

Annex A: Draft regulations

Draft Regulations laid before Parliament under section 21(5) of the Financial Guidance and Claims Act 2018, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2018 No. 0000

ELECTRONIC COMMUNICATIONS

Privacy and Electronic Communications (Amendment) Regulations 2018

Made - - - - - ***

Coming into force - - - - - ***

The Treasury in exercise of the powers conferred by sections 21(1), (2), (3), (4) and (5) and 26(2) of the Financial Guidance and Claims Act 2018⁽¹⁾, makes the following Regulations.

In accordance with section 21(5) of the Act, a draft of the instrument was laid before Parliament and approved by a resolution of each House of Parliament.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Privacy and Electronic Communications (EC Directive) (Amendment) Regulations 2018 and shall come into force on ***.

(2) In these Regulations “the 2003 Regulations” means the Privacy and Electronic Communications (EC Directive) Regulations 2003⁽²⁾.

Amendment of the 2003 Regulations

2. The 2003 Regulations are amended as follows.

3. In regulation 21 (calls for direct marketing purposes), in paragraph (6), after the words “regulation 21A” insert—

ior 21B.î.

4. After regulation 21A insert—

⁽¹⁾ 2018 c. 10.

⁽²⁾ S.I. 2003/2426, as amended by S.I. 2011/1208, 2016/524, 2016/1177, the Financial Guidance and Claims Act 2018 (c. 10), section 35, and other amendments not relevant to these Regulations.

iCalls for direct marketing of pension schemes

21B.—(1) A person must not use, or instigate the use of, a public electronic communications service to make unsolicited calls for the purpose of direct marketing in relation to pension schemes, except where paragraph (2) or (3) applies.

(2) This paragraph applies where—

- (a) the caller on the line is an FCA-regulated person or a TPR-regulated person; and
- (b) the called line is that of an individual who has previously notified the caller that for the time being the individual consents to such calls being made by, or at the instigation of, the caller on that line.

(3) This paragraph applies where—

- (a) the caller on the line is an FCA-regulated person or a TPR-regulated person;
- (b) the recipient of the call has an existing client relationship with the caller or instigator of the call and the relationship is such that the recipient envisages receiving unsolicited calls for the purpose of direct marketing in relation to pension schemes; and
- (c) the recipient has been given a simple means of refusing (free of charge except for the costs of the transmission of the refusal) the use of the recipient's contact details for the purpose of such direct marketing, at the time that the details were initially collected, and, where the recipient did not initially refuse the use of the details, at the time of each subsequent communication.

(4) A subscriber must not permit the subscriber's line to be used in contravention of paragraph (1).

(5) In paragraph (1) the reference to direct marketing in relation to pension schemes includes a reference to (i) the marketing of a product or service to be purchased using funds held, or previously held, in a pension scheme; (ii) the offer of any advice or other service intended to promote, or promote the consideration of, the transfer of funds out of a pension scheme; and (iii) the offer of any advice or other service to enable the assessment of the performance of a pension scheme (including its performance in comparison with other forms of investment).

(6) In this regulation—

- (a) "FCA-regulated person" has the meaning given in section 139A(9) of the Financial Services and Markets Act 2000⁽³⁾;
- (b) "pension scheme" means a scheme or other arrangements, comprised in one or more instruments or agreements, having or capable of having effect so as to provide benefits to or in respect of people (i) on retirement, (ii) on having reached a particular age, or (iii) on termination of service in an employment; and
- (c) "TPR-regulated person" has the meaning given in section 355(1) of the Financial Services and Markets Act 2000.

⁽³⁾ 2000 c. 8, as amended by the Financial Services Act 2012 (c. 21), section 24(1).

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Privacy and Electronic Communications (EC Directive) Regulations 2003 (S.I. 2003/2426) (the “2003 Regulations”) so as to ban cold calling in relation to pensions.

Regulation 3 amends regulation 21 of the 2003 Regulations so as to disapply it to pensions cold calling. Regulation 21 of the 2003 Regulations permits cold calling except where the recipient of the call has previously notified the caller that such calls should not be made.

Regulation 4 inserts a new provision into the 2003 Regulations banning cold calling in relation to pensions, subject to the following two exemptions: (1) where the receiver of the call has given specific consent to receiving contact from the organisation making the call; and (2) where the receiver of the call is an existing customer of the organisation making the pensions cold call.

Annex B: Privacy and Electronic Communications (EC Directive) Regulations 2003 - Regulation 21

We intend to amend [regulation 21 of Privacy and Electronic Communications \(EC Directive\) Regulations 2003](#):

Unsolicited calls for direct marketing purposes

21.—(1) A person shall neither use, nor instigate the use of, a public electronic communications service for the purposes of making unsolicited calls for direct marketing purposes where—

(a) the called line is that of a subscriber who has previously notified the caller that such calls should not for the time being be made on that line; or

(b) the number allocated to a subscriber in respect of the called line is one listed in the register kept under regulation 26.

(2) A subscriber shall not permit his line to be used in contravention of paragraph (1).

(3) A person shall not be held to have contravened paragraph (1)(b) where the number allocated to the called line has been listed on the register for less than 28 days preceding that on which the call is made.

(4) Where a subscriber who has caused a number allocated to a line of his to be listed in the register kept under regulation 26 has notified a caller that he does not, for the time being, object to such calls being made on that line by that caller, such calls may be made by that caller on that line, notwithstanding that the number allocated to that line is listed in the said register.

(5) Where a subscriber has given a caller notification pursuant to paragraph (4) in relation to a line of his—

(a) the subscriber shall be free to withdraw that notification at any time, and

(b) where such notification is withdrawn, the caller shall not make such calls on that line.