
STATUTORY INSTRUMENTS

1998 No. 3170

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

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.