



Commission for
Communications Regulation

Premium Rate Services (PRS)

The Use of Third Party PIN Verification Systems

Alternative Means of Complying with the Code of Practice

Information Notice

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An Coimisiún um Rialáil Cumarsáide
Commission for Communications Regulation

Abbey Court Irish Life Centre Lower Abbey Street Dublin 1 Ireland
Telephone +353 1 804 9600 Fax +353 1 804 9680 Email info@comreg.ie Web
www.comreg.ie

1 Introduction

1. In March 2012, the Commission for Communications Regulation (“ComReg”) indicated its intention to publish an Information Notice¹ that would outline its approach to the granting of permission, pursuant to section 3.3 of the Code of Practice, for the use of third party PIN verification systems as an alternative means of complying with the “Double Opt-in” Requirements of the ComReg’s Premium Rate Services (PRS) Code of Practice (“Code”).²
2. The purpose of this Information Notice is to set out how PRS providers may be able to comply with the “Double Opt-in” provisions of the Code by alternative means should they be interested in doing so.
3. This document is a guideline and any PRS provider seeking to use a third party PIN verification system must provide details in writing to ComReg of the system they propose to use in relation to a specific PRS and shall not commence using the system as an alternative to the “Double Opt-in” Requirements unless and until ComReg has given written permission for same as provided for in Section 3.3 of the Code.
4. It is important to note that the prescribed provisions of the Code must be adhered to until any permission is granted to use an alternative means to comply with any particular requirements of the Code. As envisaged by section 3.3 of the Code any permission, if granted, will relate to the specific service for which the application is made.

¹ ComReg 13/24 <http://www.comreg.ie/fileupload/publications/ComReg1324.pdf>

² ComReg 12/29 <http://www.comreg.ie/fileupload/publications/ComReg1229.pdf>

2 Provisions of the Code relating to “Double Opt-In”

5. The provisions of the Code that pertain to subscription PRS are set out in Sections 5.9 to 5.33, inclusive. However, the relevant sections of the Code to which this Information Notice pertain are limited to sections 5.13 to 5.15, inclusive. For ease of reference sections 5.13 to 5.15 are set out below;

5.13 When an end-user requests to subscribe to a Subscription Service, and prior to an end-user incurring any charges, the PRS Provider must send a standard, dedicated, SMS Subscription Request Message, as set out in Sections 5.14 and 5.15 below, to the nominated mobile phone number, at no charge to the end-user.

5.14 A Subscription Request Message must not contain any links or promotional material and must clearly:

(a) commence with the phrase "Free Message" or "Free Msg" in the SMS header, or as the first words in the body of the text,

(b) include a description of the Subscription Service to include the PRS name that will allow end-users to identify the PRS, which must be the name used consistently through all promotions and delivery of the service,

(c) provide an age warning, where appropriate,

(d) include any sign-up cost,

(e) include the basis for calculating charges including any:

(i) charges for each message received,

(ii) charges for each message sent, and

(iii) charge per charge period and the relevant charge period.

(f) instruct the end-user to send a plain dedicated SMS, with a KEYWORD, to a particular short code in order to subscribe.

5.15 Subscription Request Messages must follow the format of the example provided below:

SUBSCRIPTION REQUEST MESSAGE

To subscribe to [name of service and optional description] for [sign-up cost] and [cost of service in €] per [billing frequency - message received/time] and confirm that you are over 18 yrs, text AGREE [or other unique keyword for the service] to Short Code 5XXXX.

6. In summary, under the current requirements of the Code, an end user must receive an SMS that sets out material information pertaining to the PRS and the end user must then confirm their intention to subscribe by responding by SMS. The purpose of the requirement that end users send an SMS to confirm their subscription is to ensure that there is a record with their mobile network operator to confirm that the end user provided their consent to subscribe to a particular PRS. The requirements result in end users confirming their intention to subscribe after receiving auditable confirmation of the material information pertaining to the PRS. These provisions are collectively referred to as the “Double Opt-in” requirements of the Code. They are designed to ensure that end users cannot be subscribed as a result of their first engagement with the PRS.

3 Meeting requirements of the Code by Alternative Means

7. Section 3.3 of the Code provides,

3.3 Where, in respect of a particular PRS, a PRS Provider satisfies ComReg that any requirement of the Code can be adequately met by alternative means to that specified in the Code, ComReg may, in its sole discretion, permit such alternative means to be used by the PRS Provider concerned in respect of that particular PRS. Such alternative means may not, however, be used by the PRS Provider concerned unless and until such time as ComReg has given its prior written permission for it to do so. Subject to issues of confidentiality, ComReg will publish details of such alternative means permitted by it. Such permission may be withdrawn, or varied by notice if ComReg determines that the alternative means have proved inadequate or are causing unanticipated difficulties of a serious nature.

8. In this regard, it may be possible for PRS providers to meet a requirement of the Code, including the “Double Opt-in” requirements by some other means. ComReg is aware of technological developments that may provide it with a means of verifying that an end user provided their consent to subscribe, without having to send an SMS. The type of technology ComReg has in mind is ‘Third Party PIN Verification Systems’. The information and guidance provided in this notice relate to third party PIN verification systems and the approach ComReg will adopt to considering applications, pursuant to section 3.3 of the Code of Practice, for the use of such systems as an alternative means of complying with the Double Opt-in Requirements of the Code. ComReg will however consider other systems or technology options that PRS providers may propose as part of an application pursuant to section 3.3 of the Code and may in time issue information notices relating to other systems.
9. A key concern of ComReg’s and one which is reflected in the current Double Opt-in requirements of the code is that PRS providers must be able to verify that an end user has provided their **informed** consent to subscribe to a subscription service.
10. ComReg will only permit the use of a third party PIN verification system as an alternative means of complying with the “Double Opt-in” requirements, where;

- a. it is demonstrated to the satisfaction of ComReg that the provider of the system is independent of the PRS provider wishing to avail of the system, and
- b. the PIN message which is sent to users of the service by SMS contains information in relation to the service in the following format:

“Your PIN number is XXX. To subscribe to [service name] for [price] per [period] [any sign up cost if relevant] and confirm that you are over 18yrs, enter your PIN on the website.”

11. Before approving any PIN verification system as an alternative means of complying with the Double Opt-in requirements of the Code, ComReg will also expect the system to have the following features :

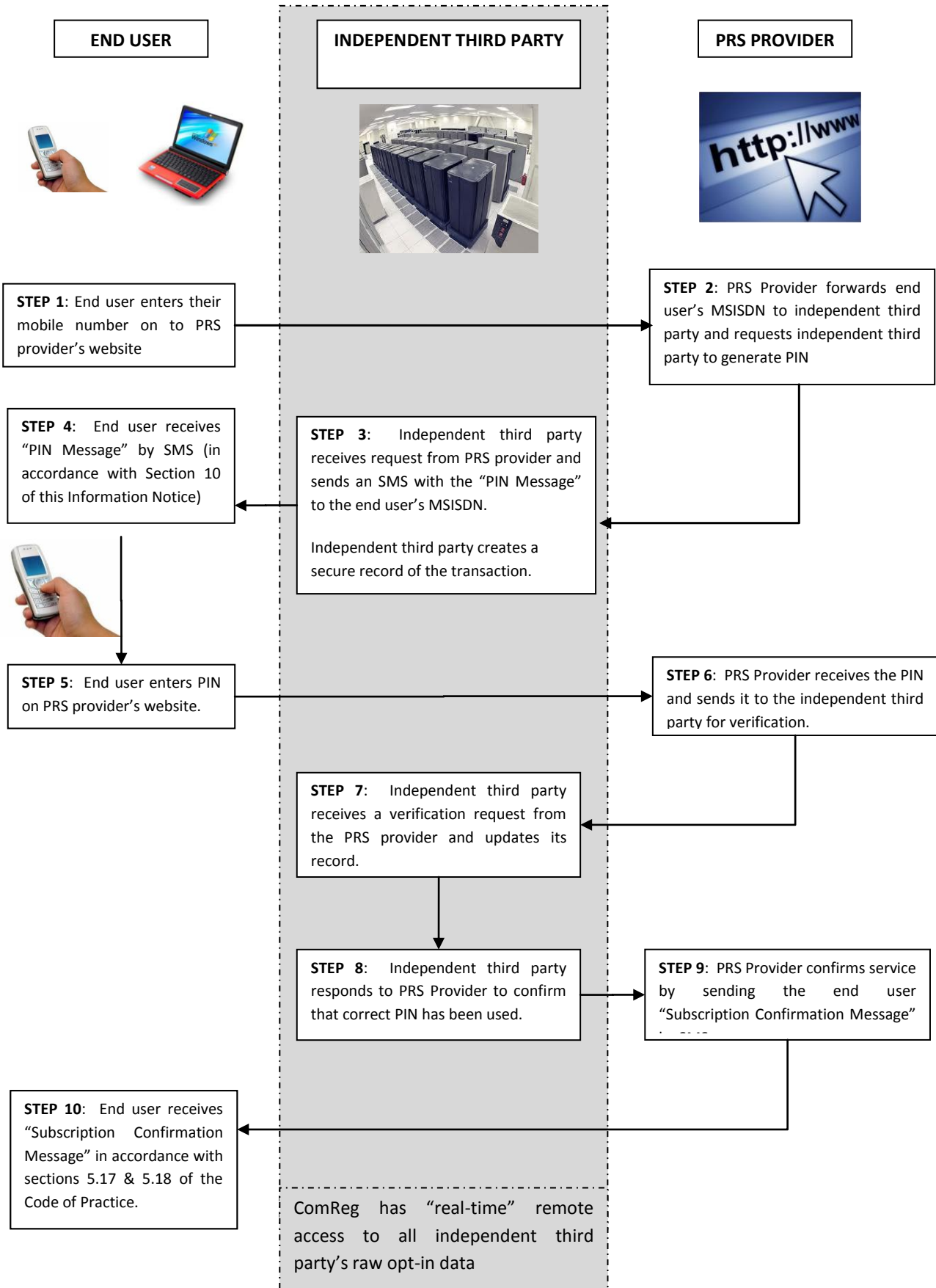
- a. The end user must enter their number manually on to a web form for the purpose of receiving a unique PIN to their phone; (a PIN-protected opt-in)
- b. A record is taken by the verification system provider of the end user opting-in, and this record is time-stamped in an appropriately secure web format (e.g. https) that cannot be tampered with or amended retrospectively;
- c. Records of the communications involved in the opt-in and any opt-out process are taken and maintained by an independent third-party company;
- d. ComReg is provided with real-time access to original records (ie raw opt-in data not a reproduction or transcription of the data into other formats). This may take the form of providing ComReg password-protected access to a system of opt-in records;
- e. The system may be capable of producing other evidence which demonstrates that the opt-in process and related records cannot be interfered with and ComReg would expect access to such evidence.

12. The type of third party PIN verification systems that may be acceptable to ComReg as an alternative means of complying with the Code is graphically represented in Appendix 1 which also contains some further explanatory notes on such systems.

4 Seeking Permission under Section 3.3 of the Code.

13. Any Provider seeking to use a third party PIN verification system must provide details in writing to ComReg of the system they propose to use in relation to a specific PRS and shall not commence using the system as an alternative means of complying with the Double Opt-in Requirements unless and until ComReg has given prior written permission for same as provided for in Section 3.3 of the Code of Practice.
14. Such permission may be withdrawn, or varied by notice if ComReg determines that the alternative means have proved inadequate or are causing unanticipated difficulties of a serious nature.
15. Subject to issues of confidentiality, ComReg will publish details of any alternative means permitted by it. ComReg currently publishes details of permissions granted pursuant to an application under Section 3.3 of the Code on its PRS website www.phonesmart.ie

Appendix: 1 Graphical Flow



Explanatory Notes

1. In general terms an independent third party means a party that is independent of the PRS and the PRS provider to whom verification services are provided. In other words a party that does not derive income from the PRS for which it is providing the PIN verification service, is not involved in the provision of any PRS in conjunction with the PRS Provider to whom they are providing the PIN verification service and has no other commercial or legal connection with the PRS Provider to whom they are providing the PIN verification service, other than unrelated independent services or other arms length commercial transactions.

A party will not be an independent third party unless at all times it provides the PIN verification service by way of a system which is independent of and not accessible to, controlled, maintained and/or supported in any way by the PRS Provider or any of its officers, employees or members.

2. The PIN verification service provider creates records (which must not be capable of being retrospectively altered once created) which contain each end user's opt-in details, including,
 - a. the MSISDN that was entered onto the PRS provider's website,
 - b. the "PIN message" that was sent to the end user,
 - c. the PIN that the end user entered onto the PRS provider's website and
 - d. the confirmation message sent to the PRS provider that the correct PIN was used.

All such records are time-stamped and include the relevant MSISDN in an appropriately secure web format which is available to the Regulator.

3. If the end user does not enter the correct PIN, the PIN verification service provider will inform the PRS provider accordingly and the end user does not become subscribed.