

Meeting the Requirements Privacy Electronic Communication Regulations (PECR)

PECYN CYMORTH LLYWODRAETHU GWYBODAETH CYMRU
WELSH INFORMATION GOVERNANCE TOOLKIT



Introduction

The Privacy and Electronic Communications Regulations 2003 (PECR) sits alongside the Data Protection Act 2018 (DPA) and the UK General Data Protection Regulation 2016 (UK GDPR) and gives individuals specific privacy rights in relation to electronic communications. Complying with PECR will help you comply with DPA and UK GDPR, and vice versa.

Some of the rules only apply to organisations that provide a public electronic communications network or service. Even if you are not a network or service provider, PECR will apply to you if you:

- market by phone, email, text or fax;
- use cookies or a similar technology on your website.

Electronic communications mean any information sent by an organisation to an individual over a phone line or internet connection. Therefore, when an organisation issues marketing information via electronic mail to a patient (customer) or uses cookies and similar technology on their website they need to comply with the Regulations. 'Electronic mail' has an intentionally broad meaning and is defined as "any text, voice, sound or image message sent over a public electronic communication 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".

Most of PECR applies to unsolicited marketing; any message that has not been specifically requested. So even if a patient has 'opted in' to receive marketing information from the organisation, it is still classed as an 'unsolicited marketing message'. 'Opted-in' means the patient has taken a specific step in consent to receive further messages; it is also likely to mean that the marketing complies with PECR.

Although organisations can generally only send marketing texts or emails with specific consent, there is an exception to this rule for existing customers known as 'the 'soft opt-in'. This means organisations can send marketing texts, calls, emails etc. if:

- they have obtained the contact details in the course of a sale (or negotiations for a sale) of a product or service to that person;
- they are only marketing their own similar products or services; and
- they gave the person a simple opportunity to refuse or opt out of the marketing, both when first collecting the details and in every message after that.

See '[Table One](#)' for further information on these previous processes.

Moving forward for any existing or new patients who have not previously been sent such messages it is recommended that the organisation obtains consent from their patients to issue messages/invitations in these circumstances.

For consent to be valid it must be knowingly and freely given, be clear and specific. When asking for patient consent you must detail the name of the organisation and the type of communication you want to use, for example, by text and/or email. It must involve some form of a very clear



action, for example, they will tick an opt-in box, click an icon, or send in an email expressing consent. The patient must fully understand what they are giving consent for. Providing information by a privacy notice that is hard to find, difficult to read or rarely used is not an acceptable way of obtaining consent. You must make it easy for a patient to withdraw consent at any time and explain to them how they can go about this.

PECR also covers the use of cookies or similar technologies that track information about people accessing a website or other electronic service. For further information see the '[cookies or similar technologies](#)' section on the ICO website.

The UK General Data Protection Regulation (UK GDPR) does not replace the Privacy Electronic Communications Regulations (PECR), although it changes the underlying definition of consent. Existing PECR rules continue to apply, however these must use the '[UK GDPR standard of consent](#)'. There is some overlap between the DPA, UK GDPR and PECR, given that both aim to protect people's privacy. Complying with PECR will help you comply with the DPA and UK GDPR, and vice versa; but there are some differences and you must make sure you comply with both.

Note: GMPs may not think they conduct any direct marketing however, it will maintain several disease registers as good professional practice and to undertake evidence-based interventions for those detailed patients. Invitations to call and re-call these patients for appointments within the Practice are often made by electronic means, e.g. text, telephone, email etc. We may consider this to be for the systematic direct care of the patient, however the Information Commissioners Office (ICO) views this as marketing due to the Practice receiving payment in line with the Quality Assurance and Improvement Framework (QAIF).

For this reason, we recommend that GMPs obtain patient consent prior to contacting them in electronic form. '[Table Two](#)' describes 'What counts as consent' for direct marketing. It should be noted that an invite via post is not covered by PECR.

How do we reach Attainment Level 1?

The organisation must have policies, procedures and guidance in place which set out the organisations process for direct marketing, including health promotion / health service promotion messages, and the use of website cookies. Processes should be in place to ensure that the appropriate staff are made aware of the policies and procedures and have a clear understanding of them. Staff responsible for managing websites and public electronic communications, including staff in Community Facing teams, IT, Communications, Research teams and Public Health, should receive appropriate training to ensure they are aware of their PECR responsibilities.

An individual should be appointed within the organisation who has a clear understanding of the Regulation to ensure the organisation is compliant. There should be a specific point of contact for staff to seek advice in relation to electronic marketing. This should be communicated throughout the organisation, to ensure all staff are aware of where to seek advice in relation to electronic marketing, including health promotional messages.

'[Table Three](#)' details the forms of electronic marketing that are covered under PECR.



Note: The ICO have produced detailed guidance on these Regulations which include useful information on [‘communication via text and email’](#).

How do we reach Attainment Level 2?

The policies and procedures should include guidance on how to obtain consent from individuals together with the process for when consent is withdrawn. Adherence to these documents by staff will help protect the organisation against breaching DPA, UK GDPR and PECR. It is imperative that staff are appropriately trained on all areas of the policy, supporting procedures and guidance.

Best practice requires that the PECR Policy and any associated procedures and guidance are regularly reviewed and updated accordingly, ensuring they remain current and relevant. The relevant group or forum must ‘sign off’ any amendments to the documentation, processes should be in place to ensure staff are made aware of such changes.

Appropriate privacy information about the use of cookies should be visible on the organisation’s website. [‘Table Four’](#) details ‘What counts as consent’ for cookies.

How do we reach Attainment Level 3?

As with any policies and procedures within the organisation it is recommended that staff sign an acknowledgement stating that they have read and understood these documents. This will also provide staff with an opportunity to gain clarification on any areas within the documentation.

The organisation should conduct compliance monitoring/staff spot checks to ensure PECR rules are being followed, including that the management of consent for electronic marketing is documented and the use of website cookies is transparent and - where appropriate – optional.

There should be processes in place to ensure that the organisation's compliance with PECR processes and requirements is regularly reported to the relevant forum i.e. Management Team/Board/Committee.

Supporting Resources

ICO: Guide to Privacy and Electronic Communications Regulations

ICO: Cookies and Similar Technologies

ICO: Electronic Mail Marketing

ICO: Consent

ICO: Children and the UK GDPR - *Practical guidance for organisations who are processing children’s personal information*



Summary Requirement

Attainment Level	Summary Requirement
1	There are documented policies and procedures for the Privacy Electronic Communications Regulations (PECR) for all electronic marketing messages (by phone, email, text, etc.) and for the management of websites. The policies and procedures set out clear responsibilities and these are made available to staff
2	Consent processes for electronic marketing and cookies are actively managed. Policies and procedures are regularly reviewed, and any changes communicated to staff
3	Compliance with PECR policies and procedures is regularly reviewed and reported as appropriate to the relevant Board / Committee / Management Team

