

The Cookie Crumbles

The Irish Regulations transposing the new European rules on cookies have come into force. While website operators will need to exercise care to ensure that they are complying with the new regime, these new rules are less onerous and disruptive than originally anticipated and should be accommodated into the design of most Irish websites without undue difficulty.

Cookies, or small items of code placed on a user's computer by a website, are vital to the functioning of the modern web. Cookies allow website operators to determine how users browse their sites and are a technical prerequisite for the operation of more advanced websites, such as those which require their users to log-in. Cookies are also used, more controversially, to monitor user behaviour for the purpose of targeting advertisements.

The rules governing cookies are being overhauled across Europe at present due to a directive adopted in 2009. While all member states are obliged to implement the Directive, they are given a certain degree of freedom as to the exact manner in which they chose to do so. The Irish transposing measures, which have just come into force, have transposed the directive in a way, is apt to minimise the negative impact on websites based in Ireland.

Under the new regime, all websites must have user consent before they place a cookie onto the user's computer. In addition, they must provide the user with clear, comprehensive, prominently displayed and easily accessible information about the cookie, particularly as to its purpose. While this regime is somewhat tougher than the existing rules, which required that websites give a user the ability to "opt-out" of the cookie, these new rules contain a number of provisions which should ensure that websites can become compliant without having to radically overhaul their design. The regulations note that the methods of providing information and giving consent should be as user friendly as possible. In certain circumstances users may be able to give consent via their browser settings. Cookies which are technically required to operate the site are exempt from these new rules. A provision in an earlier draft of the regulations, prohibiting the current practice of solely providing the relevant disclosures in a privacy policy, has not made it into the final regulations.

In short, it would seem that once websites are fully and properly transparent with their users about the use of cookies, and those users chose to continue to use the website, the relevant consent may be inferred. This approach is to be commended for ensuring that users are fully informed of the privacy implications of their online activities without imposing an undue burden on website operators.

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