



House of Commons
Regulatory Reform Committee

**Draft Regulatory
Reform (Unsolicited
Goods and Services Act
1971) (Directory Entries
and Demands for
Payment) Order 2004**

Thirteenth Report of Session 2003–04

Report, together with formal minutes

*Ordered by The House of Commons
to be printed 9th November 2004*

The Regulatory Reform Committee

The Regulatory Reform Committee is appointed to consider and report to the House of Commons on proposals for regulatory reform orders under the Regulatory Reform Act 2001 and, subsequently, any ensuing draft regulatory reform order. It will also consider any "subordinate provisions order" made under the same Act.

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Powers

The full constitution and powers of the Committee are set out in House of Commons Standing Order No. 141, available on the Internet via www.parliament.uk.

Publications

The Reports and evidence of the Committee are published by The Stationery Office by Order of the House. All publications of the Committee (including press notices) are on the Internet at www.parliament.uk/regrefcom

A list of Reports of the Committee in the present Session of Parliament is at the back of this volume.

Committee staff

The current staff of the Committee are Mick Hillyard (Clerk), Stuart Deacon (Committee Specialist), Brian Dye (Committee Assistant) and Liz Booth (Secretary).

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1 Report under Standing Order No. 141

1. The Regulatory Reform Committee has examined the draft Regulatory Reform (Unsolicited Goods and Services Act 1971)(Directory Entries and Demands for Payment) Order 2004 in accordance with Standing Order No. 141. We recommend unanimously that the draft Order be approved.

2 Introduction

2. On 25 October 2004 the Department for Trade and Industry (“the Department”) laid the draft Order before Parliament, together with an explanatory statement.

3. The proposal for this Regulatory Reform Order as laid before Parliament on 26 May 2004 contained three connected proposals to make substantive changes to the requirements on directory publishers under the Unsolicited Goods and Services Act 1971 and a number of related consequential amendments to other legislation.

4. **Proposal A** was to relax requirements imposed by section 3 of the Unsolicited Goods and Services Act 1971 (which specifies the procedures to be complied with before a person, usually a business, may be bound to pay for the publication of an entry in a directory) where a contract is renewed or extended.

5. **Proposal B** was to allow agreement to the publication of directory entries to be given over the telephone, provided certain information has first been provided to the purchaser and he pays for the entry by means of a debit or credit card. This Proposal has now been dropped.

6. **Proposal C** was to repeal section 3A of the Unsolicited Goods and Services Act 1971, which gives the Secretary of State power to make Regulations to govern the form and content of invoices and other related documents in relation to the publication of directory entries, and to specify a simplified set of provisions which would, for the first time, be capable of being satisfied by electronic documents.

7. The House has instructed us to examine the draft Order against such of the criteria specified in Standing Order No. 141(6) as are relevant. We are also required to consider the extent to which the responsible Minister has had regard to any resolution or report of the Committee or to any other representations made during the period for Parliamentary consideration.¹ Our discussion of matters arising from our examination is set out below.

3 The report on the proposal

8. We issued our substantive report on 20 September 2004, towards the end of the 60 day period for Parliamentary consideration.² On 14 September 2004 we had made our formal

1 Standing Order No. 141(7)

2 Twelfth Report from the Regulatory Reform Committee, Session 2003-04, *Proposal for the Regulatory Reform (Unsolicited Goods and Services Act 1971) (Directory Entries and Demands for Payment) Order 2004*, HC 1056

report to the House, in which we recommended that the proposal should be amended before a draft Order was laid.³

9. The Department has responded to the findings of our previous Report by dropping Proposal B and amending Proposal C, as set out in the explanatory statement laid with the draft Order.

Proposal A (Repeat entries and renewals)

10. Proposal A was to reduce the burdens imposed on directory publishers by section 3 of the Unsolicited Goods and Services Act 1971 (the “1971 Act”), by disapplying the authorisation requirements in this section for certain repeat and renewed entries. Section 3 requires the same set of formalities to be carried out for every entry in a directory, regardless of whether the client is merely “rolling over” or repeating their directory entry from one issue to the next.

11. The Act prescribes three methods of authorising an entry in a directory, and these are:

- *Business Order* method, where an advertiser requests an entry on a document with their letterhead.
- *Note of Agreement*, where the publisher sends the advertiser a Note, which they sign, return, and retain a copy for themselves, and
- *Electronic Communication*, where the advertiser acknowledges receipt of, and agrees to the terms of, an electronic communication sent by the publisher.

12. According to the Department, Proposal A would lift unnecessary burdens on directory publishers and advertisers alike, by no longer requiring these authorisation procedures where an entry is repeated or renewed under certain conditions. We were satisfied that Proposal A would reduce burdens, while continuing all necessary protection.⁴

The Department’s response

13. The Order laid before Parliament includes Proposal A, unchanged. The Department concluded that Proposal A would save businesses time and money by allowing them to take advantage of simpler methods for authorising repeat directory entries and renewals, and was likely to bring benefits to consumers from greater innovation across the sector. Since the dropping of Proposal B, however (see below), there would not be a simple, payment mechanism for approving initial directory entries, and so the expected innovation in the industry is now considered likely to be less than it would have been.

3 *Votes and Proceedings*, 14 September 2004

4 Twelfth Report from the Regulatory Reform Committee, Session 2003-04, *Proposal for the Regulatory Reform (Unsolicited Goods and Services Act 1971) (Directory Entries and Demands for Payment) Order 2004*, HC 1056, paragraphs 25 and 35.

Proposal B (Telephone authorisation)

14. The Department's Proposal B would have permitted publication to be agreed on the telephone in the course of one or more conversations providing (i) the publisher provided the purchaser with certain specified information and (ii) the purchaser made payment for the entry by means of a debit or credit card.

15. The Department itself conceded at the time of laying its Proposal that permitting telephone authorisation in this way might make it possible for rogue publishers to operate telephone-based deceptions relating to directories of no value, or which might not actually exist. The Office of Fair Trading did not support Proposal B, because it believed it could allow too much scope for deceptions to be practised and because there would, in the OFT's view, be difficulties in determining whether the prescribed information had in fact been provided during a telephone call if this was subsequently disputed by the advertiser.

16. The Department nevertheless considered that the risk that credit card payment for directory entries authorised by telephone would be exploited for sharp practices was no more significant than risks from card payment in other areas of publishing not covered by the 1971 Act. It therefore argued that it would be anomalous to impose different regulatory standards on advertising businesses operating directories from those which applied to, for example, newspaper advertising.

17. We shared the concerns expressed by the Office of Fair Trading about the risk of telephone-based deceptions and the difficulties of enforcement to which Proposal B might give rise. We considered that Proposal B failed to continue necessary protection, and we recommended that Proposal B should be omitted from the draft Regulatory Reform Order.⁵

The Department's response

18. The Department's statement reiterated its view that phone authorisation would have been a useful and cost-effective method, for those advertisers who might have wished to use it. The Department acknowledged, however, that enforcing the Control of Misleading Advertisements Regulations 1988 could be more difficult in relation to telephone authorisation. Consequently, the Department decided to omit Proposal B from the draft Order laid for final scrutiny.

19. Proposal B, the telephone authorisation procedure, has been removed from the draft Order by deleting article 2(6) and by amendments to articles 2(3), 2(4)(b) and article 2(8). The amendment to article 2(8) — which has become article 2(7) on the deletion of article 2(6) — is to subsection (1) of the new section 3B. References to the telephone authorisation procedure in Part 1 of the Schedule have also been deleted.

20. According to the Department's statement on the revised Order, the effect of omitting Proposal B is to reduce, slightly, the risks of scams and the costs to business arising from such scams. The Department says that it is not possible to quantify savings arising from omitting the telephone authorisation Proposal, as there was no information on the extent

5 *Ibid.*, paragraph 49

to which businesses would have been likely to take up the opportunities provided by this Proposal.⁶

Proposal C (Form and content of invoices and similar documents)

21. Proposal C was to repeal section 3A of the 1971 Act (and with it the Unsolicited Goods and Services (Invoices etc) Regulations 1975) and to impose requirements as to the form and content of invoices and other documents related to directory entries which were less prescriptive and which, in particular, allowed for the use of electronic documents as invoices.

22. The 1975 Regulations presently require that such a document bear the statements “THIS IS NOT A DEMAND FOR PAYMENT. THERE IS NO OBLIGATION TO PAY. THIS IS NOT A BILL”.

23. We asked the Department to consider whether it might not be clearer simply to continue to require the inclusion of the presently prescribed forms of words in invoices issued in these circumstances, on the basis that these do make quite clear that those who receive them are not required to pay them. The Department believed that the essential point was that a given invoice or other document would still make clear that no payment was being demanded, but that the requirement would take a less prescriptive form. This amounted in its view to a fully adequate continuation of protection for directory advertisers.

24. We accepted that Proposal C would continue a requirement on directory publishers to make clear to their prospective clients that no payment was due, where a directory entry had not previously been authorised in one of the prescribed ways. It seemed to us that it would be reasonable to continue to require the inclusion of the current statements, that there would be no difficulty in an electronic document reproducing the statements equally as well as a paper document and that to continue this requirement would be beneficial, in terms of clarity and simplicity, both for client businesses and directory publishers themselves. We therefore recommended that Proposal C should be amended, to provide a requirement that invoices and similar documents must continue to bear the statements presently prescribed in the 1975 Regulations.⁷

The Department's response

25. The Department's statement says that it is willing to incorporate the precise wording of the statements prescribed in the 1975 Regulations in the Subordinate Provisions that govern the wording of specific documents under Proposal C.

26. Paragraph (b) of Part 2 of the Schedule to the draft Order has been amended, to give effect to the changes to Proposal C. If an invoice or similar document is not to be regarded as asserting a right to payment, it must now bear the following statement in uppercase

6 DTI statement paragraph 34

7 Twelfth Report from the Regulatory Reform Committee, Session 2003-04, *Proposal for the Regulatory Reform (Unsolicited Goods and Services Act 1971) (Directory Entries and Demands for Payment) Order 2004*, HC 1056, paragraph 53

lettering and displayed in a manner which makes the statement readily apparent to a reasonable person reading the invoice or similar document: “THIS IS NOT A DEMAND FOR PAYMENT. THERE IS NO OBLIGATION TO PAY. THIS IS NOT A BILL”.

27. **We are satisfied that the responsible Minister has had due regard to our previous Report on the proposal for the draft Order.**

4 Other representations made on the proposal

House of Lords Committee on Delegated Powers and Regulatory Reform

28. The House of Lords Delegated Powers and Regulatory Reform Committee was satisfied that the proposed conditions attaching to repeat and renewed entries, taken together with the Control of Misleading Advertisements Regulations 1988, provided necessary protection in relation to Proposal A.⁸

29. The House of Lords Delegated Powers and Regulatory Reform Committee was not convinced by the Department’s arguments in support of Proposal B. While acknowledging that the 1971 Act provided little protection against scams operating from abroad, the Lords Committee remained concerned about whether adequate protection would be provided by an arrangement which relied on an individual’s caution when invited to provide credit or debit card details. The Lords Committee considered that Proposal B did not meet the necessary protection test, and recommended that the Proposal be amended to strengthen the protection of businesses against “rogue publishers”.⁹

30. The House of Lords Delegated Powers and Regulatory Reform Committee commented in relation to Proposal C on the Department’s approach in ensuring the 1971 Act was compatible with the European Union E-Commerce Directive, by way of making separate regulations under section 2(2) of the European Communities Act 1972. Whilst the Lords Committee understood why this approach was adopted in this particular instance, it indicated that generally the Lords Committee would find this approach unsatisfactory.¹⁰

31. As described above, the Department decided to drop Proposal B and to modify Proposal C.

32. The Department states that no other representations were received on the proposal.¹¹

8 Twenty-ninth Report from the House of Lords Delegated Powers and Regulatory Reform Committee, Session 2003-04, *Proposal for the Regulatory Reform (Unsolicited Goods and Services Act 1971)(Directory Entries and Demands for Payment) Order 2004*, HL 170, paragraph 15

9 *Ibid.*, paragraph 26

10 *Ibid.*, paragraph 10

11 DTI Statement, paragraph 28

5 Recommendation

33. In accordance with Standing Order No. 141(15), we recommend unanimously that the draft Order be approved.

Formal minutes

Tuesday 9 November 2004

Members present:

Mr Peter Pike, in the Chair

Mr Russell Brown

Mr Denis Murphy

Mr Mark Lazarowicz

Brian White

The Committee deliberated.

Draft Report [Draft Regulatory Reform (Unsolicited Goods and Services Act 1971) (Directory Entries and Demands for Payment) Order 2004], proposed by the Chairman, brought up and read.

Ordered, That the Chairman's draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 33 read and agreed to.

Resolved, That the Report be the Thirteenth Report of the Committee to the House.

Ordered, That the Chairman do make the Report to the House.

[Adjourned till Tuesday 16 November at 9.30 am.]

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