

TYPE OF MARKETING	INDIVIDUAL SUBSCRIBERS AND USERS (RECIPIENTS)	CORPORATE SUBSCRIBERS	NOTES
<p>General right to opt-out (<i>section 11, DPA</i>)</p>	<p>Individuals have a general statutory right, at any time, by notice in writing to require a marketer to cease, or not to begin, processing their personal data for direct marketing purposes (<i>section 11, DPA</i>). The individual does not need to demonstrate damage or distress.</p> <p>If the marketer fails to comply with the request, the individual can apply to the court for a court order.</p>	<p>No general statutory right to opt-out.</p>	
<p>Email</p> <p>Includes email, text (SMS or MMS), video and picture marketing messages and marketing transmitted by WAP messages. It also includes voicemail and answerphone messages when left for marketing purposes.</p>	<p>Prior consent?</p> <p>The recipient's prior consent is required (<i>regulation 22(2)</i>) and it must be given to the sender.</p> <p>Soft opt-in</p> <p>There is a limited exception for certain existing commercial relationships, in respect of similar products or services (known as the "soft-opt in"). Individuals must be given an opportunity to opt-out of direct marketing at the time their personal data is collected. If they don't opt-out recipients must be given, on each communication, an opportunity to opt-out (<i>regulation 22(3)</i>). Soft opt-in is not available to charities and not-for-profit organisations,</p>	<p>Prior consent?</p> <p>Can email or text corporate subscribers without prior consent.</p> <p>The rules on soft opt-in do not apply to corporate subscribers.</p> <p>Opt-out rights?</p> <p>Although, corporate subscribers have no opt-out rights, the Information Commissioner's Office (ICO) recommends that it is good practice to offer an opt-out on each communication and to respect their request to stop.</p> <p>Individual employees, whose business email address incorporates personal data (for example, <i>jo.bloggs@companyA.co.uk</i>) can exercise their individual opt-out rights under <i>section 11</i> of the DPA.</p>	<p>The identity and address of the sender must be included in each communication (<i>regulation 23A</i>).</p> <p>See also the information requirements inserted by the <i>Regulations 7 and 8 of the Electronic Commerce (EC) Directive Regulations 2002 (SI 2002/2013)</i> (- <i>Direct marketing; advertising, consumer protection and e-commerce rules: Table of additional requirements</i>).</p> <p>Third party marketing lists</p> <p>As consent must be given to the sender or instigator, organisations must take particular care when using bought in or rented marketing lists.</p> <p>The soft-opt in does not apply to recipients on</p>

unless they are promoting commercial goods and services (for example, offered by a trading arm).

Preference service?

There is no statutory preference service but recipients can register with the *Email Preference Service* (eMPS), a voluntary scheme run by the Direct Marketing Association (DMA) in the USA. It is not a legal requirement under the Privacy Regulations for marketers to screen the eMPS before sending marketing emails, but DMA members are required to observe it.

bought in or rented marketing, because it is the sender who must have obtained their contact details in the course of a sale or negotiation (*regulation 22(3)(a)*).

For further information on third party marketing lists see - *Direct marketing: data protection and e-privacy rules: Using third party marketing lists*.

Relevant decisions?

See the following legal updates:

- *Upper Tribunal upholds overturning of £300,000 fine for unsolicited text messages.*
- *First-tier Tribunal dismisses Optical Express appeal on marketing texts.*
- *ICO issues first fine under new powers for unsolicited marketing texts.*
- *ICO issues £130,000 fine for breach of first data protection principle.*
- *ICO fines Telegraph Media Group for election day email campaign.*

Examples where companies sent individuals emails asking if they want to receive emails from them (where no prior consent existed):

- *ICO fines airline £70,000 for sending*

			<p>over 3.3 million unsolicited marketing emails.</p> <ul style="list-style-type: none"> ICO fines car company £13,000 for sending 289,790 unsolicited marketing emails in breach of Privacy Regulations. <p>For more examples of ICO fines see - <i>ICO civil penalties: tracker</i>.</p>
<p>Automated calls or communications</p> <p>A system 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 is not live speech” for “reception by persons at some or all of the destinations so called” (<i>regulation 19(4)</i>).</p>	<p>Prior consent?</p> <p>The recipient’s prior consent is required (<i>regulation 19(2)</i>).</p> <p>Preference service?</p> <p>As prior consent is required, this is not applicable.</p>	<p>Prior consent?</p> <p>The corporate subscriber’s prior consent is required (<i>regulation 19(2)</i>).</p> <p>Preference service?</p> <p>As prior consent is required, this is not applicable.</p>	<p>The caller must identify themselves and provide a contact address or Freephone number where they can be reached (<i>regulation 24(1)(a)</i>).</p> <p>Third party marketing lists</p> <p>As consent must be given to the caller or instigator, organisations must take particular care when using bought in or rented marketing lists.</p> <p>For further information on third party marketing lists see - <i>Direct marketing: data protection and e-privacy rules: Using third party marketing lists</i>.</p> <p>The caller or the instigator of the automated calls must display their telephone number (see <i>Legal update, Direct marketers must display phone number when making automated or live marketing calls</i>).</p> <p>Relevant decisions?</p>

			<p>See the following legal updates:</p> <ul style="list-style-type: none"> • <i>ICO serves enforcement notice on Liberal Democrats..</i> • <i>ICO issues record £200,000 fine for automated calls.</i> • <i>ICO fines two companies £150,000 in one week for breach of the Privacy Regulations 2003.</i> • <i>ICO issues record £350,000 fine for 46 million automated calls.</i> <p>For more examples of ICO fines see - <i>ICO civil penalties: tracker.</i></p>
Live telephone calls	<p>Prior consent?</p> <p>A recipient’s prior consent is not required to make unsolicited calls, however, it is important to be aware that individuals can opt-out (<i>regulation 21(1)(a)</i>).</p> <p>Therefore, organisations cannot call if the recipient has said “no”.</p> <p>Preference service?</p> <p>It is a legal requirement to screen against the <i>Telephone Preference Service (TPS) (regulation 21(1)(b))</i>.</p> <p>Organisations (including charities, voluntary organisations and political parties) must not make unsolicited calls to numbers that are</p>	<p>Prior consent?</p> <p>A corporate subscriber’s prior consent is not required to make unsolicited calls, however, it is important to be aware that corporate subscribers can opt-out (<i>regulation 21(1)(a)</i>).</p> <p>Therefore, organisations cannot call if the subscriber has said “no”:</p> <p>Preference service?</p> <p>It is a legal requirement to screen against the <i>Corporate Telephone Preference Service (CTPS) (regulation 26(2A))</i> (introduced by the <i>Privacy and Electronic Communications (EC Directive) (Amendment) Regulations 2004 (SI 2004/1039)</i>).</p> <p>Organisations (including charities, voluntary organisations and political parties) must not make unsolicited calls to numbers that are registered on the CTPS unless they have the corporate subscriber’s prior</p>	<p>It is a legal requirement to screen against the TPS and CTPS. In addition, recipients and corporate subscribers can opt out.</p> <p>The caller must identify themselves and, if requested, provide a contact address or Freephone number where they can be reached (<i>regulation 24(1)(b)</i>).</p> <p>If using a subcontracted call centre, the subcontractor’s call centre staff must identify the instigator of the call (that is the organisation on whose behalf they are making the call) (<i>regulation 21(1)(b)</i>).</p> <p>The caller or the instigator of solicited or unsolicited marketing</p>

	<p>registered on the TPS unless they have the recipient’s prior consent, for the time being, to do so (<i>regulation 21(4)</i>).</p> <p>Marketers can make calls to a number during the 28 day registration period (<i>regulation 21(3)</i>), unless an opt-out request has also been made to the caller.</p> <p>Recipients can withdraw consent at any time (<i>regulation 21(5)</i>).</p> <p>Summary</p> <p>If a recipient has not said “no” and is not registered on the TPS, it is possible to call them, although, marketers must still comply with the requirements of the first data protection principle of the DPA.</p>	<p>consent, for the time being, to do so (<i>regulation 21(4)</i>).</p> <p>Marketers can make calls to a number during the 28 day registration period (<i>regulation 21(3)</i>), unless an opt-out request has also been made to the caller.</p> <p>Corporate subscribers can withdraw consent at any time (<i>regulation 21(5)</i>).</p> <p>Summary</p> <p>If a corporate subscriber has not said “no” and is not registered on the CTPS, it is possible to call them.</p>	<p>calls must display their telephone number (see <i>Legal update, Direct marketers must display phone number when making automated or live marketing calls</i>).</p> <p>Relevant decisions?</p> <p>See the following legal updates:</p> <ul style="list-style-type: none"> • <i>First-tier Tribunal upholds lenient PECR fine for marketing calls.</i> • <i>ICO fines two companies £150,000 in one week for breach of the Privacy Regulations 2003.</i> • <i>Charity signs undertaking to make fundraising calls with opt-in consent.</i> <p>For more examples of ICO fines see - <i>ICO civil penalties: tracker</i>.</p>
<p>Fax</p>	<p>Prior consent?</p> <p>The recipient’s prior consent is required (<i>regulation 20(1)(a) and (2)</i>).</p> <p>Preference service?</p> <p>Recipients have a general right to opt-out under <i>section 11</i> of the DPA and, as an added protection, the Privacy Regulations allow individuals to register on the <i>Fax Preference Service (FPS)</i> (<i>regulation 20(1)(c)</i>).</p>	<p>Prior consent?</p> <p>The corporate subscriber’s prior consent is not required but they can opt-out (<i>regulation 20(1)(b)</i>). Therefore, cannot send an unsolicited fax if the corporate subscriber has previously said “no”.</p> <p>Preference service?</p> <p>It is a legal requirement to screen against the FPS (<i>regulation 20(1)(c)</i>).</p> <p>All organisations (including charities, voluntary organisations and political parties) must not send unsolicited faxes to numbers registered on the FPS unless they have the corporate subscriber’s</p>	<p>The sender must identify themselves and provide a contact address or Freephone number where they can be reached (<i>regulation 24(1)(a)</i>).</p> <p>Third party marketing lists</p> <p>As consent must be given to the sender or instigator, organisations must take particular care when using bought in or rented marketing lists.</p> <p>For further information on third party marketing</p>

		<p>consent, for the time being, to do so (<i>regulation 20(5)</i>).</p> <p>Organisations can send faxes to a subscriber’s number during the 28 day registration period (<i>regulation 20(4)</i>), unless an opt-out request has also been made to the sender.</p> <p>Subscribers can withdraw consent at any time (<i>regulation 20(6)</i>).</p> <p>Summary</p> <p>If a corporate subscriber has not said “no” and is not on the FPS, a direct marketing fax can be sent, as consent is not required.</p>	<p>lists see - <i>Direct marketing: data protection and e-privacy rules: Using third party marketing lists.</i></p>
<p>Post</p> <p>The DPA applies where personal data is processed. All data protection principles must be complied with but particular attention is drawn to the first data protection principle (see - <i>Overview of UK data protection regime: first data protection principle: fair and lawful processing</i>).</p>	<p>Prior consent?</p> <p>Individuals can opt-out (<i>section 11, DPA</i>) (see - <i>Direct marketing: data protection and e-privacy rules: Postal marketing</i>).</p> <p>Preference service?</p> <p>The DMA runs a voluntary <i>Mail Preference Service</i> (MPS). While it is not a legal obligation under the DPA to screen against the MPS, the DMA’s codes of conduct make it an obligation, which attracts bad publicity if marketers do not first check the MPS before sending out any direct marketing by post (see - <i>Direct marketing: data protection and e-privacy rules: Voluntary codes</i>).</p>	<p>Prior consent?</p> <p>Can send post to corporate subscribers.</p> <p>Individual employees can opt-out (<i>section 11, DPA</i>).</p>	