

Response to consultation on draft statutory guidance: digital imprints | Electoral Commission Search Response to consultation on draft statutory guidance: digital imprints You are in the Our consultations section

Home Our consultations Statutory guidance on digital imprints - final draft On this page Summary How we developed the draft guidance for consultation Main changes to the guidance after consultation Themes raised through the consultation Conclusion Next steps Annex A – Breakdown of statutory consultation responses First published: 18 May 2023 Last updated: 30 May 2023 Summary Summary 'Imprints' are added to certain political or election-related material to show who is responsible for the material. This helps to deliver transparency for voters about who is spending money to influence them. The Elections Act 2022 includes provisions requiring imprints on digital campaign material. The Act introduces a new duty on the Commission to prepare statutory guidance explaining the digital imprints regime and how the Commission and the police will exercise their enforcement functions under it. Once the statutory guidance comes into force, the Commission and the police must have regard to the guidance as they enforce the regime. For campaigners, showing that they have complied with the guidance will be a statutory defence to any offence under the new laws. Between 31 October 2022 and 20 December 2022, we conducted a consultation on a draft of the guidance. The consultation received 22 responses from political parties, academics, and a range of other groups, including trade unions and organisations representing charities. We set out below a summary of the key themes and issues that emerged in the consultation, and how we have considered them all in updating the guidance and in our wider work to support campaigners. We are grateful to everyone who provided us with feedback. We have used this to inform the further development of the guidance, and to make it as clear and helpful as possible. We recognise how important it is that the people who will use the guidance support it. View the final draft of the guidance How we developed the draft guidance for consultation Before we commenced with the development of the guidance, we talked to a range of political parties and non-party campaigners from across the UK to inform the draft. We asked them about: their understanding of the imprint provisions how they use digital material in their political campaigning what digital platforms they use to reach voters how they see digital campaigning evolving in the future We used this pre-consultation phrase to draw on their expertise, as well as our experience of regulating elections, to produce a draft that would be subject to a public consultation. Main changes to the guidance after consultation Overall, feedback was positive and stakeholders felt that the draft guidance was “generally straightforward and well-written” and “navigates a complex and at times ambiguous statutory regime in an accessible way”. There were areas where additional clarity or examples were sought to make it clearer for parties and campaigners to understand the law and how to apply it in practice. In response to the feedback, we have made changes to the draft guidance. We go through the details of these below, but in summary the main changes include: Including more examples and a range of images throughout the guidance to support campaigners understand the rules and in what situations they apply. Making it clearer what factors are relevant to determining whether it is ‘reasonably practicable’ to include an imprint as a part of the material. Adding in a flowchart to explain the sharing exemption and including a new section that sets out where the liability lies when material is shared. Updating some of the terminology to make it easier for campaigners to understand and navigate. Redrafting the section on who the promoter is, making it clearer that when material is published by an organisation, the organisation itself will typically be the

promoter, so no individual's name needs to appear. Including more information on the factors that the Commission will consider when determining whether enforcement action is proportionate. Within this report we have highlighted where we agree with recommendations to improve the guidance's intelligibility. We have also set out why, in some circumstances, we have retained the original wording. In some cases, we were unable to make the amendments suggested because they conflicted with the law in the Elections Act 2022 or were views on how the law itself could be clearer. In other cases, pieces of feedback were incompatible with each other. Themes raised through the consultation

Material that requires an imprint

Background

Digital material is any material in electronic form that consists of or includes text, moving images, still images, speech or music. However, it does not include telephone calls or SMS messages. There are two different sets of criteria which determine if digital material requires an imprint. If someone has paid to publish the material as an advert, then an imprint is required if the material is 'political material'. If no one has paid for the material to be published as an advert, then this is 'organic material'. Organic material requires an imprint if the material is any of: election material referendum material recall petition material

However, an imprint is only required on organic material if the material is published by or on behalf of a 'relevant entity', which is any one of the following: a registered party a registered non-party campaigner a candidate or future candidate an elected office-holder a registered referendum campaigner a registered recall petition campaigner

Distinction between 'paid adverts' and 'organic' material

80% of respondents felt that the guidance was helpful in explaining what is meant by 'paid to be published as an advert'. However, some respondents did ask for further clarification on the distinction between the two types of material. We have therefore added some additional examples to explain that material only counts as a paid advert if the platform hosting the advert has been paid for the publication of that advert. We included information to clarify and make clear that: content from a social media influencer or paid ambassador who is publishing material on their own normal social media channels, would be classified as organic material rather than a paid advert, even if they are being paid by campaigner pay-per-click and pay-per-impression adverts would be paid adverts paying a platform to promote a particular post (through a mechanism such as a Facebook boost) would turn it into a paid advert, but paying for a general service (such as a Twitter blue tick) would not turn all the material posted from that account into a paid advert

These changes and specific examples will support campaigners to better understand in practice how different types of material are classified and how to apply it to the modern realities of campaigning. Supporting campaigners to understand what is election material and political material

60% of respondents explained that the guidance effectively detailed what political material is, and 73% said that the information on how to apply the tests in general was clear. 73% said that more examples would be helpful. Several respondents noted the complexity of the tests that campaigners need to apply, highlighting that “ publishers will likely have to make difficult judgements about whether their material requires an imprint...the burden of interpreting whether content meets this threshold will largely be borne by publishers ”. This is true and something we know campaigners are concerned about, as the duty to include an imprint falls on the promoter of the material, and anyone else on whose behalf the material is published. We acknowledge that the law is complex and want to do what we can to ensure the guidance as clear and helpful as possible. We have made amendments to the draft wording that will help campaigners in two ways: we have been clear in recommending that campaigners should

include an imprint on all digital material as best practice we have explained in more detail the criteria that determine whether material would be election material or political material. A number of respondents asked for the guidance to include more recommendations and suggestions of good practice to help them comply with the law. We have therefore added more throughout, and have been clear that it is good practice for campaigners to include an imprint on all of their material. We have also explained that if they adopt a best practice policy of including an imprint on all of their material, this would bypass the need to engage with the detail of the legal tests. Several respondents found the categories used in the definitions of political material and election material confusing, and explained that it was hard to apply the definitions in practice. To help campaigners understand the distinction better, we have included an example image for each type of scenario in which something can be either political material or election material. This also addressed more general feedback we had from respondents who explained how more examples and graphics in the guidance would provide them with greater clarity and assurances. document. We also added exemptions to the flowchart summarising what material needs an imprint to make sure it is as comprehensive as possible. A number of respondents told us that they found the phrase 'election-related material' very confusing. We have therefore replaced 'election-related material' with 'election material' to ensure the terminology is as user friendly and clear as possible. We also updated the terminology from 'political entities' to 'relevant entities', to address concerns raised by some respondents, that some types of campaigners, including registered non-party campaigners, might not identify as 'political' in its ordinary sense and therefore think that the laws may not apply to them. Navigating the guidance A couple of respondents suggested that the guidance might be easier to navigate if it was structured by type of reader (candidate, political party, non-party campaigner, and elected office-holder) rather than by topic. We agree that structuring the guidance by reader type can make it easier for campaigners to read and simpler to navigate, and this is normally the approach we adopt for drafting our own non-statutory guidance. However, the requirement on the Commission to produce this guidance is specified in law and must relate to the whole of Part 6 (and Schedules 11 and 12) of the Elections Act 2022, covering the new digital imprints regime and that alone. We therefore have produced a single guidance product that can be used by all campaigners, and where possible we have used signposting to help them understand as clearly as possible related sections of the law. In order to make the guidance as user friendly as possible for different users, and we have added new sections specifically for candidates/future candidates and for political parties, and have moved and updated the section on non-party campaigners. This allowed us to give specific and targeted guidance to those reader types which may not be relevant to others and reflects how they operate in practice. Non-party campaigners Background Non-party campaigners are individuals or organisations who campaign at elections but do not stand candidates themselves. Non-party campaigners play a vital role in our democracy, and we are committed to providing them with as much clarity as possible to ensure they are not discouraged from active campaigning. Many non-party campaigners are issues-based campaigners. This means that unlike parties or candidates, who will typically include imprints on most or all of their material, non-party campaigners will typically publish material which may or may not require an imprint on a case-by-case basis. A third of the responses to the consultation were from non-party campaigners, or groups representing them. Understanding what requires an imprint There were requests from respondents for more detail on the requirements that

determine whether material needs an imprint, especially as they relate to non-party campaigners and what sort of material does not require an imprint. s told us that they were concerned about being able to make this assessment in practice, and that the different types of material they use could be hard to distinguish between. We have therefore added specific detailed examples that relate to non-party campaigners. This includes non-party campaign material that does not require an imprint, an issues-based campaign that does not relate to elections, and a campaign against government legislation. When we drafted the guidance, we included detail to explain if a registered charity followed charity law and guidance from the relevant charity regulator, any material they pay to publish as an advert is unlikely to require an imprint because its sole or primary purpose is unlikely to be one in the definition of 'political material'. We received very different responses from two different groups representing charities. The first welcomed our drafting noting it was " very helpful " to understand when an imprint would be required. However, other respondents were " concerned that this case could lead to complacency and inadvertent breaches ". This is because for spending, the spending threshold (of £10,000 during a regulated period) provides a kind of buffer, whereas for imprints a single advert could potentially lead to a charity committing an offence. We do understand the concerns of some individuals but have retained our original wording to help provide as much reassurance to charities, who told us they want to manage the risks of them accidentally breaching the law in the best way they could. We therefore have highlighted that charities and other campaigners could for best practice include an imprint on all material that they publish around election times, even in cases where no imprint is required by the legislation. This would support transparency and we've added suggestions of how campaigners could do this in practice. More generally, a number of respondents wanted us to be clearer in the guidance that a charity (or other campaigner) putting an imprint on their material would not always mean that their material had needed an imprint by law, and that any spending on the material would meet the related 'purpose test' for regulated non-party campaigner spending. We agree that this is important to explain so have added in some additional wording to highlight that if campaigners include an imprint on all their material as good practice, then one cannot infer that an imprint was required (or that spending is regulated) from the actual inclusion of the imprint.

Information that must be included

Background The imprint must contain the name and address details of: the promoter of the material anyone else on whose behalf the material has been published

The majority of respondents, (90%) felt that the guidance effectively supported them to know what information to include, and less than half saying that more examples should be included. The types of information that must be included

Some respondents were very concerned about the requirement to include an address, particularly a home address, for security reasons. Some suggested that an email address should be acceptable, or that the address requirement be dropped entirely. However, the requirement to include an address is set out in the legislation so the guidance must reflect the law as passed. There was also a lack of understanding about whose details are required as the promoter. We have therefore updated this section and added examples, making it clear that if an organisation causes some material to be published, then the organisation is the promoter, so it is the organisation's details which must appear in the imprint. In this case, an individual's details may not be required.

Location of the imprint

Background The imprint must be included as a part of the material, unless it is not reasonably practicable to do so. If it is not reasonably practicable, then the imprint must be included somewhere directly

accessible from the material. Helping campaigners to understand what is reasonably practicable and directly accessible This was the section that respondents felt least confident with, as only 38% felt that the guidance supported them to understand when it is 'reasonably practicable' to include an imprint as a part of the material. This was the section that respondents were least confident with, as only 38% felt that the guidance supported them to understand when it is 'reasonably practicable' to include an imprint as a part of the material. To address this, we have added more detail about what is and what is not relevant to making an assessment of reasonable practicability. In particular, we have made clear it is based on the technological capacity of the platform being used, and not on other considerations, such as design preferences, effectiveness, or how much time or effort it would entail. 81% of respondents wanted more examples on direct accessibility and reasonable practicability. Respondents were able to provide a number helpful and illustrative examples of how different platforms and how their functionality might pose a problem somewhere for including an imprint directly accessible from the material. We have therefore made it clearer that the examples in the guidance of profile and pinned tweet are just examples of places that an imprint could appear, highlighting that a campaigner can add a link in to the imprint themselves – it does not have to be using the platform's existing functionality. We have explained that there are many ways to make an imprint be directly accessible from a piece of material, and it is up to each campaigner to use the best option for them. We also added in new examples, including of a TikTok video and a Google search advertisement. Concerns about technological limitations and the pace of technological change There was a general concern raised by consultees about the pace of change of social media and how the guidance would cope with that – especially if the direction of travel for social media platforms is towards more deliberately restricted functionality. We are aware of the potential for fast change in this area but the guidance aims to give principles which can be applied to any platform with any functionality, including functionality not yet invented. All the examples given to illustrate these principles are necessarily limited to existing functionality as of March 2023. We have also made clear in the guidance that if there was a platform with such extremely reduced functionality that including an imprint on its posts would be impossible, then campaigners would not legally be able to post material that required an imprint on that platform. This is a straightforward consequence of the legislation. However, we do not consider that such a platform is in mainstream use. Republishing material Background When material is shared on social media, sometimes it does not need a new imprint, if it still includes the original imprint. This applies when someone shares material that has already been published with a correct imprint and the sharer does not alter the material. 71% of respondents felt that this section of the guidance was clear. However, a number of campaigners highlighted that the laws are particularly complex in relation to republishing: “ explaining this clearly is a real challenge, and the examples are useful ” “ This is the most complex area of the legislation, but the tables provide clarity and are welcomed ” We have therefore made minimal edits to this section, but added a new flowchart to summarise how the sharing exemption works, as well as adding an extra example. Liability The most common query respondents had was over where the liability lies when shared material is published without a compliant imprint – is it with the publishers of the original material, or with the publishers of the shared material? We had included detail on this in the draft guidance, but in response to consultation feedback we have added some text into the Sharing section as well, making clear that the liability is on the republishers and

not on the individuals who published the original material. Enforcement Background The guidance sets out our approach to enforcement of the regime, the police's approach: the Commission and the police must have regard to the guidance when carrying out their duties under the Act. For campaigners, showing that they have complied with the guidance will be a statutory defence to any offence under the new laws. Overall, this section got good feedback from respondents – 73% felt that the criteria the Commission and the police will have regard to in considering enforcement action are appropriate. The National Police Chief's Council explained that "the enforcement section (regarding proportionality) is strongly supported". Process and proportionality Some respondents requested additional information that is already within a in the Commission's separate Enforcement Policy, which is another form of statutory guidance laid before Parliament independently of this statutory guidance, and which sets out our enforcement approach to the rest of the political finance regime. This included information about procedure when the Commission receives a complaint, when and how a campaigner would be contacted following a complaint or an investigation being opened, what the threshold for opening an investigation is, and more detail on what we mean by 'proportionality'. We are conscious of not replicating content from the Commission's Enforcement Policy within this separate statutory guidance, but we have added in some details to address the common questions we saw from campaigners. In particular, we have made clear that we will only open an investigation where it is proportionate to do so, considering for example the level of experience of the campaigner, their record of compliance, and whether they quickly rectified the matter. Conclusion The introduction of the requirements for imprints on digital material is important for transparency in campaigning, and it is essential that campaigners understand the new duties placed on them. The statutory guidance is a central part of the Commission's work to help ensure that campaigners are confident in applying the law to their activities. The digital imprints regime is complex. Many respondents welcomed how various sections of the draft guidance provided "clarity" and "helpful examples". We are grateful to all our respondents and have used their expertise and knowledge of how campaigning works in practice to make the guidance as clear and as helpful as possible. Next steps We have presented the final draft guidance to the Secretary of State for Levelling Up, Housing and Communities. The Minister may then modify the guidance, before laying it for parliamentary approval. A statement of reasoning is required to detail any changes that have been made. The guidance is then subject to the negative procedure in Parliament, which means that once it is laid, it will be approved unless either House rejects it within 40 days of it being laid. Following approval, the guidance will come into force. We expect this to be in November 2023. Annex A – Breakdown of statutory consultation responses Questions All responses have been considered when updating the guidance and in our wider work to support making elections accessible to all campaigners. References to percentages in the text above are percentages of respondents who answered the question. Question 1: Is the guidance helpful in explaining what is meant by 'paid to be published as an advert'? Yes/No/Don't know Yes No Don't know Didn't answer % of those who answered the question 80% 20% 0% N/A Numbers 12 3 0 7 Question 2: Does the guidance effectively explain what 'political material' is? Yes/No/Don't know Yes No Don't know Didn't answer % of those who answered the question 60% 40% 0% N/A Numbers 9 6 0 7 Question 3: Is the information included on how the digital imprints tests apply for non-party campaigners clear? Yes/No/Don't know Yes No Don't know Didn't answer % of those who answered the question 71% 29% 0% N/A Numbers 10 4 0 8 Question 4: Are there any other examples we can include that would support your understanding?

Yes/No/Don't know Yes No Don't know Didn't answer % of those who answered the question 73% 27% 0% N/A Numbers 11 4 0 7 Question 5: Does the guidance support you to know what information to include in an imprint? Yes/No/Don't know Yes No Don't know Didn't answer % of those who answered the question 93% 7% 0% N/A Numbers 14 1 0 7 Question 6: Are there any other examples we can include that would support your understanding? Yes/No/Don't know Yes No Don't know Didn't answer % of those who answered the question 43% 57% 0% N/A Numbers 6 8 0 8 Question 7: Does the guidance explain clearly where the imprint must appear? Yes/No/Don't know Yes No Don't know Didn't answer % of those who answered the question 87% 13% 0% N/A Numbers 13 2 0 7 Question 8: Is it clear what is considered 'a part of the material'? Yes/No/Don't know Yes No Don't know Didn't answer % of those who answered the question 87% 13% 0% N/A Numbers 13 2 0 7 Question 9: Does the guidance support you to understand when it is 'reasonably practicable' to include the imprint as a part of the material? Yes/No/Don't know Yes No Don't know Didn't answer % of those who answered the question 38% 62% 0% N/A Numbers 6 10 0 6 Question 10: Does the guidance give enough information on what is considered 'directly accessible' from the material? Yes/No/Don't know Yes No Don't know Didn't answer % of those who answered the question 50% 44% 6% N/A Numbers 8 7 1 6 Question 11: Are there any other examples we can include that would support your understanding? Yes/No/Don't know Yes No Don't know Didn't answer % of those who answered the question 81% 19% 0% N/A Numbers 13 3 0 6 Question 12: Is the guidance clear at explaining what types of republishing will require a new imprint? Yes/No/Don't know Yes No Don't know Didn't answer % of those who answered the question 71% 21% 7% N/A Numbers 10 3 1 8 Question 13: Are there any other types of examples we can include that would support your understanding? Yes/No/Don't know Yes No Don't know Didn't answer % of those who answered the question 43% 43% 14% N/A Numbers 6 6 2 8 Question 14: Are the criteria the Commission and the police will have regard to in considering enforcement action appropriate? Yes/No/Don't know Yes No Don't know Didn't answer % of those who answered the question 73% 13% 13% N/A Numbers 11 2 2 7 Question 15: Is the information on obtaining information and take down notice powers helpful? Yes/No/Don't know Yes No Don't know Didn't answer % of those who answered the question 67% 20% 13% N/A Numbers 10 3 2 7 Question 16: Are there any other digital platforms or types of digital material that are not included in examples that you think should be? Yes/No/Don't know Yes No Don't know Didn't answer % of those who answered the question 69% 13% 19% N/A Numbers 11 2 3 6 Question 17: Is there anything else you would like to tell us to help us draft this guidance? Yes/No/Don't know Yes No Don't know Didn't answer % of those who answered the question 69% 31% 0% N/A Numbers 9 4 0 9 Respondents We had 22 written responses. Of those who told us, these were from: Type of respondent Number
 5 Academic 4 Non-party campaigner 5 (2 of which were charities/third sector) Trade association 4 (2 of which were representing non-party campaigners/charities/third sector) Police 1 Social media company 1