

# Preparing for GDPR – interim guidance for those involved in marketing

## What is GDPR?

The Data Protection Act 1998 is in the process of being replaced by the EU General Data Protection Regulation (Regulation 2016/679). Despite being EU legislation it is likely to apply to the UK post-Brexit.

In general the GDPR does not radically shift the data protection landscape. Offering individuals the ability to opt in, rather than leaving them to opt out, will move from best practice to being a legal requirement. There is also a greater emphasis on being able to evidence that someone has chosen to opt in.

As with any new piece of legislation there will be a period during which definitions are tightened up, guidance is created, and eventually there will also be case law to further define how the Regulations should be understood. There are also some aspects of the Regulations that allow scope for the UK government to develop or set its own requirements. This has not yet happened.

This guidance is, therefore, interim, and will be updated as external guidance is developed and published.

## What else is changing?

One way in which individuals can currently exercise their right to stop their contact details being used for marketing purposes is through the Preference Services: primarily the Telephone Preference Service (TPS) and the Mailing Preference Service (MPS). These are long-established and any lists of contacts or leads that are bought in should always be checked against these before being used.

Two services specific to charities are being added. The Charity Preference Service launched in May 2017, and consultation is ongoing around the Fundraising Preference Service (FPS). It is not clear how either of these will work, nor how, or if, they will work together. Neither of them changes the fundamental principle that individuals have a right to choose not to receive direct marketing materials.

Current ICO guidance is that if a number is registered with FPS, even if it is not registered with TPS, and even if you previously had permission to call that number, you should no longer call that number for marketing purposes.

## A reminder about the definition of marketing

For the purposes of data protection, including the privacy and electronic communications regulations (PECR) and the GDPR, 'marketing' includes fundraising, and also promoting the aims and objectives of an organisation. You do not have to be selling goods or services to be involved in marketing. Messages to students and staff can be marketing and the same rules apply to them as to external customers.

Any marketing you undertake needs to be compliant with both legislation and relevant industry codes of practice. (See the Further Reading Section at the end of this guidance).

Genuine market research surveys do not count as marketing but it's important that the research contains nothing at all that could be considered to be marketing, and none of the data collected is used for marketing purposes at a later date.

## What do we need to do now?

Direct contact which is not directly linked to either someone's employment or their study here, and which is likely to be marketing, will normally require the consent of individuals before you can send it out.

There are two main changes around consent: offering people the ability to opt-in, rather than expecting them to opt-out, and recording the consent.

### Opt in, not opt out

Collecting permission to send marketing through asking people to opt-in has always been best practice; under the GDPR it becomes law. This means asking people to do something positive to signal their wish to receive marketing. This might be through ticking a box, selecting a yes/no response, or providing contact details (provided it is clear that the purpose of the contact details is to send marketing).

If you have been using an opt out (where you assume that someone is happy to receive marketing unless you hear otherwise) or you are not sure whether or not you have permission to send marketing materials then you should not contact those people after the new rules come in (May 2018).

You will continue to need to offer those who have signed up the ability to opt out again at any time.

### Record it

The second change is the requirement that we make sure we have an up to date record of who has opted in or out. The record should include the individual's name or other unique identifier; information about when they gave consent, which might be a dated or timestamped item; an indication of what wording they were given to sign up to; a note of how they demonstrated consent; information noting if (and when) consent is withdrawn. Where CRM is used and contacts can easily update their own preferences that is likely to be sufficient.

### What hasn't changed?

Not everything has changed, for example:

- You still need to check any bought in lists of leads or contacts against the Mailing and Telephone Preference Services.
- Each time you contact individuals you need to give them the option to stop hearing anything more from you.
- You still need to ensure you are only collecting information that is relevant (so to send out a termly brochure you need a postal address, but not date of birth or nationality, so don't ask for that information).
- You can still do mailshots to locations using unaddressed items or items addressed to "the householder".
- You can still make contact for genuine administrative purposes, e.g. to check an address, or confirm a payment, **but note** that if any part of the message is, or is related to, direct marketing (such as asking someone to confirm they still want to receive marketing from you) then the whole communication is considered to be marketing.
- You can still push messages out via social media, which can include calls to contacts to update their contact details or their mailing preferences.

### Wealth screening

There are no new rules directly related to wealth screening, harvesting 'publically available' information or data matching.

For wealth screening you should be open and transparent, and explain to individuals (potentially through a privacy notice sent directly to them) what you are doing with their information. If they object then you should stop using their information in this way.

Data matching – looking for additional contact details to add to those already given by an individual and using those contact details for marketing purposes - is not permitted.

## GDPR checklist – things to do now

- ✓ Do make sure you are asking people to take positive action to opt in to hearing from you

No “Please untick the box below if you do not wish to be added to our mailing list”	Yes “Let us keep you in the loop! To find out about other networking events for alumni tick this box!”
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- ✓ Do make sure you explain clearly what people are signing up for.

No “Tick here to hear more about the University”.	Yes “Tick here to sign up to our fortnightly email bulletin with news about the University.”
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- ✓ Do make it easy for people to change their minds

No “If you no longer wish to hear from us please write to the address below, giving an explanation for why you no longer want to hear us and listing all the email addresses we have on record for you.”  “If you don't wish to receive emails from us please ring us at the premium rate number below between 10.15 and 2.15 Monday to Thursday”	Yes “You've received this email because you've subscribed to our fortnightly newsletter. If you no longer wish to receive these emails from us please click here to unsubscribe.”  “Prefer not to receive texts from us? Text STOP to 2345.”
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- ✓ Do separate out consent for marketing from consent separate to terms and conditions

No “Please sign below to confirm that you would like to take part in the mentoring scheme. When you sign you are also agreeing to receive regular emails and other updates from us.”	Yes “Please sign below to confirm that you want to join the scheme. Want to hear us about other mentoring opportunities? Please tick here.”
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- ✓ Do keep evidence of the consent you have to contact individuals.
- ✓ Do review consent from time to time – don't assume that consent given in the past continues indefinitely.
- ✓ Do check the TPS and FPS before making phone calls.
- ✓ Do remember that you have until May 2018 to get things right.
- ✓ Do remember to ask for help and guidance from the Information Assurance Manager.

## Further reading and information

### Legislation, Regulation and Codes

EU GDPR. <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32016R0679&from=en>

Data Protection Act 1998. <http://www.legislation.gov.uk/ukpga/1998/29/contents>

Privacy and Electronic Communications (EC Directive) Regulations 2003

<http://www.legislation.gov.uk/uksi/2003/2426/contents/made>

Fundraising Regulator. Code of Fundraising Practice. <https://www.fundraisingregulator.org.uk/wp-content/uploads/2016/06/Code-of-Fundraising-Practice-v1-3.pdf>

ASA. The CAP Code: the UK Code of Non-broadcast Advertising and Direct and Promotional Marketing <https://www.asa.org.uk/codes-and-rulings/advertising-codes/non-broadcast-code.html>

### Guidance

ICO. Direct marketing. <https://ico.org.uk/media/for-organisations/documents/1555/direct-marketing-guidance.pdf>

ICO. Guide to Privacy and Electronic Communications Regulations. <https://ico.org.uk/for-organisations/guide-to-pect/>

Institute of Fundraising. GDPR: the essentials for fundraising organisations. <http://www.institute-of-fundraising.org.uk/library/gdpr-the-essentials-for-fundraising-organisations/>

### Preference Services

Mailing Preference Service <http://www.mpsonline.org.uk/mpsr/>

Telephone Preference Service - <http://www.tpsonline.org.uk/tps/index.html>

Charity Preference Service - <https://charitypreferenceservice.org/>

### Further reading

ICO conference paper. Fundraising and regulatory compliance. <https://ico.org.uk/media/about-the-ico/documents/2013426/fundraising-conference-2017-paper.pdf>

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V1.2 issued July 2017