

NEW RULES ON EMAIL MARKETING WHAT DO THEY MEAN FOR INDIVIDUALS?

From 11 December 2003, two new rules will apply to email marketing when the Privacy and Electronic Communications (EC Directive) Regulations 2003 come into force.

1st New Rule

This rule applies to all marketing messages sent by electronic mail, regardless of who the recipient is.

- The sender must not conceal their identity **and**
- The sender must provide a valid address for opt-out requests

2nd New Rule

This rule only applies to **unsolicited** marketing messages sent by electronic mail to **individual subscribers**.

- Senders cannot send such messages unless they have the recipient's prior consent to do so.

This strict "opt-in" rule is relaxed if three exemption criteria are satisfied. These three exemption criteria are as follows

1. The recipient's email address was collected "in the course of a sale or negotiations for a sale"
2. The sender only sends promotional messages relating to their "similar products and services" **AND**
3. When the address was collected, the recipient was given the opportunity to opt out (free of charge except for the cost of transmission) which they didn't take. The opportunity to opt-out must be given with every subsequent message.

GLOSSARY OF TERMS

"Electronic mail"

This means email **and** text/picture/video messages

"Individual subscriber"

This means a residential subscriber, a sole trader or an unincorporated partnership in England, Wales and N. Ireland.

"unsolicited"

This means something that is not invited. However, it does not mean something that is "unwanted". For example, you might welcome information about special promotions from a company that you trust and who always offers a good deal. You have not specifically "invited" these offers but you have told the company that you don't mind receiving information about special promotions that they choose to send you. You may or may not take up the offer if it interests you.

“Consent”

This is where you actively sign up for something and where you know what you are signing up to. There may be a number of ways to indicate consent. For example, where you tick a box as a positive indication that you agree to receiving marketing or where it is made clear to you that providing your email address means you agree to receiving marketing.

Opt-in/Opt-out

Opt-in is where you don't get marketing emails from an organisation unless you actively consent to receiving them (see **Consent** above). Under the new rules, organisations must collect your email address on an opt-in basis unless the three exemption criteria are satisfied.

Opt-out is where you are told that you will get marketing emails unless you say you don't want them. Organisations can collect only your email address on an opt-out basis if they can satisfy the exemption criteria.

FAILING TO OPT-OUT WHEN GIVEN THE CHANCE IS NOT THE SAME AS GIVING CONSENT.

“In the course of a sale or negotiations for a sale”

A sale does not have to be completed to satisfy this criterion. For example, you may have asked for a quote for insurance on-line but chose not to take up the offer. Where the company offering insurance wants to collect your email address to market you in the future, they should give you a chance to opt-out when they collect that address (see **Opt-in/Opt-out** above). In other words, the prior consent rule is relaxed because your details are being collected in the course of a sale or negotiations for a sale.

If you don't opt-out when your details are collected, they must give you a chance to opt-out with every subsequent marketing message they send.

“Similar products and services”

In our view, this means “what products and services do you reasonably expect to hear about from this organisation”. For example, a supermarket may sell a diverse range of products and services but a florist may only sell a limited range of products and services. If you order flowers from an on-line florist and you didn't opt-out of receiving further email marketing when the on-line florist collected your details (see **“In the course of a sale or negotiations for a sale”** above), you would only expect to receive emails about the limited range of products and services that the florist offers.

FREQUENTLY ASKED QUESTIONS

In the past, organisations didn't collect my details on an opt-in basis. Can they still use their old lists?

As an exercise of our discretion, we have allowed organisations to continue using lists that were not obtained on an opt-in basis but **only** where

1. They complied with existing legislation when they collected your details (as a minimum, they told you they would market you)

2. They have contacted you recently (e.g. in the last 12 months)
 3. You haven't already told them to stop marketing you
- AND**
4. They give you a chance to opt-out (free of charge) with every marketing message they send you

Moving forward, organisations must collect contact details in accordance with the new stricter rules.

How do I stop unsolicited marketing emails?

If the email is from an identifiable UK source, reply to it with an opt-out request. If you have already done so and you are still getting emails from that identifiable UK source, make a complaint to us.

What if the emails are not from an identifiable UK source?

In this case, do not reply to it. Take a look at our guidance on steps you can take to stop SPAM which will be published on our website shortly.

How do I make a complaint to the Information Commissioner?

Please don't forward all your SPAM to us. We have our own SPAM filters to protect our systems so if you just forward the SPAM message to us, it may never get past our own technical barriers.

Instead you should complete our complaints form. This form has been designed to pick out the information we need to process your complaint. Where appropriate, we may use your complaint to take enforcement action. If you don't give us the information we need, we can't rely on your evidence in any enforcement action we take.