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

The Privacy and Electronic Communications (Amendment) (No. 2) Regulations 2018

Made - - - - ***

Coming into force in accordance with regulation 1

The Treasury make the following Regulations in exercise of the powers conferred by section 21(1) to (4) of the Financial Guidance and Claims Act 2018(**a**) ("the Act").

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 (Amendment) (No. 2) Regulations 2018 and come into force 21 days after the day on which they are made.

(2) In these Regulations, "the 2003 Regulations" means the Privacy and Electronic Communications (EC Directive) Regulations 2003(**b**).

Amendment of the 2003 Regulations

2.—(1) The 2003 Regulations are amended as follows.

(2) In regulation 21 (calls for direct marketing purposes), in paragraph (6), after the words "regulation 21A" insert—

"or 21B.".

(3) After regulation 21A insert—

"**Calls for direct marketing in relation to pension schemes**

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

(**a**) 2018 c. 10. See section 26(2) for the definition of "Secretary of State".
(**b**) S.I. 2003/2426; amended by S.I. 2011/1208, 2016/524, 2016/1177 and the Financial Guidance and Claims Act 2018, section 35; there are other amendments not relevant to these Regulations.

(2) This paragraph applies where—

(a) the caller is an authorised person or a person who is the trustee or manager of an occupational pension scheme or a personal pension scheme; 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 the caller on that line.

(3) This paragraph applies where—

(a) the caller is an authorised person or a person who is the trustee or manager of an occupational pension scheme or a personal pension scheme;

(b) the recipient of the call has an existing client relationship with the caller on the line and the relationship is such that the recipient might reasonably envisage receiving unsolicited calls for the purpose of direct marketing in relation to occupational pension schemes or personal pension schemes; and

(c) the recipient of the call 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 this regulation—

(a) "authorised person" has the meaning given in section 31 of the Financial Services and Markets Act 2000(**a**);

(b) "direct marketing in relation to occupational pension schemes or personal pension schemes" includes—

(i) the marketing of a product or service to be acquired using funds held, or previously held, in an occupational pension scheme or a personal pension scheme,

(ii) the offer of any advice or other service that promotes, or promotes the consideration of, the withdrawal or transfer of funds from an occupational pension scheme or a personal pension scheme, and

(iii) the offer of any advice or other service to enable the assessment of the performance of an occupational pension scheme or a personal pension scheme (including its performance in comparison with other forms of investment);

(c) "existing client relationship" does not include a relationship established at the instigation of the caller primarily for the purpose of avoiding the restriction in paragraph (1); and

(d) "occupational pension scheme" and "personal pension scheme" have the meanings given in section 1(1) of the Pension Schemes Act 1993(**b**).".

name
name

Date

Two of the Lords Commissioners of Her Majesty's Treasury

(**a**) 2000 c. 8; section 31 was amended by the Financial Services Act 2012 (c. 21), section 11(1).
(**b**) 1993 c. 48; section 1(1) was amended by the Pensions Act 2004 (c. 35), section 239, the Finance Act 2007 (c. 11), Schedule 27(3)(2), paragraph 1 and S.I. 2007/3014.

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 prohibit direct marketing in relation to occupational or personal pension schemes ("pensions cold calling").

Regulation 2(2) of these Regulations amends regulation 21 of the 2003 Regulations, which establishes an opt-out regime for cold calling, so as to disapply it from pensions cold calling.

Regulation 2(3) inserts a new regulation 21B into the 2003 Regulations. Paragraphs (1) to (3) of new regulation 21B prohibit pensions cold calling except where the caller is a trustee or manager of a pension scheme or a firm authorised by the Financial Conduct Authority and—

— the recipient of the call has consented to receiving calls from the organisation making the call; or

— the recipient of the call is an existing customer of the organisation making the call, expects to receive pensions cold calls from that organisation and has been given the opportunity to refuse to provide contact details for the purpose of receiving such calls.

Paragraph (5)(b) defines pensions cold calling.

An organisation that breaches the prohibition on pensions cold calling may be liable to pay compensation to the victim and may be subject to enforcement action by the Information Commissioner's Office (the "ICO") under the Data Protection Act 1998. The ICO's enforcement powers include serving an enforcement notice and issuing a monetary penalty notice. Failure to comply with an enforcement notice is a criminal offence.

A full impact assessment has not been produced for this instrument, as no significant impact on the private, voluntary or public sector is foreseen. A *de minimis* impact assessment is available from HM Treasury, 1 Horse Guards Road, London SW1A 2HQ and is published alongside this instrument at www.legislation.gov.uk.

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