

# Guidance on political campaigning

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## Data Protection Act Privacy and Electronic Communications Regulations

### Contents

Introduction.....	2
Overview.....	3
Why comply? .....	4
What is direct marketing?.....	5
Market research .....	6
Collecting personal information .....	7
Privacy notices .....	7
Consent to send direct marketing .....	7
Contact details collected as part of constituent casework .....	7
Marketing by post.....	8
Marketing calls.....	10
Live marketing calls .....	10
Automated marketing calls .....	11
Marketing by electronic mail .....	11
Viral marketing or 'tell a friend' campaigns .....	12
Marketing by fax .....	14
Objections to direct marketing from individuals.....	15
Marketing lists compiled by third parties.....	16
Using analytics.....	16
Data protection principles.....	17
Elected representatives changing to a different political party .....	18
More information.....	19

## Introduction

1. Engaging voters is important in a healthy democracy, and in order to do that, political parties, referendum campaigners and candidates will campaign using a variety of communication methods. However, they must comply with the law when doing so; this includes the handling of the personal data that they collect and hold. If they contact an individual by any of the methods listed in the [overview](#) to promote a political view in order to gain support at the ballot box, or otherwise influence an individual, that is 'direct marketing' and this is also regulated by law.
2. Throughout this guidance we use the term 'political campaign' to mean activity in support of, or against, a political party, a referendum campaigner or a candidate standing for election. We use the term 'organisations' to include individuals and organisations carrying out this activity. This includes candidates, employees and volunteers working for the political party or candidate.
3. Under the Privacy and Electronic Communication (EC Directive) Regulations 2003 (PECR) and the Data Protection Act 1998 (the DPA) there are specific rules organisations must comply with for each type of communication method and for the processing of personal data. The Information Commissioner enforces compliance with both pieces of legislation.
4. An overview of the main provisions of the DPA can be found in [The Guide to Data Protection](#), and an overview of the main provisions of PECR can be found in [The Guide to Privacy and Electronic Communications](#). Detailed guidance on the direct marketing rules can be found in our [direct marketing guidance](#). We have also produced a [direct marketing checklist](#) to help organisations comply with the law and good practice.
5. This guidance explains what an organisation needs to do in each case, including where it uses viral marketing and 'tell a friend' campaigns.

## Overview

Communication method	In summary, organisations may use this method to promote a political party, candidate or referendum campaign...
Post addressed to particular individuals	...unless the individual has asked the organisation not to write to them or not to send them marketing material by post. In addition, electoral law <sup>1</sup> will set out whether a political party, candidate or referendum campaigner has the right to send a Freepost mailing. This specific right applies even if the individual has asked the organisation not to contact them.
Email/text and other messages to mobile phones/voicemail	...where the individual has consented to contact of that sort from the organisation for those purposes.
Fax	...where the individual has consented to contact of that sort from the organisation for those purposes.
Phone calls	...unless the organisation has grounds for believing the individual would not want it to contact them, such as TPS registration.
Automated phone calls	...where the individual has consented to contact of that sort from the organisation for those purposes.
AND in every case	...the organisation must normally identify itself in the communication and provide contact details to allow individuals to contact it and easily opt out of unwanted direct marketing. Electoral law also requires

<sup>1</sup> Section 91, Representation of the People Act 1983 for UK Parliament elections; Regulation 63, European Parliamentary Election Regulations 2004; Regulation 58, European Parliamentary Elections (Northern Ireland) Regulations 2004; Article 61, Scottish Parliament (Elections etc) Order 2010; Article 65, Representation of the People (National Assembly of Wales) Order 2007 and Schedule 1, Northern Ireland Assembly (Elections) Order 2001 (applying section 91 of the RPA 1983). Further guidance is available from the Electoral Commission website: <http://www.electoralcommission.org.uk/>

	specific details to appear on election publications.
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## Why comply?

6. The actions of a political campaign come under close scrutiny from the public and the media. It is not just in an organisation's interests to act lawfully, but it should also show respect for the privacy of the individuals it seeks to represent, by treating them fairly. Treating individuals fairly includes using their information only in a way they would expect, while respecting any preferences they have expressed about not receiving direct marketing (subject to the right of a political party, referendum campaigner or candidate to send a Freepost mailing at a particular election or referendum).
7. In recent years we have investigated complaints about political parties and referendum campaigners using direct marketing, and on occasion we have used our enforcement powers to prevent them doing the same thing again. Failure to comply with an enforcement notice is a criminal offence. We can also issue fines of up to £500,000 for a serious breach of the DPA or PECR. We will consider the nature and number of any complaints received about direct marketing by political parties with a view to using the powers at our disposal to prevent political campaigns from making the same mistake in future.
8. The complaints we have received reveal that individuals find unwanted direct marketing, and unwanted contact from political parties in particular, to be extremely annoying. This is more likely to be the case where more intrusive means of contact are used or the individual has previously objected to marketing and where they are opposed to an organisation's views.
9. It is important to understand where responsibility for complying with the DPA and PECR lies; ie who is the 'data controller'. We have produced guidance [Data controllers and data processors: what the difference is and what the governance implications are](#). Political parties are set up in different ways so the data controller might be central office, a local constituency office, a candidate or a campaigner, or more than one of these. MPs are data controllers in their own right, as are many other elected representatives. Political parties must be clear whether the

central office or local office is the data controller. Regardless of where legal responsibility lies, political parties should bear in mind that the media and general public are likely to take the view that the party is ultimately responsible.

## What is direct marketing?

10. Section 11 of the DPA defines direct marketing as:

*"the communication (by whatever means) of any advertising or marketing material which is directed to particular individuals".*

11. Direct marketing is not limited to the offer for sale of goods or services only, but also includes the promotion of the aims and ideals of any organisation including political campaigns. This would include appeals for funds or support for a campaign, encouraging individuals to take some form of direct action or vote for a particular political party or candidate.
12. This definition extends to any means of communication including online marketing, social networking or other emerging channels of communication. It also covers any messages which include some marketing elements, even if this is not their main purpose.
13. Our view was supported by the Information Tribunal in [\*Scottish National Party v Information Commissioner \(EA/2005/0021, 15 May 2006\)\*](#) when it dismissed the argument that political campaigning was not marketing.
14. Political parties, candidates and referendum campaigners need to ensure that their activities comply with the law as they are not exempt from either the DPA or PECR.
15. Because direct marketing covers communications 'directed to particular individuals', mailings addressed to individuals by name will be caught by the definition in nearly all circumstances – whether delivered by the Royal Mail, private delivery firms or by local volunteers. However leaflet-drops and mailings which are unaddressed, or addressed merely to 'the occupier', do not fall within the statutory definition of direct marketing.

16. Candidates, political parties and referendum campaigners have a right (depending on the type of election or referendum<sup>2</sup>) to send an 'election address' by Freepost, either addressed to each individual elector or unaddressed to each postal address. This applies to elections for the UK or Scottish Parliament, for the Northern Ireland Assembly or National Assembly for Wales, or for the European Parliament, or at a particular referendum. This type of Freepost mailing does not constitute direct marketing.
17. For further detail on the direct marketing rules, read our [direct marketing guidance](#).

### **Market research**

18. A political campaign can conduct genuine research in the same way that professional market research companies do to help inform their views and formulate policies. The direct marketing rules do not apply to genuine market research as this does not involve communicating advertising or promotional material.
19. However, communications claiming to be for research that are in reality intended to gain support now or at some point in the future are covered by the direct marketing rules. For example the following are direct marketing:
  - a telephone call which starts by seeking an individual's opinions and then urges support or invites contact with a political party, referendum campaigner or candidate or to provide promotional materials on request; and
  - a telephone call which seeks an individual's opinions in order to use that data to identify those people likely to support the political party or referendum campaign at a future date in order to target them with marketing.
20. It should be possible for market research to be carried out without recording the information in a way that identifies the individual respondent. If an organisation records the responses in a way that it can be linked to the individual so that it can then follow up their responses and contact them in future, it is conducting marketing and will need to explain that to them before collecting their information.

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<sup>2</sup>These requirements are set out in the Electoral Commission's guidance for each election and referendum at [www.electoralcommission.org.uk](http://www.electoralcommission.org.uk).

21. For further information on market research, read our [direct marketing](#) guidance.

## Collecting personal information

### Privacy notices

22. The DPA requires that processing of personal information must be fair. Fairness generally requires an organisation to be transparent and tell individuals how it intends to use their personal data including who the information will be shared with. This is commonly provided by a privacy notice given to individuals at the time their data is collected.
23. Privacy notices should be written in clear straightforward language that individuals will understand. Read our [Privacy Notices Code of Practice](#) for detailed information.

### Consent to send direct marketing

24. Organisations will generally need an individual's consent before sending:
  - marketing emails, texts or faxes;
  - making automated marketing calls; or
  - making marketing calls to a number registered on the Telephone Preference Service.
25. In order for consent to be valid the individual must know what they are consenting to, the consent should be freely given, and clear and specific to the type of marketing being sent by the particular organisation.
26. If candidates in internal party elections wish to use member lists to send emails or texts, or make automated calls the candidate must ensure that they have consent from the individuals to use such marketing channels.
27. Read our [direct marketing guidance](#) for further detailed guidance on marketing consent.

### Contact details collected as part of constituent casework

28. Elected representatives and their parties should not use contact details they obtained when carrying out casework for direct marketing unless they are sure that the constituents concerned would expect that contact from them and would not object.

Specific consent is needed from the constituent in the case of marketing emails, text messages or automated calls.

29. Compliance advice for elected representatives and their offices on handling personal information when carrying out casework on behalf of constituents is available from the sources listed below.

Elected body	Contact point
European Parliament	European Data Protection Supervisor in Brussels
House of Commons	Information Rights and Information Security Service (IRIS)
National Assembly for Wales	Information Governance Manager
Northern Ireland Assembly	Communications and Information Standards team
Scottish Parliament	Head of Information Governance
Local authorities	Members' Services or equivalent

## Marketing by post

30. If an organisation uses personal information to promote a political campaign by sending them promotional messages by post it will need to make sure that it processes their personal information fairly and in most circumstances that it respects any requests not to receive information from it.
31. Political parties, referendum campaigners and candidates are entitled to a copy of the full electoral register for electoral or referendum purposes, which includes contacting individuals on the list by post. At particular elections or referendums they also have a specific legal right to send one Freepost mailing, as described in paragraph 16.
32. Political parties, candidates, and those who campaign for or work with them must treat the electoral register with great

care and ensure it is kept securely. Failure to do so may give rise to a breach of the DPA.

33. The electoral register is regularly updated. The use of an older version of the register may raise issues about processing personal data, and lead to the risk of a breach of the provisions of the DPA. Such processing might be unfair and might not accord with the expectations of individuals.
34. Quite apart from this specific right, use of the full register during elections or referendums is legitimate and an organisation may contact an individual to promote a political campaign unless it is aware that the individual objects to direct marketing.
35. Where an organisation collects information directly from the individual, it must clearly explain to them that it will be using their information to target them with direct marketing by post, unless it is otherwise apparent from its relationship with them that this contact will occur.
36. Where an organisation sends promotional mailings to known supporters, it needs to be satisfied that those supporters would expect their personal information to be used for that purpose.
37. Where an organisation buys or rents mailing lists from a third party to contact individuals who meet a particular profile, it needs to be sure that the personal information has been fairly obtained only from individuals who would expect their information to be used for promotional purposes by a particular political campaign. If the organisation is employing a third party to carry out a mailing, it must ensure that the third party observes these requirements. The use of a third party in either of these scenarios is likely to be the responsibility of the data controller (see paragraph 9, above).
38. The organisation must identify itself in any campaign material and include certain information specified by law.<sup>3</sup> It is good practice to provide contact details so that individuals who wish to object to any further direct marketing can do so.
39. An organisation must not send mailings to anyone who has objected, unless it is sending an election or referendum

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<sup>3</sup> These requirements are set out in the Electoral Commission's guidance for each election and referendum at [www.electoralcommission.org.uk](http://www.electoralcommission.org.uk).

Freepost mailing (see above). Read the section on [individuals objecting to direct marketing](#) for more information.

## Marketing calls

40. The organisation must treat individuals fairly. If it is collecting landline or mobile numbers from individuals in order to use them for direct marketing, it will need to inform them that their information will be used in that way. If it obtains numbers from third parties, it will need to be sure that the individual has been informed and has a reasonable expectation that their number will be used for promotional calls by a third party for a political campaign.

### Live marketing calls

41. Organisations must ensure that they screen against the Telephone Preference Service (TPS) when undertaking telephone campaigns. The organisation must also ensure that it does not call individuals who have told it that they do not want to be called.
42. Live marketing calls can only be made to numbers registered on the TPS where the individual has specifically agreed to the organisation telephoning them.
43. In all other cases, it cannot make phone calls to anyone, including an existing supporter, who has registered with the TPS or who has objected to the organisation directly about the use of their information for direct marketing purposes.
44. Where the organisation is permitted to telephone an individual, it must:
  - identify itself at the start of the call;
  - allow its number (or an alternative contact number) to be displayed to the person receiving the call;
  - if requested provide an address or number where it can be reached free of charge to object to marketing; and
  - record and respect any objection to marketing made by the individual at the time of the call.
45. Read our guidance on [telephone marketing](#) for more information.

## **Automated marketing calls**

46. The rules on automated marketing calls are stricter than live calls. This is when a recorded message is played to the person who answers the phone. It is worth noting that many individuals have told us that they consider automated calls to be extremely intrusive and even disturbing.
47. If an organisation wishes to use automated calling it will need the specific prior consent of the individual.
48. Obtaining consent to make live voice calls is not sufficient and the automated nature of the calls must be clear in the information given to individuals to inform their decision.
49. All automated marketing calls must include the name of the organisation and a contact address or Freephone number, and must allow the organisation's number (or alternative contact details) to be displayed to the person receiving the call.

## **Marketing by electronic mail**

50. An organisation must carefully consider its compliance with the DPA and PECR when communicating with individuals by electronic mail. 'Electronic mail' includes email, text message, social media, video message and voicemail.
51. The organisation must have the individual's specific consent to communicate with them in this way. In addition, in all such communications the organisation must identify itself and provide an address that individuals can use to object and request that it does not send them any further communications.
52. An organisation might have collected email addresses or mobile phone numbers in connection with particular issues highlighted in previous campaigns; for example, school closures or road building. As prior consent is required, the organisation must assess the basis on which those contact details were collected originally if it wants to use them to promote subsequent campaigns by electronic mail including text messages and emails.
53. If an individual provides their contact details in response to a leaflet about a particular local campaign, an organisation cannot assume that the individual will always be happy to

receive promotional emails, text messages etc about other issues from its political campaign.

54. If, however, the wording on a specific campaign leaflet states clearly that if an individual chooses to provide an email address or mobile phone number they are consenting to direct marketing, the organisation may then be able to retain their contact details and use them more widely for promotional purposes.
55. It is important to ensure that the notification the organisation gives to individuals about electronic mail marketing is prominent, clear and explicit so that their choice to provide it with their details is fully informed. Consent must be specific to the method of communication and to the instigator of the message. The organisation might also want to consider using separate opt-in tick boxes for each type of electronic marketing.
56. If the organisation receives any objections from individuals, it must ensure that it rapidly suppresses their details. Making it easy for individuals to object and promptly respecting their choices will help to reduce the risk of breaking the law (and of causing individuals to complain that the organisation is not respecting their privacy).
57. There is no fixed time limit after which consent automatically expires. However, consent will not remain valid forever. How long consent remains valid will depend on the context – the question is whether it is still reasonable to treat it as an ongoing indication of the person’s current wishes. Any list an organisation maintains should be up to date, accurate, and reliably record consent.
58. An organisation should always check that it is not going to send direct marketing to individuals who have objected to such contact from it.
59. Read our detailed guidance on complying with [PECR](#) and on [direct marketing](#) which is available on our website.

### **Viral marketing or ‘tell a friend’ campaigns**

60. An organisation may be using viral marketing or “tell a friend” campaigns to tap into social and family networks of its supporters or potential supporters; this is where:

- it asks an individual to send the original marketing message to family or friends; or
  - it asks an individual to give it their family or friends' contact details.
61. This is not a way of getting around the need for consent from the recipient, and organisations should take care in the design and implementation of these campaigns. The organisation must still comply with the direct marketing rules.
62. Arguably, where an organisation asks an individual to forward its message or promotional materials to an individual who has not consented to that contact, it is encouraging them to break the law in order to promote its political campaign. The organisation is strongly advised to warn individuals of this and advise them that they should only forward communications of this type to friends and family that they are reasonably certain would consent and will be happy to receive them.
63. Where an organisation sends a message to someone whose details it has collected from a friend or family member, it will have to assume that they have consented to that contact through a third party (the friend or family member who gave it their details). The organisation will be liable for any messages sent to email addresses obtained from a friend or relative. When collecting contact details, the organisation should:
- ask the individual to confirm that they have the consent of the friend or relative whose details they are passing on to receive this contact;
  - check that the recipient hasn't already objected to marketing from the organisation. If those contact details appear on its suppression list it may have cause to question whether consent has been obtained at all; and
  - tell the individual that it will inform the recipient of the message how it got their details and include it in the message to the individual.
64. The organisation should bear in mind that this method of communication may be used maliciously by individuals to inconvenience or harass others or to discredit it. For example, it is possible to envisage circumstances where a person might give the contact details of another person to a whole range of political campaigns whose views that individual strongly

disagrees with, knowing that they would not consent to such contact and/or will subsequently complain about those political campaigns. While the organisation is not responsible for the malicious activities of an individual using the service it provides, it should bear in mind that, at the very least, the recipient may forever associate it with that unpleasant experience. In any event, it should always identify itself, include an address for objections and rapidly suppress the recipient's contact details to avoid further distress.

65. As it will be difficult for the organisation to be sure that the friends or family actually agreed to give their details to it, we would advise against using this type of viral marketing.

## Marketing by fax

66. Whilst the use of fax as a means of communication has substantially reduced, we set out the provisions here for the avoidance of doubt. If the user of the fax is an individual as opposed to a corporate subscriber, the organisation must have their explicit consent to receive promotional material from it by fax.
67. If the organisation is collecting fax numbers from individuals in order to use them for direct marketing, it will need to inform them that their information will be used in that way and obtain their consent.
68. The organisation must identify itself in the fax and provide an address or number where it can be reached free of charge.
69. The organisation cannot send unsolicited marketing to individuals, including corporate subscribers, who have registered with the Fax Preference Service (FPS) or who have advised it directly that they do not want to receive direct marketing.
70. If it adds fax numbers to postal addresses, even if it is aiming to contact an existing supporter, the organisation must make sure it screens its list against the FPS list first, unless the supporter has agreed to receive promotional faxes from it. For more information, please visit the [FPS website](#).

## Objections to direct marketing from individuals

71. Individuals have an absolute right under section 11 of the DPA to object to direct marketing from any organisation and the processing of their information for direct marketing purposes. However this is subject to the right of a candidate, political party or referendum campaigner to send a Freepost mailing, as described in paragraph 16.
72. An organisation must respect any written request it receives from an individual not to send them promotional material (other than election or referendum Freepost mailings as mentioned above) or otherwise process their personal information for direct marketing purposes. In those cases the organisation will not be able to contact an individual to promote its aims or ideals by post, email, text, video and voicemail messages to their mobile phone and automated or live calling. It will also be unable to use their information in any profiling of people in a particular area or other manipulation of a larger dataset to determine whom to contact with direct marketing during a campaign.
73. An organisation should keep a list of individuals who have exercised their right to object and screen all of its prospective communications against it, or it should have some other process to ensure that it does not contact individuals in circumstances where it has been asked not to.
74. Where a constituency party, local association or local campaign group has a separate legal identity from its national organisation, then a request to one of them not to send promotional material does not automatically apply to the others. However, it is unlikely that most members of the public will appreciate this separation. It would, therefore, be good practice on receiving an objection of this sort to check whether the individual also requires the request to be passed on to the other entities.
75. The structure of a political party also affects whether it has responsibility under the DPA for the actions of its candidates during an election. As mentioned earlier, it is important for a political party and its local offices, its candidates and its staff and volunteers to be clear on who is the data controller. Again, this is something that few members of the public are likely to appreciate, and adverse publicity about a candidate's actions can obviously reflect badly on the political party as a whole. It

therefore makes good sense to encourage candidates to comply with the DPA.

## Marketing lists compiled by third parties

76. The use of third parties requires particular care. If the organisation purchases contact details of individuals from a third party such as a list broker it needs to be sure that the third party has obtained the data fairly and lawfully. If the organisation intends to use the list to send electronic marketing, it also needs to ensure that individuals have consented to receiving these forms of contact.
77. Therefore an explanation must have been given to the individual by the list broker, or other person who provided the broker with the information, about how their information would be used, including by the organisation and they must have indicated their consent in some way. The explanation given to the individual must have been in broad enough terms to clearly include promotional messages from the organisation's political campaign. Once it has those assurances, it is for the organisation to decide whether that individual would welcome contact from it in that form. If the organisation employs a third party to send out electronic communications, it must ensure the third party follows these rules.
78. Read our [direct marketing guidance](#) for further information on buying a marketing list.

## Using analytics

79. The big data revolution has made available new and powerful technical means to analyse extremely large and varied datasets. These can include traditional datasets such as the electoral register but also information which people have made publicly accessible on Facebook, Twitter and other social media. Research and profiling carried out by and on behalf of political parties can now benefit from these advanced analytical tools. The outputs may be used to understand general trends in the electorate, or to find and influence potential voters.
80. Whatever the purpose of the processing, it is subject to the DPA if it involves data from which living individuals can be identified. This brings with it duties for the party commissioning

the analytics and rights for the individuals to whom the data relates. It includes the duty to tell people how their data is being used. While people might expect that the electoral register is used for election campaigns they may well not be aware of how other data about them can be used and combined in complex analytics. If a political organisation is collecting data directly from people eg via a website or obtains it from another source, it has to tell them what it is going to do with the data. In the case of data obtained from another source, the organisation may make the information available in other ways, eg on its website, if contacting individuals directly would involve disproportionate effort. It cannot simply choose to say nothing, and the possible complexity of the analytics is not an excuse for ignoring this requirement. Our code of practice on [privacy notices, transparency and control](#) provides advice on giving people this information.

81. Even where information about individuals is apparently publicly accessible, this does not automatically mean that it can be re-used for another purpose. If a political organisation collects and processes this data, then it is a data controller for that data, and has to comply with the requirements of the DPA in relation to it.
82. If a political organisation, as data controller, commissions a third party company to carry out analytics, then that company is likely to be a data processor. The political organisation needs to take account of the DPA provisions on the data controller-data processor relationship. In particular there must be a written contract which requires the data processor to have arrangements in place to ensure the security of the data and that the personal data is processed under instructions and for specified purposes. Our guidance on [data controllers and data processors](#) explains this relationship in more detail.

## Data protection principles

83. An organisation will need to comply with the principles of good information handling from the point at which it first collects personal information to the moment it is deleted. It will need to be aware of what it holds and why and it should routinely assess and amend the information to ensure that it is fit for purpose. Amongst other things this will require the organisation to:

- be transparent about its use of the individual's information and respect their preferences;
- use it only in ways that are compatible with the purposes it or a third party provider has informed the individual of;
- not collect any more information than it needs for the purpose it has told the individual about;
- ensure that it does not keep the information for longer than necessary to fulfil those purposes;
- keep the information secure and delete or securely destroy information when it has served its purpose;
- respect individuals' rights of access to information it holds about them and to object to the organisation using their information; and
- only send the information outside the European Economic Area where it has taken steps to ensure it is protected.

See the information for organisations on our website for detailed [guidance](#) on the application of the DPA.

## Elected representatives changing to a different political party

84. Elected representatives are data controllers for all the personal data handled by their office. Where an elected representative leaves one political party and seeks re-election with another party, there are implications in relation to the personal data that, up to that point, had been processed by their office.
85. Personal data should only be processed in line with the expectations of an individual. If there is any doubt as to whether an individual would expect or would be happy for an MP who now represents a different party to continue to use their data for marketing and campaigning purposes, the MP should seek the individual's consent.
86. We suggest that political parties should provide guidance about these scenarios for elected representatives and their offices.

## More information

87. This guidance has been developed drawing on ICO experience. It will be reviewed and considered from time to time in line with new decisions of the Information Commissioner, Tribunals and courts.
88. It is a guide to our general recommended approach, although individual cases will always be decided on the basis of their particular circumstances.
89. Organisations that need any more information about this or any other aspect of data protection should please [contact us](#).