



**CHAMBERS
IRELAND**
IN BUSINESS FOR BUSINESS

Direct Marketing Communications *General Guide for Data Controllers*

Targeted direct marketing, giving individuals information about products and services, is a perfectly legitimate activity - provided it respects the individual's right to privacy. Sending unwanted direct marketing is neither in your interests nor the interests of those receiving it. Data protection law imposes strict obligations on the use of personal data for direct marketing. Because marketing using electronic means is more intrusive than postal marketing, stricter rules apply to it.

General Rule

The basic rule that applies to direct marketing is that **you need the consent of the individual to use their personal data for direct marketing purposes.**

At a minimum, an individual must be given a right to refuse such use of their personal data both at the time the data is collected (an "opt-out") and, in the case of direct marketing by electronic means, on every subsequent marketing message. The "opt-out" right must be free of charge. You must also make clear who you are and where you obtained the individual's personal data (where this is not obvious).

Postal Marketing

Marketing through the post is the traditional and oldest form of direct marketing. For mail to be considered to be direct marketing it must, generally speaking, be addressed to a named person and must be promoting a product or service.

Unaddressed mail or mail addressed to "the occupant", "the resident" or "the householder" does not normally involve the use of personal data and consequently data protection legislation would not apply. However, where a data controller can identify "the occupant", "the resident" or "the householder" from the address in conjunction with other data in or likely to come into his possession, this may involve the processing of personal data and data protection requirements would apply.

Also, the rules do not normally apply to postal marketing of corporate entities (companies, agencies etc) - including marketing of office-holders within such an entity (provided that the marketing is related to the organisation's business needs and that the details of the named person in receipt were obtained fairly).

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Before you can use personal data for postal marketing, you must tell customers (or potential customers) that you intend to use their data for this purpose and give them an opportunity to refuse such use. Where you yourself have collected the personal data, this should be done at the time of collection (for example, by providing a "tick-box" on a form). Where you have obtained the personal data from a third party - including a source of information that is publicly available by law - the opportunity to refuse direct marketing material must be provided before any such material is sent. If any customer objects, you may not use their personal data to directly market them. The individual may withdraw their consent to direct marketing at any time. If your only reason for holding an individual's personal data is direct marketing, then you must erase the personal data from any lists or databases that you hold once the individual has objected.

You may use names and addresses drawn from the **Edited Electoral Register** for postal marketing. The "Edited Register" contains a sub-set of the names and addresses on the "Full Register" of voters. Individuals on the Edited Register are those who, when registering to vote, did not object to their personal data being used for marketing or other non-statutory purposes.

It is an offence under electoral law to use information drawn from the "Full Register" of electors for direct marketing (or for any other purpose not provided for in legislation). It is also your duty to make sure that you are using the most up-to-date version of the Edited Register.

Electronic Marketing

The rules governing electronic marketing (phone, text message, email) are mainly contained in Regulation 13 of the Electronic Privacy Regulations. Different rules apply to phone, fax, text message and e-mail marketing. The rules are more restrictive in the case of marketing by electronic mail of individuals who are not your customers. Unlike in the case of postal marketing, certain restrictions also apply to electronic marketing to businesses and other corporate entities.

Phone

You may not make a marketing phone call to the phone number of an individual or business, other than a current customer who has given consent to the receipt of such calls, if his/her/it's preference not to receive such calls is noted in the [National Directory Database](#).

You also may not make a marketing phone call to an individual or business phone number if s/he/it has previously told you that s/he/it does not consent to the receipt of such calls.

You may not make a marketing call to a mobile telephone number unless (i) you have been notified by the subscriber or user concerned that he or she consents to the receipt of such calls on his or her mobile telephone or (ii) the subscriber or user concerned has consented generally to marketing calls and that such consent is recorded in the National Directory Database in respect of his or her mobile telephone number.

Electronic Mail

Electronic mail includes text messages (SMS), voice messages, sound messages, image messages, multimedia message (MMS) and email messages.

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Individual and Business Customers

Where you have obtained contact details in the context of the sale of a product or service, you may only use these details for direct marketing by electronic mail if the following conditions are met:

1. the product or service you are marketing is of a kind similar to that which you sold to the customer at the time you obtained their contact details
2. At the time you collected the details, you gave the customer the opportunity to object, in an easy manner and without charge, to their use for marketing purposes
3. Each time you send a marketing message, you give the customer the right to object to receipt of further messages
4. The sale of the product or service occurred not more than twelve months prior to the sending of the electronic marketing communication or, where applicable, the contact details were used for the sending of an electronic marketing communication in that twelve month period.

NOTE: In relation to 4 above, if the subscriber fails to unsubscribe using the cost free means provided to them by the direct marketer, they will be deemed to have remained opted-in to the receipt of such electronic mail for a twelve month period from the date of issue to them of the most recent marketing electronic mail.

Individuals ("Natural Persons") who are not Customers

If an individual is not a customer, you may not use electronic mail to send a marketing message to their contact address unless you have obtained the prior consent of that individual to the receipt of such messages - a consent that can be withdrawn at any time.

Business Contacts (Customers and non Customers)

You may not use electronic mail to send a marketing message to a business contact address/number if the subscriber has notified you that they do not consent to the receipt of such communications.

SUMMARY

The following table summarises the rules that apply.

	Postal Marketing	Text/Email Marketing	Phone Marketing to Landlines	Phone Marketing To Mobile
Individual Customer	Opt-Out**	Opt-Out** (provided similar product or service)	Opt-Out**	Opt-Out**
Individual Non-Customer	Opt-Out**	Opt-In*	Opt-In* if on NDD, Opt-Out** otherwise	Opt-In*
Business Contacts (Customer & Non-Customer)	Opt-Out**	Opt-Out**	Opt-In* if on NDD, Opt-Out** otherwise	Opt-In*

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*Opt-in means you can only market an individual where you have their explicit consent to do so. Similarly, selected third parties with whom you share your marketing lists may only market an individual where you have obtained the explicit consent by the individual for marketing by each specific third party.

**Opt-out means that you can market an individual provided you have previously given them the option not to receive such marketing and they have not availed of this option. For all Electronic Marketing Communications, an option to unsubscribe must be included.

If your Chamber has a database of members data it is necessary for any person or organisation to opt-in to this database in the first instance and then each contact thereafter should have an unsubscribe option or opt-out to allow a person or organisation to cease receiving communications.

Offences and Penalties

Failure to comply with the rules can attract heavy penalties. In the case of breach of the rules on electronic marketing, the onus is on you to prove that you had a subscriber's consent to send a marketing message. You should retain such consents for a period of 2 years after the sending of the most recent marketing message to the recipient. Further information on offences and penalties is available [here](#).

What is an unsolicited communication?

Unsolicited communication is essentially something that was not sought or requested. If there is an ongoing, or recent, relationship with a person, then contact might not be deemed to be unsolicited, as some form of consent may be present. In addition, where contact details have been volunteered in the course of completing lifestyle surveys or entering promotions, such details may have consent attached to their future use and subsequent contact may not be deemed to be unsolicited depending on when they were provided.

Are there ways of stopping unsolicited marketing contacts?

Unsolicited direct marketing mail can be stopped by sending back an opt-out from such contacts to the sender. A means of doing this should be provided with the communication received. If there are concerns as to where information was sourced, you should seek an explanation from the company concerned. Where you are unhappy with the outcome please contact the Office of the Data Protection Commissioner for further advice or to make a complaint that will be investigated. The sending of unsolicited direct marketing post is known as a breach of Data Protection Legislation which, on becoming aware, the Commissioner will have corrected. It is not an offence that carries a financial penalty.

Unsolicited direct marketing phone calls, emails or text messages to an individual's phone are offences and each such call or message can attract a fine of up to €5,000 on summary conviction. If convicted on indictment, the fines range from €50,000 for a natural person to €250,000 if the offender is a body corporate.

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Unsolicited direct marketing phone calls can be stopped by placing a phone number on the National Directory Database (NDD) opt-out register. This also applies to stopping unsolicited direct marketing faxes.

Targeted marketing phone calls?

Under SI 336 of 2011 marketing calls to mobile phones are prohibited unless (i) the caller has been notified by the subscriber or user that he or she consents to the receipt of such calls on his or her mobile telephone, or (ii) the subscriber or user has consented generally to receiving marketing calls and that such consent to receive marketing calls is recorded in the NDD in respect of his or her mobile telephone number.

In relation to email and mobile phone text based direct marketing, it is an offence to send such communications without your clear consent in advance. In the case of businesses, messages can be sent until such time as the sender is asked to stop and any subsequent messages from that sender would then be an offence.

How do I know what preference has been recorded?

Any subscriber has a right to ask his/her service provider for a copy of his/her listing in the NDD. The service provider has a right to charge a fee for this service. If a Line Provider fails to record a preference to be placed on the opt-out register of the NDD this is a matter for Commission for Communication Regulation 1890-229-668 or www.askcomreg.ie

Will I still receive marketing calls from people I do business with?

Unless you instruct these people that you do not wish to receive marketing from them, they can rely on consent arising from any consent you may have given as part of that existing relationship to market you regardless of what preference may be recorded in the NDD.

How do I remove a deceased person from a direct marketing database?

This should be done in the standard way by writing to the data controller and explaining the circumstances. In the vast majority of cases this will be respected as the data controller will have no business case for continuing to send direct marketing in such cases. As the Data Protection Acts only provide a right to object to the receipt of direct marketing to living individuals there is no express provision to object to such mail addressed to a deceased person. However, where there is reason to believe that a reasonable request for the removal of a deceased person's details is being ignored for the purpose of continuing to send mail to the home in question, then there may be rights under the Acts in such circumstances for a living individual in that home to object to its receipt.

To whom do I complain?

A complaint can either be made to the Office of the Data Protection Commissioner (who will prosecute persistent offenders) or to the Commission for Communication Regulation (who can issue enforceable directions against certain bodies).

Those wishing to complain to ComReg should phone their consumer line at 1890 229 668 or visit their website at www.askcomreg.ie

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Can I ask my customers to provide the electronic contact details of friends as part of a "refer a friend" scheme so that I can market them about my products and services?

It is an offence under the provisions of SI 336 of 2011 to send an unsolicited marketing message to someone where there is no existing customer relationship. The onus is on the sender to show that the recipient has consented to the receipt of such messages. It is difficult to see how the operation of a "refer a friend" facility could meet this requirement.

Can I ask my customers to inform their friends via my website as part of a "tell a friend" scheme about my products and services?

This depends on the way the scheme operates. It is more likely to be acceptable if the content of the message is determined solely by the sending customer.

What is the difference between the Full Electoral Register and the Edited Electoral Register?

Since 2004, registration authorities are required to publish two versions of the Electoral Register – the 'Full' Register and the 'Edited' Register. The 'Full Register' lists everyone who is entitled to vote and can only be used for an electoral or other statutory purpose.

The 'Edited Register' contains the names and addresses of persons whose details can be used for a purpose other than an electoral or other statutory purpose, e.g. for direct marketing use by a commercial or other organisation.

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