

*Explanatory Note*

**UNSOLICITED MARKETING CALLS, FAX MESSAGES, E-MAILS,  
TEXT MESSAGES (SMS), SILENT CALLS & PREMIUM RATE SERVICE  
(PRS) CALLS**

This note summarises the regulatory arrangements for unsolicited calls, faxes, e-mails, text messages (SMS), silent and PRS calls and provides details of what consumers can do to avoid receiving them.

**1. Unsolicited Calls**

Under the Privacy and Electronic Communications (EC Directive) Regulations 2003, consumers are protected from unsolicited marketing calls and have the right to opt-out from particular callers or from all callers by registering with the Telephone Preference Service (TPS) scheme. The Direct Marketing Association runs the TPS scheme on behalf of Ofcom. Under the regulations no one can make an unsolicited marketing call to a consumer who has previously notified the caller that they do not wish to receive such calls or has been registered with the TPS for at least 28 days. The TPS scheme was extended to include corporate consumers on 25 June 2004 in the light of a public consultation on the implementation of the Privacy Directive. Consumers can register free of charge with the TPS through one of the following methods:

Online: <http://www.tpsonline.org.uk>

by telephone: 0845 070 0707

by fax : 0207 732 4266

in writing: The Telephone Preference Service  
DMA House  
70 Margaret Street  
London  
W1M 8SS

**2. Unsolicited Fax Messages**

Under the Privacy Regulations consumers are protected from unsolicited marketing fax messages unless prior permission has been obtained or there is a previous relationship between the parties. For corporate consumers the rules are slightly different and corporate consumers are protected if they have previously notified the sender that they do not wish to receive such fax messages or have been registered with the Fax Preference Service (FPS) scheme for at least 28 days. The Regulations also require that all unsolicited marketing fax messages must include the name and either the postal address

of the sender or a freephone telephone number on which the sender can be contacted. Consumers can register free of charge with the FPS through one of the following methods:

Online: <http://www.fpsonline.org.uk>

by telephone: 0845 070 0702

by fax: 0845 070 0705

in writing: The Fax Preference Service  
DMA House  
70 Margaret Street  
London  
W1M 8SS

### **3. Unsolicited Text Messages (SMS)**

Under the Privacy Regulations individual consumers are protected from unsolicited marketing fax messages unless prior permission has been obtained or there is a previous relationship between the parties. For corporate consumers the rules are slightly different and prior permission is not required. However, if a corporate consumer contacts the company concerned to request that no further text messages be sent to them and this is ignored then the Information Commissioner's Office can take action as they have responsibility for the enforcement of the Privacy Regulations.

### **4. Unsolicited E-mails**

Under the Privacy Regulations individual consumers are protected from unsolicited e-mails unless prior permission has been obtained or there is a previous relationship between the parties. The rules for corporate consumers are slightly different and corporate consumers can opt out from future e-mails by advising the sender that they do not wish to receive further e-mails. The Regulations require that the identity of the sender should not be disguised or concealed and that a valid address must be included to which the recipient can send a request that such communications cease. If a corporate consumer contacts the company concerned to request that no further e-mails be sent to them and this is ignored then the Information Commissioner's Office can take action.

The Internet Watch Foundation (IWF) is a group set up and funded by the UK Internet service providers (ISPs). It operates a hotline to which consumers can report potentially illegal material. However, the IWF can only act on material which can be prosecuted under UK law and should not be contacted simply because something may be found to be personally offensive. The IWF passes reports to the police, when it originates in the UK, or to the National Criminal Intelligence Service when it originates overseas in order that the relevant foreign law enforcement agencies can consider whether to take action. Where the material is hosted within the UK the IWF also passes

reports to ISPs so that they can remove illegal material from their systems. If the ISP fails to remove the material following notification by the IWF they can also be liable to prosecution. The IWF contact details are:

by email: [report@iwf.org.uk](mailto:report@iwf.org.uk)

by telephone: 08456 008844

by fax: 01223 235921

in writing: Internet Watch Foundation  
5 Coles Lane  
Oakington  
Cambridgeshire  
CB4 5BA

## **Ways of avoiding unwanted e-mails**

### **a) Giving out an e-mail address**

Most e-mail addresses used by spammers are obtained from third parties or copied without consent from websites and chat-rooms. Much of this copying is done automatically. Consumers can prevent this harvesting by disguising addresses for example using AT instead of @ on web pages and ensuring that private addresses are only given to people that are trusted to maintain privacy.

### **b) Filtering services**

Regulating unsolicited e-mails is complicated by the global nature of the Internet and the fact that a lot of such e-mails currently originate from outside the EU. Alongside UK and international regulatory initiatives there are industry led measures that can offer protection. For example, some ISPs offer a free filtering service where unsolicited e-mails can be re-directed to a dedicated inbox folder. The consumer can then either check this folder for any e-mails they do not want to receive or choose not to check the folder in which case the filtered e-mails are usually deleted automatically after a certain period of time. Also, there are some commercial e-mail filtering products available and existing e-mail handling software usually has some filtering functions built-in. These keep e-mails out by various user configurable methods from complex scoring functions to simple criteria such as the presence of certain words in the title or body of the e-mail.

### **c) Opting out of e-mails**

The Privacy Regulations make it a requirement that proper contact details be provided in order that recipients can exercise their rights to opt-out for example if they no longer want to stay on a circulation list to which they previously opted in to or if they provided a contact address when buying something but now no longer want it to be used for marketing purposes. Although, many Internet experts advise against replying to unsolicited e-mails from unknown or unreliable sources because of the risk that unscrupulous

marketers will take any response as confirmation that the address is valid and send further e-mails or pass an address on to others.

**d) When is it safe to send an opt-out reply**

- When you know who the marketer is for example a business that you have previously dealt with.
- When the e-mail provides full details about the business that it is advertising and how to contact them and provides a user-friendly opt-out mechanism for example an e-mail address.

**e) When to be cautious about opting-out**

- When the e-mail comes from a business that is unknown to you or that you have never dealt with before, particularly if the source seems to be outside the European Union.
- When the e-mail provides little or no information about the business that it is advertising, where they are based and how they can be contacted.
- When the e-mail seems to be promoting a 'scam' for example inviting you to buy products that are illegal.
- When the unsubscribe facility provided is expensive or inconvenient to use for example an international telephone number or postal address.

**Never** send an opt-out request if this involves ringing, faxing or making an Internet dial up connection to a Premium Rate Service (PRS) number. If any e-mail, fax or SMS encourages you to do this, then this should be reported to ICSTIS, whose contact details are below.

**ENFORCEMENT OF THE PRIVACY REGULATIONS**

The Information Commissioner's Office (ICO) has responsibility for the enforcement of the Privacy Regulations and considers breaches of the TPS, FPS, unsolicited e-mails and text messages. All breaches are considered on a case-by-case basis and action may be taken against those that wilfully or negligently breach the regulations despite being informed of their obligations. A breach of their enforcement notice is a criminal offence subject to a fine of up to £5,000 in a magistrate's court. For background information ICO's contact details are:

Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF

Telephone: 01625 545 700

Fax: 01625 524 510

e-mail: [mail@ico.gsi.gov.uk](mailto:mail@ico.gsi.gov.uk)

website: [www.informationcommissioner.gov.uk](http://www.informationcommissioner.gov.uk)

## **5. SILENT CALLS**

### **What are silent calls**

Silent calls are usually made by direct marketing companies, which use a computerised calling device known as a predictive dialler. This involves a machine that dials the telephone number and automatically transfers the call to an available sales agent and gives efficiency savings. However, if a sales agent is unavailable to take the call, the call is not picked up and the consumer receives a silent call. This is very irritating to those who receive such calls and can be particularly problematic for elderly people or those who are hard of hearing. Silent calls may also be generated by the financial services sector and companies engaged in number scanning activities, which dial a sequence of telephone numbers to find out which ones are in service, the results of which are used to develop a “clean list” of numbers which have commercial value.

### **Action taken**

In response to increasing consumer concern on 6 April 2006 the Government increased the maximum penalty from £5,000 to £50,000. We believe the increase acts as a significant deterrent to companies whose direct marketing activity involves making silent calls to consumers. This was done after having undertaken a consultation, which was launched on 31 October 2005 proposing to raise the maximum penalty for persistent misuse of electronic communications networks, which includes silent calls, from £5,000 to £50,000. The consultation closed on 24 January 2006 and there was overwhelming support. Further details about the consultation are available from: [http://www.dti.gov.uk/industries/telecoms/public\\_consultations.html](http://www.dti.gov.uk/industries/telecoms/public_consultations.html)

### **Ofcom's role**

The Communications Act 2003 provides powers to the Office of Communications (Ofcom) to take action against those who persistently misuse networks or services in a way that causes unnecessary annoyance, inconvenience or anxiety. On 1 March 2006 Ofcom also announced that in response to their consultation, which closed on 9 January 2006, that in addition to amending its policy on persistent misuse to tackle silent calls, new rules for the use of automatic calling systems were being introduced designed to deliver additional protection to consumers from silent calls. The revised policy sets out a series of

requirements that organisations that use automatic calling systems have to abide by for example:

- Any abandoned calls must carry a pre-recorded message, which identifies the source of a call and offers the person called the opportunity to decline further calls from that source.
- Calling Line Identification (CLI) must be presented on all outbound calls.
- Telephone numbers dialled and then abandoned should not be called for at least 72 hours.
- Abandoned call rates must be below 3 per cent of total calls for any 24 hour period of each campaign

Ofcom applies these policies to all UK companies commissioning services from call centres whether located in the UK or overseas. Further details about Ofcom's role in tackling silent calls is available from:

<http://www.ofcom.org.uk>

Ofcom Contact Centre  
Riverside House  
2a Southwark Bridge Road  
London  
SE1 9HA  
E-mail: [contact@ofcom.org.uk](mailto:contact@ofcom.org.uk)  
Telephone: 0845 456 3000  
Fax: 0845 456 3333

## **6. Premium Rate Services (PRS)**

The PRS regulator, the Independent Committee for the Supervision of Standards of Telephone Information Services (ICSTIS) estimates that the UK PRS market (around 45 thousand different services) is worth over £1billion a year. Most services do not cause any problems but the Government takes consumer protection very seriously and works with both ICSTIS and Ofcom, the independent communications regulator, to ensure a co-ordinated and effective response to problems as they arise. The maximum penalty for breaches of the ICSTIS Code of Practice, the rules that govern the provision of PRS in the UK was increased from £100,000 to £250,000 in December 2005. Further information is available at:

[www.icstis.org.uk](http://www.icstis.org.uk)

Complaints line: 0800 500212

ICSTIS  
Freepost  
London  
SE1 2BR

### **Additional Background Information**

The issue of unsolicited marketing calls and faxes was addressed under the Telecommunications (Data Protection and Privacy) Regulations 1999, which came into force on 1 March 2000. These Regulations formed part of the implementation of the European Union's Telecoms Data Protection Directive (97/66/EC) in the UK. Part V of the Regulations dealt with marketing calls and faxes. The Privacy and Electronic Communications (EC Directive) Regulations 2003 updated the Regulations in the light of new technology and specifically addressed the sending of unsolicited marketing e-mails and SMS messages, in addition to calls and faxes. They came into force on the 11 of December 2003, implementing the European Union's Directive on Privacy and Electronic Communications (2002/58/EC) in the UK. Regulations 20 and 25 deals with faxes, regulations 21 and 26 with calls and regulations 22 and 23 with e-mails and SMS. The text of the Regulations is available on the Stationary Office website at: <http://www.hms.o.gov.uk/si/si2003/20032426.htm>

### Definitions Used:

As mentioned earlier in this document the ICO has responsibility for the enforcement of the Privacy Regulations and has provided guidance for consumers. The term "marketing" has been interpreted by the ICO to cover not just the offer for sale of goods and services but also the promotion of an organisation's aims and ideals.

For the purposes of these Regulations, the term "individual" applies to private individuals and sole traders in the UK, and also to partnerships in England, Wales and Northern Ireland. Consumers falling outside these groups constitute corporate subscribers. The ICO guidance on the Regulations is available from their website;

<http://www.informationcommissioner.gov.uk/eventual.aspx?id=96>

### The Directive:

The Directive on Privacy and Electronic Communications is available on the European Commission's website in PDF format at:

[http://europa.eu.int/eur-lex/pri/en/oj/dat/2002/l\\_2011/l\\_20120020731en00370047.pdf](http://europa.eu.int/eur-lex/pri/en/oj/dat/2002/l_2011/l_20120020731en00370047.pdf)