



THE EUROPEAN COMMUNITIES (ISLE OF MAN) ACT 1973

THE UNSOLICITED COMMUNICATIONS REGULATIONS 2005

Laid before Tynwald.....21st June 2005

Coming into operation.....1st October 2005

In exercise of the powers conferred on the Council of Ministers by section 2B of the European Communities (Isle of Man) Act 1973¹, and of all other enabling powers, and for the purpose of implementing Article 13 (unsolicited communications) of Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector², the following Regulations are hereby made:—

1. Citation, commencement and interpretation

(1) These Regulations may be cited as the Unsolicited Communications Regulations 2005 and shall come into operation on the 1st October 2005.

(2) In these Regulations —

“call” means a telephone connection established by means of a public telecommunication system allowing two-way communication in real time;

“the Commission” means the Communications Commission;

“communication” means any information exchanged or conveyed between a finite number of parties by means of a public telecommunication system, but does not include information conveyed as part of a programme service, except to the extent that such information can be related to the identifiable subscriber or user receiving the information;

“corporate subscriber” means a subscriber who is —

- (a) a company within the meaning of the Companies Act 1931³; or
- (b) any other body corporate or entity which is a legal person distinct from its members;

“direct marketing” means the communication (by whatever means) of any advertising or marketing material which is directed to particular individuals;

“the Directive” means Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector;

¹ 1973 c.14

² OJ L 201, 31.7.2002 p.37

³ XIII p.235

“electronic mail” means any text, voice, sound or image message sent over a public telecommunication system 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;

“individual” means a living individual and includes an unincorporated body of such individuals;

“line” includes anything which performs the function of a line;

“programme service” has the same meaning as in the Broadcasting Act 1993⁴;

“public telecommunication system” has the same meaning as in the Telecommunications Act 1984⁵;

“the Supervisor” means the Isle of Man Data Protection Supervisor;

“user” means any individual using a public telecommunication system.

(2) Expressions used in these Regulations which are not defined in paragraph (1) and are defined in the Data Protection Act 2002⁶ have the same meanings as in that Act.

(3) Expressions used in these Regulations which are not defined in paragraph (1) or the Data Protection Act 2002 and are defined in the Directive have the same meanings as in the Directive.

2. Use of automated calling systems

(1) A person shall neither transmit, nor instigate the transmission of, communications comprising recorded matter for direct marketing purposes by means of an automated calling system except in the circumstances referred to in paragraph (2).

(2) Those circumstances are where the called line is that of a subscriber who has previously notified the caller that for the time being he consents to such communications being sent by, or at the instigation of, the caller on that line.

(3) A subscriber shall not permit his line to be used in contravention of paragraph (1).

(4) For the purposes of this regulation, an automated calling system is a system which is capable of—

- (a) automatically initiating a sequence of calls to more than one destination in accordance with instructions stored in that system; and
- (b) transmitting sounds which are not live speech for reception by persons at some or all of the destinations so called.

3. Use of facsimile machines for direct marketing purposes

(1) A person shall neither transmit, nor instigate the transmission of, unsolicited communications for direct marketing purposes by means of a facsimile machine where the called line is that of—

⁴ 1993 c.12

⁵ 1984 c.11

⁶ 2002 c.2

- (a) an individual subscriber, except in the circumstances referred to in paragraph (2);
- (b) a corporate subscriber who has previously notified the caller that such communications should not be sent on that line; or
- (c) a subscriber and the number allocated to that line is listed in the register kept under regulation 8.

(2) The circumstances referred to in paragraph (1)(a) are that the individual subscriber has previously notified the caller that he consents for the time being to such communications being sent by, or at the instigation of, the caller.

(3) A subscriber shall not permit his line to be used in contravention of paragraph (1).

(4) A person shall not be held to have contravened paragraph (1)(c) where the number allocated to the called line has been listed on the register for less than 28 days preceding that on which the communication is made.

(5) Where a subscriber who has caused a number allocated to a line of his to be listed in the register kept under regulation 8 has notified a caller that he does not, for the time being, object to such communications being sent on that line by that caller, such communications may be sent by that caller on that line, even though the number allocated to that line is listed in the said register.

(6) Where a subscriber has given a caller notification pursuant to paragraph (5) in relation to a line of his —

- (a) the subscriber shall be free to withdraw that notification at any time, and
- (b) where such notification is withdrawn, the caller shall not send such communications on that line.

(7) This regulation is without prejudice to regulation 2.

4. Unsolicited calls for direct marketing purposes

(1) A person shall neither use, nor instigate the use of, a public telecommunication system for the purposes of making unsolicited calls for direct marketing purposes where —

- (a) the called line is that of a subscriber who has previously notified the caller that such calls should not for the time being be made on that line; or
- (b) the number allocated to a subscriber in respect of the called line is one listed in the register kept under regulation 9.

(2) A subscriber shall not permit his line to be used in contravention of paragraph (1).

(3) A person shall not be held to have contravened paragraph (1)(b) where the number allocated to the called line has been listed on the register for less than 28 days preceding that on which the call is made.

(4) Where a subscriber who has caused a number allocated to a line of his to be listed in the register kept under regulation 9 has notified a caller that he does not, for the time being, object to such calls being made on that line by that caller, such calls may be made by that caller on that line, notwithstanding that the number allocated to that line is listed in the said register.

(5) Where a subscriber has given a caller notification pursuant to paragraph (4) in relation to a line of his —

- (a) the subscriber shall be free to withdraw that notification at any time, and
- (b) where such notification is withdrawn, the caller shall not make such calls on that line.

5. Use of electronic mail for direct marketing purposes

(1) This regulation applies to the transmission of unsolicited communications by means of electronic mail to individual subscribers.

(2) Except in the circumstances referred to in paragraph (3), a person shall neither transmit, nor instigate the transmission of, unsolicited communications for purposes of direct marketing by means of electronic mail unless the recipient of the electronic mail has previously notified the sender that he consents for the time being to such communications being sent by, or at the instigation of, the sender.

(3) A person may send or instigate the sending of electronic mail for purposes of direct marketing where —

- (a) that person has obtained the contact details of the recipient of that electronic mail in the course of the sale or negotiations for the sale of a product or service to that recipient;
- (b) the direct marketing is in respect of that person's similar products and services only; and
- (c) the recipient has been given a simple means of refusing (free of charge except for the costs of the transmission of the refusal) the use of his contact details for purposes of such direct marketing, at the time that the details were initially collected, and, where he did not initially refuse the use of the details, at the time of each subsequent communication.

(4) A subscriber shall not permit his line to be used in contravention of paragraph (2).

6. Use of electronic mail for direct marketing purposes where the identity or address of the sender is concealed

A person shall neither transmit, nor instigate the transmission of, a communication for purposes of direct marketing by means of electronic mail —

- (a) where the identity of the person on whose behalf the communication has been sent has been disguised or concealed; or
- (b) where a valid address to which the recipient of the communication may send a request that such communications cease has not been provided.

7. Information to be provided for purposes of regulations 2, 3 and 4

(1) Where a public telecommunication system is used for the transmission of a communication for direct marketing purposes the person using, or instigating the use of the system shall ensure that the following information is provided with that communication —

- (a) in relation to a communication to which regulation 2 or 3 applies, the particulars mentioned in paragraph (2)(a) and (b);
- (b) in relation to a communication to which regulation 4 (telephone calls) applies, the particulars mentioned in paragraph (2)(a) and, if the recipient of the call so requests, those mentioned in paragraph (2)(b).

(2) The particulars referred to in paragraph (1) are —

- (a) the name of the person;
- (b) either the address of the person or a telephone number on which he can be reached free of charge.

8. Register to be kept for purposes of regulation 3

(1) For the purposes of regulation 3 the Commission shall maintain and keep up-to-date, or cause to maintain and be kept up-to-date, on or off the Island in printed or electronic form, a register of the numbers allocated to subscribers, in respect of particular lines, who have notified them (notwithstanding, in the case of individual subscribers, that they enjoy the benefit of regulation 3(1)(a) and (2)) that they do not for the time being wish to receive unsolicited communications for direct marketing purposes by means of facsimile machine on the lines in question.

(2) The Commission shall remove a number from the register maintained under paragraph (1) where it has reason to believe that it has ceased to be allocated to the subscriber by whom they were notified pursuant to paragraph (1).

(3) On the request of —

- (a) a person wishing to send, or instigate the sending of, such communications as are mentioned in paragraph (1), or
- (b) a subscriber wishing to permit the use of his line for the sending of such communications,

for information derived from the register kept under paragraph (1), the Commission shall, unless it is not reasonably practicable so to do, on the payment to it of such fee (if any) as is prescribed under the Fees and Duties Act 1989⁷, make the information requested available to that person or that subscriber.

9. Register to be kept for purposes of regulation 4

(1) For the purposes of regulation 4 the Commission shall maintain and keep up-to-date, or cause to maintain and be kept up-to-date, on or off the Island in printed or electronic form, a register of the numbers allocated to individual subscribers, in respect of particular lines, who have notified it that they do not for the time being wish to receive unsolicited calls for direct marketing purposes on the lines in question.

⁷ 1989 c.12

(2) The Commission shall remove a number from the register maintained under paragraph (1) where it has reason to believe that it has ceased to be allocated to the subscriber by whom it was notified pursuant to paragraph (1).

(3) On the request of—

- (a) a person wishing to make, or instigate the making of, such calls as are mentioned in paragraph (1), or
- (b) a subscriber wishing to permit the use of his line for the making of such calls,

for information derived from the register kept under paragraph (1), the Commission shall, unless it is not reasonably practicable so to do, on the payment to it of such fee (if any) as is prescribed under the Fees and Duties Act 1989, make the information requested available to that person or that subscriber.

10. Modification of contracts

To the extent that any term in a contract between a subscriber to and the operator of a public telecommunication system would be inconsistent with a requirement of these Regulations, that term shall be void.

11. Proceedings for compensation for contravention

(1) A person who suffers damage by reason of any contravention of any of the requirements of these Regulations by any other person shall be entitled to bring proceedings in the High Court for compensation from that other person for that damage.

(2) In proceedings brought against a person by virtue of this regulation it shall be a defence to prove that he had taken such care as in all the circumstances was reasonably required to comply with the relevant requirement.

(3) The provisions of this regulation are without prejudice to those of regulation 12.

12. Enforcement — extension of Part 4 of the Data Protection Act 2002

(1) The provisions of Part 5 of the Data Protection Act 2002 and of Schedules 6 and 8 to that Act are extended for the purposes of these Regulations and, for those purposes, shall have effect subject to the modifications set out in the Schedule.

(2) In regulations 13 and 14, “enforcement functions” means the functions of the Supervisor under the provisions referred to in paragraph (1) as extended by that paragraph.

(3) This regulation is without prejudice to regulation 11.

13. Request to Supervisor to exercise enforcement functions

Where it is alleged that there has been a contravention of any of the requirements of these Regulations either the Commission or a person aggrieved by the alleged contravention may request the Supervisor to exercise his enforcement functions in respect of that contravention, but those functions shall be exercisable by the Supervisor whether or not he has been so requested.

14. Technical advice to Supervisor

The Commission shall comply with any reasonable request made by the Supervisor, in connection with his enforcement functions, for advice on technical and similar matters relating to electronic communications.

Regulation 12(1)

SCHEDULE

MODIFICATIONS OF THE DATA PROTECTION ACT 2002

Enforcement notices

1. (1) In section 36(1) —
 - (a) for “data controller” substitute “person”;
 - (b) for “data protection principles” substitute “requirements of the Unsolicited Communications Regulations 2005 (“the relevant requirements”)”;
 - (c) for “principle or principles” substitute “requirement or requirements”.
- (2) In section 36(2), omit “or distress”.
- (3) Omit section 36(3), (4), (5), (9) and (10).
- (4) In section 36(6)(a), for “data protection principle or principles” substitute “relevant requirement or requirements.”

Cancellation of enforcement notice

2. In section 37(1) and (2), for “data protection principle or principles” substitute “relevant requirement or requirements”.

Request for assessment

3. Omit section 38.

Information notices

4. (1) For section 39(1) and (2) substitute —

“(1) If the Supervisor reasonably requires any information for the purpose of determining whether a person has complied or is complying with the relevant requirements, he may serve that person with a notice (“an information notice”) requiring him, within such time as is specified in the notice, to furnish the Supervisor, in such form as may be so specified, with such information relating to compliance with the relevant requirements as is so specified.

(2) An information notice must contain a statement that the Supervisor regards the specified information as relevant for the purpose of determining whether the person has complied or is complying with the relevant requirements and his reason for regarding it as relevant for that purpose.”
- (2) In section 39(6) —
 - (a) in paragraph (a), after “under” insert “the Unsolicited Communications Regulations 2005 or”;
 - (b) in paragraph (b), after “arising out of” insert “the said Regulations or”.
- (3) Omit section 39(10).

*Unsolicited Communications Regulations 2005
Special information notices etc.*

5. Omit sections 40, 41 and 42.

Failure to comply with notice

6. (1) In section 43(1), for “an information notice or special information notice” substitute “or an information notice”.
- (2) In section 43(2), omit “or a special information notice”.

Rights of appeal

7. (1) In section 44(1), for “an information notice or a special information notice” substitute “or an information notice”;
- (2) In section 44(3) —
- (a) for “an information notice or a special information notice” substitute “or an information notice”;
- (b) for “39(5) or 40(6)” substitute “or 39(5)”.
- (3) Omit section 44(4).

Determination of appeals

8. Omit section 45(5).

Powers of entry and inspection

9. (1) Schedule 8 is modified as follows.
- (2) For paragraph 1(1)(a) substitute —
- “(a) that a person has contravened or is contravening any of the requirements of the Unsolicited Communications Regulations 2005 (“the 2005 Regulations”) or”;
- (3) Omit paragraph 1(2).
- (4) In paragraph 9(1)(a), after “rights under” insert “the 2005 Regulations or”; and
- (5) In paragraph 9(1)(b) after “arising out of” insert “the 2005 Regulations or”.

MADE 24th May 2005


Deputy
Chief Secretary

EXPLANATORY MEMORANDUM

(This note is not part of the Regulations.)

These Regulations implement Article 13 of Directive 2002/58/EC on privacy and electronic communications, which relates to unsolicited communications and is applied to the Isle of Man by the Unsolicited Communications Order 2005 (SD 392/05).

Regulation 2 provides that a person may not transmit communications comprising recorded matter for direct marketing purposes by an automated calling system unless a subscriber has consented.

Regulations 3, 4 and 5 set out the circumstances in which persons may make unsolicited communications for purposes of direct marketing by fax, telephone or e-mail.

Regulation 6 prohibits the sending of anonymous communications by e-mail for purposes of direct marketing.

Regulation 7 sets out certain information that must be provided for the purposes of regulations, and.

Regulations 8 and 9 require the Communications Commission to keep registers of the numbers of subscribers who do not wish to receive unsolicited communications by fax or telephone for purposes of direct marketing.

Regulation 10 provides that terms in certain contracts which are inconsistent with these Regulations shall be void.

Regulation 11 allows a claim for damages to be brought in respect of contraventions of the Regulations.

Regulations 12 and 13 make provision in connection with the enforcement of the Regulations by the Isle of Man Data Protection Supervisor.

Regulation 14 requires the Communications Commission to comply with any reasonable request made by the Supervisor for advice on technical matters relating to electronic communications.