

Property Repairs (Prohibition of Cold-calling) Bill

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TO

Make provision about cold-calling to solicit employment to undertake the laying of drives and other property repairs, maintenance and improvements.

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 Meaning of cold-call

Subject to section 2, in this Act a “cold-call” means a visit to a consumer by a trader, whether or not the trader supplies goods or services, and which—

- (a) takes place otherwise than at the consumer's express request, or
- (b) takes place at the consumer's express request and after the trader or a person linked to the trader has—
 - (i) telephoned the consumer, or
 - (ii) visited the consumer,

otherwise than at the consumer's express request and indicated (either expressly or by implication) during the course of that telephone call or visit that a trader (not necessarily the trader who eventually makes the visit) may or will visit the consumer or is willing to visit the consumer.

2 Pre-arranged visits

- (1) A visit of the type described in section 1(b) above (“the intended visit”) is not a cold-call if the conditions of subsections (2) and (3) below are met.
- (2) The condition of this subsection is met if, after the initial visit or telephone call and not earlier than 5 days before the intended visit, the trader or a person linked to the trader serves on the consumer a letter (an “arrangement letter”) setting out his intention to make the visit or arrange the visit, as the case may be.
- (3) The condition of this subsection is met if the consumer expressly requests that the intended visit takes place and does not cancel it before it is made.
- (4) An arrangement letter must specify—

- (a) the proposed date and time of the intended visit,
- (b) the nature of the goods or services to be offered,
- (c) the name and address of the trader including—
- (i) in the case of a partnership firm, the name of each partner,
 - (ii) in the case of an individual, his name, 5
 - (iii) in the case of a limited company, its name, and
 - (iv) in relation to each person so named, an address in Great Britain at which service of any document relating to the business will be effective,
- (d) that the consumer may cancel the visit at any time, 10
- (e) an address, a telephone number and an e-mail address which can be used by consumers who wish to cancel the intended visit, and
- (f) any other prescribed information.
- (5) An arrangement letter may be served by such means as may be prescribed.
- 3 Prohibition on making cold-calls 15**
- (1) No trader shall make a cold-call to a consumer's home or place of work with a view to engaging the consumer in a conversation and offering to provide a property service.
- (2) Any person who contravenes this section shall be guilty of an offence and shall be liable on summary conviction to imprisonment for a term not exceeding three months or a fine not exceeding level 5 on the standard scale or both. 20
- 4 Cancellation of contract**
- No contract for the supply of property services made during a visit which is prohibited under section 3 above shall be enforceable against the consumer.
- 5 Powers of entry, inspection and examination 25**
- (1) A duly authorised officer of an enforcement authority on production, if required, of his credentials, or a constable, may,—
- (a) for the purpose of ascertaining whether any offence under this Act has been committed, inspect any goods and enter any premises or vehicles other than premises used only as a dwelling, 30
 - (b) if he has reasonable cause to suspect that an offence under this Act has been committed, for the purpose of ascertaining whether it has been committed, require any person carrying on a business or employed in connection with a business to produce any books or documents relating to the business and may take copies of, or of any entry in, any such book or document, 35
 - (c) if he has reasonable cause to believe that an offence under this Act has been committed, seize and detain any goods for the purpose of ascertaining, by testing or otherwise, whether the offence has been committed, 40
 - (d) seize and detain any goods or documents which he has reason to believe may be required as evidence in proceedings for an offence under this Act.

- (2) An officer or constable seizing any goods or documents in the exercise of his powers under this Act shall inform the person from whom they are seized.
- (3) If a justice of the peace, on sworn information in writing, is satisfied under subsections (4) and (5) below, he may by warrant under his hand, which shall continue in force for a period of one month, authorise an officer of an enforcement authority, or a constable to enter the premises, if need be by force. 5
- (4) A justice is satisfied under this subsection, if he is satisfied that there are reasonable grounds to believe either –
- (a) that any goods, books or documents which a duly authorised officer has power under this section to inspect are on any premises and that their inspection is likely to disclose evidence of the commission of an offence under this Act, or 10
 - (b) that any offence under this Act has been, is being or is about to be committed on any premises.
- (5) A justice is satisfied under this subsection, if he is satisfied either – 15
- (a) that admission to the premises has been or is likely to be refused and that notice of intention to apply for a warrant under this subsection has been given to the occupier; or
 - (b) that an application for admission, or the giving of such a notice, would defeat the object of the entry or that the premises are unoccupied or that the occupier is temporarily absent and it might defeat the object of the entry to await his return. 20
- (6) An officer entering any premises by virtue of this section may take with him such other persons and such equipment as may appear to him necessary; and on leaving any premises which he has entered by virtue of a warrant under subsection (3) he shall, if the premises are unoccupied or the occupier is temporarily absent, leave them as effectively secured against trespassers as he found them. 25
- (7) Nothing in this section shall be taken to compel the production by a solicitor of a document containing a privileged communication made by or to him in that capacity or to authorise the taking of possession of any such document which is in his possession. 30

6 Obstruction of authorised officers

- (1) Any person who –
- (a) wilfully obstructs an officer of an enforcement authority or a constable acting in pursuance of this Act; or 35
 - (b) wilfully fails to comply with any requirement properly made to him by such an officer or a constable so acting under section 4(1)(b) of this Act; or
 - (c) without reasonable cause fails to give such an officer or a constable so acting any other assistance or information which he may reasonably require of him for the purpose of the performance of his functions under this Act, 40
- shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale. 45
- (2) If any person in giving such information as is mentioned in subsection (1) makes any statement which he knows to be false, he shall be guilty of an

offence and shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

- (3) Nothing in this section shall be construed as requiring a person to answer any question or give any information if to do so might incriminate him.

7 Powers of arrest 5

In Schedule 1A to the Police and Criminal Evidence Act 1984 (c. 60) (specific offences which are rescuable offences), at the end there is inserted –

“Property Repairs (Prohibition of Cold-calling) Act 2004

28. An offence under section 3 of the Property Repairs (Prohibition of Cold-calling) Act 2004 (prohibition on making cold-calls).” 10

8 Duties of enforcement authorities

- (1) It shall be a duty of every enforcement authority to enforce within their area the provisions of this Act.
- (2) Proceedings for an offence under this Act shall not be instituted except by or on behalf of an enforcement authority or a constable. 15

9 Defence of due diligence

- (1) In proceedings for an offence under this Act it shall be a defence for the person charged to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.
- (2) If in any case the defence provided under subsection (1) above involves the allegation that the commission of the offence was due to the act or default of another person, the person charged shall not, without leave of the court, be entitled to rely on that defence unless, no later than 7 clear days before the hearing, he has served on the prosecutor a notice in writing giving such information as was then in the possession identifying or assisting in the identification of that other person. 20
25

10 Liability of directors, etc.

- (1) Where an offence under this Act committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he as well as the body corporate, shall be guilty of the offence. 30
- (2) Where the affairs of the body corporate are managed by its members, subsection (1) above shall apply to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate. 35

11 Regulations

Any power of the Secretary of State to make regulations under this Act is exercisable by statutory instrument which are subject to annulment by either House of Parliament. 40

12 Interpretation

In this Act—

- “business” includes a trade or profession;
- “consumer” means a person other than a body corporate, who is acting for purposes which can be regarded as outside his business; 5
- “enforcement authority” means a local weights and measures authority;
- “local authority” means—
- (a) in relation to England—
 - (i) a county council,
 - (ii) a district council, 10
 - (iii) a London borough council,
 - (iv) the Common Council of the City of London in its capacity as a local authority,
 - (v) the Council of the Isles of Scilly,
 - (b) in relation to Wales, a county council or a county borough council, 15
 - (c) in relation to Scotland, a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c. 39);
- a “person linked to a trader” means—
- (a) a person acting or claiming or purporting to act in the trader's name or on his behalf, or 20
 - (b) a person in whose name or on whose behalf the trader is acting or is claiming or purporting so to act;
- “prescribed” means prescribed by regulations made by the Secretary of State; 25
- “property service” means a service consisting of the doing of something to buildings or land, or fittings, machinery or equipment in or connected with buildings or land, and including the fixing of things to buildings or land or, as the case may be, to things so fixed. 30
- “public telecommunications operator” means— 30
- (a) a person authorised, by a licence to which section 9 of the Telecommunications Act 1984 (c. 12) applies, to run a public telecommunications system, or
 - (b) a person to whom the telecommunications code has been applied pursuant to section 10 of that Act; 35
- “statutory undertaker” means any public gas transporter, water or sewerage undertaker, any holder of a licence under section 6 of the Electricity Act 1989 (c. 29), or any public telecommunications operator;
- “trader” means a person who is acting for the purpose of his business whether for profit or not, and anyone acting in the name or on behalf of such a person, but does not include the following persons— 40
- (a) a local authority,
 - (b) a government department,
 - (c) a statutory undertaker acting for the purpose of repairing or replacing equipment or apparatus provided by them on the premises concerned, or taking a meter reading, 45
 - (d) any other person carrying out functions under any enactment,
 - (e) a landlord exercising rights under a lease,

- (f) a person acting on behalf or at the request of any of the persons mentioned in paragraphs (a) to (e) above and (if appropriate) in the circumstances mentioned in those paragraphs,

13 Corresponding provision for Northern Ireland

An Order in Council under paragraph 1(1) of the Schedule to the Northern Ireland Act 2000 (c. 1) (legislation for Northern Ireland during suspension of devolved government) which contains a statement that it is made only for purposes corresponding to those of this Act. 5

14 Short title, commencement and extent

- (1) This Act may be cited as the Property Repairs (Prohibition of Cold-calling) Act 2004. 10
- (2) This Act shall not come into force until such day as the Secretary of State may by order made by statutory instrument appoint.
- (3) Subject to subsection (4), this Act extends to England, Wales and Scotland.
- (4) Section 13 extends to Northern Ireland only. 15

Property Repairs (Prohibition of Cold-calling) Bill

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To make provision about cold-calling to solicit employment to undertake the laying of drives and other property repairs, maintenance and improvements.

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supported by
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