



United Kingdom: "Tele-Sales"

November 2002

LL File No. 2002-14039
LRA-D-PUB-000238

This report is provided for reference purposes only.
It does not constitute legal advice and does not represent the official
opinion of the United States Government. The information provided
reflects research undertaken as of the date of writing.
It has not been updated.

LAW LIBRARY OF CONGRESS

UNITED KINGDOM

“TELE-SALES”

Regulations governing “tele-sales” in the United Kingdom prohibit the use of automated calling systems. An emphasis has been placed on an opt-out scheme for individuals who do not wish to be subjected to unsolicited direct marketing calls. The Regulations also require that certain procedures be followed when tele-marketers and individuals agree to a contract if there is to be no face-to-face contact. If the procedures are not followed, the contract can be rendered void.

Introduction

United Kingdom Regulations addressing “tele-sales” are based on European Union Directives, particularly the Telecommunications Data Protection Directive¹ which aimed at regulating Member States’ laws relating to electronic commerce. The term “tele-sales” in this context is interpreted to refer solely to transactions initiated or conducted via the telephone through unsolicited direct marketing.

Direct Marketing

In 1999, the United Kingdom enacted the Telecommunications (Data Protection and Privacy) Regulations² in response to the EU’s Telecommunications Data Protection Directive. The Regulations place certain requirements on the use of public telecommunications systems for direct marketing, which is defined as “the communication of any advertizing or marketing material on a particular line.”³

The Regulations prohibit companies from placing unsolicited calls for direct marketing purposes to individuals who have indicated that they do not want to receive such calls.⁴ Such an indication can take the form of a notification to individual companies that unsolicited calls should not be made, or the registration in an opt-out scheme, which the Director General of Telecommunications (DGT) is required to maintain.⁵ The DGT designated that the Direct Marketing Association, which previously had been operating a voluntary scheme, have the responsibility of operating the opt-out scheme, called

¹ 1997 O.J. (L 24) 66.

² SI 1999/2093.

³ *Id.* reg. 21.

⁴ *Id.* reg. 25 and the Data Protection Act 1998, ch. 29, §11.

⁵ *Id.* reg. 25(4).

the Telephone Preference Service (TPS). The Regulations prohibit direct marketers from making calls to individuals who have been registered with the TPS for more than 28 days. This requires that companies using direct marketing update the list of people not to be contacted at least once every 28 days.⁶

As well as providing an opt-out scheme for people not wanting to take direct marketing calls, the Regulations require that direct marketers follow certain procedures when making such calls. The person making the call is under an obligation to provide information that identifies him/her and the company or organization that he/she is calling on behalf of, and where requested, either a contact address or free-phone number that enables the individual called to contact them.⁷

The Regulations prohibit the use of automated calling systems for direct marketing purposes unless the individual being contacted has previously consented to the use of the system or has instigated the call.⁸

These Regulations are enforced by the Information Commissioner who can investigate any alleged contravention of the Regulations, whether or not they have been reported to him/her.⁹ Compensation can be provided to any person who has suffered any damage through the contravention of the Regulations.¹⁰

Distance Contracts

The Consumer Protection (Distance Selling) Regulations 2000¹¹ regulate distance contracts, where the supplier and buyer have no face-to-face contact at any point in the contract.¹² To be a valid contract under the 2000 Regulations, certain information must be supplied prior to the conclusion of the contract to ensure that the buyer adequately knows the goods or services that they are purchasing. Suppliers must provide in a clear, durable manner:

- their identity and, if the contract requires advance payment, their postal address
- the total price and a description of the main characteristics of the goods or services

⁶ *Id.* reg. 27(4).

⁷ *Id.* reg. 27.

⁸ *Id.* reg. 22-3.

⁹ *Id.* reg. 36-37.

¹⁰ *Id.* reg. 35.

¹¹ SI 2000/2334.

¹² *Id.* reg. 1.

- applicable delivery costs
- the arrangements for payment, delivery, or performance
- the existence of a right of cancellation
- the cost of using the means of communication if it is more than the basic rate
- the duration for which the offer or price is valid
- whether, if necessary, substitute goods will be supplied and the cost of returning such goods
- where appropriate, the minimum duration of the contract¹³

The supplier must provide the buyer with written confirmation of the information above once an order has been placed, unless it has been provided in writing beforehand.¹⁴

The written information must also include any after-sales guarantees or services, whether the consumer is under a requirement to return any goods and which party is responsible for the costs of returning or recovering the goods.¹⁵ Goods are required to be delivered within 30 days, if this cannot be achieved then the buyer is under no obligation to continue with the contract.¹⁶ The buyer has a number of options in which to cancel an order and can do so in writing provided that it is done within seven working days from the date after the goods were received or seven days after the buyer agrees to proceed with a contract.¹⁷

The law does not apply to contracts between businesses, nor to suppliers that only conduct distance contracts on a one off basis. Various types of contracts are also excluded from the ambit of the regulations, such as contracts for financial services; contracts for the sale or disposition of an interest in land, except rental agreements; or contracts concluded at an auction.¹⁸

The regulations are enforced by the Director General of Fair Trading, the Trading Standards Department in Great Britain, and the Department of Enterprise, Trade and Investment in Northern Ireland. These bodies are required to consider complaints that the regulations have been breached and can apply for an injunction against any person

¹³ *Id.* reg. 7.

¹⁴ *Id.* reg. 8.

¹⁵ *Id.* reg. 8.

¹⁶ *Id.* reg. 19.

¹⁷ *Id.* reg. 12 - 13.

¹⁸ *Id.* reg. 5. A comprehensive list of exempt contracts is contained in regulation 5 and schedule 2 .

who appears to be responsible for the breach.¹⁹

Prepared by Clare Feikert
Legal Specialist
Western Law Division
Law Library of Congress
November 2002

¹⁹ *Id.* reg. 27.