

EU Consumer Law Acquis Compendium

Legislation

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Full name and/or number of the statute (in original language):

Privacy and Electronic Communications (EC Directive) Regulations

Translation of the name:

Privacy and Electronic Communications (EC Directive) Regulations

Reference in Official Journal (if appropriate):

Statutory Instrument 2003/2426

Date of coming into force:

11.12.2003

Subsequent amendments:

Amended by the Privacy and Electronic Communications (EC Directive) (Amendment) Regulations 2011, (2011/1208), regs.3, 8, and 9, as of 26.5.2011

Text:

Privacy and Electronic Communications (EC Directive) Regulations 2003,
SI 2003/2426

2 Interpretation

(1) In these Regulations--

"bill" includes an invoice, account, statement or other document of similar character and "billing" shall be construed accordingly;

"call" means a connection established by means of a telephone service available to the public allowing two-way communication in real time;

"communication" means any information exchanged or conveyed between a finite number of parties by means of a public electronic communications service, but does not include information conveyed as part of a programme service, except to the extent that such information can be related to the identifiable subscriber or user receiving the information;

"communications provider" has the meaning given by section 405 of the Communications Act 2003;

"corporate subscriber" means a subscriber who is--

(a) a company within the meaning of section 735(1) of the Companies Act 1985;

(b) a company incorporated in pursuance of a royal charter or letters patent;

(c) a partnership in Scotland;

(d) a corporation sole; or

(e) any other body corporate or entity which is a legal person distinct from its members;

"the Directive" means Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications);

"electronic communications network" has the meaning given by section 32 of the Communications Act 2003;

"electronic communications service" has the meaning given by section 32 of the Communications Act 2003;

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"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;

"enactment" includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament;

"individual" means a living individual and includes an unincorporated body of such individuals;

"the Information Commissioner" and "the Commissioner" both mean the Commissioner appointed under section 6 of the Data Protection Act 1998;

"information society service" has the meaning given in regulation 2(1) of the Electronic Commerce (EC Directive) Regulations 2002;

"location data" means any data processed in an electronic communications network or by an electronic communications service indicating the geographical position of the terminal equipment of a user of a public electronic communications service, including data relating to--

(f) the latitude, longitude or altitude of the terminal equipment;

(g) the direction of travel of the user; or

(h) the time the location information was recorded;

"OFCOM" means the Office of Communications as established by section 1 of the Office of Communications Act 2002;

"personal data breach" means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, personal data transmitted, stored or otherwise processed in connection with the provision of a public electronic communications service;

"programme service" has the meaning given in section 201 of the Broadcasting Act 1990;

"public communications provider" means a provider of a public electronic communications network or a public electronic communications service;

"public electronic communications network" has the meaning given in section 151 of the Communications Act 2003;

"public electronic communications service" has the meaning given in section 151 of the Communications Act 2003;

"subscriber" means a person who is a party to a contract with a provider of public electronic communications services for the supply of such services;

"traffic data" means any data processed for the purpose of the conveyance of a communication on an electronic communications network or for the billing in respect of that communication and includes data relating to the routing, duration or time of a communication;

"user" means any individual using a public electronic communications service; and

"value added service" means any service which requires the processing of traffic data or location data beyond that which is necessary for the transmission of a communication or the billing in respect of that communication.

(2) Expressions used in these Regulations that are not defined in paragraph (1) and are defined in the Data Protection Act 1998 shall have the same meaning as in that Act.

(3) Expressions used in these Regulations that are not defined in paragraph (1) or the Data Protection Act 1998 and are defined in the Directive shall have the same meaning as in the Directive.

(4) Any reference in these Regulations to a line shall, without prejudice to paragraph (3), be construed as including a reference to anything that performs the function of a line, and "connected", in relation to a line, is to be construed accordingly.

19 Use of automated calling systems

(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.

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- (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 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.

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

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that line.

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

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.

22 Use of electronic mail for direct marketing purposes

(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 has 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 his contact details for the purposes of such direct marketing, at the



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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).

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

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.

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

(1) Where a public electronic communications service is 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).

(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.

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 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.

26 Register to be kept for the purposes of regulation 21

(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.

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(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 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.