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About this guidance

The Privacy and Electronic Communications Regulations 2003 (as amended) (PECR) cover the sending of electronic mail for direct marketing purposes.

This guidance discusses electronic mail marketing in detail. Read it if you have detailed questions not answered in the Guide to PECR, or if you need a deeper understanding of how PECR applies to electronic mail marketing.

This guidance covers what you must do to comply with PECR if you want to send direct marketing by electronic mail. Where this guidance uses the word “must”, this means that the law requires you to do something (so it’s a legal requirement). Where we use the word “should”, this is what we consider important to help you comply. You should follow this unless you have a good reason not to (good practice). However, you may take a different approach and still comply. Where we use the word “could” this refers to an option(s) that you may want to consider to help you comply (good practice). We have highlighted these words for ease.

If you haven’t yet read the [electronic mail marketing page in the Guide to PECR](#), you may find it useful to read that first. It introduces this topic and sets out the key points you need to know, along with a practical checklist to help you comply.

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What is electronic mail marketing?

In detail

- [Why is it important to know the PECR rules before sending electronic mail marketing?](#)
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Why is it important to know the PECR rules before sending electronic mail marketing?

Using electronic mail to communicate your direct marketing messages is a very useful and cost-effective way to grow your business or gain support for your cause. However, many people do find unsolicited electronic mail marketing a nuisance.

It is important to know what the PECR rules are before you start your electronic mail marketing campaign so that you don't breach PECR. Getting things wrong not only damages trust and confidence in you and your reputation, but in some cases the ICO can also fine you. See the section [What happens if we do not comply with PECR when sending marketing by electronic mail?](#) for further information.

This guidance supports and empowers you to use electronic mail marketing to connect with your customers and supporters, while protecting people from unwanted intrusion and nuisance.

What is electronic mail?

Electronic mail is a private message stored for a specific intended recipient to collect. PECR define electronic mail as:



“any text, voice, sound or image message sent over a public electronic communications network which can be stored in the network or in the recipient’s terminal equipment until it is collected by the recipient and includes messages sent using a short message service”

It covers any electronically stored messages, such as:

- email and text (SMS) messages;
- picture or video messages;
- voicemail messages;
- in-app messages; and
- direct messaging on social media (ie where you send someone a private message).

The definition is deliberately broad so that it can cover any new forms of electronic mail. Currently, the

most commonly used forms of electronic mail are email and text messages. However, this guidance applies to any type of electronic mail.

The definition doesn't cover online advertising (eg advertisements placed on websites). It also doesn't cover some types of direct marketing using social media (eg advertising messages shown on news feeds). This is even when organisations target these advertisements to a particular user of the site or platform. This is because the 'message' isn't stored until someone collects it, unlike an email. In the case of a marketing email, it's sent to the address at a particular time and on a particular date containing specific content. So, for example, even if someone doesn't access their email account for a month after you sent your marketing email, none of these things would change. The marketing email would stay in the exact same form, waiting for them to collect it.

However, other rules in PECR may still apply even if this type of direct marketing is not electronic mail. For example, if you are using cookies or similar technologies for your online advertising. See our separate guidance on [cookies and similar technologies](#) for more information.

Further Reading

 [Relevant provisions in PECR - See Regulation 2\(1\) for electronic mail](#) 

External link

Further reading

- We have separate detailed guidance on the rules for [cookies and similar technologies](#).

What is direct marketing?

PECR takes its definition of direct marketing from the Data Protection Act 2018 (DPA 2018). This is because any undefined term within PECR has the same meaning as in the UK data protection regime.

The DPA 2018 says direct marketing means:



“the communication (by whatever means) of advertising or marketing material which is directed to particular individuals”

This definition is broad and covers all types of advertising, marketing or promotional material. It includes:

- commercial marketing (eg promotion of products and services); and
- the promotion of aims and ideals (eg fundraising or campaigning).

It covers any means of communication, which means it includes any type of electronic mail marketing.

The definition doesn't cover electronic mail sent for administrative or customer service purposes. For example, emails to advise changes to terms and conditions or advise someone of a problem with their account. These types of messages are often referred to as "service messages". They don't count as direct marketing if you use them purely for administrative purposes. This is because you aren't advertising or marketing to customers. However, if you include promotional content within your service message, then the message counts as direct marketing. For example, content with the aim of getting your customer to buy more products or increase their donations.

Further Reading

[↗ Relevant provisions in the legislation PECR – see Regulation 2\(2\) and Regulation 22 ↗](#)
External link

[↗ DPA 2018 – for the definition of direct marketing see section 122\(5\) ↗](#)
External link

Do we need to know the name of the person we want to send the marketing to for PECR to apply?

You don't need to know the name of the person you are sending the message to for the electronic mail marketing rules to apply. This is because the rules aren't limited to electronic mail that involve personal data.

The marketing rules in PECR protect "subscribers". For example, the customer named on the bill for an internet connection subscription or a telephone line. There are two types of subscribers in PECR:

- **Corporate subscribers** are corporate bodies with separate legal status (eg companies, limited liability partnerships, Scottish partnerships).
- **Individual subscribers** are people but also include some types of businesses (eg sole traders and some types of partnerships).

Unlike other PECR marketing provisions, some of the rules on electronic mail marketing only apply to individual subscribers. This means that some types of businesses don't have the same protections when it comes to receiving marketing by electronic mail.

However, the information that you **must** provide when sending electronic mail marketing applies to both types of subscriber. See the section [What information do we need to provide when sending marketing by electronic mail?](#) for more information.

Further Reading

[↗ Relevant provisions in PECR - See Regulation 22\(1\) and 23 ↗](#)
External link

Further reading

- [Guide to PECR: Subscribers](#)

- We also have separate guidance on [business-to-business marketing](#) which contains more detail on how the rules apply to corporate subscribers.

What are the rules on direct marketing using electronic mail?

In detail

- [Who is responsible for complying with the rules on sending marketing by electronic mail?](#)
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- [What does “solicited” and “unsolicited” mean?](#)
- [What is consent?](#)
- [What information do we need to provide when sending marketing by electronic mail?](#)

Who is responsible for complying with the rules on sending marketing by electronic mail?

In general the PECR rules apply to anyone that wishes to send unsolicited messages by electronic mail for the purposes of direct marketing.

It is the ‘sender’ or the ‘instigator’ of the message who has responsibility for complying with the rules. PECR do not define the term ‘instigator’. However, you are likely to be instigating if you encourage, incite, incentivise or ask someone else to send electronic mail containing your direct marketing message.

For example, asking someone else to send your electronic mail marketing for you may mean you are the instigator and the party who is sending the marketing is the sender. This can mean you both have responsibility for complying with PECR. This may be different if you’re using a webmail provider or a marketing platform to send electronic mail on your behalf. In these cases, you may only have responsibility for the sending and the other party has no responsibility under PECR for it.

If you want to use someone else to send your electronic mail marketing, you **should** undertake appropriate checks to have confidence in their reliability from a compliance point of view. You **should** also have a written contract with them that sets out their responsibilities. If you’re using personal data, then you **must** have a contract with the organisation sending marketing on your behalf.

If your organisation is also a subscriber (ie named on the bill for the internet connection subscription or phone line) you **must not** allow others to use your phone line or internet connection to breach the marketing rules. If someone else is using your line or connection to send electronic mail marketing, you **must** make sure that these communications comply with PECR.

If you are considering asking your customers to send or forward your electronic mail marketing messages, see the section [Can we ask people to send our electronic mail marketing?](#) for more information.

Further Reading

 [Relevant provisions in the legislation PECR – see Regulation 22](#) 

External link

What are the rules on sending marketing by electronic mail?

PECR says that you can only send direct marketing by electronic mail if:

- you have consent; or
- you can meet all of the requirements of the 'soft opt-in'.

However, these rules only apply to individual subscribers (which includes sole traders and some types of partnership). Therefore, you can send electronic mail marketing to a corporate subscriber (eg a limited company) without needing to comply with the above requirements.

In general, you **must** have people's consent to send them marketing by electronic mail. See the section [What is consent?](#) for further information.

However, there is an exception to this consent requirement. It is commonly known as the 'soft opt-in' (although PECR don't use this terminology). Regulation 22(3) says:



"A person may send or instigate the sending of electronic mail for the purposes of direct marketing where—

(a) that person has obtained the contact details of the recipient of that electronic mail in the course of the sale or negotiations for the sale of a product or service to that recipient;



(b) the direct marketing is in respect of that person's similar products and services only; and

(c) the recipient has been given a simple means of refusing (free of charge except for the costs of the transmission of the refusal) the use of his contact details for the purposes of such direct marketing, at the time that the details were initially collected, and, where he did not initially refuse the use of the details, at the time of each subsequent communication."









For the soft opt-in to apply, you **must** be able to meet all of its requirements.

For example, currently you can use the soft opt-in if **all** of the following apply:

- You want to send marketing by electronic mail to individual subscribers (including sole traders and some types of partnerships).
- You collected their contact details directly from them.
- You collected their details during a sale, or negotiations for a sale, of your products or services.
- You want to use their details to send them marketing about your similar products and services.

-  You gave them a clear, simple way to opt-out, or to say no to your marketing, when you collected their details.
-  You give them a clear, simple way to opt-out, or change their mind about your marketing, in each message you send.



However, currently the soft opt in won't apply if:

-  You want to send direct marketing by methods other than electronic mail (eg using phone calls or post).
-  You didn't collect the contact details directly from the person you want to send the marketing to.
-  You didn't collect their details during a sale, or negotiation for a sale, of your products and services.
-  You collected their contact details as part of your fundraising or campaigning.
-  You want to use their contact details to send someone else's marketing.
-  You want to use their contact details to send messages about fundraising or campaigning.
-  You didn't give them a clear, simple way to opt-out, or say no to your marketing, when you collected their details.
-  You don't give them a clear, simple way to opt-out, or change their mind about your marketing, in each message you send.

See the section [How do we use the soft opt-in to send marketing by electronic mail?](#) for more information.

Whichever you are using, you **must** also provide certain information when you send marketing by electronic mail. This applies to individual and corporate subscribers. See the section [What information do we need to provide when sending marketing by electronic mail?](#) for further information.

Further Reading

 [Relevant provisions in PECR – see Regulation 22\(1\), 22\(2\) \(consent requirement\), 22\(3\) \(soft opt-in\)](#) 
External link

Further reading

- [Guide to PECR: Subscribers](#)
- For more information on sending marketing to corporate subscribers, see our guidance on [business-to-business marketing](#).

What does “solicited” and “unsolicited” mean?

Some of the rules on electronic mail marketing only apply to “unsolicited” messages.

Solicited

Electronic mail marketing is solicited if someone specifically asks you to email them with marketing information. You can send someone particular promotional information if they ask you to. In this case, some of the PECR rules don't apply (eg you don't need consent or the soft opt-in to send the message).

Example

A customer asks a company to email them a copy of its summer brochure. The company subsequently sends a copy of the brochure to the customer's email address. By sending this message, the company is responding to the customer's request. This means the marketing is solicited.

Unsolicited

Unsolicited means any marketing message that someone hasn't specifically requested. Consenting to, or not opting out of, your general electronic mail marketing doesn't mean that the marketing is solicited. It still counts as “unsolicited” for the purposes of PECR. However, this doesn't necessarily stop you from sending the message. You just need to comply with PECR's rules on electronic mail as normal.

You can send unsolicited direct marketing that someone has generally “opted in” or consented to receive. An opt-in means that they are happy to receive further marketing. It's likely that this unsolicited marketing is lawful.

Likewise, you can send unsolicited direct marketing if someone didn't take the opportunity you gave them to opt-out (as part of the 'soft opt-in'). In such cases, not opting out is likely to mean they are happy to receive your marketing. Therefore, it is likely to mean that the unsolicited marketing is lawful.

Example

When they requested the summer brochure, the customer also ticked a box opting in to receive

information about future offers from the company. A few months later, the company sends an email with details of a discounted service.

This is unsolicited marketing, because the customer did not contact the company to specifically request information about the particular discounted service. However, this doesn't mean that the company should not have sent these details. It can do this because the customer consented to receive these offers.

The information you **must** provide when sending electronic mail marketing still applies whether the electronic mail marketing is unsolicited or solicited. See the section [What information do we need to provide when sending marketing by electronic mail?](#) for more information.

What is consent?

Often you may need consent to send electronic mail marketing. Sometimes, you may simply decide that you want to ask for consent for your electronic mail marketing instead of using the soft opt-in.

PECR takes its standard of consent from the UK GDPR, which says consent is:



“any freely given, specific, informed and unambiguous indication of the data subject's wishes by which he or she, by a statement or by a clear affirmative action, signifies agreement to the processing of personal data relating to him or her”

This means that if you are seeking consent for your electronic mail marketing messages:

- you **must** give people a free choice to consent so that they can refuse without detriment and you **must** keep the consent separate from other things such as terms and conditions (freely given);
- you **must** make it clear that the consent covers your electronic mail marketing messages and you **must** give your name in the consent request (specific and informed);
- you **must** have no doubt that they are consenting to your electronic mail marketing messages (unambiguous indication); and
- they **must** take a positive action to consent, so you **must not** use pre-ticked opt-in boxes, silence or inactivity (clear affirmative action).

You **should** keep a record of the consent (eg who, when, how) so that you can demonstrate that it is valid.

People can also withdraw consent and you **must** make it easy for people to do this. If someone withdraws their consent you can no longer send marketing by electronic mail to them. See the section [Can people object to our electronic mail marketing?](#) for further information.

Example

A company provides the following information on its website when it collects customer details:



Tick here if you would like to receive marketing emails from us about our services.

If customers decide to tick the box, the company has their consent to send them marketing emails.

Further Reading

 [Relevant provisions in PECR – see Regulation 22\(2\)](#) 

External link

 [Relevant provisions in UK GDPR - for consent see Article 4\(11\), Article 7, Recital 32, 42, and 43](#) 

External link

Further reading

For more detail on how consent works see our UK GDPR [consent guidance](#).

What information do we need to provide when sending marketing by electronic mail?

When you send marketing by electronic mail to any type of subscriber you **must**:

- not disguise or hide your identity; and
- provide a valid contact address for people and businesses to opt-out or unsubscribe.

These rules apply regardless of whether the message is solicited or unsolicited.

Further Reading

 [Relevant provisions in PECR – see Regulation 23](#) 

External link

How do we comply with the rules on sending marketing by electronic mail?

In detail

- [How do we use consent to send marketing by electronic mail?](#)
- [How do we use the soft opt-in to send marketing by electronic mail?](#)
- [Can we use the soft opt-in for fundraising or campaigning?](#)
- [Can we use bought-in lists to send electronic mail marketing?](#)
- [Can we use publicly available contact details to send marketing by electronic mail?](#)
- [Can we ask people to send our electronic mail marketing?](#)
- [Can people object to our electronic mail marketing?](#)

How do we use consent to send marketing by electronic mail?

If you want to rely on consent, your consent request **must** be prominent, concise, easy to understand and separate from things like general terms and conditions.

You **must** ensure that the consent specifically covers receiving that particular type of electronic mail from you. For example, you **must** have specific consent for emails or specific consent for text messages. Simply asking for consent for 'direct marketing' would not make it specific or informed enough.

Example



Tick here if you would like to receive marketing from us about our services by text message.



Tick here if you would like to receive marketing from us about our services.

Remember, some people may want to consent to some forms of electronic mail but not to others. For example, some people may want your marketing emails but not your marketing text messages. Therefore you **should** ask for consent separately for each one.

If you are considering sending direct marketing by text message, remember that consent to use someone's phone number for live or automated calls doesn't automatically cover direct marketing by text message.

Consent for electronic mail marketing **must** be freely given. For example, it's unlikely that you can make consent to such marketing either a condition of buying your product or service or donating to your cause.

Example



If you would like to receive our marketing emails please tick here .

Click [here](#) to submit your order.



By submitting your order you agree to receive our marketing emails.

Click [here](#) to submit your order.

There are many different ways that you may decide to seek consent for your electronic mail marketing. For example, you **could** use opt-in tick boxes, use equally prominent yes or no options, or even by verbal consent. But the key point is that you **must** get valid consent and you **should** keep clear records of it. See the section [What is consent?](#) for more information about the standard of consent you need.

Example



A customer uses their mobile phone to call a restaurant to book a table. The restaurant asks for their number in case it need to contact the customer about the booking and so that it can send a confirmation message.

The customer tells the restaurant their mobile number. The restaurant then asks them if they would like to receive its marketing text messages about discounts and events.

The customer verbally agrees, so the restaurant adds their number to its marketing database which shows the time and date that they consented.

The restaurant subsequently sends a booking confirmation text to the customer. A few days later it also sends the customer a text advertising its special food event.

The restaurant complies with PECR by obtaining the customer's consent to receive its direct marketing text messages.



A customer uses their mobile phone to call a restaurant to book a table. The restaurant asks for their number in case it needs to contact the customer about the booking and so that it can send a confirmation message.

The customer tells the restaurant their mobile number.

The restaurant subsequently sends a booking confirmation text to the customer. A few days later it also sends the customer a text advertising its special food event.

The customer didn't consent to the restaurant using their phone number to send direct marketing text messages. The restaurant didn't give any information to the customer during the phone call about using their number for this purpose.

The customer giving the restaurant their phone number to administer their booking is not consent to receive direct marketing text messages.

Consent isn't transferrable. It's specific to receiving electronic mail marketing to a particular number or address that the person gives you. For example, the consent someone gives you to receive direct marketing to their particular email address won't cover any other email addresses that they might also use.

Remember that, under PECR, someone gives consent "for the time being" and can withdraw it. See the section on [Can people object to our electronic mail marketing?](#) for further information.

Further Reading

 [Relevant provisions in PECR – see Regulation 22\(2\)](#) 

External link

Further reading

- For more detail on obtaining, recording and managing consent, see our UK GDPR [consent guidance](#).

How do we use the soft opt-in to send marketing by electronic mail?

Many organisations find that using the soft opt-in is a good way to send electronic mail marketing to their existing customers. However, if you want to use the soft opt-in instead of consent, you **must** meet all of its requirements.

It breaks down into five requirements:

1. You obtained the contact details;
2. In the course of a sale or negotiation of a sale of a product or service;
3. You are marketing your similar products and services;
4. You provided an opportunity to refuse or opt-out when you collected the details; and
5. You give an opportunity to refuse or opt-out in every subsequent communication.

We describe these requirements in detail below.

1. You obtained the contact details

You **must** obtain the contact details directly from the person you want to send the marketing to. If someone else obtains the contact details then the soft opt-in doesn't apply. For example, there is no such thing as a third party marketing list that is 'soft opt-in compliant'.

Example



A restaurant collects mobile phone numbers from customers when they book a table on its website.

By collecting the contact details themselves, the restaurant satisfies this first part of the soft opt-in.



A restaurant buys a list of people's mobile phone numbers which the third party claims are 'soft opt-in compliant'.

The soft opt-in doesn't apply because the restaurant did not obtain the contact details directly from these people. The restaurant didn't satisfy the first part of the soft opt-in.

The soft opt-in is only available to the same entity or single organisation that originally collected the contact details. For example, this means that it won't apply to other companies within the same group as the collecting organisation.

2. In the course of a sale or negotiation of a sale of a product or service

A person doesn't actually need to buy anything from you to trigger the soft opt-in. It's enough if "negotiations for a sale" took place. This means that they **must** actively express an interest in buying your products or services. For example, by requesting a quote or asking for more details of what you offer. You **must** have some form of express communication.

Example



A customer completes an online enquiry form asking for more details about a product or range of products. This may be enough to meet this part of the soft opt-in.



A customer logs into a company's website to browse its range of products. This is not enough to constitute negotiations and this part of the soft opt-in.

Another example of "negotiations for a sale" might include them signing up to a free trial of your service or product. But remember you **must** still meet the other parts of the soft opt-in. This includes giving people a chance to opt-out at the time you collect their details.

The communication from the person **must** involve buying products or services. It's not enough for someone to send any type of query.

Example



A customer sends an online enquiry to ask if the company can order a particular product. This could constitute negotiations for a sale and satisfy this part of the soft opt-in.



A customer sends an online enquiry asking if the company is going to open more branches in a particular location. This does not satisfy this part of the soft opt-in as the enquiry is not about buying products or services.

Currently, the PECR soft opt-in specifically uses the word "sale" and refers to "products and services". This means it doesn't apply to details collected where there is no sale (or such a negotiation), or where there is no product or service involved, eg fundraising and campaigning.

3. You are marketing your similar products and services

You can only send electronic mail about your similar products or services. The key question is whether people reasonably expect direct marketing about your particular product or service. This is likely to depend on the context, including the type of business you are and the category of product.

Example



A customer buys bread and bananas online from a large supermarket chain. Afterwards they might reasonably expect emails about groceries, as well as emails about a wide range of other products commonly sold in supermarkets.



A customer buys bread and bananas online from a large supermarket chain. Afterwards, however, they are unlikely to expect emails about banking or insurance products sold under the supermarket brand. These products are not bought and sold in a similar context. Also, the supermarket is usually not the same organisation as the one that provides banking or insurance products under its branding.

Because it **must** involve your similar products and services, the soft opt-in doesn't apply to sending the marketing messages of other organisations.

As in the previous requirement, because the soft opt-in currently applies to "products and services", it can only apply to commercial marketing. This means that charities, political parties or other not-for-profit bodies cannot rely on the soft opt-in for their campaigning or fundraising, even with existing supporters. In other words, you **must** have consent to send electronic mail promoting your aims or ideals. See the section [Can we use the soft opt-in for fundraising or campaigning?](#) for further information.

4. You provided an opportunity to refuse or opt-out when you collected the details

You **must** give people a clear opportunity to opt-out of your direct marketing when you first collect their details. Just because people engage with you doesn't mean they are happy to receive direct marketing from you in the future.

You **must** make it simple to opt out. When first collecting a customer's details, you **must** include this as part of the same process. For example, your online forms **should** include a prominent opt-out box, and staff taking down details verbally **should** specifically offer an opt-out.

Example



A customer buys some trainers from an online retailer and, as part of the buying process, provides their email address. The retailer provides a clear, easy to understand opt-out box when it asks the customer to provide their email address. The customer decides they want the retailer's marketing so they don't tick the box to opt out. The retailer adds their email address to its marketing database. The customer subsequently receives an email with a 10% discount code for their next purchase.

It's likely that these emails are compliant with this part of the soft opt-in.



A customer buys some trainers from an online retailer and, as part of the buying process, provides their email address. The retailer automatically adds their email

address to its marketing database. The customer subsequently receives an email with a 10% discount code for their next purchase.

These emails are not compliant with this part of the soft opt-in. The retailer did not give the customer an opportunity to opt-out of receiving direct marketing emails when it collected their details. This means the retailer cannot rely on the soft opt-in, even though it collected the customer's email address during the course of a sale and the marketing is for the retailer's similar products.

You **must** offer an opt-out at the time you collect someone's details. Placing an opt-out within your privacy policy is not sufficient, as this doesn't make it easy or simple for people to opt-out. Likewise, providing an opt-out after collecting their details is also not sufficient. For example, giving an opt-out in an order completion email doesn't constitute "at the time" you collected the details and is not a simple means of opting out.

Example



A customer orders a takeaway pizza online. As part of the process, the company asks them to provide either an email address or mobile phone number. The customer provides their mobile phone number and a box appears underneath which says:

We will send you marketing text messages about our special offers. If you don't want to receive these please tick here .

The customer decides to tick the box as they don't want marketing text messages from the takeaway.

The takeaway subsequently sends an order confirmation text to the customer. The takeaway doesn't send them any direct marketing text messages.

The takeaway complies with PECR and this part of the soft opt-in. This is because they gave the customer an opportunity to opt-out of marketing texts when collecting their details.



A customer orders a takeaway pizza online. As part of the process, the company asks them to provide either an email address or mobile phone number. The customer provides their mobile phone number.

The takeaway subsequently sends an order confirmation text to the customer. This also tells them how to opt-out of the takeaway's marketing text messages.

Providing an opt-out after the customer gives their details is not compliant with the soft opt-in. This means any marketing text messages that the takeaway subsequently sends would breach PECR.

5. You give an opportunity to refuse or opt-out in every subsequent communication

You **must** give people the chance to opt-out of every subsequent message that you send.

You **must** make it simple for customers to change their mind and opt-out or unsubscribe. For example, in subsequent messages it **should** be possible for them to reply directly to the message, or click a clear 'unsubscribe' link. With text messages you **could** offer an opt-out by telling people to send a stop message to a short code number. You **must** make this free of charge, apart from the cost to people of sending the message.

Example



A yoga studio sends its clients an email about upcoming events. At the bottom of the email the studio provides the following information:

'If you don't want to receive these emails from us any more please click here and we will unsubscribe you.'



A yoga studio sends its clients an email about upcoming events. At the bottom of the email the studio provides the following information:

'If you don't want to receive these emails from us any more please call the studio on 01245678 and quote your membership number and email address.'

Example



A hairdresser sends its clients a text message offering 30% off colour treatments. At the end of the text it says:

'To opt-out text STOP to 12345.'



A hairdresser sends its clients a text message offering 30% off colour treatments. It doesn't provide any information in the message about how to opt-out or unsubscribe.

You shouldn't ask people to create an account in order to unsubscribe, or ask them to log into their existing account to change their preferences. This is not considered a simple way to opt-out of your electronic mail marketing.

Further Reading

[Relevant provisions in PECR - see Regulation 22\(3\)](#)

External link

Can we use the soft opt-in for fundraising or campaigning?

No. The soft opt-in is currently worded so that it only applies to commercial marketing of products or services. It doesn't apply to the promotion of aims and ideals, eg campaigning or fundraising.

However, you can potentially use the soft opt-in for any commercial products or services you offer.

Example

A charity has an online shop that sells various ethically-sourced products. A customer buys some speciality teas from the online shop. When they provide their details, the charity gives them a clear, up-front chance to opt-out of direct marketing by email.

If the customer doesn't tick the opt-out box, the charity may use the soft opt-in to send direct marketing emails about its shop's products (assuming it meets the other soft opt-in criteria).

However, the charity can't send emails to the customer about fundraising because this isn't covered by the soft opt-in.

Currently you can't send campaigning or fundraising texts or emails without specific consent, even to existing supporters.

Example

A supporter is making a donation online to a charity. The charity provides an opt-in box that clearly explains that people can tick if they want to hear more about the charity's fundraising work by email. The supporter decides they would like to hear about the charity's work, so they tick the box.

The charity sends fundraising emails to the supporter as it has their consent to do so.

Further Reading

 [Relevant provisions in PECR - see Regulation 22\(3\)](#) 

External link

Can we use bought-in lists to send marketing by electronic mail?

Many organisations offer marketing lists for sale, rent or under licence. Depending on the circumstances, you can potentially use such a list compiled by a third party to send direct marketing by electronic mail.

However, in order to use such a list for electronic mail marketing, the people on it **must** have given their consent to receive such marketing from you.

If the third party claims that those on the list consented to direct marketing, you **must** check that any consent is valid and actually covers you. You **should** do this by making the following checks:

- What were people told?
- What did they consent to?
- Were you named on the consent request?
- When and how did they consent?
- Did they have a choice to consent?
- Is there a record of the consent?

You are responsible for ensuring that you comply with PECR. For example, if the consent doesn't name you or cover the method of electronic mail that you want to use, then it isn't valid. This means that any electronic mail marketing you send to those on the list would breach PECR. See the section [What is consent?](#) for more information.

The soft opt-in doesn't apply to bought-in marketing lists. This is because as part of the soft opt-in you **must** collect the details directly from the person you want to send marketing to during the course or negotiation of a sale of a product or service. Clearly this doesn't apply to details you got from a third party. Remember there is no such thing as a third-party marketing list that is 'soft opt-in compliant'.

You also **must** be aware of the data protection implications if the information you are buying is personal data. See the section [What do the data protection rules mean for electronic mail marketing?](#) for more information.

Can we use publicly available contact details to send marketing by electronic mail?

The term 'publicly available' can refer to contact details sourced from various places, including social media accounts, websites or other online or offline sources.

You **must** have consent or meet all of the soft opt-in requirements to send unsolicited direct marketing by electronic mail to people. Remember, these rules also apply for sole traders and some types of partnership.

Just because someone's contact details (eg their email address or mobile number) are publicly available doesn't mean they are consenting to your direct marketing. See the section [What is consent?](#) for more information.

The soft opt-in also doesn't apply to contact details collected from publicly available sources. There are various criteria that you **must** meet to use the soft opt-in for your electronic mail. This includes you collecting their details during the course or negotiation of a sale of a product or service. You **must** also provide that person with an opt-out. Clearly this doesn't apply to contact details obtained from public sources.

Therefore, if you have collected someone's contact details from publicly available sources, it's unlikely that you can use these to send them unsolicited electronic mail marketing. An exception to this might be someone's business contact details that are on their employer's website.

You also **must** be aware of the data protection implications if the information you are gathering is personal data. See the section [What do the data protection rules mean for electronic mail marketing?](#) for more information.

Further Reading

 [Relevant provisions in PECR - see Regulation 22](#) 

External link

Further reading

- If you are considering using publicly available details of other businesses see our guidance on [business-to-business marketing](#).

Can we ask people to send our electronic mail marketing?

Asking people to send your direct marketing to their friends and family is often known as viral marketing or a 'refer a friend' or 'tell a friend' campaign. While many people appreciate such campaigns or schemes, you **must** comply with the PECR rules. This applies even if you don't send the messages yourself, but instead instigate the sending or forwarding of these messages.

Instigate doesn't necessarily mean that you incentivised your customer to send your messages. You don't have to provide a reward or benefit to instigate the sending of messages. It's enough if you actively encourage someone to send or forward the messages.

Direct marketing emails and texts require consent (the soft opt-in doesn't apply in this situation) and you **must** demonstrate it. You can't collect valid consent when asking a customer to send your direct marketing. This is because you have no direct contact with the people they are sending your direct marketing to.

Example

An online retailer operates a 'refer a friend' scheme, where customers are given 10% off their orders if they participate. A customer provides their own name and email address. The retailer automatically generates an email containing its marketing for them to send to their friends and family.

The retailer is instigating the direct marketing, therefore it is responsible for complying with PECR. Because the retailer doesn't have the friends' and family's consent, such emails breach PECR.

Many organisations offer rewards if a customer gets their friends and family to also become customers. The fact that such a reward is available doesn't necessarily mean that PECR is engaged. However, if you are encouraging people to send electronic mail to their friends about becoming your customer, you are instigating the sending of direct marketing.

We appreciate it's difficult for you to control how your customer decides to make other people aware of your reward scheme. However, you can take steps to avoid being the instigator of the messages in this scenario. For example, by not creating pre-populated emails (as in the example above) or not actively encouraging customers to send an email or text message to their friends and family about the reward.

Example

A company operates a 'refer a friend' scheme where customers get a discount if their friends or family switch to the company's service.

When the customer logs into their account, there is a page about the scheme. It explains that if their friends or family input the customer's unique code when signing up to the company's services, the customer then gets a discount on their bill. There is no mention on the webpage of how the customer should make people aware of the scheme. It's therefore for the customer to decide if and how they take part.

In this case, if a customer decides to send electronic mail to make their friends and family aware of the scheme, the company won't have responsibility under PECR as it is not instigating such messages.

In terms of fundraising, often a key part is people participating in sponsored events. People may choose to seek their sponsorship using electronic mail. You aren't considered the instigator of those messages (even though it is your event), if you haven't encouraged them to use that method.

Sometimes your customers and supporters may send your messages to their friends and family on their own initiative. For example, they may be recommending you, giving details of your promotion or campaign or linking to a product on your website. Obviously you are not responsible under PECR if someone chooses, with no encouragement from you, to send such messages.

Further Reading

Can people object to our electronic mail marketing?

Yes. People can object to receiving your electronic mail marketing and they can decide that they no longer want your messages. PECR specifically uses the language “for the time being” which means that they can change their previous preferences.

In short you **must**:

- not send electronic mail marketing to anyone that has opted-out or unsubscribed; and
- stop sending electronic mail marketing based on consent where someone withdraws that consent.

You **should** have a process in place to deal with anyone who tells you they no longer want your electronic mail marketing.

It’s important to remember that people are free to change their mind about getting your direct marketing. For example, they can choose to withdraw their consent to receiving your direct marketing messages at any time and you **must** respect this.

If someone opts out or unsubscribes, this is likely to cover a particular contact type. For example, if someone gets marketing from you by text message and email but then decides to use the email’s unsubscribe link this opt-out is only likely to cover email marketing. It would not affect the text messages. This is assuming that the unsubscribe link was clear that it only covers email marketing.

Example

A customer receives marketing by text message and email from a company. The company is sending the messages while relying on the soft opt-in. As part of this, each text message tells people how to opt-out of the texts and each email has an unsubscribe button which makes clear that using it stops the emails.

The customer decides they no longer want to receive marketing by email so uses the unsubscribe button.

The company stops sending marketing to them by email. However, as the customer has not opted out of the texts, the company continues to send marketing by this other method.

If someone unsubscribes from your particular electronic mail marketing method, you **must not** send them any further marketing using that method. You **should** stop sending the messages as soon as possible.

You **should** add the contact details of people who withdraw their consent or unsubscribe to your ‘do not contact’ or suppression list. Using such a list helps you to comply, as you can check against it and avoid sending electronic mail marketing to anyone who has told you not to.

If someone withdraws their consent or unsubscribes, you can only send electronic mail marketing to them if in the future they subsequently decide to consent to such direct marketing from you.

As people may want to get your electronic mail marketing at a later date, you may wish to make them aware of how they can do this. For example, when they unsubscribe you **could** send them an automatic bounce back message (using the method they have unsubscribed from). This **could** confirm that they have unsubscribed and advise them of what to do if they change their mind. However, this message **must not** require them to take action to confirm their unsubscribe request.

You **could** also remind people of their electronic mail marketing preferences if the reminder is a minor addition to a message that you were sending anyway. For example, you **could** include this on an email confirmation when someone places an order with you. This **could** tell them how they can update their preferences (but without encouraging them to change their mind).

People also have data protection objection rights if you are using their personal data when sending electronic mail marketing. See the section [What do the data protection rules mean for electronic mail marketing?](#) for more information.

Further Reading

 [Relevant provisions in PECR - see Regulation 22](#) 

External link

What else do we need to consider?

In detail

- [What is the relationship between PECR and the data protection regime?](#)
- [What do the data protection rules mean for electronic mail marketing?](#)
- [Are tracking pixels covered by the electronic mail marketing rules?](#)
- [What happens if we do not comply with PECR when sending marketing by electronic mail?](#)

What is the relationship between PECR and the data protection regime?

PECR sits alongside the data protection regime, which is the UK GDPR and Data Protection Act 2018 (DPA 2018). Data protection and PECR aim to protect people's privacy. Data protection complements PECR. You may find that complying with PECR helps you comply with data protection requirements, and vice versa.

PECR takes some of its definitions from data protection. For example, it takes the UK GDPR's standard of consent and the DPA 2018 definition of direct marketing.

Data protection also applies if you are using personal data when sending electronic mail marketing (eg because you know the name of the person you are texting).

A person's email address identifies a unique user and distinguishes them from other users, which means it is personal data. Likewise, someone's business email address may identify them and therefore constitute personal data, eg [\[email protected\]](#)

If you are using personal data, you **must** make sure that you comply with the data protection rules as well as PECR.

Further reading

- See our separate guidance on: [What is personal data?](#)

What do the data protection rules mean for electronic mail marketing?

If the address you are sending electronic mail marketing to identifies a unique user, or if you know the person's name, then you **must** comply with data protection law as well as PECR.

For example, this means you **must** make sure what you want to do is fair, lawful and transparent. You **must** also comply with people's data protection rights (such as the right to object).

Fairness means not doing things with personal data that people would find unexpected, misleading or detrimental. Transparency means being clear, open and honest about what you want to do with their information. For example, you **must** make it clear to people when collecting their details that you want to send them electronic mail marketing. People have the "right to be informed" about what you intend to use

their personal data for.


Lawfulness includes having a valid data protection reason (known as a “lawful basis”) when you use personal data in order to send electronic mail marketing. There are six of these to choose from in the UK GDPR. However, it’s likely that the most relevant ones in the context of electronic mail marketing are consent and legitimate interests. This depends on whether you are relying on consent or the soft opt-in under PECR.

If you are relying on consent to send electronic mail marketing then it’s likely your lawful basis is also consent. However, if you can meet all of the requirements of the soft opt-in, then it’s likely you can rely on legitimate interests as your lawful basis. See our separate guidance on [legitimate interests](#) for help on how to assess if it does apply to your particular circumstances.

People also have the absolute data protection right to object to you using their personal data for direct marketing purposes (including using their personal data to send marketing by electronic mail). If someone exercises this right you **must** stop using their personal data for direct marketing purposes. There are no grounds for you to refuse.

You **should** keep a ‘do not contact’ or suppression list to make sure that you don’t inadvertently send electronic mail marketing to someone who has exercised this right. Failing to opt-out of the PECR soft opt-in won’t override the fact that someone has used this right. You can only send electronic mail marketing to them if they subsequently decide to consent to such marketing from you.

Further Reading

 [Relevant provisions in the UK GDPR – see Article 5\(1\)\(a\) \(fairness, lawfulness and transparency\), Article 6 \(lawful basis\), Article 13 and 14 \(right to be informed\), Article 21\(2\) \(right to object\) !\[\]\(29658d981ebdf5edc259074cbf6110e0_img.jpg\)](#)

External link

Further reading

- The ICO has produced lots of guidance on how to comply with data protection law. You can find it in the [Guide to the UK GDPR](#), which includes topics such as fairness, transparency, lawfulness and rights.

Are tracking pixels covered by the electronic mail marketing rules?

Many marketing emails include tracking pixels. For example, some record information such as the time, location and operating system of the device used to read the email.

The electronic mail marketing rules in PECR only cover the email itself, not the tracking pixels. Using such tracking pixels are instead covered by PECR’s separate rules on cookies and similar technologies.

This means that you **must** comply with the electronic mail rules when sending the marketing email itself. You **must** also comply with the rules on cookies if that email uses tracking pixels. See our separate guidance on [cookies and similar technologies](#) for more information.

Further Reading

 [Relevant provisions in PECR – see Regulation 22 \(electronic mail marketing\) and Regulation 6 \(cookies and similar technologies\)](#) 

External link

Further reading

- We have separate detailed guidance on the rules for [cookies and similar technologies](#).

What happens if we don't comply with PECR when sending marketing by electronic mail?

The ICO's aim is to help and empower you to comply with the law. In cases where you refuse or fail to comply voluntarily, we have a range of options available for taking formal action where necessary.

We take a risk-based, effective and proportionate approach to enforcement. Our aim is to create an environment which protects people, while supporting organisations to ensure they can operate and innovate efficiently in the digital age. We will be as robust as necessary in upholding the law, while ensuring that enterprise is not constrained by red tape, or by concern that we would use sanctions disproportionately.


We have several ways of taking action to change the behaviour of anyone who breaches PECR. This includes serving an enforcement notice that requires an organisation to stop sending direct marketing that is in breach of PECR. We can also serve a monetary penalty notice imposing a fine of up to £500,000 which we can issue against the organisation or its directors. These powers are not mutually exclusive. We can use them in combination, where justified by the circumstances.

Further Reading

 [Relevant provisions in PECR – see Regulations 31, 31A, 31B and Schedule 1](#) 

External link

Further reading

- [Regulatory Action Policy](#) 
- For recent action that the ICO has taken to enforce PECR see the [action we've taken](#) section of our website.