

**TRANSPOSITION NOTE FOR DIRECTIVE 2002/58/EC OF THE EUROPEAN PARLIAMANT AND OF THE  
COUNCIL OF 12 JULY 2002  
concerning the processing of personal data and the protection of privacy in the electronic communications sector  
(Directive on privacy and electronic communications)**

<b>Article</b>	<b>Objective</b>	<b>Implementation</b>	<b>Responsibility</b>
1(1), (2) and (3)	Defines the scope and aim of the Directive	No action required	
2	Definitions	Regulation 2	Secretary of State – through the Regulations
3(1), (2) and (3)	Defines the services to which the provisions of the Directive apply. Article 3(3) permits Member States to notify the Commissions of cases where the implementation of Articles 8, 10 and 11 would be technically impossible or involve disproportionate economic effort.	No specific transposition required. The UK has not made any notification pursuant to article 3(3).	
4(1)	Requires a provider of a publicly available electronic communications service to take appropriate measures to safeguard the security of its services, if necessary in conjunction with the provider of the public communications network. The	Regulation 5(1) requires a provider of a public electronic communications service to take appropriate technical and organisational measures to safeguard the security of the service. Regulation 5(2) provides that those measures may be taken	Secretary of State – through the Regulations

	<p>measures taken shall ensure a level of security appropriate to the risk, having regard to the state of the art and the cost of implementation.</p>	<p>in conjunction with the provider of the electronic communications network by means of which the service is provided, and requires the network provider to comply with reasonable requests made by the service provider for those purposes. Regulation 5(4) provides that for the purposes of paragraph (1) a measure shall only be taken to be appropriate if, having regard to the state of technological development and the cost of implementing it, it is proportionate to the risks against which it would safeguard.</p>	
4(2)	<p>Requires a provider of a publicly available electronic communications service, in the case of a particular risk of a security breach, to inform subscribers of the risk and of any possible remedies, including an indication of the likely costs involved.</p>	<p>Regulation 5(3) provides that where there remains a significant risk to the security of the service, the service provider shall inform subscribers concerned of the nature of the risk, any appropriate measures he may take to safeguard against it, and the likely costs of those measures.</p>	<p>Secretary of State – through the Regulations</p>
5(1)	<p>Requires Member States to ensure the confidentiality of communications and related</p>	<p>Article 5(1) is not transposed in these Regulations, as its requirements are met by the</p>	

	<p>traffic data through national legislation. In particular, they are required to prohibit listening, tapping, storage or other kinds of interception and surveillance of communications without the consent of the users concerned except where legally authorised in accordance with article 15(1).</p>	<p>Regulation of Investigatory Powers Act 2000.</p>	
5(2)	<p>Permits legally authorised recording of communications and related traffic data when carried out in the course of a lawful business practice.</p>	<p>Article 5(2) is not transposed in these Regulations, as its requirements are met by the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000.</p>	
5(3)	<p>Requires Member States to ensure that the use of electronic communications networks to store or gain access to information in the terminal equipment of a subscriber or user is only allowed where the subscriber or user is provided with information in accordance with Directive 95/46/EC, inter alia about the purposes of the processing, and is offered the right to refuse such processing; but this shall not</p>	<p>Regulation 6(1) provides that a person shall not use an electronic communications network to store or gain access to information in the terminal equipment of a subscriber or user unless the requirements of regulation 6(2) are met. Those requirements are that the subscriber or user is given information about the purposes of the storage of or access to the information, and is given the opportunity to refuse that storage</p>	<p>Secretary of State – through the Regulations</p>

	prevent technical storage or access for the sole purpose of carrying out or facilitating the transmission of a communication, or as strictly necessary for the provision of an information society service requested by a subscriber or user.	or access. Regulation 6(4) provides that regulation 6(1) shall not apply to the technical storage of or access to information for the sole purpose of carrying out or facilitating the transmission of a communication or where such storage or access is strictly necessary for the provision of an information society service requested by a subscriber or user.	
6(1)	Requires providers of public electronic communications networks or publicly available electronic communications services to erase or make anonymous traffic data relating to subscribers or users when it is no longer needed for the transmission of a communication.	Regulation 7(1) requires traffic data relating to subscribers or users which are stored or processed by a public communications provider to be erased or modified so that they no longer constitute personal data (or, in the case of a corporate subscriber, what would constitute personal data were it an individual subscriber) when they are no longer required for the transmission of a communication.	Secretary of State – through the Regulations
6(2)	Provides that traffic data needed for billing and interconnection payments may be processed up to the end of the period during which the bill may be challenged or	Regulation 7(2) and (5) together provide that traffic data held for purposes connected with the payment of charges or in respect of interconnection payments may	Secretary of State – through the Regulations

	payment pursued.	be processed and stored until the end of the period during which legal proceedings may be brought in respect of payments due or until proceedings which are brought are determined.	
6(3)	Permits the provider of a publicly available electronic communications service to process traffic data relating to a subscriber or user for the purposes of marketing electronic communications services or providing value added services with the consent of the subscriber or user, which consent shall be capable of being withdrawn at any time.	Regulation 7(3) permits processing and storage of traffic data by a provider of a public electronic communications service if it is for the purpose of marketing electronic communications services or for the provision of value added services, where the subscriber or user to whom the traffic data relates has given his consent to the processing or storage and its duration is no longer than is necessary for its purpose. Regulation 7(4) provides that where a subscriber or user has given his consent to such processing or storage he shall be able to withdraw it at any time.	Secretary of State – through the Regulations
6(4)	Requires a service provider to give the subscriber or user certain information about the traffic data which are processed for the	Regulation 8(1) provides that processing of traffic data in accordance with regulation 7(2) or (3) shall not be undertaken unless	Secretary of State – through the Regulations

	purposes mentioned in Article 6(2) and (3).	the subscriber or user to whom the data relates has been provided with certain information.	
6(5)	Provides that processing of traffic data in accordance with the foregoing paragraphs must be restricted to persons acting under the authority of providers of the public electronic communications networks and the publicly available electronic communications services handling matters including billing or traffic management or customer enquiries, and must be restricted to what is necessary for the purposes of such activities.	Regulation 8(2) and (3) together provide that processing of traffic data in accordance with regulation 7 shall be limited to what is required for the purposes of certain specified activities and shall be carried out only by a public communications provider or person acting under his authority.	Secretary of State – through the Regulations
6(6)	Allows competent bodies to be informed of traffic data with a view to the settling of disputes.	Regulation 8(4) permits the furnishing of traffic data to competent authorities for the purposes of any provision relating to the settling of disputes.	Secretary of State – through the Regulations
7(1)	Provides that subscribers should have the right to receive non-itemised bills.	Regulation 9(1) requires a provider of a public electronic communications service to provide a subscriber who requests them with non-itemised bills.	Secretary of State – through the Regulations
7(2)	Requires Member States to apply national provisions to reconcile	Regulation 9(2) places a duty on OFCOM, when exercising their	OFCOM

	the rights of subscribers receiving itemised bills with the right to privacy of calling users and called subscribers.	functions under Chapter 1 of Part 2 of the Communications Act 2003, 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.	
8(1)	Requires that, where presentation of calling line identification (“CLI”) is offered, a service provider must offer the calling user the possibility of preventing the presentation of CLI on a per-call basis. Subscribers are to be offered this on a per-line basis.	Regulation 10(2) requires a provider of a public electronic communications service to provide users making a call with a simple means of preventing the presentation of CLI as respects that call. Regulation 10(3) requires such a means to be provided to subscribers to the service as respects their line and all calls originating from that line. Regulation 10(4) requires the measures provided to be provided free of charge.	Secretary of State – through the Regulations
8(2)	Requires a service provider to offer the called subscriber the possibility of preventing the presentation of the CLI of incoming calls.	Regulation 11(2) requires a service provider to provide the called subscriber with a simple means to prevent presentation of CLI on the connected line.	Secretary of State – through the Regulations
8(3)	Requires a service provider, where CLI is presented prior to	Regulation 11(3) requires that, where presentation of CLI prior to	Secretary of State – through the Regulations

	the call being established, to offer the called subscriber the possibility of rejecting incoming calls where the presentation of the CLI has been prevented by the caller.	the call being established is available, a service provider shall provide the called subscriber with a simple means of rejecting incoming calls where the presentation of CLI has been prevented.	
8(4)	Provides that, where presentation of connected line identification is offered, a service provider must offer the calling subscriber the possibility of preventing its presentation to the called user.	Regulation 11(4) requires a service provider to provide the called subscriber with a simple means to prevent the presentation of the identity of the connected line on any calling line.	Secretary of State – through the Regulations
8(5)	Provides that Article 8(1) shall apply to calls from the Community to third countries, and that Article 8(2), (3) and (4) shall apply to incoming calls from third countries.	No specific transposition required.	
8(6)	Requires Member States to ensure that service providers inform the public of the presentation of calling/connected line identification (where they are offered) and of the possibilities set out in Article 8(1) to (4).	Regulation 12 requires a provider of a public electronic communications service to provide certain information to the public, for the purposes of regulations 10 and 11, where calling or connected line identification is offered.	Secretary of State – through the Regulations
9(1)	Provides that location data (other than traffic data) relating to users	Regulation 14(2) provides that location data relating to a user or	Secretary of State – through the Regulations

	<p>or subscribers of public communications networks or publicly available electronic communications services may only be processed if they are made anonymous or (with the user or subscriber's consent, which shall be capable of being withdrawn at any time) to the extent and for the duration necessary for the provision of a value added service. Certain information must be provided to users and subscribers before their consent is obtained.</p>	<p>subscriber of a public communications provider may only be processed where the user or subscriber cannot be identified from the data or, with their consent, where the processing is necessary for the provision of a value added service. Regulation 14(3) sets out information that must be provided to the user or subscriber before their consent is obtained. Regulation 14(4)(a) provides that a user or subscriber should be free to withdraw their consent at any time.</p>	
9(2)	<p>Provides that users or subscribers whose consent to the processing of location data (other than traffic data) has been obtained should be able to temporarily refuse the processing of such data for each connection to the network or each transmission of a communication.</p>	<p>Regulation 14(4)(b) provides that a user or subscriber shall, in respect of each connection to the network or each transmission of a communication, be given the opportunity to withdraw his consent to processing, using a simple means and without charge.</p>	<p>Secretary of State – through the Regulations</p>
9(3)	<p>Provides for restrictions on the processing of location data in accordance with Article 9(1) and (2) and on the persons who may process such data.</p>	<p>Regulation 14(5) places restrictions on the processing of location data, and on who may process it.</p>	<p>Secretary of State – through the Regulations</p>
10	<p>Requires Member States to ensure</p>	<p>Regulation 15(1) permits a</p>	<p>Secretary of State – through the</p>

	<p>that there are transparent procedures governing the way in which a provider of a public communications network and/or a publicly available electronic communications service may override (a) the elimination of the presentation of CLI upon application by a subscriber requesting the tracing of malicious or nuisance calls, and (b) the elimination of the presentation of CLI and the temporary denial or absence of consent of a subscriber or user to the processing of location data, on a per-line basis for the purpose of responding to emergency calls.</p>	<p>communications provider to do override anything done to prevent the presentation of CLI where a subscriber has requested the tracing of malicious or nuisance calls and the provider is satisfied that such action is necessary and expedient for the purposes of tracing such calls. Regulation 16 provides that, in order to facilitate responses to emergency calls, all such calls shall be excluded from regulation 10, no person shall be entitled to prevent the presentation on the connected line of CLI, and the restriction on the processing of location data under regulation 14(2) shall be disregarded.</p>	<p>Regulations</p>
<p>11</p>	<p>Provides that Member States shall ensure that any subscriber has the possibility of stopping automatic call forwarding by a third party to the subscriber's terminal.</p>	<p>Regulation 17(1) provides that where calls are being automatically forwarded to a subscriber's line as result of action taken by a third party and the subscriber requests his provider of electronic communications services to stop that forwarding, the provider shall ensure that the forwarding is stopped without delay.</p>	<p>Secretary of State – through the Regulations</p>

12(1)	Requires Member States to ensure that subscribers are informed about the purpose(s) of a printed or electronic directory in which their personal data can be included and of any further usage possibilities based on search functions embedded in electronic versions of the directory.	Regulation 18(2)(a) provides that an individual subscriber's personal data shall not be included in a directory unless he has been informed by the collector of the data of the purposes of the directory. Regulation 18(3)(a) provides that where an individual subscriber's personal data are to be included in a directory with facilities which enable users to gain access to that data solely on the basis of a telephone number, the information to be provided shall include information about those facilities.	Secretary of State – through the Regulations.
12(2)	Requires Member States to ensure that subscribers are given the opportunity to determine whether their personal data are included in a directory and, if so, which, and to verify, correct or withdraw such data free of charge.	Regulation 18(2)(b) requires an individual subscriber to be given the opportunity to determine whether such of his personal data as are deemed relevant by the producer of the directory should be included in the directory. Regulation 18(5) requires that an individual subscriber shall be able to verify, withdraw or correct that data, free of charge at any time.	Secretary of State – through the Regulations
12(3)	Provides that Member States may require that for any purpose of a	Regulation 18(3)(b) provides that where an individual subscriber's	Secretary of State – through the Regulations

	<p>directory other than searches for persons' details on the basis of name and, where necessary, a minimum of other identifiers, additional consent shall be asked of subscribers.</p>	<p>personal data are to be included in a directory with facilities which enable users to obtain access to that data solely on the basis of a telephone number, the express consent of the subscriber to the inclusion of his data must be obtained.</p>	
12(4)	<p>Provides that Article 12(1) and (2) shall apply to subscribers who are natural persons, and requires Member States to ensure, in the framework of Community law and national legislation, that the legitimate interests of other subscribers are sufficiently protected.</p>	<p>Regulation 18(4) provides that 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.</p>	<p>Secretary of State – through the Regulations</p>
13(1)	<p>Provides that the use of automated calling machines, facsimile machines (fax) or electronic mail for the purposes of direct marketing may only be allowed in respect of subscribers who have given prior consent.</p>	<p>Regulation 19(1) and (2) together provide that a person shall not transmit, nor instigate the transmission of, a communication for direct marketing purposes by an automated calling system except where the subscriber has previously notified the caller that he consents to such communications being sent. Regulation 20(1) and (2) together provide a person shall not</p>	<p>Secretary of State – through the Regulations. OFCOM are responsible for keeping the register under regulation 25.</p>

		<p>transmit, nor instigate the transmission of, a communication for direct marketing purposes by fax where the called line is that of an individual subscriber (except where he has previously advised the caller that he consents to such communications being sent), a corporate subscriber who has previously notified the caller that such communications should not be sent on that line, or a subscriber whose number is listed in the register kept under regulation 25 (which requires OFCOM to keep a register of numbers of subscribers who do not wish to receive communications by fax for direct marketing purposes).</p> <p>Regulation 22(2) provides that a person shall not transmit, nor instigate the transmission of, unsolicited communications for direct marketing purposes by electronic mail, except in the circumstances referred to in regulation 22(3), unless the recipient has notified the sender that he consents to such</p>	
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		communications being sent.	
13(2)	Provides that a natural or legal person who has obtained from its customers their electronic contact details in the context of the sale of a product or service in accordance with Directive 95/46/EC may use those contact details for direct marketing of its own similar products or services, provided customers are given the opportunity to object to such use of the details when they are collected and on the occasion of each message where the customer has not initially refused such use.	Regulation 22(3) provides that a person may send or instigate the sending of electronic mail for direct marketing purposes where he has obtained the recipient's contact details in the course of a sale or negotiations for a sale of a product or service to that recipient, the direct marketing is in respect of similar products and services, and the recipient has been given a simple means of refusing the use of his contact details at the time they were collected and, where he did not so refuse, at the time of each subsequent communication.	Secretary of State – through the Regulations.
13(3)	Requires Member States to take appropriate measures to ensure that unsolicited communications for the purposes of direct marketing in cases other than those referred to in Article 13(1) and (2) are either not allowed without the subscriber's consent or in respect of subscribers who do not wish to receive such communications, the choice	Regulation 21(1) provides that a person shall not use, nor instigate the use of, a public electronic communications service for unsolicited calls for direct marketing purposes where the line is that of a subscriber who has notified the caller that he does not wish to receive such calls on that line, or the subscriber's number is listed in the register kept under	Secretary of State – through the Regulations. OFCOM are responsible for keeping the register under regulation 26.

	between these options to be determined by national legislation.	regulation 26 (which requires OFCOM to keep a register of numbers of individual subscribers who do not wish to receive unsolicited calls for direct marketing purposes).	
13(4)	Prohibits the sending of electronic mail for direct marketing purposes where the identity of the sender on whose behalf the communication is made is disguised or concealed or where a valid address to which the recipient may send a request that such communications cease is not provided.	Regulation 23 provides that a person may not transmit, nor instigate the transmission of, a communication for direct marketing purposes by electronic mail where the identity of the sender on whose behalf the communication is made is disguised or concealed or where a valid address to which the recipient may send a request that such communications cease is not provided.	Secretary of State – through the Regulations.
13(5)	Provides that Article 13(1) and (2) shall apply only to subscribers who are natural persons, and that Member States shall also ensure, within the framework of Community law and national legislation, that the legitimate interests of other subscribers are sufficiently protected.	Regulations 19, 20(1)(b) and (c), 21(1)(a) and 25 protect the interests of corporate subscribers.	Secretary of State – through the Regulations
14(1), (2) and (3)	Sets out provisions regarding	No specific transposition required.	

	technical features and standardisation.		
15(1)	Permits Member States to adopt legislative measures to restrict certain rights and obligations in the Directive where such restriction is a necessary, appropriate and proportionate measure to safeguard certain aims including national security.	This permission is taken advantage of in regulation 28(1), which provides that nothing in the Regulations shall require a communications provider to do, or refrain from doing, anything if exemption from the requirement in question is required for the purpose of safeguarding national security, and in regulation 29, which provides for exemptions from the requirements of the Regulations for communications providers in certain circumstances connected to legal proceedings, the prevention and detection of crime and the prosecution of offenders.	
15(2)	Provides that the provisions of Chapter III of Directive 95/46/EC shall apply with regard to national provisions adopted pursuant to this Directive and with regard to individual rights derived from this Directive.	Regulation 30 provides that proceedings may be brought for compensation for damage caused by breaches of the Regulations. Regulations 31 and 32 provide for enforcement of the Regulations by the Information Commissioner.	Secretary of State – through the Regulations
15(3)	Makes provision regarding the Working Party on the Protection	No action required.	

	of Individuals with regard to the Processing of Personal Data instituted by Article 29 of directive 95/46/EC.		
16(1)	Provides that Article 12 shall not apply to editions of directories produced or placed on the market before the national provisions adopted pursuant to the Directive enter into force	Paragraph 2(1) of Schedule 2 provides that regulation 18 shall not apply in relation to editions of directories first published before the date on which the Regulations come into force.	Secretary of State – through the Regulations
16(2)	Provides that where subscribers' personal data have been included in a directory in accordance with Directive 95/46/EC and Article 11 of Directive 97/66/EC before the national provisions adopted in pursuance of the Directive enter into force, that data may remain included in the directory in its printed or electronic versions, including versions with reverse search functions, unless subscribers indicate otherwise, having received information in accordance with Article 12.	Paragraph 2(2) of Schedule 2 provides that where a subscriber's personal data have been included in a directory in accordance with Part IV of the Telecommunications (Data Protection and Privacy) Regulations 1999, that data may remain included in the directory provided that the subscriber has been provided with information in accordance with regulation 8, and has not requested that his data be withdrawn.	Secretary of State – through the Regulations
17(1)	Transposition – requires Member States, in adopting the provisions of the Directive, to include a reference to the Directive.	The Explanatory Note to the Regulations (which is not part of the Regulations) sets out which provisions of the Directive which	Secretary of State – through the Explanatory Note to the Regulations

		the Regulations implement.	
17(2)	Requires Member States to communicate the provisions they adopt in the field governed by the Directive to the Commission.	No transposition required	
18	Review	No action required	
19	Repeal	No action required	
20	Entry into force	No action required	
21	Addressees	No action required	