

Summary

S.1 The Director General of Telecommunications (“the Director”) has today published a Notification (see Annex A) modifying the definition of “Relevant Data Protection Legislation” in Paragraph 1 of Part 1 of both:

- The Schedule to the Notification under section 48(1) of the Communications Act 2003 (“the Act”) setting general conditions under section 45 of the Act (“the General Conditions Notification”). The Director issued the General Conditions Notification on 22 July 2003, which took effect on 25 July 2003. It can be accessed at:

http://www.ofcom.org.uk/static/archive/oftel/publications/eu_directives/2003/cond_final0703.pdf

- The Schedule to the Notification under Regulation 4(10) of the Electronic Communications (Universal Service) Regulations 2003 proposing the designation of universal service providers and the setting of conditions, which were given effect by paragraphs 7(1) and 7(2) of Schedule 18 to the Act (“the Universal Service Notification”). The Director issued the Universal Service Notification on 21 July 2003, which took effect on 25 July 2003. It can be accessed at:

http://www.ofcom.org.uk/static/archive/oftel/publications/eu_directives/2003/uso0703.pdf

S.2 The Director published on 24 October 2003 a Notification (“the First Notification”) setting out his proposals to modify the definition of “Relevant Data Protection Legislation” in Paragraph 1 of Part 1 of both the General Conditions Notification and the Universal Service Notification. The First Notification can be accessed at:

<http://www.ofcom.org.uk/static/archive/oftel/publications/licensing/2003/datapro1003.pdf>

S.3 The rest of this document explains what is being provided for in the Notification and why.

Directive 2002/58/EC on privacy and electronic communications

S.4 Chapter 1 sets out the background to Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (“the Directive”).

S.5 Chapter 1 sets out also the background to the DTI’s consultation on the implementation of the Directive and refers to the new Privacy and Electronic Communications (EC Directive) Regulations 2003, which came into force on 11 December 2003.

S.6 The Privacy and Electronic Communications (EC Directive) Regulations 2003 revoke the Telecommunications (Data Protection and Privacy) Regulations 1999 and the Telecommunications (Data Protection and Privacy) (Amendment) Regulations 2000.

General conditions of entitlement

S.7 Chapter 2 refers to the General Conditions Notification, in particular the definition in Paragraph 1 of Part 1 of the Schedule to the General Conditions Notification of “Relevant Data Protection Legislation”.

S.8 Under Paragraph 1 of Part 1 of the Schedule to the General Conditions Notification, “Relevant Data Protection Legislation” meant the Data Protection Act 1998 and the Telecommunications (Data Protection and Privacy) Regulations 1999.

Designation of universal service providers

S.9 Chapter 3 refers to the Universal Service Notification, in particular the definition in Paragraph 1 of Part 1 of the Schedule to the Universal Service Notification of “Relevant Data Protection Legislation”.

S.10 Under Paragraph 1 of Part 1 of the Schedule to the Universal Service Notification, “Relevant Data Protection Legislation” meant the Data Protection Act 1998 and the Telecommunications (Data Protection and Privacy) Regulations 1999.

The modification

S.11 Under the Notification (see Annex A), the definition of “Relevant Data Protection Legislation” in Paragraph 1 of Part 1 of both the General Conditions Notification and the Universal Service Notification has been modified to mean the Data Protection Act 1998 and the Privacy and Electronic Communications (EC Directive) Regulations 2003.

S.12 In making this modification, and explained in this statement, the Director has considered the test set out in section 47(2) of the Act. The test is that the modification is:

1. Objectively justifiable in relation to the networks, services, facilities, apparatus or directories to which it relates;
2. Not such as to discriminate unduly against particular persons or against a particular description of persons;
3. Proportionate to what the modification is intended to achieve; and
4. In relation to what it is intended to achieve, transparent.

S.13 The Director considers that the modification satisfies the test.

Chapter 1

Background

Directive 2002/58/EC on privacy and electronic communications

1.1 The Directive is one of the measures which arose from the EC 1999 Communications Review of the regulatory framework for electronic communications. It concerns the processing of personal data and the protection of privacy in the electronic communications sector. The Directive can be accessed at:

http://europa.eu.int/eur-lex/pri/en/oj/dat/2002/l_108/l_10820020424en00330050.pdf

1.2 The Directive repealed the Telecommunications Data Protection Directive 1997/66/EC (TDPD), which was implemented in the UK by the Telecommunications (Data Protection and Privacy) Regulations 1999:

<http://www.opsi.gov.uk/si/si1999/19992093.htm>

and which was amended by the Telecommunications (Data Protection and Privacy) (Amendment) Regulations 2000:

<http://www.opsi.gov.uk/si/si2000/20000157.htm>

1.3 The Directive was adopted on 12 July 2002. Implementation in the UK was by means of secondary legislation under the European Communities Act 1972. The new implementing Regulations revoked the Telecommunications (Data Protection and Privacy) Regulations 1999 and the Telecommunications (Data Protection and Privacy) (Amendment) Regulations 2000.

1.4 DTI was responsible for implementing the Directive.

DTI consultation on the implementation of Directive 2002/58/EC on privacy and electronic communications

1.5 The draft UK implementing regulations (the Privacy and Electronic Communications (EC Directive) Regulations 2003) were published by DTI in March 2003, together with a consultation document seeking the views of industry and individuals on the Government's proposed approach to implementing the Directive in the UK. Further details of the consultation can be accessed at: http://www.dti.gov.uk/industries/ecomunications/directive_on_privacy_electronic_communications_200258ec.html

1.6 The consultation ran from 27 March to 19 June 2003. More than 420 responses were received by DTI from a wide cross-section of stakeholders, including individuals, businesses, trade and consumer representatives and regulatory authorities. Those who responded, excluding confidential responses, are listed at:

http://www.dti.gov.uk/industries/ecomunications/directive_on_privacy_electronic_communications_200258ec.html

1.7 The Government's response to the consultation can be accessed at the link in paragraph 1.5 above.

The Privacy and Electronic Communications (EC Directive) Regulations 2003

1.8 The Privacy and Electronic Communications (EC Directive) Regulations 2003 were made and laid before Parliament on 18 September 2003 and came into force on 11 December 2003. The Regulations can be accessed at:

<http://www.opsi.gov.uk/si/si2003/20032426.htm>

Chapter 2

General conditions of entitlement

2.1 The Director issued on 22 July 2003 the General Conditions Notification, which took effect on 25 July 2003. The General Conditions Notification can be accessed at:

http://www.ofcom.org.uk/static/archive/oftel/publications/eu_directives/2003/cond_final0703.pdf

2.2 Under Paragraph 1 of Part 1 of the Schedule to the General Conditions Notification, “Relevant Data Protection Legislation” meant the Data Protection Act 1998 and the Telecommunications (Data Protection and Privacy) Regulations 1999.

2.3 The following general conditions under Part 2 of the Schedule to the General Conditions Notification include a reference to the requirements of “Relevant Data Protection Legislation”:

- Condition 8: Operator assistance, directories and directory enquiries facilities (paragraph 8.5);
- Condition 11: Metering and billing (paragraph 11.2); and
- Condition 19: Provision of directory information (paragraph 19.4).

2.4 The Privacy and Electronic Communications (EC Directive) Regulations 2003, which came into force on 11 December 2003, revoked the Telecommunications (Data Protection and Privacy) Regulations 1999 and the Telecommunications (Data Protection and Privacy) (Amendment) Regulations 2000.

2.5 The Director proposed therefore in the First Notification to modify the definition of “Relevant Data Protection Legislation” under Paragraph 1 of Part 1 of the Schedule to the General Conditions Notification.

2.6 Under the proposal in the First Notification “Relevant Data Protection Legislation” would be amended to mean the Data Protection Act 1998 and the Privacy and Electronic Communications (EC Directive) Regulations 2003.

2.7 The Director proposed in the First Notification that this modification should be made so that it is effective from 11 December 2003, to coincide with the date on which the Privacy and Electronic Communications (EC Directive) Regulations 2003 were due to come into force.

2.8 In making the proposal set out in the First Notification, the Director considered the test set out in section 47(2) of the Act. The test is that the modification is:

1. Objectively justifiable in relation to the networks, services, facilities, apparatus or directories to which it relates;
2. Not such as to discriminate unduly against particular persons or against a particular description of persons;
3. Proportionate to what the modification is intended to achieve; and
4. In relation to what it is intended to achieve, transparent.

2.9 The Government was required to implement the requirements of Directive 2002/58/EC on privacy and electronic communications. It decided to implement the Directive by means of secondary legislation under the European Communities Act 1972.

2.10 Having consulted on its proposals to implement the Directive, the Government made and laid the new Privacy and Electronic Communications (EC Directive) Regulations 2003. The Regulations came into force on 11 December 2003, thereby revoking the Telecommunications (Data Protection and Privacy) Regulations 1999 and the Telecommunications (Data Protection and Privacy) (Amendment) Regulations 2000.

2.11 The Director invited comments on the proposal set out in the First Notification by 27 November 2003. No such comments were received in respect of the proposal.

2.12 In the circumstances, the Director has made this modification to reflect the change in legislation.

2.13 It is for these reasons that the Director considers that this modification satisfies the test in section 47(2) of the Act.

Chapter 3

Designation of universal service providers

3.1 The Director issued on 21 July 2003 the Universal Service Notification, which took effect on 25 July 2003. The Universal Service Notification can be accessed at:

http://www.ofcom.org.uk/static/archive/oftel/publications/eu_directives/2003/uso0703.pdf

3.2 Under Paragraph 1 of Part 1 of the Schedule to the Universal Service Notification, “Relevant Data Protection Legislation” meant the Data Protection Act 1998 and the Telecommunications (Data Protection and Privacy) Regulations 1999.

3.3 The following condition under Part 2 of the Schedule to the Universal Service Notification includes a reference to the requirements of “Relevant Data Protection Legislation”:

- Condition 7: Maintenance and supply of a Directory Information database and Directories (paragraphs 7.3(b) and 7.6).

3.4 The Privacy and Electronic Communications (EC Directive) Regulations 2003, which came into force on 11 December 2003, revoked the Telecommunications (Data Protection and Privacy) Regulations 1999 and the Telecommunications (Data Protection and Privacy) (Amendment) Regulations 2000.

3.5 The Director proposed therefore in the First Notification to modify the definition of “Relevant Data Protection Legislation” under Paragraph 1 of Part 1 of the Schedule to the Universal Service Notification.

3.6 Under the proposal in the First Notification “Relevant Data Protection Legislation” would be amended to mean the Data Protection Act 1998 and the Privacy and Electronic Communications (EC Directive) Regulations 2003.

3.7 The Director proposed in the First Notification that this modification should be made so that it is effective from 11 December 2003, to coincide with the date on which the Privacy and Electronic Communications (EC Directive) Regulations 2003 were due to come into force.

3.8 In making the proposal set out in the First Notification, the Director considered the test set out in section 47(2) of the Act. The test is that the modification is:

1. Objectively justifiable in relation to the networks, services, facilities, apparatus or directories to which it relates;
2. Not such as to discriminate unduly against particular persons or against a particular description of persons;
3. Proportionate to what the modification is intended to achieve; and

4. In relation to what it is intended to achieve, transparent.

3.9 The Government was required to implement the requirements of Directive 2002/58/EC on privacy and electronic communications. It has decided to implement the Directive by means of secondary legislation under the European Communities Act 1972.

3.10 Having consulted on its proposals to implement the Directive, the Government made and laid the new Privacy and Electronic Communications (EC Directive) Regulations 2003. The Regulations came into force on 11 December 2003, thereby revoking the Telecommunications (Data Protection and Privacy) Regulations 1999 and the Telecommunications (Data Protection and Privacy) (Amendment) Regulations 2000.

3.11 The Director invited comments on the proposal set out in the First Notification by 27 November 2003. No such comments were received in respect of the proposal.

3.12 In the circumstances, the Director has made this modification to reflect the change in legislation.

3.13 It is for these reasons that the Director considers that this modification satisfies the test in section 47(2) of the Act.

Annex A

Notification under section 48(1) of the Communications Act 2003

Notification modifying the definition of “Relevant Data Protection Legislation” under:

(1) Paragraph 1 of Part 1 of the Schedule to the Notification setting general conditions under section 45 of the Communications Act 2003, issued by the Director on 22 July 2003 (“the General Conditions Notification”); and

(2) Paragraph 1 of Part 1 of the Schedule to the Notification under regulation 4(10) of the Electronic Communications (Universal Service) Regulations 2003 proposing the designation of universal service providers and the setting of conditions, issued by the Director on 21 July 2003, and which were given effect under paragraphs 7(1) and 7(2) of Schedule 18 to the Communications Act 2003 (“the Universal Service Notification”).

WHEREAS

(A) The Director General of Telecommunications (“the Director”) in accordance with section 48(2) of the Communications Act 2003 (“the Act”) made a proposal to modify the definition of “Relevant Data Protection Legislation” under:

- a) Paragraph 1 of Part 1 of the Schedule to the General Conditions Notification; and
- b) Paragraph 1 of Part 1 of the Schedule to the Universal Service Notification,

to mean the Data Protection Act 1998 and the Privacy and Electronic Communications (EC Directive) Regulations 2003 by publication of a Notification on 24 October 2003 (“the First Notification”).

(B) A copy of the First Notification was sent to the Secretary of State in accordance with section 50(1)(a) of the Act.

(C) The Director invited representations about the proposal set out in the First Notification and the consultation document accompanying the First Notification by 27 November 2003.

(D) By virtue of section 48(5) of the Act, the Director may give effect to any proposal to modify conditions set out in the First Notification, with or without modification to the proposal, where:

- a) He has considered every representation about the proposals made to him within the period specified in the First Notification; and
- b) He has had regard to every international obligation of the United Kingdom (if any) which has been notified to him for this purpose by the Secretary of State.

(E) There were no such representations made to him in respect of the proposal.

THEREFORE

1. The Director in accordance with section 48(1) of the Act hereby modifies the definition of "Relevant Data Protection Legislation" under:

- a) Paragraph 1 of Part 1 of the Schedule to the General Conditions Notification; and
- b) Paragraph 1 of Part 1 of the Schedule to the Universal Service Notification,

to mean the Data Protection Act 1998 and the Privacy and Electronic Communications (EC Directive) Regulations 2003.

2. The Director's reasons for modifying the definition of "Relevant Data Protection Legislation" referred to in paragraph 1 of this Notification are contained in the statement published with this Notification.

3. The effect of the modification is set out in Chapters 2 and 3 of the statement published with this Notification.

4. In making the modification referred to in paragraph 1 of this Notification, the Director has considered and acted in accordance with all relevant requirements set out in sections 45 to 50 of the Act.

5. In making the modification referred to in paragraph 1 of this Notification, the Director has considered and acted in accordance with the six Community requirements in section 4 of the Act.

6. A copy of this Notification has been sent to the Secretary of State in accordance with section 50(1)(a) of the Act.

7. By virtue of the Communications Act 2003 (Commencement No.1) Order 2003 made under sections 411 and 408 of the Act:

- a) Certain provisions of the Act are commenced on 25 July 2003 for the purpose only of enabling the networks and services functions under those provisions to be carried out by the Director; and
- b) Those provisions of the Act are to have effect as if references to Ofcom were references to the Director.

8. Except as otherwise defined in this Notification, words or expressions used shall have the same meaning as in the Act.

NEIL BUCKLEY
POLICY PROJECT MANAGER

A person authorised under paragraph 8 of Schedule 1 to the Telecommunications Act 1984

Dated: 11 December 2003