

BAILIWICK OF GUERNSEY



DATA PROTECTION

DIRECT MARKETING
A Guide for Businesses



Direct Marketing – A Guide for Businesses

Introduction

Direct marketing is an activity that can bring commercial benefits to many organizations. However it is an activity which involves the use of customers' personal information, the improper handling of which could lead to distress and the invasion of privacy for many people. It is therefore important that direct marketing activities are compliant with data protection and privacy related legislation. This Guide explains how such compliance can be achieved.

Common marketing terms / definitions

Direct marketing:

the communication, by whatever means, of any advertising or marketing material to specific individuals or organizations. This includes communications from charities and political parties

Channels: any means of Direct Marketing such as mail, email, telesales, fax, SMS (text messages to mobile phones), MMS (picture messages to mobile phones)

Opt-out: a positive indication to a business, such as ticking a box, that a person or organization **does not** wish to become a customer

Opt-in: a positive indication to a business that a person or organization does wish to become a customer. There must be some positive action that this is the case, by ticking a box or signing to indicate agreement

Soft opt-in: when the organization has already obtained contact details as a result of a previous sale for a product or service, and the messages being sent concern a similar product or service, and the individual has not indicated any objection to receiving them

Profiling: using information provided by the customer or other sources to build up an understanding of customers' preferences.

Relevant legislation

The Data Protection (Bailiwick of Guernsey) Law, 2001 (*DPL*) regulates direct marketing to individuals.

The European Communities (Implementation of Privacy Directive) (Guernsey) Ordinance 2004 (the *Regulations*) regulates direct marketing by electronic means to individuals and organizations. There are equivalent Ordinances in Alderney and Sark.

The UK and other countries within the European Union have similar legislation to the DPL and the Regulations.

Please note that although the UK Privacy and Electronic Communications Regulations (*PECR*) are similar to the Guernsey *Regulations* the two sets of legislation are drafted in a slightly different order. Therefore throughout this booklet the equivalent sections of *PECR* to the *Regulations* will be added as footnotes.

Silent calls

In addition sections 128-130 of the UK Communications Act, 2003 regulate the problem known as “silent calls”. These calls are generated by machines called predictive diallers which are used to send telemarketing messages. They work by dialling many telephone numbers automatically, and when the call is answered it is connected to a call centre. If all call centre staff are busy and there is no-one to answer the phone this results in silence on the line. These calls can be frightening for people, especially for those who live alone.

Silent calls are not regulated by the DPL or the Regulations as there is no message communicated to the intended recipient. Ofcom, a UK organization, is responsible for the enforcement of the Communications Act and so will deal with complaints about silent calls. The Office of Utility Regulations in Guernsey (OUR) is happy to assist any person who may be impacted with such calls. Contact details for Ofcom and the OUR are given at the end of this guidance.

How the legislation works

If you are an individual consumer a business must give you the opportunity to:

Opt –out of being marketed by **Mail** (section 11 of DPL) and screen against the Mail Preference Service (MPS) register

Opt –out of being marketed by **Telephone** (section 11 of DPL & Regulation 21); in addition before organizations make any unsolicited calls they must screen against the *Telephone Preference Service* (TPS) register

Opt- in or **Soft opt-in** to be marketed by **Email** (section 11 of DPL & Regulation 20²)

Opt-in to be marketed by **SMS** (section 11 of DPL & Regulation 20³)

Opt-in to be marketed by **Fax** (section 11 of the DPL & Regulation 18⁴)

Opt-in to be marketed by **Automated Telemarketing**

¹Regulation 21 PECR

²Regulation 22 PECR

³Regulation 22 PECR

⁴Regulation 20 PECR

⁵Regulation 19 PECR

A business must give another business:

A valid **Email** address when marketing by **Email** to provide an opportunity to **Opt-out** (Regulation 20⁶)

A valid **Email** address when marketing by **SMS** to provide an opportunity to **Opt-out** (Regulation 20⁷)

The **Opt-out** option to receive **Faxes**; the business must also check the *Fax Preference Service* before sending **Unsolicited Faxes** (Regulation 18⁸)

The **Opt-in** option to receive **Automated Telemarketing Calls** (Regulation 17⁹); the business must check the *Corporate TPS* before making **Unsolicited Telemarketing Calls** to another business (Regulation 19¹⁰)

The identity and address of the sender of **electronic mail and text messages to individual consumers and to organizations** must not be concealed (Regulation 21¹¹)

⁶Regulation 22 PECR

⁷Regulation 22 PECR

⁸Regulation 20 PECR

⁹Regulation 19 PECR

¹⁰Regulation 21 PECR

¹¹Regulation 23 PECR

The Ofcom requirements are:

Telephone Calls - Predictive dialling

Silent calls must be below 3% of all calls made in any 24 hour period for each campaign

All abandoned calls must carry a short recorded message identifying the source of the call

Calling line identification (CLI) must be included on all outbound calls generated by automatic calling systems. This allows people to dial 1471 or use caller display function to identify the number of the person or organization calling them.

Fax Screening - Predictive dialling

Opt-out but must screen against *FPS*

Contact Ofcom

www.ofcom.org.uk

Tel: 020 7981 3000 (switchboard)

Tel: 020 7981 3040 (advice / complaints)

Fax: 0207981 3333

Address: Ofcom
Riverside House
2a Southwark Bridge Road
London SE1 9HA

Contact Office of Utility Regulation (OUR)

www.regutil.gg/consumer_issues/faqs.asp

Tel: 01481 711120

Fax: 01481 711140

Address: Suite B1 & B2
Hirzel Court
St Peter Port
Guernsey
GY1 2NL

Preference Services – how to register

Mail Preference Service (MPS)

www.mpsonline.org.uk

tel: 0845 703 4599

fax: 020 7323 4226

Telephone Preference Service (TPS)

www.tpsonline.org.uk

tel: 0845 070 0707

fax: 0845 070 0706

Fax Preference Service (FPS)

www.fpsonline.org.uk

tel: 0845 070 0702

fax: 0845 070 0706

An information booklet on the Preference Services is available free of charge from the Commissioner's Office; alternatively it may be downloaded from the Commissioner's website; www.gov.gg/dataprotection

N.B. Bailiwick of Guernsey residents are able to register with the Preference Services and they may do this free of charge.

The following publications are available free of charge from the Data Protection Office:

Guidance Handbooks (A4)

- Notification Exemptions Notification Handbook

Advice Booklets (A5)

- Baby Mailing Preference Service (how to stop unwanted mail about baby products)
- Be Open ... with the way you handle information (obtaining data fairly and legally)
- Charities/Not-for-Profit organisations
- CCTV Checklist/CCTV Guidance
- Code of Practice—Criminal Records Check
- Data Controllers (how organisations must process personal data)
- Disclosure of Medical Data to the GMC
- Disclosure to Elected Members
- Exporting Personal Data
- Facebook—How to protect your Privacy
- Financial Institutions
- Health Records—Subject Access
- Your rights under the Law: Guidance for Individuals
- Mailing, telephoning, fax and e-mailing preference services
- Marketing—A guidance for Businesses
- No Credit (how to access, and correct, details held by credit reference agencies)
- Notification - a simple guide
- Privacy Statements on Websites
- The Data Protection Law and You (advice for small businesses)
- Respecting the Privacy of Telephone Subscribers
- Schools—Information for Parents, Schools and Students
- Spam—How to deal with Spam
- States Departments—a Guidance
- Subject Access Requests
- Transparency Policy
- Trusts and Wills Guidance
- Violent warning markers: use in the public sector
- Disclosures of vehicle keeper details
- Work references

Further information about compliance with the Data Protection (Bailiwick of Guernsey) Law, 2001 can be obtained via:

E-mail address: dataprotection@gov.gg

Internet: www.gov.gg/dataprotection.

Telephone: +44 (0) 1481 742074
Fax: +44 (0) 1481 742077

Post: Data Protection Commissioner's Office
P.O. Box 642
Frances House
Sir William Place
St. Peter Port
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