



**Information Commissioner's Office**  
Promoting public access to official information  
and protecting your personal information

# **Guidance for subscribers on the Privacy and Electronic Communications (EC Directive) Regulations 2003**

## **Part 1: Marketing by electronic means**

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## **Introduction – General questions**

### **Do these Regulations apply to all marketing?**

They apply to the sending of direct marketing messages by electronic means such as by telephone, fax, email, text message and picture (including video) message and by using an automated calling system. The Regulations are designed to be more 'technology neutral' than the Telecommunications (Data Protection and Privacy) Regulations 1999 (the '1999 Regulations') and so cover any new developments there may be in electronic communications.

### **What is the definition of direct marketing?**

Section 11 of the Data Protection Act 1998 (the DPA) refers to direct marketing as 'the communication (by whatever means) of any advertising or marketing material which is directed to particular individuals'.

We regard the term 'direct marketing' as covering a wide range of activities which will apply not just to the offer for sale of goods or services, but also to the promotion of an organisation's aims and ideals. This would include a charity or a political party making an appeal for funds or support and, for example, an organisation whose campaign is designed to encourage individuals to write to their MP on a particular matter or to attend a public meeting or rally. This view was supported by the UK Information Tribunal [ruling](#) when they dismissed an appeal by the Scottish National Party who argued that political campaigns were not covered.

### **These Regulations have been amended since introduction. What are the changes?**

The Privacy and Electronic Communications (EC Directive) (Amendment) Regulations 2004 (the 'Amendment Regulations') amend one small part of the Regulations. This relates to Telephone Preference Service ([TPS](#)) registration. From 25 June 2004, corporate subscribers have been allowed to register their numbers on the [TPS](#). For more information see the section on [telephone marketing](#) which has been updated to include guidance on this amendment.

### **Are there any other changes or additions to this guidance?**

Yes. For a summary, please see our [Summary of changes](#) in Appendix 1.

### **Which law should marketers comply with – these Regulations or the Data Protection Act?**

If you process personal data for marketing, you will need to comply with both.

When sending direct marketing by electronic means they must comply with the Regulations. If they are processing personal data (that is, if they know the name of the person who will receive their message) they must also comply with the DPA. For more information about obligations under the DPA, refer to our leaflet '[Be Open](#)' which is also available from [our office](#). (See also '[The Guide to Data Protection](#)' [chapter C 1c](#))

The important point to note is that marketers do not need to know individuals' names in order to carry out a direct marketing exercise. For example, they may only have a list of telephone numbers to call with marketing messages. If marketers only hold telephone numbers and don't know the name of the person who can be reached on that telephone number, the DPA does not apply. However, they must comply with these Regulations when they make those marketing calls. Once they know the name of the person who can be reached on that telephone number, they must also comply with their obligations under the DPA.

### **Doesn't the recent Durant –vs – Financial Services Authority Appeal Court Ruling mean that mailing lists of named individuals are no longer caught by DPA?**

No, it does not. The Commissioner has issued [guidance](#) on the Court of Appeal decision. That guidance also takes into account a decision by the European Court of Justice. Marketing lists which contain names and contact details are usually lists of those who have shown an interest in a particular product or service or who fall into a particular category. Our guidance makes clear that such lists will be personal data.

### **How do the defined terms apply to marketing?**

The Regulations refer to 'person', 'caller', 'subscriber', 'individual subscriber', and 'corporate subscriber' among other defined terms.

When the Regulations say:

'person' – this means a legal person, for example, a business, a charity, **or** a natural person, that is, a living individual.

'caller' – this means the instigator of a call. This is usually a legal person. The call would not be made or the fax, email, text or picture message would not be sent unless this caller paid for it to be made or sent.

'subscriber' – this means the person that pays the bill for the use of the line (that is, the person legally responsible for the charges incurred).

'individual subscriber' – this means a residential subscriber, a sole trader or a non-limited liability partnership in England, Wales and Northern Ireland.

'corporate subscriber' – this includes corporate bodies such as a limited company in the UK, a limited liability partnership in England, Wales and Northern Ireland or any partnership in Scotland. It also includes schools, government departments and agencies, hospitals and other public bodies, for example, the Information Commissioner's Office.

### **What is the difference between a 'solicited marketing message' and an 'unsolicited marketing message that you consent to receiving'?**

Put simply, a 'solicited message' is one that you have actively invited. An 'unsolicited marketing message that you consent to receiving' is one that you have

not specifically invited but you have positively indicated that you do not mind receiving it. This is not the same as failing to object to receiving a message when you are given the opportunity to object.

By analogy, it is the difference between asking someone to buy you a drink and that person asking you if they may buy you a drink to which you answer 'Yes'. The outcome may be the same in both scenarios - you receive a drink. However, in the first scenario you have invited the drink whereas, in the second scenario, you haven't objected to someone buying you a drink but you didn't invite them to make the offer. To extend the analogy, when a person does not say 'No' to a drink that is offered, it is not the same as saying 'Yes'. They may simply be ignoring the offer which they are entitled to do if it doesn't interest them.

So, if you call a travel agency and ask them to look into the cost of flights to Prague at New Year, you are soliciting a call back from that travel agency with a range of quotes for that trip. The travel agency could make further marketing calls to you about other flights to other destinations at a later date which **they** think might interest you. These would be unsolicited calls. For good practice, the travel agency should ask you first whether you agree to receive such calls from them. However, they should not, in any event, make such calls to you if you are a TPS registered subscriber unless you have told them that you do not mind receiving such calls.

### **Does consent mean ticking a box?**

It is true that marketers need to have a positive indication of consent under these Regulations but it is not true that this must be obtained by ticking a box.

Recital 17 of the Directive on which these Regulations are based (2002/58/EC) gives the ticking of a box on an internet site as an example of an 'appropriate method' to give consent but it is only an example. It is not the only method by which you can give consent.

Directive 95/46/EC (the main Data Protection Directive on which the UK Data Protection Act is based) defines 'the data subject's consent' as:

'any freely given specific and informed indication of his wishes by which the data subject signifies his agreement to personal data relating to him being processed'.

In our view, therefore, there must be some form of communication where you knowingly indicate consent. This may involve clicking an icon, sending an email or subscribing to a service. The crucial consideration is that you must fully understand that by the action in question you will be giving consent.

### **I'm confused about the terms 'opt-in' and 'opt-out'. What do they mean?**

We are concerned that the terms 'opt-in' and 'opt-out' can be misunderstood. They are commonly taken to refer to the use of tick-boxes. In this context, 'opt-in' refers to a box that you tick to indicate agreement and 'opt-out' refers to a box that you tick to indicate objection. Marketers have traditionally favoured the latter, that is, where the

default (an unticked 'opt-out' box) indicates a failure to register an objection. The fact that someone has had an opportunity to object which they have not taken only means that they have not objected. It does not mean that they have consented. We also note that the terms 'subscribe' and 'unsubscribe' are commonly used to indicate agreement or objection.

By itself, failing to register an objection will be unlikely to constitute valid consent. However, in context, failing to indicate objection may be **part of** the mechanism whereby a person indicates consent. For example, if you receive a clear and prominent message along the following lines, the fact that a suitably prominent opt-out box has not been ticked may help establish that you have given consent. For example, 'By submitting this registration form, you will be indicating your consent to receiving email marketing messages from us **unless** you have indicated an objection to receiving such messages by ticking the above box'.

In summary, the precise mechanisms by which you give valid informed consent may vary. The crucial consideration is that you must fully appreciate that you are consenting and must fully appreciate what you are consenting to.

### **Does the phrase 'for the time being' mean consent only lasts a finite period of time?**

Many of the Regulations refer to consent being given 'for the time being'. We do not interpret the phrase 'for the time being' as meaning that consent must inevitably lapse after a certain period. Consent, once given, will not inevitably last indefinitely. However, it will remain valid until there is good reason to consider it is no longer valid, for example, where you have specifically withdrawn it or it is otherwise clear that you no longer want to receive such messages. The initial consent will remain valid where there are good grounds for believing that you are happy to continue to receive the marketing communications in question, for example, where you have responded **positively** (that is, other than to object) to previous, reasonably recent marketing emails.

The phrase 'for the time being' is also used in the Regulations in respect of notifications of objection. For example, Regulation 21(1) (a) (see [Telephone marketing](#)) provides that **unsolicited** direct marketing calls should not be made where the subscriber has notified that such calls should not be made 'for the time being'. We do not believe that this means the objection will lapse automatically. The objection will remain valid until there is good reason to ignore it, for example, where you have changed your mind and indicated that you now consent to receiving such calls.

## How can I stop unsolicited electronic marketing messages?

We recognise that many people are concerned about confirming their email address or mobile phone number where they make any response to such messages (even where that response is exercising their legal right to opt out). Most spam email originates from outside the UK and should never be replied to unless you are familiar with the company and trust that company. For more information about this please read our Subscribers' FAQs in the section on [Electronic mail](#).

If you receive a marketing message that you don't want from an identifiable UK source, the first thing to do is contact the company concerned and tell them to stop sending you further messages. You should be able to identify them because they are legally obliged to provide you with their contact details and not conceal their identity. Most responsible marketers will comply with an opt-out request. In most circumstances they are legally obliged to comply with an opt-out request. The only circumstance where they are not legally obliged to comply with an opt-out request is when they are marketing corporate subscribers by electronic mail without processing personal data (see [Electronic mail](#) for more information). Make sure you provide them with details of the number or email address that they contacted you on. This enables them to add those details to their suppression list which will make sure that they keep a record of your objection.

There are two statutory 'do not call' lists. One is for telephone numbers (Telephone Preference Service). The other is for fax numbers (Fax Preference Service). For more information about the Telephone Preference Service contact:

Website	<a href="http://www.tpsonline.org.uk">www.tpsonline.org.uk</a>
Phone	0845 070 0707
Fax	0845 070 0706
Address	The Telephone Preference Service DMA House 70 Margaret Street London W1M 8SS

For more information about the Fax Preference Service contact:

Website	<a href="http://www.fpsonline.org.uk">www.fpsonline.org.uk</a>
Phone	0845 070 0702
Fax	0845 070 0705
Address	The Fax Preference Service DMA House 70 Margaret Street London W1M 8SS

There are a number of industry initiatives to facilitate opt-outs from other media such as the Mailing Preference Service and the Email Preference Service. Although these lists do not have a statutory basis, we welcome their widespread use by responsible marketers.

For more information contact:

Website [www.dma.org.uk](http://www.dma.org.uk)  
Phone 0845 703 4599  
Fax 020 7323 4426  
Address Direct Marketing Association  
DMA House  
70 Margaret Street  
London  
W1M 8SS

### **How do I make a complaint about an unsolicited electronic marketing message?**

For more information about making a complaint to the Information Commissioner, please refer to each set of Subscribers' FAQs in this guidance.

[Complaints about automated calls](#)  
[Complaints about telesales calls](#)  
[Complaints about marketing faxes](#)  
[Complaints about electronic mail](#)

### **Automated calling systems (Regulations 19 and 24))**

#### **How do the Regulations apply to automated calling systems?**

The Regulations restate the requirement of the 1999 Regulations in respect of marketing by automated calling systems.

However, Regulation 19 clarifies the definition of 'automated calling system'. It refers to a system which is 'capable of automatically initiating a sequence of calls to more than one destination in accordance with instructions stored in that system' and which transmits 'sounds which are not live speech for reception by persons at some or all of the destinations so called' (Regulation 19(4) refers). The UK Information Tribunal [ruled](#) on a case where automated calls had been used to promote the Scottish National Party in the lead up to the 2005 General Election.

It is important to note that automated calls does **not** cover marketing by text, picture and video message, by fax or by email, nor does it cover the technology used by some call centres to dial target numbers automatically in order to facilitate live telephone conversations, so-called 'power dialling'. Text, picture and video messages, faxes, live telephone calls and emails are covered elsewhere in the Regulations and elsewhere in this guidance.

This is what the law requires.

- Marketing material cannot be sent to you by automated calls without your **prior consent**. This is where you have told the caller that you consent, [for the time being](#), to these calls (Regulation 19(1) and (2) refer).

- You must not allow your line to be used to make automatic calls to other subscribers without their consent. This would breach Regulation 19. (Regulation 19(3) refers).
- All marketing messages sent by automatic calls must include the identity of the caller and a contact address or Freephone number (Regulation 24(1)(a) refers).

The mischief that Regulation 19 seeks to address is where you receive a marketing call which is a recorded message and where there is no opportunity to speak to a 'live' person. In our view, even if an opportunity is provided at some point in the message, for example, 'to speak to a live operator, press 1', such a call would still be covered by the prior consent rule because not all telephones are 'touch tone' phones. Such calls are particularly intrusive and can be unsettling. We will therefore be taking a firm line on this point.

### **Subscribers' FAQs**

**I keep getting calls where, when I pick up the phone, there is only silence. I put down the phone then it happens again. This is extremely distressing. The caller withholds their number and my phone company won't tell me who the caller is because they think it would breach the Data Protection Act. Does this Regulation or any other of the Regulations apply? What can I do?**

We understand how distressing so-called 'silent calls' can be. The natural assumption is that the call is made with malicious intent. Service providers have specific procedures for dealing with malicious calls. However, it is likely that, in this case, your service provider is not pursuing the matter as a malicious call because they have identified that the caller is a business using technology which dials target numbers automatically to facilitate a 'live' conversation, so-called 'power diallers'.

Sometimes, when power diallers are used, there can be a delay in the process of connecting the call centre worker to the target number which results in a disturbing silence. Although such systems can give the organisation certain efficiency savings, it can also result in silent calls where the individual ultimately hangs up at times when there are more answered calls than available operators. Even though they are not 'malicious' calls, they are certainly a nuisance. As disturbing as silent calls can be, no marketing material is being transmitted and so the marketing rules in these Regulations do not apply.

There are three further points worth making. First, Regulation 15 makes it clear that there is nothing in the Regulations to prevent phone companies from telling a person 'with a legitimate interest' the identity of whoever is making calls that are malicious or cause a nuisance. In our view, if you are receiving repeated nuisance calls such as this, you clearly have a legitimate interest in knowing who made them.

Second, the Data Protection Act only applies to individuals and not to businesses. There is nothing in the Data Protection Act which prevents the phone company from disclosing a business name to you although we note that many do not, as a policy decision, provide this information. They have concerns about individuals taking the

law into their own hands and so have decided, as a matter of policy, only to disclose caller information to the police.

If the call is made with malicious intent by an individual, the Data Protection Act allows disclosures of personal information which are necessary to prevent or detect crime. If you believe you are receiving calls made with malicious intent, speak to your phone company who will, if necessary, involve the appropriate law enforcement authorities.

Finally, persistent misuse of communications networks is regulated by Ofcom under the Communications Act 2003. This Act gives that regulator powers to take action against network use which causes avoidable nuisance, annoyance or anxiety.

In March 2006, Ofcom published a policy statement on persistent misuse which related to the use of automated calling systems and silent calls. One of the requirements of this policy is that where the calling organisation cannot connect to an operator it will leave a pre-recorded message (or a number which can be called back to hear a pre-recorded message) rather than the call remaining silent. The message should tell the individual that the organisation tried to call you but was not able to connect at that time.

When the message only informs an individual that their number was called by a particular organisation and does not to promote the calling organisation's products or services, then it will not be classed as direct marketing. Messages of this type will not fall under the regulations we enforce.

For more information contact Ofcom at:

Website	<a href="http://www.ofcom.org.uk">www.ofcom.org.uk</a>
Phone	020 7981 3000
Fax	020 7981 3333
Address	OFCOM Riverside House 2a Southwark Bridge Road London SE1 9HA

### **How do I stop unsolicited automated calls?**

Contact the marketer and tell them to stop. They are legally obliged to provide you with their contact details in their marketing message. They are also legally obliged to stop calling you when you ask them to. Make sure you provide them with details of the number that they contacted you on. This enables them to add those details to their suppression list which will make sure they keep a record of your objection. Keep a record of your request.

### **How do I make a complaint about unsolicited automated calls?**

If you want to complain to us, contact our Helpline on 01625 545745 and ask for a [privacy regulations complaint form and leaflet](#), or see our website.

If you make a complaint, please make sure you answer **every** question on the form. The questions have been prepared to obtain basic information that we would need if we were to rely on your evidence in formal **enforcement** action. The questions take account of our previous enforcement experience. What may seem irrelevant to you could be vital to the success or failure of any enforcement action we might take. Where we have evidence of a persistent and widespread failure to comply, we would need to find the strongest cases to rely on in court. By providing this information up front, you are helping us to identify the strongest cases more quickly.

### **Am I entitled to compensation?**

If you can demonstrate to a court that the caller has breached these Regulations and that by doing so, you have been caused quantifiable damage; you may be entitled to compensation under Regulation 30 of these Regulations. Please note that if a caller can demonstrate to a court that they did what could reasonably be required of them to comply with the Regulations, this would be a defence against any compensation claim.

We have produced two leaflets '**Claiming compensation**' (Leaflet 7) and '**Taking a case to court**' (Leaflet 8) for those wanting to take action for compensation under Section 13 of the DPA. Much of the information also applies to those who want to seek compensation under Regulation 30 of these Regulations.

## Telephone marketing (Regulations 21 and 24)

### How do the Regulations apply to telephone marketing?

The Regulations restate the 1999 Regulations with respect to marketing by telephone with two significant changes. First, from 11 December 2003, corporate subscribers have an enforceable right to opt out of receiving marketing calls by asking the caller to stop making further marketing calls to a particular number or numbers. Second, and with effect from 25 June 2004, **corporate subscribers** have been allowed to register their numbers on the Corporate Telephone Preference Service (CTPS). See our **good practice note** for more information on the rules about corporate subscribers.

This is what the law requires.

- If you have told a marketer to stop making telesales calls to your number, they must comply with that request (Regulation 21(1)(a) refers).
- Marketers cannot make or instigate the making of **unsolicited** telesales calls to any number listed on the TPS register (Regulation 21(1)(b) refers).
- TPS registration takes 28 days to come into force. Calls can be made to a number during the registration period unless you also make an opt-out request to the caller (see above) (Regulation 21(3) refers).
- Marketers can make or instigate the making of unsolicited telesales calls to your TPS registered number where you have notified them that, **for the time being**, you do not object to receiving such calls on that TPS registered number (Regulation 21(4) refers).
- You can withdraw that overriding **consent** at any time, in which case, further telesales calls must not be made to that number (Regulation 21(5) refers).
- Marketers must identify themselves when making a telesales call. If you ask them, they must provide a valid business address or Freephone number at which you can contact them. If the marketer uses a subcontractor, the subcontractor's call centre staff must identify the instigator of the call (that is, the organisation they are making the call for) (Regulation 24(1)(b) refers).
- You must not let your lines be used to breach Regulation 21 (Regulation 21(2) refers).

### What is the TPS?

The **Telephone Preference Service** (TPS) list is a statutory list of phone numbers where the subscriber to that number has registered a general objection to receiving **unsolicited** marketing calls on that number. From 25 June 2004, **corporate subscribers** have also been allowed to register their numbers on the TPS.

### Does TPS registration apply to mobile numbers?

Any mobile number can be registered on the TPS to block unwanted 'live' calls. Those who want to market by text, picture and video message do not need to screen against the TPS, but they need to get your prior **consent** before sending such messages. The rules on marketing by text, picture and video message are covered in the **Electronic mail** section of this guidance.

## **Subscribers' FAQs**

### **I registered my number on the TPS before these Regulations came into force, do I have to register again?**

No, your registration before 11 December 2003 is still valid.

### **I'm ex-directory. Do I need to register on the TPS if I want to stop unsolicited telesales calls?**

Yes. Going ex-directory will not prevent unsolicited direct marketing calls. Many marketers use technology to generate telephone numbers at random, perhaps for a target postcode area. As a consequence, ex-directory numbers may be generated. Marketers must make sure any numbers they generate are screened against the TPS.

### **I asked a marketer not to call me before these Regulations came into force, do I need to write to them again?**

No, your opt-out request made before 11 December 2003 is still valid. If you are a corporate subscriber and you made such a request before 11 December 2003, the marketer was not legally obliged to comply with that request. A responsible marketer would have complied with that request even if they were not legally obliged to do so. From 11 December 2003, a marketer is legally obliged to comply with such a request regardless of whether you are a corporate or individual subscriber. If you are a corporate subscriber, you should make sure you advise the marketer of all your direct dial numbers if you want to make sure they do not make any further contact with you by telephone.

### **Do I have to make my opt-out request in writing?**

The Regulations do not state that you have to make an opt-out request in writing. However, if you were making a complaint to the Information Commissioner or enforcing your rights yourself through the courts, you would need to be able to demonstrate that you had made that request. A diary record of who you spoke to and when you spoke to them may not be sufficient where the caller contradicts your version of events, particularly where we were looking to rely on your evidence in enforcement action. The most practical way to overcome this potential problem is to make all opt-out requests in writing, preferably getting proof of posting when you do so. Remember to provide a list of all your numbers if you are a corporate subscriber.

### **I asked a company for a quote and now they won't stop calling me. Should I register on the TPS to stop them calling me?**

TPS registration may not prevent calls from any organisation whose calls you have previously invited and which has assumed that you are happy to receive calls from them. You should write directly to the company and ask them to stop calling you. You should remember to tell them which numbers they should no longer call. They must comply with this request.

## How do I stop unsolicited telesales calls?

Ask the marketer for their contact details. They are legally obliged to provide you with their contact details, if you ask them. This should be either an address or a Freephone number. Next, contact them at that address or on that Freephone number and tell them to stop. They are also legally obliged to stop making further calls to you if you ask them to. Make sure you provide them with details of the number that they contacted you on. This enables them to add those details to their suppression list which will ensure that they keep a record of your objection. Keep a record of your request.

If you have not done so already, you should also register your number on the [TPS](#).

## How do I make a complaint about unsolicited telesales calls?

If you are TPS registered, you should, in the first instance, contact the [TPS](#). The TPS will check that your number is registered accurately and then contact the marketer to advise them of your complaint. Most responsible marketers will take remedial action when the TPS contacts them about a complaint. The TPS also sends us a detailed statistical record of the complaints they have received. We use this record to assist us in identifying which companies are persistently failing to comply with their obligations.

If you want to complain to us, contact our Helpline on 01625 545745 and ask for a [privacy regulations complaint form and leaflet](#), or see our website.

If you make a complaint, please make sure you answer **every** question on the form. The questions have been prepared to obtain basic information that we would need if we were to rely on your evidence in formal enforcement action. The questions take account of our previous enforcement experience. What may seem irrelevant to you could be vital to the success or failure of any enforcement action we might take. Where we have evidence of a persistent and widespread failure to comply, we would need to find the strongest cases to rely upon in court. By providing this information up front, you are helping us to identify the strongest cases more quickly.

## Am I entitled to compensation?

If you can demonstrate to a court that the caller has breached these Regulations and that by doing so, you have been caused quantifiable damage, you may be entitled to compensation under Regulation 30 of these Regulations. Please note that if a caller can demonstrate to a court that they did what could reasonably be required of them to comply with the Regulations, this would be a defence against any compensation claim.

We have produced two leaflets '[Claiming compensation](#)' (Leaflet 7) and '[Taking a case to court](#)' (Leaflet 8) for those wanting to take action for compensation under Section 13 of the DPA. Much of the information also applies to those who want to seek compensation under Regulation 30 of these Regulations.

## Corporate subscribers' FAQs

### How do the Regulations apply to corporate registration on TPS?

From 25 June 2004, the [Amendment Regulations](#) also came into force and businesses have been allowed to register their numbers on the [TPS](#). They must do so in writing and they must renew their registration annually. Apart from postage costs, registration is free.

### Why do we have to register in writing and renew annually? We don't have to do this when we register on the [FPS](#) to prevent unsolicited faxes.

In response to the DTI's consultation exercise, the Direct Marketing Association and others raised concerns that telephone or on-line registration may lead to bogus or unauthorised registration, perhaps by a competitor or by an over-zealous junior member of staff. In response to those concerns the DTI decided to include some additional safeguards. For more information on the registration process please see the [TPS](#) website. If you want to read more about the DTI consultation process, click [here](#).

### Who, in our organisation, should take responsibility for TPS registration?

That is entirely a matter for you. If you do register some or all of your numbers on the TPS list, you are advised to inform all your front-line staff who handle telephone calls. You might want to establish a company policy on dealing with cold calls. For example:

- Call handlers could ask anyone making an unsolicited marketing call to provide a business name as well as an address or Freephone number. Marketers are legally obliged to provide such information if you ask them. If you want to make a complaint to us, a record of this information is very important.
- Call handlers could be instructed to advise such callers that the number they called is registered on the TPS (assuming it is in fact registered) and that further calls of a similar nature may result in a formal complaint to the Information Commissioner.

### We have hundreds of employees, some of whom might invite calls from companies without telling their colleagues. If one of those colleagues takes the call they may reject a good offer because they think the caller has breached our TPS registration. How do we use our registration selectively?

You may wish to have a central database of invited callers that call handlers can access. Because the calls in this scenario would be [solicited](#), they are not breaching the Regulations when they call you. Or, if you find that TPS registration is having an adverse effect on your business, you may wish to consider de-registration.

**If we register our switchboard number, is that enough to prevent unsolicited direct marketing calls to all of our numbers?**

No, it is not. By registering on the TPS you are registering a general objection to receiving such calls on a particular number. If you want to stop receiving such calls on all your numbers you must register all of them. Registration is free for both individual and corporate subscribers.

**We have a general non-geographic number (for example, 0800, 0870) to which all external calls are made. These are then diverted to other numbers depending on which line is free. Isn't it enough to register that non-geographic number?**

If you register a non-geographic number, that will only prevent unsolicited calls being made to that non-geographic number. It will not prevent calls to any underlying numbers that are also direct dial numbers. Many telemarketers randomly generate numbers. Marketers must make sure any numbers they generate are screened against the TPS and any internal suppression list the telemarketer may have. If your direct dial numbers are randomly generated and they are not on the TPS list or the caller's own suppression list, a call to that number will not be a breach of the Regulations.

You should therefore register all numbers which lie behind your non-geographic number.

**Our business has hundreds of direct dial numbers, do we really have to register all of them?**

It is for you to decide which numbers you want to put on the TPS register. You may, for example, wish to keep the numbers of your Sales Department or your Buying Department off the TPS register. Registration is free regardless of the amount of numbers you are registering.

**We often switch direct dial numbers or divert numbers around the office. How is our registration affected?**

Only the numbers you have entered on the register will be covered by your TPS registration. If you assign a non-registered number to an employee who previously used a TPS registered number and you want to prevent unsolicited calls to that previously non-registered number, you should amend your registration accordingly.

**Will TPS registration prevent our existing contacts from calling us with new business opportunities or quotations?**

You may want to advise your regular contacts that you are happy to continue taking their calls. You can withdraw this invitation at any time and you are advised to inform them in writing if you change your mind and decide you no longer want to hear from them. If you invite a company to call you then the call would not be caught by the Regulations because it would be a **solicited** call.

## Fax marketing (Regulations 20 and 24)

### How do the Regulations apply to fax marketing?

This is what the law requires.

- 1 Marketers cannot send or instigate the sending of an unsolicited marketing fax to the line of an **individual subscriber** without their prior **consent** (Regulation 20(1)(a) refers).
- 2 Marketers cannot send or instigate the sending of an unsolicited marketing fax to the line of a **corporate subscriber** where that subscriber has asked them not to fax on that line (Regulation 20(1)(b) refers).
- 3 Marketers cannot send or instigate the sending of an unsolicited marketing fax to any number listed on the **FPS** register (Regulation 20(1)(c) refers).
- 4 FPS registration takes 28 days to come into force. Faxes can be sent to your number during the registration period unless you have also made an opt-out request to the caller (see 2 above) (Regulation 20(4) refers). If you are an individual subscriber, marketers cannot fax you without your prior consent (see 1 above).
- 5 Marketers can send unsolicited marketing faxes to an FPS registered number where you have notified them that, **for the time being**, you do not object to receiving such calls (Regulation 20(5) refers).
- 6 You can withdraw that overriding consent at any time, in which case, further marketing faxes must not be sent to that number (Regulation 20(6) refers).
- 7 Marketers must provide their identity on each fax they send (that is, the name of the business being promoted) **and** a valid business address or Freephone telephone number for you to contact them. (Regulation 24(1)(a) refers).
- 8 You must not allow your line to be used to breach Regulation 20 (Regulation 20(3) refers).

### What is the FPS?

The **Fax Preference Service** list is a statutory list of telephone numbers where the subscriber to that number has registered a general objection to receiving unsolicited marketing faxes on that number.

### Subscribers' FAQs

#### Can individual subscribers register their numbers on the FPS?

Yes, they can. We recommend that they do so for extra protection, particularly if they are sole traders or unincorporated partnerships whose contact details may be available in business directories.

#### I registered my number on the FPS before these Regulations came into force, do I have to register again?

No, your registration before 11 December 2003 is still valid.

**I asked a marketer not to call me before these Regulations came into force, do I need to write to them again?**

No, your request made before 11 December 2003 is still valid.

**I'm ex-directory. Do I need to register on the FPS if I want to stop unsolicited marketing faxes?**

Yes. Going ex-directory will not prevent unsolicited marketing faxes. Many marketers use technology to generate fax numbers at random, perhaps for a target postcode area. As a consequence, ex-directory numbers may be generated. Marketers must make sure any numbers they generate are screened against the FPS and that numbers belonging to individual subscribers are removed.

**I'm registered with the FPS, I've written to the caller, I've complained to the Information Commissioner and I am still getting unsolicited faxes? Can nothing be done to stop them?**

Unsolicited marketing faxes have been the subject of the most complaints we have received to date. We share your frustration. We have taken enforcement action against those companies who were the subject of the most complaints and continue to monitor the level of complaints we receive about other companies.

However, in the course of enforcement action we have identified some technical reasons which may explain why you might still be receiving marketing faxes despite registering your number on the FPS.

Some telephony packages, especially those used by small businesses, are more sophisticated than we had appreciated. You may have an extra number or a bundle of numbers attached to your main number(s) that you were not previously aware of. These extra numbers are in place to facilitate other features of your telephony package, for example, 'call sign' feature, ADSL. A call made to one of these extra numbers may be automatically diverted to a line that you use. If a fax machine is plugged into a line you use and the diverted call is an attempt to send a fax, you will receive a fax. If this applies to you, you should register all your numbers on the FPS, even if you don't have a fax machine attached to them. A fax received on an FPS registered line through a divert from a non-FPS registered number is not a breach of the Regulations **unless** the subscriber to that non-FPS registered number is an individual subscriber.

You should be able to identify these extra numbers on your telephone bill or by checking with your phone company.

**I am FPS registered and I have received an unsolicited fax asking me if I want to stop receiving further unsolicited faxes? If I don't want to receive further faxes I have to either fax back on a premium rate line or call a national rate number. Is this legal?**

If you are **FPS** registered or an individual subscriber, it is likely that this fax has been sent to you in breach of the Regulations.

Although the premium rate line may be the most prominent contact detail, the sender is legally obliged to provide a valid address or Freephone number. This is usually found in the small print at the bottom of the fax. Contact the caller and ask them not to fax you again. They are legally obliged to comply with this request. Make sure you tell them what your number is so they can add it to their suppression list which will make sure they keep a record of your objection. Keep a record of your request and then write to the FPS to report what has happened. If they persist, you should contact the Information Commissioner (see **Complaints about marketing faxes**).

You may also want to contact ICSTIS on 0800 500 212 (9am to 4pm, Monday to Friday) or visit their website at [www.icstis.org.uk](http://www.icstis.org.uk). ICSTIS regulate the use of premium rate lines and have a strict code of practice which states what companies can and cannot do with premium rate lines. They also have the power to suspend premium rate lines and, if appropriate, impose large fines for a breach of their code of practice.

**How do I stop unsolicited faxes?**

There should be an address or Freephone number on the fax (it may be in very small print so check carefully). Contact the marketer at that address or on that Freephone number and tell them to stop. They are also legally obliged to stop making further calls to you if you ask them to. Make sure you provide them with details of the number that they contacted you on. This enables them to add those details to their suppression list which will ensure that they keep a record of your objection. Keep a record of your request.

If you have not done so already, you should also register your number on the **FPS**.

**How do I make a complaint about unsolicited faxes?**

If you are FPS registered, you should, in the first instance, contact the **FPS**. The FPS will check your fax number is registered accurately and then contact the marketer to advise them of your complaint. Most responsible marketers will take remedial action when the FPS contacts them about a complaint. The FPS also sends us a detailed statistical record of the complaints they have received. We use this record to assist us in identifying which companies are persistently failing to comply with their obligations.

If you want to complain to us, contact our Helpline on 01625 545745 and ask for a **privacy regulations complaint form and leaflet**, or see our website.

If you complain, please make sure you answer **every** question on the form. The questions have been prepared to obtain basic information that we would need if we were to rely on your evidence in formal enforcement action. The questions take account of our previous enforcement experience. What may seem irrelevant to you could be vital to the success or failure of any enforcement action we might take. Where we have evidence of a persistent and widespread failure to comply, we would need to find the strongest cases to rely upon in court. By providing this information up front, you are helping us to identify the strongest cases more quickly.

### **Am I entitled to compensation?**

If you can demonstrate to a court that the caller has breached these Regulations and that by doing so, you have been caused quantifiable damage; you may be entitled to compensation under Regulation 30 of these Regulations. Please note that if a caller can demonstrate to a court that they did what could reasonably be required of them to comply with the Regulations, this would be a defence against any compensation claim.

We have produced two leaflets '**Claiming compensation**' (Leaflet 7) and '**Taking a case to court**' (Leaflet 8) for those wanting to take action for compensation under Section 13 of the DPA. Much of the information also applies to those who want to seek compensation under Regulation 30 of these Regulations.

**I keep getting calls where, when I pick up the phone, there is only a fax signal. I put down the phone then it happens again. This is extremely irritating. The caller withholds their number and my phone company won't tell me who the caller is because they think it would breach the Data Protection Act. Does this Regulation or any other of the Regulations apply? What can I do?**

As with '**silent calls**', no marketing material is being transmitted and therefore such attempts to send faxes are not caught by the marketing rules of these Regulations. If it is possible to attach a fax machine to your line, you should be able to find out whether it is someone trying to send a marketing fax or not. You are also advised to register that number on the FPS. You don't need to have a fax machine to register your number on the FPS.

There are three further points worth making. First, Regulation 15 makes it clear that there is nothing in the Regulations to prevent phone companies from telling a person 'with a legitimate interest' the identity of whoever is making calls that are malicious or cause a nuisance. In our view, if you are receiving repeated nuisance calls such as this, you clearly have a legitimate interest in knowing who made them.

Second, the Data Protection Act only applies to individuals and not to businesses. There is nothing in the Data Protection Act which prevents the phone company from disclosing a business name to you although many service providers do not, as a policy decision, provide this information. They have concerns about individuals taking the law into their own hands and have therefore have decided, as a matter of policy, only to disclose caller information to the police.

If the call is made with malicious intent by an individual, the Data Protection Act permits disclosures which are necessary to prevent or detect crime. If you believe you are receiving calls made with malicious intent, speak to your phone company who will, if necessary, involve the appropriate law enforcement authorities.

Finally, persistent misuse of communications networks is regulated by Ofcom under the Communications Act 2003. This Act gives that regulator powers to take action against network use which causes avoidable nuisance, annoyance or anxiety. For more information contact Ofcom at:

Website	<a href="http://www.ofcom.org.uk">www.ofcom.org.uk</a>
Phone	020 7981 3000
Fax	020 7981 3333
Address	OFCOM Riverside House 2a Southwark Bridge Road London SE1 9HA

## Electronic mail (Regulations 22 and 23)

### How do the Regulations apply to marketing by electronic mail?

The Regulations define electronic mail as 'any text, voice, sound, or image message sent over a public electronic communications network which can be stored in the network or in the recipient's terminal equipment until it is collected by the recipient and includes messages sent using a short message service' (Regulation 2 'Interpretation' refers).

In other words, both email and text, picture and video marketing messages are considered to be 'electronic mail'. Marketing transmitted in WAP messages is considered to be 'electronic mail'. WAP Push allows a sender to send a specially formatted SMS message to a handset which, when received, allows a recipient through a single click to access and view content stored online, through the browser on the handset

We consider that this rule also applies to voicemail and answerphone messages left by marketers making marketing calls that would otherwise be 'live'. Therefore, there are stricter obligations placed upon those marketers who make live calls but who want to leave messages on a person's voicemail or answerphone.

Faxes are not considered to be 'electronic mail'. **Fax marketing** is covered elsewhere in the Regulations. Also, so-called '**silent calls**' or calls where a fax or other electronic signal is transmitted are not covered by these Regulations. This is because no marketing material is transmitted during such calls.

This is what the law requires.

- Marketers cannot send, or instigate the sending of, unsolicited marketing material by electronic mail to an **individual subscriber** unless the subscriber has previously notified them that they **consent, for the time being**, to receiving such communications. There is an exception to this rule which has been widely referred to as the '**soft opt-in**' (Regulation 22(2) refers).
- You must not allow your line to be used to breach Regulation 22(2) (Regulation 22(4) refers).
- Marketers cannot send, or instigate the sending of any marketing by electronic mail (whether solicited or unsolicited) to **any subscriber** (whether corporate or individual) where:
  - a the identity of the sender has been disguised or concealed; or
  - b a valid address to which you can send an opt-out request has not been provided (Regulation 23 refers).

## What is the difference between a ‘solicited marketing message’ and an ‘unsolicited marketing message that you consent to receiving’?

Put simply, a ‘solicited message’ is one that you have actively invited. We accept that this invitation can be given via a third party (see below [Third party electronic mailing lists](#)). An ‘unsolicited marketing message that you have opted into receiving’ is one that you have not invited but you have indicated that you do not, [for the time being](#), object to receiving it. If challenged, marketers would need to demonstrate that you have positively opted into receiving further information from them.

## What would constitute a ‘valid address’ for the purpose of Regulation 23?

In an on-line environment, this could be a valid email address. We accept that short code numbers could be used as a ‘valid address’ in text messages as long as they do not incur costs other than the cost of sending the message (that is, using the short code does not incur premium rate charges). As good practice, a valid website address (where further valid contact details can be found) or a valid PO Box number should be included in any promotional text message.

## Is there any difference between an [individual subscriber](#) and the recipient of marketing material by electronic mail (Regulation 22(2))?

Yes, there is a difference.

The Directive which these Regulations implement says that unsolicited marketing should not be sent by electronic mail to an individual subscriber unless the **subscriber** has given [consent](#). However, this Regulation refers to the consent of the **recipient**. We consider that the practical interpretation of the meaning of ‘the recipient’ is the **intended** recipient. Where a household member has an individual email address then the consent of that individual is required unless the [soft opt-in](#) criteria are satisfied. Where a household has a household email address (for example, familyname@domainname.com) then the consent of someone whom it is reasonable to believe does speak on behalf of the family is sufficient unless the [soft opt-in](#) criteria are satisfied.

## What is ‘soft opt-in’ (Regulation 22(3))?

This is what the law goes on to state.

Marketers may send or instigate the sending of electronic mail for marketing purposes to an [individual subscriber](#) where:

- they have obtained your contact details in the course of a sale or negotiations for the sale of a product or service to you;
- the direct marketing material they are sending is in respect of their similar products and services only; **and**

- you have been given a simple means of refusing (free of charge except for the cost of sending it) the use of your contact details for marketing purposes at the time those details were initially collected and, where you did not refuse the use of those details, at the time of **each subsequent** communication.

In other words, if marketers satisfy these criteria, they do not need prior consent to send marketing by electronic mail to individual subscribers. If they cannot satisfy these criteria, they cannot send marketing by electronic mail to individual subscribers without their prior consent.

### **How does the Information Commissioner interpret ‘in the course of a sale or negotiations for the sale of a product or service’?**

A sale does not have to be completed for this criterion to apply. It may be difficult to establish where negotiations may begin. However, where you have actively expressed an interest in purchasing a company’s products and services and not opted out of further marketing of that product or service or **similar products and services** at the time your details were collected, the company can continue to market you by electronic mail unless and until you opt out of receiving such messages at a later date.

We do not consider that ‘negotiations for the sale of a product or service’ includes the use of cookie technology to identify your area of interest when they are browsing a website. Unless you have expressly communicated your interest by, for example, asking for a quote, no ‘negotiations’ can be said to have taken place for the purpose of these Regulations.

As another example, if you send an email to a national retailer asking them if they are going to open a branch in your town, you would expect a response of ‘yes’ with details or ‘no’ perhaps with details of their other stores in your area. This query does not, however, constitute part of a negotiation for the sale of a product or service. It does not constitute an invitation to the retailer to send you further information about their products or services. Nor does it indicate consent to receive further promotional emails from that retailer. The retailer could send you emails promoting their products and services if you:

- expressly invited them to;
- consented to their suggestion that they send you promotional emails; or
- did not object to receiving emails in the course of a sale or negotiations for a sale.

### **How does the ICO interpret ‘similar products and services’?**

We are taking a purposive approach here. In our view, the intention of Regulation x is to make sure you do not receive promotional material about products and services that you would not reasonably expect to receive. For example, if you have shopped on-line at a supermarket’s website (and not objected to receiving further email marketing from that supermarket), you would expect at some point in the future to receive further emails promoting the diverse range of goods available at that supermarket.

Ultimately, if you feel the company has gone beyond the boundaries of your reasonable expectation, you can opt out, something which most responsible marketers will be keen to avoid. For the time being, therefore, we will focus particular attention on failures to comply with opt-out requests. We will continue to monitor the extent to which marketers take the reasonable expectations of individual subscribers into consideration.

### **Can marketers pass my email address or mobile number on to a third party for them to use for marketing purposes?**

If the email addresses or mobile numbers in question are those of individual subscribers, the third party will not be able to use them to send unsolicited marketing material unless you have consented to receiving it from that third party (that is, 'the sender'). Marketers must make it clear who they are proposing to pass the details on to and what sort of products and services they will be offering.

For example, if you give a positive response to a phrase such as 'We would like to pass your details on to specially selected third parties so that they can send you more information about holidays in America. Do you agree to this?' it is likely to be sufficient to allow third parties to use those contact details for promoting holidays in America by electronic mail.

A phrase such as 'We will pass your details on to third parties unless you write to us and tell us that you don't agree' will not be sufficient. Marketers should not use contact lists which have been obtained in these circumstances.

The decision about what happens to your electronic contact details must rest with you. No disclosure can be made to third parties for their marketing purposes unless you actively consent to such a disclosure taking place.

### **Viral marketing**

#### **How do the rules apply to 'viral marketing'?**

So-called 'viral marketing' is where:

- 1 a marketer asks a person to send the original marketing message to a friend or friends; or
- 2 the marketer asks a person to hand over their friends' contact details.

This process may or may not be incentivised in some way.

It has come to our attention that some companies mistakenly see either of these options as a way of getting around the prior consent rule.

We recognise that you might recommend a good deal to a friend whether the marketer prompts you or not. We also recognise that you may check with your friends first before passing their details on. This is the sort of thing that individuals would do acting in good faith and in the interests of their friends.

Arguably, where 1 applies, marketers are encouraging their customers to break the law (that is, send an unsolicited message to an individual subscriber without prior consent) in order to promote their name. Clearly, this would be a bad way to promote an organisation's name, products and services and marketers should tell their customers only to forward emails to those they are certain are happy to receive them. We would point out that where this is incentivised, there is a strong argument that the marketer is the 'instigator' of the message. Customers wouldn't do it without the promise of a reward. It is the instigator of the message who is liable for the sending of that message. If you allow your line to be used to break the law (that is, by passing your message on), you may also be liable in this scenario.

Where 2 applies, the marketer will be sending a message to someone who they assume has consented through a third party (the third party being the friend who passed the details on to the marketer) to receiving messages. It is quite clear that under the legislation the marketer is liable for any messages sent to email addresses or mobile numbers obtained using b. As with all **third party electronic mailing lists**, marketers cannot use this list unless they are satisfied that you have notified them that you consent to receiving such messages. Marketers should therefore ask you to confirm that you have the consent of the individuals whose details you are passing on. They should also check that you haven't already asked them to **suppress** your details. Finally, marketers should also tell you that they propose to let those individuals know how they got their details. The **DPA** would not prevent them from doing this. This is particularly important if they propose to incentivise their customers in any way.

Even if 1 or 2 is not incentivised, marketers should bear in mind that this mechanism may be used maliciously by customers. For example, it is possible to envisage circumstances where, as a puerile trick, a person might hand the contact details of another person to a whole range of companies. While it is hard to see how the marketer is directly responsible for the malicious activities of one of their customers, they should bear in mind that, at the very least, the recipient may forever associate the organisation's name with that unpleasant experience. In any event, the marketer should make sure they rapidly suppress the recipient's contact details to avoid further distress.

## **Email tracking**

**Some marketing emails contain clear gifs. They can help work out how successful a campaign has been. Is that activity caught by the Regulations?**

Yes, it is.

The important point is that you should be told if there is such a tracking device in the marketing emails you receive. It should also be explained how to switch the web beacon or clear gif off.

## **How do these Regulations apply to unsolicited marketing material sent by electronic mail to individual employees of a corporate subscriber where that material promotes goods and services which are clearly intended for their personal or domestic use?**

We have no authority to take enforcement action based on the content of emails sent to corporate subscribers even though that content may be entirely inappropriate for business to business communications.

In the 'Spam' report of an Inquiry by the All-Party Parliamentary Internet Group (APPIG) there was a recommendation that the Information Commissioner set out clear guidance as to how business-to-business communications are to be distinguished from messages intended for individual subscribers. This recommendation was prompted by the observation of one of the witnesses to the inquiry that an invitation to buy Viagra sent to the sales address of a shipping company could only be construed as being sent to an individual since it would not be of any business relevance. The problem is that the 'opt-in' and 'soft opt-in' rules do not extend to the sending of marketing emails to corporate subscribers. In the example quoted, the subscriber will be the shipping company because that is the person which is party to a contract with a provider of public electronic communications systems. This means, therefore, that even an email addressed to an individual within the company will not be covered by the Regulations although it may be subject to the DPA and an opt-out request under [Section 11](#) of the DPA could be issued. In other words, the fact that an email sent to a corporate subscriber's address is obviously aimed at an individual (because it promotes a product that is for personal or domestic use) is not relevant for the purposes of the Regulations. Email communications sent to a corporate subscriber are simply not covered by the Regulations except in so far as there is a requirement to identify the sender and to provide contact details. However they would be covered by the individual's right to object to direct marketing in the DPA.

We understand that the CAP (Committee of Advertising Practice) Code restricts the sending of such emails to corporate email addresses. For more information on the CAP Code visit their website [www.cap.org.uk](http://www.cap.org.uk).

## **How do the Regulations apply to the sending of text, picture and video messaging to mobile phones which are supplied to individual employees by corporate subscribers?**

The law applies in exactly the same way as it does to the sending of emails to corporate subscribers.

### **Electronic mail marketing to partnerships**

#### **How do the Regulations apply to the sending of marketing messages by electronic mail to partnerships?**

A non-limited liability partnership in England, Wales or Northern Ireland is an individual subscriber under these Regulations. This means that such a partnership (which may consist of several individuals and which may have a large number of

employees) is afforded the same protection under these Regulations as a residential subscriber or a sole trader. This protection is not available to limited liability partnerships, to Scottish partnerships or to corporate subscribers which include small and medium sized limited companies.

Strictly speaking, marketers must get prior consent to send emails to any email address used by an unincorporated partnership unless the ‘**soft optin**’ criteria apply. This may be the generic contact email address of the partnership, for example, mail@partnershipname.com or it may be the separate email addresses used by individuals (partners, associates, other employees) working at that partnership.

This issue was the matter of some debate during the Department of Trade and Industry’s consultation exercise prior to the implementation of these Regulations. ([http://www.dti.gov.uk/industries/ecomunications/directive\\_on\\_privacy\\_electronic\\_communications\\_200258ec.html](http://www.dti.gov.uk/industries/ecomunications/directive_on_privacy_electronic_communications_200258ec.html))

### **What does this mean in practice?**

Although, strictly speaking, the partnership could be viewed as the commercial equivalent of a large household (see above comments on the issue of ‘**recipient**’), we recognise that there may be circumstances when the wishes of the subscriber, that is the unincorporated partnership (which is legally responsible for charges incurred on its lines) might override the wishes of the employee. For example, an employer may insist that an employee keeps in regular contact with conference organisers. The employer’s wishes in respect of unsolicited emails from conference organisers would override the wishes of the employee.

However, if one individual working at the partnership consents to receiving unsolicited marketing material from the organiser, this does **not** mean that every individual working at the partnership has consented to receiving such material from the organiser.

Marketers must also remember that where they know the name of the person they are seeking to contact, that person’s contact details must be processed in line with the eight data protection principles of the DPA. For example, where the DPA applies, all individuals have a fundamental opt-out right under **Section 11**.

### **Who is able to give consent on behalf of individuals working at a partnership?**

If marketers want to target an individual working at a partnership, they must make sure they obtain the consent of the individual (or a person who can be reasonably assumed to be entitled to give consent on that individual’s behalf, for example, a secretary or assistant) before sending unsolicited electronic mail to that individual unless the ‘**soft opt-in**’ criteria apply.

Partnerships may wish to make sure that their key frontline staff, for example, switchboard operators, receptionists, administrators, secretaries are advised of any office policy regarding the disclosure of employee contact details.

Individuals employed by partnerships must remember that in respect of their work email address and mobile phone, it is ultimately their employer's consent choices which take precedence over their individual choices.

### **Who is able to give consent on behalf of the partnership?**

Marketers must make sure that they have obtained consent from a person working for that partnership who, it is reasonable to assume has the authority to give such consent. Partnerships may wish to make sure that their key frontline staff, for example, switchboard operators, receptionists, administrators, secretaries, are advised of any office policy regarding the disclosure of office contact details.

### **Electronic mail marketing to sole traders**

#### **How do the Regulations apply to sending of marketing messages by electronic mail to sole traders?**

Sole traders are also individual subscribers under the Regulations.

That said, we have recognised in earlier enforcement that marketers may have difficulty in distinguishing sole traders from small limited companies, particularly where a sole trader's contact details are available in business directories. However, marketers should use their best efforts to make sure they do not send marketing messages by electronic mail to sole traders in breach of the Regulations. For example, it is possible to check free of charge on Companies House website [www.companieshouse.gov.uk](http://www.companieshouse.gov.uk) whether or not a trading entity is a limited company.

### **Subscribers' FAQs**

#### **I have made all my consent choices using one email account or mobile number. How do the Regulations apply when I change my email address or mobile number?**

A company cannot be expected to know that you want to transfer your consent options to a different email address or a different mobile phone number unless you tell them.

#### **I use a number of different email addresses simultaneously, do my consent choices for one account automatically transfer to the others?**

No. A company cannot be expected to know that you can receive marketing messages on a number of different email addresses. If you want to make sure a company who has been marketing you by email never contacts you again at any of your existing email addresses, you must make sure you provide that company with a list of all your email addresses. Or, you should make sure you opt out of receiving further marketing messages at each different email address. For the future, you will need to remember that your consent choices for one account do not automatically transfer to others.

**I sometimes access my personal email account at work, at the library, at an internet café, at a hotel. Do my rights only apply when I access the account at home?**

Not necessarily. A responsible marketer should be able to identify which domain names are generally used by individual subscribers rather than corporate subscribers.

However, there may be difficulties in relying on your evidence in enforcement or compensation proceedings where you only access your personal email account through a line paid for by a corporate subscriber even if that subscriber charges you for the privilege.

**We are a partnership and, therefore, an [individual subscriber](#) under the Regulations. How do the rules apply to our employees?**

See [Partnerships](#) above.

**I am a sole trader and, therefore, an individual subscriber under the Regulations. How do the rules apply to me?**

See [Sole Traders](#) above.

**How do I stop getting marketing messages sent by unsolicited electronic mail?**

Pay close attention to the options that organisations give you when they collect your information on-line. Organisations have a general obligation under data protection law to be transparent about what they plan to do with your information. (See our leaflet '[Rules on electronic marketing for individuals](#)'). These Regulations place additional obligations upon organisations who collect your details for marketing by electronic mail. These obligations will give you more options. Even where you have opted in to receiving marketing by electronic mail, you should be given a valid address for opt-out requests.

Bear in mind that you may be getting emails or text messages from an organisation because you consented to receiving information from third parties. In other words, your details may have been entered, entirely legitimately, on [third party electronic mailing lists](#). In future, you should check your options when handing your details over. If you are not satisfied with the options you are given or the explanations that have been provided, you should consider taking your business or your support elsewhere.

If you have already been contacted by a company you do not wish to hear from, contact the company and tell them to stop sending marketing material to you. They are obliged to identify themselves in their messages and to provide a valid address for opt-out requests. Make sure you provide them with details of the number or email address that they contacted you on. This enables them to add those details to their suppression list which will ensure that they keep a record of your objection.

We recognise that many people are reluctant to send opt-out requests to unsolicited marketing emails that come from senders that are outside UK jurisdiction. Many people are also concerned about some unscrupulous marketers failing to comply with their obligation to provide a valid address for opt-out requests that is free of charge. If this applies to you, we recommend that you do the following:

#### **‘Spam’ emails**

Most spam email originates from outside the UK and should never be replied to unless you are familiar with the company and trust that company. We have produced separate information about technical measures you can take to block [spam](#).

#### **Text, picture and video messages with a premium rate line opt-out**

If you are certain that you have never given the company your prior consent, copy the text out, complete our complaints form and send the details to us.

If you think you may have given your consent at some stage, look for a postal address in the message. This may be no more than a name and a PO Box number. Write to the company and tell them to stop sending messages to your number. You do not need to give them your name or address but you should state clearly that:

- a you are the subscriber to that number; and
- b you do not want to receive further messages from them on that number

You should make sure you keep a copy of your letter and proof of posting

Contact ICSTIS. This message may breach their code of practice on the use of premium rate lines.

Phone: 0800 500 212 (9am to 4pm, Monday to Friday)

Website: [www.icstis.org.uk](http://www.icstis.org.uk)

There are no statutory lists similar to the **TPS** and the **FPS** for those who do not want to receive unsolicited electronic mail. There are non-statutory direct marketing industry initiatives in this area and you may want to contact the Direct Marketing Association for more information:

Website	<a href="http://www.dma.org.uk">www.dma.org.uk</a>
Phone	0845 703 4599
Fax	020 7323 4426
Address	Direct Marketing Association DMA House 70 Margaret Street London W1M 8SS

#### **How do I make a complaint about marketing by unsolicited electronic mail?**

If you want to complain to us, contact our Helpline on 01625 545745 and ask for a [privacy regulations complaint form and leaflet](#), or see our website.

If you complain, please make sure you answer **every** question on the form. The questions have been prepared to obtain basic information that we would need if we were to rely on your evidence in formal enforcement action. The questions take account of our previous enforcement experience. What may seem irrelevant to you could be vital to the success or failure of any enforcement action we might take. Where we have evidence of a persistent and widespread failure to comply, we would need to find the strongest cases to rely upon in court. By providing this information up front, you are helping us to identify the strongest cases more quickly.

### **Am I entitled to compensation?**

If you can demonstrate to a court that the caller has breached these Regulations and that by doing so, you have been caused quantifiable damage; you may be entitled to compensation under Regulation 30 of these Regulations. Please note that if a caller can demonstrate to a court that they did what could reasonably be required of them to comply with the Regulations, this would be a defence against any compensation claim.

We have produced two leaflets '[Claiming compensation](#)' (Leaflet 7) and '[Taking a case to court](#)' (Leaflet 8) for those wanting to take action for compensation under Section 13 of the DPA. Much of the information also applies to those who want to seek compensation under Regulation 30 of these Regulations.

### **Contact us**

Website      [www.ico.gov.uk](http://www.ico.gov.uk)  
Email        please use the online enquiry form on our [website](#)  
Helpline     01625 545745  
Fax          01625 524510

Address      Information Commissioner's Office  
                Wycliffe House  
                Water Lane  
                Wilmslow  
                Cheshire  
                SK9 5AF