

Cookies, Gillian Harding

The law on the use of cookies changed on the 26th May 2011. The Office of the Information Commissioner (ICO) enforces breaches of the law. It won't take enforcement action before 26th May 2012 but businesses must be able to show that they're taking steps to comply if they receive a complaint before then. You now need explicit consent from users to your use of cookies in most cases- an opt out system is no longer enough. The ICO has issued guidelines on what steps you must take to comply.

You must audit your use of cookies, i.e check what types you use and how you use them, and then assess how intrusive your use of cookies is. The Regulations are intended to increase privacy protection so the ICO expects businesses to prioritise compliance where cookies are more intrusive i.e. which involve creating detailed profiles of the user's browsing activity.

Next, you must decide how you will obtain users' consent . The more intrusive your cookies are, the further you must go to ensure that you get 'meaningful consent' but where cookies are 'strictly necessary' (a narrow exception which applies to cookies necessary for check-outs), consent isn't needed. There are a considerable number of legal, technical and practical variables involved but the key is to draw users' attention to the changes and get meaningful consent.

You can't rely on a user's browser settings to indicate consent. This may change in future because the Government is working with browser providers to develop new privacy settings which would be enough to signal a user's consent to the use of cookies. We're in a holding pattern on that front. Whilst waiting to see what will happen, we would recommend that you start your audit and assess your use of cookies. Once you've finished, you can see whether the Government's made any progress. If not, we have to recommend that you leave plenty of time to deal with the problem for yourself before May 2012. If you are going to need outside technical help making changes, you won't be the only one so we would recommend taking advice from your web developer as soon as possible about suggested solutions. After all, if browser providers don't come up with a suitable solution by May 2012, they won't be the ones breaching the law.



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