

Regulatory Impact Assessment – Key Analysis

1. Title of proposal

CONSULTATION BY THE DEPARTMENT OF TRADE AND INDUSTRY ON A DRAFT ORDER RAISING THE MAXIMUM PENALTY FOR PERSISTENT MISUSE OF ELECTRONIC COMMUNICATIONS NETWORKS OR ELECTRONIC COMMUNICATIONS SERVICES TO TACKLE SILENT CALLS

2. Purpose and intended effect

- Objective -- To reduce consumer detriment from silent calls, by increasing the maximum fine.
- Background – Silent calls is a high profile issue with media interest and MPs and other interested groups are calling for the Government to take appropriate action to tackle this problem. The volume of silent calls appears to be growing in parallel with the industry’s adoption of dialler technology over the last two to three years. The level of consumer harm and worry has grown significantly. Silent calls are usually made by direct marketing companies, which use a computerised calling device known as a predictive dialler, power dialler or automatic calling equipment. This is equipment is essentially a machine that dials the telephone number and automatically transfers the call to an available sales agent. If a sales agent is not available the call is not picked up and the consumer will receive a silent call. Often the number of the calling party is not available, which means the consumer cannot find out who made the call.
- Rationale for government intervention – Protection for consumers who are being plagued by silent calls. Silent calls are becoming more frequent and unless companies are deterred by a heavier fine the problem will continue to remain unresolved and cause a nuisance to consumers. Repeated and wilful breaches of the persistent misuse provisions under the Communications Act 2003 are a major concern to Ofcom and the proposed maximum penalty of £50,000 would be a proportionate sanction and deterrent for persistent misuse of predictive dialler technology by the call centre industry. A maximum financial penalty of £50,000 would send an important signal to operators of call centres to take reasonable care to prevent the harm and distress that silent calls cause.

- BT currently handles about 160,000 complaints a month about nuisance calls. Across all operators the nuisance call bureaux handle about 5,000 escalated complaints per month and Ofcom currently receives about 150 complaints a month. According to a survey published last month by Brookmead Consulting that was commissioned by the Direct Marketing Association, which is the trade body for the direct marketing industry, they discovered that 22% of the public felt anxious when they received a silent call and of those 41% were females aged between 16-24 years old. Also 37% felt they were unacceptably inconvenienced by silent calls. On average about 6 silent calls per month were made to every consumer and some consumers received 2-3 silent calls per day.

3. **Consultation**

- Within Government- discussions with Ofcom and Direct Marketing Association at official level about the problem of silent calls and how best to tackle it.
- Public consultation – Extensive public consultation by DTI throughout 2005/06. DTI consulted from 31 October to 24 January. Following the consultation no major changes were made to the Order. The majority of responses did not express concern about any costs to legitimate business.

4. **Option – Maximum Fine:**

1. *Raise maximum penalty to £50,000.*
2. Raise the maximum penalty to less than £50,000, which will have some deterrent effect, but will not completely provide a solution to silent calls, as some companies will probably continue to make nuisance silent calls.
3. *Do nothing and keep the maximum fine to £5,000.*

5. **Costs and benefits**

- **Sectors and groups affected** – Direct marketing industry and in particular specifically those companies, which make nuisance silent calls to consumers without any regard for the anxiety that these calls cause. Other industries that use automatic calling equipment, e.g. financial services. Consumers are very concerned about this issue and have called for the Government to take

appropriate and decisive action as they feel they should not have to suffer from the nuisance of such calls.

- **Benefits** – Consumers will suffer less detriment and anxiety. The direct marketing industry will be cleaned up and its good name restored and made more respectable, which will enable companies to concentrate on doing business without causing anxiety or distress to consumers.
- **Costs** – There will be no additional costs to either compliant business or to Ofcom as the enforcement authority. Initial assessment has shown that this proposal will have no impact on businesses that do not make silent calls and will only affect those that continue to make silent calls. Therefore, this proposal will only effect a very small minority of direct marketing companies who make nuisance silent calls.

6. **Small Firms Impact Test** - We have discussed our proposal with interested parties and have identified no impact on compliant SMEs. Non-compliant SMEs will incur no disproportionate costs, which are also borne out by Ofcom's detailed analysis.

7. **Competition assessment** –There will be no adverse impact on competition. Benefits to companies will be that companies which make silent calls will be deterred substantially to leave the field clear for legitimate marketing companies who do not make silent calls.

8. **Enforcement, sanctions and monitoring**

Ofcom decides when and where to issue a penalty against anyone who persistently misuses networks or services including making silent calls. Ofcom reviews breaches on a case-by-case basis, based on level of consumer detriment and the seriousness of the breach. All adjudications are published on the website and initial decisions can be appealed against. Ofcom will continue to monitor the level of complaints about silent calls to see how the new penalty is working in practice.

9. **Declaration and publication**

I have read the regulatory impact assessment and I am satisfied that the benefits justify the costs

Signed

Date

Minister's name, title, department

Contact point for enquiries and comments: name, address, telephone number and email address.