Data Protection in Ireland

A guide for SMS marketing...

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.** As 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).

Electronic Marketing:

The rules governing electronic marketing (phone, fax, 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(1) 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(2).

Email / Text Message Marketing:

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

NOTE: the Regulations state that the customer contact details must have been collected "in accordance with the Data Protection Act". The Data Protection Commissioner considers that, in order to comply with the provisions of the Data Protection Acts concerning the retention of data for no longer than is necessary, it would not be in order to market a customer where there had not been a transaction within the previous 12 months. 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. "Opt-in" means you can only market an individual where you have their explicit consent to do so. "Opt-out" means that you can market an individual provided you have given them the option not to receive such marketing and they have not availed of this option. For a electronic communication to a business, an option to unsubscribe must be included.

	SMS & Email Marketing
Individual Customer	Opt-0ut (provided similar product or service)
Individual Non Customer	Opt-In
Business Contacts (Customer and Non-Customer)	Opt-0ut

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.