

GDPR and PECR: To ask for consent or not?

The General Data Protection Regulation (GDPR) states that there are six legal grounds for processing personal data.

However, there are two that are likely to be used as a legal basis for direct marketing: consent and legitimate interests.

The rules are further complicated by the Privacy and Electronic Communications Regulations (PECR), which mandates that consent is required in specific circumstances when using electronic marketing channels.

Where PECR does not require consent, organisations may be able to use legitimate interests as a legal basis for direct marketing rather than consent.

The below chart summarises and simplifies which legal grounds are most appropriate depending on the marketing method:



Marketing method		GDPR legal basis	
		Legitimate interests	Consent
Consent required by PECR	Emails/text messages to individuals - without 'soft opt-in'	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	Automated phone calls	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	'Live' phone calls to TPS/CPTS registered numbers	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Consent not required/ PECR not applicable	Emails/text messages to individuals - obtained using 'soft opt-in'	<input checked="" type="checkbox"/>	<input type="checkbox"/>
	'Live' phone calls where there is no TPS/CTPS registration or objection	<input checked="" type="checkbox"/>	<input type="checkbox"/>
	Post/direct mail to business contacts	<input checked="" type="checkbox"/>	<input type="checkbox"/>
	Post/direct mail to consumers	<input checked="" type="checkbox"/>	<input type="checkbox"/>
	Emails/text messages to business contacts	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Conclusion

Marketers often confuse or conflate GDPR and PECR but it's important to understand the difference between the two.

The GDPR applies to all your marketing that uses personal data, while PECR applies on top of GDPR when you're marketing over electronic channels.

Ensure that you comply with both pieces of legislation and use this chart to double check which legal ground in GDPR is likely to be most appropriate.

Bear in mind that PECR requires consent in certain instances but where PECR doesn't require consent or isn't applicable you can use legitimate interests as your legal ground.

However, in order to use legitimate interests you must carry out a legitimate interests assessment and successfully complete it.

More information about consent and legitimate interest can be found in our GDPR guidance.

About the DMA

The DMA provides guidance and support to help its members put their customers at the heart of their one-to-one communications to give them the rich benefits of a much more relevant, welcomed and effective relationship with each individual customer.

The DMA aspires to facilitate its members' marketing evolution with the opportunities, advice, support, networks and tools to be able to reach the sensitivity and sophistication of marketing to build their future prosperity – along with the success of the industry as a whole.

Published by The Direct Marketing Association (UK) Ltd Copyright © Direct Marketing Association. All rights reserved.

www.dma.org.uk