

**COMMUNICATIONS (PERSONAL DATA AND PRIVACY)
REGULATIONS 2006**

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**Subsidiary
2006/074**

Regulations made under s. 9.

**COMMUNICATIONS (PERSONAL DATA AND
PRIVACY) REGULATIONS 2006**

(LN. 2006/074)

5.6.2006

Amending enactments	Relevant current provisions	Commencement date
LN. 2011/071	rr. 2, 4(1A) & (1B), 4A, 5, 6(3), 8, 11, 12, 13, 14, 20, 21, 22, 23, 24, 25A, 26(1), (2) & (3), 28, 29A, 31A & 32	26.5.2011
2012/167	rr. 4(1C), 5(4)(a), (b) & (c), 6(3)(a), (b), (c) & (d), 7(1), 15(2) (a), (b) & (c), 15A-15F	22.11.2012
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EU Legislation/International Agreements involved:

Directive 2002/58/EC

Directive 2006/24/EC

Directive 2009/136/EC

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In exercise of the powers conferred on me by section 9 of the Communications Act 2006 and in order to transpose into the law of Gibraltar Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector I have made the following regulations.

Title.

1. These regulations may be cited as the Communications (Personal Data and Privacy) Regulations 2006.

Interpretation.

- 2.(1) In these regulations—

“bill” includes an invoice, account, statement or other document of similar character and "billing" shall be construed accordingly;

“communication”—

- (a) means any information exchanged or conveyed between a finite number of parties by means of a publicly available electronic communications service, but excluding any information conveyed as part of a broadcasting service to the public over an electronic communications network except to the extent that the information can be related to the identifiable subscriber or user receiving the information;
- (b) excludes any information falling within the scope of paragraph (a) but concerning public security, defence, State security (including the economic well-being of the State when the activities relate to State security matters) and the activities of the State in areas of criminal law;

“communications provider” means a person who is authorised to provide an electronic communications network or an electronic communications service pursuant to the Communications (Authorisation and Licensing) Regulations 2006;

“corporate subscriber” means a subscriber who is—

- (a) a company within the meaning of the Companies Act;

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- (b) any other body corporate or entity which is a legal person distinct from its members;

“the Directive” means Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002, concerning the processing of personal data and the protection of privacy in the electronic communications sector (the Privacy Directive), as the same may be amended from time to time;

“electronic mail” means any text, voice, sound or image message sent over a publicly available electronic communications network which can be stored in the network or in the recipient's terminal equipment until it is collected by the recipient and includes messages sent using a short message service;

“individual” means a living individual and includes an unincorporated body of such individuals;

“the Data Protection Commissioner” and “the Commissioner” both mean the Commissioner designated under regulation 21 of the Data Protection Act 2004;

“information society service” has the meaning given in regulation 2 of the Electronic Commerce Act 2001;

“location data” means any data processed in an electronic communications network or by an electronic communications service, indicating the geographic position of the terminal equipment of a user of a publicly available electronic communications service;”

“personal data breach” means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, personal data transmitted, stored or otherwise processed in connection with the provision of a publicly available electronic communications service in the European Union;

“traffic data” means any data processed for the purpose of the conveyance of a communication on an electronic communications network or for the billing in respect of that communication and includes data relating to the routing, duration or time of a communication;

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“user” means any individual using a publicly available electronic communications service; and

“value added service” means any service which requires the processing of traffic data or location data beyond that which is necessary for the transmission of a communication or the billing in respect of that communication.

(2) In these regulations references to a telephone number shall be construed in accordance with section 35 of the principal Act, but does not include any number which is used as an internet domain name, an internet address or an address or identifier incorporating either an internet domain name or an internet address, including an electronic mail address.

(3) Expressions used in these regulations that are not defined in sub-regulation (1) and are defined in the Data Protection Act 2004 or the principal Act shall have the same meaning as in that Act or the Data Protection Act 2004 as the case may be.

(4) Expressions used in these regulations that are not defined in sub-regulation (1), in the Data Protection Act 2004 or in the principal Act and are defined in the Directive shall have the same meaning as in the Directive.

(5) Any reference in these regulations to a line shall, without prejudice to sub-regulation (4), be construed as including a reference to anything that performs the function of a line, and "connected", in relation to a line, is to be construed accordingly.

Relationship between these regulations and the Data Protection Act 2004.

3. Nothing in these regulations shall relieve a person of his obligations under the Data Protection Act 2004 in relation to the processing of personal data.

Security of Processing.

4.(1) Subject to sub-regulation (2), a provider of a publicly available electronic communications service (“the service provider”) shall take appropriate technical and organisational measures to safeguard the security of that service.

(1A) Without prejudice to the Data Protection Act 2004, the measures referred to in sub-regulation (1) shall—

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- (a) ensure that personal data can be accessed only by authorised personnel for legally authorised purposes;
- (b) protect personal data stored or transmitted against accidental or unlawful destruction, accidental loss or alteration, unauthorised or unlawful storage, processing, access or disclosure; and
- (c) ensure the implementation of a security policy with respect to the processing of personal data.

(1B) The Data Protection Commissioner may audit the measures taken by service providers and issue recommendations about best practices concerning the level of security which such measures should achieve.

(1C) The Data Protection Commissioner shall be responsible for monitoring the measures taken by service providers in respect of data retained pursuant to regulation 15C.

(2) If necessary, the measures required by sub-regulation (1) may be taken by the service provider in conjunction with the provider of the electronic communications network by means of which the service is provided, and that network provider shall comply with any reasonable requests made by the service provider for these purposes.

(3) Where, notwithstanding the taking of measures as required by sub-regulation (1), there remains a significant risk to the security of the publicly available electronic communications service, the service provider shall inform the subscribers concerned of—

- (a) the nature of that risk;
- (b) any appropriate measures that the subscriber may take to safeguard against that risk; and
- (c) the likely costs to the subscriber involved in the taking of such measures.

(4) For the purposes of sub-regulation (1), a measure shall only be taken to be appropriate if, having regard to—

- (a) the state of technological developments; and
- (b) the cost of implementing it,

it is proportionate to the risks against which it would safeguard.

(5) Information provided for the purposes of sub-regulation (3) shall be provided to the subscriber free of any charge other than the cost to the subscriber of receiving or collecting the information.

Personal data breach.

4A.(1) A service provider shall, as soon as reasonably practicable and with undue delay, notify the Data Protection Commissioner of any personal data breach.

(2) When the personal data breach is likely to adversely affect the personal data or privacy of a subscriber or individual, the service provider shall also notify the subscriber or individual of the breach as soon as reasonably practicable and without undue delay.

(3) Notification of a personal data breach to a subscriber or individual concerned shall not be required if the provider has demonstrated to the satisfaction of the Data Protection Commissioner that it has implemented appropriate technological protection measures, and that those measures were applied to the data concerned by the security breach.

(4) The technological protection measures referred to in sub-regulation (3) shall be such as to render the data unintelligible to any person who is not authorised to access it.

(5) Without prejudice to the provider's obligation to notify subscribers and individuals concerned pursuant to sub-regulation (2), if the provider has not already notified the subscriber or individual of the personal data breach, the Data Protection Commissioner, having considered the likely adverse effects of the breach, may require it to do so.

(6) The notification to the subscriber or individual shall, as a minimum, contain the following information—

- (a) a description of the nature of the personal data breach;
- (b) the contact points where more information can be obtained; and
- (c) a recommendation of the measures that can be taken to mitigate the possible adverse effects of the personal data breach.

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(7) The notification to the Data Protection Commissioner shall, in addition to the information set out in sub-regulation (6), also contain a description of the consequences of, and the measures proposed or taken by the provider to address, the personal data breach.

(8) Subject to any technical implementing measures adopted by the European Commission pursuant to Article 4 (5) of the Privacy Directive, the Data Protection Commissioner may adopt guidelines and, where necessary, issue instructions concerning the circumstances in which providers are required to notify personal data breaches, the format of such notifications and the manner in which the notification is to be made.

(9) The Data Protection Commissioner may audit whether providers have complied with their notification obligations under this regulation.

(10) A service provider who fails to comply with the requirements of this regulation commits an offence.

(11) Service providers shall maintain an inventory of personal data breaches comprising—

- (a) the facts surrounding the breach;
- (b) the effects of the breach; and
- (c) the remedial action taken,

which shall be sufficient to enable the Data Protection Commissioner to verify compliance with the provisions of this regulation.

(12) The inventory referred to in sub-regulation (11) shall only include the information necessary for the purposes of that sub-regulation.

Confidentiality of communications.

5.(1) Subject to sub-regulation (4), a person shall not store information, or gain access to information stored, in the terminal equipment of a subscriber or user unless the requirement of sub-regulation (2) is met.

(2) The requirement is that the subscriber or user of that terminal equipment has given his consent, having been provided with clear and comprehensive information, in accordance with the provisions of the Data Protection Act 2004, about the purposes of the storage of, or access to, that information.

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(3) Where an electronic communications network is used by the same person to store or access information in the terminal equipment of a subscriber or user on more than one occasion, it is sufficient for the purposes of this regulation that the requirement of sub-regulation (2) is met in respect of the initial use.

(4) Sub-regulation (1) shall not apply to the technical storage of, or access to, information—

- (a) for the sole purpose of carrying out the transmission of a communication over an electronic communications network;
- (b) where such storage or access is strictly necessary for the provision of an information society service requested by the subscriber or user to provide the service; or
- (c) where such storage or access are strictly necessary for compliance with regulations 15A and 15B.

Restrictions on the processing of certain traffic data.

6.(1) Subject to sub-regulations (2) and (3), traffic data relating to subscribers or users which are processed and stored by a public communications provider shall, when no longer required for the purpose of the transmission of a communication, be—

- (a) erased;
- (b) in the case of an individual, modified so that they cease to constitute personal data of that subscriber or user; or
- (c) in the case of a corporate subscriber, modified so that they cease to be data that would be personal data if that subscriber was an individual.

(2) Traffic data held by a public communications provider for purposes connected with the payment of charges by a subscriber or in respect of interconnection payments may be processed and stored by that provider until the time specified in sub-regulation (5).

(3) Traffic data relating to a subscriber or user may be processed and stored by a service provider if—

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- (a) such processing and storage are for the purpose of marketing electronic communications services, or for the provision of value added services to that subscriber or user;
- (b) the subscriber or user to whom the traffic data relate has given his prior consent to such processing or storage;
- (c) such processing and storage are undertaken only for the duration necessary for the purposes specified in paragraph (a); and
- (d) such processing and storage are necessary for compliance with regulation 15A and 15B.

(4) Where a user or subscriber has given his consent in accordance with sub-regulation (3), he shall be able to withdraw it at any time.

(5) The time referred to in sub-regulation (2) is the end of the period during which legal proceedings may be brought in respect of payments due or alleged to be due or, where such proceedings are brought within that period, the time when those proceedings are finally determined.

(6) Legal proceedings shall not be taken to be finally determined—

- (a) until the conclusion of the ordinary period during which an appeal may be brought by either party (excluding any possibility of an extension of that period, whether by order of a court or otherwise), if no appeal is brought within that period; or
- (b) if an appeal is brought, until the conclusion of that appeal.

(7) References in sub-regulation (6) to an appeal include references to an application for permission to appeal.

Further provisions relating to the processing of traffic data under regulation 6.

7.(1) With the exception of regulation 6(3)(d), processing of traffic data in accordance with regulation 6(2) or (3) shall not be undertaken by a public communications provider unless the subscriber or user to whom the data relate has been provided with information regarding the types of traffic data which are to be processed and the duration of such processing and, in the

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case of processing in accordance with regulation 6(3), he has been provided with that information before his consent has been obtained.

(2) Processing of traffic data in accordance with regulation 6 shall be restricted to what is required for the purposes of one or more of the activities listed in sub-regulation (3) and shall be carried out only by the public communications provider or by a person acting under his authority.

(3) The activities referred to in sub-regulation (2) are activities relating to—

- (a) the management of billing or traffic;
- (b) customer enquiries;
- (c) the prevention or detection of fraud;
- (d) the marketing of electronic communications services; or
- (e) the provision of a value added service.

(4) Nothing in these regulations shall prevent the furnishing of traffic data to a person who is competent for the purposes of any provision relating to the settling of disputes (by way of legal proceedings or otherwise) which is contained in, or made by virtue of, any enactment.

Prohibition on interception.

8.(1) Subject to the following provisions of this regulation, a person who intentionally intercepts a communication or the related data in the course of its transmission by means of a publicly available electronic communications service shall be guilty of an offence.

(2) A person shall not be guilty of an offence under this regulation if—

- (a) the communication is intercepted in accordance with such statutory provision or rule of law as may be relevant in the circumstances;
- (b) that person has reasonable grounds for believing that the person to whom, or the person by whom, the communication is sent has consented to the interception; or
- (c) the communication is intercepted for purposes connected with the provision of a publicly available electronic communications

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service or the related data traffic or with the enforcement of any enactment relating to the provision or user of those services.

(3) In this regulation—

“address” includes an electronic address;

“intercept” includes the listening to, tapping of, storage of or surveillance of electronic communications and the related traffic;

“intercepted material”, in relation to a warrant, means the communications intercepted in obedience to that warrant;

“person” includes any organisation and any association or combination of persons.

Commercial transactions.

9. Nothing in regulation 8 shall affect the legally authorised recording of communications and related traffic data when carried out in the course of lawful business practice for the purpose of providing evidence of a commercial transaction or of any other business communication.

Itemised billing and privacy.

10.(1) At the request of a subscriber, a provider of a publicly available electronic communications service shall provide that subscriber with bills that are not itemised.

(2) The Authority shall have a duty, when exercising its statutory functions in relation to electronic communications, to have regard to the need to reconcile the rights of subscribers receiving itemised bills with the rights to privacy of calling users and called subscribers, including the need for sufficient alternative privacy-enhancing methods of communications or payments to be available to such users and subscribers.

Prevention of calling line identification - outgoing calls.

11.(1) This regulation applies, subject to regulations 16 and 17, to outgoing calls where a facility enabling the presentation of calling line identification is available.

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(2) The service provider shall provide users originating a call by means of that service with a simple means to prevent presentation of the identity of the calling line on the connected line as respects that call.

(3) The service provider shall provide subscribers to the service, as respects their line and all calls originating from that line, with a simple means of preventing presentation of the identity of that subscriber's line on any connected line.

(4) The measures to be provided under sub-regulations (2) and (3) shall be provided free of charge.

Prevention of calling or connected line identification - incoming calls.

12.(1) This regulation applies to incoming calls.

(2) Where a facility enabling the presentation of calling line identification is available, the service provider shall provide the called subscriber with a simple means to prevent, free of charge for reasonable use of the facility, presentation of the identity of the calling line on the connected line.

(3) Where a facility enabling the presentation of calling line identification prior to the call being established is available, the service provider shall provide the called subscriber with a simple means of rejecting incoming calls where the presentation of the calling line identification has been prevented by the calling user or subscriber.

(4) Where a facility enabling the presentation of connected line identification is available, the service provider shall provide the called subscriber with a simple means to prevent, without charge, presentation of the identity of the connected line on any calling line.

(5) In this regulation “called subscriber” means the subscriber receiving a call by means of the service in question whose line is the called line (whether or not it is also the connected line).

Publication of information for the purposes of regulations 11 and 12.

13. Where a service provider provides facilities for calling or connected line identification, he shall provide information to the public regarding the availability of such facilities, including information regarding the options to be made available for the purposes of regulations 11 and 12.

Co-operation of communications providers for the purposes of regulations 11 and 12.

14. For the purposes of regulations 11 and 12, a communications provider shall comply with any reasonable requests made by the service provider by means of which facilities for calling or connected line identification are provided.

Restrictions on the processing of location data.

15.(1) This regulation shall not apply to the processing of traffic data.

(2) Location data relating to a user or subscriber of a publicly available electronic communications network or a publicly available electronic communications service may only be processed—

- (a) where that user or subscriber cannot be identified from such data;
- (b) where necessary for the provision of a value added service, with the consent of that user or subscriber; or
- (c) where necessary for compliance with regulation 15A and 15B.

(3) Prior to obtaining the consent of the user or subscriber under sub-regulation (2)(b), the public communications provider in question must provide the following information to the user or subscriber to whom the data relate—

- (a) the types of location data that will be processed;
- (b) the purposes and duration of the processing of those data; and
- (c) whether the data will be transmitted to a third party for the purpose of providing the value added service.

(4) A user or subscriber who has given his consent to the processing of data under sub-regulation (2)(b) shall—

- (a) be able to withdraw such consent at any time, and
- (b) in respect of each connection to the publicly available electronic communications network in question or each transmission of a communication, be given the opportunity to

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withdraw such consent, using a simple means and free of charge.

- (5) Processing of location data in accordance with this regulation shall—
- (a) only be carried out by—
 - (i) the public communications provider in question;
 - (ii) the third party providing the value added service in question; or
 - (iii) a person acting under the authority of a person falling within (i) or (ii); and
 - (b) where the processing is carried out for the purposes of the provision of a value added service, be restricted to what is necessary for those purposes.

Retention of data: general.

15A. (1) This regulation applies to traffic and location data necessary to identify the subscriber or registered user.

(2) A communications provider shall retain, to the extent that those data are generated or processed, the categories of data specified in subregulation (3) for the relevant period.

- (3) The categories of data are—
- (a) data necessary to trace and identify the source of a communication—
 - (i) concerning fixed network telephony and mobile telephony—
 - (A) the calling telephone number; and
 - (B) the name and address of the subscriber or registered user.
 - (ii) concerning Internet access, Internet e-mail and Internet telephony—

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- (A) any user ID allocated;
 - (B) the user ID and telephone number allocated to any communication entering the public telephone network; and
 - (C) the name and address of the subscriber or registered user to whom an Internet Protocol (IP) address, user ID or telephone number was allocated at the time of the communication.
- (b) data necessary to identify the destination of a communication—
- (i) concerning fixed network telephony and mobile telephony—
 - (A) the number dialled (the telephone number called), and, in cases involving supplementary services such as call forwarding or call transfer, the number or numbers to which the call is routed; and
 - (B) the name and address of the subscriber or registered user.
 - (ii) concerning Internet e-mail and Internet telephony—
 - (A) the user ID or telephone number of the intended recipient of an Internet telephony call;
 - (B) the name and address of the subscriber or registered user and user ID of the intended recipient of the communication.
- (c) data necessary to identify the date, time and duration of a communication—
- (i) concerning fixed network telephony and mobile telephony, the date and time of the start and end of the communication; and
 - (ii) concerning Internet access, Internet e-mail and Internet telephony—

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- (A) the date and time of the log-in and log-off of the Internet access service, based on a certain time zone, together with the IP address, whether dynamic or static, allocated by the Internet access service provider to a communication, and the user ID of the subscriber or registered user; and
 - (B) the date and time of the log-in and log-off of the Internet e-mail service or Internet telephony service, based on a certain time zone.
- (d) data necessary to identify the type of communication–
- (i) concerning fixed network telephony and mobile telephony – the telephone service used;
 - (ii) concerning Internet e-mail and Internet telephony – the Internet service used.
- (e) data necessary to identify users' communication equipment or what purports to be their equipment–
- (i) concerning fixed network telephony, the calling and called telephone numbers;
 - (ii) concerning mobile telephony–
 - (A) the calling and called telephone numbers;
 - (B) the International Mobile Subscriber Identity (IMSI) of the calling party;
 - (C) the International Mobile Equipment Identity (IMEI) of the calling party;
 - (D) the IMSI of the called party;
 - (E) the IMEI of the called party; and
 - (F) in the case of prepaid anonymous services, the date and time of the initial activation of the

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service and the location label (Cell ID) from which the service was activated.

(iii) concerning Internet access, Internet e-mail and Internet telephony—

(A) the calling telephone number for dial-up access; and

(B) the digital subscriber line (DSL) or other end point of the originator of the communication.

(f) data necessary to identify the location of mobile communication equipment—

(i) the location label (Cell ID) at the start of the communication; and

(ii) data identifying the geographic location of cells by reference to their location labels (Cell ID) during the period for which communications data are retained.

(4) Categories of data specified in subregulation (3) do not include data relating to unconnected calls.

(5) This regulation does not apply to the content of electronic communications, including information consulted using an electronic communications network.

(6) Data revealing the content of communications shall not be retained pursuant to this regulation.

(7) In this regulation and in regulations 15B to 15E –

“Cell ID” means the identity of the cell from which a mobile telephony call originated or in which it terminated;

“data” means traffic data and location data and the related data necessary to identify the subscriber or user;

“relevant period” means 12 months from the date of the communication;

“telephone service” means calls (including voice, voicemail and conference and data calls), supplementary services (including call

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forwarding and call transfer) and messaging and multi-media services (including short message services, enhanced media services and multi-media services);

“unsuccessful call attempt” means a communication where a telephone call has been successfully connected but not answered or there has been a network management intervention;

“user” means any legal entity or natural person using a publicly available electronic communications service for private or business purposes, without necessarily having subscribed to that service; and

“user ID” means a unique identifier allocated to persons when they subscribe to or register with an Internet access service or Internet communications service.

Retention of data: unsuccessful call attempts.

15B. In so far as it relates to unsuccessful call attempts, data which has been generated, processed, stored (as regards telephony data) or logged (as regards Internet data) shall, in respect of the categories of data set out in regulation 15A(3), be retained for the relevant period.

Additional security requirements.

15C. Without prejudice to any other security requirement imposed under these Regulations or under the Data Protection Act 2004, the following additional measures shall be applied to data retained pursuant to regulations 15A and 15B-

- (a) the retained data shall be of the same quality and subject to the same security and protection as those data on the network;
- (b) the data shall be subject to appropriate technical and organisational measures to protect the data against accidental or unlawful destruction, accidental loss or alteration, or unauthorised or unlawful storage, processing, access or disclosure;
- (c) the data shall be subject to appropriate technical and organisational measures to ensure that they can be accessed by specially authorised personnel only; and

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- (d) the data, except those that have been accessed and preserved, shall be destroyed at the end of the relevant period.

Transmission of requested data.

15D. A communications provider shall ensure that data retained pursuant to regulations 15A and 15B are stored in such manner that where a request for data has been made by the Data Protection Commissioner, those data are transmitted without undue delay.

Unlawful disclosure of data.

15E. A communications provider who discloses data retained pursuant to regulations 15A or 15B in contravention of the provisions of these Regulations or the Data Protection Act 2004 commits an offence.

Reporting to European Commission.

15F. The Data Protection Commissioner shall provide to the Minister, for onwards transmission to the European Commission, yearly statistics, excluding any personal data, on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or a public communications network, including—

- (a) the cases in which information was provided in accordance with regulation 15D;
- (b) the time elapsed between the date on which the data were retained and the request made in accordance with regulation 15D; and
- (c) the cases in which requests for data could not be met.

Tracing of malicious or nuisance calls.

16.(1) A communications provider may override anything done to prevent the presentation of the identity of a calling line where—

- (a) a subscriber has requested the tracing of malicious or nuisance calls received on his line; and
- (b) the provider is satisfied that such action is necessary and expedient for the purposes of tracing such calls.

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(2) Any term of a contract for the provision of publicly available electronic communications services relating to such prevention shall have effect subject to the provisions of sub-regulation (1).

(3) Nothing in these regulations shall prevent a communications provider, for the purposes of any action relating to the tracing of malicious or nuisance calls, from storing and making available to a person with a legitimate interest data containing the identity of a calling subscriber which were obtained while sub-regulation (1) applied.

Emergency calls.

17.(1) For the purposes of this regulation, “emergency calls” shall be construed in accordance with regulation 22 of the Communications (Universal Service and Users’ Rights) Regulations 2006.

(2) In order to facilitate responses to emergency calls–

- (a) all such calls shall be excluded from the requirements of regulation 11;
- (b) no person shall be entitled to prevent the presentation on the connected line of the identity of the calling line; and
- (c) the restriction on the processing of location data under regulation 15(2) shall be disregarded.

Termination of automatic call forwarding.

18.(1) Where–

- (a) calls originally directed to another line are being automatically forwarded to a subscriber's line as a result of action taken by a third party; and
- (b) the subscriber requests his provider of electronic communications services (“the subscriber's provider”) to stop the forwarding of those calls,

the subscriber's provider shall ensure, free of charge, that the forwarding is stopped without any avoidable delay.

(2) For the purposes of sub-regulation (1), every other communications provider shall comply with any reasonable requests made by the subscriber's

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provider to assist in the prevention of that forwarding.

Directories of subscribers.

19.(1) This regulation applies in relation to a directory of subscribers, whether in printed or electronic form, which is made available to members of the public or a section of the public, including by means of a directory enquiry service.

(2) The personal data of an individual subscriber shall not be included in a directory unless that subscriber has, free of charge, been—

- (a) informed by the collector of the personal data of the purposes of the directory in which his personal data are to be included, and
- (b) given the opportunity to determine whether such of his personal data as are considered relevant by the producer of the directory should be included in the directory.

(3) Where personal data of an individual subscriber are to be included in a directory with facilities which enable users of that directory to obtain access to that data solely on the basis of a telephone number—

- (a) the information to be provided under sub-regulation (2)(a) shall include information about those facilities; and
- (b) for the purposes of sub-regulation (2)(b), the express consent of the subscriber to the inclusion of his data in a directory with such facilities must be obtained.

(4) Data relating to a corporate subscriber shall not be included in a directory where that subscriber has advised the producer of the directory that it does not want its data to be included in that directory.

(5) Where the data of an individual subscriber have been included in a directory, that subscriber shall, without charge, be able to verify, correct or withdraw those data at any time.

(6) Where a request has been made under sub-regulations (5) or (9), that request shall be treated as having no application in relation to an edition of a directory that was produced before the producer of the directory received the request.

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(7) For the purposes of sub-regulation (6), an edition of a directory which is revised after it was first produced shall be treated as a new edition.

(8) Nothing in this regulation shall apply in relation to editions of directories first published before the date on which these regulations come into force.

(9) Where a subscriber's personal data has been included in a directory prior to the coming into force of these regulations, that data may remain included in the directory provided that the subscriber has been provided with information in accordance with regulation 7, and has not requested that his data be withdrawn.

Use of automated calling and communication systems.

20.(1) A person shall neither transmit, nor instigate the transmission of, communications comprising recorded matter for direct marketing purposes by means of an automated calling and communication system except in the circumstances referred to in sub-regulation (2).

(2) Those circumstances are where the called line is that of a subscriber or user who has previously notified the caller that for the time being he consents to such communications being sent by, or at the instigation of, the caller on that line.

(3) A subscriber or user shall not permit his line to be used in contravention of sub-regulation (1).

(4) For the purposes of this regulation, an automated calling and communication system is a system which is capable of—

- (a) automatically initiating a sequence of calls to more than one destination in accordance with instructions stored in that system; and
- (b) transmitting sounds which are not live speech for reception by persons at some or all of the destinations so called.

Use of facsimile machines for direct marketing purposes.

21.(1) A person shall neither transmit, nor instigate the transmission of, unsolicited communications for direct marketing purposes by means of a facsimile machine where the called line is that of—

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- (a) an individual subscriber or user, except in the circumstances referred to in sub-regulation (2);
- (b) a corporate subscriber or user who has previously notified the caller that such communications should not be sent on that line; or
- (c) a subscriber or user and the number allocated to that line is listed in the register kept under regulation 26.

(2) The circumstances referred to in sub-regulation (1)(a) are that the individual subscriber or user has previously notified the caller that he consents for the time being to such communications being sent by, or at the instigation of, the caller.

(3) A subscriber or user shall not permit his line to be used in contravention of sub-regulation (1).

(4) A person shall not be held to have contravened sub-regulation (1)(c) where the number allocated to the called line has been listed on the register for less than 28 days preceding that on which the communication is made.

(5) Where a subscriber or user 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 communications being sent on that line by that caller, such communications may be sent by that caller on that line, notwithstanding that the number allocated to that line is listed in the said register.

(6) Where a subscriber or user has given a caller notification pursuant to sub-regulation (5) in relation to a line of his—

- (a) the subscriber or user shall be free to withdraw that notification at any time; and
- (b) where such notification is withdrawn, the caller shall not send such communications on that line.

(7) The provisions of this regulation are without prejudice to the provisions of regulation 20.

Unsolicited calls for direct marketing purposes.

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

- (a) the called line is that of a subscriber or user 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 or user in respect of the called line is one listed in the register kept under regulation 27.

(2) A subscriber or user shall not permit his line to be used in contravention of sub-regulation (1).

(3) A person shall not be held to have contravened sub-regulation (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 or user who has caused a number allocated to a line of his to be listed in the register kept under regulation 27 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 or user has given a caller notification pursuant to sub-regulation (4) in relation to a line of his—

- (a) the subscriber or user shall be free to withdraw that notification at any time and free of charge; and
- (b) where such notification is withdrawn, the caller shall not make such calls on that line.

Use of electronic mail for direct marketing purposes.

23.(1) This regulation applies to the transmission of unsolicited communications by means of electronic mail to individual subscribers or users.

(2) Except in the circumstances referred to in sub-regulation (3), a person shall neither transmit, nor instigate the transmission of, unsolicited communications for the purposes of direct marketing by means of electronic mail unless the recipient of the electronic mail has previously notified the

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sender that he consents for the time being to such communications being sent by, or at the instigation of, the sender.

(3) A person may send or instigate the sending of electronic mail for the purposes of direct marketing where—

- (a) that person has obtained the contact details of the recipient of that electronic mail in the course of the sale or negotiations for the sale of a product or service to that recipient;
- (b) the direct marketing is in respect of that person's similar products and services only; 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 his contact details for the purposes of such direct marketing, at the time that the details were initially collected, and, where he did not initially refuse the use of the details, at the time of each subsequent communication.

(4) A subscriber or user shall not permit his line to be used in contravention of sub-regulation (2).

Use of electronic mail for direct marketing purposes where the identity or address of the sender is concealed.

24. A person shall neither transmit, nor instigate the transmission of, a communication for the purposes of direct marketing by means of electronic mail—

- (a) where the identity of the person on whose behalf the communication has been sent has been disguised or concealed, in contravention of the Electronic Commerce Act 2001;
- (b) where a valid address to which the recipient of the communication may send a request that such communications cease has not been provided; or
- (c) where a recipient is encouraged to visit a website that contravenes the Electronic Commerce Act 2001.

Information to be provided for the purposes of regulations 20, 21 and 22.

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25.(1) Where a publicly available electronic communications service is used for the transmission of a communication for direct marketing purposes the person using, or instigating the use of, the service shall ensure that the following information is provided with that communication—

- (a) in relation to a communication to which regulations 20 (automated calling systems) and 21 (facsimile machines) apply, the particulars mentioned in sub-regulation (2)(a) and (b);
- (b) in relation to a communication to which regulation 22 (telephone calls) applies, the particulars mentioned in sub-regulation (2)(a) and, if the recipient of the call so requests, those mentioned in sub-regulation (2)(b).

(2) The particulars referred to in sub-regulation (1) are—

- (a) the name of the person; and
- (b) either the address of the person or a telephone number on which he can be reached free of charge.

Redress for infringements.

25A.(1) Any person adversely affected by infringements of the provisions of regulations 20 to 25, and having a legitimate interest in the cessation or prohibition of such infringements, may bring legal proceedings before the Supreme Court in respect of such infringements.

(2) A service provider may bring legal proceedings in respect of such infringements in order to protect its legitimate business interests.

(3) A service provider who by its negligence contributes to infringements of the provisions of regulations 20 to 25 commits an offence.

Register to be kept for the purposes of regulation 21.

26.(1) For the purposes of regulation 21, the Authority shall maintain and keep up-to-date, in printed or electronic form, a register of the numbers allocated to subscribers or users, in respect of particular lines, who have notified it (notwithstanding, in the case of individual subscribers or users, that they enjoy the benefit of regulation 21(1)(a) and (2)) that they do not for the time being wish to receive unsolicited communications for direct marketing purposes by means of facsimile machine on the lines in question.

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(2) The Authority shall remove a number from the register maintained under sub-regulation (1) where it has reason to believe that the number has ceased to be allocated to the subscriber or user by whom it was notified pursuant to sub-regulation (1).

(3) On the request of—

- (a) a person wishing to send, or instigate the sending of, such communications as are mentioned in sub-regulation (1); or
- (b) a subscriber or user wishing to permit the use of his line for the sending of such communications,

for information derived from the register kept under sub-regulation (1), the Authority shall, unless it is not reasonably practicable so to do, on the payment to it of such fee as is, subject to sub-regulation (4), required by it, make the information requested available to that person, subscriber or user.

(4) For the purposes of sub-regulation (3) the Authority may require different fees—

- (a) for making available information derived from the register in different forms or manners; or
- (b) for making available information derived from the whole or from different parts of the register,

but the fees required by it shall be ones in relation to which the Minister has notified the Authority that he is satisfied that they are designed to secure, as nearly as may be and taking one year with another, that the aggregate fees received, or reasonably expected to be received, equal the costs incurred, or reasonably expected to be incurred, by the Authority in discharging its duties under sub-regulations (1), (2) and (3).

(5) The functions of the Authority under sub-regulations (1), (2) and (3), other than the function of determining the fees to be required for the purposes of sub-regulation (3), may be discharged on its behalf by some other person in pursuance of arrangements made by the Authority with that other person.

Register to be kept for the purposes of regulation 22.

27.(1) For the purposes of regulation 22, the Authority shall maintain and keep up-to-date, in printed or electronic form, a register of the numbers

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allocated to individual subscribers, in respect of particular lines, who have notified it that they do not for the time being wish to receive unsolicited calls for direct marketing purposes on the lines in question.

(2) The Authority shall remove a number from the register maintained under sub-regulation (1) where it has reason to believe that the number has ceased to be allocated to the subscriber by whom it was notified pursuant to sub-regulation (1).

(3) On the request of—

- (a) a person wishing to make, or instigate the making of, such calls as are mentioned in sub-regulation (1); or
- (b) a subscriber wishing to permit the use of his line for the making of such calls,

for information derived from the register kept under sub-regulation (1), the Authority shall, unless it is not reasonably practicable so to do, on the payment to it of such fee as is, subject to sub-regulation (4), required by it, make the information requested available to that person or that subscriber.

(4) For the purposes of sub-regulation (3) the Authority may require different fees—

- (a) for making available information derived from the register in different forms or manners; or
- (b) for making available information derived from the whole or from different parts of the register,

but the fees required by it shall be ones in relation to which the Minister has notified the Authority that he is satisfied that they are designed to secure, as nearly as may be and taking one year with another, that the aggregate fees received, or reasonably expected to be received, equal the costs incurred, or reasonably expected to be incurred, by the Authority in discharging its duties under sub-regulations (1), (2) and (3).

(5) The functions of the Authority under sub-regulations (1), (2) and (3), other than the function of determining the fees to be required for the purposes of sub-regulation (3), may be discharged on its behalf by some other person in pursuance of arrangements made by the Authority with that other person.

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Modification of contracts.

28. To the extent that any term in a contract between a subscriber to and the service provider or such a provider and the provider of an electronic communications network would be inconsistent with a requirement of these regulations, that term shall be void.

Legal requirements, law enforcement etc.

29.(1) Nothing in these regulations shall require a communications provider to do, or refrain from doing, anything (including the processing of data)–

- (a) if compliance with the requirement in question–
 - (i) would be inconsistent with any requirement imposed by or under an enactment or by a court order; or
 - (ii) would be likely to prejudice the prevention or detection of crime or the apprehension or prosecution of offenders; or
- (b) if exemption from the requirement in question–
 - (i) is required for the purposes of, or in connection with, any legal proceedings (including prospective legal proceedings);
 - (ii) is necessary for the purposes of obtaining legal advice; or
 - (iii) is otherwise necessary for the purposes of establishing, exercising or defending legal rights.

Responding to requests for access to personal data

29A. Communications providers shall establish procedures for responding to requests for access to users' personal data in accordance with the provisions of the Data Protection Act 2004 and shall provide the Data Protection Commissioner, on request, with information of such procedures, the number of requests received, the legal justification invoked and his response.

Proceedings for compensation for failure to comply with requirements of the these regulations.

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30.(1) A person who suffers damage by reason of any contravention of any of the requirements of these regulations by any other person shall be entitled to bring proceedings for compensation from that other person for that damage.

(2) In proceedings brought against a person by virtue of this regulation it shall be a defence to prove that he had taken such care as in all the circumstances was reasonably required to comply with the relevant requirement.

(3) The provisions of this regulation are without prejudice to those of regulation 32.

Penalties.

31A.(1) A person guilty of an offence under these Regulations is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding 12 months, or to a fine not exceeding level 5 on the standard scale, or to both, or
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years, or to a fine, or to both.

(2) A person shall also be guilty of an offence under these Regulations, and subject to the penalties set out in sub-regulation (1), where the conduct leading to the offence has subsequently been rectified.

Enforcement - extension of Part V of the Data Protection Act 2004.

31.(1) The provisions of Part V of the Data Protection Act 2004 shall have effect in relation to these regulations as they have effect in relation to the Data Protection Act 2004: and for these purposes, Part V shall be read with any modifications necessary to give effect to this regulation.

(2) The provisions of this regulation are without prejudice to those of regulation 32.

Request that the Data Protection Commissioner exercises his enforcement functions.

32. Where it is alleged that there has been a contravention of any of the requirements of these Regulations, a person aggrieved by the alleged contravention may request the Data Protection Commissioner to exercise his

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enforcement functions in respect of that contravention, but those functions shall be exercisable by the Commissioner whether or not it has been so requested.