

BACKGROUND

The Unsolicited Communications Regulations 2005 ("the Regulations") came into effect in the Isle of Man on 1st October 2005 and are based upon Regulations 19 to 33 of the UK's Privacy and Electronic Communications (EC Directive) Regulations which came into operation in 2003 and gave effect to Directive 2002/58/EC. The regulations can be found on our website www.gov.im/odps

EFFECT OF THE REGULATIONS

Direct marketing by Email (includes SMS text messages as defined in Regulation 1)

The transmission or the instigation of the transmission of an unsolicited direct marketing Email is a breach of Regulation 5 **unless**

- the recipient has previously notified the sender that he consents to receiving such communications, **or**
- the sender has an existing business relationship with the recipient for a similar product or service.

All direct marketing Emails must provide the recipient with a simple free of charge method except for the cost of transmission) to prevent any further direct marketing Emails being sent to the recipient.

NOTE: The simple free of charge method except for the cost of transmission does not permit a company to utilise a premium rate telephone number as a method to prevent further direct marketing emails.

In addition, Regulation 6 requires that each direct marketing email must provide the true identity of the sender and a valid address for the recipient to send a request that no further direct marketing emails are sent.

Direct Marketing by Telephone and Fax

An unsolicited direct marketing telephone call to a subscriber listed on the Telephone Preference Service (TPS), currently managed and maintained by the Direct Marketing Association (DMA) on behalf of OFCOM, is a breach of Regulation 4 **unless** the subscriber has previously consented to receiving such calls. The subscriber may withdraw consent at any time and where consent is withdrawn the caller cannot make further direct marketing calls to that line.

In addition, under Regulation 7, the caller must provide the name of the person (company) making the call and if requested either the address of the person or a telephone number on which he can be reached free of charge.

Regulation 3 makes similar provisions in relation to **direct marketing communications by Fax**. However, under Regulation 7, a direct marketing Fax must always provide the address of the person or a telephone number on which he can be reached free of charge.

Automated Calling Systems

Using an Automated Calling System to transmit, or instigate the transmission of, a recorded message, such as "You have won a holiday", is a breach of Regulation 2 unless a subscriber has previously consented to receiving such calls.

Subject to Regulation 4 an automated calling system may be used for “live speech”, that is where an operator will talk to the subscriber.

ENFORCEMENT

Regulation 12 extends the enforcement functions of the Isle of Man Data Protection Supervisor (the “Supervisor”) under the provisions of part 4 of the Data Protection Act 2002 to these Regulations. A contravention of the Regulations is not an offence; however the Supervisor may serve an Enforcement Notice upon any person who is found to have contravened the Regulations. Failure to comply with an Enforcement Notice is an offence.

COMPENSATION

Under Regulation 11 a person is entitled to bring proceedings in the High Court for compensation against the person who caused damage by reason of any contravention of the Regulations.

If you require any further advice, please contact the Office of the Data Protection Supervisor:

Telephone 01624 693260
Email enquiries@odps.gov.im
Website www.gov.im/odps