

Anti-Spam Laws

On 11 December, 2003 the Privacy and Electronic Communications (EC Directive) Regulations 2003 came into force. Amongst other things, the Regulations made new laws about sending unsolicited commercial emails and created certain criminal offences which any business which uses email as a marketing tool should be aware of.

What are the new rules?

The most important one is that it is now an offence to send an unsolicited marketing message to an individual by email without that individual's prior consent.

Failure to opt out is not consent

The Regulations are clear that it isn't good enough that the individual had the opportunity to opt out of receiving future mailings and failed to take it. He has to give his consent by opting in.

In practice, this means you should not use a check-box marked "Click here if you do not wish to receive future marketing emails from us." Instead, an opt in check-box should be used.

Are there any exceptions?

The only exception is if:-

- you obtained the individual's email address in connection with a sale (or negotiations for a sale) to him; and
- he was given the opportunity then to opt out of future mailings and didn't do so; and

- your email is about similar products or services.

The other new rules

All marketing emails, whether sent to individuals or companies, must:

- not conceal the identity of the sender; and
- provide a valid address for opt out requests.

What about sending marketing emails to companies rather than individuals?

The rules are less strict. Such emails are allowed but you must comply with the two rules referred to above.

What are the penalties for breach of the new rules?

Offenders can be fined up to £5,000 and sued for compensation by the recipient. The Information Commissioner (also responsible for overseeing the Data Protection Act) polices the Regulations and will take action in response to complaints.

This is a general note for information only. Advice should always be taken on particular circumstances.

For further information please contact Chris Smith on 0131 225 1677.