



Compliance Bulletin 105

WEBSITE REQUIREMENTS FOR THE 25TH MAY 2012

IMPLEMENTATION OF THE INFORMATION COMMISSIONER OFFICE'S (ICO) REQUIREMENTS ON COOKIES

► The Cookie Requirements

What is a cookie?

"A cookie is a small file, typically of letters and numbers, downloaded on to a device when the user accesses certain websites. Cookies allow a website to recognise a user's device."

Also known as browser cookies or tracking cookies, cookies are small, often encrypted text files, located in browser directories. They are used by web developers to help users navigate their websites efficiently and perform certain functions.

Cookies are created when a user's browser loads a particular website. The website sends information to the browser which then creates a text file. Every time the user goes back to the same website, the browser retrieves and sends this file to the website's server. Computer Cookies are created not just by the website the user is browsing but also by other websites that run ads, widgets, or other elements on the page being loaded.

When do the rules come into effect and what is required?

As at the **25th May 2012** it will be a requirement for all websites that set cookies to:

- tell people that the website operates cookies;
- explain what the cookies are doing; and
- obtain the user's consent to store a cookie on their device.



► What's Changed

Since 2003 any website using cookies has been required to provide clear information to the web user about these cookies. The rules stated:

- You must provide clear and comprehensive information about any cookies you are using; and
- You must provide the 'option' for people to opt out of cookies being stored on their devices;

From the 25th May 2012 it will be a requirement for firms to:

- Provide clear and comprehensive information about the cookies in use and what they are used for; and
- Website providers 'must obtain consent' to store a cookie on a user or subscribers device (computer or phone)

The ICO defines consent as:

- '*any freely given specific and informed indication of his wishes by which the data subject signifies his agreement to personal data relating to him being processed'*

Consent must involve some form of communication where the individual knowingly indicates their acceptance. This may involve clicking an icon, sending an e-mail or subscribing to a service.

► Enforcement and Penalties

It is the role of the Information Commissioners Office (ICO) to ensure that organisations comply with the law. In cases where organisations refuse or fail to comply voluntarily the Information Commissioner has a range of options available to him to take formal action where this is necessary.

It should be noted that if the ICO were to enforce or charge a penalty, the owner of the website would be liable and not IN Partnership for any penalty levied.

The main options available to the ICO are:

- **Information notice:** this requires organisations to provide the ICO with specified information within a certain time period;
- **Undertaking:** this commits an organisation to a particular course of action in order to improve its compliance;
- **Enforcement notice:** this compels an organisation to take the action specified in the notice to bring about compliance with the Regulations. For example, a notice may be served to compel an organisation to start gaining consent for cookies. **Failure to comply with an enforcement notice can be a criminal offence.**
- **Monetary Penalty Notice:** a monetary penalty notice requires an organisation to pay a monetary penalty of an amount determined by the ICO, up to a maximum of £500,000. This power can be used in the most serious of cases and if specific criteria are met, if any person



has seriously contravened the regulations and if the contravention was of a kind likely to cause substantial damage or substantial distress. In addition the person must have been aware that the contravention was taking place or that he ought to have known that there was a risk the contravention might occur.

➤ How to comply with the Cookie Regulations

If you are operating a website you should determine whether your website uses cookies, if you are using cookies you should get confirmation from your website provider detailing all of the cookies in use. These may include; statistical cookies, tracking cookies or analytical cookies details of which can be found on the following website <http://www.allaboutcookies.org>.

The ICO have set out a clear process that should allow firms to meet its requirements of the new cookie regulations, in line with its recommendations:

1. Conduct a Cookie Audit:

- a. Firms should build an inventory of the cookies created and uploaded by their website

2. Assess how intrusive the firms use of cookies is:

- a. The ICO explains that understanding the degree to which each cookie impacts on a website visitor's privacy is key to an accurate consideration of how to comply with the regulations. This may be covered in the cookie audit.

3. Consider how necessary each cookie is:

- a. The ICO suggests conducting a review of whether each cookie in use by the website could be removed or is necessary, or whether it is possible to reduce the overall privacy impact of the website on its visitors.

4. A solution should be found for obtaining consent:

- a. The ICO gives a number of different examples in its document ICO – Guidance on the rules on use of cookies and similar technologies however, it does state that any solution has to be appropriate to an organisation's own needs. Below is an example given by the ICO in its guidance which can be found on the following web page (http://www.ico.gov.uk/for_organisations/privacy_and_electronic_communications/the_guide/cookies.aspx) :



Example website

PDF File.

(Log in)



Home

About

News

Blog

Contact

Changes to terms and conditions

We are making changes to our terms and conditions.

We use cookies for:

- Analytical purposes - measuring visitor behaviour so we can improve our website
- Your preferences - to remember the way you like to view our website

By checking this box you are agreeing to the use of cookies.

Confirm

For more detail about the cookies we use, see our [privacy and cookies policy](#).

5. Updating your privacy policy

- A firm is required to update its privacy policy to outline all of the cookies in use by the website and details of what each cookie is used for. An example of which is detailed below:

For example

Our website uses four cookies. A cookie is a small file of letters and numbers that we put on your computer if you agree. These cookies allow us to distinguish you from other users of the website which helps us to provide you with a good experience when you browse our website and also allows us to improve our site.

The cookies we use are 'analytical' cookies. They allow us to recognise and count the number of visitors and to see how visitors move around the site when they're using it. This helps us to improve the way our website works, for example by making sure users are finding what they need easily. Read more about the individual analytical cookies we use and how to recognise them [link]



- b. The privacy policy should be highlighted to the user so that they may read and become aware of the cookies in use the ICO has a number of suggestions:

1.

A screenshot of a website header. At the top left is a red underlined link 'New: cookies info'. To its right are 'About' and 'Contact' links. Below the header is a search bar with a magnifying glass icon. Underneath the search bar are two buttons: 'Download' on the left and 'Sign up' on the right. A solid blue horizontal bar is at the bottom of the header area.

Highlighting cookies information

2.

A screenshot of a website header. At the top left are several black underlined links: 'About', 'Privacy and Cookies', 'FAQs', and 'Contact us'. Below these is a search bar with a magnifying glass icon. Underneath the search bar are two buttons: 'Download' on the left and 'Sign up' on the right. A solid blue horizontal bar is at the bottom of the header area.

Simple formatting can help - this might include changing the size of the link to the information or using a different font. The key is whether the link to this important information is distinguishable from “normal text” and other links. Positioning is important – simply moving the link from the footer of the page to somewhere more likely to catch attention is an easy but effective thing to try.

3.

A screenshot of a website footer. At the top left are several blue underlined links: 'About', 'Terms', 'Privacy', 'Help', 'Accessibility', 'Jobs', and 'Contact'. In the center, there is a blue underlined link 'Read about how we use cookies'. At the bottom left is a copyright notice: '© Example website 2011'.

Making the hyperlink more than simply “privacy policy” : this could involve a link through some explanatory text (“Find out more about how our site works and how we put you in control”)



► What you should do?

Once you have established whether your website does indeed use cookies and how you are going to obtain consent for the use of cookies, you should implement the following steps:

1. Update your website to include the option for obtaining consent as per the section in this document titled "[A solution should be found for obtaining consent](#):"
2. Update your privacy policy as per "[Updating your privacy policy](#)" section in this document to reflect and give details of the cookies used on your website;
3. Keep a track of all changes you have made to your website and when your website comes up for review, submit the changes you have made along with the website.

"Please note that the onus is on you and your website provider to implement the changes by the 25th of May 2012 not IN Partnership and it is the Firm not IN Partnership or the Website Provider that may incur a penalty should they not adhere to the rules."

If you have any further queries, contact your website developer in the first instance or alternatively you can contact the compliance department at compliance@inpartnership.net