

Committee for Enterprise, Trade and Investment

Report on Unsolicited Services (Trade and Business Directories) Bill

Together with the Minutes of Proceedings of the Committee
Relating to the Report and the Minutes of Evidence

Ordered by The Committee for Enterprise, Trade and Investment to be printed 1 July 2010
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Session 2009/2010

Second Report

Membership and Powers

Powers

The Committee for Enterprise, Trade & Investment is a Statutory Committee established in accordance with paragraphs 8 and 9 of the Belfast Agreement, Section 29 of the Northern Ireland Act 1998 and under Assembly Standing Order 46. The Committee has a scrutiny, policy development and consultation role with respect to the Department for Enterprise, Trade & Investment and has a role in the initiation of legislation.

The Committee has power to:

- Consider and advise on Departmental Budgets and Annual Plans in the context of the overall budget allocation;
- Approve relevant secondary legislation and take the Committee stage of relevant primary legislation;
- Call for persons and papers;
- Initiate inquiries and make reports; and
- Consider and advise on matters brought to the Committee by the Minister for Enterprise, Trade & Investment.

Membership

The Committee has 11 members, including a Chairperson and Deputy Chairperson, and a quorum of five members.

The membership of the Committee is as follows:

Mr Alban Maginness (Chairperson) ¹
Mr Paul Butler (Deputy Chairperson) ⁴

Ms Jennifer McCann
Mr Leslie Cree

Mr Daithí McKay ^{5, 6}
Mr David Simpson MP ²
Mr Gregory Campbell MP ³
Mr Paul Frew ⁷
Dr Alasdair McDonnell MP
Mr Gerry McHugh
Mr Sean Neeson

¹ With effect from 30 June 2009 Mr Alban Maginness replaced Mr Mark Durkan.

² With effect from 14 September 2009 Mr David Simpson replaced Mr Robin Newton.

³ With effect from 14 September 2009 Mr Gregory Campbell replaced Mr Jim Wells.

⁴ With effect from the 14 September 2009 Paul Butler replaced Jennifer McCann as Deputy Chairperson

⁵ With effect from the 31 March 2010 Mr Alan McFarland stood down from membership of the committee

⁶ On 13th April 2010 Mr Daithí McKay was appointed as a Member of the Committee for Enterprise, Trade and Investment.

⁷ With effect from 28 June 2010 Mr Paul Frew replaced Mr Stephen Moutray.

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4. Consultation Document on proposals for an Unsolicited Services (Trade and Business Directories) Bill

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Executive Summary

Purpose

1. The Report details the Committee for Enterprise, Trade & Investment's consideration of the Unsolicited Services (Trade and Business Directories) Bill.

Principles of the Bill

2. The Committee welcomed the introduction of the Bill and considered the principles of the Bill to be as follows:

- To re-enact, with amendments, certain provisions of the Unsolicited Goods and Services (Northern Ireland) Order 1976 ('the 1976 Order'). These provisions govern the circumstances in which businesses may be charged for the publication about them in directories.
- To update the legislation to facilitate electronic commerce by introducing equivalence between paper-based methods and electronic methods for contracting an entry in a directory.

3. The Committee engaged in a public consultation exercise and consulted with a wide range of stakeholders with a variety of interests. There were no written responses from either the public consultation or from the stakeholders to which the Committee wrote.

Key Issues

4. There was one key issue that arose during pre-legislative scrutiny of the Bill; however, during evidence sessions with the Department during pre-legislative scrutiny, the Committee's concern was addressed. During the Committee Stage, one other issue arose relating to contract renewals.

5. The Committee considered that the key issues relating to the Bill were as follows:

- Details required in an invoice; specifically on an electronic invoice
- Notices of renewals on existing contracts

Introduction

6. At the commencement of pre-legislative scrutiny, the Bill was entitled the Unsolicited Goods and Services (Amendment) Bill. On 31 March 2009, the Minister for Enterprise, Trade and Investment wrote to the Committee for Enterprise, Trade & Investment (CETI or the Committee) to state that it has been re-named the Unsolicited Services (Trade and Business Directories) Bill, following advice from the Office of the First Minister and deputy First Minister and the Office of Legislative Council.

7. The Unsolicited Services (Trade and Business Directories) Bill was introduced to the Northern Ireland Assembly on 23 March 2010. The Assembly debated the principles of the Bill in the Second Stage on 20 April 2010, after which it was referred to the Committee for Committee

Stage. The Committee sought and received the approval of the Assembly in Plenary Session on 11 May 2010 to extend its consideration and scrutiny of the Bill to 1 October 2010.

8. The Bill contains 9 clauses and 1 schedule.

9. The Committee launched a public consultation on 21 April 2010 and also wrote to key stakeholders for issues relating to the Bill.

10. There were no issues raised from either the key stakeholders or the public consultation.

11. All papers and responses referred to in the report are listed in the appendices.

Summary of the Draft Unsolicited Services (Trade and Business Directories) Bill as Presented to the Committee for Enterprise, Trade & Investment in the Committee Stage

Section One: Control of charges for directory entries

Clause 1 – Control of charges for directory entries

12. Clause 1 provides the prohibition on charges unless one of four conditions (requirements) is met (as prescribed in clauses 2, 3, 4 and 5). The conditions are:

- If an order form is signed;
- If a note of agreement to charge is signed;
- In certain cases of electronic communication; or
- In certain cases of renewed or extended contract.

Section Two: Permitted charges

Clause 2 – Charge permitted if order form signed

13. Clause 2 set the requirements for a charge when an order form has been signed. The requirements are met when an order form has been signed by a person (or on behalf of a person) in hard copy or electronic copy. This must bear the person's name and address.

Clause 3 – Charge permitted if note of agreement to charge signed

14. Clause 3 sets requirements when a note of agreement is signed by a person (or on behalf of a person).

Clause 4 – Charge permitted in certain cases of electronic communication

15. Clause 4 sets the requirements for a charge in certain cases of electronic communication.

Clause 5 – Charge permitted in certain cases of renewed or extended contract

16. Clause 5 sets the requirements for a charge in certain cases of renewed or extended contract.

Section Three: Offence

Clause 6 – Offence to demand payment where section 1 contravened

17. Clause 6 sets the offence to demand payment when section 1 is breached.

Section Four: Supplementary

Clause 7 – Power to amend the Schedule

18. Clause 7 sets that the Department of Enterprise, Trade and Investment (DETI or the Department) will have power to amend the Schedule to the Bill by Order subject to negative resolution. An Order under that clause may also make any necessary transitional provisions and amendments to provisions referred to in the Schedule.

Clause 8 – Amendment and repeals

19. Clause 8 repeals Articles 5 and 6 of the 1976 Order as they are being replaced by the provisions of the proposed Bill. Article 2(3) of the 1976 Order is being amended because it will need to refer to the conditions in paragraph 4 of the Schedule to the Bill.

Clause 9 – Short title and commencement

20. Clause 9 sets the short title of the Bill as the Unsolicited Services (Trade and Business Directories) Act (Northern Ireland) 2010. Also sets that the Act will come into operation 2 months after the day on which it receives royal assent.

Schedule – Matters referred to in sections 3, 4 and 5

21. The Schedule mirrors the provisions of the Schedule to the Regulatory Reform (Unsolicited Goods and Services Act 1971) (Directory Entries and Demands for Payment) Order 2005 (S.I. 2005/55). The details have, however, been set out in a different sequence to match the sequence in which they occur in the Bill. The Schedule also specifies the matters and details referred to in clauses 3, 4 and 5 of the Bill including:

- Particulars of directory or proposed directory which must be given in a note for charging a person;
- Information required in a written notice;
- Information to be given to a person;
- Conditions applying to invoice or similar document which does not assert right to payment.

Summary of Consideration During Pre-legislative Scrutiny

Details required in an electronic invoice

22. During pre-legislative scrutiny of the Bill, members raised the issue that electronic versions of invoices may be easier to replicate and would potentially lead to more scams targeted towards businesses.

23. The Department responded by stating that any documents that emanate from a directory publisher must have comprehensive details about the charges. The Bill will also be prescriptive about informing business of every aspect of a transaction before an order is placed.

24. Members were content with the Department's responses.

Summary of Consideration

Clause 5 – Charge permitted in certain cases of renewed or extended contract

25. The Committee sought clarification on whether a business would receive a notice to renew an existing contract from a business directory and if a contract would be automatically renewed unless otherwise informed by the business.

26. The Department responded by stating a business may receive a notice from a business directory to renew the contract, unless otherwise informed by the business.

27. Members were content with the Department's response.

Clause by Clause Scrutiny of the Bill

Clause 1 – Control of charges for directory entries

Clause 2 – Charge permitted if order form signed

Clause 3 – Charge permitted if note of agreement to charge signed

Clause 4 – Charge permitted in certain cases of electronic communication

Clause 5 – Charge permitted in certain cases of renewed or extended contract

Clause 6 – Offence to demand payment where section 1 contravened

Clause 7 – Power to amend the Schedule

Clause 8 – Amendment and repeals

Clause 9 – Short title and commencement

28. The Committee for Enterprise, Trade and Investment is content with Clauses 1 to 9 as drafted.

Schedule – Matters referred to in section 3, 4 and 5

29. The Committee for Enterprise, Trade and Investment is content with the Schedule as drafted.

Long Title

30. The Committee for Enterprise, Trade and Investment is content with the Long Title as drafted.

Summary of the Draft Unsolicited Services (Trade and Business Directories) Bill as Presented to the Committee for Enterprise, Trade & Investment in the Committee Stage

Appendix 1

Minutes of Proceedings

Thursday, 11 December 2008 Room 21, Parliament Buildings

Present: Mr Mark Durkan MP (Chairperson)

Mr Leslie Cree

Mr Alan McFarland

Mr Sean Neeson

Mr Robin Newton

Dr Alasdair McDonnell MP

In Attendance: Mr Jim McManus (Assembly Clerk)

Mr Paul Connolly (Assistant Assembly Clerk)

Mr Stephen White (Clerical Supervisor)

Mr Jim Nulty (Clerical Officer)

Apologies: Ms Jennifer McCann (Deputy Chairperson)

Mr Simon Hamilton

Mr Gerry McHugh

10.32 a.m. The meeting opened in public session.

6. Unsolicited Goods Bill

11.30am Officials joined the meeting.

Department Officials John Hinds (Grade 7), Head of Consumer Affairs Branch and Deirdre Dempsey (Staff Officer), Consumer Affairs Branch briefed members on the Unsolicited Goods Bill. Key issues discussed included the rationale behind the proposed Bill and how it would operate in practice.

11.42am Officials left the meeting.

Agreed: The Committee agreed to receive further briefing from officials after the consultation has ended.

[Extract]

Thursday, 1 October 2009 Room 21, Parliament Buildings

Present: Mr Alban Maginness (Chairperson)
Mr Paul Butler (Deputy Chairperson)
Ms Jennifer McCann
Mr Stephen Moutray
Mr Gregory Campbell MP
Mr David Simpson MP
Mr Sean Neeson
Mr Alan McFarland
Dr Alasdair McDonnell MP
Mr Gerry McHugh

In Attendance: Mr Jim McManus (Assembly Clerk)
Ms Sohui Yim (Assistant Assembly Clerk)
Mr Jim Nulty (Clerical Supervisor)
Ms Michelle McDowell (Clerical Officer)

Apologies: Mr Leslie Cree

10.45am The meeting opened in public session

8. Unsolicited Services Bill Report, Outcome of Consultation – Written Briefing.

The Committee noted a written briefing on the Unsolicited Services Bill Report.

[Extract]

Thursday, 18 February 2010 Room 30, Parliament Buildings

Present: Mr Alban Maginness (Chairperson)
Mr Paul Butler (Deputy Chairperson)
Dr Alasdair McDonnell MP
Mr Stephen Moutray
Mr David Simpson MP

Mr Sean Neeson
Mr Gerry McHugh
Mr Leslie Cree

In Attendance: Mr Jim McManus (Assembly Clerk)
Ms Sohui Yim (Assistant Clerk)
Mr Jim Nulty (Clerical Supervisor)
Ms Michelle McDowell (Clerical Officer)

Apologies: Mr Alan McFarland

10.33am The meeting began in public session.

3. Matters arising

The Chair informed members that the Committee has received the Unsolicited Services Bill from the Department.

Agreed: To receive an oral briefing from Departmental officials on the Bill at the meeting of 4 March.

[Extract]

Thursday, 4 March 2010 Room 30, Parliament Buildings

Present: Mr Alban Maginness (Chairperson)
Mr Paul Butler (Deputy Chairperson)
Dr Alasdair McDonnell MP
Mr Alan McFarland
Mr Stephen Moutray
Mr David Simpson MP
Mr Gregory Campbell MP
Mr Sean Neeson
Ms Jennifer McCann
Mr Gerry McHugh

In Attendance: Mr Jim McManus (Assembly Clerk)
Ms Sohui Yim (Assistant Clerk)
Mr Jim Nulty (Clerical Supervisor)
Ms Michelle McDowell (Clerical Officer)

Apologies: Mr Leslie Cree

10.40am The meeting began in public session.

4. Unsolicited Services (Trade and Business Directories) Bill: Oral Briefing

11.12am The Officials joined the meeting.

The Committee received an oral briefing from John Hinds, Head of Consumer Affairs and Philip McClenaghan, Team Leader Legislation Unit. Key issues discussed included the proposed timing for the legislation, current status of the Bill and key aspects of the Bill.

11.27am The Officials left the meeting.

Agreed: To receive a list of full consultees to the Bill.

[Extract]

Thursday, 25 March 2010 Room 30, Parliament Buildings

Present: Mr Alban Maginness (Chairperson)
Mr Paul Butler (Deputy Chairperson)
Mr Alan McFarland
Mr Leslie Cree
Mr Sean Neeson
Mr Gerry McHugh

In Attendance: Mr Jim McManus (Assembly Clerk)
Ms Sohui Yim (Assistant Clerk)
Mr Jim Nulty (Clerical Supervisor)
Ms Michelle McDowell (Clerical Officer)

Apologies: Mr Stephen Moutray
Mr Gregory Campbell MP
Mr David Simpson MP
Dr Alasdair McDonnell MP
Ms Jennifer McCann

10.36am The meeting began in public session.

3. Matters arising

Members noted that the Unsolicited Services (Trade and Business Directories) Bill has been introduced and that the second stage of the Bill is expected shortly after recess.

Agreed: Content with the principles of the Bill.

[Extract]

Thursday, 15 April 2010 Soni Building, Castlereagh House, Belfast

Present: Mr Alban Maginness (Chairperson)
Mr Leslie Cree
Mr Gerry McHugh
Ms Jennifer McCann
Mr Sean Neeson

In Attendance: Mr Jim McManus (Assembly Clerk)
Ms Sohui Yim (Assistant Clerk)
Mr Jim Nulty (Clerical Supervisor)
Ms Michelle McDowell (Clerical Officer)

Apologies: Mr Paul Butler (Deputy Chairperson)
Mr David Simpson MP
Mr Gregory Campbell MP
Mr Stephen Moutray
Mr Daithí McKay
Dr Alasdair McDonnell MP

11.50am The meeting began in public session.

3. Matters arising

Members discussed a Departmental briefing on the summary of responses to the consultation on the Unsolicited Services Bill, a list of key stakeholders for the Bill and the draft public notice for the Bill.

Agreed: To write to the list of stakeholders for the Bill.

Agreed: Content with the public notice and the closing date for submissions.

[Extract]

Thursday, 22 April 2010 Room 30, Parliament Buildings

Present: Mr Alban Maginness (Chairperson)
Mr Paul Butler (Deputy Chairperson)
Ms Jennifer McCann
Mr Daithí McKay
Dr Alasdair McDonnell MP
Mr Leslie Cree
Mr Gerry McHugh

In Attendance: Mr Jim McManus (Assembly Clerk)
Ms Sohui Yim (Assistant Clerk)
Mr Jim Nulty (Clerical Supervisor)
Ms Michelle McDowell (Clerical Officer)

Apologies: Mr Stephen Moutray
Mr Gregory Campbell MP
Mr David Simpson MP
Mr Sean Neeson

10.35am The meeting began in public session.

3. Matters Arising

Members noted a draft motion to extend the Committee stage of the Unsolicited Services Bill.

Agreed: Content with the extension.

[Extract]

Thursday, 13 May 2010 Room 30, Parliament Buildings

Present: Mr Alban Maginness (Chairperson)
Mr Paul Butler (Deputy Chairperson)
Ms Jennifer McCann
Mr Stephen Moutray
Mr Gregory Campbell MP
Mr David Simpson MP
Dr Alasdair McDonnell MP
Mr Sean Neeson
Mr Leslie Cree
Mr Gerry McHugh

In Attendance: Mr Jim McManus (Assembly Clerk)
Ms Sohui Yim (Assistant Clerk)
Mr Jim Nulty (Clerical Supervisor)
Ms Michelle McDowell (Clerical Officer)

Apologies: Mr Daithí McKay

10. Unsolicited Services (Trade and Business Directories) Bill – Assembly Research Paper – Written Briefing

Members noted the written briefing.

Agreed: To consider the research paper provided when the Committee further considers the Bill.

[Extract]

Thursday, 10 June 2010 Room 30, Parliament Buildings

Present: Mr Alban Maginness (Chairperson)
Mr Paul Butler (Deputy Chairperson)
Dr Alasdair McDonnell MP
Mr Gregory Campbell MP
Mr Stephen Moutray
Mr Leslie Cree
Mr Sean Neeson
Mr Gerry McHugh

In Attendance: Mr Jim McManus (Assembly Clerk)
Ms Sohui Yim (Assistant Clerk)

Mr Jim Nulty (Clerical Supervisor)
Ms Michelle McDowell (Clerical Officer)

Apologies: Ms Jennifer McCann

10.33am The meeting began in closed session.

1. Consideration of the Unsolicited Services (Trade and Business Directories) Bill: Internal Memorandum from the Examiner of Statutory Rules

Members discussed the Examiner's memorandum.

Agreed: Content with the Examiner's advice.

Agreed: Content to take no oral evidence for the Bill and to commence the preliminary view of the Bill and, if no issues are raised, the clause-by-clause scrutiny of the Bill at next week's meeting.

[Extract]

Thursday, 17 June 2010 Room 30, Parliament Buildings

Present: Mr Alban Maginness (Chairperson)
Mr Paul Butler (Deputy Chairperson)
Mr Daithí McKay
Dr Alasdair McDonnell MP
Mr Gregory Campbell MP
Mr Stephen Moutray
Mr Leslie Cree
Mr Sean Neeson

In Attendance: Mr Jim McManus (Assembly Clerk)
Ms Sohui Yim (Assistant Clerk)
Mr Jim Nulty (Clerical Supervisor)
Ms Michelle McDowell (Clerical Officer)

Apologies: Ms Jennifer McCann

6. Consideration of the Unsolicited Services (Trade and Business Directories) Bill: Written Briefing.

Members discussed the written briefing. There were no issues raised in relation to the Bill.

12.09pm Officials from the Department joined the meeting to answer member's questions – Philip McClenaghan and Patrick Neill.

Agreed: Content with the Bill, as drafted, and to proceed to formal clause-by-clause scrutiny of the Bill.

12.12pm Gregory Campbell left the meeting.

7. Formal Clause-by-Clause Scrutiny of the Unsolicited Services (Trade and Business Directories) Bill

The Committee formally scrutinised, clause-by-clause, The Unsolicited Services (Trade and Business Directories) Bill and agreed the following:

Clause 1 – Control of Charges for directory entries

Question put and agreed: That the Committee is content with Clause 1, as drafted.

Clause 2 – Charge permitted if order form signed

Question put and agreed: That the Committee is content with Clause 2, as drafted.

Clause 3 – Charge permitted if note of agreement to charge signed.

Question put and agreed: That the Committee is content with Clause 3, as drafted.

Clause 4 – Charge permitted in certain cases of electronic communication

Question put and agreed: That the Committee is content with Clause 4, as drafted.

Clause 5 – Charge permitted in certain cases of renewed or extended contract

Question put and agreed: That the Committee is content with Clause 5, as drafted.

Clause 6 – Offence to demand payment where section 1 contravened

Question put and agreed: That the Committee is content with Clause 6, as drafted.

Clause 7 – Power to amend the schedule

Question put and agreed: That the Committee is content with Clause 7, as drafted.

Clause 8 – Amendment and repeals

Question put and agreed: That the Committee is content with Clause 8, as drafted.

Clause 9 – Short title and commencement

Question put and agreed: That the Committee is content with Clause 9, as drafted.

Schedule

Question put and agreed: That the Committee is content with the schedule, as drafted.

Long Title

Question put and agreed: That the Committee is content with the long title, as drafted.

Agreed: To consider a first draft of the report next week.

12.13am Alasdair McDonnell rejoined the meeting.

[Extract]

Thursday, 24 June 2010 Room 30, Parliament Buildings

Present: Mr Alban Maginness (Chairperson)
Mr Paul Butler (Deputy Chairperson)
Ms Jennifer McCann
Dr Alasdair McDonnell MP
Mr Gregory Campbell MP
Mr Gerry McHugh
Mr Leslie Cree
Mr Sean Neeson

In Attendance: Mr Jim McManus (Assembly Clerk)
Ms Sohui Yim (Assistant Clerk)
Mr Jim Nulty (Clerical Supervisor)
Ms Michelle McDowell (Clerical Officer)

Apologies: Mr David Simpson MP
Mr Stephen Moutray

10.03am The meeting began in public session.

11. Consideration of Unsolicited Services (Trade and Business Directories) Bill Final Draft of Report: - Written Briefing.

Members discussed the draft report of the Bill.

Agreed: That the executive summary at paragraphs 1-5 stands part of the report.

Agreed: That the introduction at paragraphs 6-11 stands part of the report.

Agreed: That the summary of the draft Unsolicited Services (Trade and Business Directories) Bill as presented to the Committee at paragraphs 12-21 stands part of the report.

Agreed: That the summary of consideration during pre-legislative scrutiny at paragraphs 22-24 stands part of the report.

Agreed: That the summary of consideration at paragraphs 25-27 stands part of the report.

Agreed: That the clause-by-clause consideration of the Bill at paragraphs 28-30 stands part of the report.

[Extract]

Thursday, 1 July 2010 Room 144, Parliament Buildings

Present: Mr Alban Maginness (Chairperson)
Mr Gregory Campbell MP
Mr Paul Frew
Mr Sean Neeson
Mr Gerry McHugh

In Attendance: Mr Jim McManus (Assembly Clerk)
Mr Jim Nulty (Clerical Supervisor)
Ms Michelle McDowell (Clerical Officer)
Ms Alison Ferguson (Clerical Officer)

Apologies: Mr Paul Butler (Deputy Chairperson)
Ms Jennifer McCann
Mr Leslie Cree

7. Consideration of Unsolicited Services (Trade and Business Directories) Bill – Final Draft of Report: Written briefing

The Committee formally scrutinised each appendix of the final Bill report.

Agreed: That the following papers should be appended to the Committee's report:

Minutes of proceedings

Minutes of evidence (Hansards)

Memoranda and papers from DETI

The Assembly Research Paper

List of witnesses

Agreed: Chair to approve an extract from today's minutes which reflect the read-through of the Report.

Agreed: To lay the report in its entirety in the Assembly Business Office after today's meeting.

Agreed: To order 30 reports with a CD ROM and 10 full reports for printing.

[Extract]

Appendix 2

Minutes of Evidence

11 December 2008

Members present for all or part of the proceedings:

Mr Mark Durkan (Chairperson)
Mr Paul Butler
Mr Leslie Cree
Mr Alan McFarland
Mr Sean Neeson
Mr Robin Newton
Mr Jim Wells

Witnesses:

Ms Deirdre Dempsey
Mr John Hinds
Department of Enterprise, Trade and Investment

1. The Chairperson (Mr Durkan): I welcome John Hinds, head of the consumer affairs branch of the Department of Enterprise, Trade and Investment (DETI), and Deirdre Dempsey, who is also from that branch, to this morning's Committee meeting. They will give a briefing on the proposed unsolicited goods Bill. The Committee may wish to receive further briefing at the end of the consultation process. I remind members and visitors that this part of today's proceedings is being reported by Hansard.

2. Mr John Hinds (Department of Enterprise, Trade and Investment): Thank you for giving us the opportunity to speak to the Committee about the proposed Bill. The Committee received advance notice of our intentions on 13 May 2008. The overall intention of the proposed Bill is to bring Northern Ireland law into line with that in GB and to ensure compliance with article 9(1) of what is known as the e-commerce directive of the European Community.

3. The proposed Bill will make technical amendments to the provisions that control the circumstances in which businesses may be charged for the publication of entries about them in trade directories. It will allow an advertiser to place an entry in a business directory by sending the publisher an order form — or other business stationery — by electronic means. The proposed Bill will be drafted so as to ensure that safeguards for businesses will continue to be in place to act against scams that are practised in relation to the publication of real or pretended directory products.

4. The proposed Bill is intended to remove provisions that the Department believes are burdensome and unnecessary for businesses, to remove anomalies, and to ensure the compatibility of Northern Ireland law with the obligations that arise from membership of the European Union. It is intended that the proposed Bill will improve efficiency for businesses by relaxing and simplifying the arrangements for: first, repeats and renewals of directory entries; secondly, sending order forms electronically; and thirdly, the requirements that cover the form and content of invoices and other documents.

5. In summary, the Department believes that the proposed Bill will strike the right balance by removing obstacles to contracting by electronic means, ensuring compliance with the e-commerce directive and ensuring, as far as possible, that advertisers and trade directories are protected from scams. After the Committee has had the opportunity to comment on the proposed Bill, the Department intends to submit a draft policy consultation document to the Executive in February 2009 and to consult between February and April 2009.

6. We have spoken already to the Data Publishers Association, which supports our proposals. As part of the consultation, we will, of course, speak to the Federation of Small Businesses, the Confederation of British Industry (CBI) and the Institute of Directors (IOD) in order to alert businesses about the enhanced level of protection that the Bill will provide. Instructions will then be sent to the legislative draftsman, and we hope to have Executive clearance for the proposed Bill by November 2009. The Department's proposals are set out in more detail in the draft consultation document that was sent to the Committee. I am happy to answer any questions that the Committee may have.

7. The Chairperson: How did the issue arise? Why has the introduction of the proposed Bill become a priority for the Department?

8. Mr Hinds: The proposed Bill is essentially a piece of parity legislation. GB colleagues legislated in 2005 to bring the law up to speed in the area. At that time, the Department did not attach a high priority to the matter, and we did not introduce proposals for legislation. However, with the passage of time, we felt that the anomaly needed to be addressed, and we feel that now is a good time to do so, particularly given the need to comply with the e-commerce directive.

9. The Chairperson: Was anyone pushing the Department on the matter? Did anyone say that the anomaly was affecting them, or was that anomaly simply something about which the Department was conscious?

10. Mr Hinds: Apart from advice from our lawyers and solicitors to the effect that we would be in contravention of the directive if we did not introduce the legislation, no other pressure has been brought to bear by outside influences.

11. Mr Wells: The banes of my life are emails offering to improve various parts of my anatomy, which I am not interested in, and —

12. Mr Cree: It is too late, Jim.

13. The Chairperson: You have given up on them.

14. Mr Wells: Another bane of my life is emails that come from the widow of some African dictator who has \$10 million to invest in Europe. Those emails tell me that if I allow her to have my bank account number, I can have 10% of that money. I do not believe that too many of those are bona fide emails. Similarly, I receive a constant stream of letters and emails to say that I owe £50 to have my name inserted in some business directory in Barcelona or wherever. I have enough trouble dealing with all the people with whom I must deal at the moment, never mind including my name in a business directory.

15. Perhaps I picked you up wrongly, but I thought that you said that one would be able to order and confirm placements by email. I would have thought that that would have made life easier for the scammers.

16. Mr Hinds: The legislation will specify arrangements to make the business in complete control of what it authorises. For example, the order form that is transmitted electronically must be filled out on business stationery or on other material that emanates directly from the business. Thus, the legislation will prescribe that the business must authorise the content and the detail of the form before it can be entered in the trade directory.

17. Mr Wells: Surely somebody in a hothouse in Barcelona, the Dominican Republic or the Cayman Islands — places from where such emails tend to come — could be clever about their

scams. Given that many companies advertise, it would be easy to prepare a pro forma of a mock order form after copying the logo on the stationery and then to send that by email. Someone would sign up to the arrangement by hitting the "confirm" button, and a secretary sitting in a busy office might think that the scam is authentic.

18. Every day, I receive authentic-looking correspondence that is supposedly from the Abbey National or the Halifax. However, that correspondence is a scam; the scammers are trying to get me to feed back my account details so that they can take money from my account. Surely if such scams can be carried out electronically, a completely new industry opens up for the scam merchants.

19. Mr Hinds: Other provisions in the proposed Bill will insist that any documents that emanate from the directory publisher must have comprehensive details about the charges. The publisher will have to specify whether any demands will be placed on the business regarding the price of the directory and when and how many directories will be published. Therefore, the proposed Bill will be quite prescriptive about informing businesses of every aspect of the transaction before an order is placed.

20. Mr Wells: I am sure that the folks working in the boiler rooms will include all that. However, I am slightly worried about a hard-pressed secretary in a front office somewhere who receives correspondence that looks authentic, and, by simply pushing a button, she produces a liability. Email is now the most popular method of scamming.

21. Mr Hinds: The onus is on the directory publisher to prove that the order in the stipulated design was legitimate and that it emanated from the business. The business can take some control over that. Therefore, the directory publisher cannot receive a fake authorisation willy-nilly in the way that you described, because they would be subject to prosecution.

22. Mr Wells: Yes, but if the scammer is in the Cayman Islands, the invoice could be paid electronically before the scam is discovered. In my email in-box today, I will have received at least 40 scam emails from various sources, some of which appear to be incredibly authentic. Every day in life I delete such emails. The only reason that I know that some of the emails are scams is because I do not have accounts with the banks that allegedly want me to confirm my account details. For instance, the Bank of America wrote to ask me to confirm my account details, but I do not have an account with that bank. However, it would be a different matter if I were to receive an email that came supposedly from the Ulster Bank using the same wonderfully prepared and extremely accurate documents.

23. There is a huge postal scamming industry, so it must be made particularly difficult for people to be scammed by email. However, people regard emails as junk currency. Some £11 million a year is defrauded from people in Britain from Nigerian scams alone. There is a name for the particular scam, but I do not recall it. We must be worldly-wise so far as these characters are concerned, because they are so good at what they do.

24. Mr Hinds: The Department will advise companies about the protection that the proposed Bill will provide. We have warned them, and we will continue to alert them to specific scams that target businesses. We have not had any complaints, and no companies have told us that they have been the victims of the type of scam that you mentioned. However, we intend to liaise with business organisations to ensure that their members are aware of what the provisions in the proposed Bill will allow for and of what they should be alert to.

25. Mr Wells: I think that signing up should be doable by email. However, there should be no liability, and nothing should be forcibly paid until something is followed up by a hard copy.

26. The Chairperson: I think that that point has been well made now.

27. Mr Cree: I have tried to get excited by this issue, but I have been unsuccessful. Is it fair to say that the proposed Bill will make our legislation compliant with that in the UK and Europe and that it will afford the same protections and benefits that exist in the rest of the UK? Is it as simple as that?

28. Mr Hinds: Yes.

29. Mr Cree: I am happy enough, then.

30. The Chairperson: The proposed Bill will make a difference to a local business directory. If a firm compiles a UK-wide sectoral business directory, on what basis does it deal with Northern Ireland firms? Does that happen under existing GB law or under existing Northern Ireland law?

31. Mr Hinds: The UK trade directory publishers are caught by GB legislation, but Northern Ireland trade directory publishers are not. Therefore, any transactions between Northern Ireland businesses and Northern Ireland-based trade directory publishers will be caught by the Bill.

32. The Chairperson: Does that mean that they will be in the same position? At present, do firms that deal with directory propositions that come from somewhere such as Birmingham have to comply with laws that are different to those that cover propositions that come from somewhere else?

33. Mr Hinds: That is exactly right.

34. Mr Newton: My point is a small one. The Bill will offer no protection for the individual; it is orientated more towards businesses.

35. Mr Hinds: That is correct.

36. Mr Newton: Therefore, Jim's point is valid. The proposed Bill will not cover the majority of the scam emails such as those that he receives.

37. Mr Hinds: The proposed legislation will not cover such situations. However, The Consumer Protection from Unfair Trading Regulations 2008 updated the law on several unfair practices, including scams that affect individual consumers. Therefore, comprehensive protection has been introduced already. That was done on foot of the introduction of the Unfair Commercial Practices Directive, which was European led.

38. The Chairperson: The Committee will want to pick up on the feedback from the consultation. You said that you will be talking to members of the Federation of Small Businesses. I assume that they will refer to their colleagues across the water about those elements of the legislation have or have not worked and about what positive or negative differences have been made. There may come a time, Leslie, when the proposed Bill generates some excitement. That will depend on the feedback that emerges from the consultation. For now, members have nothing further to add.

39. Thank you for attending today's meeting.

4 March 2010

Members present for all or part of the proceedings:

Mr Alban Maginness (Chairperson)
Mr Paul Butler (Deputy Chairperson)
Mr Gregory Campbell
Ms Jennifer McCann
Dr Alasdair McDonnell
Mr Alan McFarland
Mr Gerry McHugh
Mr Stephen Moutray
Mr Sean Neeson
Mr David Simpson

Witnesses:

Mr John Hinds
Mr Philip McClenaghan Department of Enterprise Trade and Investment

40. The Chairperson: I welcome John Hinds, who is head of consumer affairs, and Phillip McClenaghan, who is team leader of the legislation unit. I am very pleased to see you this morning. I am sorry for keeping you waiting, but we had some other business to attend to. We are very pleased that you have come along to brief us on the proposed unsolicited services (trade and business directories) Bill.

41. Mr Hinds (Department of Enterprise, Trade and Investment): Good morning. Thank you for affording us the opportunity to update you on our earlier briefings on the proposed unsolicited services (trade and business directories) Bill.

42. I am head of consumer affairs, and my colleague Phillip McClenaghan is from our legislation unit. As the Committee will be aware, the Department has kept it fully informed of progress since the Department's original proposals emerged in May 2008. The most recent letter from the Minister issued to the Committee on 8 February. At its meeting on 25 February, the Executive agreed that the Bill should be introduced in the Assembly, and we plan to do so around 22 March. The Secretary of State has given his consent to the consideration of the Bill by the Assembly, and we received that on 24 February.

43. Essentially, the Bill will bring Northern Ireland law into line with that in GB and ensure compliance with article 9(1) of the European Community's e-commerce directive. The Bill is a technical, non-controversial measure. It will re-enact, with technical amendments, certain provisions of the Unsolicited Goods and Services (Northern Ireland) Order 1976. Those provisions control the circumstances in which businesses may be charged for the publication of entries about them in directories. As I agreed with the Committee in December 2008, the Department took steps to specifically offer additional briefing to the Northern Ireland Chamber of Commerce, the Northern Ireland branches of the Institute of Directors, the Federation of Small Businesses and the Confederation of British Industries during the consultation process. None of those organisations had any concerns with the proposals and welcomed the Bill.

44. The Bill is intended to enable businesses to improve efficiency by relaxing and simplifying arrangements for repeats and renewals of directory entries, arrangements for sending order forms electronically and requirements covering the form and content of invoices and other documents. The Bill will update the law to reflect the modern and commercial realities of the directory publishing industry, while ensuring that the legislation continues to provide protection

for businesses against a number of scams. I welcome any questions that Committee members might have.

45. The Chairperson: Thank you for your presentation. This is fairly straightforward legislation. Am I right in saying that it arises out of the fact that electronic communications have moved on and that it is an attempt to catch up with the pace of change?

46. Mr Hinds: That is right. It also reflects the fact that corresponding legislation was enacted in 2005 in GB. We have been meaning to bring the Bill forward. It has not been a high priority, given the small nature of the business directory sector in Northern Ireland, but it is has been on the stocks. It will bring the law in Northern Ireland up to date, and it will fulfil our European obligations.

47. The Chairperson: It is at one with the European directive.

48. Mr Hinds: Yes.

49. The Chairperson: Have there been any complaints about the problem that the Bill seeks to address?

50. Mr Hinds: Last month, our colleagues in the Trading Standards Service, in conjunction with the PSNI, issued a press release about Yell's trade directory publication. In that instance, businesses and individuals were being targeted by fraudulent invoices. That, therefore, brings to the public notice the fact that scams continue to affect businesses and consumers in Northern Ireland. The protection that the Bill affords will help in some way to curtail those activities and continue to protect businesses against those types of scams.

51. The Chairperson: The company or the person who is charging has to give particulars in relation to the amount that will be charged. It has to give written notice, which provides the name of the directory or the proposed directory; the name of the person or firm producing the directory; the address; and the price at which the directory is offered for sale.

52. Mr Hinds: That is correct.

53. The Chairperson: Those rules must be complied with in order to administer a charge. Is that correct?

54. Mr Hinds: That is correct. It helps to ensure that the whole process is transparent and that the business knows what it is getting up front. If those rules are not complied with, businesses will know to be suspicious of any attempts to elicit money from them.

55. The Chairperson: The idea is to locate the firm or individual, so that it is not something out in the ether. It is important to pin down the firm or individual who is responsible for the proposed directory.

56. Mr Hinds: That is correct.

57. Mr Moutray: I am not sure whether I heard all the points. Very few copies of some directories are, in fact, distributed. Can that be tightened?

58. Mr Hinds: The Bill will force any organisation that is trying to promote a directory to include information on the number of copies of the directory that will be published and details on how they will be distributed. That will be covered by the Bill.

59. The Chairperson: That allows the purchaser to know how valuable the directory is and how widespread its distribution will be.

60. Mr Hinds: That is correct.

61. Mr Butler: How widespread are the scams? In February, the Office of Fair Trading had its scam awareness month. Some of the figures in Britain are alarming. How bad is it here?

62. Mr Hinds: Scams represent quite a range of activity. The Bill relates only to trade directories. In the wider picture, scams affect a number of businesses and consumers. Our colleagues in the Trading Standards Service have a raft of legislation that allows them to pursue individuals involved in scams.

63. We use the media proactively to warn consumers and businesses about specific scams. I mentioned the Yell directory scam. We try to discover which countries those scams come from so that businesses can be wary of communications that emanate, for example, from Holland or some other source. We work closely with the PSNI's organised crime branch to ensure that businesses know the particulars of such scams.

64. Mr McHugh: I can see the benefits of the Bill. By how much will it reduce scams and unsolicited emails? The Government's computerised systems are protected, but many businesses could employ someone full-time to wipe out the rubbish that appears on computer screens. People have to make enormous efforts to beat back all that rubbish, some of which is very dangerous. People at home can get threatening letters and all sorts.

65. Mr Hinds: The Bill is directed at businesses, not consumers. It is designed to afford some protection to the business community. In that regard, we recognise that it may be difficult, particularly for small businesses, to be alert to scams and fraudulent claims. We acknowledge that, as part of the Bill's implementation process, we will have to focus on informing and educating the business representative bodies to ensure that owners of small businesses and their employees know what to look out for.

66. Mr Campbell: I notice that a number of organisations had no comments to make. I presume that that is because they are content. There does not seem to be anything untoward or controversial in the Bill. Have there been any responses from businesses saying that the Bill is fine, but that they have proposals to make about dealing with untoward contact or unsolicited services? Have any businesses made representations of that sort?

67. Mr Hinds: No. We discussed this proposed Bill with the Committee back in December 2008. We took specific steps to talk to the business representative bodies. As well as the general consultation letter that is normally sent to a wide range of interested parties for any proposed legislation, we crafted slightly different letters to send to the business representative bodies on the foot of the interest expressed by the Committee and the likely effect that the Bill would have. We followed up that letter with telephone calls and offered additional briefings, so that businesses would be well aware of the Bill and its consequences. However, they all felt comfortable with the Bill's proposals and the protections that would afford them. The exception was the Federation of Small Businesses, which wrote to say that it welcomed the Bill and had no other issues to discuss with us.

68. Mr Campbell: I am happy enough with that answer, but I have had contact with a number of people who have told me about the nature of the scams to which they have fallen victim. I concur fully with what they said: they are not content just to delete the emails or resist the scam. They want private business to come up with something that could target the scammers.

Rather than just avoid being caught out, they want to devise a system that would not only ensure that the scammers did not make a profit but would cost them money.

69. Obviously, that has nothing to do with the Bill, but I just wondered whether private businesses had ever made any representations along those lines, beyond simply trying to protect people by making it more difficult for scammers to operate in the future? Is there some way of ensuring that scams cost the scammers money rather than make them a profit?

70. Mr Hinds: I am not aware of any such suggestions from the business community. Our colleagues in the Trading Standards Service work very closely with the business community in enforcing a wide range of consumer protection legislation. In that sense, there is a good working relationship and, as I said before, we are proactive in trying to warn people about specific scams. We describe what they will look like and the sort of contact that the business might receive from a prospective scammer. As Mr Butler mentioned, during scams awareness week we engaged in a wide range of activity to make the issue of scams as high profile and as visible as possible.

71. The Chairperson: Thank you. It would be helpful if the Committee were to receive a full list of the consultees.

72. Mr Hinds: Certainly.

73. The Chairperson: Then we will proceed to deal with the legislation in the normal fashion. Thank you very much for coming along. It has been very helpful.

17 June 2010

Members present for all or part of the proceedings:

Mr Alban Maginness (Chairperson)
Mr Paul Butler (Deputy Chairperson)
Mr Gregory Campbell
Mr Leslie Cree
Dr Alasdair McDonnell
Mr Stephen Moutray
Mr Sean Neeson

Witnesses:

Mr Philip McClenaghan
Mr Patrick Neill Department of Enterprise, Trade and Investment

74. The Chairperson (Mr A Maginness): We now move to the initial consideration of the Unsolicited Services (Trade and Business Directories) Bill. This is the Committee's opportunity to raise any issues, concerns or matters that have arisen from the consultation process. I advise members that departmental officials are on standby to address any questions or concerns. This agenda item does not constitute the formal clause-by-clause scrutiny of the Bill. However, if there are no unresolved issues or concerns following this agenda item, the Committee will move immediately to formal clause-by-clause scrutiny.

75. I advise members that the issues tables in their packs explain each clause of the Bill. No issues were raised during the Department's or the Committee's consultations on the Bill. The

three responses to the Department's consultation stated that they welcomed the Bill. The Clerk will take the Committee through the clauses, and, after he has outlined the provisions of each clause, I will ask members whether they have any issues or questions for the departmental officials.

76. The Committee Clerk: Clause 1 sets the prohibition on charges unless one of four conditions or requirements is met, as prescribed in clauses 2 to 5. Those conditions are: if an order form is signed; if a note of agreement to charge is signed; in certain cases of electronic communication; or in certain cases of renewed or extended contract.

77. No issues or concerns were raised in respect of clause 1 during the Department's or the Committee's consultation.

78. The Chairperson: Are members content?

Members indicated assent.

79. The Committee Clerk: Clause 2 sets the requirements for a charge when an order form has been signed. Requirements are met when an order form has been signed by, or on behalf of, a person in hard or electronic copy, which must bear the person's name and address.

80. No issues or concerns were raised during either the Department's or the Committee's consultation.

81. The Chairperson: Are members content?

Members indicated assent.

82. The Committee Clerk: Clause 3 sets the requirements when a note of agreement to charge is signed. The requirements are met when the note: specifies the particulars as set in paragraph 1 of the schedule to the Bill; gives reasonable particulars of the entry in respect of which the charge would be payable; and when a copy of the note was given to the person, or a person acting on his or her behalf, before it was signed.

83. No issues or concerns were raised in respect of clause 3 during the Department's or the Committee's consultation.

84. The Chairperson: Are members content?

Members indicated assent.

85. The Committee Clerk: Clause 4 sets the requirement for a charge permitted in certain cases of electronic communication. The requirements are met if: there has been an electronic communication from or on behalf of the person that states that they agree to the charge; and, before the electronic communication was sent, the following information was transmitted to the person:

"(i) the particulars set out in paragraph 1 of the Schedule; and

(ii) reasonable particulars of the entry in respect of which the charge would be payable".

86. Additionally, the electronic communication has to be readily produced and retained in a visible and legible form.

87. No issues of concern were raised in respect of clause 4 during either the Department's consultation or the Committee's consultation.

88. The Chairperson: Are members content?

Members indicated assent.

89. The Committee Clerk: Clause 5 sets the requirement for charges permitted in certain cases of renewed or extended contract. No issues or concerns were raised relating to clause 5 during either the Department's consultation or the Committee's consultation.

90. Mr Cree: Does the clause cover a situation in which an insurance company would notify its customers that renewal of contract will happen automatically and that customers will, therefore, be debited accordingly without any further communication? Does it put the onus back on to the customer?

91. The Chairperson: It would perhaps be helpful at this stage if Mr McClenaghan and Mr Neill came forward and joined us at the table.

92. Mr Philip McClenaghan (Department of Enterprise, Trade and Investment): The legislation is aimed only at trade directories. Therefore, it would not apply to insurance contracts or their renewals.

93. Mr Cree: It may or may not link to those, howsoever they are arrived at. Continuing on, we could have a situation in which there would be automatic renewal.

94. Mr McClenaghan: For insurance contracts?

95. Mr Cree: That is just one example. It could be any contract.

96. Mr McClenaghan: The legislation is aimed at, for example, a tradesperson with an advert in the 'Yellow Pages', or a similar trade directory, who wishes to renew that advert on an annual basis.

97. Mr Cree: The same would apply to insurance. A customer may receive a communication to say that their contract will be renewed unless the company hears otherwise.

98. Mr McClenaghan: Yes.

99. The Chairperson: Are members content?

Members indicated assent.

100. The Committee Clerk: Clause 6 sets the offence to demand payment when clause 1 is contravened. No issues or concerns were raised in respect of clause 6 during either the Department's consultation or the Committee's consultation.

101. The Chairperson: Are members content?

Members indicated assent.

102. The Committee Clerk: Clause 7 sets the power to amend the schedule. The Department of Enterprise, Trade and Investment will have the power to amend the schedule to the Bill by

Order, subject to negative resolution. An Order made under clause 7 may also make any necessary transitional provisions and amendments to revisions that are referred to in the schedule.

103. No issues or concerns were raised relating to clause 7 during either the Department's consultation or the Committee's consultation. Furthermore, the Examiner of Statutory Rules gave advice on the powers to make subordinate legislation under the clause — which was considered by members on 10 June — and stated that the powers seemed appropriate.

104. The Chairperson: Are members content?

Members indicated assent.

105. The Committee Clerk: Clause 8 repeals articles 5 and 6 of the Unsolicited Goods and Services (Northern Ireland) Order 1976 because they are being replaced by the provisions of the proposed Bill. Article 2(3) of the 1976 Order is being amended because it will need to refer to the conditions set out in paragraph 4 of the schedule to the Bill.

106. No issues or concerns were raised in respect of clause 8 during either the Department's consultation or the Committee's consultation.

107. The Chairperson: Are members content?

Members indicated assent.

108. The Committee Clerk: Clause 9 sets the short title as the Unsolicited Services (Trade and Business Directories) Act (Northern Ireland) 2010. The clause also sets out that the Act will come into operation two months after the day on which it receives Royal Assent.

109. No issues or concerns were raised in respect of clause 9 during either the Department's consultation or the Committee's consultation.

110. The Chairperson: Are members content?

Members indicated assent.

111. The Committee Clerk: The schedule specifies the matters and details referred to in clauses 3, 4 and 5 of the Bill, including: particulars of the directory or proposed directory, which must be given in a note for charging a person; information required in a written notice; information to be given to a person; and conditions applying to an invoice or similar document that does not assert right to payment.

112. No issues or concerns relating to the schedule were raised during the Department's consultation or the Committee's consultation.

113. The Chairperson: Are members content with their initial consideration of the Bill?

Members indicated assent.

114. The Chairperson: No issues having arisen, we will now move directly to the formal clause-by-clause scrutiny of the Unsolicited Services (Trade and Business Directories) Bill. I will go through the nine clauses and the schedule to seek the Committee's position. I remind members

that, having given their views on each clause as drafted, no amendments have been made to date by the Department or by the Committee.

Clauses 1 to 9 agreed to.

Schedule agreed to.

Long title agreed to.

115. The Chairperson: That concludes the formal clause-by-clause scrutiny of the Unsolicited Services (Trade and Business Directories) Bill. Next week, members will consider the first draft of the Committee's report on the Bill. Thank you.

Appendix 3

Memoranda and Papers from DETI

Letter to Committee May 08

176 Newtownbreda Road
BELFAST
BT8 6QS
Tel: (028) 9025 3902
Fax: (028) 9025 3953
Text Phone: (028) 9025 3988
E-mail: john.hinds@detini.gov.uk

Ms Lucia Wilson
Clerk Enterprise, Trade and Investment Committee
Room 424
Parliament Buildings
Stormont
BELFAST
BT4 3XX

13 May 2008

Proposed Unsolicited Goods and Services (Amendment) Bill

I am writing to inform the Committee that the Department of Enterprise, Trade and Investment is proposing to seek Executive approval to introduce a Bill, in the 2009/10 Assembly Session, to amend the Unsolicited Goods and Services (Northern Ireland) Order 1976 ("the 1976 Order"). The 1976 Order is available on line here –

http://www.statutelaw.gov.uk/legResults.aspx?LegType=All_Primary&PageNumber=1&BrowseLetter=U&NavFrom=1&activeTextDocId=1910173

The Committee will be consulted on the detailed proposals for the Bill prior to the public consultation, which is likely in the autumn. Nevertheless, the Department wished to inform the

Committee of the proposed Bill (which is technical in nature and non controversial) at an early stage.

The Unsolicited Goods and Services (Northern Ireland) Order 1976 was passed, amongst other reasons, to control the circumstances in which businesses could be charged for the publication of entries about them in directories. It had been the case prior to the 1976 Order that unwary businesses could be tricked by various sharp practices into paying for directory entries for which they had not asked and which they did not want.

The proposed Bill will amend the provisions of the 1976 Order governing the processes of authorization by advertisers of entries in directories for which demands for payment can legitimately be issued. It will be similar in effect to amendments made to the equivalent GB legislation on unsolicited goods and services. The Appendix sets out more detail on the proposals.

The aim is to remove provisions which the Department believes are burdensome and unnecessary, to remove anomalies and to ensure the compatibility of NI law with European Union Legislation.^[1]

The Bill will be drafted so as to ensure that safeguards for business against certain deceptions practised in relation to the publication of real or pretended directory products will continue in place. If enacted the Bill will ensure compliance with EU law and that NI businesses have the same benefits and protections of unsolicited goods and service legislation as in the rest of the United Kingdom.

If you or your Committee need further information please let me know.

Yours sincerely

John Hinds
Head of Consumer Affairs Branch

Appendix

1. The equivalent in Great Britain of the Unsolicited Goods and Services (Northern Ireland) Order 1976 (the "1976 Order") is the Unsolicited Goods and Services Act 1971 (the "1971 Act"). The Act is available on line here-

http://www.statutelaw.gov.uk/legResults.aspx?LegType=All_Primary&PageNumber=1&BrowseLetter=U&NavFrom=1&activeTextDocId=1366984

The 1971 Act was amended by this Act Unsolicited Goods And Services (Amendment) Act 1975 (1975 c.13) which is available here

http://www.statutelaw.gov.uk/legResults.aspx?LegType=All_Primary&PageNumber=1&BrowseLetter=U&NavFrom=1&activeTextDocId=1225878

2. The Department wishes to make amendments to the 1976 Order similar to those made to the 1971 Act by –

- The Regulatory Reform (Unsolicited Goods and Services Act 1971) (Directory Entries and Demands for Payment) Order 2005 (S.I. 2005/55); See http://www.legislation.gov.uk/si/si2005/uksi_20050055_en.pdf

- The Unsolicited Goods and Services Act 1971 (Electronic Commerce) (Amendment) Regulations 2005 (S.I. 2005/148). See http://www.legislation.gov.uk/si/si2005/uksi_20050148_en.pdf

3. The Order amended the provisions of the 1971 Act governing the processes of authorization by advertisers of entries in directories for which demands for payment can legitimately be issued.

4. The Order relaxed the existing requirements where clients renew or extend existing contracts for entries in a directory and simplified requirements as to the form and content of certain documents relating to contracts for directory entries.

5. The Regulations amended section 3 of the 1971 Act. They allowed an advertiser to place an entry in a business directory by sending the publisher an order form or other business stationery by electronic means.

6. Section 3 of the 1971 Act prescribes three methods of authorising payment for placing an entry in a business directory. These are:

- The Business Order Form method, which is where a request for a directory entry is sent on the business' own order form or other stationary belonging to the business and bearing in print it's name and address;
- The Business 'Note' method, which is where a 'note' agreeing to the charge is produced by a directory publisher and signed by the business; and
- The Electronic Communications method, which is where an electronic communication agreeing to the charge is sent by the business.

7. The 1971 Act, as it stood, provided for Business Order Forms to be sent in paper form only. This constitutes a barrier to electronic contracting, in contravention of Article 9(1) of the E-Commerce Directive. The Regulations removed this barrier to electronic contracting. It facilitated electronic commerce by introducing equivalence between paper-based methods and electronic methods of placing an entry in a directory. This was achieved by allowing Business Order Forms to be sent electronically where a request for a directory entry is sent on the business' own order form or other stationary belonging to the business. This removed a potential obstacle to e-commerce and ensured compliance with the Directive. The bulk of the E-Commerce Directive was implemented by the Electronic Commerce (EC Directive) Regulations 2002. Article 9(1) is being implemented on an ad hoc basis, where legislation is identified which contravenes its requirements.

8. The Business Order form method is not widely used in the industry. Where a request for a directory entry originates from an advertiser, the publisher usually confirms it via a Note of Agreement or an electronic communication. However, the changes made by the Regulations are beneficial for advertisers and potentially reduce burdens for those who wish to use a new and simplified means to contract for a directory entry by electronic means.

9. The Order was made under section 1 of the Regulatory Reform Act 2001. This Act does not apply to Northern Ireland Legislation, so similar amendments to the 1976 Order must be made by Act of the Assembly. The Regulations were made under section 2(2) of the European Communities Act 1972 as they concerned the implementation of certain obligations under a Directive. DETI has power to make similar regulations. Nevertheless, both sets of amendments are so closely linked it was decided, on foot of advice from the Departmental Solicitor's Office, to combine them in an Act of the Assembly.

10. The Bill will make amendments to the 1976 Order similar to those made to the 1971 Act by both S.I. 2005/55 and S.I. 2005/148.

[1] In particular Article 9(1) of Directive 2000/31/EC of the European Parliament and of the Council on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (the E-Commerce Directive). Throughout the UK , Article 9(1) is being implemented on an ad hoc basis, where legislation is identified which contravenes its requirements.

Letter from Minister re Unsolicited Services Bill

Consumer Affairs



176 Newtownbreda Road
BELFAST
BT8 6QS
Tel: (028) 9025 3902
Fax: (028) 9025 3953
Text Phone: (028) 9025 3998
E-mail: john.hinds@detni.gov.uk

Mr Jim McManus
Clerk Enterprise, Trade and Investment Committee
Room 424
Parliament Buildings
Stormont
BELFAST
BT4 3XX

21st November 2008

**PROPOSED UNSOLICITED GOODS AND SERVICES (AMENDMENT)
BILL**

On 13 May 2008 the Department wrote to the Committee regarding preliminary proposals for a bill to amend the Unsolicited Goods and Services (Northern Ireland) Order 1976. The Department is now in a position to let the Committee have more detail on the proposals.

I have set out briefing on the proposals in more detail in **Annex A** to this letter. The draft Consultation Document is at **Appendix A**.

Yours sincerely

John Hinds
Consumer Affairs Branch

Annex A

PROPOSED UNSOLICITED GOODS AND SERVICES BILL

BRIEFING FOR MEETING OF THE ETI COMMITTEE ON 27 NOVEMBER 2008

Introduction and Purpose of Briefing

1. The briefing is intended to inform the Committee about the proposed Unsolicited Goods and Services Bill, and the Department's plan to issue a consultation document on the proposed Bill.
2. The Bill is intended to amend the Unsolicited Goods and Services (Northern Ireland) Order 1976 ("the 1976 Order"). The 1976 Order is available on line here:
<http://www.statutelaw.gov.uk/legResults.aspx?LegType=All%20Primary&PageNumber=1&BrowseLetter=U&NavFrom=1&activeTextDocId=1910173>
3. The Bill will amend the provisions of the 1976 Order which govern the processes of authorization by advertisers of entries in directories for which demands for payment can legitimately be issued. It is technical in nature and not expected to be controversial.
4. The Bill is intended to remove provisions which the Department believes are burdensome and unnecessary, to remove anomalies and to ensure the compatibility of NI law with obligations arising from membership of the European Union. The Bill also aims to ensure that NI businesses have the same benefits and protections in this area of law as in the rest of the United Kingdom.

Background

5. The equivalent in Great Britain of the 1976 Order is the Unsolicited Goods and Services Act 1971 (the "1971 Act"). The 1971 Act is available on line here:
<http://www.statutelaw.gov.uk/legResults.aspx?LegType=All%20Primary&PageNumber=1&BrowseLetter=U&NavFrom=1&activeTextDocId=1366984>

The 1971 Act was amended by the Unsolicited Goods and Services (Amendment) Act 1975 (1975 c.13) which is available here:

<http://www.statutelaw.gov.uk/legResults.aspx?LegType=All%20Primary&PageNumber=1&BrowseLetter=U&NavFrom=1&activeTextDocId=1225878>

6. The Department wishes to make amendments to the 1976 Order similar to those made to the 1971 Act by –
 - The Regulatory Reform (Unsolicited Goods and Services Act 1971) (Directory Entries and Demands for Payment) Order 2005 (S.I. 2005/55); See http://www.legislation.gov.uk/si/si2005/uksi_20050055_en.pdf
 - The Unsolicited Goods and Services Act 1971 (Electronic Commerce) (Amendment) Regulations 2005 (S.I. 2005/148). See http://www.legislation.gov.uk/si/si2005/uksi_20050148_en.pdf

7. S.I. 2005/55 amended the provisions of the 1971 Act governing the processes of authorization by advertisers of entries in directories for which demands for payment can legitimately be issued.
8. S.I. 2005/55 relaxed the existing requirements where clients renew or extend existing contracts for entries in a directory and also simplified requirements as to the form and content of certain documents relating to contracts for directory entries.
9. S.I. 2005/148 amended section 3 of the 1971 Act. The amendment allowed an advertiser to place an entry in a business directory by sending the publisher an order form or other business stationery by electronic means.
10. Further detail on both of the GB Statutory Instruments is in the Appendix to the Department's letter of 13 May 2008.
11. S.I. 2005/55 was made under section 1 of the Regulatory Reform Act 2001. This Act does not apply to Northern Ireland legislation, so similar amendments to the 1976 Order must be made by Act of the Assembly. S.I. 2005/148 was made under section 2(2) of the European Communities Act 1972 as it concerned the implementation of certain obligations under a Directive. The Department has power to make similar Regulations. Nevertheless, both sets of amendments are so closely linked it was decided, on foot of advice from the Departmental Solicitor's Office, to combine them in an Act of the Assembly.
12. The Department of Trade and Industry (now the Department for Business Enterprise and Regulatory Reform) published guidance on the changes to the law made by these Statutory Instruments which the Committee may find helpful. See "The Unsolicited Goods and Services Act 1971- changes to the law relating to directory entries and demands for payment - Business Guidance January 2005" a copy of which is available on line here -

<http://www.berr.gov.uk/files/file34916.pdf>

Consultation

13. The Department intends to carry out a consultation exercise once the Committee has considered our proposals. The Department will submit a memorandum to the Executive to seek the Executive's agreement to carry out a policy consultation on the Bill.
14. A copy of the draft policy consultation document, including a Regulatory Impact Assessment, and Equality screening is at **Appendix B**.

The Proposed Amendments

15. The details of the amendments to the 1976 Order which the Department is proposing are in the consultation document attached to this briefing.
16. As the Committee may be aware, the proposals as set out are subject to amendment because of-
 - The consultation exercise (see paragraph 15);
 - The drafting process in conjunction with the Office of Legislative Counsel.

Financial and Staffing Implications

17. If enacted the Bill is not expected to lead to any increase in public expenditure or public sector staffing as the legislation on Unsolicited Goods and Services is currently being enforced by Trading Standards Service and the amendments are unlikely to lead to increased enforcement activity.

Officials responsible for the policy:

18. Senior Officer : Michael Bohill (G 5) Telephone [028 909] 05277 email michael.bohill@detini.gov.uk

Mr. John Hinds (G7): Telephone [028 902] 53902 email John.hinds@detini.gov.uk



Department of Enterprise, Trade and Investment

Consultation on Proposals for an Unsolicited Goods and Services (Amendment) Bill

Introduction

1. The Department of Enterprise, Trade and Investment is proposing to seek Executive approval for a Bill to amend the Unsolicited Goods and Services (Northern Ireland) Order 1976 ("the 1976 Order"). The 1976 Order is available on line here –

<http://www.statutelaw.gov.uk/legResults.aspx?LegType=All%20Primary&PageNumber=1&BrowseLetter=U&NavFrom=1&activeTextDocId=1910173>

2. The purpose of this consultation document is to explain the Department's proposals and invite comments on them.

Background to the 1976 Order

3. The 1976 Order was passed, amongst other reasons, to control the circumstances in which businesses could be charged for the publication of entries about them in directories. It had been the case prior to the 1976 Order, that unwary businesses could be tricked by various sharp practices into paying for directory entries for which they had not asked and which they did not want.
4. Unscrupulous directory publishers would accomplish this, by sending companies a document in the form of a statement of address, telephone details etc. with a request that the information be checked and confirmed. A statement to the effect that the company concerned consented to the publication of this information in a directory and to pay the associated charges was included amongst various 'small print' located elsewhere on the document. By responding to confirm matters such as its address, the publisher could therefore claim that the business concerned had consented to publication. Directories produced by means of misleading transactions of this kind were generally of no informational or commercial value and were no more than devices by which charges could be imposed on unwary businesses.
5. Another dishonest practice was for individuals, who may not have been publishers at all but confidence tricksters, simply to issue invoices for entries in directories which were entirely fictitious. Some of the companies who received such invoices would go on to pay them, particularly where the 'publisher' made repeated demands for settlement and perhaps made suggestions of legal action. These were,

of course, never techniques associated with the bona fide directory publishing industry.

The proposals

6. The Bill will amend the provisions of the 1976 Order governing the processes of authorization by advertisers of entries in directories for which demands for payment can legitimately be issued. It will be similar in effect to amendments made IN 2005 to the equivalent GB legislation on unsolicited goods and services (see paragraph 12).
7. The Bill will be drafted so as to ensure that safeguards for business against certain deceptions practiced in relation to the publication of real or pretended directory products will continue in place.
8. The Bill is intended to remove provisions which the Department believes are burdensome and unnecessary, to remove anomalies and to ensure the compatibility of NI law with obligations arising from membership of the European Union. In particular the Bill will ensure that the 1976 Order will comply with Article 9(1) of Directive 2000/31/EC of the European Parliament and of the Council on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (the E-Commerce Directive). Throughout the UK, Article 9(1) is being implemented on an ad hoc basis, where legislation is identified which contravenes its requirements.
9. The Bill is also intended to ensure that NI businesses have the same benefits and protections in this area of law as in the rest of the United Kingdom.
10. The equivalent in Great Britain of the 1976 Order is the Unsolicited Goods and Services Act 1971 (the "1971 Act"). The Act is available on line here-

<http://www.statutelaw.gov.uk/legResults.aspx?LegType=All%20Primary&PageNumber=1&BrowseLetter=U&NavFrom=1&activeTextDocId=1366984>

11. The 1971 Act was amended by the Unsolicited Goods and Services (Amendment) Act 1975 (1975 c.13) which is available here

<http://www.statutelaw.gov.uk/legResults.aspx?LegType=All%20Primary&PageNumber=1&BrowseLetter=U&NavFrom=1&activeTextDocId=1225878>

12. The proposed amendments to the 1976 Order are similar to those made to the 1971 Act by –
 - The Regulatory Reform (Unsolicited Goods and Services Act 1971) (Directory Entries and Demands for Payment) Order 2005 (the "Regulatory Reform Order") (S.I. 2005/55); See http://www.legislation.gov.uk/si/si2005/uksi_20050055_en.pdf
 - The Unsolicited Goods and Services Act 1971 (Electronic Commerce) (Amendment) Regulations 2005 (the "Regulations") (S.I. 2005/148). See http://www.legislation.gov.uk/si/si2005/uksi_20050148_en.pdf
13. The Regulatory Reform Order amended the provisions of the 1971 Act governing the processes of authorization by advertisers of entries in directories for which demands for payment can legitimately be issued.
14. In particular the Regulatory Reform Order relaxed the existing requirements where clients renew or extend existing contracts for

entries in a directory and simplified requirements as to the form and content of certain documents relating to contracts for directory entries.

15. The Regulations amended section 3 of the 1971 Act. They allowed an advertiser to place an entry in a business directory by sending the publisher an order form or other business stationery by electronic means.
16. The Department of Trade and Industry (now the Department of Business, Enterprise and Regulatory Reform) has published guidance on the changes to the law made by these Statutory Instruments. Consultees may find it helpful to look at this guidance. See "The Unsolicited Goods and Services Act 1971- changes to the law relating to directory entries and demands for payment Business Guidance January 2005" which is available on line here -

<http://www.berr.gov.uk/files/file34916.pdf>

The Proposed Amendments in detail

17. The Department is proposing to amend the 1976 Order in accordance with the following paragraphs.
18. We intend that Article 2(3) of the 1976 Order be replaced with new provisions equivalent to the amendments of section 6(2) of the 1971 Act made by Article 2(8)(a) and (b) of the Regulatory Reform Order.
19. In particular there will an equivalent NI provision to the replacement of new paragraph (2) of section 6 of the 1971 Act (the equivalent of Article 2(3) of the 1976 Order) made by Article 2(8)(a) of the Regulatory Reform Order. The new paragraph (2) provides that any invoice or similar document stating the amount of any payment shall not be regarded as asserting a right to the payment unless it complies with the conditions set out in Part 2 of the Schedule to the Regulatory Reform Order. The provisions of the Schedule to the Regulatory Reform Order are subordinate provisions for the purposes of section 4 of the Regulatory Reform Act 2001 and may be amended by an SI. We consider that the equivalent amendment to the 1976 Order will need to take account of the subordinate legislation provision outlined in paragraph 26 of this consultation document. Paragraph 26 sets out the reasons for the differences between the NI and GB provision.
20. There will also be an NI provision equivalent to the insertion of a new section 6(3) into the 1971 Act made by Article 2(8)(b) of the Regulatory Reform Order. The new section 6(3) provides that nothing in sections 3 or 3B (of the 1971 Act) shall affect the rights of any consumer under the Consumer Protection (Distance Selling) Regulations 2000. The Consumer Protection (Distance Selling) Regulations 2000 apply in NI and we would intend that a similar provision be inserted into Article 3 of the 1976 Order but with reference to Articles 5 or 6 of the 1976 Order (the equivalent in NI of sections 3 or 3B of the 1971 Act).
21. Article 5(1) of the 1976 Order is to be amended along similar lines to the amendments to section 3(1) of the 1971 Act made by Article 2(2) and (3) of the Regulatory Reform Order. In particular Article 5(1) should have a new provision equivalent to the amendment of the 1971 Act made by Article 2(3) of the Regulatory Reform Order but with the reference to "section 3B(1)" (of the 1971 Act) replaced by "Article 6(1)" of the 1976 Order.

22. Article 5(2) of the 1976 Order should be amended in line with the amendments to section 3(2) of the 1971 Act made by Article 2(4) of the Regulatory Reform Order.
23. Article 5(3) of the 1976 Order should be amended in a similar way to the amendments to section 3(3) of the 1971 Act made by Article 2(5) of the Regulatory Reform Order. Article 2(5)(c) of the Regulatory Reform Order provides that a person's agreement to a charge must specify the particulars set out in Part 1 of the Schedule to the Regulatory Reform Order. In view of paragraph 26 of this consultation document the equivalent amendment to the 1976 Order will need to be different in form. Paragraph 26 sets out the reasons for the differences between the NI and GB provision.
24. We intend that Article 6 of the 1976 Order should be deleted as this is equivalent to the deletion of section 3A of the 1971 Act made by Article 2(6) of the Regulatory Reform Order.
25. We consider that a new provision should be inserted into the 1976 Order equivalent to the insertion of a new section 3B into the 1971 Act made by Article 2(7) of the Regulatory Reform Order. The new provision inserted to the 1976 Order would be equivalent to the new section 3B(h)(i) of the 1971 Act. In view of paragraph 26 of this consultation document the equivalent amendment to the 1976 Order will need to be different in form. Paragraph 26 sets out the reasons for the differences between the NI and GB provision.
26. Article 3 of the Regulatory Reform Order provides that the provisions in the Schedule are subordinate provisions for the purposes of section 4 of the Regulatory Reform Act. Under that section, those provisions may be amended by order subject to annulment by resolution of either House of Parliament. The Regulatory Reform Act 2001 does not apply to NI Legislation. To provide similar flexibility to amend the equivalent provisions in NI, the equivalent provision in the Bill should be different in form. We expect that the Bill will either-
 - enable the Department to make subordinate legislation, subject to negative resolution, having similar effect to Part 2 of the Schedule to the Regulatory Reform Order; or
 - contain provisions equivalent to the Schedule to the Regulatory Reform Order but give the Department power to make subordinate legislation, subject to negative resolution, to amend those provisions.

There is no difference in practical terms between the two proposals. They would both provide a similar flexibility to amend specific technical provisions by subordinate legislation.

27. Article 4 of the Regulatory Reform Order makes amendments to the Consumer Protection (Distance Selling) Regulations 2000 (S.I. 2000/2334). S.I. 2000/2334 applies to the whole of the UK. Those amendments concern the 1971 Act. Regulation 24(7)(b) of S.I. 2000/2334 also refers to "the requirements of regulations made under Article 6 of the Unsolicited Goods and Services (Northern Ireland) Order 1976". We intend that Article 6 of the 1976 Order should be revoked. A provision should, therefore, be inserted in the Bill, to amend regulation 24(7) of S.I. 2000/2334 to delete "the requirements of regulations made under Article 6 of the Unsolicited Goods and Services (Northern Ireland) Order 1976". We also intend that regulation 24(7) of

S.I. 2000/2334 be amended, to include a reference to the provision which we have requested in paragraph 26. Paragraph 26 sets out the reasons for the differences between the NI and GB provisions.

28. Article 5 of the Regulatory Reform Order provides that the Electronic Commerce (EC Directive) Regulations 2002 apply to the Regulatory Reform Order and any subordinate provisions order (within the meaning of section 4(4) of the Regulatory Reform Act 2001) made in respect of the Schedule to the Regulatory Reform Order. We understand that The Regulatory Reform Act 2001 does not apply to NI Legislation. Our intention is to ensure that the law on Unsolicited Goods and Services in NI is amended to have similar effect to the 1971 Act as amended by the Regulatory Reform Order. We are therefore proposing that the Electronic Commerce (EC Directive) Regulations 2002 apply both to the proposed Bill and Regulations made under the 1976 Order which we are proposing in paragraph 26.
29. The amendments proposed in paragraphs 18 to 28 are equivalent to those made to the 1971 Act by the Regulatory Reform Order.
30. The final proposed amendment relates to Article 5 of the 1976 Order. Article 5 should be amended in a similar manner to the amendments of section 3(3)(a) of the 1971 Act made by regulation 2 of the Regulations. The effect will be to allow an advertiser to place an entry in a business directory by sending the publisher an order form or other business stationery by electronic means.

Commencement of the legislation

31. The proposed legislation will either come into operation on a date to be determined by a Commencement Order made by the Department or say two months after the Bill has been passed by the Assembly. Should the Bill contain provisions that the Department would have to make a Statutory Rule equivalent to the various Parts of the Schedule to S.I. 2005/55 then the Department would have to bring the provisions into force by Commencement Order. This is because the Statutory Rule would be required to give full effect to the proposed amendments to the 1976 Order being made by the Bill. The Commencement Order would therefore bring the provisions of the Act into force on the same date as the provisions of that Statutory Rule. The decision on the best way to bring the provisions of the legislation will be taken once the exact form of the Bill has been determined.

Legislative Competence

32. The subject matter of this Bill falls within the legal competence of the Assembly as described in Section 6 of the Northern Ireland Act 1998.

Financial Implications:

33. If enacted the Act is not expected to lead to any increase in public expenditure or public sector staffing. The legislation on unsolicited goods and services is currently being enforced by Trading Standards Service of the Department and the amendments made by the proposed Bill are unlikely to lead to any significant increase in enforcement activity.

Statutory Equality Obligations and Human Rights:

34. The proposed legislation is expected to have no differential impact on any of the groups set out in Section 75 of the Northern Ireland Act 1998 and a screening exercise has indicated that a full Equality Impact Assessment is not necessary. The proposed legislation will directly affect directory publishers and those who pay to advertise in directories. It will be for directory publishers and their advertisers to make the business decision to take advantage of the revised legislation. The Bill will be drafted so that safeguards for business against certain deceptions practiced in relation to the publication of real or pretended directory products will continue in place. It could therefore be considered to have positive human rights implications because those affected will have enhanced benefits and protections from the legislation.

Regulatory Impact Assessment

35. The Regulatory Impact Assessment is at the **Annex**.

ETI Committee

36. The ETI Committee was consulted on 27 November 2008.

Position in Other Jurisdictions

37. As described above the Bill is intended to replicate the legislative position in the rest of the UK. The Republic of Ireland has implemented Article 9 of the E Commerce Directive partly by the Electronic Commerce Act 2000 and partly by the European Communities (Directive 2000/31/EC) Regulations, 2003 (S.I. No. 68 of 2003).

Responses and Questions

38. If you wish to respond to this consultation document or have any questions regarding it please contact:

Mrs. Deirdre Dempsey
Legislation Unit
Consumer Affairs Branch
Department of Enterprise, Trade and Investment
Trading Standards Service Building
176 Newtownbreda Road
Belfast BT8 6QS
e-mail deirdre.dempsey@detini.gov.uk
Telephone 028 90253949
Fax: 028 90548520

All responses should include the name and postal address of the responder.

Please state whether you are responding as an individual or representing an organisation. If responding on behalf of an organisation, please make it clear who the organisation represents and, where applicable, how the views of members were assembled.

An acknowledgement will be sent to confirm receipt of each response.

This Consultation Document is available on the Department's website:

<http://www.detini.gov.uk/cgi-bin/gethome>

Copies of this document may also be provided in other formats, e.g. large print, Braille, disc, audiocassette and other languages. Please contact Deirdre Dempsey at the address shown above.

If you have any comment or complaint about the way this consultation was conducted, it should be sent to:

John Hinds
Legislation Unit
Consumer Affairs Branch
Department of Enterprise, Trade and Investment
Trading Standards Service Building
176 Newtownbreda Road
Belfast BT8 6QS
e-mail john.hinds@detini.gov.uk
Telephone 028 90253902
Fax: 028 90548520

Confidentiality & Data Protection

Your response may be made public by the Department following the completion of the consultation process. If you would prefer your response to be treated as confidential, please let us know, stating your reasons clearly. Any automatic confidentiality disclaimer generated by your IT system will be taken to apply only to information in your response for which confidentiality has been specifically requested.

If we are asked to disclose responses under freedom of information legislation, we will take any requests for confidentiality into account. However, confidentiality cannot be guaranteed.

We will handle appropriately any personal data you provide in accordance with the Data Protection Act 1998.

For further information about confidentiality of responses, please contact the Information Commissioner's Office or see website at: www.informationcommissioner.gov.uk

REGULATORY IMPACT ASSESSMENT

Unsolicited Goods and Services (Amendment) Bill

Objective

1. The Department of Enterprise, Trade and Investment (the "Department") is introducing the Unsolicited Goods and Services (Amendment) Bill for two reasons -
 - to amend the Unsolicited Goods and Services (Northern Ireland) Order 1976 (the "1976 Order") to ensure it complies with Article 9 of the European E-Commerce Directive;
 - to amend the 1976 Order to facilitate electronic commerce by introducing equivalence between paper-based methods and electronic methods for contracting an entry in a directory.
2. The Bill will ensure compliance by creating an electronic equivalent to the Business Order Form method of contracting for a directory entry, which is where a request for a directory entry is sent on the business' own order form or other stationery belonging to the business. The 1976 Order does not make provision for an electronic equivalent of this paper based order form, which creates a potential barrier to contracting electronically for directory entries.
3. To remove this potential obstacle and ensure compliance with the Directive, the Bill will provide for Business Order Forms to be sent electronically. The Department also see this as beneficial to advertisers who may wish to place an entry in a directory through a quick and cost-effective electronic means. This can be seen as reducing a burden as advertisers would potentially have a new and simplified means to contract for a directory entry by electronic means.

Background

4. Article 9 of the European E-Commerce Directive requires Member States to ensure that "requirements applicable to the contractual process do not create obstacles for the use of electronic contracts". For the purposes of this Bill, it means ensuring there is equivalence between paper based and electronic methods for contracting an entry in a directory.
5. The 1976 Order currently prescribes three methods of authorising payment for placing an entry in a business directory. These are:
 - The *Business Order Form Method*, which is where a request for a directory entry is sent on the business' own order form or other stationery belonging to the business and bearing in print its' name and address; and
 - The *Business 'Note' method*, which is where a 'note' agreeing to the charge is produced by a directory publisher and signed by the business;
 - The *Electronic Communications method*, which is where an electronic communication agreeing to the charge is sent by the business.

6. The Bill is intended to insert a fourth method into the 1976 Order. This is a simplified method for repeat entries and renewals under certain conditions.
7. This part of the Bill relates to the first method of agreeing a directory entry, the Business Order Form method. At present, Business Order Forms – as defined by the 1976 Order - cannot be sent electronically. Should a directory publisher wish to accept an electronic order for a directory entry, it must use the Electronic Communications method of authorising payment set out above.
8. What this means is that the 1976 Order requires certain specified information to be given to a purchaser [generally a business] before it agrees to a charge by way of an electronic communication. Such information is not required for paper-based Business Order Forms, where an advertiser requests a directory entry, and so potentially puts obstacles in the way of a business who would wish to contract electronically in this way.
9. The Bill also amends the 1976 Order to lift burdens on directory publishers and advertisers, and brings the 1976 Order into line with the European E-Commerce Directive.

The Directory publishing industry

10. The proposals directly affect directory publishers and those who pay to advertise in directories.
11. The Directory publishing market is worth about £1.5 billion per annum in the whole UK. Business to Consumer directories - dominated by Yell (Yellow Pages) - comprise between £800 million and £1 billion per annum. Business-to-Business directories are about £200 – £300 million per annum. There are also a small number of directories which do not advertise and service the professional reference market. Many publishing houses also publish directories as a sideline to their other business.
12. Few advertisers in the UK use the Business Order Form method and publishers do not generally receive unsolicited entries in this way, either paper-based or electronic. The Department understands that, where such a request is received, publishers would generally confirm them either through a Note of Agreement or an Electronic Communication.
13. Some smaller publishers could, however, accept an emailed Order Form and find as a result that their advertising contracts were unenforceable. Under the current legislation, there is a risk that they would not be able to require payment for the entry from the advertiser, should they accept an Order emailed in this way. It is likely that not every business will be aware of the current requirements of the 1976 Order, particularly small publishers or those who publish directories as a sideline to other publishing.

Current and Potential Advertisers

14. Current and potential future advertisers in directories (mainly businesses) are also affected by these proposals. As indicated above, advertisers do not generally use the Business Order Form to place entries in directories. The reasons for this are unclear, though the lack of any legal means to make a Business Order electronically might be contributing to deterring advertisers from using this method. The Department anticipates that the removal of this

obstacle will be welcomed by the industry as providing a quick and cost-effective means to contract electronically, as intended by the E-Commerce Directive.

Risk assessment

15. To ensure compliance with Article 9 of the E-commerce Directive, the Department is required to make a change to create an electronic equivalent of Business Order Forms. The risk of not proceeding would be an infraction of European Community law, and could be subject to infraction proceedings.
16. Any risks to those affected by the legislation are from scams, because there may be more difficulty determining the origin and authenticity of electronic communications in comparison to paper ones. However, such a risk is slight for the following reasons -
 - The Business Order method of contracting is not widely used, so these changes will affect relatively few transactions anyway (although more businesses may use this method once an electronic Business Order Form is introduced).
 - With modern technology, details on and of paper-based Business Orders can also be altered fraudulently, so that there is an argument of fairness for providing an equivalent electronic Business Order form method.
17. The main risks would arise should any email be considered an electronic Business Order in terms of the 1976 Order. This could lead to a scenario where a fraudulent publisher claims an email response to one originating from the "publisher" is a Business Order. The fine print of this email could sign the advertiser up to bogus directory entries. To mitigate this risk the Bill is to stipulate that only an order form or stationery belonging to the purchaser (whether transmitted electronically or otherwise) will be considered a Business Order. This would mean that a bogus publisher could not require payment in those circumstances where a potential advertiser was responding to an unsolicited email.

Benefits

18. The Department has considered whether the benefits of the proposals outweigh any risks for the directory publishers and advertisers in their directories, and whether any key groups would be disproportionately affected by the proposal.
19. The Department proposes to remove the information requirements around electronically transmitted Orders in a way that minimises any reduction in the protection that the 1976 Order provides. This means making an electronically transmitted Business Order equivalent to one sent on a 'business' own order form or other stationery belonging to the business and bearing in print its name and address".
20. There are benefits to the publisher from clearing up any potential lack of clarity in the law, whereby they may accept an emailed request for a directory entry and find as a result that their contract with the advertiser is unenforceable. There are also potential benefits to advertisers from providing a new, quick and cost-effective method for authorising a directory entry.

21. The Bill will ensure compliance with the E-Commerce Directive, so the UK as a whole will fulfil its obligation under this aspect of European law. It will also remove an area of legal uncertainty and provide an additional, quick and cost-effective means to authorise a directory entry for those advertisers who choose to use it.
22. No group will be disproportionately affected by this proposal. It will be a business decision on behalf of directory publishers and their advertisers to take advantage of this new method for approving an entry in a directory.
23. The Department considers that the benefits of this proposal and the need to ensure compliance with the E-Commerce Directive outweigh any other risks.

Compliance costs

24. There are no obvious compliance costs arising from this proposal. We have not required the Order Forms to incorporate any burdensome features, such as embedded logos. There is a very low level of complaints or prosecutions under the 1976 Order and these proposals are unlikely to lead to any increase.
25. The introduction of a new method for contracting a directory entry that is the electronic equivalent of the Business Order Method would not directly lead to costs for directory publishers. There is the possibility of costs from amending business procedures to take advantage of a new method for authorising a directory entry. Such costs are likely to be low as few directory transactions use the Business Order Form Method.
26. The Department considers that it is highly unlikely that there will be an increase in scams through the introduction of an electronic Business Order Form. The Bill will maintain the legal protection that such a form must "be made by means of an order form or other stationery belonging to the purchaser ... and bearing his name and address ...". Moreover the directory publishing industry in the UK has a small number of large companies that account for the majority of the turnover in the industry. These large companies are the least likely to fall victim to scams. There are a large number of smaller companies which would have been most susceptible to scams but they will have the legal protection referred to above.
27. Directory publishers might incur costs initially by taking advantage of this new authorisation method in order to make longer-term savings. These short-term costs are difficult to quantify but are likely to be low. Most legitimate directory entries are agreed using the Note of Agreement method, and the proposed change is not expected to lead Directory publishers to change their business practices.
28. The Department considers this a relatively small and insignificant measure, given that the Business Order Method is rarely used. The proposals are such that publishers will not be put at a disadvantage through burdens such as embedded logos, in comparison to other advertising media or overseas directory publishers. In the longer term the proposals should allow the industry to compete more effectively within the wider advertising industry, where there is not the same obstacle to contracting by electronic means. This Bill will not limit competition within the industry or allow any one firm or type of firm to gain a competitive advantage over rivals.

Enforcement

29. Trading Standards Service of the Department will continue to enforce the 1976 Order. Staff will be made aware of the changes to the 1976 Order being made by the proposed Bill.

Monitoring and review

30. Monitoring of scams and potential rogue directory publishers will continue as part of the Department's activities in enforcing the 1976 Order.

Summary

31. The Department considers that the 1976 Order should be amended in the way described above for the reasons set out below.

32. The Unsolicited Goods and Services Bill would ensure compliance with the E-Commerce Directive, remove a potential obstacle to contracting by electronic means in the directory publishing field and provide a quick and cost-effective means for advertisers to contract for a directory entry should they choose to use it. The Department considers that the proposed Bill strikes the right balance of:

- removing obstacles to contracting by electronic means;
- ensuring compliance with the E-Commerce Directive; and
- ensuring, as far as possible, business advertisers do not incur costs due to scams.

Letter from Minister re Unsolicited Services Bill

From the Office of the Minister



Department of
**Enterprise, Trade
and Investment**
www.deti.ni.gov.uk

NETHERLEIGH
MASSEY AVENUE
BELFAST
BT4 2JP
Tel: 028 90 529452
Fax: 028 90 529545

E Mail: private.office@deti.ni.gov.uk
Our Ref: DETI SUB 205/2009

Mark Durkan MP MLA
Chair, Enterprise, Trade and Investment Committee
Room 424
Parliament Buildings
BELFAST
BT4 3XX

31 March 2009

Dear Mark

PROPOSED UNSOLICITED SERVICES (TRADE AND BUSINESS DIRECTORIES) BILL (PREVIOUSLY UNSOLICITED GOODS AND SERVICES (AMENDMENT) BILL)

On 13 May 2008 my Department wrote to the Committee regarding preliminary proposals for a bill to amend the Unsolicited Goods and Services (Northern Ireland) Order 1976. The Department supplied further detail on the proposals to the Committee on 21 November 2008. DETI officials briefed the Committee on 12 December 2008 and the Committee responded on 30 January 2009 requesting further briefing when the consultation period ended. The purpose of this letter is to update the Committee on changes to my Department's proposals.

A draft Executive Paper seeking agreement to my Department carrying out public consultation was circulated to Ministers for comments on 5 March 2009. OFMDFM responded on 24 March by suggesting that the Department consider having a draft Bill accompany the consultation document to assist consultees to fully understand the changes to the 1976 Order. No other substantive comments were received.

As you are aware, the initial plan was to amend the Unsolicited Goods and Services (Northern Ireland) Order 1976 ("the 1976 Order"). On foot of advice from OFMDFM and the Office of Legislative Counsel, my Department would now intend the Bill to re-enact the relevant provisions of the 1976 Order about directory entries, in a new form which will state the revised law clearly and succinctly. The Bill will make technical non controversial amendments to the current law in Northern Ireland relating to unsolicited goods and services.

I have set out a briefing on the revised proposals in more detail in the **Appendix** to this letter. The draft of the proposed Bill is in the draft Consultation Document which is attached as a separate document. My Department would intend to issue the Consultation Document as soon as possible after obtaining final Executive approval.

My officials will be in contact with the Committee following the period of public consultation.

Yours sincerely

ARLENE FOSTER MLA

Appendix

PROPOSALS FOR UNSOLICITED SERVICES (TRADE AND BUSINESS DIRECTORIES) BILL (PREVIOUSLY UNSOLICITED GOODS AND SERVICES (AMENDMENT) BILL)

The proposed Unsolicited Services (Trade and Business Directories) Bill is intended to re-enact with amendments certain provisions of the Unsolicited Goods and Services (Northern Ireland) Order 1976 ("the 1976 Order").

The Bill will make a number of technical and relatively minor changes to the current law. In essence it will replicate the changes made to the corresponding GB law by the GB SIs which were outlined in previous correspondence with the Committee.

The Office of Legislative Counsel has identified a number of problems with the approach taken by GB. Section 3 of the GB 1971 Act is now heavily amended and the provisions dealing with the cases of permitted charges are interwoven and difficult to follow; and there is in consequence a lot of duplication and unnecessary cross-referencing. For example, the particulars set out at length in section 3(3B) of the GB Act are repeated in exactly the same terms in Part 1 of the Schedule to the Regulatory Reform Order.

The GB SIs were constrained by the limited powers to make them contained in the Regulatory Reform Act 2001 and the European Communities Act 1972. The Regulatory Reform Act 2001 does not apply to NI legislation, so to achieve the same effect NI must proceed by a Bill which is not similarly constrained.

The Unsolicited Services (Trade and Business Directories) Bill will restate the law with similar amendments to those made by the recent GB SIs, in a consolidated and more readily understood form. The draughtsman has largely followed the language of the GB SIs but has made considerable alterations to the structure of the Bill.

Clauses 1 to 6 of the Bill are equivalent to section 3 of the Unsolicited Goods and Services Act 1971 ("the GB Act") as amended. Section 3 of the GB Act deals with 6 different things - the general prohibition on charges unless one of four conditions is met; the details of each of those four conditions; and the offence of demanding payment without complying with one of those conditions.

Clauses 1 to 6 of the NI Bill have restated these provisions separately. This approach removes the need for unnecessary cross-referencing and enables the text to be consolidated and simplified.

As stated above, the language of the NI Bill follows closely that of the GB Act (as amended) and the NI Bill, although different in structure, will produce exactly the same legal effect as the GB Act as amended. Anyone who complies with the law in GB will comply with the law in NI as set out in the Bill.

Article 3 of the GB Regulatory Reform Order provides that the provisions in the Schedule are subordinate provisions for the purposes of section 4 of the Regulatory Reform Act. Under that section, those provisions may be amended by order subject to annulment by resolution of either House of Parliament. To provide similar flexibility to amend the equivalent provisions in NI, the Bill sets out those provisions in the Schedule with power for the Department to amend the Schedule by Statutory Rule.

There appears to be no practical advantage in requiring the Department to prescribe these details in a Statutory Rule after the Bill has been enacted. The Schedule to the Bill, therefore, mirrors the provisions of the Schedule to the Regulatory Reform Order, although the details have been set out in a different sequence to match the sequence in which they occur in the Bill.

Under Clause 7 of the Bill, the Department will have power to amend the Schedule to the Bill by Order subject to negative resolution. An Order under that clause may also make any necessary transitional provisions and amendments to provisions referred to in the Schedule.

Clause 8(2) repeals Articles 5 and 6 of the 1976 Order, because they are being replaced by the provisions of the proposed Bill. Article 2(3) of the 1976 Order is being amended as it will need to refer to the conditions in paragraph 4 of the Schedule to the proposed Bill.

Consultation document



Department of Enterprise, Trade and Investment

**Consultation on Proposals for an Unsolicited
Services (Trade and Business Directories) Bill**

Introduction

1. The Department of Enterprise, Trade and Investment has obtained Executive approval to consult on an Unsolicited Services (Trade and Business Directories) Bill.
2. The proposed Bill is intended to re-enact with amendments certain provisions of the Unsolicited Goods and Services (Northern Ireland) Order 1976 ("the 1976 Order"). These provisions govern the processes of authorization by advertisers of entries in directories, for which demands for payment can legitimately be issued. The 1976 Order is available on line here –
<http://www.statutelaw.gov.uk/legResults.aspx?LegType=All%20Primary&PageNumber=1&BrowseLetter=U&NavFrom=1&activeTextDocId=1910173>
3. The purpose of this consultation document is to explain the Department's proposals and invite comments on them.

Background to the 1976 Order

4. The 1976 Order was passed, amongst other reasons, to control the circumstances in which businesses could be charged for the publication of entries about them in directories. It had been the case prior to the 1976 Order, that unwary businesses could be tricked by various sharp practices into paying for directory entries for which they had not asked and which they did not want.
5. Unscrupulous directory publishers would accomplish this, by sending companies a document in the form of a statement of address, telephone details etc. with a request that the information be checked and confirmed. A statement to the effect that the company concerned consented to the publication of this information in a directory and to pay the associated charges was included amongst various 'small print' located elsewhere on the document. By responding to confirm matters such as its address, the publisher could therefore claim that the business concerned had consented to publication. Directories produced by means of misleading transactions of this kind were generally of no informational or commercial value and were no more than devices by which charges could be imposed on unwary businesses.
6. Another dishonest practice was for individuals, who may not have been publishers at all but confidence tricksters, simply to issue invoices for entries in directories which were entirely fictitious. Some of the companies who received such invoices would go on to pay them, particularly where the 'publisher' made repeated demands for settlement and perhaps made suggestions of legal

action. These were, of course, never techniques associated with the bona fide directory publishing industry.

Background to the proposed Bill

7. The proposed Unsolicited Services (Trade and Business Directories) Bill is intended to remove provisions which the Department believes are burdensome and unnecessary, to remove anomalies and to ensure the compatibility of Northern Ireland law with obligations arising from membership of the European Union. In particular the Bill will ensure that the law on unsolicited services in Northern Ireland will comply with Article 9(1) of Directive 2000/31/EC of the European Parliament and of the Council on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (the E-Commerce Directive). Throughout the UK, Article 9(1) is being implemented on an ad hoc basis, where legislation is identified which contravenes its requirements.
8. The equivalent in Great Britain of the 1976 Order is the Unsolicited Goods and Services Act 1971 (the "1971 Act"). The Act is available on line here-
<http://www.statutelaw.gov.uk/legResults.aspx?LegType=All%20Primary&PageNumber=1&BrowseLetter=U&NavFrom=1&activeTextDocId=1366984>
9. The 1971 Act was amended by the Unsolicited Goods and Services (Amendment) Act 1975 (1975 c.13) which is available here-
<http://www.statutelaw.gov.uk/legResults.aspx?LegType=All%20Primary&PageNumber=1&BrowseLetter=U&NavFrom=1&activeTextDocId=1225878>
10. The proposed Bill will have similar effect to the amendments made to the 1971 Act by –
 - The Regulatory Reform (Unsolicited Goods and Services Act 1971) (Directory Entries and Demands for Payment) Order 2005 (the "Regulatory Reform Order") (S.I. 2005/55); See-
http://www.legislation.gov.uk/si/si2005/uksi_20050055_en.pdf
 - The Unsolicited Goods and Services Act 1971 (Electronic Commerce) (Amendment) Regulations 2005 (the "Regulations") (S.I. 2005/148). See
http://www.legislation.gov.uk/si/si2005/uksi_20050148_en.pdf
11. The Regulatory Reform Order amended the provisions of the 1971 Act governing the processes of authorization by advertisers

of entries in directories for which demands for payment can legitimately be issued.

12. In particular, the Regulatory Reform Order relaxed the existing requirements where clients renew or extend existing contracts for entries in a directory and simplified requirements as to the form and content of certain documents relating to contracts for directory entries.
13. The Regulations amended section 3 of the 1971 Act. They allowed an advertiser to place an entry in a business directory by sending the publisher an order form or other business stationery by electronic means.

The Proposed Bill

14. The Bill will make a number of technical and relatively minor changes to the current law. It will replicate, in effect, the changes made to the corresponding GB law by the GB Statutory Instruments described above. A draft of the Bill is at **Annex 1**.
15. There are a number of problems with the approach taken by GB. Section 3 of the GB 1971 Act is heavily amended and the provisions dealing with the cases of permitted charges are interwoven and difficult to follow; and there is in consequence a lot of duplication and unnecessary cross-referencing. For example, the particulars set out at length in section 3(3B) of the GB Act are repeated in exactly the same terms in Part 1 of the Schedule to the Regulatory Reform Order.
16. The GB Statutory Instruments were constrained by the limited powers to make them contained in the Regulatory Reform Act 2001 and the European Communities Act 1972. The Regulatory Reform Act 2001 does not apply to Northern Ireland legislation, so to achieve the same effect we must proceed by a Bill which is not similarly constrained.
17. The Unsolicited Services (Trade and Business Directories) Bill will restate the law in this area, with amendments similar to those made by the recent Statutory Instruments, in a consolidated and more readily understood form. The proposed Bill largely follows the language of the GB Statutory Instruments but is different in structure.
18. Clauses 1 to 6 of the Bill are equivalent to section 3 of the GB Act as amended. Section 3 of the GB Act deals with the following: –
 - the general prohibition on charges unless one of four conditions is met;
 - the details of each of those four conditions; and

- the offence of demanding payment without complying with one of those conditions.
19. Clauses 1 to 6 of the Northern Ireland Bill have restated these provisions separately. This approach removes the need for unnecessary cross-referencing and the text has been consolidated and simplified.
 20. The Northern Ireland Bill, although different in structure, will produce exactly the same legal effect as the GB Act as amended. Anyone who complies with the law in GB will comply with the law in Northern Ireland as set out in the Bill.
 21. Article 3 of the GB Regulatory Reform Order provides that the provisions in the Schedule are subordinate provisions for the purposes of section 4 of the Regulatory Reform Act. Under that section, those provisions may be amended by order subject to annulment by resolution of either House of Parliament. To provide similar flexibility to amend the equivalent provisions in Northern Ireland, the Bill sets out those provisions in the Schedule with power for the Department to amend the Schedule by Statutory Rule.
 22. The Schedule to the Bill mirrors the provisions of the Schedule to the Regulatory Reform Order, although the details have been set out in a different sequence to match the sequence in which they occur in the Bill.
 23. Under Clause 7 of the Bill, the Department will have power to amend the Schedule to the Bill by Order subject to negative resolution. An Order under that clause may also make any necessary transitional provisions and amendments to provisions referred to in the Schedule.
 24. Clause 8(2) repeals Articles 5 and 6 of the 1976 Order as they are being replaced by the provisions of the proposed Bill. Article 2(3) of the 1976 Order is being amended because it will need to refer to the conditions in paragraph 4 of the Schedule to the proposed Bill.

Commencement of the legislation

25. It is intended that the proposed legislation will come into operation two months after the Bill has been passed by the Assembly.

Legislative Competence

26. The Departmental Solicitor will be asked to confirm that the subject matter of this Bill falls within the legislative competence of the Assembly as described in Section 6 of the Northern Ireland Act 1998.

Financial Implications

27. If enacted, the Act is not expected to lead to any increase in public expenditure or public sector staffing. The legislation on unsolicited goods and services is currently being enforced by Trading Standards Service of the Department and the amendments made by the proposed Bill are unlikely to lead to any significant increase in enforcement activity.

Statutory Equality Obligations and Human Rights

28. The proposed legislation is expected to have no differential impact on any of the groups set out in Section 75 of the Northern Ireland Act 1998 and a screening exercise has indicated that a full Equality Impact Assessment is not necessary. The proposed legislation will directly affect directory publishers and those who pay to advertise in directories. It will be for directory publishers and their advertisers to make the business decision to take advantage of the revised legislation. The Bill will be drafted so that safeguards for business against certain deceptions practiced in relation to the publication of real or pretended directory products will continue in place. It could therefore be considered to have positive human rights implications because those affected will have enhanced benefits and protections from the legislation.

Regulatory Impact Assessment

29. The Regulatory Impact Assessment is at the **Annex** to the Consultation Document.

ETI Committee

30. The ETI Committee was consulted on 27 November 2008. The Committee responded to the Department on 30 January 2009, stating that they looked forward to further briefing on the outcome of the public consultation. The Committee was advised of revisions to the Department's proposals in March 2009.

Position in Other Jurisdictions

31. As described above the Bill is intended to replicate the legislative position in the rest of the UK. The Republic of Ireland has implemented Article 9 of the E Commerce Directive partly by the Electronic Commerce Act 2000 and partly by the European Communities (Directive 2000/31/EC) Regulations, 2003 (S.I. No. 68 of 2003).

Responses and Questions

32. The closing date for receipt of responses to this consultation is **28 August 2009**.

33. If you wish to respond to this consultation document or have any questions regarding it please contact:

Mr. Philip McClenaghan
Legislation Unit
Consumer Affairs Branch
Department of Enterprise, Trade and Investment
Trading Standards Service Building
176 Newtownbreda Road
Belfast BT8 6QS
e-mail philip.mcclenaghan@detini.gov.uk
Telephone 028 90253949
Fax: 028 90548520

All responses should include the name and postal address of the responder.

Please state whether you are responding as an individual or representing an organisation. If responding on behalf of an organisation, please make it clear who the organisation represents and, where applicable, how the views of members were assembled.

An acknowledgement will be sent to confirm receipt of each response.

This Consultation Document is available on the Department's website:

<http://www.detini.gov.uk/cgi-bin/gethome>

Copies of this document may also be provided in other formats, e.g. large print, Braille, disc, audiocassette and other languages. Please contact Philip McClenaghan at the address shown above.

If you have any comment or complaint about the **way** this consultation was conducted, it should be sent to:

John Hinds
Legislation Unit
Consumer Affairs Branch
Department of Enterprise, Trade and Investment
Trading Standards Service Building
176 Newtownbreda Road
Belfast BT8 6QS
e-mail john.hinds@detini.gov.uk
Telephone 028 90253902
Fax: 028 90548520

Confidentially & Data Protection

Your response may be made public by the Department following the completion of the consultation process. If you would prefer your response to be treated as confidential, please let us know, stating your reasons clearly. Any automatic confidentiality disclaimer generated by your IT system will be taken to apply only to information in your response for which confidentiality has been specifically requested.

If we are asked to disclose responses under freedom of information legislation, we will take any requests for confidentiality into account. However, confidentiality cannot be guaranteed.

We will handle appropriately any personal data you provide in accordance with the Data Protection Act 1998.

For further information about confidentiality of responses, please contact the Information Commissioner's Office or see website at: www.informationcommissioner.gov.uk

Unsolicited Services (Trade and Business Directories) Bill

[13/03/2009 09:52:35]

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A

B I L L

TO

Make provision about charges for entries in business or trade directories

BE IT ENACTED by being passed by the Northern Ireland Assembly and assented to by Her Majesty as follows:

Control of charges for directory entries

Control of charges for directory entries [j1]

1.—(1) A person (“P”) shall not be liable to make any payment (and shall be entitled to recover any payment made) by way of charge for including or arranging for the inclusion in a directory of an entry relating to P or P’s trade or business, unless the requirements of section 2, 3, 4 or 5 are met.

(2) Nothing in this section affects the rights of any consumer under the Consumer Protection (Distance Selling) Regulations 2000 (No. 2334).

Permitted charges

Charge permitted if order form signed [j2]

2. The requirements of this section are met if there has been signed by or on behalf of P an order made by means of an order form or other stationery belonging to P (which may be sent electronically) and which bears P’s name and address (or one or more of P’s addresses).

Charge permitted if note of agreement to charge signed [j3]

3. The requirements of this section are met if—

- (a) there has been signed by or on behalf of P a note of P’s agreement to the charge which—
 - (i) specifies the particulars set out in paragraph 1 of the Schedule; and
 - (ii) gives reasonable particulars of the entry in respect of which the charge would be payable; and

- (b) before the note was signed, a copy of it was supplied for retention by P to P or a person acting on P's behalf.

Charge permitted in certain cases of electronic communication [j4]

- 4.—(1) The requirements of this section are met if—
- (a) there has been transmitted by or on behalf of P an electronic communication which includes a statement that P agrees to the charge; and
 - (b) before the electronic communication was transmitted the following information was communicated to P—
 - (i) the particulars set out in paragraph 1 of the Schedule; and
 - (ii) reasonable particulars of the entry in respect of which the charge would be payable; and
 - (c) the electronic communication can readily be produced and retained in a visible and legible form.
- (2) In this section "electronic communication" has the same meaning as in the Electronic Communications Act (Northern Ireland) 2001 (c. 9).

Charge permitted in certain cases of renewed or extended contract [j5]

- 5.—(1) The requirements of this section are met if the charge arises under a contract in relation to which the conditions in subsection (2) are met.
- (2) Those conditions are met in relation to a contract ("the new contract") if—
- (a) P has entered into an earlier contract ("the earlier contract") for including or arranging for the inclusion in a particular issue or version of a directory ("the earlier directory") of an entry ("the earlier entry") relating to P or P's trade or business;
 - (b) P was liable to make a payment by way of a charge arising under the earlier contract for including or arranging for the inclusion of the earlier entry in the earlier directory;
 - (c) the new contract is a contract for including or arranging for the inclusion in a later issue or version of a directory ("the later directory") of an entry ("the later entry") relating to P or P's trade or business;
 - (d) the form, content and distribution of the later directory is materially the same as the form, content and distribution of the earlier directory;
 - (e) the form and content of the later entry is materially the same as the form and content of the earlier entry;
 - (f) if the later directory is published other than in electronic form—
 - (i) the earlier directory was the last, or the last but one, issue or version of the directory to be published before the later directory, and
 - (ii) the date of publication of the later directory is not more than 13 months after the date of publication of the earlier directory;
 - (g) if the later directory is published in electronic form, the first date on which the new contract requires the later entry to be published is not more than the relevant period after the last date on which the earlier contract required the earlier entry to be published;
 - (h) if it was a term of the earlier contract that P renew or extend the contract—

- (i) before the start of the new contract the other party to that contract has given notice in writing to P containing the information set out in paragraph 2 of the Schedule; and
 - (ii) P has not written to that other party withdrawing P's agreement to the renewal or extension of the earlier contract within the period of 21 days starting when P receives the notice referred to in sub-paragraph (i); and
- (j) if the parties to the earlier contract and the new contract are different—
- (i) the parties to both contracts have entered into a novation agreement in respect of the earlier contract; or
 - (ii) the other party to the new contract has before the conclusion of that contract given P the information set out in paragraph 3 of the Schedule.
- (3) For the purposes of subsection (2)(d) and (e), the form, content or distribution of the later directory, or the form or content of the later entry, shall be taken to be materially the same as that of the earlier directory or the earlier entry (as the case may be), if a reasonable person in P's position would—
- (a) view the two as being materially the same; or
 - (b) view that of the later directory or the later entry as being an improvement on that of the earlier directory or the earlier entry.
- (4) For the purposes of subsection (2)(g) "the relevant period" means the period of 13 months or (if shorter) the period of time between the first and last dates on which the earlier contract required the earlier entry to be published.

Offence

Offence to demand payment where section 1 contravened [j6]

6.—(1) A person commits an offence if, in a case where a payment in respect of a charge would be recoverable from the person in accordance with section 1(1), that person demands payment, or asserts a present or prospective right to payment, of the charge or any part of it, without having reasonable cause to believe that the requirements of section 2, 3, 4 or 5 have been met.

- (2) A person guilty of an offence under subsection (1) is liable—
- (a) on summary conviction to a fine not exceeding the statutory maximum;
 - (b) on conviction on indictment to a fine.

(3) For the purposes of this section any invoice or similar document stating the amount of any payment shall be regarded as asserting a right to the payment unless it complies with the conditions set out in paragraph 4 of the Schedule.

Supplementary

Power to amend the Schedule [j7]

7.—(1) The Department of Enterprise, Trade and Investment may by order subject to negative resolution amend the Schedule.

- (2) An order under subsection (1) may—
- (a) contain transitional provisions; and

- (b) make consequential amendments to any statutory provision (including a provision of this Act) which refers to the Schedule.

Amendment and repeals [j508]

8.—(1) In Article 2(3) of the Unsolicited Goods and Services (Northern Ireland) Order 1976 (NI 1) for the words “the requirements of regulations made under Article 6 applicable thereto” substitute “the conditions set out in paragraph 4 of the Schedule to the Unsolicited Services (Trade and Business Directories) Act (Northern Ireland) 2009”.

(2) Articles 5 and 6 of the Unsolicited Goods and Services (Northern Ireland) Order 1976 are repealed.

Short title and commencement [j510]

9.—(1) This Act may be cited as the Unsolicited Services (Trade and Business Directories) Act (Northern Ireland) 2009.

(2) This Act comes into operation two months after the day on which it receives Royal Assent.

(3) Nothing in this Act applies to a payment due under a contract entered into—

- (a) before this Act comes into operation; or
- (b) by the acceptance of an offer made before this Act comes into operation.

SCHEDULE

MATTERS REFERRED TO IN SECTIONS 3, 4 AND 5 [S1]

Sections 3, 4, 5 &
7

Particulars of directory or proposed directory which must be given in a note

1. The particulars referred to in section 3(a)(i) and 4(1)(b)(i) are—
 - (a) the amount of the charge;
 - (b) the name of the directory or proposed directory;
 - (c) the name of the person producing the directory;
 - (d) the geographical address at which that person is established;
 - (e) if the directory is to be available in printed form, the proposed date of publication of the directory or of the issue in which the entry is to be included;
 - (f) if the directory or the issue in which the entry is to be included is to be put on sale, the price at which it is to be offered for sale and the minimum number of copies which are to be available for sale;
 - (g) if the directory or the issue of the directory in which the entry is to be included is to be distributed free of charge (whether or not it is also to be put on sale), the minimum numbers of copies which are to be so distributed; and
 - (h) if the directory is or is to be made available in a form other than printed form, adequate details of how it may be accessed.

Information required in written notice

2. The notice referred to in section 5(2)(h)(i) must specify the following information—
 - (a) the fact that the earlier contract is to be renewed or extended;
 - (b) the commencement date of the new contract;
 - (c) the cost to P of the new contract; and
 - (d) the fact that P may, within 21 days, write to the person by whom the notice is given withdrawing P's consent to the renewal or extension of the contract.

Information to be given to P

3. The following information must be given to P under section 5(2)(j)(ii)—
 - (a) the name of the other party to the new contract; and
 - (b) the fact that, if P enters into the new contract, the parties to the earlier contract and the new contract will be different.

Conditions applying to invoice or similar document which does not assert right to payment

4. The conditions referred to in section 6(3) are that the invoice or similar document must—
 - (a) be clear, legible and comprehensible; and
 - (b) contain the following statement, displayed in uppercase lettering and in a manner that makes that statement readily apparent to a reasonable person reading that invoice or similar document—

"THIS IS NOT A DEMAND FOR PAYMENT"

THERE IS NO OBLIGATION TO PAY
THIS IS NOT A BILL™

REGULATORY IMPACT ASSESSMENT

Unsolicited Services (Trade and Business Directories) Bill

Objective

1. The Department of Enterprise, Trade and Investment (the "Department") is introducing the Unsolicited Services (Trade and Business Directories) Bill to re-enact with amendments certain provisions of the Unsolicited Goods and Services (Northern Ireland) Order 1976 ("the 1976 Order"). These provisions govern the processes of authorization by advertisers of entries in directories, for which demands for payment can legitimately be issued. The Bill is being introduced for two reasons -
 - to ensure the law in Northern Ireland in this field, complies with Article 9 of the European E-Commerce Directive;
 - to facilitate electronic commerce by introducing equivalence between paper-based methods and electronic methods for contracting an entry in a directory.
2. The Bill will ensure compliance by creating an electronic equivalent to the Business Order Form method of contracting for a directory entry, which is where a request for a directory entry is sent on the business' own order form or other stationery belonging to the business. The 1976 Order does not make provision for an electronic equivalent of this paper based order form, which creates a potential barrier to contracting electronically for directory entries.
3. To remove this potential obstacle and ensure compliance with the Directive, the Bill will provide for Business Order Forms to be sent electronically. The Department also see this as beneficial to advertisers who may wish to place an entry in a directory through a quick and cost-effective electronic means. This can be seen as reducing a burden as advertisers would potentially have a new and simplified means to contract for a directory entry by electronic means.

Background

4. Article 9 of the European E-Commerce Directive requires Member States to ensure that "requirements applicable to the contractual process do not create obstacles for the use of electronic contracts". For the purposes of this Bill, it means ensuring there is equivalence between paper based and electronic methods for

contracting an entry in a directory.

5. The 1976 Order currently prescribes three methods of authorising payment for placing an entry in a business directory. These are:
 - The *Business Order Form Method*, which is where a request for a directory entry is sent on the business' own order form or other stationery belonging to the business and bearing in print its' name and address; and
 - The *Business 'Note' method*, which is where a 'note' agreeing to the charge is produced by a directory publisher and signed by the business;
 - The *Electronic Communications method*, which is where an electronic communication agreeing to the charge is sent by the business.
6. The Bill is intended to provide a fourth method. This is a simplified method for repeat entries and renewals under certain conditions.
7. This part of the Bill relates to the first method of agreeing a directory entry, the Business Order Form method. At present, Business Order Forms – as defined by the 1976 Order - cannot be sent electronically. Should a directory publisher wish to accept an electronic order for a directory entry, it must use the Electronic Communications method of authorising payment set out above.
8. What this means is that the 1976 Order requires certain specified information to be given to a purchaser [generally a business] before it agrees to a charge by way of an electronic communication. Such information is not required for paper-based Business Order Forms, where an advertiser requests a directory entry, and so potentially puts obstacles in the way of a business who would wish to contract electronically in this way.
9. The Bill also lift burdens on directory publishers and advertisers, and brings the legislation in this area into line with the European E-Commerce Directive.

The Directory publishing industry

10. The proposals directly affect directory publishers and those who pay to advertise in directories.
11. The Directory publishing market is worth about £1.5 billion per annum in the whole UK. Business to Consumer directories - dominated by Yell (Yellow Pages) - comprise between £800 million and £1 billion per annum. Business-to-Business directories are about £200 – £300 million per annum. There are also a small

number of directories which do not advertise and service the professional reference market. Many publishing houses also publish directories as a sideline to their other business.

12. Few advertisers in the UK use the Business Order Form method and publishers do not generally receive unsolicited entries in this way, either paper-based or electronic. The Department understands that, where such a request is received, publishers would generally confirm them either through a Note of Agreement or an Electronic Communication.
13. Some smaller publishers could, however, accept an emailed Order Form and find as a result that their advertising contracts were unenforceable. Under the current legislation, there is a risk that they would not be able to require payment for the entry from the advertiser, should they accept an Order emailed in this way. It is likely that not every business will be aware of the current requirements of the 1976 Order, particularly small publishers or those who publish directories as a sideline to other publishing.

Current and Potential Advertisers

14. Current and potential future advertisers in directories (mainly businesses) are also affected by these proposals. As indicated above, advertisers do not generally use the Business Order Form to place entries in directories. The reasons for this are unclear, though the lack of any legal means to make a Business Order electronically might be contributing to deterring advertisers from using this method. The Department anticipates that the removal of this obstacle will be welcomed by the industry as providing a quick and cost-effective means to contract electronically, as intended by the E-Commerce Directive.

Risk assessment

15. To ensure compliance with Article 9 of the E-commerce Directive, the Department is required to make a change to create an electronic equivalent of Business Order Forms. The risk of not proceeding would be an infraction of European Community law, and the Department could be subject to infraction proceedings.
16. Any risks to those affected by the legislation are from scams, because there may be more difficulty determining the origin and authenticity of electronic communications in comparison to paper ones. However, such a risk is slight for the following reasons -
 - The Business Order method of contracting is not widely used, so these changes will affect relatively few transactions anyway (although more businesses may use

this method once an electronic Business Order Form is introduced);

- With modern technology, details on and of paper-based Business Orders can also be altered fraudulently, so that there is an argument of fairness for providing an equivalent electronic Business Order form method.

17. The main risks would arise should any email be considered an electronic Business Order. This could lead to a scenario where a fraudulent publisher claims an email response to one originating from the "publisher" is a Business Order. The fine print of this email could sign the advertiser up to bogus directory entries. To mitigate this risk the Bill is to stipulate that only an order form or stationery belonging to the purchaser (whether transmitted electronically or otherwise) will be considered a Business Order. This would mean that a bogus publisher could not require payment in those circumstances where a potential advertiser was responding to an unsolicited email.

Benefits

18. The Department has considered whether the benefits of the proposals outweigh any risks for the directory publishers and advertisers in their directories, and whether any key groups would be disproportionately affected by the proposal.
19. The Department proposes to remove the information requirements around electronically transmitted Orders in a way that minimises any reduction in the protection that the 1976 Order provides. This means making an electronically transmitted Business Order equivalent to one sent on a 'business' own order form or other stationery belonging to the business and bearing in print its name and address".
20. There are benefits to the publisher from clearing up any potential lack of clarity in the law, whereby they may accept an emailed request for a directory entry and find as a result that their contract with the advertiser is unenforceable. There are also potential benefits to advertisers from providing a new, quick and cost-effective method for authorising a directory entry.
21. The Bill will ensure compliance with the E-Commerce Directive, so the UK as a whole will fulfill its obligation under this aspect of European law. It will also remove an area of legal uncertainty and provide an additional, quick and cost-effective means to authorise a directory entry for those advertisers who choose to use it.

Outcome of Consultation

Mr Jim McManus
Clerk Enterprise, Trade and Investment Committee
Room 424
Parliament Buildings
Stormont
BELFAST
BT4 3XX 21 September 2009

Proposed Unsolicited Services (Trade and Business Directories) Bill (Previously Unsolicited Goods and Services (Amendment) Bill)

The Minister of Enterprise, Trade and Investment wrote to the Committee in March 2009 regarding the above bill. The Bill will make technical non controversial amendments to the current law in Northern Ireland relating to unsolicited goods and services. It will re-enact the relevant provisions of the Unsolicited Goods and Services (Northern Ireland) Order 1976 about trade directory entries, in a new form which will state the revised law more clearly and succinctly. Although different in form, the proposed Bill will align NI law with recent amendments to the GB law in this area.

It was initially intended that the changes to the law contained in the Bill would be taken forward by the Unsolicited Goods and Services (Amendment) Bill. Following advice from Office of First Minister and Deputy First Minister and the Office of Legislative Counsel (OLC) a revised draft Bill was prepared by OLC - the Unsolicited Services (Trade and Business Directories) Bill.

The consultation on the proposed Bill took place over the normal 12 week period and ended on 28 August 2009. The purpose of this letter is to provide briefing on the outcome of the consultation. The briefing is set out in the Appendix to this letter. I would be grateful if you would bring this to the attention of the Committee. To assist the Committee I enclose a copy of the consultation document (which includes the draft Bill) as a separate word document.

Yours sincerely

John Hinds
DETI Consumer Affairs Branch

Appendix to Letter

Proposed Unsolicited Services (Trade and Business Directories) Bill Briefing for the ETI Committee on Result of Consultation which ended on 28 August 2009

Introduction

1. The Bill is intended to re-enact with amendments certain provisions of the Unsolicited Goods and Services (Northern Ireland) Order 1976 ("the 1976 Order").
2. It will re-enact the relevant provisions of the 1976 Order about trade directory entries, in a new form which will state the revised law more clearly and succinctly. Although different in form, the proposed Bill will align NI law with the GB law in this area. The GB law is the provisions relating to trade directories in the Unsolicited Goods and Services Act 1971 as last amended in 2005 by –
 - The Regulatory Reform (Unsolicited Goods and Services Act 1971) (Directory Entries and Demands for Payment) Order 2005; and
 - The Unsolicited Goods and Services Act 1971 (Electronic Commerce) (Amendment) Regulations 2005.

3. In essence the Bill will restate the previous NI law in this area while replicating the changes made to the corresponding GB law by the GB Statutory Instruments referred to above.
4. It was initially proposed that the amendments to the law contained in the Bill should be taken forward by the Unsolicited Goods and Services (Amendment) Bill. Following advice from Office of First Minister and Deputy First Minister and the Office of Legislative Counsel (OLC) a revised draft Bill was prepared by OLC - the Unsolicited Services (Trade and Business Directories) Bill.
5. The Bill is intended to remove provisions which the Department believes are burdensome and unnecessary, to remove anomalies while preserving safeguards for business against certain deceptions in relation to the publication of real or pretended entries in trade and business directories.
6. The Bill will also ensure the compatibility of Northern Ireland law with obligations arising from membership of the European Union. In particular the Bill will ensure that the law on unsolicited services in Northern Ireland will comply with Article 9(1) of Directive 2000/31/EC of the European Parliament and of the Council on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (the E-Commerce Directive).
7. Further information on the proposals is available in the consultation document which has been made available to the Committee

Consultation

8. The consultation on the proposed Bill took place over the normal 12 week period and ended on 28 August 2009.
9. The consultation exercise was carried out using the Office of First Minister and Deputy First Minister Guidance on issue of consultation documents and issued to those on the list in that document. As it deals with trade directories it was also issued to the Data Publishers Association, the Periodical Publishers Association, Yell Limited and the European Association of Directory Publishers.
10. It was agreed with the Committee, at its meeting on 12 December 2008 on the Unsolicited Goods and Services (Amendment) Bill (the previous Bill see paragraph 4 of this brief), that the Department would contact certain organisations offering additional briefing if requested. Accordingly written and telephone contact was made with the NI Chamber of Commerce and the NI Branches of the Institute of Directors, the Federation of Small Businesses and the Confederation of British Industries. None of these organisations requested a briefing.
11. It was not expected that many organisations would respond, as the Bill will re-enact with technical and relatively minor amendments certain provisions of the 1976 Order. Ten organisations responded. Seven had no comments.
12. The Federation of Small Businesses Northern Ireland Policy Unit welcomed the simplification of the law, the elimination of burdensome and unnecessary procedures and the bringing of NI law into line with that in GB. The Federation also hoped that the Bill may present an opportunity to raise awareness amongst small businesses of the sharp practices, in relation to trade directory entries, from which the new Bill will continue to provide protection.
13. Antrim Borough Council and Ballymena Borough Council welcomed the Bill.
14. The following organizations had no comments on the proposed Bill-

- Institute of Directors (NI Branch)
- Limavady Borough Council
- Disability Action
- Executive Services Directorate OFMDFM
- North South Ministerial Council OFMDFM
- North Belfast Community Action Unit, OFMDFM
- Northern Ireland Judicial Appointments Commission.

Future action

15. The Bill is a minor technical measure and there have been no issues raised during the consultation process. In view of this, the Department would intend to proceed, as soon as possible, to seek clearance from the Executive for the Bill to proceed to introduction into the Assembly. Whilst officials would be pleased to provide an oral briefing to the committee on the consultation, it will however have an opportunity to scrutinize fully all aspects of the proposed legislation during the committee stage.

Letter from Minister re Unsolicited Services Bill

From the Office of the Minister



NETHERLEIGH
MASSEY AVENUE
BELFAST
BT4 2JP
Tel: 028 90 529452
Fax: 028 90 529545
E Mail: private.office@detini.gov.uk
Our Ref: DETI SUB 037/2010

Mr Alban Maginness
Chair of ETI Committee
Northern Ireland Assembly
Room 424, Parliament Buildings
BELFAST
BT4 3XX

8 February 2010

Dear Alban

THE UNSOLICITED GOODS AND SERVICES (TRADE AND BUSINESS DIRECTORIES) BILL

I intend to introduce an Assembly Bill to update the law protecting businesses from demands for payment for entries in business directories that have not been previously agreed.

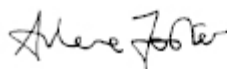
The Bill will make technical non controversial amendments to the current law in Northern Ireland relating to unsolicited goods and services. It will re-enact the relevant provisions of the Unsolicited Goods and Services (Northern Ireland) Order 1976 concerning trade directory entries, in a new form which will state the revised law more clearly and succinctly. Although different in form, the proposed Bill will align NI law with recent amendments to the GB law in this area.

On 11 December 2008 my officials appeared before the committee to brief members on the key issues surrounding the Bill and how it would operate in practise. The committee asked for further briefing once the consultation on the Bill had closed. Written briefing was provided to the committee on 1 October 2009 following the outcome of the consultation. (There were no issues raised by any of the consultees to the Bill).

I now enclose, on an in confidence basis, an advance copy of the Bill which I intend to introduce together with an Explanatory and Financial Memorandum. (The Bill is unchanged from the draft provided to the committee at prior to its meeting on 2 April 2009).

Should you wish, my officials are available to brief your Committee on the details of the Bill. Please advise if you would like me to ask them to arrange such a briefing.

Yours sincerely



ARLENE FOSTER MLA

Appendix 4

Research Papers

Research and Library Services



April 2010

Unsolicited Services (Trade and Business Directories) Bill

Eoin Murphy

This paper provides background to and an overview of the Unsolicited Services (Trade and Business Directories) Bill, which was introduced into the Assembly on the 23rd of March 2010. The purpose of the Unsolicited Services Bill is to bring Northern Ireland law into compliance with an EU Directive which has been in operation in England and Wales since 2005. The Bill is intended to remove provisions which the Department for Enterprise, Trade and Investment believes are burdensome and unnecessary, to remove anomalies and to ensure the compatibility of Northern Ireland law with obligations arising from membership of the European Union.

Library Research Papers are compiled for the benefit of Members of The Assembly and their personal staff. Authors are available to discuss the contents of these papers with Members and their staff but cannot advise members of the general public.

Summary

With the continuing development of electronic communication methods (such as the internet, email, etc.) it is necessary to update existing legislation to take these changes into account.

Previous legislation was enacted in order to protect businesses from unscrupulous directory publishers tricking them into paying for directory entries for which they had not asked and which they did not want.

In 2000, a new EU Directive was introduced which required member nations to update their legislation regarding this practice, taking into account electronic communication methods.

The Bill will make a number of technical and relatively minor changes to current law, replicating the changes made to the corresponding Great Britain (GB) law currently in operation, thereby bringing Northern Ireland (NI) law into line with the rest of the United Kingdom.

The Bill will restate the law in these areas, consolidating it into a more readily understandable form. The changes to the existing law will include:

Clause 1 – 6 restates provisions regarding the necessary conditions needed for directory publishers to require payment, removing the need for unnecessary cross referencing and consolidating and simplifying the text;

The Bill sets out provisions in the Schedule which are subordinate provisions for the purposes of section 4 of the Regulatory Reform Act. The Bill includes the power for the Department to amend these schedules by Statutory Rule;

The Schedule of the Bill mirrors the provisions of the schedule to the Regulatory Reform Order, although the details have been set out in a different sequence to match that of the Bill;

Clause 7 provides DETI with the power to amend the Schedule to the Bill by Order subject to negative resolution; and

Clause 8 (2) repeals Articles 5 and 6 of the 1976 Order as they are being replaced by the provisions of the proposed Bill. In addition, Article 2 (3) of the 1976 order is being amended as it needs to refer to the conditions in paragraph 4 of the Schedule to the proposed Bill.

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Introduction

The Unsolicited Services (Trade and Business Directories) Bill (henceforth referred to as "The Bill") is intended to re-enact, with amendments, certain provisions of the Unsolicited Goods and Services (Northern Ireland) Order 1976.

The original act was established to control the circumstances under which businesses could be charged for the publication of entries about them in directories. Prior to the 1976 Order, it had been possible for businesses to be tricked into paying for directory entries for which they had not asked nor wanted. Methods employed included asking businesses to check contact details on a form, with small print located elsewhere in the document stating they were agreeing to

publication of their details and the practice of issuing invoices for entries in fictitious directories, with threats of legal action if the invoice was not paid.

The 1976 Act legislated against these activities and subsequently requires updating to take account of Article 9 (1) of Directive 2000/31/EC of the European Parliament and of the Council and to bring Northern Ireland's legislation into line with that of the rest of the United Kingdom.

Background

The Bill is intended to remove provisions within the 1976 Act which the Department for Enterprise, Trade and Investment believes are burdensome and unnecessary, to remove anomalies and to ensure the compatibility of Northern Ireland law with obligations arising from membership of the European Union.

In particular the Bill will ensure that the law on unsolicited services will comply with Article 9 (1) of Directive 2000/31/EC of the European Parliament and of the Council on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (the E-Commerce Directive). Throughout the UK, Article 9 (1) is being implemented on an ad hoc basis where legislation is identified which contravenes its requirements^[1].

The Bill restates Northern Ireland law in this area whilst replicating changes made to corresponding law in Great Britain.

The public consultation took place over the normal twelve week period and was completed on the 28th August 2009.

On the 25th February 2010, Executive Agreement for the Bill to move forward was given and the Bill was drafted. A further department brief to the Committee for Enterprise, Trade and Investment was made on the 4th March 2010 with regards to the drafted Bill, and the Bill was introduced to the Assembly on the 23rd March 2010.

Results of Consultation

The Department's Consultation sought responses from a number of organisations on issues concerning the overall objectives and framework of the Unsolicited Services Bill.

As well as seeking the views of the general public, the consultation was also issued to the Data Publishers Association, the Periodical Publishers Association, Yell Limited and the European Association of Directory Publishers. Following discussion with the Committee for Enterprise, Trade and Investment a number of additional organisations were consulted including the NI Chamber of Commerce, the Institute of Directors, the Federation of Small Businesses and the Confederation of British Industries (NI branches).

Only ten organisations responded to the consultation, with seven of these stating they had no comments.

Of the three organisations that provided comments, the Federation of Small Businesses Northern Ireland Policy Unit:

"...welcomed the simplification of the law, the elimination of burdensome and unnecessary procedures and the bringing of NI law into line with that in GB^[2]."

The organisation went on to state that the Bill may provide an opportunity to raise awareness of the practices the Bill will provide protection under.

The other two respondents that provided comments, Antrim Borough Council and Ballymena Borough Council, welcomed the Bill.

The organisations which responded but which had no comment were:

- Institute of Directors (NI Branch);
- Limavady Borough Council;
- Disability Action;
- Executive Services Directorate OFMDFM;
- North South Ministerial Council OFMDFM;
- North Belfast Community Action Unit OFMDFM; and
- Northern Ireland Judicial Appointments Commission.

Equivalent Legislation in Great Britain

The Bill brings Northern Ireland into compliance with EU Directive 2000/31/EC which considered electronic commerce. The Bill aims to align the law in NI with that of Great Britain.

The legislation most applicable to the NI law is the Unsolicited Goods and Services Act 1971. This Act was amended in 2005 in Great Britain to bring it into compliance with the EU Directive by:

- The Regulatory Reform (Unsolicited Goods and Services Act 1971) (Directory Entries and Demands for Payment) Order 2005; and
- The Unsolicited Goods and Services Act 1971 (Electronic Commerce) (Amendment) Regulations 2005.

The Regulatory Reform Act altered the law which imposes requirements as to how agreements may be made for entries in directories. The order adds an additional method in which a person who has already agreed to an entry can have repeat or renewed listing.

Failure to comply with a method as laid out in the Act makes the charge for an entry unenforceable or recoverable, and the person claiming the charge will commit an offence if they demand payment, unless they believe that the requirements in the Act have been complied with.

In addition the Order establishes requirements that invoices and similar documents must comply with if they are not to be regarded under the Act as asserting a right to payment.

The second set of amendments to the Unsolicited Goods and Services Act 1971 brought GB law into compliance with Article 9 (1) of the Directive 2000/31/EC of the European Parliament in relation to electronic commerce and information society services.

The regulations amend Section 3 of the 1971 Act so that orders may be sent electronically provided certain specified requirements are met.

Purpose of the Bill

DETI states that the Unsolicited Services Bill will bring Northern Ireland law into line with that in GB and ensure compliance with Article 9(1) of the European Community's e-commerce directive. The Bill is a technical, non-controversial measure. It will re-enact, with technical amendments, certain provisions of the Unsolicited Goods and Services (Northern Ireland) Order 1976. Those provisions control the circumstances in which businesses may be charged for the publication of entries about them in directories.[\[3\]](#)

The Bill is intended to enable businesses to improve efficiency by relaxing and simplifying arrangements for repeats and renewals of directory entries, arrangements for sending order forms electronically and requirements covering the form and content of invoices and other documents.

The Bill will update the law to reflect the modern and commercial realities of the directory publishing industry, while ensuring that the legislation continues to provide protection for businesses against a number of scams.

Overview of the Bill

The Bill will make a number of technical and relatively minor changes to the current law.

The Great Britain Statutory Instruments were constrained by the limited powers to make them contained in the Regulatory Reform Act 2001 and the European Communities Act 1972.

As the Bill is not similarly constrained it will restate the law in this area, with amendments similar to those made by the recent Great Britain Statutory Instruments, in a consolidated and more readily understood form. The proposed Bill largely follows the language of the Great Britain Statutory Instruments but is different in structure.

The proposed Bill will produce exactly the same legal effect as the GB Act as amended. DETI considers that anyone who complies with the law in GB will comply with the law in Northern Ireland as set out in the Bill.

Content of the Bill[\[4\]](#)

Clauses 1 to 6 of the Bill are equivalent to Section 3 of the 1971 GB Act as amended by the Great Britain Statutory Instruments. Section 3 covers:

- the general prohibition on charges unless one of four conditions is met;
- the details of each of these four conditions; and
- the offence of demanding payment without complying with one of these conditions.

Clauses 1 to 6 of the proposed Bill have restated these provisions separately.

This approach removes the need for unnecessary cross-referencing and the text has been consolidated and simplified.

Under Clause 7 of the Bill, the Department will have power to amend the Schedule to the Bill by Order subject to negative resolution. An Order under that clause may also make any necessary transitional provisions and amendments to provisions referred to in the Schedule.

The Schedule to the Bill sets out certain matters which are referred to in clauses 3, 4 and 5. It mirrors the provisions of the Schedule to Regulatory Reform (Unsolicited Goods and Services Act 1971) (Directory Entries and Demands for Payment) Order 2005 (S.I. 2005/55). The details have, however, been set out in a different sequence to match the sequence in which they occur in the Bill.

Clause 8(2) repeals Articles 5 and 6 of the 1976 Order as they are being replaced by the provisions of the proposed Bill. Article 2(3) of the 1976 Order is being amended because it will need to refer to the conditions in paragraph 4 of the Schedule to the Bill.

Importantly, the proposed Bill will produce exactly the same legal effect as the GB Act as amended^[5].

Options Considered

To ensure compliance with Article 9 of the E-Commerce Directive, an amendment to the law is required to create an electronic equivalent of Business Order Forms. The risk of not proceeding would be an infraction of European Community law, and could be subject to infraction proceedings.

Compliance with Article 9 could have been achieved by the Department making Regulations under section 2(2) of the European Communities Act 1972 to amend the 1976 Order. Section 2(2) allows secondary legislation to amend primary legislation, a process not normally allowed for within UK law. Section 2 (2) is only applicable when implementing European Union obligations.

However, it would not have been possible to amend the 1976 Order in the same way the 1971 Act was amended by the Regulatory Reform (Unsolicited Goods and Services Act 1971) (Directory Entries and Demands for Payment) Order 2005 (the Regulatory Reform Order^[6]). This Order was made under the Regulatory Reform Act 2001 which does not apply to Northern Ireland devolved legislation^[6].

The provisions of the "Regulatory Reform Order" relaxed the existing requirements when clients renew or extend existing contracts for entries in a directory. It also simplified requirements as to the form and content of certain documents relating to contracts for directory entries. The Department wishes to ensure that NI businesses have the same benefits and protections in this area of law as in the rest of the United Kingdom. To achieve the same effect in Northern Ireland it is necessary to proceed by introducing a Bill into the Assembly. Accordingly it was decided to proceed with a Bill combining similar amendments to the Regulatory Reform Order with the amendments necessary to ensure compliance with Article 9 of the E -Commerce Directive.

Costs

If enacted, the Bill is not expected to lead to any increase in public expenditure or public sector staffing. The legislation on unsolicited goods and services is currently being enforced by the Department's Trading Standards Service and the amendments made by the proposed Bill are unlikely to lead to any significant increase in enforcement activity^[7].

For businesses, there is the possibility of costs from amending business procedures to take advantage of a new method for authorising a directory entry. However, such costs are likely to be low as few directory transactions use the Business Order Form Method.

In addition, directory publishers might also incur costs initially by taking advantage of this new authorisation method in order to make longer term savings. Again, these costs are likely to be low and are not expected to lead Directory publishers to change their business practices^[8].

Human Rights Issues

There are no human rights issues. The Bill re-enacts, with minor technical amendments, the existing law in this field^[9].

Equality Impact Assessment

Equality screening did not reveal any negative impact on any of the groups set out in section 75 of the Northern Ireland Act 1998^[10].

The Regulatory Impact Assessment

The Bill would ensure compliance with the E-Commerce Directive, remove a potential obstacle to contracting by electronic means in the directory publishing field and provide a quick and cost-effective means for advertisers to contract for a directory entry should they choose to use it.

DETI considers that the Bill strikes the right balance, as with the GB legislation^[11], of: removing obstacles to contracting by electronic means; ensuring compliance with the E-Commerce Directive; and ensuring, as far as possible, business advertisers do not incur costs due to scams^[12].

[1] DETI Consultation on Proposals for an Unsolicited Services (Trade and Business Directories) Bill 2009

[2] DETI 4th March 2010 Briefing for the ETI Committee on result of consultation which ended on 28 August 2009

[3] Hansard, Minutes of Evidence, Unsolicited Services Bill, p.2
http://archive.niassembly.gov.uk/record/Hansard_enterprise_trade_investment.htm (first accessed 13th April 2010)

[4] 'Debt Relief, Explanatory and Financial Memorandum.' NIA Bill
http://archive.niassembly.gov.uk/legislation/primary/2009/niabill12_09_efm.htm

[5] DETI Consultation on Proposals for an Unsolicited Services (Trade and Business Directories) Bill 2009

[6] Based on discussions with DETI representatives

[7] DETI Consultation on Proposals for an Unsolicited Services (Trade and Business Directories) Bill 2009

[8] Ibid

[9] Ibid

[10] Ibid

[11] Department of Trade and Industry Explanatory Memorandum to the: The Unsolicited Goods and Services Act 1971 (Electronic Commerce) (Amendment) Regulations 2005

[12] DETI Consultation on Proposals for an Unsolicited Services (Trade and Business Directories) Bill 2009

Appendix 5

List of Witnesses

Mr John Hinds Department of Enterprise, Trade and Investment

Ms Deirdre Dempsey Department of Enterprise, Trade and Investment

Mr Philip McLenaghan Department of Enterprise, Trade and Investment

Mr Patrick Neill Department of Enterprise, Trade and Investment