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## What are Privacy and Electronic Communications Regulations?

The Privacy and Electronic Communications Regulations (PECR) sit alongside the data protection act and give individuals specific rights in relation to electronic communications. From a development perspective, there are specific rules on direct marketing calls, e-mails, faxes and texts to individuals and these are different for different types of communication.

Direct marketing covers all advertising or promotional material, including that promoting the aims or ideals of not-for-profit organisations – for example, it covers a charity, school or political party campaigning for support or funds.

You will often need specific consent to send unsolicited direct marketing communications. The best way to obtain valid consent is to ask customers to tick opt-in boxes confirming they are happy to receive marketing calls, texts or emails from you.

## When is marketing ‘solicited’ and when is it ‘unsolicited’?

Most of the rules in PECR only apply to unsolicited marketing messages. They do not restrict solicited marketing.

Put simply, a solicited message is one that is actively requested. So, if someone specifically asks you to send them some information, you can do so without worrying about PECR (although you must still say who you are, display your number when making calls, and provide a contact address).

An unsolicited message is any message that has not been specifically requested. So even if the customer has ‘opted in’ to receiving marketing from you, it still counts as unsolicited marketing. An opt-in means the customer agrees to future messages (and is likely to mean that the marketing complies with PECR).

## What counts as consent?

You will often need a person’s consent before you can send them a marketing message. If you do need consent, then – to be valid – consent must be knowingly and freely given, clear and specific. It must cover both your particular organisation and the type of communication you want to use (e.g. call, automated call, fax, email, text). It must involve some form of positive action – for example, ticking a box, clicking an icon, sending an email, or subscribing to a service – and the person must fully understand that they are giving you consent. You cannot show consent if you only provide information about marketing as part of a privacy policy that is hard to find, difficult to understand, or rarely read.

The clearest way to obtain consent is to ask the customer to tick an opt-in box confirming they are happy to receive your marketing calls, faxes, texts or emails.

You should keep clear records of what a person has consented to, and when and how you got this consent, so that you can demonstrate compliance in the event of a complaint.

## What is the difference between 'opt in' and 'opt out' consent?

'Opt in' means a person has to take a specific positive step (e.g. tick a box, send an email, or click a button) to say they want marketing. 'Opt out' means a person must take a positive step to refuse or unsubscribe from marketing.

Some organisations provide opt-in boxes that are automatically pre-ticked. In effect, this is closer to an opt-out, as the person must click the box (untick it) in order to refuse marketing.

ICO recommends you use unticked opt-in boxes wherever possible.

## What is a 'soft opt-in'?

The term 'soft opt-in' is sometimes used to describe the rule about existing customers. The idea is that if an individual bought something from you recently, gave you their details, and did not opt out of marketing messages, they are probably happy to receive marketing from you about similar products or services even if they haven't specifically consented. You must have given them a clear chance to opt out – both when you first collected their details, and in every message you send.

The soft opt-in rule means you may be able to email or text your own customers, but it does not apply to prospective customers or new contacts (e.g. from bought-in lists). **It also does not apply to non-commercial promotions (e.g. charity fundraising or political campaigning).**

## Marketing calls

You must not make marketing calls to any number listed on the Telephone Preference Service (TPS) unless that person has specifically consented to your calls. You can however call a number if it is not listed on the TPS. In practice, this means you will need to screen most call lists against the TPS register. You will also need to keep your own 'do not call' list of people who object or opt out, and screen against that as well.

## E-mail / Text

You must not send marketing emails or texts to individuals without specific consent for example, by ticking an opt-in box. There is a limited exception for your own previous customers, often called the 'soft opt-in' however, 'soft opt-in' does not apply to charity promotions (see above).

## What's the best way to compile your own marketing list?

You may want to compile your own in-house marketing list using details of people who have been engaged with the school in the past, have registered on your website or made an enquiry. However, you should not assume that everyone is happy to receive marketing just because they have provided their contact details.

You should make it clear upfront that you intend to use their details for marketing purposes. The best way to get clear consent for your marketing is to provide opt-in boxes that specify the type of messages you plan to send (e.g. by email, by text, by phone, etc).

You should record when and how you got consent, and what type of messages it covers. If possible, you should also record whether the customer is an individual or a company, as different rules apply. If this is not clear, assume they are an individual.

## Can we share our list with other organisations?

The same rules apply as for other third parties. If you intend to share the list within your group, you must have each individual's specific consent to marketing from your group – this might apply for example where a school and an alumni association are marketing to an individual.

As always, the best way to get consent is to provide an opt-in box. Ideally, you should list the individual organisations who will process the personal data or you may even want to consider offering separate opt-ins for each organisation, to give the individual greater choice and to target your group's marketing more effectively (*this granular approach to consent was included in the draft guidance on GDPR consent from the ICO*).

## How should we respond to objections or opt-outs?

As soon as someone objects to or opts out of your marketing, you should add them to a 'do not contact' list. You must not simply delete their details altogether, as you should screen all your marketing against this list to make sure you don't contact anyone who has opted out.

## Can we send marketing by post?

PECR do not cover marketing by post, but if you are sending post to named individuals you must comply with the Data Protection Act.

*Please note this information is from ICO's guidance on PECR, for further details, please visit <https://ico.org.uk/for-organisations/guide-to-pecr/>*