

The ‘Statistical Purposes’ Cookie Consent Exception: What the ICO Says

Regulation 6 of the Privacy and Electronic Communications Regulations

The “statistical purposes exception” is a new PECR provision introduced under the **Data Use and Access Act (DUAA)**.

It allows *information society service providers* to collect **aggregate statistics** about how their service is used, with a view to improving it.

No consent is needed, but the service provider must give **clear information** and a **simple, free means of objecting** (an opt-out).

The ICO recently finalised its position on the exception as part of its “**storage and access technologies**” guidance.

1 Scope: What sorts of data can we collect?

WITHIN SCOPE

- Aggregate visits, page traffic
- Scroll depth, time on page
- Device & browser information
- Referral sources, A/B testing
- Page load speeds and bounce rates

OUTSIDE SCOPE

- Identifying or tracking users
- Profiling categories of users
- Online advertising (any form)
- Wifi probe requests and similar passive emissions

“The exception is about **how** your service is used, not about **who** uses it. It is not for identifying, tracking or monitoring people or groups of people who use your service.”

2 Aggregation: Can it include personal data?

- **Output must be aggregate data, not personal data**
- Data must not drive decisions about individuals
- UK GDPR applies in parallel where personal data is processed
- No fixed timeframe; daily aggregation is often appropriate
- More frequent aggregation may suit high-traffic services

“You **must** ensure that you do not store any personal data for any longer than is necessary for your aggregation process.”

3 Analytics providers: Can we use them?

- **The other party must be a processor, not a joint controller**
- Build your own analytics, or use a third-party provider
- Provider may only use data to improve your service
- No linking with information from any other source
- Users must be told a third party is involved
- International transfer rules apply where relevant

“Your provider can only: act on your behalf; and use the information to help **you** improve **your** service.”

4 What’s the ‘sole purpose’ of improving the service?

If storage or access serves any additional purpose, the ‘sole purpose’ test fails and **consent is required**.

- Profiling visitors to decide what content to promote
- Sharing data with advertising partners for retargeting
- Retaining individual-level data after aggregation
- Inferring or deciding things about individuals or groups

“The operator cannot rely on the statistical purposes exception. This is because what it wants to do goes beyond the exception’s scope by **including profiling to target content**.”

5 Objection: How should the opt-out work?

- **A simple, free means of objecting is required**
- Can be delivered through your existing consent banner
- E.g. a statistical purposes toggle, on by default, switchable off
- If the user objects, storage and access must stop immediately
- If the user opts back in later, the exception applies again
- Browser settings alone are not a clear objection

“If someone does object, you **must** stop storing or accessing information on their device. But if the user changes their mind later (eg by toggling the purpose back to on), then you can store or access information again.”

6 April 2026 update: What’s new post-consultation?

NOW IN SCOPE

Bounce rates

When aggregated and used solely to understand interaction patterns

OUT OF SCOPE

Eye-tracking

May capture information about identifiable users

Multi-purpose rule: the exception cannot be combined with any non-exempt purpose on the same technology, because of the ‘sole purpose’ wording.

“We did not expand the list to include eye-tracking because these tools may capture information about identifiable users. However, we have added bounce rates, as this metric can fall within the exception when it is aggregated and used solely to understand overall service interaction patterns.”