



Rules on email marketing What do they mean for individuals?

From 11 December 2003, the Privacy and Electronic Communications (EC Directive) Regulations 2003 became law and two new rules came into force regarding email marketing.

1st Rule

- when they send marketing emails to you, the sender must not conceal their identity; **and**
- they must give you a valid address for opt-out requests

This rule actually applies to all marketing messages sent by electronic mail (see '**electronic mail**' below), regardless of who the recipient is.

2nd Rule

- Senders cannot send such messages unless they have your prior consent to do so.

This strict 'opt-in' rule is relaxed if three exemption criteria are satisfied. These are:

1. your 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 your address was collected, you were given the opportunity to opt out (free of charge except for the cost of transmission) which you didn't take. The opportunity to opt-out must be given with every subsequent message.

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

Glossary of terms

'Electronic mail'

This means email **and** text/picture/video messages, WAP messages and 'bluetooth'.

'Individual subscriber'

This means a residential subscriber, a sole trader or an unincorporated partnership in England, Wales and Northern 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 an organisation that you trust and who always offers a good deal. You have not specifically ‘invited’ these offers but you have told the organisation 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.

‘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 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 rules, organisations must collect your email address on an opt-in basis unless the three exemption criteria described above are satisfied.

Opt-out is where you are told that you will get marketing 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.

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

‘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 online but chose not to take up the offer. Where the organisation 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 online florist and

you didn't opt-out of receiving further email marketing when the online 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

How do I stop unsolicited marketing emails?

If the email is from an identifiable UK source, reply to it with an opt-out request, and keep a copy. 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 the guidance on our website on steps you can take to stop SPAM, or contact your ISP.

How do I make a complaint to the Information Commissioner?

Please don't forward all your SPAM to us. The filters we use to protect our systems may stop it getting through. Instead you should complete our complaints form which has been designed to help you 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.

More information

If you need any more information about this or any other aspect of the regulations, please contact us.

Phone: 01625 545745

Website: www.ico.gov.uk