

DATA PROTECTION ACT 1998

SUPERVISORY POWERS OF THE INFORMATION COMMISSIONER

MONETARY PENALTY NOTICE

To: Reed Online Limited

Of: Academy Court, 94 Chancery Lane, London, WC2A 1DT

1. The Information Commissioner ("the Commissioner") has decided to issue Reed Online Limited ("ROL") with a monetary penalty under section 55A of the Data Protection Act 1998 ("DPA"). The penalty is in relation to a serious contravention of Regulation 22 of the Privacy and Electronic Communications (EC Directive) Regulations 2003 ("PECR").
2. This notice explains the Commissioner's decision.

Legal framework

3. ROL, whose registered office address is given above (Companies House Registration Number: 06317279) is the organisation stated in this notice to have transmitted unsolicited communications by means of electronic mail to individual subscribers for the purposes of direct marketing contrary to regulation 22 of PECR.
4. Regulation 22 of PECR states:

- "(1) This regulation applies to the transmission of unsolicited communications by means of electronic mail to individual subscribers.*
- (2) Except in the circumstances referred to in paragraph (3), a person shall neither transmit, nor instigate the transmission of, unsolicited communications for the purposes of direct marketing by means of electronic mail unless the recipient of the electronic mail has previously notified the sender that he consents for the time being to such communications being sent by, or at the instigation of, the sender.*
- (3) A person may send or instigate the sending of electronic mail for the purposes of direct marketing where—*
- (a) that person has obtained the contact details of the recipient of that electronic mail in the course of the sale or negotiations for the sale of a product or service to that recipient;*
 - (b) the direct marketing is in respect of that person's similar products and services only; and*
 - (c) the recipient has been given a simple means of refusing (free of charge except for the costs of the transmission of the refusal) the use of his contact details for the purposes of such direct marketing, at the time that the details were initially collected, and, where he did not initially refuse the use of the details, at the time of each subsequent communication.*
- (4) A subscriber shall not permit his line to be used in contravention of paragraph (2)."*

5. Section 122(5) of the Data Protection Act 2018 "DPA18" defines direct marketing as "*the communication (by whatever means) of advertising or marketing material which is directed to particular individuals*". This definition also applies for the purposes of PECR (see regulation 2(2) PECR and paragraphs 430 & 432(6) to Schedule 19 of the DPA18).
6. From 1 January 2021, consent in PECR has been defined by reference to the concept of consent in the UK GDPR as defined in section 3(10) of the DPA 2018^[1]: see regulation 2(1) of PECR, as amended by Part 3 of Schedule 3, paragraph 44 of The Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019/419. Article 4(11) of the UK GDPR sets out the following definition: "*'consent' of the data subject means any freely given, specific, informed and unambiguous indication of the data subject's wishes by which he or she, by a statement or by a clear affirmative action, signifies agreement to the processing of personal data relating to him or her*".
7. Recital 32 of the UK GDPR materially states that "*When the processing has multiple purposes, consent should be given for all of them*". Recital 42 materially provides that "*For consent to be informed, the data subject should be aware at least of the identity of the controller*". Recital 43 materially states that "*Consent is presumed not to be freely given if it does not allow separate consent to be given to different personal data processing operations despite it being appropriate in the individual case*".
8. "Individual" is defined in regulation 2(1) of PECR as "*a living individual and includes an unincorporated body of such individuals*".

^[1] The UK GDPR is therein defined as Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 ("GDPR") as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018.

9. A "subscriber" is defined in regulation 2(1) of PECR as *"a person who is a party to a contract with a provider of public electronic communications services for the supply of such services"*.
10. "Electronic mail" is defined in regulation 2(1) of PECR as *"any text, voice, sound or image message sent over a public electronic communications network which can be stored in the network or in the recipient's terminal equipment until it is collected by the recipient and includes messages sent using a short message service"*.
11. The term "soft opt-in" is used to describe the rule set out in in Regulation 22(3) of PECR. In essence, an organisation may be able to e-mail its existing customers even if they haven't specifically consented to electronic mail. The soft opt-in rule can only be relied upon by the organisation that collected the contact details
12. Section 55A of the DPA (as applied to PECR cases by Schedule 1 to PECR, as variously amended) states:

"(1) The Commissioner may serve a person with a monetary penalty if the Commissioner is satisfied that –

- (a) there has been a serious contravention of the requirements of the Privacy and Electronic Communications (EC Directive) Regulations 2003 by the person,*
- (b) subsection (2) or (3) applies.*

(2) This subsection applies if the contravention was deliberate.

(3) This subsection applies if the person –

- (a) knew or ought to have known that there was a risk that the contravention would occur, but*

(b) failed to take reasonable steps to prevent the contravention."

13. The Commissioner has issued statutory guidance under section 55C (1) of the DPA about the issuing of monetary penalties that has been published on the ICO's website. The Data Protection (Monetary Penalties) (Maximum Penalty and Notices) Regulations 2010 prescribe that the amount of any penalty determined by the Commissioner must not exceed £500,000.
14. PECR were enacted to protect the individual's fundamental right to privacy in the electronic communications sector. PECR were subsequently amended and strengthened. The Commissioner will interpret PECR in a way which is consistent with the Regulations' overall aim of ensuring high levels of protection for individuals' privacy rights.
15. The provisions of the DPA remain in force for the purposes of PECR notwithstanding the introduction of the DPA18: see paragraph 58(1) of Schedule 20 to the DPA18.

Background to the case

Complaints

16. ROL provides a platform to assist users with finding work and career enhancement throughout their careers.
17. ROL came to the attention of the ICO by seven complaints being made through the ICO Spam reporting facility. The complaints were about marketing emails sent by Reed Online Limited with the subject title "Have your CV reviewed by the professionals." The email invited

individuals to submit their CVs to be reviewed by an organisation named as [REDACTED].

18. The complainants were asked to provide the emails that they had received and give further details. Below are the responses received:

"In terms of additional information, I can add that I suspect I'm not the only person to have received this particular email (despite the no contact preferences). My partner for instance also mentioned rather irritatedly that she had received the same email albeit some time later the same day, this is despite also having the same preferences to receive nothing from Reed. Much like myself she followed the unsubscribe link to check/unsubscribe again but found that their site attempts to trick you into resubscribing (layout/wording) but that everything was indeed disabled. I have since asked Reed to remove my account/data to avoid a repeat as nether myself or my partner have been looking for a role for some 3 years. It is however rather disconcerting to be sent these kinds of emails in the midst of a pandemic when jobs are in some instances less secure (I work in the wedding/events space currently) and its irritating that their unwelcome marketing in my mind is an attempt to turn this to their favour."

"As requested, forwarded email below. Although the email says at the bottom "you have agreed to receive Job News emails" this is incorrect. I logged in and checked my preferences and confirmed I had opted out of all contact."

"I contacted the Company on the day the email arrived and had an acknowledgement and apology on the same day (5th February) with a commitment to explain why this happened. I have however heard nothing further in the intervening 2 weeks."

The Investigation

19. An initial investigation letter was sent to ROL on 18 February 2021.
20. On 19 February 2021 ROL responded acknowledging the letter and stated *"We are fully aware of the systems incident on 4 February 2021 where an email was sent in error to users of our services. This issue which caused the email to be sent has been identified and has since been rectified. We will now provide you with all the information you have required as soon as we can in order for you to complete your investigation."*
21. On 3 March 2021 ROL sent an email to the ICO requesting an extension due to staff working from home during the pandemic.
22. On 8 March 2021 a response was sent from the ICO to ROL granting the extension.
23. On 18 March 2021 a detailed response was received from ROL including an attachment titled 'PECR Training Manual'.
 - 23.1 They stated that an incident had occurred overnight on 4 February 2021; the email in question had been sent to every jobseeker on their database as a scheduled campaign. It was sent by their new Customer Relationship Management system, [REDACTED]. The migration from their old system to the new [REDACTED] system was scheduled for and took place on 5 February 2021.
 - 23.2 They stated the following *"As part of the migration process, ROL undertook an exercise to condense the number of campaign proposals and subsequent variations within the [REDACTED] system to drive better consistency and efficiency. These campaigns fell into*

either Marketing or Transactional/Service emails, mostly set up to mirror the equivalents in Salesforce, with some new campaigns created. Within [REDACTED], there is functionality to set up a Scheduled campaign or a Triggered campaign. Triggered campaigns remain dormant in the system until such time as they are signed off and become Scheduled."

- 23.3 ROL stated that the incident had occurred because of human error; *"the Email which had the dormant Triggered status, was accidentally switched to be treated as Scheduled."* The email was sent to the entire database.
- 23.4 They stated that *"whilst unsubscribe/suppression lists are in place and operated by ROL, the error also resulted in the Email being classified as a Transactional email (as opposed to a Marketing email), and therefore bypassed the users' marketing preference settings. The Email was, in fact, never intended to be sent, nor was it sent for the purposes of direct marketing."*
- 23.5 They went on to say that *"when users were clicking to unsubscribe (every Marketing email carries an unsubscribe function), they saw a notification that they were already unsubscribed, prompting frustration as to why they had received the email. However, the system was working as intended; these users were unsubscribed from Marketing emails (and still are). ROL fixed the issue without delay in order to prevent further frustration from users, in addition to highlighting the error in a message on its website."*
- 23.6 ROL identified several issues that led to the emails being sent:

23.6.1 *"The [REDACTED] system allowed an operator the ability to switch a campaign from being in a Triggered state to a Scheduled state without raising a flag, undergoing formal review and achieving sign off state."*

23.6.2 *"The [REDACTED] system allowed the Email to go to over 18 million people without raising a flag or sign off request."*

23.6.3 *"Due to the large number of email recipients, the email deliveries took place over a period of 2.5 days. Once the email had been sent, ROL was unable to recall it from the email service providers."*

23.7 ROL stated that they had taken immediate action to implement new quality assurance to prevent a campaign type being switched to 'scheduled' without review and sign off. Further that they are *"re-considering ANY scheduled emails outside of core working hours and looking into options around email recall capabilities within [REDACTED]"* and additional system functionality considerations are being looked at to add *"automated flag or sign off requirements for email transmissions above a certain threshold."*

23.8 In relation to ROL's relationship with [REDACTED], they stated that they have *"a relationship with [REDACTED] for it to provide CV writing services directly to ROL's users who elect to make use of [REDACTED] services. [REDACTED] services are promoted by ROL on ROL's website only ... After a user is registered with ROL, they are given the opportunity, on the ROL website, to interact with [REDACTED] directly to assist with CV writing skills. The message appearing*

on the sign-up screen states: "By ticking this box, you agree that ROL will share your full name, email address and CV with [REDACTED]. They will contact you directly via email to provide feedback on your CV and inform you of their CV writing services. View [REDACTED] privacy policy." Should the user elect this option, they are contacted by [REDACTED] directly to assist with their CV writing services."

23.9 Those who clicked on the email were taken to their own accounts on the ROL website and their details were never provided to [REDACTED].

23.10 ROL stated that *"the Incident occurred as a result of a human error during the [REDACTED] implementation process and ROL has already put in place changes to avoid repetition. ROL did not profit in any way from this innocent error and believes it operates a robust privacy compliant programme."*

23.11 In relation to the PECR Training Manual, it contained information for employees about PECR and fines monetary penalties issued by the ICO to other organisations for contraventions. Reed Online Limited recognised that their training could be improved, and they have developed a specific PECR training module which was delivered on 16 March 2021 to all marketing staff and senior leadership team. The session was delivered by the Data Protection Officer and head of Data Management. Further, for new employees, viewing of a recorded version of the training will be mandatory and there will be an annual refresher course for existing staff.

- 24 On 22 March 2021 further enquiries were sent to ROL by the ICO.
- 25 On 26 March 2021 a response was received. The response reiterated the position that the incident was a result of human error, and that ROL was confident that Regulation 22 of PECR 2003 could not apply in these circumstances; the email was not sent for the purposes of direct marketing and there was no intention to send the email. There was no purpose to the sending of the email and as such it could not be said that the email was sent for the purposes of direct marketing. ROL confirmed that 16,983,447 of the emails it sent were received by the addressee, and 6,250,966 of those were received by individuals who were unsubscribed from receiving direct marketing emails.
- 26 On 1 April 2021 further enquiries were sent to ROL by the ICO.
- 27 On 8 April 2021 a response was received:
- 27.1 of the 16,983,447 received emails, 77,101 recipients clicked on the link 'Claim your free CV review'
- 27.2 of the 16,983,447 received emails, 256,418 recipients clicked on the unsubscribe link
- 27.3 of the 6,250,966 received emails sent to individuals who were unsubscribed from receiving marketing emails from ROL, 37,011 recipients clicked on the link 'Claim your free CV review'
- 27.4 of the 6,250,966 received emails sent to individuals who were unsubscribed from receiving marketing emails, 227,063 recipients clicked on the unsubscribe link

28. On 13 May 2021 the ICO wrote to ROL to say the investigation had been concluded and that a decision would be made whether any regulatory action would be taken.
29. On 8 September 2021 the ICO wrote to ROL asking for some additional information. ROL requested an extension to provide their response, which was granted.
30. On 30 September 2021 ROL provided their response which included a process map which outlined the process for the incident from inception through to sending. Within the response, ROL stated the following:
 - a. The email was drafted in 2016.
 - b. They believe the email would have been drafted by the person who held the role of Senior CRM Manager/Senior Email Developer or similar title.
 - c. In 2021, there was no intention of sending the email out. The email was used in a campaign that ran from 7 July 2016 to January 2020. The email was sent in a targeted way, with a monthly average of 9,290 emails.
 - d. The email was moved in February 2021 to the new system as part of the migration of all emails.
 - e. The email was sent as part of an automated process following its status accidentally being switched from marketing (which would require human intervention for it to be sent) to transactional (which is sent automatically at a scheduled time). The email was then sent at the first available point after the migration to the

new system. A senior member of staff switched the status of the email.

31. There is some discrepancy in the text of the response and the detail in the process map as to when the initial error described above occurred, it was either August 2020 or October 2020.
32. The Commissioner has made the above findings of fact on the balance of probabilities.
33. The Commissioner has considered whether those facts constitute a contravention of regulation 22 of PECR by ROL and, if so, whether the conditions of section 55A DPA are satisfied.

The contravention

34. The Commissioner finds that ROL contravened regulation 22 of PECR.
35. The Commissioner finds that the contravention was as follows:
36. The Commissioner finds that between 4 February 2021 and 7 February 2021 there were 6,250,966 direct marketing emails received by subscribers. The Commissioner finds that ROL transmitted those direct marketing messages, contrary to regulation 22 of PECR.
37. ROL, as the sender of the direct marketing, is required to ensure that it is acting in compliance with the requirements of regulation 22 of PECR, and to ensure that valid consent to send those messages had been acquired.
38. For consent to be valid it is required to be "freely given", by which it follows that if consent to marketing is a condition of subscribing to a

service, the organisation will have to demonstrate how the consent can be said to have been given freely.

39. Consent is also required to be "specific" as to the type of marketing communication to be received, and the organisation, or specific type of organisation, that will be sending it.
40. ROL have asserted that their actions do not amount to a breach of regulation 22 as there was no intention to send the email for the purposes of direct marketing. While the Commissioner accepts that the contravention occurred due to human error, he nonetheless is satisfied that intention is not a necessary element and that there was a contravention.
41. The regulations do not require an intention on the part of the sender. The focus of the legislation is on protecting individuals from receiving unsolicited communications which contain direct marketing material however they may be sent, rather than being concerned with the intent (or lack of) of the sender behind the actual transmission of the communication.
42. In this instance, consent remains a relevant consideration and consent had not been given; the recipients had not consented to direct marketing. ROL accept that consent was not given, but submit that someone cannot consent to an unintentional communication.
43. The Commissioner is therefore satisfied from the evidence he has seen that ROL did not have the necessary valid consent for the 6,250,966 direct marketing messages received by subscribers.

44. The Commissioner has gone on to consider whether the conditions under section 55A DPA are met.

Seriousness of the contravention

45. The Commissioner is satisfied that the contravention identified above was serious. This is because between 4 February 2021 and 7 February 2021 a confirmed total of 6,250,966 direct marketing messages were sent by ROL. These messages contained direct marketing material for which subscribers had not provided valid consent. Furthermore, the Commissioner is satisfied that ROL cannot rely on the soft opt-in exemption.
46. The total number of direct marketing messages sent during the incident was 16,983,447; 37% of those (6,250,966) were people who had unsubscribed from receiving marketing emails. This is a high number of people affected.
47. The Commissioner is therefore satisfied that condition (a) from section 55A (1) DPA is met.

Deliberate or negligent contraventions

48. The Commissioner has considered whether the contravention identified above was deliberate. In the Commissioner's view, this means that ROL'S actions which constituted that contravention were deliberate actions (even if ROL did not actually intend thereby to contravene PECR).
49. The Commissioner does not consider that ROL deliberately set out to contravene PECR in this instance.

50. The Commissioner has gone on to consider whether the contravention identified above was negligent. This consideration comprises two elements:
51. Firstly, he has considered whether ROL knew or ought reasonably to have known that there was a risk that these contraventions would occur. He is satisfied that this condition is met, for the following reasons:
- a. ROL have a high proportion of opted out clients, therefore it is reasonable to expect that they should be proactive in ensuring measures were in place to avoid a high-risk contravention.
 - b. Preventative measures such as a two-step process and checks along the way were clearly lacking.
52. The Commissioner has published detailed guidance for those carrying out direct marketing explaining their legal obligations under PECR. This guidance gives clear advice regarding the requirements of consent for direct marketing and explains the circumstances under which organisations are able to carry out marketing over the phone, by text, by email, by post, or by fax. In particular, it states that organisations can generally only send, or instigate, marketing messages to individuals if that person has specifically consented to receiving them; and highlights the difficulties of relying on indirect consent for electronic mail. The guidance also provides a full explanation of the "soft opt-in" exemption. The Commissioner has also published detailed guidance on consent under the GDPR. In case organisations remain unclear on their obligations, the ICO operates a telephone helpline. ICO communications about previous enforcement action where businesses have not complied with PECR are also readily available.

53. It is therefore reasonable to suppose that ROL should have been aware of its responsibilities in this area.
54. Secondly, the Commissioner has gone on to consider whether ROL failed to take reasonable steps to prevent the contraventions. Again, he is satisfied that this condition is met.
55. ROL had unsubscribe/suppression lists in place, yet the email was classified incorrectly as a transactional email and therefore bypassed those lists. The email was set at 'scheduled' status from August/October 2020 until it was sent out in February 2021. The Quality Assurance process was lacking as it failed to identify and correct this error during the intervening period.
56. ROL have identified action to prevent further incidents such as this occurring; these should have been in place in the first instance.
57. In the circumstances, the commissioner acknowledges that ROL had processes and checks in place but on this occasion those processes and checks were inadequate. The Commissioner is therefore satisfied that ROL failed to take reasonable steps to prevent the contraventions.
58. The Commissioner is therefore satisfied that condition (b) from section 55A (1) DPA is met.

The Commissioner's decision to issue a monetary penalty

59. The Commissioner has taken into account the following mitigating feature of this case:
 - Steps taken by the organisation

ROL has developed a specific PECR training module for staff. The organisation has stated that the IT issue which led to the contravention being possible has been fixed. ROL are now solely operating a new Customer Relationship Management system [REDACTED].

- The contravention occurred as a result of human error

60. For the reasons explained above, the Commissioner is satisfied that the conditions from section 55A (1) DPA have been met in this case. He is also satisfied that the procedural rights under section 55B have been complied with.
61. The latter has included the issuing of a Notice of Intent, in which the Commissioner set out his preliminary thinking. In reaching his final view, the Commissioner has taken into account the representations made by ROL on this matter.
62. The Commissioner is accordingly entitled to issue a monetary penalty in this case.
63. The Commissioner has considered whether, in the circumstances, he should exercise his discretion so as to issue a monetary penalty.
64. The Commissioner has considered the likely impact of a monetary penalty on ROL. He has decided on the information that is available to him, that ROL has access to sufficient financial resources to pay the proposed monetary penalty without causing undue financial hardship.
65. The Commissioner's underlying objective in imposing a monetary penalty notice is to promote compliance with PECR. The sending of unsolicited direct marketing messages is a matter of significant public

concern. A monetary penalty in this case should act as a general encouragement towards compliance with the law, or at least as a deterrent against non-compliance, on the part of all persons running businesses currently engaging in these practices. The issuing of a monetary penalty will reinforce the need for businesses to ensure that they are only messaging those who specifically consent to receive direct marketing.

66. For these reasons, the Commissioner has decided to issue a monetary penalty in this case.

The amount of the penalty

67. Taking into account all of the above, the Commissioner has decided that a penalty in the sum of **£40,000 (forty-thousand pounds)** is reasonable and proportionate given the particular facts of the case and the underlying objective in imposing the penalty.
68. The monetary penalty must be paid to the Commissioner's office by BACS transfer or cheque by **20 May 2022** at the latest. The monetary penalty is not kept by the Commissioner but will be paid into the Consolidated Fund which is the Government's general bank account at the Bank of England.
69. If the Commissioner receives full payment of the monetary penalty by **19 May 2022** the Commissioner will reduce the monetary penalty by 20% to **£32,000 (thirty two thousand pounds)**. However, you should be aware that the early payment discount is not available if you decide to exercise your right of appeal.
70. There is a right of appeal to the First-tier Tribunal (Information Rights) against:

- (a) the imposition of the monetary penalty
and/or;
 - (b) the amount of the penalty specified in the monetary penalty
notice.
71. Any notice of appeal should be received by the Tribunal within 28 days of the date of this monetary penalty notice.
72. Information about appeals is set out in Annex 1.
73. The Commissioner will not take action to enforce a monetary penalty unless:
- the period specified within the notice within which a monetary penalty must be paid has expired and all or any of the monetary penalty has not been paid;
 - all relevant appeals against the monetary penalty notice and any variation of it have either been decided or withdrawn; and
 - the period for appealing against the monetary penalty and any variation of it has expired.
74. In England, Wales and Northern Ireland, the monetary penalty is recoverable by Order of the County Court or the High Court. In Scotland, the monetary penalty can be enforced in the same manner as an extract registered decree arbitral bearing a warrant for execution issued by the sheriff court of any sheriffdom in Scotland.

Dated the 20th Day of April 2022

Andy Curry
Head of Investigations
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

ANNEX 1

SECTION 55 A-E OF THE DATA PROTECTION ACT 1998

RIGHTS OF APPEAL AGAINST DECISIONS OF THE COMMISSIONER

1. Section 55B(5) of the Data Protection Act 1998 gives any person upon whom a monetary penalty notice has been served a right of appeal to the First-tier Tribunal (Information Rights) (the 'Tribunal') against the notice.

2. If you decide to appeal and if the Tribunal considers:-

a) that the notice against which the appeal is brought is not in accordance with the law; or

b) to the extent that the notice involved an exercise of discretion by the Commissioner, that he ought to have exercised his discretion differently,

the Tribunal will allow the appeal or substitute such other decision as could have been made by the Commissioner. In any other case the Tribunal will dismiss the appeal.

3. You may bring an appeal by serving a notice of appeal on the Tribunal at the following address:

General Regulatory Chamber
HM Courts & Tribunals Service
PO Box 9300
Leicester
LE1 8DJ

Telephone: 0203 936 8963
Email: grc@justice.gov.uk

- a) The notice of appeal should be sent so it is received by the Tribunal within 28 days of the date of the notice.
 - b) If your notice of appeal is late the Tribunal will not admit it unless the Tribunal has extended the time for complying with this rule.
4. The notice of appeal should state:-
- a) your name and address/name and address of your representative (if any);
 - b) an address where documents may be sent or delivered to you;
 - c) the name and address of the Information Commissioner;
 - d) details of the decision to which the proceedings relate;
 - e) the result that you are seeking;
 - f) the grounds on which you rely;
 - g) you must provide with the notice of appeal a copy of the monetary penalty notice or variation notice;
 - h) if you have exceeded the time limit mentioned above the notice of appeal must include a request for an extension of time

and the reason why the notice of appeal was not provided in time.

5. Before deciding whether or not to appeal you may wish to consult your solicitor or another adviser. At the hearing of an appeal a party may conduct his case himself or may be represented by any person whom he may appoint for that purpose.

6. The statutory provisions concerning appeals to the First-tier Tribunal (Information Rights) are contained in section 55B(5) of, and Schedule 6 to, the Data Protection Act 1998, and Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 (Statutory Instrument 2009 No. 1976 (L.20)).