These Notes refer to the Communications (Unsolicited Telephone Calls and Texts) Bill as introduced in the House of Commons on 19 June 2013 [Bill 21]

COMMUNICATIONS (UNSOLICITED TELEPHONE CALLS AND TEXTS) BILL

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes relate to the Communications (Unsolicited Telephone Calls and Texts) Bill as introduced in the House of Commons on 19 June 2013. They have been prepared by Mike Crockart MP in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.

2. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill.

COMMENTARY ON CLAUSES

Clause 1

3. This clause is self-explanatory. It confirms which legislation is amended by this Bill. In addition, there is a minor amendment to the Communications Act 2003 (see clause 5).

Clause 2

Subsections 2 and 3

4. Subsections (2) and (3) are designed to ensure that registration with the Telephone Preference Service (TPS) can only be overridden by first party consent. The ICO guidance currently provides that third party consent is not sufficient to override registration with the TPS, but the legislation is not entirely clear on this point. Consequently, some businesses see third party consent as a "loophole" that can be relied upon in order to call consumers who are registered with the TPS. Subsections (2) and (3) are aimed at closing this perceived loophole. Given that this is in line with current ICO guidance, it will not place any additional burden on legitimate marketing businesses.

Subsection 4

5. New regulation 24A extends the reach of PECR to companies that collect and sell on personal data for the purposes of direct marketing rather than just the direct marketing industry itself. Currently PECR only comes into play where personal data is actually used to make a marketing communication. The act of collecting personal data to pass onto third parties for the purposes of marketing is not covered by PECR. In order to take enforcement action against companies which collect data without obtaining the proper consent for it to be used for marketing – when those companies know/intend that the data will be used in that way – the ICO has to rely indirectly on the Data Protection Act 1998. Regulation 24A would make it easier for the ICO to take action directly under PECR. This aims to cut off unlawful use of data at the source. New regulation 24B establishes an expiry date on consent to third party marketing and clarifies the meaning of the vague phrase "for the time being". See clause 4 below for an explanation of new regulation 24C.

Subsection 5

6. Subsection (5), by paragraphs (a), (c) and (d), ensures that the level of detriment that has to be shown before the ICO can take enforcement action is set at an appropriate level, equivalent to that prescribed for Ofcom. The government recently announced its willingness to lower this threshold, although it has not specified what the new level of detriment would be or when the change would be implemented. By reducing the level of detriment from "substantial damage or substantial distress" to "annoyance, inconvenience or anxiety", subsection (5) ensures that the amendment to the threshold is both appropriate and timely.
   Subsection (5)(b) is aimed at requiring businesses that are engaged in direct marketing to demonstrate that consent has been obtained rather than the ICO having to "prove a negative" by showing that the business does not have consent.

Clause 3

7. Clause 3 is an enabling provision, allowing the Secretary of State to ensure that the terminology used in consent boxes is fit for purpose and ensure consumers can effectively give and withdraw consent for direct marketing without confusion.

Clause 4

8. Clause 4 (along with new regulation 24C above) enables the ICO, if it thinks necessary, to give legislative force to issues of good practice. For example, the guidance could cover the number of times per day/week a consumer can be contacted before this becomes inappropriate, or specify hours of the day when marketing calls and texts will always be inappropriate.

Clause 5

9. Clause 5 will enable easier information sharing between regulators by designating the ICO as a body with which Ofcom may share information. DCMS recently stated in its July 2013 paper "Connectivity, Content and Consumers" that it would legislate to enable Ofcom to more easily share information with the ICO. However, again, no details or timeframes were specified, rendering this clause necessary.

Clause 6

10. Clause 6 is self-explanatory. It relates to the implementation, title and extent of the Bill.

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