

Information Commissioner's Office

# Consultation:

## Direct Marketing Code

Start date: 8 January 2020

End date: 4 March 2020

## Introduction

The Information Commissioner is producing a direct marketing code of practice, as required by the Data Protection Act 2018. A draft of the code is now out for public consultation.

The draft code of practice aims to provide practical guidance and promote good practice in regard to processing for direct marketing purposes in compliance with data protection and e-privacy rules. The draft code takes a life-cycle approach to direct marketing. It starts with a section looking at the definition of direct marketing to help you decide if the code applies to you, before moving on to cover areas such as planning your marketing, collecting data, delivering your marketing messages and individuals rights.

The public consultation on the draft code will remain open until **4 March 2020**. The Information Commissioner welcomes feedback on the specific questions set out below.

You can email your response to [directmarketingcode@ico.org.uk](mailto:directmarketingcode@ico.org.uk)

Or print and post to:

Direct Marketing Code Consultation Team  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire SK9 5AF

If you would like further information on the consultation, please email the [Direct Marketing Code team](#).

### Privacy statement

For this consultation we will publish all responses received from organisations except for those where the response indicates that they are an individual acting in a private capacity (eg a member of the public). All responses from organisations and individuals acting in a professional capacity (eg sole traders, academics etc) will be published but any personal data will be removed before publication (including email addresses and telephone numbers).

For more information about what we do with personal data please see our [privacy notice](#)

Q1 Is the draft code clear and easy to understand?

Yes

No

If no please explain why and how we could improve this:

The Code is written clearly and transparently. However, we suggest that you complete the "summary" at the beginning of the code with basic principles such as:

- consent to receive commercial information must be informed, voluntary and specific;
- separate consent for each communication channel (sms / marketing / web push);
- a clearly defined entity for which consent is given;
- clear purpose of consent;
- easy withdrawal of consent (at least in the same way as its granting).

Q2 Does the draft code contain the right level of detail? (When answering please remember that the code does not seek to duplicate all our existing data protection and e-privacy guidance)

Yes

No

If no please explain what changes or improvements you would like to see?

We suggest adding more examples related to direct marketing and practical tips, e.g.:

- on what principles it is possible to run an advertising campaign based on profiling (specific examples), when the consent of the data subject for profiling is required and when it is not (we see that for our clients that this is a problematic issue);
- examples of correct content of consents to marketing (also in the case of consent to third party marketing);
- examples of messages sent electronically that will not be considered marketing (e.g. system / technical emails).

Q3 Does the draft code cover the right issues about direct marketing?

Yes

No

If no please outline what additional areas you would like to see covered:

We suggest that the code also address the following issues:

- the draft code does not address the issue of direct marketing in a capital group, in particular whether each of the companies is required to independently obtain consents on the basis of PECR, or is it possible to give consent to the entire group – we suggest addressing this issue;
- the draft code does not contain detailed explanation why in the event of a requirement to consent under the PECR, the basis for the processing of personal data under the GDPR cannot be a legitimate interest and an indication of how consent to the processing of personal data under GDPR should be expressed in such situation. In our opinion, in such a situation, the legitimate interest should and may be the basis for the processing of personal data. In practice, most entities operating in the marketing industry, but also other entities conducting their marketing, relies on the basis of processing data in the form of legitimate interest. In our opinion, this is the most important issue to think about and correct in the code;
- we suggest to clearly specify how consent can be withdrawn in the case of sms communication - whether it is necessary to provide relevant information in each sms about the possibility of withdrawal of consent;
- we suggest deciding whether the consent expressed in the web browser settings for the use of cookies can be considered effective (it seems that European regulations stand in the way of this).

Q4 Does the draft code address the areas of data protection and e-privacy that are having an impact on your organisation's direct marketing practices?

Yes

No

If no please outline what additional areas you would like to see covered

In general, the draft code address the areas of data protection and e - privacy that are having an impact on our organization's direct marketing practice, but we suggest taking into account our comments and suggestions posted above.

Q5 Is it easy to find information in the draft code?

Yes

No

If no, please provide your suggestions on how the structure could be improved:

Q6 Do you have any examples of direct marketing in practice, good or bad, that you think it would be useful to include in the code

Yes

No

If yes, please provide your direct marketing examples :

Examples of good practices:

- there should be a link in the e-mail that allows you to withdraw your consent;
- the unsubscribe option should be simple and short - no additional questions why;
- the sender should be clearly indicated in each e-mail;
- if consent to marketing concerns a larger number of entities (e.g. capital group) - all entities should be listed or there should be a link to the list.

Q7 Do you have any other suggestions for the direct marketing code?

All suggestions stated above.

## About you

Q8 Are you answering as:

- An individual acting in a private capacity (eg someone providing their views as a member of the public)
- An individual acting in a professional capacity
- On behalf of an organisation
- Other

Please specify the name of your organisation:

  
Olesiński i Wspólnicy sp. k., ul. Powstańców Śląskich 2-4, 53-333 Wrocław, Poland

If other please specify:

Q9 How did you find out about this survey?

- ICO Twitter account
- ICO Facebook account
- ICO LinkedIn account
- ICO website
- ICO newsletter
- ICO staff member
- Colleague
- Personal/work Twitter account
- Personal/work Facebook account
- Personal/work LinkedIn account
- Other

If other please specify:

Thank you for taking the time to complete the survey