

Communications (Unsolicited Telephone Calls and Texts) Bill

EXPLANATORY NOTES

Explanatory notes to the Bill, prepared by Mike Crockart, the Member in charge of the Bill, are published separately as Bill 21 – EN.

Communications (Unsolicited Telephone Calls and Texts) Bill

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TO

Reduce the incidence of unsolicited telephone calls and texts received by consumers; and for connected purposes.

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1 Interpretation

In this Act “the Regulations” means the Privacy and Electronic Communications (EC Directive) Regulations 2003 (S.I. 2003/2426).

2 Amendment of the Regulations

- (1) The Regulations are amended as set out in subsections (2) to (5). 5
- (2) After regulation 20(5) insert—
“(5A) A subscriber will not have given notification to a caller for the purpose of paragraph (5) unless that notification is given directly to the caller by the subscriber and not obtained by the caller via another person.”
- (3) After regulation 21(4) insert— 10
“(4A) A subscriber will not have given notification to a caller for the purpose of paragraph (4) unless that notification is given directly to the caller by the subscriber and not obtained by the caller via another person.”
- (4) After regulation 24 insert—
- “24A Collection of personal data for direct marketing purposes 15**
- (1) Except in the circumstances referred to in paragraph (2) a person shall not collect, nor instigate the collection of, personal data from a data subject if at the time of collection the person knew or ought reasonably to have known that the personal data would be used—
- (a) by any person for the purpose of direct marketing via an automated calling system; 20

- (b) by any person for the purpose of direct marketing via facsimile machine;
- (c) by another person for the purpose of direct marketing by electronic mail; or
- (d) for one or more of the purposes in paragraphs (1)(a), (1)(b) or (1)(c), even if at the time of collection it was not known precisely which of those purposes the personal data would be used for. 5
- (2) The circumstances referred to in paragraph (1) are where, at the time the person collects the personal data, he obtains the necessary consent from the data subject to use the personal data. 10
- (3) The necessary consent referred to in paragraph (2) is—
- (a) the consent required by regulation 19(2), where paragraph (1)(a) applies;
- (b) the consent required by regulation 20(2), where paragraph (1)(b) applies; 15
- (c) the consent required by regulation 22(2), where paragraph (1)(c) applies; and
- (d) the consent required by each of regulations 19(2), 20(2) and 22(2) where paragraph (1)(d) applies.
- 24B Consent and notification** 20
- (1) This regulation applies to any consent or notification that is required for the purpose of regulation 19(2), 20(2), 20(5), 21(4) or 22(2).
- (2) Consent or notification persists for the time being only if—
- (a) the marketer has not been informed, expressly or implicitly, that the consent or notification has been withdrawn; 25
- (b) the marketer is not aware of any other circumstances suggesting that the consent or notification does not persist for the time being; and
- (c) where the marketer obtained the consent or notification via a third party, the person who gave the consent or notification did so less than 1 year ago. 30
- (3) In this regulation “marketer” means a person who carries out or instigates an activity for direct marketing purposes in reliance on any consent or notification.
- 24C Inappropriate direct marketing** 35
- (1) A person shall neither transmit, nor instigate the transmission of—
- (a) communications comprising recorded matter by means of an automated calling or communications system;
- (b) unsolicited communications by means of a facsimile machine; or 40
- (c) unsolicited communications by means of electronic mail for the purpose of inappropriate direct marketing.
- (2) A person shall neither use, nor instigate the use of, a public electronic communications service to make or attempt to make unsolicited calls for the purpose of inappropriate direct marketing.” 45
- (5) In Schedule 1—

- (a) in paragraph 1(b) for “the words “or distress” shall be omitted” substitute “for the words “damage or distress” there shall be substituted the words “annoyance, inconvenience or anxiety””;
- (b) at the end of paragraph 4(a) insert—
- “(2A) If an information notice requires a person to furnish the Commissioner with information about any consent or notification that the person was required to obtain in order to comply with a relevant requirement, and the person does not furnish sufficient information to show that he obtained the requisite consent or notification, the Commissioner may rely on this fact in deciding whether he is satisfied that the person has contravened a relevant requirement for the purpose of section 40(1).
- (2B) For the purpose of subsection (2A), unless the Commissioner decides otherwise, a person will not furnish sufficient information to show that he obtained the requisite consent or notification by demonstrating that he obtained the requisite consent or notification via a third party, unless he also—
- (a) informs the Commissioner of the identity of the third party; and
- (b) furnishes sufficient information to show that the requisite consent or notification was in fact obtained by the third party or by another identified person.”;
- (c) after paragraph 8A(a)(ii) insert—
- “(iii) for “substantial damage or substantial distress” there shall be substituted “annoyance, inconvenience or anxiety””;
- (d) for paragraph 8A(b) substitute—
- “(b) in subsection (3)—
- (i) for “data controller” there shall be substituted “person”;
- (ii) for “substantial damage or substantial distress” there shall be substituted “annoyance, inconvenience or anxiety””.

3 Power to make further provision by order

- (1) The Secretary of State may by order specify criteria that must be met before a person may rely on any consent or notification for the purpose of complying with regulation 19, 20, 21 or 22 of the Regulations.
- (2) Without prejudice to the generality of subsection (1), an order under subsection (1) may—
- (a) include a requirement that specified information be given to a person about any aspect of that person’s consent or notification;
- (b) include a requirement that the information referred to in subsection (2)(a) be given in plain language; and
- (c) specify measures that a person must take, where that person has obtained consent or notification via a third party, to ensure that the consent or notification has been collected in such a way that it may be relied upon for the purpose of complying with the Regulations.

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- 4 Guidance about inappropriate direct marketing**
- (1) The Commissioner may prepare and issue guidance as to what does and does not constitute inappropriate direct marketing for the purposes of regulation 24C of the Regulations.
 - (2) The Commissioner may alter or replace the guidance. 5
 - (3) If the guidance is altered or replaced, the Commissioner must issue the altered or replacement guidance.
 - (4) The Commissioner must consult the Secretary of State before issuing any guidance under this section.
 - (5) The Commissioner must lay any guidance issued under this section before each House of Parliament. 10
 - (6) The Commissioner must arrange for the publication of any guidance issued under this section in such form and manner as he considers appropriate.
 - (7) In subsections (4) to (6), “guidance” includes altered or replacement guidance.
- 5 Amendment of the Communications Act 2003** 15
- (1) The Communications Act 2003 is amended as set out in subsection (2).
 - (2) After section 393(3)(i) insert –
 - “(j) the Information Commissioner as appointed under section 6 of the Data Protection Act 1998”.
- 6 Short title, commencement and extent** 20
- (1) This Act may be cited as the Communications (Reducing Unsolicited Telephone Calls and Texts) Act 2013.
 - (2) The provisions of this Act shall come into force on such day as the Secretary of State may appoint by order made by statutory instrument.
 - (3) An order under subsection (2) may appoint different days for different purposes. 25
 - (4) This Act has the same extent as the Regulations, except section 5 which has the same extent as the Communications Act 2003.

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supported by
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