

Research and Library Services



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UNSOLICITED SERVICES (TRADE AND BUSINESS DIRECTORIES) BILL

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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.

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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 requirements¹.

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.

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

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 GB²."

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

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

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.

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

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 Bill⁴

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

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

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 amended⁵.

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"). This Order was made under the Regulatory Reform Act 2001 which does not apply to Northern Ireland devolved legislation⁶.

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.

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

⁶ Based on discussions with DETI representatives

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 activity⁷.

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 practices⁸.

Human Rights Issues

There are no human rights issues. The Bill re-enacts, with minor technical amendments, the existing law in this field⁹.

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 1998¹⁰.

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 legislation¹¹, of:

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

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 scams¹².

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