

ELECTRONIC TRADING

The Electronic Commerce (EC Directive) Regulations 2002

1 Website trading

Websites must provide "in a clear, comprehensive and unambiguous manner" the following information –

- the different technical steps to follow to conclude the contract
- whether the contract will be (a) stored and (b) accessible
- the technical means to review and correct an order before it is placed
- the languages in which the order can be placed

Website owners must also ensure there are "effective and accessible means" to check and correct orders before they are placed, and must promptly and electronically acknowledge the order

2 Websites and emails generally

This probably applies to all commercial websites, even if just "brochure sites", and to all commercial emails

The site or email must provide, "in a form and manner which is easily, directly and permanently accessible", the following information

- the name of the owner
- his/her/its geographic address
- "details" (including email address) for direct and rapid communication with the owner
- if the owner is included in a trade register (eg: CORGI; ABTA), details of the register and of the owner's registration number
- where the service provided by the owner is subject to an authorisation scheme (eg: financial advice), details of the relevant supervisory authority (eg: FSA)
- where the site owner is part of a regulated profession (eg: chartered accountant), the details of the professional body to which the site owner belongs (eg: ICA), the site owner's professional title, a reference to the relevant professional rules and how to access them
- where the site owner is VAT registered, his/her/its VAT registration number
- where the site refers to prices for goods or services offered by the owner, they must be "indicated clearly and unambiguously" and state whether they include tax and delivery costs

3 Spam – "commercial communications"

"Commercial communications" cover a communication, in any form, designed to promote, directly or indirectly, the goods, services or image of any person pursuing a commercial, industrial or craft activity or exercising a regulated profession, except -

- (a) geographic or website or email address only and
- (b) independent 3rd party communications

The term is intended to cover spam email, but covers virtually any communication

The regulations in fact only cover commercial communications that are part of an "information society service" – basically electronic commerce; the regulations require these electronic communications to

- clearly identify the sender
- clearly identify any promotional offer, competition or game and the conditions that apply; and
- be "clearly identifiable as a commercial communication"

Unsolicited commercial communications (the real spam) must be "clearly and unambiguously identifiable as such as soon as it is received" – short of putting the word "SPAM" in the subject line, which would rather defeat the object, it is difficult to know how this could be achieved

4 All electronic trading

As well as complying with the "commercial communications" requirements already mentioned, in all cases where contracts are made electronically (eg: email and website orders) the supplier must ensure that any terms and conditions that apply must be available in a downloadable and printable form

All "distance selling" is subject to the buyer's right to cancel their order within 7 working days - even if they have already received the goods or services they ordered. You should therefore obtain the buyer's waiver of this right before starting work or sending goods within the 7 working day period

Justin Nelson: 20 February 2011