

UK ICO Offers New Guidance to Businesses on Direct Marketing

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The UK Information Commissioner's Office (ICO) has recently published new guidance on direct marketing (a detailed [overview](#) of the law relating to direct marketing and a short [checklist](#)). The guidance tries to help business better understand the rules on direct marketing and has been produced by the ICO in response to the large number of consumer complaints about unwanted marketing calls and texts that it has received recently. The guidance outlines how the UK Data Protection Act 1998 (DPA) and Privacy and Electronic Communications (EC Directive) Regulations 2003 (as well as other codes of practice and regulations) apply to different types of direct marketing. There are different rules for (i) "electronic communications" (which includes email and SMS), (ii) pre-recorded/automated telephone calls, (iii) "live" telephone calls, (iv) faxes and (v) post. Different rules also apply depending on whether the direct marketing materials are sent to individuals or businesses. As a general rule, businesses need prior consent from individual consumers to direct market to them by email, SMS, automated telephone call or fax. In other words, an individual consumer needs to "opt-in" in order for the business to direct market to them using these methods. Consent is defined in the DPA as "any freely given specific and informed indication of his wishes by which the data subject signifies his agreement to personal data relating to him being processed." The ICO guidance suggests that the best way to comply with the legislation is to use an opt-in box that the individual consumer should tick in order to indicate their consent to direct marketing. Businesses do not need prior consent from individual consumers to direct market to them by "live" telephone calls or by post. However, individual consumers can opt out of receiving direct marketing telephone calls by registering with the Telephone Preference Service list (TPS). Businesses must check that the number they intend to call for direct marketing is not listed on the TPS before making the call. For direct marketing by post, businesses must allow individual consumers to opt out of receiving further communications.

Tip: The ICO guidance is a helpful resource that companies can use to understand the UK rules on direct marketing. For methods where prior consent to direct marketing is required (such as for marketing by email and SMS), companies direct marketing in the UK should keep records of the consent provided as the ICO has indicated that it will look for documentation of consent in the event of a problem or complaint.

This tip has been created for information and planning purposes. They are not intended to be, nor should they be substituted for, legal advice, which turns on specific facts.

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