

# Guidance on political campaigning

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## Data Protection Act Privacy and Electronic Communications Regulations

### Contents

Introduction.....	3
A. Why comply? .....	5
B. What is direct marketing?.....	7
C. Is political profiling and market research direct marketing?.....	7
D. An organisation has received an objection to direct marketing from an individual; what does it need to do?.....	8
E. What do organisations need to do when contacting individuals by post? .....	9
F. What do organisations need to do when contacting individuals by email, text message (SMS), video message (MMS), social media, or voicemail left on answering machines? .....	10
G. Can organisations use viral marketing or “tell a friend” campaigns to send email, text message (SMS), video message (MMS), or communications via social media? .....	13
H. What do organisations need to do when contacting individuals by fax? .....	14
I. What do organisations need to do when contacting individuals by telephone (including mobiles)?.....	15

J. Are there any other things organisations need to know when using information for direct marketing purposes? ..... 16

K. Obligations of elected representatives in relation to personal data when changing to a different political party..... 17

More information ..... 17

## 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, contacting an individual by any of the methods listed in the table below to promote a political view in order to gain support at the ballot box, or otherwise influence an individual, is “direct marketing” and this is 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. 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](#).

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. See sections B and D.
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. See sections F and G.
Fax	...where the individual has consented to contact of that sort from the organisation for those purposes. See section H.
Phone calls	...unless the organisation has grounds for believing the individual would not want it to contact them, such as TPS registration. See section I.
Automated phone calls	...where the individual has consented to contact of that sort from the organisation for those purposes. See section I.
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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5. This guidance explains what an organisation needs to do in each case, including where it uses viral marketing and “tell a friend” campaigns. Subject to the legal provisions for a particular election or referendum, individuals have an absolute right to object to direct marketing from a particular political campaign, which organisations must respect and take steps to comply with.
6. 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. Organisations 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.

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

## A. Why comply?

7. 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 have 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).

8. 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 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.
9. 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.
10. Note that elected representatives, along with their party and campaigners, should not use for direct marketing any contact details they obtained when carrying out casework, unless they are sure that the constituents concerned would expect that contact from them and would not object.
11. 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. 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.

## B. What is direct marketing?

12. 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”.
13. We take a broad view of what constitutes marketing and are satisfied that it is not only the offer for sale of goods or services 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.
14. Our view was supported by the Information Tribunal in 2006 when it dismissed an appeal by the Scottish National Party, who argued that political campaigning was not marketing.
15. Because marketing only 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 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>) in 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, to send an “election address” by Freepost, either addressed to each individual elector or unaddressed to each postal address. This type of Freepost mailing does not constitute direct marketing.

## C. Is political profiling and market research direct marketing?

17. Political campaigns do not just communicate with individuals for promotional purposes. A political campaign can conduct genuine research in the same way that professional market

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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).



research companies do to help inform their views and formulate policies. 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. 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.
18. 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 will be conducting marketing and will need to explain that to them before collecting their information.

#### **D. An organisation has received an objection to direct marketing from an individual; what does it need to do?**

19. Individuals have an absolute right 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 above.
20. 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.

21. 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 should respect their wishes not to contact them.
22. 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 people will appreciate this. 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.
23. The structure of a political party also affects whether it has responsibility under the DPA for the actions of its candidates during an election. Again, this is something that few people 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.

## E. What do organisations need to do when contacting individuals by post?

24. If an organisation uses personal information, such as name, address and any information it has about the preferences of the individual, 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 respects any requests not to receive information from it.
25. 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 above.
26. Quite apart from this specific right, use of the full register during elections or referendums is, of course, perfectly

legitimate and it will not be unfair for an organisation to contact an individual to promote a political campaign unless it is aware that the individual objects to direct marketing. The same situation applies to any contact details it obtains from publicly available sources of information.

27. 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, unless it is otherwise apparent from its relationship with them that this contact will occur.
28. Where an organisation sends promotional mail to known supporters, it needs to be satisfied that those supporters would expect their personal information to be used for that purpose.
29. 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 concerned 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 11, above).
30. 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 for individuals who wish to contact it to object to any further direct marketing from it.
31. Unless the organisation is sending an election or referendum Freepost mailing (see above), then in all cases where it intends to send promotional messages by post, regardless of the source of the address, it must first screen the potential recipients against the list of individuals who have objected to receiving direct marketing from it and suppress any mailings to them.

## **F. What do organisations need to do when contacting individuals by email, text message (SMS), video message**

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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).

## (MMS), social media, or voicemail left on answering machines?

32. An organisation must carefully consider its compliance with the DPA and PECR when communicating with individuals by means of email, text message, social media, video message and voicemail.
33. The organisation must have the individual's 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.
34. 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 communication including text messages and emails.
35. If an individual provides their contact details in response to a leaflet about a particular local campaign, for example in connection with a campaign to save a local hospital, 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.
36. If, however, an individual provides their email address in response to a leaflet about a particular campaign and the wording on the leaflet states clearly and explicitly that by providing an email address or mobile phone number that individual consents to the use of those details in any current and future campaigns, then the organisation will be able to retain their contact details and use them more widely for promotional purposes.
37. It is important to ensure that the notification the organisation gives to individuals is prominent, clear and explicit so that their choice to provide it with their details is fully informed. The organisation might also want to consider using a tick box where the individual indicates that they opt into or consent to future communications from it by email, text message, social media, video message or voicemail.

38. The use of third parties requires particular care. If the organisation purchases email addresses or mobile phone numbers from a third party such as a list broker with the intention of sending an electronic communication to those listed, it needs to be sure that the individuals have consented to receiving these forms of contact from it. [Better Together, a campaign group in the 2014 Scottish independence referendum, signed an undertaking in November 2013](#) that they would ensure any future electronic marketing was only sent to people who had consented to receiving this type of message.
39. 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 by third parties 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.
40. 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).
41. 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.
42. An organisation may not need to get the consent of individuals if it has an existing list of supporters' email addresses or mobile phone numbers which it compiled before 11 December 2003 and if the organisation satisfies all of the following criteria. Due to the passage of time, this provision is now of reduced relevance.

- it compiled the list in line with privacy legislation at that time (so at the very least it told the person when it collected their details that it would be contacting them for marketing purposes);
  - it has used the list recently;
  - the individual hasn't already told it to stop contacting them;
  - it provides a valid opt-out address in each message; and
  - it stops sending them direct marketing as soon as they ask it to.
43. An organisation should always check that it is not going to send direct marketing to individuals who have objected to such contact from it.
44. We have produced detailed guidance on complying with [PECR](#) and on [direct marketing](#) which are available on our website.

### G. Can organisations use viral marketing or “tell a friend” campaigns to send email, text message (SMS), video message (MMS), or communications via social media?

45. 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 a person to send the original marketing message to family or friends; or
  - it asks a person to give it their family or friends' contact details.
46. These types of campaign are 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.
47. 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.

48. 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.

49. 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 its political campaign. 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.

## H. What do organisations need to do when contacting individuals by fax?

50. 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.

51. 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 before collecting the information from them.
52. If it obtains fax numbers from third parties, it will need to be sure that the individual has consented to their number being used for promotional purposes by a third party such as a political campaign or that the information has been obtained from publicly available directories.
53. The organisation must identify itself in the fax and provide an address or number where it can be reached free of charge.
54. 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.
55. 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](#).

## **I. What do organisations need to do when contacting individuals by telephone (including mobiles)?**

56. The organisation must treat individuals fairly. If it is collecting telephone 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 purposes by a third party such as a political campaign, or the information has been obtained from publicly available directories.
57. If a person has specifically agreed to an organisation telephoning them, then it may do so even if they have



registered online with the Telephone Preference Service (TPS). Otherwise, however, 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. For more information, please visit [the TPS website](#). Where the organisation is permitted to telephone an individual, it must identify itself at the start of the call, and if requested provide an address or number where it can be reached free of charge to object to marketing. It should also record and respect any objection to marketing made by the individual at the time of the call.

58. If an organisation wishes to use automated calling where a recorded message is played to the person who answers the phone, it will need the prior consent of the individual. Obtaining consent to make 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. It is worth noting that many individuals have told us that they consider automated calls to be extremely intrusive and even disturbing.

## **J. Are there any other things organisations need to know when using information for direct marketing purposes?**

59. 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.

## K. Obligations of elected representatives in relation to personal data when changing to a different political party

60. 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.
61. 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.
62. We suggest that political parties should provide guidance about these scenarios for elected representatives and their offices.

### More information

63. 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.
64. It is a guide to our general recommended approach, although individual cases will always be decided on the basis of their particular circumstances.
65. Organisations that need any more information about this or any other aspect of data protection should please contact us.

**Phone**

England: 0303 123 1113  
Northern Ireland: 0289 027 8757  
Scotland: 0131 244 9001  
Wales: 0292 067 8400

**Email**

Please use the online enquiry form on our website:  
[www.ico.org.uk](http://www.ico.org.uk).