

**2005 No. 55**

**REGULATORY REFORM**

**The Regulatory Reform (Unsolicited Goods and Services Act 1971) (Directory Entries and Demands for Payment) Order 2005**

*Made* - - - - *12th January 2005*

*Coming into force* - - *6th April 2005*

Whereas

- (a) the Secretary of State for Trade and Industry (“the Secretary of State”) consulted—
  - (i) such organisations as appeared to her to be representative of interests substantially affected by her proposals for this Order,
  - (ii) such organisations as appeared to her to be representative of the statutory bodies to whose functions her proposals relate,
  - (iii) the Law Commission,
  - (iv) the National Assembly for Wales, and
  - (v) such other persons as she considered appropriate;
- (b) as a result of that consultation it appeared to the Secretary of State that it was appropriate to vary part of her proposals;
- (c) following the consultation mentioned in recital (a) the Secretary of State considered it appropriate to proceed with the making of this Order;
- (d) a document containing the Secretary of State’s proposals was laid before Parliament as required by section 6 of the Regulatory Reform Act 2001<sup>(a)</sup> and the period for Parliamentary consideration under section 8 of that Act expired;
- (e) the Secretary of State had regard to the representations made during that period and in particular to the Twenty-Ninth Report, Session 2003-2004, of the Delegated Powers and Regulatory Reform Committee of the House of Lords and the Twelfth Report, Session 2003-2004, of the Regulatory Reform Committee of the House of Commons;
- (f) a draft of this Order was laid before Parliament with a statement giving details of those representations and the changes to the Secretary of State’s proposals in the light of them;
- (g) the draft was approved by resolution of each House of Parliament;
- (h) the Secretary of State is of the opinion that this Order does not remove any necessary protection or prevent any person from continuing to exercise any right or freedom which he might reasonably expect to continue to exercise; and
- (i) this Order creates burdens affecting persons in the carrying on of certain activities, and the Secretary of State is of the opinion that—

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<sup>(a)</sup> 2001 c.6.

- (i) the provisions of this Order, taken as a whole, strike a fair balance between the public interest and the interests of the persons affected by the burdens being created, and
- (ii) the extent to which this Order removes or reduces one or more burdens, or has other beneficial effects for persons affected by the burdens imposed by the existing law, makes it desirable for this Order to be made;

Now therefore the Secretary of State, in exercise of the powers conferred by section 1 of the Regulatory Reform Act 2001, hereby makes the following Order:—

### **Citation, Commencement, extent and interpretation**

**1.**—(1) This Order may be cited as the Regulatory Reform (Unsolicited Goods and Services Act 1971) (Directory Entries and Demands for Payment) Order 2005 and shall come into force at the end of the period of 12 weeks beginning with the day on which it is made.

(2) This Order does not extend to Northern Ireland.

(3) Expressions used in this Order which are also used in the Unsolicited Goods and Services Act 1971<sup>(a)</sup> have the same meaning as in that Act.

### **Amendments to the Unsolicited Goods and Services Act 1971**

**2.**—(1) The Unsolicited Goods and Services Act 1971 is amended as follows.

(2) In section 3 (directory entries), at the end of subsection (1)(b)~~(b)~~, omit the word “or”.

(3) In section 3(1), after the words “in relation to that communication” in paragraph (c), insert—

“; or

(d) the charge arises under a contract in relation to which the conditions in section 3B(1) (renewed and extended contracts) are met”.

(4) In section 3(2)—

(a) omit the words from “; in the absence of an order” to “satisfied,”;

(b) in paragraph (c) after the words “subsection (1)(c)” insert the words “or (d)”.

(5) In section 3(3)—

(a) for the words “subsection (1) above,” substitute “this section – (a)”;

(b) before “the note” insert “(b)”;

(c) for the words from “required by this section” to the end of the subsection, substitute—

“of a person’s agreement to a charge must—

(i) specify the particulars set out in Part 1 of the Schedule to the Regulatory Reform (Unsolicited Goods and Services Act 1971) (Directory Entries and Demands for Payment) Order 2005, and

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

(6) Omit section 3A~~(c)~~ (contents and form of notes of agreement, invoices and similar documents).

(7) Before section 4 insert—

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<sup>(a)</sup> 1971 c.30, amended by the Unsolicited Goods and Services (Amendment) Act 1975 (1975 c.13), the Magistrates Courts Act 1980 (1980 c. 43), the Criminal Justice Act 1982 (1982 c. 48), S.I. 2000/2334 and S.I. 2001/2778.

<sup>(b)</sup> Section 3 amended by s2(1) of the Unsolicited Goods and Services (Amendment) Act 1975, s32(2) of the Magistrates Courts Act 1980 and S.I. 2001/2778.

<sup>(c)</sup> Section 3A inserted by section 1 of the Unsolicited Goods and Services (Amendment) Act 1975.

### **“3B Renewed and extended contracts**

(1) The conditions referred to in section 3(1)(d) above are met in relation to a contract (“the new contract”) if —

- (a) a person (“the purchaser”) 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 him or his trade or business;
- (b) the purchaser 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 the purchaser or his 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 the purchaser renew or extend the contract—
  - (i) before the start of the new contract the relevant publisher has given notice in writing to the purchaser containing the information set out in Part 3 of the Schedule to the Regulatory Reform (Unsolicited Goods and Services Act 1971) (Directory Entries and Demands for Payment) Order 2005; and
  - (ii) the purchaser has not written to the relevant publisher withdrawing his agreement to the renewal or extension of the earlier contract within the period of 21 days starting when he receives the notice referred to in sub-paragraph (i); and
- (i) 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 relevant publisher has given the purchaser the information set out in Part 4 of the Schedule to the Regulatory Reform (Unsolicited Goods and Services Act 1971) (Directory Entries and Demands for Payment) Order 2005.

(2) For the purposes of subsection (1)(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 the position of the purchaser 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.

(3) For the purposes of subsection (1)(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.

(4) For the purposes of subsection (1)(h) and (i) “the relevant publisher” is the person with whom the purchaser has entered into the new contract.

(5) The information referred to in subsection (1)(i)(ii) must be given to the purchaser prior to the conclusion of the new contract.”

(8) In section 6 (interpretation)—

(a) for subsection (2)(a) substitute—

“(2) For the purposes of this Act, 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 Part 2 of the Schedule to the Regulatory Reform (Unsolicited Goods and Services Act 1971) (Directory Entries and Demands for Payment) Order 2005.”

(b) after subsection (2) insert—

“(3) Nothing in sections 3 or 3B shall affect the rights of any consumer under the Consumer Protection (Distance Selling) Regulations 2000.”

### **Subordinate Provisions**

**3.**—(1) The provisions of the Schedule are subordinate provisions for the purposes of section 4 of the Regulatory Reform Act 2001.

(2) A subordinate provisions order (within the meaning of section 4(4) of that Act) made in respect of the Schedule shall be subject to annulment in pursuance of a resolution of either House of Parliament.

### **Consequential Provisions**

**4.** In regulation 24(7)(b) of the Consumer Protection (Distance Selling) Regulations 2000(b)—

(a) for the words from “requirements of regulations” to “1971” substitute “the conditions set out in Part 2 of the Schedule to the Regulatory Reform (Unsolicited Goods and Services Act 1971) (Directory Entries and Demands for Payment) Order 2005”; and

(b) after the words “as the case may be,” insert the words “the requirements of regulations made under”.

### **The Electronic Commerce (EC Directive) Regulations 2002(c)**

**5.** The Electronic Commerce (EC Directive) Regulations 2002 apply to—

(a) this Order; and

(b) any subordinate provisions order (within the meaning of section 4(4) of the Regulatory Reform Act 2001) made in respect of the Schedule to this Order.

12th January 2005

*Gerry Sutcliffe,*  
Parliamentary Under Secretary of State for  
Employment Relations, Competition and Consumers,  
Department of Trade and Industry

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(a) Section 6(2) amended by section 2(2) of the Unsolicited Goods and Services (Amendment) Act 1975.  
(b) S.I. 2000/2334.  
(c) S.I. 2002/2013.

## PART 1

### PARTICULARS OF DIRECTORY OR PROPOSED DIRECTORY WHICH MUST BE GIVEN IN A NOTE

The particulars referred to in section 3(3) of the Unsolicited Goods and Services Act 1971 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 geographic 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.

## PART 2

### CONDITIONS APPLYING TO INVOICE OR SIMILAR DOCUMENT WHICH DOES NOT ASSERT RIGHT TO PAYMENT

The conditions referred to in section 6(2) of the Unsolicited Goods and Services Act 1971 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”

## PART 3

### INFORMATION REQUIRED IN WRITTEN NOTICE

The notice referred to in section 3B(1)(h)(i) of the Unsolicited Goods and Services Act 1971 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 the purchaser of the new contract; and
- (d) the fact that the purchaser may, within 21 days, write to the person by whom the notice is given withdrawing his consent to the renewal or extension of the contract.

## PART 4

### INFORMATION TO BE GIVEN TO A PURCHASER

The following information must be given to the purchaser pursuant to section 3B(1)(i)(ii) of the Unsolicited Goods and Services Act 1971:

- (a) the name of the relevant publisher; and
- (b) the fact that, if the purchaser enters into the new contract:
  - (i) the other party to the new contract will be the relevant publisher; and
  - (ii) the parties to the earlier contract and the new contract will be different.

## **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order is made under section 1 of the Regulatory Reform Act 2001. It reforms the law in section 3 of the Unsolicited Goods and Services Act 1971 (“the Act”) which imposes requirements as to how agreements may be made for entries in directories. The Order adds one further method by which a person may agree to an entry where that entry is a repeat or renewed entry in a directory. Failure to comply with a method in the Act makes the charge unenforceable or recoverable and the person claiming the charge will commit an offence if he demands payment unless he believes that the requirements in the Act had been complied with.

The Order also sets out the 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.

Article 2(5) amends section 3(3) of the Act so that a note required by section 3 of a person’s agreement to a charge must set out the particulars in Part 1 of the Schedule to the Order and also give reasonable particulars of the entry in respect of which the charge is payable.

Article 2(6) repeals section 3A of the Act under which regulations as to the contents and form of notes of agreement, invoices and similar documents could be made. Provisions are now made about these matters in the Schedule to the Order. Article 3 provides that the provisions in the Schedule are subordinate provisions for the purposes of section 4 of the Regulatory Reform Act 2001 and may be amended by order subject to annulment by resolution of either House of Parliament.

Article 2(7) inserts a new section 3B which allows a contract to advertise in a directory to be renewed or extended without the formalities that would otherwise apply under the Act. Various conditions apply which include that the form content and distribution of the directory must be materially the same as the previous directory, as must be the entry itself.

The new section 3B provides that where it was a term of an earlier contract for a directory entry that the purchaser renew or extend, then the purchaser must be given written notice of the renewal or extension and 21 days to withdraw his agreement.

A full regulatory impact assessment of the effect that this instrument will have on the costs of business is available from the DTI Publications Orderline, Admail 528, London SW1W 8YT, telephone 0870 1502 500, fax 0870 1502 333, minicom 0870 1502 100. It may also be accessed online at <http://www.cabinetoffice.gov.uk/regulation/rra/rro/proposals.asp#unsolgoods>.

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STATUTORY INSTRUMENTS

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1971) (Directory Entries and Demands for Payment) Order 2005

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