

STATUTORY INSTRUMENTS SUPPLEMENT

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STATUTORY INSTRUMENTS

2019 No. 83.

THE UGANDA COMMUNICATIONS (TEXT AND MULTIMEDIA
MESSAGING) REGULATIONS, 2019.

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2019 No. 83.

**The Uganda Communications (Text and Multimedia Messaging)
Regulations, 2019.**

*(Under section 93 of the Uganda Communications Act, 2013,
Act 1 of 2013)*

IN EXERCISE of the powers conferred upon the Minister by section 93 of the Uganda Communications Act, 2013 and in consultation with the Uganda Communications Commission, these Regulations are made this 5th day of July, 2019.

PART I—PRELIMINARY

1. Title.

These Regulations may be cited as the Uganda Communications (Text and Multimedia Messaging) Regulations, 2019.

2. Application.

(1) These Regulations apply—

- (a) to all originators and terminators of text and multimedia messages accessed or initiated by communications subscribers or users in Uganda, including telecommunications operators, information and application providers and assignees of short codes; and
- (b) to all messages terminating on a communications device, whether originating from a telecommunications, broadcasting or postal operator.

(2) These Regulations do not apply—

- (a) to messages initiated by Government or any government

ministry, department or agency and messages authorised by the Commission on the occurrence of a state of emergency or in the public interest; including health, safety and law enforcement;

- (b) to messages of personal communication by end users or subscribers with family, friends, associates and other contacts;
- (c) to messages of closed user group communication from an employer to a member of staff; or
- (d) to any other messages authorised by the Commission in the public interest.

3. Objectives of Regulations.

The objectives of these Regulations are—

- (a) to promote the use, with confidence, of text and multimedia message by end users of communications services in Uganda, while minimising encumbrances from mobile spam;
- (b) to provide a transparent mechanism for complaints handling in relation to text and multimedia messaging and ensuring that complaints are handled in a fair and efficient manner;
- (c) to establish a regime that ensures that reasonable steps are taken by the operator or authorised parties to protect children from viewing audiovisual content that is not suitable for them; and
- (d) to ensure that the use of text and multimedia messages complies with the laws of Uganda.

4. Interpretation

In these Regulations, unless the context otherwise requires—

“Act” means the Uganda Communications Act, 2013;

- “authorised party” means any person authorised by the Commission to provide communication services on a communications platform to consumers or operators;
- “Commission” means the Uganda Communications Commission established under the Act;
- “communications” means telecommunications, data communication, radio communications, and postal communications; and includes broadcasting;
- “communications services” means services performed consisting of the dissemination or interchange of audio, visual or data content using postal, radio, or communications media, data communication, and includes broadcasting;
- “consumer” means a final user of communications apparatus, communications services or value added service or customer and includes a purchaser for value of communications apparatus or communications services regulated by the Commission under the Act; but excludes an operator, wholesaler or retailer of communications apparatus or communications services;
- “customer” means a subscriber or user of a communications service that has indicated a willingness to access or utilise a service provided by a message originator or application provider;
- “data” means electronic representations of information in any form;
- “end user” means the person or consumer that actually uses the service offered by the operator or authorised parties;
- “information or application provider” means a person that creates or delivers informational products to communications subscribers or users through computer based applications, internet based applications, or other electronic services over the network of an operator;

“message” means text or multi-media content generated from a mobile telephone, computer or other electronic system and conveyed using SMS or MMS, and includes pictures, video clips, mobile games, music, sounds and experiences such as gambling;

“message originator” means the person or entity sending a message to a subscriber;

“MMS” means multimedia messaging service;

“mobile spam” means unsolicited communication sent to subscribers or end users via text and multi-media messages;

“operator” means a person licensed to provide a communications service or broadcasting service;

“print media spam” means any documents containing unsolicited communication sent to consumers through postal and courier channels;

“recipient” means a consumer or person who receives a message, either intentionally or unintentionally;

“SMS” means short messaging service;

“subscriber” means a person provided with a telecommunications service by an operator, and who is responsible for the payment of all charges and rentals for the service;

“unsolicited message” means a message transmitted on a communications platform to a subscriber without his or her prior consent;

“unsubscribe request” means a message or request sent by a subscriber to the authorised parties to cease sending further messages to the subscriber’s telephone number.

5. Prohibition of unsolicited messages.

A person shall not use an automated system to send an unsolicited SMS or MMS to a subscriber.

6. Intellectual property.

Operators and authorised parties shall comply with the laws governing intellectual property in Uganda and shall, in particular, not infringe the intellectual property rights of their clients, suppliers and other parties.

7. Content control.

(1) Authorised parties and operators shall not transmit, re-transmit or publish prohibited content on a communications network.

(2) Where an authorised party becomes aware of prohibited content under that authorised party's control, the provider shall immediately suspend access to that content and shall report the illegal content to law enforcement authorities and the Commission.

(3) An operator shall comply with any order lawfully issued under these Regulations by a law enforcement authority or by the Commission.

(4) Operators and authorised parties shall establish procedures and mechanisms to trace the origin of content, where applicable, and shall, upon request by the Commission provide the sources of origin.

8. Prohibited content.

(1) Operators and authorised parties shall not transmit any content that is objectionable on the grounds of public interest, public morality, public order, public security, national harmony or otherwise prohibited by the laws of Uganda.

(2) Prohibited content under subregulation (1) includes content that—

- (a) promotes or depicts sexuality, including violence, bestiality, homosexuality, incest, pedophilia, any kind of coercion or nonconsensual sex or other sexual activity;
- (b) promotes the use of dangerous substances including abuse of drugs;
- (c) is unsolicited for any reason; and includes mobile spam;
- (d) promotes acts of violence or cruelty;
- (e) glorifies, incites or endorses ethnic, tribal, racial or religious hatred, strife or intolerance;
- (f) results in any unreasonable invasion of privacy;
- (g) induces any unacceptable sense of fear or anxiety;
- (h) encourages or incites a person to engage in dangerous practices or to use harmful substances;
- (i) debases, degrades or demeans; or
- (j) is prohibited by the Anti-Pornography Act, 2014 or Schedule 4 to the Act.

9. Employee awareness.

Operators and authorised parties shall ensure that all their employees are made aware of the requirements and procedures associated with these Regulations.

PART III—CUSTOMER SERVICE

10. Provision of information to customers.

(1) Operators and authorised parties shall provide transparent and fair dealings with their customers and in particular, any pricing information for services shall be clearly and accurately conveyed to customers and potential customers, with no hidden charges.

(2) Operators and authorised parties shall not disseminate information that is false or deceptive or that is likely to mislead by inaccuracy, ambiguity, exaggeration or omission.

(3) Operators and authorised parties shall on request, avail the terms and conditions of all their services to customers and potential customers.

(4) Every message sent by an authorised party shall include a recognised accurate identifier which shall be in a form which reasonably enables a recipient to identify the message originator or authorised parties.

(5) Any message sent by an authorised party shall include clear and accurate information about how the recipient can readily contact the message originator or authorised parties and where the sending party is an organisation, the name of the organisation shall be included in the message.

(6) Recognised identifiers and associated contact details required under subregulation (4) shall remain accurate and readily available for at least 45 days after the message is sent.

7) Upon request from a validated recipient, an authorised party shall, within a period not exceeding 36 hours, identify the source from which the recipient's contact details were obtained.

11. Privacy and confidentiality.

(1) Subject to subregulation (2), every authorised party shall respect the right of a customer to personal privacy and privacy of communications and shall not provide unsolicited commercial communication to subscribers, unless prior consent has been obtained from the addressee of the message.

(2) Subregulation (1) does not apply where the contact details of the target addressee have been obtained in a prior commercial transaction and shall be conditional on the authorised party making it clear to the addressee, at the time of collecting the contact data, that the details may be used for direct marketing and shall offer the addressee a right to object or withhold consent at that time or subsequent time in the future.

(3) Every commercial communication made before obtaining contact data based on subregulation (2) shall include an indication to the recipient of an easy and efficient way for the recipient to stop the receipt of further messages from the authorised party or to notify the authorised party to stop sending any further messages.

(4) An authorised party shall respect the confidentiality of the personal information of the customer and shall not sell or distribute or divulge the information to any other party without the explicit consent of the customer, except where required by law.

PART IV—SUBSCRIPTION SERVICES

12. Customer's right to opt-out.

(1) Every authorised party shall implement a functional, obvious, clear and efficient unsubscribe or opt out facility to enable a customer to send notification to the authorised party barring further messages to the customer from the respective authorised party or specific application and, subject to subregulation (5), the notification shall be based on the word "STOP".

(2) The unsubscribe or opt out facility implemented under subregulation (1) shall—

- (a) be easy for all associated customers to understand and use;
- (b) minimise inconvenience to the customer; and
- (c) be provided at no cost to the customer.

(3) An unsubscribe request shall form an instruction to the authorised party or operator to cease sending further messages to the subscriber, unless the addressee specifies, in the unsubscribe request, categories of products or services which the subscriber wishes to continue to receive and in the case of such specifications, the authorised party may continue to send messages in the specified categories of products or services to the subscriber.

(4) Where a subscriber or customer has opted out or unsubscribed from a service, a message confirming the unsubscribe or opt out request shall be sent to that subscriber or customer and the message shall reference the specific service that the subscriber or customer has opted-out from.

(5) Where the words "END", "CANCEL", "UNSUBSCRIBE", "QUIT" or other similar words are used in place of "STOP" in an opt-out request, the authorised party or operator must honor the unsubscribe request as if the word "STOP" had been used.

(6) An unsubscribe request shall be honored as soon as practicable and not later than 24 hours after receipt of the request and the unsubscribe state shall remain in effect until cancelled by the subscriber.

(7) A content provider, authorised party or operator shall retain copies of unsubscribe requests to facilitate investigation and enforcement of the requests for at least 12 months after receipt.

(8) A subscriber who receives an unsolicited message shall have the right to information from the operator on how their contact information was obtained.

Conformity

13. Arrangements between operators and authorised parties.

(1) Every operator providing text or multi-media message connectivity or services shall—

- (a) provide a copy of these Regulations to each authorised party on whose behalf the operator transmits text or multi-media message connectivity or provides similar services; and
- (b) inform each authorised party that, unless it complies with these Regulations, the operator shall be required to withdraw or terminate transmission of the text or multi-media message connectivity or services on their behalf.

(2) Where an operator establishes that an authorised party has contravened these Regulations, the operator shall—

- (a) in the case of a single contravention or one of a minor nature, issue a written notification to the authorised party indicating the violation and require the authorised party to comply with these Regulations; and
- (b) in the case of a systemic contravention or one of a significant nature, issue a written warning to the authorised party that if the authorised party does not comply with these Regulations, the operator shall suspend or terminate the transmission of text or multi-media message connectivity or related services.

(3) Where an authorised party does not comply with a warning issued under subregulation (2) (b), the operator shall take appropriate action, which may include suspension or termination of transmission of text or multi-media message connectivity or services to that authorised party.

14. Enforcement.

(1) Where the Commission establishes that an operator or authorised party has contravened these Regulations, the Commission shall initiate enforcement proceedings against the authorised party or operator.

(2) Operators and authorised parties shall, on the enforcement of subregulation (1) comply with investigation procedures and requirements and with any information requests from the Commission.

(3) The Commission may impose the following sanctions in respect of subregulation (1) for contravention of these Regulations—

- (a) fines;
- (b) publication of compliance or violation status;
- (c) instructions to the operators to suspend or terminate any contracts with the violating authorised parties; or

(d) compensation or refund to the affected customer.

(4) Operators, authorised parties and communication operators shall be held liable for the acts, practices or omissions of their employees and any agents for the contravention of these Regulations.

15. Keeping of records.

(1) Every authorised party or operator shall keep appropriate logs for all services or applications it offers in order to deal with consumer complaints and investigations by appropriate authorities.

(2) The logs kept under subregulation (1) shall include billing, time, the date on which the message was sent and the content or information provided.

Complaints Framework

16. Complaint handling.

(1) All operators and other authorised parties shall establish systems and procedures that enable the receipt, tracking and handling of complaints made by customers or subscribers relating to the text and multimedia services and applications offered by the operator or authorised party.

(2) All complaints received by an operator or authorised party shall be expeditiously acknowledged and responded to within a reasonable period of time but in any case not later than 7 days from the date the complaint is made by the customer.

(3) Customer support and redress channels shall be easily available and shall not be limited to a medium that the customer is unlikely to have access to.

17. Operator to investigate subscriber complaints.

(1) Where an operator receives a complaint from any of its subscribers alleging that an authorised party using the operator's network or services has contravened these Regulations, the operator shall investigate the complaint or refer the complaint to the respective authorised party.

(2) Where a complaint is referred to the authorised party under subregulation (1), a response must be provided to the operator within 24 hours after the authorised party receives the complaint, upon which the operator shall advise the subscriber.

18. Handling of complaints by Commission.

(1) Any person may lodge a complaint with the Commission under the Uganda Communications (Consumer Protection) Regulations, 2019 against an operator or an authorised party who contravenes these Regulations.

(2) For the avoidance of doubt, the Commission may investigate any complaint under these Regulations including complaints against spam or messages transmitted even where the consumer has opted out and continues to receive such messages.

Commercial Communications

19. Sending of commercial communications.

(1) Commercial communications may not be timed to be delivered between 1900 and 0600 hours, unless explicitly agreed to by the recipient, or unless delivery during this period forms part of the upfront description of the service.

(2) Subregulation (1) does not apply to messages alerting or notifying of an emergency related to health, fire or security.

20. Identification of spam.

A commercial communication message is considered unsolicited or mobile spam unless—

- (a) the recipient has given consent to receive or has requested the message; or
- (b) the recipient has had a direct and recent, prior commercial relationship, within a period of three months, with the message originator and the recipient's contact details were obtained in a clear and transparent manner in accordance with regulation 11(2).

21. Sending of multiple messages to subscribers.

An operator or authorised party shall not repetitively or continuously send messages to a subscriber or addressee encouraging directly or indirectly the subscriber or addressee to call or send a message or other electronic communication to a premium rate number unless the express consent of the subscriber or addressee has been obtained to continue sending the message or a reminder of the message.

22. Reminder message.

(1) An operator or authorised party shall send a reminder to all its subscription service customers informing the customer of the service subscribed to, the tariff associated with the service, the identity of the operator or authorised party and how to unsubscribe from the service.

(2) A message sent under subregulation (1) shall be sent within 30 days after the initial subscription message and thereafter, once in every calendar month.

23. Restricted content.

(1) An operator or authorised party shall send a reminder to all its subscribers prior to transmitting restricted content and the restricted content shall only be provided to a subscriber where—

- (a) the subscriber has requested access to the restricted content; and
- (b) the operator or authorised party has taken reasonable steps to ensure that the subscriber is not below 18 years of age before the delivery of the restricted content.

(2) Restricted content under subregulation (1) includes content that—

- (a) would be likely to be rated as suited for persons aged 18 years and above;
- (b) promotes or encourages activities that are legally restricted for persons under 18 years of age such as drinking alcohol and sex;

- (c) contains frequent and repetitive use of strong or foul language;
- (d) contains actual or realistic depictions of sexual activity and nudity or depicting the pubic area or genitals;
- (e) contains graphic violence, which, in particular, dwells on the infliction of pain, injury or scenes of sexual violence; or
- (f) depicts gross violence towards vulnerable or defenseless persons.

(3) Restricted content does not include material which genuinely seeks to inform and educate the public in matters such as matters of sexuality, safe sex and health, where explicit images are the minimum necessary to illustrate and educate in a responsible manner.

(4) Reasonable steps under subregulation (1) include having an “opt-in” or “subscribe” application system that must be accompanied with information required by the operator or authorised party to verify the subscriber or customer’s identity and a declaration that the account holder is not below 18 years of age.

Cross References

Anti-Pornography Act, 2014, Act 1 of 2014.

Uganda Communications (Consumer Protection) Regulations, 2019.

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