



Commission for
Communications Regulation

Direction

Ex-directory numbers and the Opt-Out Register for Direct Marketing

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1 Introduction

In 2005 ComReg and the Data Protection Commissioners Office jointly launched the opt-out register for direct marketing calls. This register allows consumers who contact their telephone line operator to record a preference to opt-out of direct marketing in the National Directory Database (NDD).

The National Directory Database lists all phone numbers printed in public directories or available through directory enquiries and can now be used to list the preference of subscribers not to receive unsolicited marketing calls or faxes. This facility is open to both residential and business phone subscribers and it is a free service. It applies to voice calls and, for business subscribers, to faxes. The main aim of the register is to stop unsolicited marketing messages and it only applies to calls made from within this State.

It takes 28 days for a preference to opt-out to be recorded in the NDD. In the absence of a notification from a subscriber, the telephone line details remain unchanged with no amendment to the record in the NDD.

The aim of the register is to allow marketing companies to check telephone numbers to ensure that they do not inadvertently ring a telephone subscriber who has opted-out. It is a criminal offence to make an unsolicited marketing call to a telephone line recorded in the opt-out register but this can only be enforced if the call is made from within the State or is made on behalf of a marketer within Ireland. Enforcement of this aspect is a matter for the Data Protection Commissioner.

Regulation 14 (1) of S.I. 535 of 2003 requires undertakings referred to in Regulation 21(1) or 21(2) of the Universal Service Regulations S.I. 308 of 2003 to record in the NDD that a subscriber does not consent to unsolicited calls for the purpose of direct marketing.

In addition to other duties placed on operators under the Data Protection Regulations 14 (2) of S.I. 535 of 2003 requires operators referred to in Regulation 21(1) or 21(2) of the Universal Service Regulations S.I. 308 of 2003 to ensure that their subscribers are provided with information regarding their entitlements under Regulations 13 of the Data Protection Regulations. The manner in which individual operators inform their subscribers is not stipulated in the Regulations and therefore it is a matter for each operator to choose the most efficient way of informing their subscriber base.

Prior to October 31, 2006 the NDD did not hold records relating to ex-directory subscribers. This resulted in ex-directly subscribers being denied the protection from cold calling that is offered to listed/unlisted subscribers. ComReg and the Data Protection Commissioner issued Directions/Enforcement notices to operators and the NDD to have all ex-directory numbers recorded in the NDD and automatically placed on the opt-out register (See Direction below). This Direction places an obligation on all undertakings referred to in Regulation 21(1) or 21(2) of the Universal Service Regulations S.I. 308 of 2003 to automatically place ex-directory telephone numbers into the opt- out register for direct marketing calls.

The Direction was directly communicated to all service providers who at that stage were entering subscriber details on the National Directory Database. It is being re-issued now

to inform other service providers who, since that date, fall within the scope of Regulation 21(1) or 21 (2) as above.

All operators to whom Regulation (21) 1 or (21) 2 applies as of this date are advised to take all necessary measures to ensure that they are compliant with this Direction. Such operators should further note that they will have a period of 3 months from the date of publication of this document to comply.

2 Direction

Direction issued under Regulation 19(1) of the European Communities (Electronic Communications Networks and Services) (Data Protection and Privacy) Regulations 2003.

To all undertakings referred to in Regulation 21(1) or 21(2) of the European Communities (Electronic Communications Networks and Services) (Universal Service and Users' Rights) Regulations 2003.

Having regard to its functions and objectives set out in Sections 10 and 12 of the Communications Regulation Act 2002, and

having regard to the following regulations:

Regulation 4 (3) of the European Communities (Electronic Communications Networks and Services) (Universal Service and Users' Rights) Regulations 2003 ("the Universal Service Regulations") which states:

"A designated undertaking shall, subject to Regulation 10 of the European Communities (Data Protection and Privacy in Telecommunications) Regulations 2002 (S.I. No. 192 of 2002) keep a record (to be known as the National Directory Database) of all subscribers of publicly available telephone services in the State, including those with fixed, personal and mobile numbers, who have not refused to be included in that record, and allow access to any information contained in such record to any other such undertaking or any person in accordance with such terms and conditions as may be specified by it and approved by the Regulator."

Regulation 31 of the Universal Service Regulations which states:

"The Regulator may, for the purpose of further specifying requirements to be complied with relating to an obligation imposed by or under these Regulations, issue directions to a person to do or refrain from doing anything which the Regulator specifies in the direction."

Regulation 14 (1) of the European Communities (Electronic Communications Networks and Services) (Data Protection and Privacy) Regulations 2003 ("the Data Protection Regulations") which states:

An undertaking referred to in Regulation 21(1) or 21(2) of the Universal Service Regulations shall, for the purposes of Regulation 13(2)(b) or 13(4)(b), record or cause to be recorded in the National Directory Database the relevant information specified in paragraph (2) in respect of a line of any one of its subscribers who-

- (a) is, upon the making of these Regulations, an unlisted subscriber in respect of that line,
- (b) had at any time after the establishment of that Database, made a request to the operator or notified the relevant undertaking that the subscriber does not consent to unsolicited calls for the purpose of direct marketing or to

such calls by means of an automated calling machine or a facsimile machine to a line of that subscriber.

Regulation 14 (2) of the Data Protection Regulations which states:

“Operators of publicly available telephone services are required to ensure that their subscribers are provided with information regarding their entitlements under Regulations 13(1)a, 13(2)b and 13(4)b of the Data Protection Regulations, and the possibilities referred to in Regulation 14(1) .

Regulation 19 (1) of the Data Protection Regulations which states:

“Subject to the performance by the Commissioner of the functions under Regulation 17, it shall be a function of the Regulator to monitor compliance with Regulations 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 and 15 and to issue such directions as may be necessary, from time to time, for their effective implementation. The Regulator, in consultation with the Commissioner, may also specify the form and any other requirements regarding the obtaining, recording and rescinding of consent of subscribers for the purposes of these Regulations.”

Regulation 19 (3) of the Data Protection Regulations which states:

“The Regulator may give directions to a person to whom Regulation 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 or 15 applies, requiring the person to take specified measures or to refrain from taking specified measures for the purpose of complying with the provision.”

Regulation 22 of the Data Protection Regulations which states:

“The Commissioner and the Regulator shall, in the performance of their functions under these Regulations, cooperate with and provide assistance to each other.”

the Commission for Communications Regulation hereby directs undertakings referred to in Regulation 21 (1) or 21 (2) of the Universal Service Regulations to do the following:

- 1) To enter all ex-directory customer telephone numbers (other than those numbers of customers who have refused to have their telephone number entered) onto the NDD in the format specified by the NDD.
- 2) To have contacted all ex-directory customers for the purpose of informing them of the proposed action and to afford them the opportunity to refuse to have their telephone number entered onto the NDD for the purpose of inclusion in the opt-out register.
- 3) To issue permanent guidance to all of customers on how to opt-out of direct marketing.
- 4) To remove details of the relevant entry in the NDD should an ex -directory customer elect, at any stage, not to have their telephone number included in the opt-out register.

- 5) To advise all new customers on all options regarding the NDD opt-out register at point of sale.