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UK – PECR 2003



Full title: **The Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2003/2426. Entry into force: 11/12/2003**

Amended by:

The Privacy and Electronic Communications (EC Directive) (Amendment) Regulations 2004 (SI 2004/1039). Entry into force: 25/06/2004.

The Privacy and Electronic Communications (EC Directive) (Amendment) Regulations 2011 (SI 2011/1208). Entry into force: 26/05/2011.

Title of relevant sections: Regulation 6: Confidentiality of Communications
 Regulation 19: Use of automated calling systems
 Regulation 20: Use of facsimile machines for direct marketing purposes
 Regulation 21: Unsolicited calls for direct marketing purposes
 Regulation 22: Use of electronic mail for direct marketing purposes
 Regulation 23: Use of electronic mail for direct marketing purposes where the identity or address of the sender is concealed
 Regulation 24: Information to be provided for the purposes of regulations 19, 20 and 21
 Regulation 25: Register to be kept for the purposes of regulation 20
 Regulation 26: Register to be kept for the purposes of regulation 21

Reg. 6: Confidentiality of Consolidated Text (as amended by Reg. 6(1-5) of SI 2011/1208)¹
 (1) Subject to paragraph (4), a person shall not store or gain access to

¹ **Amendment of the 2003 Regulations by SI 2011/1208**

6. (1) In regulation 6—

(2) In paragraph (1) for “use an electronic communications network to store information, or to”, substitute “store or”.

(3) For paragraph (2)(b) substitute “(b) has given his or her consent”.

(4) After paragraph (3) insert—

“(3A) For the purposes of paragraph (2), consent may be signified by a subscriber who amends or sets controls on the Internet browser which the subscriber uses or by using another application or programme to signify consent.”

(5) In paragraph (4)(a) omit “or facilitating”.

URL of source: <http://www.legislation.gov.uk/ukxi/2003/2426/contents/made>

Communications:	<p>information stored, in the terminal equipment of a subscriber or user unless the requirements of paragraph (2) are met.</p> <p>(2) The requirements are that the subscriber or user of that terminal equipment:</p> <ul style="list-style-type: none">(a) is provided with clear and comprehensive information about the purposes of the storage of, or access to, that information; and(b) has given his or her consent. <p>(3) Where an electronic communications network is used by the same person to store or access information in the terminal equipment of a subscriber or user on more than one occasion, it is sufficient for the purposes of this regulation that the requirements of paragraph (2) are met in respect of the initial use.</p> <p>“(3A) For the purposes of paragraph (2), consent may be signified by a subscriber who amends or sets controls on the internet browser which the subscriber uses or by using another application or programme to signify consent.</p> <p>(4) Paragraph (1) shall not apply to the technical storage of, or access to, information:</p> <ul style="list-style-type: none">(a) for the sole purpose of carrying out the transmission of a communication over an electronic communications network; or(b) where such storage or access is strictly necessary for the provision of an information society service requested by the subscriber or use
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**Regulation 19:
Use of automated
calling systems**

Consolidated Text (as amended by Regulation 8 of SI 2011/1208)²

19. (1) A person shall neither transmit, nor instigate the transmission of, communications comprising recorded matter for direct marketing purposes by means of an automated calling or communication system except in the circumstances referred to in paragraph (2).

(2) Those circumstances are where the called line is that of a subscriber who has previously notified the caller that for the time being he consents to such communications being sent by, or at the instigation of, the caller on that line.

(3) A subscriber shall not permit his line to be used in contravention of paragraph (1).

(4) For the purposes of this regulation, an automated calling system is a system which is capable of:

- (a) automatically initiating a sequence of calls to more than one

² **Amendment of the 2003 Regulations (by SI 2011/1208**

8. In regulation 19(1) after “automated calling” insert “or communication”.

destination in accordance with instructions stored in that system; and

(b) transmitting sounds which are not live speech for reception by persons at some or all of the destinations so called.

**Regulation 20:
Use of facsimile
machines for direct
marketing purposes**

(1) A person shall neither transmit, nor instigate the transmission of, unsolicited communications for direct marketing purposes by means of a facsimile machine where the called line is that of:

(a) an individual subscriber, except in the circumstances referred to in paragraph (2);

(b) a corporate subscriber who has previously notified the caller that such communications should not be sent on that line; or

(c) a subscriber and the number allocated to that line is listed in the register kept under regulation 25.

(2) The circumstances referred to in paragraph (1)(a) are that the individual subscriber has previously notified the caller that he consents for the time being to such communications being sent by, or at the instigation of, the caller.

(3) A subscriber shall not permit his line to be used in contravention of paragraph (1).

(4) A person shall not be held to have contravened paragraph (1)(c) where the number allocated to the called line has been listed on the register for less than 28 days preceding that on which the communication is made.

(5) Where a subscriber who has caused a number allocated to a line of his to be listed in the register kept under regulation 25 has notified a caller that he does not, for the time being, object to such communications being sent on that line by that caller, such communications may be sent by that caller on that line, notwithstanding that the number allocated to that line is listed in the said register.

(6) Where a subscriber has given a caller notification pursuant to paragraph (5) in relation to a line of his:

(a) the subscriber shall be free to withdraw that notification at any time, and

(b) where such notification is withdrawn, the caller shall not send such communications on that line.

(7) The provisions of this regulation are without prejudice to the provisions of regulation 19.

**Regulation 21:
Unsolicited calls for
direct marketing
purposes**

(1) A person shall neither use, nor instigate the use of, a public electronic communications service for the purposes of making unsolicited calls for direct marketing purposes where:

(a) the called line is that of a subscriber who has previously notified the caller that such calls should not for the time being be made on that line;

or

(b) the number allocated to a subscriber in respect of the called line is one listed in the register kept under regulation 26.

(2) A subscriber shall not permit his line to be used in contravention of paragraph (1).

(3) A person shall not be held to have contravened paragraph (1)(b) where the number allocated to the called line has been listed on the register for less than 28 days preceding that on which the call is made.

(4) Where a subscriber who has caused a number allocated to a line of his to be listed in the register kept under regulation 26 has notified a caller that he does not, for the time being, object to such calls being made on that line by that caller, such calls may be made by that caller on that line, notwithstanding that the number allocated to that line is listed in the said register.

(5) Where a subscriber has given a caller notification pursuant to paragraph (4) in relation to a line of his:

(a) the subscriber shall be free to withdraw that notification at any time, and

(b) where such notification is withdrawn, the caller shall not make such calls on that line.

Regulation 22: Use of electronic mail for direct marketing purposes

22. (1) This regulation applies to the transmission of unsolicited communications by means of electronic mail to individual subscribers.

(2) Except in the circumstances referred to in paragraph (3), a person shall neither transmit, nor instigate the transmission of, unsolicited communications for the purposes of direct marketing by means of electronic mail unless the recipient of the electronic mail ³has previously notified the sender that he consents for the time being to such communications being sent by, or at the instigation of, the sender.

(3) A person may send or instigate the sending of electronic mail for the purposes of direct marketing where:

(a) that person has obtained the contact details of the recipient of that electronic mail in the course of the sale or negotiations for the sale of a product or service to that recipient;

(b) the direct marketing is in respect of that person's similar products and services only; and

(c) the recipient has been given a simple means of refusing (free of charge except for the costs of the transmission of the refusal) the use of

³ Regulation 2(1) PECR 2003 (SI 2003/2426: Electronic Mail: "electronic mail" means any text, voice, sound or image message sent over a public electronic communications 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;

his contact details for the purposes of such direct marketing, at the time that the details were initially collected, and, where he did not initially refuse the use of the details, at the time of each subsequent communication.

(4) A subscriber shall not permit his line to be used in contravention of paragraph (2).

**Regulation 23:
Use of electronic
mail for direct
marketing purposes
where the identity or
address of the sender
is concealed**

Consolidated Text (amended by Reg. 9(1) and (2) of SI 2011/1208)⁴

A person shall neither transmit, nor instigate the transmission of, a communication for the purposes of direct marketing by means of electronic mail:

(a) where the identity of the person on whose behalf the communication has been sent has been disguised or concealed;

(b) where a valid address to which the recipient of the communication may send a request that such communications cease has not been provided.

“(c) where that electronic mail would contravene regulation 7 of the Electronic Commerce (EC Directive) Regulations 2002; or

(d) where that electronic mail encourages recipients to visit websites which contravene that regulation.”

**Regulation 24:
Information to be
provided for the
purposes of
regulations 19, 20
and 21**

(1) Where a public electronic communications service ⁵is used for the transmission of a communication for direct marketing purposes the person using, or instigating the use of, the service shall ensure that the following information is provided with that communication:

(a) in relation to a communication to which regulations 19 (automated calling systems) and 20 (facsimile machines) apply, the particulars mentioned in paragraph (2)(a) and (b);

(b) in relation to a communication to which regulation 21 (telephone calls) applies, the particulars mentioned in paragraph (2)(a) and, if the recipient of the call so requests, those mentioned in paragraph (2)(b).

⁴ Amendment of the 2003 Regulations (by Reg 9 – SI 2011/1208)

9. (1) In regulation 23, at the end of paragraph (a) omit “or”.

(2) After paragraph (b) insert—

“(c)where that electronic mail would contravene regulation 7 of the Electronic Commerce (EC Directive) Regulations 2002; or

(d)where that electronic mail encourages recipients to visit websites which contravene that regulation.”

⁵ A public communications service is defined in section 151 of the Communications Act 2003 (c.21) as “any electronic communications service that is provided so as to be available for use by members of the public”. What constitutes electronic communications is further defined in section 32 – in short, any electrical, magnetic or electro-magnetic signals (including speech, music, sounds, visual images or data of any description) conveyed over a transmission system.

URL of source: <http://www.legislation.gov.uk/uksi/2003/2426/contents/made>

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

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

**Regulation 25:
Register to be kept
for the purposes of
regulation 20**

(1) For the purposes of regulation 20 OFCOM shall maintain and keep up-to-date, in printed or electronic form, a register of the numbers allocated to subscribers, in respect of particular lines, who have notified them (notwithstanding, in the case of individual subscribers, that they enjoy the benefit of regulation 20(1)(a) and (2)) that they do not for the time being wish to receive unsolicited communications for direct marketing purposes by means of facsimile machine on the lines in question.

(2) OFCOM shall remove a number from the register maintained under paragraph (1) where they have reason to believe that it has ceased to be allocated to the subscriber by whom they were notified pursuant to paragraph (1).

(3) On the request of:

- (a) a person wishing to send, or instigate the sending of, such communications as are mentioned in paragraph (1), or
- (b) a subscriber wishing to permit the use of his line for the sending of such communications, for information derived from the register kept under paragraph (1), OFCOM shall, unless it is not reasonably practicable so to do, on the payment to them of such fee as is, subject to paragraph (4), required by them, make the information requested available to that person or that subscriber.

(4) For the purposes of paragraph (3) OFCOM may require different fees:

- (a) for making available information derived from the register in different forms or manners, or
 - (b) for making available information derived from the whole or from different parts of the register, but the fees required by them shall be ones in relation to which the Secretary of State has notified OFCOM that
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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 OFCOM in discharging their duties under paragraphs (1), (2) and (3).

(5) The functions of OFCOM under paragraphs (1), (2) and (3), other than the function of determining the fees to be required for the purposes of paragraph (3), may be discharged on their behalf by some other person in pursuance of arrangements made by OFCOM with that other person.

**Regulation 26:
Register to be kept
for the purposes of
regulation 21**

Consolidated Text (as amended by Reg 2 (2-5) of SI 2004/1039)⁶

(1) For the purposes of regulation 21 OFCOM shall maintain and keep up-to-date, in printed or electronic form, a register of the numbers allocated to subscribers, in respect of particular lines, who have notified them that they do not for the time being wish to receive unsolicited calls for direct marketing purposes on the lines in question.

“(1A) Notifications to OFCOM made for the purposes of paragraph (1) by corporate subscribers shall be in writing.”

(2) OFCOM shall remove a number from the register maintained under paragraph (1) where they have reason to believe that it has ceased to be allocated to the subscriber by whom they were notified pursuant to paragraph (1).

“(2A) Where a number allocated to a corporate subscriber is listed in the register maintained under paragraph (1), OFCOM shall, within the period of 28 days following each anniversary of the date of that number being first listed in the register, send to the subscriber a written reminder that the number is listed in the register.”

(3) On the request of—

(a) a person wishing to make, or instigate the making of, such calls as are mentioned in paragraph (1), or

(b) a subscriber wishing to permit the use of his line for the making of such calls, for information derived from the register kept under

⁶ 2. (1) Regulation 26 of the Privacy and Electronic Communications (EC Directive) Regulations 2003 shall be amended as follows.

(2) In paragraph (1), the word “individual” shall be omitted.

(3) After paragraph (1), there shall be inserted the following provision—

“(1A) Notifications to OFCOM made for the purposes of paragraph (1) by corporate subscribers shall be in writing.”

(4) After paragraph (2), there shall be inserted the following provision—

“(2A) Where a number allocated to a corporate subscriber is listed in the register maintained under paragraph (1), OFCOM shall, within the period of 28 days following each anniversary of the date of that number being first listed in the register, send to the subscriber a written reminder that the number is listed in the register.”

(5) In paragraph (5), after (2) there shall be inserted “, (2A)”.

paragraph (1), OFCOM shall, unless it is not reasonably practicable so to do, on the payment to them of such fee as is, subject to paragraph (4), required by them, make the information requested available to that person or that subscriber.

(4) For the purposes of paragraph (3) OFCOM may require different fees:

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

(b) for making available information derived from the whole or from different parts of the register, but the fees required by them shall be ones in relation to which the Secretary of State has notified OFCOM 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 OFCOM in discharging their duties under paragraphs (1), (2) and (3).

(5) The functions of OFCOM under paragraphs (1), (2), (2A), and (3), other than the function of determining the fees to be required for the purposes of paragraph (3), may be discharged on their behalf by some other person in pursuance of arrangements made by OFCOM with that other person.
