

The Information Commissioner's Office

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Information Commissioner's Office



Overview

- Role of the Information Commissioner's Office (ICO)
- Requirements on telecommunications companies:
 - Data Protection Act 1998 (DPA)
 - Privacy and Electronic Communications (EC Directive) Regulations 2003 (PECR)
- Enforcement
- Questions

The role of the ICO

- Independent supervisory authority reporting directly to the UK parliament
- Regulates and enforces:
 - DPA 1998
 - PECR 2003
 - Freedom of Information Act 2000
 - Environmental Information Regulations 2004

The role of the ICO

- DP Departments:
 - CAD (Casework and Advice Division)
 - RAD (Regulatory Action Division)
 - GPD (Guidance and Promotion Division)
 - CSU (Corporate Support Unit)
 - Notification
- Request for assessments and enquiries

Data protection obligations

- DPA governs how personal data should be used
- Aims to balance between free flow of information and protection of privacy
- DP is written into ICSTIS code:
 - Notification
 - Fair processing information
 - Retention

Data protection principles

- The data protection principles

Personal data shall be:

- **1.** processed fairly and lawfully
- **2.** obtained only for specified and lawful purposes and further processed only in a compatible manner
- **3.** adequate, relevant and not excessive
- **4.** accurate and up to date
- **5.** kept for no longer than necessary
- **6.** processed in accordance with the rights of data subjects
- **7.** kept secure
- **8.** transferred outside the EEA only if there is adequate protection

Privacy and Electronic Communications Regulations 2003

- Came into force 11 December 2003
- Implemented European Directive on Privacy and Electronic Communications - 2002/58/EC
- Updated Telecommunications (Data Protection & Privacy) Regulations 1999
- Technology neutral

Unsolicited direct marketing

- Unsolicited – not actively invited
- Direct marketing – “the communication ... of any advertising or marketing material which is directed to particular individuals” (Section 11 DPA98)
- Marketing – sale or promotion of goods, services, aims or ideals

The recipient

- Individual subscriber – residential subscriber, sole trader or non-limited liability partnership (in England, Wales or Northern Ireland)
- Corporate subscriber – corporate bodies (e.g. Ltd), public bodies (e.g. ICO), limited liability partnerships, all partnerships in Scotland

Direct marketing by automated call

- Regulation 19
- Need prior consent to call anyone (opt-in)
- Silent calls – no marketing
- Regulation 24
 - Name of the sender
 - Address or freephone number



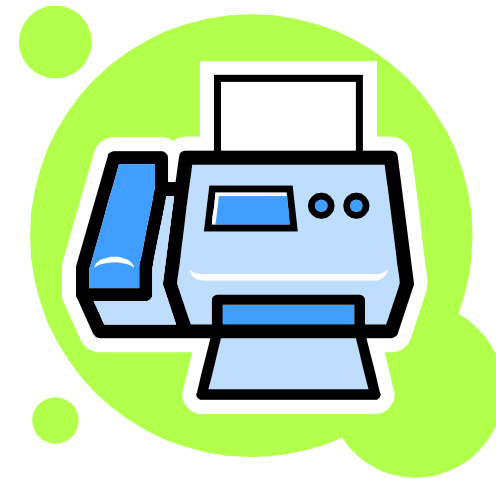
Direct marketing by telephone

- Regulation 21
 - Opt-out: TPS & CTPS
 - Already objected to caller
- Regulation 24
 - Name of the caller
 - Address or freephone number if requested



Direct marketing by fax

- Regulation 20
 - Individuals: prior consent + FPS
 - Corporate: FPS
- Regulation 24
 - Name of the sender
 - Address or freephone number



Direct marketing by electronic mail

- Includes:
 - Email
 - Sms
 - Picture & video messages
 - Bluetooth
 - Voicemail & answerphone



The definition is left open to include new technologies

Direct marketing by electronic mail

- Regulation 22
 - Individuals only
 - Prior consent, unless soft opt in...
- Regulation 23
 - Identity of sender
 - Valid address for opt out



Direct marketing by electronic mail

- Soft opt in, send without prior consent if:
 - Obtained details in course of a sale or negotiations of a sale,
 - Marketing is for similar products or services**AND**
 - Simple means of opting out at time of collection & each subsequent time

Enforcement

- Regulation 31
 - Extension of Part 5 DPA (Except s.42 – RFA)
 - Not appropriate for PECR
 - DTI review of powers: Enterprise Act
- Regulation 32
- Not a criminal offence
- 4 stage enforcement process:
 - Informal resolution / undertaking
 - Preliminary Enforcement Notice
 - Enforcement Notice
 - Prosecution for breach of Notice (£5,000 maximum fine)

Any questions?

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