

The Electronic Commerce (EC Directive) Regulations 2002 (The “E-Commerce Directive”)

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If your firm operates online using the web or communicates using email, this is very likely to apply to you.

These Regulations apply to both business to business and business to consumer relationships.

Some provisions of the Regulations came into force on the 21 August 2002, with the other provisions coming into effect on the 23 October of that year. (Prior to that, the EU adopted the E-Commerce Directive on the 8 June 2000.)

The Regulations are complex, and we strongly advise you to consult a legal professional if you are in doubt.

Please note, this Fact Sheet does not constitute legal advice.

1. Does this apply to me?

The Regulations are likely to apply to you if you:

- Sell goods or services on the Internet or via email to businesses or consumers,
- Advertise your business on the Internet or via email (e.g. if you have a web site)
- Convey or store electronic content or provide access to a communications network (e.g. web hosting companies or telecom providers).

2. What’s the purpose of the Regulations?

The purpose of the Directive (and therefore the Regulations) is to “ensure the free movement of ‘information society services’ across the European Community and to encourage greater use of e-commerce by breaking down barriers across Europe and boost consumer confidence and trust by clarifying the rights and obligations of businesses and consumers.”

3. What are the key features of the regulations?

The Regulations cover both paid - for services and information, and also extends to services and information which are not paid for by those who receive them.

For example, this includes on-line information (e.g. web sites) or commercial communications (e.g. email), or those providing search, access and retrieval of data.

Other key points:

- Online selling and advertising is subject to the laws of the UK if the trader is based here.
- Recipients of online services must be given clear information about the trader, the nature of commercial communications and how to complete an online transaction.
- Online service providers (e.g. web site hosting firms) are exempt from liability for the

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content they convey or store, under certain circumstances.

- There are changes to the powers of enforcement authorities such as Trading Standards and the office of Fair Trading.

4. What information do I need to provide on my web site to comply?

You need to:

- Display the name of your business and address, (not just a PO Box number) and contact information such as phone number and email address
- Give your company registration number or proprietor's name, VAT number if you are VAT registered,
- Refer to trade or professional recognition schemes, (with registration number, if applicable - for example, the CORGI scheme for gas installers.)
- Give clear information on price, taxes and delivery terms to buyers.
- Clearly show your Terms and Conditions, and acknowledge any orders - this can be via email.

5. What information do I need to provide on my emails to comply?

Your emails need to:

- Be clearly identifiable as a "commercial communication"
- Clearly identify the person on whose behalf the commercial communication is made, i.e. your business

- Clearly identify as such any promotional offer and ensure that any conditions that must be met to qualify for it must be easily accessible, and presented clearly, and unambiguously; and

- Clearly identify as such any promotional competition or game and ensure that any conditions for participation are easily accessible and presented clearly and unambiguously.

Good practice on email marketing - though not an express requirement of the Regulations - would also dictate that you have an easy to use "unsubscribe" mechanism that you strictly adhere to, to allow recipients to be taken off your target list.

6. What are the exemptions to the Regulations?

Personal e-mail exchanges or a web site with no commercial content - for example, a hobby web site - would not be covered by these Regulations.

7. Useful links:

www.offt.gov.uk -
Office of Fair Trading web site

www.dti.gov.uk -
Department of Trade & Industry Governmental web site

Also - see the Fact Sheets on:

"Data Protection Act 1998"

"Consumer Protection - Distance Selling Regulations"