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STATUTORY INSTRUMENTS

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**2018 No. 1396**

**The Privacy and Electronic Communications  
(Amendment) (No. 2) Regulations 2018**

**Amendment of the 2003 Regulations**

2.—(1) The 2003 Regulations are amended as follows.

(2) In regulation 21 (calls for direct marketing purposes), in paragraph (6), after the words “regulation 21A” insert—

“or 21B.”.

(3) After regulation 21A insert—

**“Calls for direct marketing in relation to pension schemes**

**21B.**—(1) A person must not use, or instigate the use of, a public electronic communications service to make unsolicited calls to an individual for the purpose of direct marketing in relation to occupational pension schemes or personal pension schemes, except where paragraph (2) or (3) applies.

(2) This paragraph applies where—

- (a) the caller is an authorised person or a person who is the trustee or manager of an occupational pension scheme or a personal pension scheme; and
- (b) the called line is that of an individual who has previously notified the caller that for the time being the individual consents to such calls being made by the caller on that line.

(3) This paragraph applies where—

- (a) the caller is an authorised person or a person who is the trustee or manager of an occupational pension scheme or a personal pension scheme;
- (b) the recipient of the call has an existing client relationship with the caller on the line and the relationship is such that the recipient might reasonably envisage receiving unsolicited calls for the purpose of direct marketing in relation to occupational pension schemes or personal pension schemes; and
- (c) the recipient of the call has been given a simple means of refusing (free of charge except for the costs of the transmission of the refusal) the use of the recipient’s contact details for the purpose of such direct marketing, at the time that the details were initially collected and, where the recipient did not initially refuse the use of the details, at the time of each subsequent communication.

(4) A subscriber must not permit the subscriber’s line to be used in contravention of paragraph (1).

(5) In this regulation—

- (a) “authorised person” has the meaning given in section 31 of the Financial Services and Markets Act 2000<sup>(1)</sup>;
- (b) “direct marketing in relation to occupational pension schemes or personal pension schemes” includes—
  - (i) the marketing of a product or service to be acquired using funds held, or previously held, in an occupational pension scheme or a personal pension scheme,
  - (ii) the offer of any advice or other service that promotes, or promotes the consideration of, the withdrawal or transfer of funds from an occupational pension scheme or a personal pension scheme, and
  - (iii) the offer of any advice or other service to enable the assessment of the performance of an occupational pension scheme or a personal pension scheme (including its performance in comparison with other forms of investment);
- (c) “existing client relationship” does not include a relationship established at the instigation of the caller primarily for the purpose of avoiding the restriction in paragraph (1); and
- (d) “occupational pension scheme” and “personal pension scheme” have the meanings given in section 1(1) of the Pension Schemes Act 1993<sup>(2)</sup>.

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<sup>(1)</sup> 2000 c. 8; section 31 was amended by the Financial Services Act 2012 (c. 21), section 11(1).

<sup>(2)</sup> 1993 c. 48; section 1(1) was amended by the Pensions Act 2004 (c. 35), section 239, the Finance Act 2007 (c. 11), Schedule 27(3)(2), paragraph 1 and S.I. 2007/3014.