

Unwanted Communications

UNWANTED FAXES AND TELEPHONE CALLS

In May 1998, the Government brought in Regulations which provide protection against unwanted faxes and phone calls. The Regulations, called "The Telecommunications (Data Protection and Privacy) (Direct Marketing) Regulations 1998" (SI 1998/3170), implement the European Union's Telecommunications Data Protection Directive.

Unwanted Faxes

The sending of an unsolicited direct marketing fax to an individual is unlawful, unless the individual has given his or her prior consent. "Individual" will include sole traders and partnerships. "Direct marketing" is defined as "the communication of any advertising or marketing material".

It is unlawful to send a direct marketing fax to a corporate body - such as a limited company, if either:

- the company has previously notified the sender that it does not wish to receive such faxes, or
- the company has opted out of receiving unsolicited faxes, by recording its details on a central register.

The Regulations provide that the Direct Marketing organisation must include a name and address or freephone telephone number, as part of all direct marketing faxes. Those persons who do not wish to receive the information can therefore notify the organisation.

Unwanted Telephone Calls

As far as unwanted direct marketing telephone calls are concerned

- in respect of individuals (including sole traders and partnerships), no-one may make a direct marketing call to an individual, if that individual has either previously notified the caller that he does not wish to receive such calls, or if the individual has "opted out" by recording his details on a central register.
The fact that an individual may have an ongoing contractual relationship with a particular company will not prevent him exercising his "opt-out" rights under the Regulations.
- there is no protection under the Regulations for companies receiving unwanted direct marketing phone calls, although companies always have the right to complain to the Telecommunications Regulator, OFTEL, on 0845 714 5000.

OPTING-OUT RIGHTS

Enforcement of the regulations is by the Information Commissioner (previously called the Data Protection Registrar). The Commissioner's office can be contacted on 01625 545 700.

Both these registers are operated by the Direct Marketing Association (DMA) which won the Government tender to run the two registers, 0207 291 3300, www.dma.org.uk

- *The Telephone Preference Service (TPS)* - Individuals can exercise their "opt-out" rights by registering with the TPS on 0845 0700 707, www.tpsonline.org.uk
- *Fax Preference Service (FPS)* - Companies can exercise their "opt-out" rights by registering with the FPS on 0845 0700 702, www.fpsonline.org.uk

EFFECT ON TELE-SALE COMPANIES

Organisations which use "direct calling" must ensure that their call lists are "cleaned" against the TPS register. Companies must use an up to date list. The Direct Marketing Association has various subscription schemes ranging from an annual subscription for companies which use telesales throughout the year to ad hoc subscriptions for companies which have periodic telesales campaigns. Details and information packs can be obtained from the DMA on 0207 291 3300.

JUNK MAIL AND E - MAIL

In addition to the Telephone and Fax Preference Services the Direct Marketing Association also administers the Mailing Preference Service www.mpsonline.org.uk, and the E-Mail Preference Service (www.e-mps.org.uk). The Mailing and E-Mail Preference Services are a self-regulatory initiative being taken by the Direct Marketing Association. These Preference Services are not based on legislation but an E.U. directive is anticipated in a few years to regulate e-mail and internet privacy.

GENERALLY

When filling in a form for any product or service, you should always look out for any box giving you an option to "opt-out" of receiving unsolicited marketing literature.

The Data Protection Act of 1998 gives you a right to write to an organisation, requesting it not to process your data for the purposes of direct marketing. The organisation must comply, otherwise it could lead to enforcement action by the Information Commissioner.

This fact sheet is an outline of the position at the time of writing.

It offers general guidance only and should not be regarded as a complete or authoritative statement of law.

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