

## Introduction

Thank you for taking the time to complete this consultation. This survey is being run by Constitution Group Analysis, on behalf of the Elections Division in the Cabinet Office. If you have any questions or are unable to access the survey link, please do get in touch and we will be on hand to help at: [digital-imprints@cabinetoffice.gov.uk](mailto:digital-imprints@cabinetoffice.gov.uk). Our privacy notice, which covers these consultation questions, can be found [here](#). If you have read and understood the attached Privacy Notice, please mark 'Yes' to begin.

## About you

Please choose from the list below:

- Member of the public
- Social media platform or technology company
- Other private business
- Civil society organisation X
- Political party
- Political campaign group
- Current holder or prospective holder of elected office
- Public body
- Trade association or representative body
- Other

If you are a member of an organisation, please provide its name. If not, please reply N/A.

Open Rights Group (ORG)

Please provide your name and email address if you are happy to do so (optional). We may use these contact details to follow up with you regarding your consultation response.

- Your name: Pascal Crowe
- Email address: [pascal@openrightsgroup.org](mailto:pascal@openrightsgroup.org)

In section 9, we have included questions to monitor the regulatory burden of this regime on business (for example, technical, administrative, legal and communication costs associated with compliance). Would you like to answer these questions? ● Yes

- No X

## Proposal 1: Extension of regime

For full details on this proposal, please refer in the consultation document to Proposal 1 - Extension of Regime.

Question 1: Do you agree or disagree with this proposal for the extension of the imprints regime to digital election material?

- Strongly agree
- Agree X
- Neither agree nor disagree
- Disagree
- Strongly disagree

Question 2: Please provide any further detail to explain your response here.

Question 3: Do you agree or disagree that this regime will improve the transparency of digital election material?

- Strongly agree
- Agree X
- Neither agree nor disagree
- Disagree
- Strongly disagree

Question 4: Please provide any further detail to explain your response here.

Open Rights Group (ORG) commends the Government's commitment to transparency in political campaigning. However, we also consider transparency of how data is used to identify and message individuals to be a key factor of transparency and essential for data subjects to exercise their rights under the General Data Protection Regulation (GDPR). We make three recommendations:

**(1) Data subjects are entitled to a means to find how to access information held about them by the entity placing the advert via the imprint.** This would include the source of any data used in targeting and the companies that provide it (for example, the company Experian and the product 'Mosaic'). Data subjects may be targeted on a platform, for instance, on the basis of an email address from a third party data source, or a party database, that is matched to the user of a platform such as Facebook. The data subject is entitled to know about this matching, and a simple means to reach the privacy policy of the entity holding the external dataset should be provided.

Information about data sources held by the company is or should usually be available in a company or political party's privacy policy. In order to bring advertising in line with GDPR, imprints should link to information about the data controller of the advert, and their privacy policy. This would direct the user to the above information.

**(2) Data subjects are entitled to know why they received the advert, if this is done through profiling on the platform itself.** Other information about a user will be provided by the platform itself to the entity buying the advert, such as the targeting parameters used, and any other information available to the buyers of the ads. Information about targeting should also be easy to see and understand for the user.

**(3) Data subjects are entitled to find information about the political targeted ads they received after the fact.** Adverts often appear briefly, and then are automatically removed. At other times, users may question what they viewed some time later, or need to review what they saw briefly and were not in a position to note at the time. In order that users are able to find out about adverts they saw, they need a 'personal political ad library' - a list of political ads they have been served, where they can follow up any concerns they have.

Without these recommendations being adopted, imprints alone will be unhelpful for many voters, and will not introduce the level of accountability needed.

Question 5: What do you consider to be the main benefits of the digital imprints

proposal?

Enhanced transparency and greater trust in democratic processes.

Question 6: Do you have any other comments on this proposal?

ORG notes that the proposals have been made in line with the UK's existing liability regime, which is based in the EU eCommerce Directive's prohibition on general monitoring requirements. While government has been clear that it has no current plans to change this regime, Ministers have discussed doing so in the past, and we note that the debate on the Online Harms Bill poses some risks to general monitoring requirements. We therefore ask government to continue the prohibition on general monitoring, as legislated in the eCommerce Directive, to ensure the success of the new imprints regime.

### **Proposal 2: Material subject to the regime**

For full details on this proposal, please refer to Proposal 2 - Material subject to the regime.

Question 7: Do you agree or disagree that the regime should be extended to registered political parties, registered third party campaigners, candidates, holders of elected office and registered referendum campaigners - both paid and unpaid (or 'organic') material?

- Strongly agree X
  - Agree
  - Neither agree nor disagree
  - Disagree
  - Strongly disagree

Question 8: Please provide any further detail to explain your response here.

Question 9: Do you agree or disagree that the regime should be extended to prospective office holders (both paid and unpaid, or 'organic', material)? ●

- Strongly agree X
- Agree
  - Neither agree nor disagree
  - Disagree
  - Strongly disagree

Question 10: Please provide any further detail to explain your response here.

Question 11: Do you agree or disagree that the regime should be extended to unregistered third party campaigners promoting paid material only? ●

- Strongly agree
- Agree
  - Neither agree nor disagree
  - Disagree X
  - Strongly disagree

Question 12: Please provide any further detail to explain your response here.

ORG supports the UK Electoral Commission's proposal to extend the imprints regime to unregistered third party campaigners promoting both paid and unpaid material. Otherwise the likelihood of loopholes for abuse emerging is too great.

The Scottish Government has published legislation that will require imprints for registered and unregistered campaigners for paid and unpaid for content. However it will include an exemption for individuals expressing personal opinion. ORG supports this policy and suggests it provides a novel way to protect freedom of expression online whilst guarding against the abuse of loopholes in the imprint rules.

Question 13: Do you agree or disagree with the distinction made in this proposal between paid and unpaid material?

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree X

Question 14: Please provide any further detail to explain your response here.

ORG supports the UK Electoral Commission's submission in this regard. The definition of 'paid' material rests on distribution costs incurred by a campaigner. Given the ways that social media can be 'gamed' and content can go viral, distribution costs are often minimal or non-existent. The distinction between paid material and unpaid for material is therefore not a relevant metric here.

Question 15: Do you agree or disagree that the regime should be expanded beyond what is considered election material (as set out in this proposal), to wider online political advertising?

- Strongly agree
- Agree
- Neither agree nor disagree X
- Disagree
- Strongly disagree

Question 16: Please provide any further detail to explain your response here.

ORG considers that a discussion on expanding the imprint regime, and the potential knock on effects of this, should be welcomed. However an expansion should not be mandated at this time.

Question 17: Do you agree or disagree that the digital imprints rules should apply to all forms of elections and referendums (beyond those already listed in the proposal and excluding devolved elections and referendums)?

- Strongly agree X
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree

Question 18: Please provide any further detail to explain your response here.

ORG supports the UK Electoral Commission's opinion that voters in any election or referendum should be able to understand where campaigning material comes from.

Question 19: Do you have any other comments on this proposal?

### **Proposal 3: Details on the imprint**

For full details on this proposal, please refer to Proposal 3 - Details on the imprint.

Question 20: Do you agree or disagree with the proposal on the details to be contained within the imprint i.e. the name and address of the promoter of the material and the name and address of any person on behalf of whom the material is being published?

- Strongly agree X
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree

Question 21: Please provide any further detail to explain your response here.

Question 22: Do you have any other comments on this proposal?

Digital Imprints Consultation Paper 27

### **Proposal 4: Location of the imprint**

For full details on this proposal, please refer to Proposal 4 - Location of the imprint.

Question 23: Do you agree or disagree with the proposal for the location of the imprint - that the imprint must be located as part of the material where it is practical to do so and where it is not practical, must be accessible from the material?

- Strongly agree
- Agree X
- Neither agree nor disagree
- Disagree
- Strongly disagree

ORG supports the UK Electoral Commission's submission in this regard. Consistent guidance from platforms, backed by new legal requirements, would help ensure some consistency in the content and quality of disclaimers on political adverts. Individuals should be able to view the full imprint as part of the advert – it should not be optional or unobvious in any way.

Question 24: Please provide any further detail to explain your response here.

Question 25: How do you think digital platforms can facilitate campaigners to include imprints?

Question 26: Do you have any other comments on this proposal?

**Proposal 5: Appearance of the imprint**

For full details on this proposal, please refer to Proposal 5 - Appearance of the imprint.

Question 27: Do you agree or disagree with the proposal for what the imprint should look like - permanent, embedded and visible/audible, clearly readable/legible/audible and replicable?

- Strongly agree X
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree

Question 28: Please provide any further detail to explain your response here.

Question 29: What would campaigners need from digital platforms in order to comply with the rules?

ORG supports the development of technical solutions to facilitate full imprints on campaign material.

Question 30: Do you have any other comments on this proposal?

**Proposal 6: Re-publishing of election material**

For full details on this proposal, please refer to Proposal 6 - Re-publishing of election material.

Question 31: Do you agree or disagree with the proposal for the re-publishing or 'sharing' of material?

- Strongly agree
- Agree X
- Neither agree nor disagree
- Disagree
- Strongly disagree

28 **Digital Imprints** Consultation Paper

Question 32: Please provide any further detail to explain your response here.

Question 33: Do you have any other comments on this proposal?

## **Proposal 7: Territoriality**

For full details on this proposal, please refer to Proposal 7 - Territoriality.

Question 34: Do you agree or disagree with the proposal that the regime will apply to all election material regardless of where it has been promoted from?

- Strongly agree X
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree

Question 35: Please provide any further detail to explain your response here.

ORG agrees with the UK Electoral Commission's position that if imprint rules do not apply to materials from overseas this is an obvious loophole.

Question 36: Do you have any other comments on this proposal?

## **Section 8: Enforcement**

Question 37: Do you agree or disagree that the relevant authorities are in a position to effectively enforce digital imprints?

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree X
- Strongly disagree

Question 38: Please provide any further detail to explain your response here.

Regulation is only effective when it is enforced. For this to happen the regulator needs to be bold, have meaningful powers, and be independent of government. The Government's attempts to clip the wings of the UK Electoral Commission, for example by forcing out its chairman, are disturbing and should be stopped. The Speaker's Committee on the Electoral Commission should be non partisan and effectively scrutinised to ensure this. Similarly, Electoral Commission proposals to grant the Electoral Commission enhanced prosecution powers should be taken back off the shelf and enacted in law.

Question 39: Do you agree or disagree that civil sanctioning powers should be extended for use in relation to offences committed concerning election material in support of candidates?

- Strongly agree X
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree

Question 40: Please provide any further detail to explain your response here.

Question 41: Do you have any further comments on this section?

## Section 9: Regulatory costs and benefits to business

As part of our duty to monitor the regulatory burden on business, we have included the following questions for businesses to answer in order to estimate the cost of compliance with the new regime. Please also answer these questions if you represent a political party or the third sector. When answering this section, please consider all cost implications of this policy which include, but are not limited to: technical, administrative, legal and communication costs.

Digital Imprints Consultation Paper 29

Question 42: If you are a business, what size of business are you?

- Micro (0-9 employees)
- Small (10-49 employees)
- Medium (50-249 employees)
- Large (250+ employees)
- N/A

Question 43: If you are a business, what was your yearly turnover in the last financial year?

- less than or equal to £5 million;
- greater than £5 million and less than or equal to £10 million;
- greater than £10 million and less than or equal to £25 million;
- greater than £25 million and less than or equal to £50 million;
- greater than £50 million and less than or equal to £100 million;
- greater than £100 million and less than or equal £350 million;
- greater than £350 million
- N/A

Question 44: If you are a business, do you anticipate there will be any financial or other costs associated with the proposed regime?

- Yes
- No
- N/A

Question 45: If you answered “yes” to the previous question, what do you anticipate the cost to your organisation will be?

- less than or equal to £1,000;
- greater than £1,000 and less than or equal to £10,000;
- greater than £10,000 and less than or equal to £100,000;
- greater than £100,000 and less than or equal to £1 million;
- greater than £1 million
- N/A

Question 46: Will these costs be one-off or ongoing?

- One-off
- Ongoing
- Both
- N/A

Question 47: If you have more information on costs, please add it here. For example, information on direct transition costs (start-up costs, training and familiarisation), direct ongoing costs (complying with the regulation) and indirect impacts on business (productivity, profits and barriers to entry). Where possible, please provide any calculations and frequency of these. If you have any evidence on the benefits of this legislation to business or wider society, please also add it here.

## Contact details and how to respond

For information about how we treat your personal data when you respond to our consultation, please see the **Privacy Notice at Annex A**.

Please respond online at: <https://www.smartsurvey.co.uk/s/digitalimprintsconsultation/>

**OR**

send your response via email to: [digital-imprints@cabinetoffice.gov.uk](mailto:digital-imprints@cabinetoffice.gov.uk)

Please do not send responses by post to the department at the moment as we may not be able to access them.

### Complaints or comments

If you have any complaints or comments about the consultation process you should contact Cabinet Office at the above address.

### Extra copies

If you would like paper copies of this consultation or require an alternative format version of this publication please contact: [publiccorrespondence@cabinetoffice.gov.uk](mailto:publiccorrespondence@cabinetoffice.gov.uk).

### Confidentiality

If you want the information that you provide to be treated as confidential, please explain to us why you regard the information you have provided as confidential. We will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on Cabinet Office.

Digital Imprints Consultation Paper 31

## Annex A – Privacy Notice for Cabinet Office consultations

This notice sets out how we will use your personal data, and your rights. It is made under Articles 13 and/or 14 of the General Data Protection Regulation (GDPR).

### Your data

#### Purpose

The purpose for which we are processing your personal data is to obtain the opinions of members of the public, parliamentarians and representatives of organisations and companies about departmental policies, proposals, or generally to obtain public opinion data on an issue of public interest. If you leave contact details we may contact you with further questions.

## **The data**

We will process the following personal data: name, address, email address, job title (where given), and employer (where given), as well as opinions.

We will also process additional biographical information about respondents or third parties where it is volunteered.

## **Legal basis of processing**

The legal basis for processing your personal data is that it is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the data controller. In this case that is consulting on departmental policies or proposals, or obtaining opinion data, in order to develop good effective policies.

Sensitive personal data is personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, and the processing of genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person's sex life or sexual orientation.

The legal basis for processing your sensitive personal data, or data about criminal convictions (where you volunteer it), is that it is necessary for reasons of substantial public interest for the exercise of a function of the Crown, a Minister of the Crown, or a government department. The function is consulting on departmental policies or proposals, or obtaining opinion data, in order to develop good effective policies.

32 **Digital Imprints** Consultation Paper

## **Recipients**

Where individuals submit responses, we may publish their responses, but we will not publicly identify them. We will endeavour to remove any information that may lead to individuals being identified.

Responses submitted by organisations or representatives of organisations may be published in full.

Where information about responses is not published, it may be shared with officials within other public bodies in order to help develop policy.

As your personal data will be stored on our IT infrastructure it will also be shared with our data processors who provide survey management, email, and document management and storage services.

We may share your personal data where required to be law, for example in relation to a request made under the Freedom of Information Act 2000.

## Retention

Published information will generally be retained indefinitely on the basis that the information is of historic value. This would include, for example, personal data about representatives of organisations.

Responses from individuals will be retained in identifiable form for three calendar years after the consultation has concluded.

## Where personal data have not been obtained from you

Your personal data were obtained by us from a respondent to a consultation.

## Your rights

You have the right to request information about how your personal data are processed, and to request a copy of that personal data.

You have the right to request that any inaccuracies in your personal data are rectified without delay.

You have the right to request that any incomplete personal data are completed, including by means of a supplementary statement.

You have the right to request that your personal data are erased if there is no longer a justification for them to be processed.

You have the right in certain circumstances (for example, where accuracy is contested) to request that the processing of your personal data is restricted.

**Digital Imprints** Consultation Paper 33

You have the right to object to the processing of your personal data where it is processed for direct marketing purposes.

You have the right to object to the processing of your personal data.

## International transfers

As your personal data is stored on our IT infrastructure, and shared with our data processors, it may be transferred and stored securely outside the UK. Where that is the case it will be subject to equivalent legal protection through the use of Model Contract Clauses, or through an adequacy decision in respect of the territory in question.

## Contact details

The data controller for your personal data is the Cabinet Office. The contact details for the data controller are: Cabinet Office, 70 Whitehall, London, SW1A 2AS, or 0207 276 1234, or [publiccorrespondence@cabinetoffice.gov.uk](mailto:publiccorrespondence@cabinetoffice.gov.uk).

The contact details for the data controller's Data Protection Officer are: Data Protection

Officer, Cabinet Office, 70 Whitehall, London, SW1A 2AS, or [dpo@cabinetoffice.gov.uk](mailto:dpo@cabinetoffice.gov.uk).

The Data Protection Officer provides independent advice and monitoring of Cabinet Office's use of personal information.

## Complaints

If you consider that your personal data has been misused or mishandled, you may make a complaint to the Information Commissioner, who is an independent regulator. The Information Commissioner can be contacted at: Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF, or 0303 123 1113, or [casework@ico.org.uk](mailto:casework@ico.org.uk). Any complaint to the Information Commissioner is without prejudice to your right to seek redress through the courts.

34 **Digital Imprints** Consultation Paper

## Impact Assessment

A regulatory impact assessment (RIA) is a tool used to inform policy decision-making. It uses cost-benefit analysis, as set out in the Green Book, to ensure good practice in developing policy based on robust evidence.

There exists a general threshold for independent scrutiny of Regulatory Impact Assessments (RIAs) where the equivalent annual net direct cost to business (EANDCB) is greater than  $\pm£5m$ . For measures below this threshold, proportionate cost-benefit analysis should be undertaken to inform decision-making, as well as demonstrating that the impact of a measure is below the  $\pm £5m$  EANDCB threshold.

In line with the Better Regulation Framework Principles, during the consultation stage of this policy-making process, we will undertake proportionate analysis to determine whether a regulatory impact assessment is needed and what level of independent scrutiny will be required. We have added specific sections on anticipated costs and benefits to the consultation questions to help inform this. This will help inform the assumptions we will use to conduct future cost-benefit analysis.

This document is available in large print, audio and braille on request. Please email: [publiccorrespondence@cabinetoffice.gov.uk](mailto:publiccorrespondence@cabinetoffice.gov.uk)



© Crown copyright 2019

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit [nationalarchives.gov.uk/doc/open-government-licence/version/3](http://nationalarchives.gov.uk/doc/open-government-licence/version/3) or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: [psi@nationalarchives.gsi.gov.uk](mailto:psi@nationalarchives.gsi.gov.uk).

Where we have identified any third party copyright information you will need to obtain

permission from the copyright holders concerned.

Any enquiries regarding this publication should be sent to us at [publiccorrespondence@cabinetoffice.gov.uk](mailto:publiccorrespondence@cabinetoffice.gov.uk)

This publication is available at [www.gov.uk/government/consultations](http://www.gov.uk/government/consultations)