



GDPR and PECR: The Do's and Don'ts of Direct Marketing

Direct Marketing:

Direct marketing covers a range of activities including the offer for sale of goods or services, for example, student recruitment activity. The Information Commissioner's Office (ICO) also considers direct marketing to include the promotion of an organisation's aims and ideals.

Depending on how you are marketing, you may have to comply with General Data Protection Regulations (GDPR), Privacy and Electronic Communications Regulations (PECR) or both.

- If you are using electronic communications, such as email, for a marketing campaign, PECR applies.
- If you are using or gathering personal information, GDPR will apply.
- If you are using electronic communications for marketing to named individuals, both PECR and GDPR will apply.

GDPR and PECR:

The GDPR is an overarching data protection framework but there are specific rules for direct marketing regulated by PECR.

GDPR brings about legislative change that asserts that data belongs not to businesses, but to the individual. The new regulation aims to give people greater control over the collection and use of their personal data.

PECR is being revised and will become the ePrivacy Regulation (ePR). The new ePR will not be in place before the GDPR comes into effect but the rules will continue to apply with some changes to account for the GDPR.

General Facts:

- The GDPR applies when we are processing **PERSONAL** data.
- PECR covers:
 - **marketing and advertising** by electronic means such as telephone, email, text message and picture (including video) message;
 - the **use of electronic communications**, for example confidentiality of communications.
- As our business-to-business activity includes the use of personal data GDPR will apply – corporate contact details and emails are personal data where an individual can be identified eg firstname.lastname@eg.co.uk
- Personal data is information that allows an individual to be identified. We must be mindful that at first glance data may not be perceived as personal but when linked to other data could make an individual identifiable.
- The definition of personal data is now broader and now includes:
 - A person's work email address
 - Mobile numbers regardless if work or private
 - IP address, cookies
 - Social identities
- There are 6 legal grounds for processing personal data, all are equally valid. Depending on the groups we are marketing to will depend on the basis for processing and therefore if opt-in consent is required.
- The definition of consent has been updated. Consent must be specific, informed (through privacy notices) with an unambiguous clear affirmative action to positively opt-in.
- You must carry out rigorous checks before relying on indirect consent – consent originally given to a third party such as list brokers or broadcast media lead generation. PECR specifically requires that the individual has notified the sender (NTU) that they consent to messages, unless it is clear and specific enough that the customer must have anticipated that their details would be passed to the organisation in question.
- The rules on calls, texts and emails are stricter than those on direct mail marketing.
- The right to object has been expanded. These are **ABSOLUTE** and now include:
 - The right to be informed - to know what happens to their information
 - The right of access - this is known as Subject Access Request (SAR)
 - The right to rectification - data should be kept accurate
 - The right to erasure - the right to have data deleted / to be forgotten
 - The right to restrict processing - where the data subject believes the data is inaccurate or requires it for legal claims, or believes the processing is unlawful or is challenging the data controller's legitimate interests
 - The right to data portability - to transfer data from one supplier to another
 - The right to object - to stop data from being processed
 - Rights in relation to automated decision making and profiling - not to be profiled or to have a human make decisions which are otherwise automated.
- You must stop sending marketing messages to any person who objects or opts out of receiving them.

Electronic Marketing:

Marketing using electronic means is covered by PECR and may also have a Data Protection element.

To conduct an electronic marketing campaign targeting individuals e.g. to personal email addresses as opposed to generic emails, you must have the consent of the individual.

The only exception to this rule is if the 'soft opt-in' applies. This applies where:

- you have obtained personal details during a previous sale or transaction **AND**
- marketing is conducted by the same entity who has dealt previously with the individual **AND**
- marketing relates to "similar products and services" **AND**
- an opt-out mechanism is provided at the point of data collection, and is provided with each new communication.

If an individual chooses to opt out of subsequent communications, you **MUST** adhere to their wishes and no further electronic marketing can be sent.

If you are engaging in direct marketing communications you **MUST NOT** conceal your identity, and a valid address must be provided for the recipient to opt out of further communications.

There are specific rules regarding the use of automated calling systems. If you intend to use such a system you must check with Legal Services that you are doing so in line with PECR.

The Telephone Preference Service (TPS) is operated by the Direct Marketing Association. It allows people to register their numbers to opt out of receiving unsolicited calls. You must not contact individuals or organisations who have registered their numbers with the TPS unless you have their consent to do so. There is also a Fax Preference Service (FPS). The same rules apply at the TPS.

Further details can be found at:

<http://www.tpsonline.org.uk/tps/whatistps.html>

<http://www.fpsonline.org.uk/fps/>.

Postal marketing

Postal marketing is not covered by PECR. If you are marketing to a named individual then you will have to consider Data Protection.

If the individual you are sending your direct marketing to requests to be removed from your mailing list, you must comply with their request.

Electronic communications

PECR regulates certain types of electronic communications: data which identifies users, their general location, as well as data gathered for billing purposes.

This part of PECR will only affect the University in a very limited way and is more applicable to large electronic communication service providers.

Cookies

PECR covers the use of electronic communications networks to store information, namely using cookies, or gaining access to information stored in the terminal equipment of a subscriber or user. Further information about how this applies to the University is included in the Cookie policy.

Direct Marketing: Post 25 May

Communication method	B2C (student recruitment)	B2B (employer engagement activity)	VIPs (Senior influencers)
Direct Mail	Can send out mail to enquirers, applicants and students but must give an option to opt out. <i>Lists should be checked against the Mailing Preference Service and internal unsubscribe lists.</i>	Can send out mail but must give an option to opt out. <i>Lists should be checked against the Mailing Preference Service and internal unsubscribe lists.</i>	Can send out mail but must give an option to opt out. <i>Lists should be checked against the Mailing Preference Service and internal unsubscribe lists.</i>
Email	Only email prospects/enquirers if we have received clear, evidenced consent which includes them requesting information from us. Can email applicants and students as we are lawfully processing data on either contractual or legitimate interests basis. Current students / alumni will also have been considered to have 'soft opt-in' so we can legally send marketing texts or emails unless they have opted out. <i>Must give an option to opt out. Lists should be checked against internal unsubscribe lists.</i>	Can email prospective <u>organisations</u>. (Exception sole traders and some partnerships as they are treated as individuals) If emailing prospective individuals within organisations need to have received clear consent to contact them. Can email current customers (both companies and other corporate bodies and individuals within these organisations). Can email past customers (corporate individuals) if marketing similar products/services. <i>Must give an option to opt out. Lists should be checked against internal unsubscribe lists.</i>	Can email as we are lawfully processing data on Public Task basis but they can opt out. <i>Lists should be checked against the Mailing Preference Service and internal unsubscribe lists.</i>

Communication method	B2C (student recruitment)	B2B (employer engagement activity)	VIPs (Senior influencers)
Telephone	Unable to contact prospects/enquirers unless they have opted-in. Can phone applicants and students. <i>Lists should be checked against the Telephone Preference Service and internal unsubscribe lists.</i> <i>They must be able to see your telephone number; you must tell them who you are and provide a Freephone contact number or address if requested.</i>	Can phone prospective companies (except sole traders and some partnerships who are treated as individuals) Can phone corporate clients. Can contact prospects/enquirers IF they have opted-in and the consent is recorded. <i>Lists should be checked against the Corporate Telephone Preference Service, the Telephone Preference Service and internal unsubscribe lists.</i> <i>They must be able to see your telephone number; you must tell them who you are and provide a Freephone contact number or address if requested.</i>	Can phone as we are lawfully process data on Legitimate Interest basis. <i>Lists should be checked against the Mailing Preference Service and internal unsubscribe lists.</i>
Social media	Does not need consent or an opt in as can freely choose whether to follow or like us on a social medial platform		