

What are the E-Marketing Rules

Written
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Data subjects have the right to object to the processing of their personal data for the purposes of direct marketing. They can do this either by notifying an organisation or by registering with one of the opt-out services run by the Direct Marketing Association. These opt-out services enable the individual to opt out of being contacted by mail, telephone, email or fax for direct marketing purposes.

The Privacy and Electronic Communications (EC Directive) Regulations 2003 ("Regulations") came into effect late 2003, and it imposes constraints on the use of e-mails, SMS marketing and Website cookies.

Rule 1

Applies to **all** marketing messages sent by email 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. There are certain exemptions that apply to the Regulations. The Regulations also deal with the use of cookies on websites.

The Regulations lays down the law regarding the use of cookies on websites. **Cookies** are temporary records that are kept of a person's email address and other details when a person accesses a website. Under the Regulations the use of cookies and other tracking devices are:

- prohibited unless subscribers and users are clearly told they are being used; and
- given the chance to refuse their use
- Regulations do not set out when, where or how information or switch off opportunity should be communicated. It is suggested that this may be communicated in a privacy policy
- Department of Trade and Industry is currently investigating use of cookies by data controllers.

The exemptions under the Regulations are as follows:-

- Existing customer relationship exemption
- Limited direct marketing by e-mail is permissible without an express opt-in, subject of the following requirements:
 - The email address must have been obtained in the course of the "sale or negotiations for the sale of a product or service to that recipient" direct marketing is permitted only in respect of the marketer's "similar products and services"
 - Recipient must be given a simple means of refusing the use of contact details for the purposes of direct marketing - e.g. a tick box

However, Legacy Mailing List (e-mail addresses) Collected before October 2003 - maybe legally unusable:-

- Unless email addresses of persons bought or negotiated for the sale of goods or services
- Opt-in required in all other cases - if persons registered on a website for a newsletter or feature in a bought-in list
- Information Commission Guidance - requirement to include a "simple means of refusing" further emails

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