
STATUTORY INSTRUMENTS

1998 No. 3170

TELECOMMUNICATIONS

The Telecommunications (Data Protection and Privacy) (Direct Marketing) Regulations 1998

<i>Made</i>	- - - -	<i>16th December 1998</i>
<i>Laid before Parliament</i>		<i>17th December 1998</i>
<i>Coming into force</i>	- -	<i>1st May 1999</i>

The Secretary of State, being a Minister designated⁽¹⁾ for the purposes of section 2(2) of the European Communities Act 1972⁽²⁾ in relation to measures relating to telecommunications, in exercise of the powers conferred on him by the said section 2(2), hereby makes the following Regulations:—

PART I
GENERAL

Citation and commencement

1. These Regulations may be cited as the Telecommunications (Data Protection and Privacy) (Direct Marketing) Regulations 1998 and shall come into force on 1st May 1999.

Interpretation

2.—(1) In these Regulations—

“corporate subscriber” means a subscriber who is not an individual, that is to say, a subscriber who is—

- (a) a company within the meaning of section 735(1) of the Companies Act 1985⁽³⁾;
- (b) a company incorporated in pursuance of a royal charter or letters patent;
- (c) a partnership in Scotland;
- (d) a corporation sole, or

⁽¹⁾ See the European Communities (Designation) Order 1996 ([S.I. 1996/266](#)).

⁽²⁾ 1972 c. 68.

⁽³⁾ 1985 c. 6.

(e) any other body corporate or other entity which is a legal person distinct from the persons (if any) of which it is composed;

“the Data Protection Registrar” and “the Registrar” both mean the Registrar appointed under section 3 of the Data Protection Act 1984⁽⁴⁾;

“the Directive” means Directive 97/66/EC of the European Parliament and of the Council of the European Union⁽⁵⁾;

“the Director” means the Director General of Telecommunications appointed under section 1 of the Telecommunications Act 1984⁽⁶⁾;

“individual” means a living individual and includes an unincorporate body of such individuals;

“public telecommunications network” means any transmission system and, where applicable, switching equipment and other resources which—

(a) permit the conveyance of signals between defined termination points by wire, by radio, by optical or by other electromagnetic means, and

(b) are used, in whole or in part, for the provision of publicly available telecommunications services;

“subscriber” means a person who is a party to a contract with a telecommunications service provider for the supply of publicly available telecommunications services;

“telecommunications network provider” means a person who provides a public telecommunications network (whether or not he is also a telecommunications service provider);

“telecommunications service provider” means a person who provides publicly available telecommunications services (whether or not he is also a telecommunications network provider);

“telecommunications services” means services the provision of which consists, in whole or in part, of the transmission and routing of signals on telecommunications networks, not being services by way of radio or television broadcasting.

(2) Subject to paragraph (1) and except where the context otherwise requires, expressions used in these Regulations which are also used in the Directive have the same meanings in these Regulations as they have in the Directive.

(3) In a case in which signals are conveyed to telecommunications equipment used by a subscriber, wholly or partly otherwise than by line, any reference in these Regulations to a line shall be construed as including a reference to what, in that case, functionally corresponds to a line.

Incidental and consequential amendments and modification of contracts

3.—(1) The amendments set out in Schedule 1 shall have effect.

(2) To the extent that any term in a contract between a subscriber to, and the provider of, publicly available telecommunications services would be inconsistent with a requirement of these Regulations, that term shall be void.

Consents and notifications for purposes of Regulations

4.—(1) Except where the context otherwise requires, a consent or notification for the purposes of these Regulations may be in general or more limited terms and may be subject to conditions and, so long as it remains in force, shall have effect according to its tenor.

(4) 1984 c. 35.

(5) O.J. No. L24, 30.1.98, p.1.

(6) 1984 c. 12.

(2) A notification for the purposes of these Regulations may (without prejudice to any other method of transmission) be sent by post.

PART II

USE OF TELECOMMUNICATIONS SERVICES FOR DIRECT MARKETING PURPOSES

Application and interpretation of Part II

5.—(1) This Part shall apply in relation to the use of publicly available telecommunications services for direct marketing purposes.

(2) Any reference in this Part to direct marketing is a reference to the communication of any advertising or marketing material on a particular line.

(3) In this Part, “caller” means a person using publicly available telecommunications services for direct marketing purposes, except that where such services are so used at the instigation of some other person “caller” means that other person.

Use of automated calling systems for direct marketing purposes—communications on lines of individual or corporate subscribers

6.—(1) This regulation applies in relation to the use of publicly available telecommunications services for the communication of material, for direct marketing purposes, by means of an automated calling system, that is to say, a system which, when activated, operates to make calls without human intervention, whether the called line is that of a subscriber who is an individual or that of a corporate subscriber.

(2) A person shall not use, or instigate the use of, publicly available telecommunications services, and a subscriber to such services shall not permit his line to be used, as mentioned in paragraph (1), except where the called line is that of a subscriber who has previously notified the caller that he consents to such communications as are there mentioned being made by, or at the instigation of, the caller in question on that line.

Use of fax for direct marketing purposes—unsolicited communications on lines of individual or corporate subscribers

7.—(1) This regulation applies in relation to the use of publicly available telecommunications services for the unsolicited communication of material, for direct marketing purposes, by means of facsimile transmission, whether the called line is that of a subscriber who is an individual or that of a corporate subscriber.

(2) A person shall not use, or instigate the use of, publicly available telecommunications services, and a subscriber to such services shall not permit his line to be used, as mentioned in paragraph (1) where—

- (a) the called line is that of a subscriber who has previously notified the caller (notwithstanding, in the case of a subscriber who is an individual, that he enjoys the benefit of regulation 8) that such unsolicited communications as are there mentioned should not be sent on that line, or
- (b) the number allocated to a subscriber in respect of the called line is one listed in the record kept under paragraph (4).

(3) For the purposes of paragraphs (1) and (2), the communication of material as mentioned in paragraph (1) shall not be treated as unsolicited where the called line is that of a subscriber who has

notified the caller that he does not object to receiving on that line such communications as are so mentioned from the caller in question.

(4) For the purposes of this regulation—

(a) the Director shall maintain and keep up-to-date, in printed form or in electronic form, a record of the numbers allocated to subscribers, in respect of particular lines, who have notified him (notwithstanding, in the case of individuals, that they enjoy the benefit of regulation 8) that they do not for the time being wish to receive such communications as are mentioned in paragraph (1) on the lines in question, and he shall remove a number from the record where he has reason to believe that it has ceased to be allocated to the subscriber by whom he was so notified, and

(b) on the request of—

(i) a person wishing to send, or instigate the sending of, such communications, or

(ii) a subscriber wishing to permit the use of his line for the sending of such communications,

for information derived from that record, the Director shall, unless it is not reasonably practicable so to do, on the payment to him of such fee as is applicable and is, subject to paragraph (5), required by him, make the information requested available to that person or that subscriber.

(5) For the purposes of paragraph (4)(b) the Director may require different fees—

(a) for making available information derived from the record in different forms or manners, or

(b) for making available information derived from the whole or from different parts of the record,

but the fees required by him shall be ones in relation to which the Secretary of State has notified the Director that he is satisfied that they are designed to secure, as nearly as may be and taking one year with another, that the aggregate fees received, or reasonably expected to be received, equal the costs incurred, or reasonably expected to be incurred, by the Director, in discharging his duties under paragraph (4).

(6) The functions of the Director under paragraph (4), other than the function of determining the fees to be required for the purposes of sub-paragraph (b) thereof, may be discharged on his behalf by some other person in pursuance of arrangements in that behalf made by the Director with that other person.

Use of fax for direct marketing purposes—communications on lines of subscribers who are individuals

8.—(1) This regulation applies in relation to the use of publicly available telecommunications services for the communication of material, for direct marketing purposes, by means of facsimile transmission where the called line is that of a subscriber who is an individual; and the provisions of this regulation and those of regulation 7 are without prejudice to each other.

(2) A person shall not use, or instigate the use of, publicly available telecommunications services, and a subscriber to such services shall not permit his line to be used, as mentioned in paragraph (1), except where the called line is that of a subscriber who has previously notified the caller that he consents to such communications as are there mentioned being sent by the caller in question on that line.

Unsolicited calls for direct marketing purposes on lines of subscribers who are individuals

9.—(1) This regulation applies in relation to the use of publicly available telecommunications services for the purposes of making unsolicited calls, for direct marketing purposes, otherwise than

by means of an automated calling system within the meaning of regulation 6(1) or by means of facsimile transmission, where the called line is that of a subscriber who is an individual.

(2) A person shall not use, or instigate the use of, publicly available telecommunications services, and a subscriber to such services shall not permit his line to be used, as mentioned in paragraph (1) where—

- (a) the called line is that of a subscriber who has previously notified the caller that such unsolicited calls as are there mentioned should not be made on that line, or
- (b) the number allocated to a subscriber in respect of the called line is one listed in the record kept under paragraph (4).

(3) For the purposes of paragraphs (1) and (2), a call on a subscriber's line shall not be treated as an unsolicited call if that subscriber has notified the caller that he does not object to receiving on that line calls made by, or at the instigation of, the caller in question for direct marketing purposes.

(4) For the purposes of this regulation—

- (a) the Director shall maintain and keep up-to-date, in printed form or in electronic form, a record of the numbers allocated to subscribers who are individuals, in respect of particular lines, who have notified him that they do not for the time being wish to receive unsolicited calls made for direct marketing purposes on the lines in question, and he shall remove a number from the record where he has reason to believe that it has ceased to be allocated to the subscriber by whom he was so notified, and
- (b) on the request of—
 - (i) a person wishing to make, or instigate the making of, such calls, or
 - (ii) a subscriber wishing to permit the use of his line for the making of such calls,for information derived from that record, the Director shall, unless it is not reasonably practicable so to do, on the payment to him of such fee as is applicable and is, subject to paragraph (5), required by him, make the information requested available to that person or that subscriber.

(5) For the purpose of paragraph (4)(b) the Director may require different fees—

- (a) for making available information derived from the record in different forms or manners, or
- (b) for making available information derived from the whole or from different parts of the record,

but the fees required by him shall be ones in relation to which the Secretary of State has notified the Director that he is satisfied that they are designed to secure, as nearly as may be and taking one year with another, that the aggregate fees received, or reasonably expected to be received, equal the costs incurred, or reasonably expected to be incurred, by the Director in discharging his duties under paragraph (4).

(6) The functions of the Director under paragraph (4), other than the function of determining the fees to be required for the purposes of sub-paragraph (b) thereof, may be discharged on his behalf by some other person in pursuance of arrangements in that behalf made by the Director with that other person.

Notifications for the purposes of regulation 7(4)(a) or 9(4)(a)

10.—(1) Where any such person as is mentioned in paragraph (3) has in his possession such a notification as is mentioned in regulation 7(4)(a) or regulation 9(4)(a) (to whomsoever it is addressed) or a copy or record of such a notification—

- (a) he shall, without undue delay, transmit a copy of that notification or a copy of that record to the Director, and

- (b) subject to receipt by the Director of a copy of a notification or of a record thereof so transmitted, the notification in question shall be treated for the purposes of regulation 7(4) (a) or, as the case may be, regulation 9(4)(a) as if it had been given to the Director.

(2) Where the Director has made arrangements in pursuance of paragraph (6) of regulation 7 or, as the case may be, paragraph (6) of regulation 9 for the discharge of functions under paragraph (4) of the regulation in question by some other person on his behalf, paragraph (1) of this regulation shall have effect, in relation to such a notification as is mentioned in paragraph (4)(a) of the regulation in question, as if for the reference to the Director in sub-paragraph (a) and the first reference to him in sub-paragraph (b) there were substituted references to that other person.

(3) The persons referred to in paragraph (1) are—

- (a) a telecommunications service provider;
- (b) the producer of a directory of subscribers, and
- (c) where, in connection with the production of such a directory, information relating to a particular subscriber is supplied to the producer thereof by some other person, that other person.

(4) In paragraph (3), “directory of subscribers” means a directory of subscribers to publicly available telecommunications services, whether in printed form or in electronic form, which is made available to the public or a section of the public and, in relation to such a directory, “producer” means the person by whom the directory is published or prepared.

Supplementary provisions

11.—(1) Where publicly available telecommunications services are used for the communication of material for direct marketing purposes—

- (a) by means of an automated calling system within the meaning of regulation 6(1) or by means of facsimile transmission, the caller shall ensure that the material communicated includes the particulars mentioned in paragraph (2)(a) and (b) below;
- (b) otherwise than as mentioned in sub-paragraph (a), the caller shall ensure that the material communicated includes the particulars mentioned in paragraph (2)(a) below and, if the recipient of the call so requests, those mentioned in paragraph (2)(b) below.

(2) The particulars referred to in paragraph (1) are—

- (a) the name of the caller;
- (b) either the address of the caller or a freephone telephone number on which he can be reached.

(3) Where a person by whom numbers are allocated to subscribers is requested by or on behalf of the Director, for the purposes of his functions under regulation 7(4) or 9(4), to furnish information as to when a particular number ceases to be allocated to a particular subscriber, that person shall comply with the request.

(4) A caller shall not be held to have contravened regulation 7 or regulation 9 by reason of the making, or instigating the making, of a call and a subscriber shall not be held to have contravened regulation 7 or regulation 9 by permitting his line to be used for the making of a call, notwithstanding that the number of the called line is one listed in the record kept under paragraph (4) of the regulation in question, if that number was not so listed at any time within the 28 days preceding that on which the call is made.

PART III

COMPENSATION AND ENFORCEMENT

Compensation for failure to comply with requirements of Regulations

12.—(1) A person who suffers damage by reason of any contravention of any of the requirements of these Regulations by any other person shall be entitled to compensation from the other person for that damage.

(2) In proceedings brought against a person by virtue of this regulation it shall be a defence to prove that he had taken such care as in all the circumstances was reasonably required to comply with the requirement concerned.

Enforcement—application of sections 10, 13, 14 and 16 of the Data Protection Act 1984

13.—(1) Subject to the omissions and other modifications set out in Schedule 2, the provisions of sections 10, 13, 14 and 16 of the Data Protection Act 1984⁽⁷⁾ and of Schedules 3 and 4 thereto shall apply for the purposes of the enforcement of these Regulations and connected purposes.

(2) In regulations 14 and 15, “enforcement functions” means the functions of the Data Protection Registrar under the said provisions as so applied.

(3) The provisions of this regulation and those of regulation 12 are without prejudice to each other.

Request that Registrar should exercise his enforcement functions

14. Where it is alleged that there has been a contravention of any of the requirements of these Regulations either the Director or a person aggrieved by the alleged contravention may request the Registrar to exercise his enforcement functions in respect of that contravention; but those functions shall be exercisable by him whether or not he has been so requested.

Technical advice to Registrar

15. The Director shall comply with any reasonable request made by the Registrar, in connection with his enforcement functions, for advice on technical and similar matters relating to telecommunications.

16th December 1998

Barbara Roche
Parliamentary Under Secretary of State for Small
Firms, Trade and Industry,
Department of Trade and Industry

(7) 1984 c. 35.

SCHEDULE 1**Regulation 3(1)****INCIDENTAL AND CONSEQUENTIAL AMENDMENTS***The Telecommunications Act 1984*

1. In section 1(6) of the Telecommunications Act 1984⁽⁸⁾ (payment out of money provided by Parliament) for the words following “by any of his staff” there shall be substituted the following words—

“in consequence of the provisions of—

- (a) this Act;
- (b) the Telecommunications (Open Network Provision) (Voice Telephony) Regulations 1998; or
- (c) the Telecommunications (Data Protection and Privacy) (Direct Marketing) Regulations 1998.”.

The Telecommunications (Open Network Provision) (Voice Telephony) Regulations 1998

2. Regulations 40(1) of the Telecommunications (Open Network Provision) (Voice Telephony) Regulations 1998⁽⁹⁾ (amendment of section 1(6) of the Telecommunications Act 1984) is hereby revoked.

SCHEDULE 2**Regulation 13(1)****MODIFICATIONS TO SECTIONS 10, 13, 14 AND 16 OF THE DATA PROTECTION ACT 1984 AND SCHEDULES 3 AND 4 THERETO AS EXTENDED BY REGULATION 13**

1. In section 10—

(a) in subsection (1)—

- (i) the word “registered” shall be omitted;
- (ii) for the words “data protection principles” there shall be substituted the words “requirements of the Telecommunications (Data Protection and Privacy) (Direct Marketing) Regulations 1998 (in this section and section 16 below referred to as “a relevant requirement”)”, and
- (iii) for the words “principle or principles” there shall be substituted the words “requirement or requirements”;

(b) in subsection (2), the words “or distress” shall be omitted;

(c) subsections (3) and (4) shall be omitted, and

(d) in subsection (5)(a), for the words “principle or principles” there shall be substituted the words “relevant requirement or requirements”.

2. In section 13—

- (a) in subsection (1), for paragraphs (a) and (b) there shall be substituted the words “any enforcement notice with which that person has been served.”;

⁽⁸⁾ 1984 c. 12; section 1(6) was amended by regulation 40(1) of the Telecommunications (Open Network Provision) (Voice Telephony) Regulations 1998 (S.I. 1998/1580).

⁽⁹⁾ S.I. 1998/1580.

- (b) subsection (2) shall be omitted, and
 - (c) in subsection (3), the words “paragraph (b) of” and the words “11(5) or 12(7)” shall be omitted.
 - 3. In section 14—
 - (a) in subsection (1), the words “refusal or” (in both places where they occur), “decision or” and “made or” shall be omitted;
 - (b) in subsection (2), the words “refusal or” shall be omitted, and
 - (c) subsections (3) and (6) shall be omitted.
 - 4. In section 16, for the words “data protection principles” there shall be substituted the words “relevant requirements”.
 - 5. In paragraph 3 of Schedule 3, for the words “13(2) or (3)” there shall be substituted the words “13(3)”.
 - 6. In paragraph 1 of Schedule 4, for sub-paragraph (b) there shall be substituted the following sub-paragraph—
 - “(b) that a person has contravened or is contravening any of the requirements of the Telecommunications (Data Protection and Privacy) (Direct Marketing) Regulations 1998 (in this Schedule referred to as “the 1998 Regulations”),”.
 - 7. In paragraph 9 of Schedule 4—
 - (a) in sub-paragraph (1)(a), after the words “rights under” there shall be inserted the words “the 1998 Regulations or”, and
 - (b) in sub-paragraph (1)(b), after the words “arising out of” there shall be inserted the words “the 1998 Regulations or”.
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EXPLANATORY NOTE

(This note is not part of the Regulations)

Directive [97/66/EC](#) of the European Parliament and of the Council (“the 1997 Directive”) concerns the processing of personal data and the protection of privacy in the telecommunications sector. It supplements Directive [95/46/EC](#) on the protection of individuals with regard to the processing of personal data and on the free movement of such data (provisions for the implementation of which are contained in the [Data Protection Act 1998—c.29](#)).

These Regulations implement so much of the 1997 Directive as relates to the use of publicly available telecommunications services for direct marketing purposes.

Part I contains general provisions. In particular, regulation 2 relates to the interpretation of the Regulations and defines “telecommunications service provider” in terms which do not limit such providers to persons who are licensed under section 7 of the Telecommunications Act [1984 \(c. 12\)](#) to run telecommunication systems.

The substantive provisions are contained in Part II. Regulation 5(2) and (3) defines “direct marketing” and “caller” for the purposes of the Part.

Regulations 6 and 7 apply whether the called subscriber is an individual or a corporate subscriber. Regulation 6 contains a general prohibition on the use of automated calling systems for direct marketing purposes except where, in a particular case, the called subscriber has previously given his consent. Regulation 7 prohibits the communication of unsolicited direct marketing material by facsimile transmission either where, in a particular case, the called subscriber has previously notified the caller that such communications should not be made or where the called subscriber's number is, at his request, included in the record required to be kept by the Director General of Telecommunications under paragraph (4) of the regulation.

Regulations 8 and 9 apply only where the called subscriber is an individual and paragraph (1) of regulation 8 provides that the provisions of that regulation and those of regulation 7 are without prejudice to each other. Regulation 8 contains a general prohibition on the communication by facsimile transmission of direct marketing material except where, in a particular case, the called subscriber has previously given his consent. Regulation 9 applies where neither automated calling systems nor facsimile transmission are used; it prohibits unsolicited calls for direct marketing purposes either where, in a particular case, the called subscriber has previously notified the caller that such calls should not be made or where the called subscriber's number is, at his request, included in the record required to be kept by the Director General of Telecommunications under paragraph (4) of the regulation. Regulations 10 and 11 contain ancillary and supplementary provisions. Those of regulation 10 relate to notifications for the purposes of regulations 7(4)(a) and 9(4)(a). Paragraphs (1) and (2) of regulation 11 provide that where a direct marketing call is made, the name of the caller must be given and, on the request of the recipient of the call, his address or freephone telephone number except that, where either an automated calling system or facsimile transmission is used, that address or freephone number must be given without any such request. Paragraph (3) provides that a person by whom numbers are allocated to subscribers shall, on request made for the purposes of the Director's functions under regulation 7(4) or 9(4), furnish information as to when a number ceases to be allocated to a subscriber. Paragraph (4) provides that regulation 7 or 9 shall not be taken to be contravened by reason of the making of a call to a number listed in the record kept under paragraph (4) of the regulation in question if that number was not so listed at any time within the 28 days preceding the making of the call.

Part III relates to compensation and enforcement.

Regulation 12 entitles a person to compensation if he suffers damage by reason of any contravention of the Regulations. Regulation 13 applies certain enforcement provisions of the Data Protection Act 1984 (c. 35) for the purposes of the enforcement of the Regulations. Regulation 14 provides that either the Director General of Telecommunications or a person aggrieved by an alleged contravention of the Regulations may request the Data Protection Registrar to exercise his functions under the provisions of the 1984 Act applied by regulation 13. Regulation 15 requires the Director to comply with requests made by the Registrar for advice on technical and similar matters relating to telecommunications.

A regulatory impact assessment is available and can be obtained from Communications and Information Industries Directorate, Department of Trade and Industry, 151 Buckingham Palace Road, London SW1W 9SS. Copies have been placed in the libraries of both Houses of Parliament.