

Unsolicited Marketing Media Factsheet



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

Definitions

Unsolicited marketing is information sent even though it has not been requested. It can reach people in the form of a telephone call, email, text message or fax.

The Law

The relevant legislation in this area is the Privacy & Electronic Communications Regulations, 2003 (PECR).

For electronic communications network and service providers, and individuals, the regulations cover the following:

- the use of publicly available electronic communications services for direct marketing purposes
- unsolicited direct marketing activity by telephone, by fax, by electronic mail (this means text/video/picture messaging and email) and by automated calling systems

Individuals' rights

The PECR provide individuals with the right to refuse unsolicited communications through fax, telephone, email and text messages. The legislation empowers individuals with the right to say that they do not want to receive unsolicited marketing materials. If, after complaining directly to the organisation, individuals continue to receive unsolicited marketing information, they can complain to the Information Commissioner's Office (ICO).

Direct marketing telephone calls

Direct marketing calls from UK based companies can be an unwanted intrusion into individuals' personal lives. There are a number of effective ways to avoid sales and marketing calls.

Top tips on preventing direct marketing calls

1. **Read the small print** – many organisations gather information about potential customers from forms and surveys that have been completed. Individuals should read the small print carefully and be mindful of options to opt in/opt out.
2. **Say no** – by law individuals have the right to ask a particular company to stop calling them. The company should then mark the telephone number as one they cannot call.
3. **Join the Telephone Preference Service (TPS)** – this is free and simple to join. If a telephone number is registered on the TPS it is likely to be a breach of the regulations for any UK organisation to make sales calls to that number. Registration of a telephone number can be done at www.mpsonline.org.uk/tps.

Automated calls

Organisations that make automated direct marketing phone calls to any subscriber, without their express permission to do so, are breaching the PECR. This prior consent rule for recorded message calls has been in force for several years and responsible organisations should be fully aware of the rule. The ICO's powers in this area are currently limited; however, we are in discussions with the Department for Trade and Industry (DTI) regarding revised information gathering and investigative powers. Many of the calls people receive come from outside the EU and are therefore outside the ICO's jurisdiction.

If an individual receives an automated direct marketing call, they should record any contact details so that they can be reported to the ICO where applicable. Individuals should beware of inadvertently calling a premium rate line to respond to a message. The use of premium rate lines is monitored by a separate regulator, ICSTIS.

Faxes

Prior consent must be obtained before faxes can be sent to individuals. Individual and corporate subscribers can register their objection to receiving unsolicited direct marketing faxes by registering their number with the Fax Preference Service at www.mpsonline.org.uk/fps.

Unsolicited marketing emails (spam)

Emails that contain marketing messages affect a large proportion of internet users across the world. The PECR cover emails with marketing content sent from within the EU. Emails of a marketing nature should only be sent where the individual has "opted in" to receive them, unless the individual's email address was obtained in the context of a commercial relationship. Individuals should always be given the opportunity to opt out – and stop receiving emails.

Enforcement action

Wherever possible, the ICO tries to resolve complaints without resorting to legal enforcement. The ICO works with its European counterparts and has a memorandum of understanding with the United States to try to reduce the amount of unsolicited marketing materials generated. Taking effective action is not easy: those engaging in unlawful activity do not voluntarily identify themselves by putting their name and contact details at the end of their message. In addition, the ICO is responsible for enforcing PECR within the UK, but as we know a considerable amount of unsolicited marketing information comes from beyond the UK. PECR does not cover the sending of emails to business email addresses.

Unsolicited direct marketing messages that are deceptive or fraudulent are a matter for the Office of Fair Trading (OFT). The ICO works closely with the OFT in respect of illegal content as they have sanctions in this area.

More information on the steps people can take to protect themselves against spam is available at www.ico.gov.uk

SMS text messages

Individuals should always be careful that they only give their mobile number to people they can trust. Unsolicited text messages should only be received by those who have opted in to receiving them and should always include an opt out option at the end of the message, for example an address or contact number.

However if, after opting out, people continue to receive unsolicited text messages they have the right to make a complaint to the Information Commissioner. PECR does not cover the sending of SMS text messages to business mobile phone numbers.

Complaining

If an individual someone receives unsolicited electronic marketing messages they can complain to the ICO. We do advise people to take pro-active steps themselves first. Our website contains useful measures people can take such as reducing spam and joining TPS. Our website also has forms for people to complete to help them complain and contains guidance on the information they would need to include.

Taking action

In the vast majority of cases the ICO manages to achieve compliance without recourse to formal powers. Where necessary, the ICO can issue an enforcement notice to achieve compliance with the regulations. An enforcement notice sets out the actions an organisation needs to take to achieve compliance. Failure to comply with the enforcement notice can lead to a prosecution and up to a £5,000 fine.

The ICO has been in talks with the DTI regarding strengthening its enforcement powers. We support the introduction of enforcement provisions that are closely modelled on the Stop Now Orders provided for in the Stop Now Orders (EC Directive) Regulations 2001. Once informal efforts to resolve a problem had been exhausted, the ICO would be able to apply to a court for an order requiring a person, considered to be contravening the regulations, to stop the non-compliant conduct.

Other bodies

The misuse of communication networks is subject to regulation by Ofcom.

www.ofcom.org.uk

ICSTIS is responsible for regulating premium rate telephone lines.

www.icstis.org.uk

Additional information

Guidance to the Privacy and Electronic Communication (EC Directive) Regulations (2003). provides information on unsolicited marketing and spam. A full copy of the regulations is available on our website at: www.ico.gov.uk

To contact ICO's helpline please telephone 01625 545745

To contact our press office please telephone 020 7282 2960