

EXPLANATORY NOTE

(This note is not part of the Regulations)

Directive [97/66/EC](#) of the European Parliament and of the Council (“the 1997 Directive”) concerns the processing of personal data and the protection of privacy in the telecommunications sector. It supplements Directive [95/46/EC](#) on the protection of individuals with regard to the processing of personal data and on the free movement of such data (provisions for the implementation of which are contained in the [Data Protection Act 1998—c.29](#)).

These Regulations implement so much of the 1997 Directive as relates to the use of publicly available telecommunications services for direct marketing purposes.

Part I contains general provisions. In particular, regulation 2 relates to the interpretation of the Regulations and defines “telecommunications service provider” in terms which do not limit such providers to persons who are licensed under section 7 of the Telecommunications Act [1984 \(c. 12\)](#) to run telecommunication systems.

The substantive provisions are contained in Part II. Regulation 5(2) and (3) defines “direct marketing” and “caller” for the purposes of the Part.

Regulations 6 and 7 apply whether the called subscriber is an individual or a corporate subscriber. Regulation 6 contains a general prohibition on the use of automated calling systems for direct marketing purposes except where, in a particular case, the called subscriber has previously given his consent. Regulation 7 prohibits the communication of unsolicited direct marketing material by facsimile transmission either where, in a particular case, the called subscriber has previously notified the caller that such communications should not be made or where the called subscriber’s number is, at his request, included in the record required to be kept by the Director General of Telecommunications under paragraph (4) of the regulation.

Regulations 8 and 9 apply only where the called subscriber is an individual and paragraph (1) of regulation 8 provides that the provisions of that regulation and those of regulation 7 are without prejudice to each other. Regulation 8 contains a general prohibition on the communication by facsimile transmission of direct marketing material except where, in a particular case, the called subscriber has previously given his consent. Regulation 9 applies where neither automated calling systems nor facsimile transmission are used; it prohibits unsolicited calls for direct marketing purposes either where, in a particular case, the called subscriber has previously notified the caller that such calls should not be made or where the called subscriber’s number is, at his request, included in the record required to be kept by the Director General of Telecommunications under paragraph (4) of the regulation. Regulations 10 and 11 contain ancillary and supplementary provisions. Those of regulation 10 relate to notifications for the purposes of regulations 7(4)(a) and 9(4)(a). Paragraphs (1) and (2) of regulation 11 provide that where a direct marketing call is made, the name of the caller must be given and, on the request of the recipient of the call, his address or freephone telephone number except that, where either an automated calling system or facsimile transmission is used, that address or freephone number must be given without any such request. Paragraph (3) provides that a person by whom numbers are allocated to subscribers shall, on request made for the purposes of the Director’s functions under regulation 7(4) or 9(4), furnish

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information as to when a number ceases to be allocated to a subscriber. Paragraph (4) provides that regulation 7 or 9 shall not be taken to be contravened by reason of the making of a call to a number listed in the record kept under paragraph (4) of the regulation in question if that number was not so listed at any time within the 28 days preceding the making of the call.

Part III relates to compensation and enforcement.

Regulation 12 entitles a person to compensation if he suffers damage by reason of any contravention of the Regulations. Regulation 13 applies certain enforcement provisions of the Data Protection Act 1984 (c. 35) for the purposes of the enforcement of the Regulations. Regulation 14 provides that either the Director General of Telecommunications or a person aggrieved by an alleged contravention of the Regulations may request the Data Protection Registrar to exercise his functions under the provisions of the 1984 Act applied by regulation 13. Regulation 15 requires the Director to comply with requests made by the Registrar for advice on technical and similar matters relating to telecommunications.

A regulatory impact assessment is available and can be obtained from Communications and Information Industries Directorate, Department of Trade and Industry, 151 Buckingham Palace Road, London SW1W 9SS. Copies have been placed in the libraries of both Houses of Parliament.

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Changes and effects yet to be applied to :

- Sch. 1 para. 1 coming into force by [S.I. 1998/3170 reg. 1](#)
- Sch. 1 para. 2 coming into force by [S.I. 1998/3170 reg. 1](#)
- Sch. 2 para. 1 coming into force by [S.I. 1998/3170 reg. 1](#)
- Sch. 2 para. 2 coming into force by [S.I. 1998/3170 reg. 1](#)
- Sch. 2 para. 3 coming into force by [S.I. 1998/3170 reg. 1](#)
- Sch. 2 para. 4 coming into force by [S.I. 1998/3170 reg. 1](#)
- Sch. 2 para. 5 coming into force by [S.I. 1998/3170 reg. 1](#)
- Sch. 2 para. 6 coming into force by [S.I. 1998/3170 reg. 1](#)
- Sch. 2 para. 7 coming into force by [S.I. 1998/3170 reg. 1](#)
- Regulations revoked by [S.I. 1999/2093 reg. 3\(1\)](#)
- reg. 1 coming into force by [S.I. 1998/3170 reg. 1](#)
- reg. 2 coming into force by [S.I. 1998/3170 reg. 1](#)
- reg. 3 coming into force by [S.I. 1998/3170 reg. 1](#)
- reg. 4 coming into force by [S.I. 1998/3170 reg. 1](#)
- reg. 5 coming into force by [S.I. 1998/3170 reg. 1](#)
- reg. 6 coming into force by [S.I. 1998/3170 reg. 1](#)
- reg. 7 coming into force by [S.I. 1998/3170 reg. 1](#)
- reg. 8 coming into force by [S.I. 1998/3170 reg. 1](#)
- reg. 9 coming into force by [S.I. 1998/3170 reg. 1](#)
- reg. 10 coming into force by [S.I. 1998/3170 reg. 1](#)
- reg.10 modified by [S.I. 1999/2093 reg.3\(2\)Sch.1 Pt.I](#)
- reg. 11 coming into force by [S.I. 1998/3170 reg. 1](#)
- reg. 12 coming into force by [S.I. 1998/3170 reg. 1](#)
- reg. 13 coming into force by [S.I. 1998/3170 reg. 1](#)
- reg. 14 coming into force by [S.I. 1998/3170 reg. 1](#)
- reg. 15 coming into force by [S.I. 1998/3170 reg. 1](#)

Changes and effects yet to be applied to the whole Instrument associated Parts and Chapters:

- Act revoked by [S.I. 1999/2093 reg.3\(1\)\(2\)](#)