

UNSOLICITED SERVICES (TRADE AND BUSINESS DIRECTORIES) ACT 2010

EXPLANATORY NOTES

INTRODUCTION

These Explanatory Notes relate to the Unsolicited Services (Trade and Business Directories) Act (Northern Ireland) 2010 which received Royal Assent on 15 December 2010. They have been prepared by the Department of Enterprise, Trade and Investment in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by the Assembly.

The notes need to be read in conjunction with the Act. They do not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section or Schedule does not seem to require any explanation or comment, none is given.

BACKGROUND AND POLICY OBJECTIVES

The Act re-enacts with amendments certain provisions of the Unsolicited Goods and Services (Northern Ireland) Order 1976 (S.I. 1976/57 (N.I. 1)) (“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 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 Act 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 Act ensures that the law on unsolicited services in Northern Ireland complies 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.

The Act is also intended to facilitate electronic commerce by introducing equivalence between paper-based methods and electronic methods for contracting an entry in a directory.

These Notes refer to the Unsolicited Services (Trade and Business Directories) Act (Northern Ireland) 2010 (c.15) which received Royal Assent on 15 December 2010

The equivalent in Great Britain of the 1976 Order is the Unsolicited Goods and Services Act 1971 (the “1971 Act”). The 1971 Act was amended by the Unsolicited Goods and Services (Amendment) Act 1975 (1975 c.13).

The Act has similar effects 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 (S.I. 2005/55); and the Unsolicited Goods and Services Act 1971 (Electronic Commerce) (Amendment) Regulations 2005 (S.I. 2005/148). The Regulatory Reform Act 2001 does not apply to Northern Ireland legislation, so to achieve the same effects an Act of the Assembly is necessary.

CONSULTATION

The consultation on the Act took place over the normal 12 week period and ended on 28 August 2009.

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.

It was agreed with the Enterprise, Trade and Investment Committee of the Assembly that the Department would contact certain organisations offering additional briefing if requested. Accordingly 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.

It was not expected that many organisations would respond, as it was proposed to re-enact with technical and relatively minor amendments certain provisions of the 1976 Order. Ten organisations responded. Seven had no 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.

Antrim Borough Council and Ballymena Borough Council welcomed the Act.

OVERVIEW

The Act makes 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.

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As the Act is not similarly constrained it restates 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 Act largely follows the language of the Great Britain Statutory Instruments but is different in structure.

The Northern Ireland Act, although different in structure, produces exactly the same legal effect as the 1971 GB Act as amended. The Department considers that anyone who complies with the law in GB will comply with the law in Northern Ireland as set out in the Act.

COMMENTARY ON SECTIONS

Sections 1 entitles a person to recover any payment in respect of a directory entry unless one of the four methods for agreeing for such an entry (specified in section 2,3,4 or 5) are met.

Sections 2 to 5 specify the conditions for the four methods of agreeing or renewing a directory entry.

Section 6 creates an offence for demanding payment where section 1 is contravened.

Section 7 empowers the Department to amend the Schedule to the Act by Order, subject to negative resolution.

The Schedule to the Act sets out certain matters which are referred to in sections 3, 4 and 5.

Section 8(2) repeals Articles 5 and 6 of the 1976 Order (these are replaced by the provisions of the Act). Article 2(3) of the 1976 Order is amended to refer to the conditions in paragraph 4 of the Schedule to the Act.

HANSARD REPORTS

The following table sets out the dates of the Hansard reports for each stage of the Act's passage through the Assembly.

STAGE	DATE
Introduction of the Act to the Committee for Enterprise, Trade and Investment	4 March 2010
Introduction to the Assembly	23 March 2010
Second Stage debate	20 April 2010
Committee Stage - evidence from the Department of Enterprise, Trade and Investment	17 June 2010
Committee's report on the Act - Report number 74/09/10R	1 July 2010
Consideration Stage in the Assembly	11 October 2010

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STAGE	DATE
Further Consideration Stage	1 November 2010
Final Stage	9 November 2010

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