

Unsolicited Goods and Services Act 1971

PUBLIC CONSULTATION
ON PROPOSED CHANGES
TO THE UNSOLICITED
GOODS AND SERVICES
ACT 1971 BY MEANS OF A
REGULATORY REFORM
ORDER

No: CCP 003/03

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Summary of Proposals

What is being consulted on?

1. Reducing burdens imposed on directory publishers by section 3 of the Unsolicited Goods and Services Act 1971 (the “1971 Act”), by amending the process required to authorise both initial and repeat entries in a directory.
2. Amending the Unsolicited Goods and Services (Invoices etc) Regulations 1975 (the “1975 Regulations”), which govern the form and content of certain documents for the purposes of the 1971 Act, to include electronic as well as paper based documents.

Why are these changes needed?

3. The changes are necessary because
 - The 1971 Act burdens directory publishers, and also businesses and individuals that choose to place paid entries in directories by requiring that arrangements for such entries be evidenced in a written format complying with procedures in the 1971 Act. Such procedures can be cumbersome and time-consuming especially in view of modern commercial realities.
 - The 1971 Act is intended to protect against certain scams operated by disreputable directory publishers. However, the 1971 Act imposes heavy administrative requirements or “burdens” and, in our view, other necessary protections are available.
 - The burdens restrict the competitiveness of British directory publishers in an increasingly global marketplace for directory publishing.
 - The burdens restrict the competitiveness of directory publishers when competing with other advertising media which are not subject to such regulation.
 - Some of the justifications used for the burdens within the 1971 Act are no longer valid in today’s context of mass electronic communication.
 - The 1975 Regulations currently pertain only to paper documents and not to electronic ones yet either medium could be used to issue invoices or similar documents which may mislead the recipient of the document.

Who will these proposals affect?

4. The proposals will affect
 - Directory publishers
 - Current and potential advertisers in directories
 - The proposal to amend the 1975 Regulations will also affect suppliers who do not wish to be regarded as asserting a right to payment under section 2 of the 1971 Act for certain unsolicited goods

What will be the financial impact of the change?

5. After any initial costs involved in amending business processes (should directory publishers choose to take advantage of the proposed changes), the proposals will allow directory publishers to utilise more efficient practices. This efficiency gain should lead to directory publishers offering a more competitive advertising product to advertisers and may lead to an increase in their selling and marketing activities. Additionally, businesses and individuals that choose to advertise in directories will not be burdened by unnecessary paperwork providing them with an administrative saving. A full analysis of the possible costs and savings is contained in Annex E.

How will these proposals be taken forward and when will they be implemented?

6. The Regulatory Reform Act 2001 provides for an order making power to reform legislation which has the effect of imposing "burdens" affecting persons in the carrying on of any activity. Such orders are referred to as Regulatory Reform Orders and are essentially made with a view to removing or reducing any of those burdens. The Act defines "burden" as including "a restriction, requirement or condition (including one requiring the payment of fees or preventing the incurring of expenditure) or any sanction (whether criminal or otherwise) for failure to observe a restriction or to comply with a requirement or condition, and any limit on the statutory powers of any person (including a limit preventing the charging of fees or the incurring of expenditure)".
7. We intend that the proposed changes to legislation as outlined in this document will be made through a Regulatory Reform Order under the Regulatory Reform Act 2001. Subject to the outcome of consultation, we propose that the changes are implemented as soon as is practicable.
8. We need to be sure that an Order does not remove any necessary protection from individuals or businesses and that it does not prevent them from exercising existing rights or freedoms that they might reasonably expect to continue to exercise. When an Order imposes a burden, it must be desirable; the order must also strike a fair balance between the public interest and the interest of those who are affected by the burden being created; and the burden must be proportionate to the expected benefit.

Consultation

9. This consultation is being made in accordance with the Regulatory Reform Act 2001 (summary at Annex C) and the terms of the Government's Code of Practice on Written Consultations (Annex D)
10. All responses should be received by 27/06/2003.

Crynodeb o'r Cynigion

Beth yr ymgynghorir yn ei gylch?

11. Gostwng y beichiau a osodir ar gyhoeddwy cyfarwyddiaduron gan adran 3 o Ddeddf Nwyddau a Gwasanaethau na Cheisiwyd 1971 ("Deddf 1971"), drwy ddiwygio'r broses sydd eisiau i awdurdodi cofnodion cychwynnol a phellach mewn cyfarwyddiadur.
12. Diwygio Rheoliadau Nwyddau a Gwasanaethau na Cheisiwyd (Anfonebau etc) 1975 ("Rheoliadau 1975"), sy'n rheoli ffurf a chynnwys dogfennau arbennig at ddibenion Deddf 1971, i gwmpasu dogfennau electronig yn ogystal â rhai papur.

Pam bod angen y newidiadau hyn?

13. Mae angen y newidiadau oherwydd
 - Bod Deddf 1971 yn gosod baich ar gyhoeddwy cyfarwyddiaduron, a hefyd busnesau ac unigolion sy'n dewis rhoi cofnodion y telir amdanynt mewn cyfarwyddiaduron, drwy fynnu i'r trefniadau ar gyfer cofnodion o'r fath gael eu tystiolaethu ar ddiwyg ysgrifenedig sy'n cydymffurfio â threfniadaethau Deddf 1971. Gall y trefniadaethau hyn fod yn drwsgl a mynd â gormod o amser, yn enwedig yng ngoleuni realeddau masnachol diweddar.
 - Bwriad Deddf 1971 yw amddiffyn rhag mathau arbennig o dwyll a ddilynr gan gyhoeddwy cyfarwyddiaduron amheus. Fodd bynnag, mae Deddf 1971 yn gosod gofynion neu "feichiau" gweinyddol trwm ac, yn ein barn ni, mae mathau eraill o ddiogelwch angenrheidiol ar gael.
 - Mae'r beichiau'n rhwystro gallu cyhoeddwy cyfarwyddiaduron Prydeinig i gystadlu mewn marchnadfa gynyddol fyd-eang ar gyfer cyhoeddi cyfarwyddiaduron.
 - Mae'r beichiau'n rhwystro gallu cyhoeddwy cyfarwyddiaduron i gystadlu â chyfryngau hysbysebu eraill nad ydynt yn dibynnu ar reoleiddio o'r fath.
 - Nid yw rhai o'r dadleuon a ddefnyddir i gyfiawnhau beichiau Deddf 1971 yn ddilys mwyach yng nghyd-destun diweddar cyfathrebu electronig torfol.
 - Ar hyn o bryd, mae Rheoliadau 1975 yn gymwys yn unig i ddogfennau papur ac nid i rai electronig, er gwaetha'r ffaith bod modd defnyddio'r naill dull neu'r llall i roi anfonebau neu ddogfennau tebyg a allai gamarwain derbyniwr y ddogfen.

Ar bwy y bydd y cynigion hyn yn effeithio?

14. Bydd y cynigion yn effeithio
 - Ar gyhoeddwy cyfarwyddiaduron
 - Ar hysbysebwr presennol a photensial mewn cyfarwyddiaduron
 - Bydd y cynnig i ddiwygio Rheoliadau 1975 hefyd yn effeithio ar gyflenwyr nad ydynt am gael eu hystyried fel rhai sy'n mynnu hawl i dâl am nwyddau arbennig na cheisiwyd

Beth fydd effaith ariannol y newid?

15. Ar ôl unrhyw gostau cychwynnol fydd ynghlwm wrth ddiwygio prosesau busnes (os bydd cyhoeddwy cyfarwyddiaduron yn dewis manteisio ar y

newidiadau arfaethedig), bydd y cynigion yn caniatáu i gyhoeddwyr cyfarwyddiaduron ddilyn arferion mwy effeithiol. Dylai'r fantais hon o ran effeithiolrwydd ysgogi cyhoeddwyr cyfarwyddiaduron i gynnig cynnyrch hysbysebu mwy cystadleuol i hysbysebwr, a gall arwain at gynnydd yn eu gweithgarwch gwerthu a marchnata. At hynny, ni fydd busnesau ac unigolion sy'n dewis hysbysebu mewn cyfarwyddiaduron yn cael eu llesteirio gan waith papur diangen, gan greu arbediad gweinyddol iddynt. Gwelir dadansoddiad llawn o'r costau a'r arbedion posibl yn Atodiad E.

Sut yr eir ymlaen â'r cynigion hyn a pha bryd y cânt eu gweithredu?

16. Mae Deddf Diwygio Rheoleiddiol 2001 yn darparu ar gyfer gorchymyn yn cyflwyno'r pŵer i ddiwygio deddfwriaeth sydd o ran effaith yn gosod "beichiau" sy'n effeithio ar bobl wrth ddilyn unrhyw weithgarwch. Cyfeirir at orchmynion felly fel Gorchmynion Diwygio Rheoleiddiol ac yn eu hanfod cânt eu gwneud gyda golwg ar ddileu neu leihau unrhyw rai o'r beichiau hynny. Mae'r Ddeddf yn diffinio "baich" fel rhywbeth sy'n cynnwys "cyfyngiad, rheidrwydd neu amod (gan gwmpasu rhai sy'n ei gwneud yn ofynnol talu ffi neu sy'n atal tynnu cost) neu unrhyw gosb (un droseddol neu fel arall) am fethiant i barchu cyfyngiad neu i gydymffurfio â rheidrwydd neu amod, ynghyd ag unrhyw derfyn ar bwerau statudol unrhyw berson (gan gwmpasu terfyn sy'n atal codi ffioedd neu dynnu cost)".
17. Bwriadwn wneud y ddau newid arfaethedig i'r ddeddfwriaeth drwy gyfrwng Gorchymyn Diwygio Rheoleiddiol o dan Ddeddf Diwygio Rheoleiddiol 2001. Gan ddibynnu ar ganlyniad yr ymgynghori, cynigiwn weithredu'r newidiadau mor fuan ag y bydd hynny'n ymarferol.
18. Mae eisiau inni fod yn siŵr nad yw Gorchymyn yn cael gwared ag unrhyw ddiogelu angenrheidiol a fwynheir gan unigolion neu fusnesau, ac nad yw'n eu hatal rhag arfer hawliau neu ryddid presennol y gallent ddisgwyl yn rhesymol gael parhau i'w harfer. Lle bo Gorchymyn yn gosod baich, rhaid i hwnnw fod yn rhywbeth i'w ddymuno; rhaid i'r Gorchymyn hefyd daro cydbwysedd teg rhwng lles y cyhoedd a lles y rhai yr effeithir arnynt gan y baich a gaiff ei greu; a rhaid i'r baich fod yn gymesur â'r fantais ddisgwyliedig.

Ymgynghori

19. Trefnir yr ymgynghori hwn yn unol â Deddf Diwygio Rheoleiddiol 2001 (crynodeb yn Atodiad C) a thelerau Cod Ymarfer y Llywodraeth ar Ymgynghori Ysgrifenedig (Atodiad D).
20. Dylai pob ymateb ddod i law erbyn 27/06/2003.

Introduction

21. This consultation paper sets out in detail the Government's proposals for streamlining the process by which a directory publisher must gain authorisation from a client before accepting and charging for an entry. The Unsolicited Goods and Services Act 1971 ("the 1971 Act") stipulates the requirements.
22. The 1971 Act makes no distinction between a business and an individual (that is, persons acting in a non-business capacity) who choose to take out a paid entry in a directory - a directory publisher is required to follow a rigorous authorisation process when accepting an entry from either. However, in practice few individuals choose to place paid entries in directories. For convenience this consultation document will generally refer only to business clients. Unless otherwise indicated, such references include individual clients.
23. Section 3 of the 1971 Act requires directory publishers to gain authorisation from a business that wishes to include a paid entry in a directory, via one of three methods prescribed in detail. This is to ensure that businesses are protected from certain scams (outlined in paragraphs 29-30) and that they make a fully informed decision concerning their directory entry.
24. As it stands, the 1971 Act's requirements produce heavy administrative burdens. It is our view that the majority of the burdens can be reduced while still maintaining the protections that are currently offered. The administrative burdens also place British directory publishers at a competitive disadvantage to overseas based competitors who are not subject to the same requirements (but who are able to compete for the British market), and also to other advertising mediums within Britain which are not subject to equivalent requirements.
25. The proposals aim to reduce the administrative burden for directory publishers, by relaxing authorisation requirements while still ensuring that businesses retain necessary protection from scams. In particular, it is proposed that the strict authorisation requirements for a repeat or a renewed entry in a directory be disapplied, and that businesses be given the opportunity to enter into an agreement for an initial entry immediately over the telephone, without the need for any written communications, provided they are given sufficient information to make an informed decision and provided they pay for the entry via debit or credit card. This is to take into account standard modern commercial practices.
26. This Consultation Paper takes forward suggestions received in response to the DTI's previous consultation document *Simplification of the Unsolicited Goods and Services Act 1971 (as amended)* – December 1999. This paper is available at <http://www.dti.gov.uk/CACP/ca/consultation/goodserv.htm>.
27. Both directory publishers and their advertisers are expected to benefit from reduced administrative burdens.

28. We propose to introduce the reform by means of a Regulatory Reform Order under the Regulatory Reform Act 2001. This consultation is being conducted in accordance with section 5 of the Act. Views are invited on all aspects of the consultation paper, and a number of specific questions are set out in the response form at Annex B.
29. Each proposal for a Regulatory Reform Order must satisfy a number of legal tests. These tests are set out in detail at Annex F.

Consultation

30. The Regulatory Reform Act 2001 requires Departments to consult widely on regulatory reform proposals. It requires us to collect evidence on a number of issues from a wide range of consultees. A list of consultees, including the devolved administrations, to whom the document has been sent can be found at Annex A. The complete consultation document is available on the Internet at:
 - <http://www.dti.gov.uk/ccp/consultations.htm>
 - <http://www.cabinet-office.gov.uk/regulation/act/condocs.htm>; and
 - <http://www.ukonline.gov.uk/>
31. Comments are invited from all interested parties, and not just from those to whom the document has been sent.
32. The Parliamentary Committees who will deal with orders under the Regulatory Reform Act have requested that a note explaining the Parliamentary process for orders to be made under the Act be annexed to all consultation papers so that consultees understand when and to whom they are able to put their views, should they wish to do so. This is set out in Annex C. Annex C also outlines the type of change a Regulatory Reform Order can make, the information required before an Order can be approved, and details about disclosure of responses.
33. This consultation document follows the format recommended by the Cabinet Office for such proposals. The criteria applicable to all UK public consultations under the Cabinet Office Code of Practice on Consultation are set out in Annex D.

Disclosure

34. Normal practice will be for details of representations received in response to this consultation document to be disclosed, or for respondents to be identified. While the Act provides for non-disclosure of representations, the Minister is required to include the names of all respondents in the list submitted to Parliament alongside the draft Order. You should note that:
 - If you request that your representation is not disclosed, the Minister will not be able to disclose the contents of your representation without your express consent and, if the representation concerns a third party, their consent too. Alternatively, the Minister may disclose the content of your representation but only in such a way as to anonymise it.

- In all cases where your representation concerns information that may be damaging to the interests of a third party, the Minister is not obliged to pass it on to Parliament if he does not believe it to be true or he is unable to obtain the consent of the third party.

Please identify any information which you or any other person involved do not wish to be disclosed. *Please be aware that any e-mail response sent from a corporate system may carry an automatically generated notice stating that the content of the message should be treated as confidential. Where you do not wish your views to be treated as confidential, please make it clear that such an automatically generated message does not apply.*

35. Finally, you should be aware that the scrutiny Committees will be able to request sight of your representation as originally submitted. This is a safeguard against attempts to bring improper influence to bear on the Minister. We envisage that, in the normal course of events, this provision will only be used rarely and on an exceptional basis.

36. Comments should be sent by 27/06/2003 at the latest to

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Department of Trade and Industry
Better Regulation Team
V610
1 Victoria Street
London
SW1H 0ET

Telephone: 020 7215 0349
Fax: 020 7215 2837
E-mail: UGSA@dti.gsi.gov.uk

Representative groups are asked to provide a summary of the people and organisations they represent when they respond.

Background

Legislation Concerned

37. Section 3 of the Unsolicited Goods and Services Act 1971 (the “1971 Act”) contains regulations governing the authorisation of, and payment for, entries in directories. (Other provisions of the 1971 Act deal with protections for businesses receiving unsolicited goods and offences regarding certain unsolicited publications). Following lobbying by directory publishers the Consumer White Paper “Modern Markets: Confident Consumers” (July 1999) included a commitment to simplify the provisions set out in the 1971 Act on charging for entries in directories.
38. The 1971 Act extends to Wales and the subject matter is reserved under Section C7 of Schedule 5 to the Scotland Act 1998. The 1971 Act does not extend to Northern Ireland.
39. Prior to 1971, some rogue ‘directory publishers’ had the practice of sending businesses invoices for entries in directories without having gained their approval for inclusion. Some businesses would unwittingly pay such invoices (especially where follow up demands for payment and threats of retribution were made). Those responsible for such scams were often not ‘directory publishers’ at all, but simply claimed to have produced a non-existent directory. Where publications were produced, they were not generally of any commercial value and were not the type of production that a bona fide directory publisher would choose to be involved with or that a business would choose to advertise in.
40. Alternatively, some ‘directory publishers’, would send businesses documents, often asking for verification of details such as address and phone number, but which included ‘small print’. The small print provides that the effect of verifying details is to grant authority to the directory publisher for inclusion of an entry in the directory and to give consent to be charged for that entry. The directory publishers involved would say they had received due authorisation and claim payment. Again, this type of action was taken by people who would not produce a commercially viable publication, and it was not a tactic used by the bona fide directory publishing industry.
41. The 1971 Act addresses these issues by allowing businesses to refuse payment for **unauthorised** directory entries and to reclaim any such payments made. It also makes it an offence to claim payment for a directory entry without knowing or having reasonable cause to believe that the entry was authorised in accordance with the procedures laid out in the 1971 Act.
42. The 1971 Act prescribes three methods of **authorising** payment:
 - A business can sign an ‘order’. This is essentially a request for a directory entry on the business’s own letterhead paper. This method is subject to the least requirements on the basis the business needs to proactively and consciously produce a document requesting the entry.

- A business can sign a 'note'. A note is a document produced by a directory publisher and must state:
 - The amount of the charge directly above the place for signature
 - The date of publication of the directory or the issue in which the entry is to be included
 - The name and address of the publisher
 - The price at which the directory is to be placed on sale for
 - The minimum number of copies to be made available for sale or if the directory is free, how many copies will be distributed
 - Reasonable particulars of the entry

A copy of the note must be supplied to the business prior to their signing it, for their retention.

- A business can send an electronic communication which includes a statement that the business agrees to the charge as long as it has received a set of information from the directory publisher broadly similar to that required by the 'note', before the electronic communication is transmitted.
43. It is our view that while an authorisation process in some form is required for initial entries to ensure that necessary protections remain, there is little justification for requiring it for repeat or renewed entries. Nor is there justification for the authorisation process precluding initial entries being authorised over the phone if a business is provided with sufficient information to make an informed decision and is confident enough to pay for the entry immediately via a credit or debit card.
 44. The requirements when entering into a contract for an entry in a directory are incongruous with most business relationships where general contract law is deemed sufficient. As directory publishers compete for advertising budgets, this places them at a disadvantage to other advertising mediums where no such requirements exist. For example, there are no regulated authorisation requirements for placing an advertisement in a newspaper, allowing the newspaper industry to choose efficient authorisation and payment processes and subsequently keep their costs down.
 45. It should be noted that the 1971 Act came into force to protect businesses from rogue directory publishers but that the entire bona fide directory publishing industry is burdened by the requirements of section 3 of the 1971 Act. This industry is comprised of a small number of major directory publishers (for example those producing telephone directories) and a larger number of small directory publishers often producing specialist directories. Advice provided by the Directory and Database Publishers Association in 2000 indicated they had 53 members with a turnover of less than £2 million, 11 members with a turnover between £2 and 5 million and 13 members with a turnover greater than £5 million. They estimated that these 77 members accounted for 80% of the turnover in the sector.
 46. It is often the case that these bona fide publishers produce the same directory year after year, and there are businesses that choose to renew their entry every year. Examples of businesses who have been included in 25 annual editions of the same directory exist. Yet for every single edition, regardless of the relationship that exists, the same comprehensive and time-consuming

authorisation process must be adhered to – much to the irritation of publisher and advertiser alike.

47. The Unsolicited Goods and Services (Invoices etc) Regulations 1975 (the “1975 Regulations”) were made under section 3A of the 1971 Act. The 1971 Act provides that any invoice or similar document stating the amount of any payment *and not complying* with the requirements of regulations made under section 3A shall be regarded as asserting a right to payment.
48. Section 3(2) (“directory entries”) of the 1971 Act makes it an offence, amongst other things, to assert a right to payment for a directory entry without knowing or having reasonable cause to believe that the entry has been duly authorised in accordance with the 1971 Act. Section 2 (“Demands and threats regarding payment”) of the 1971 Act makes it an offence to assert a right to payment for what are known to be unsolicited goods sent to a *business* where there is not reasonable cause to believe there is a right to payment.
49. The 1975 Regulations specify the requirements as to content and form with which an invoice or similar document must comply in order for it *not to be regarded* as asserting a right to payment for the purposes of sections 2 and 3 of the 1971 Act. The aim of the 1975 Regulations is to enable business recipients of unsolicited goods *and* directory entrants to identify at a glance whether a particular document is an invoice which should legitimately be paid (or, for example, is simply an advert). The requirements of the 1975 Regulations include that the document must state “THIS IS NOT A DEMAND FOR PAYMENT. THERE IS NO OBLIGATION TO PAY” or “THIS IS NOT A BILL”.

Previous consultations

50. The 1971 Act has been the subject of a previous consultation paper: *Simplification of the Unsolicited Goods and Services Act 1971 (as amended)* – December 1999. This paper is available at <http://www.dti.gov.uk/CACP/ca/consultation/goodserv.htm>.
51. The 1999 paper consulted on three proposals to simplify the 1971 Act. The first was to allow electronic communications to be used in the authorisation process for directory entries. As outlined above, this is now possible and was brought into effect by the Unsolicited Goods and Services Act 1971 (Electronic Communications) Order 2001, made under the auspices of section 8 of the Electronic Communications Act 2000. This Act included powers that allowed a rapid response to this particular issue but not the other issues covered in the following two paragraphs.
52. The second proposal was to disapply the authorisation requirements, outlined above, from repeat or renewed entries. This suggestion received universal support within the directory publishing industry and a high degree of support from other consultees including consumer protection groups. The issue that concerned a small number of consultees was whether necessary protections for businesses from scams would be retained. This proposal is being taken forward by this Regulatory Reform Order proposal and issues regarding necessary protections are discussed in the ‘analysis’ section.
53. The third proposal was to revoke the 1975 Regulations and to repeal the regulation making powers and make consequential amendments to the 1971

Act. For the current consultation, this proposal has been amended – the 1975 Regulations place no burden on bona fide directory publishers, and could be usefully retained to repel rogue publishers, and widened to include electronic documents. As noted in the 1999 consultation paper, there has been previous debate about whether the 1975 Regulations are currently in force. It is our view that they are, and the proposal to amend the 1975 Regulations is put forward on that basis.

The Proposals

Burdens imposed by the 1971 Act

54. While the 1971 Act provides protection for businesses from rogue directory publishers, it also places a number of significant burdens on legitimate directory publishers and to the advertisers themselves. Recent concerns have been voiced that the requirements for written formalities to be followed ignores the realities of the modern business world. However the main concern, which has been raised in the past by lobby groups (for example, the Directory and Database Publishers Association) concerns repeat and renewed entries.
55. The 1971 Act requires the same set of formalities regarding authorisation (outlined in paragraph 32) to be carried out, for every entry in a directory, regardless of whether there is an existing business relationship and the client is merely ‘rolling over’ or repeating their directory entry from one issue to the next. This is placing an unnecessary burden on reputable directory publishers who are trying to compete in an increasingly international marketplace. The world of directory publishing has changed dramatically in recent years. On-line directories are now much more commonplace and clients can check and update their entries on a much more regular basis. In this context the need to make a prescribed authorisation for every repeat entry has become much more burdensome. Since on-line directories may be based anywhere in the world, more burdensome compliance requirements place British directory publishers at a disadvantage compared to other European publishers¹.
56. Informal consultation with a number of directory publishers has indicated that, among other things, the effect of the 1971 Act is to require them to:
- avoid offering immediate over the phone credit or debit card payment options, and consequently lower cost directory products and services
 - make more phone calls (to chase up businesses to send their signed orders),
 - have reduced cut off dates for advertising prior to printing (to allow orders to be received), and

¹ The Electronic Commerce (EC Directive) Regulations 2002 provide that businesses within the European Economic Area (EEA) which provide “information society services” are subject to the laws of their own country and can not be hindered by the national law of other EEA states in which they operate where such provisions impose requirements restricting freedom to provide the service. In other words, these Regulations allow an EEA directory publisher to operate electronically in Britain without being subject to the 1971 Act and 1975 Regulations where these are considered to impose such a restriction. Further details of the Electronic Commerce (EC Directive) Regulations 2002 can be found at http://www.dti.gov.uk/cii/e-commerce/europeanpolicy/e-commerce_directive.shtml

- spend more money on postage and stationary than might otherwise be the case.

57. The reason the written authorisation formalities were imposed in 1971, was due to the proliferation of scams involving rogue directory publishers either sending invoices for unsolicited directory entries or hiding directory charges within the small print of forms or documents. There is evidence that such scams still operate from within Britain, for which adequate protections and sanctions are needed. However, the scams that the 1971 Act sought to provide protection against were document based and did not involve direct personal interaction. Yet the authorisation requirements prevent orders for directory entries being placed over the telephone, with immediate payment by credit or debit card regardless of the fact this was not an avenue used by fraudsters. Further, the need to insist upon a complex authorisation procedure for repeat or renewed entries, where an existing business relationship exists, is also questionable for a number of reasons. Firstly, it is our view that after an initial entry, a business is in an informed position regarding the value of the entry to their business and the operation of the directory publishing company generally and secondly, a legitimate directory publisher who is chasing repeat business is unlikely to behave in a disreputable fashion towards businesses who have previously advertised with them – they would have more to gain commercially from continuing to satisfy clients.

Proposals to reduce the burdens

First proposal

58. The first proposal to reduce the burden of authorisation requirements, on both the directory publishing industry and those businesses which choose to place paid entries, is to set out the conditions for a repeat or renewed entry and disapply the authorisation requirements in section 3 of the 1971 Act (including the proposed initial telephone authorisation requirements detailed below) from such entries. For all repeat or renewed entries, the position would in general revert to ordinary contractual principles of offer and acceptance. Other options were considered when producing this consultation document and are discussed and analysed in the Partial Regulatory Impact Assessment at Annex E. They have not been proposed as they either do not take forward the policy objective or they place businesses at too great a risk of scams.
59. Setting out the conditions for a repeat or renewed entry raises a number of issues and the consultation referred to in paragraph 50 asked for comment on the matter. From the responses, a series of principles for describing the concept emerged:
- A) A repeat or renewed entry is one that takes place between the original contracting parties. The rationale for this is that an existing relationship provides businesses with certain information about the directory publisher.
 - B) A repeat entry can only occur where the customer has had an entry in the issue directly preceding the issue concerned. Where a directory is online and clients purchase exposure for a period of time rather than in a specific hard copy edition, a repeat entry can only occur where there is no time lapse between the two periods of time purchased.

(The rationale for this is that a lapse in entries implies a lapse in the business relationship and it would thus be appropriate for this relationship to be re-established via the 1971 Act's authorisation process).

- C) A repeat entry *can* occur where the business changes the content of their entry. (It would be hard to justify a new authorisation process when, for example, a business simply wishes to update their phone number or address).
- D) A repeat entry cannot occur where there is a significant change in form, content or distribution of the directory from the edition containing the initial entry. By significant change, we mean one which may influence, though not necessarily decisively, the mind of a reasonable person as to whether to continue with an entry in a directory. (Legitimate directory publishers would *presumably* consult with, or announce to, their clients any such change and allow them to take appropriate action. The argument is that where a significant change occurs, a requirement is needed to ensure businesses make an informed decision about continuing to advertise in a particular directory).

- 60. If the proposal to disapply the authorisation requirements of section 3 (including the new proposal regarding telephone authorisation) of the 1971 Act for repeat entries is taken forward, our intention is that the principles outlined in paragraph 5
- 61. 9 be the basis for determining whether an entry is to be deemed a repeat entry. We invite consultee's comments on these principles and whether any are seen as problematic.

Second Proposal

- 62. The second proposal is to allow businesses to choose to enter into an agreement for an initial directory entry immediately over the telephone, without the need for any written communications, provided that:
 - they are given sufficient information to make an informed decision and
 - pay for the entry via debit or credit card.This proposal will benefit both directory publishers and businesses by providing a means of *immediate* and convenient payment should a business wish to do so. Currently this option is not available due to the requirement for either a paper or electronic document to be received, and so extra administrative steps for both businesses and directory publishers must take place.
- 63. The type of information required to be given verbally under this proposal would include information similar to that required to be given under the current arrangements, for example the:
 - amount of the charge
 - date of publication of the directory or the issue in which the entry is to be included
 - price at which the directory is to be placed on sale for
 - minimum number of copies to be made available for sale or if the directory is free, how many copies will be distributed.

64. The rationale behind this proposal is that for most other services offered to a business, there is an option to conclude contracts verbally over the telephone with (immediate) payment by credit or debit card. If a business is confident enough in the service being provided they may choose this option. There appears no justification for singling out directory publishing services for different treatment in this instance. This proposal will not, in our view, make businesses more susceptible to scams (this point is discussed below in the analysis section), but rather takes into account modern commercial practices. Regardless, there will be a requirement for directory publishers to provide businesses with enough information for an informed decision to be made regarding payment. We invite consultee's comments on all aspects of this proposal and exactly what information should be provided by the directory publisher.

Supplementary proposal

65. A supplementary proposal is being made, that we amend the 1975 Regulations in order to update them to include electronic documents as well as paper-based documents. One way this can be achieved is by removing references to paper specific requirements and substituting general requirements that pertain to "documents" (which refer to both paper based and electronic documents). For example, requirements such as including the words 'This is not a demand to pay' would apply to both electronic and paper documents. The outcome achieved would be that documents would have to be clearly labelled as not being a bill if they were to avoid asserting a right to payment, regardless of whether they are paper based or electronic.

66. As mentioned above, there has been some debate as to whether the 1975 Regulations, though not revoked, are in force. We are therefore considering whether a technical provision is needed in this regard.

67. We invite consultee's comments on all aspects of this proposal.

Consumer Protection (Distance Selling) Regulations 2000

68. The Consumer Protection (Distance Selling) Regulations 2000 (the "2000 Regulations") apply to contracts for goods and services supplied to consumers (that is, persons acting in a non-business capacity) where the contract is concluded exclusively by means of distance communication. The 2000 Regulations provide that "in good time prior to the conclusion of the contract" the consumer must be provided with certain information, for example, the identity of the supplier, a description of the main characteristics of the goods or services and the price. Also, in certain circumstances, the consumer is given a "cooling-off period" within which to cancel the contract

69. While it is rare for consumers to pay for an entry in a directory, there is therefore a degree of overlap between the 2000 Regulations and the 1971 Act where a *consumer* enters into a contract for a directory entry exclusively by means of distance communication. The Department of Trade and Industry is proposing to consult separately on amendments to the 2000 Regulations. However, we are considering whether provisions in the proposed RRO are needed or are desirable to deal with the interplay. Again, consultee's views and comments are invited.

Analysis

Proposal A – repeat or renewed entries

70. This proposal would disapply the authorisation requirements contained within section 3 of the 1971 Act from repeat or renewed entries in directories, reducing a burden on both directory publishers and those who choose to pay for entries in directories.

Necessary protections

71. In our view, necessary protections will be maintained for those who choose to pay for entries in directories.
72. The authorisation process will only be disapplied where the transaction takes place between the original contracting parties. That is, there must be an existing business relationship for the authorisation requirements to be disapplied. A business will thus be in a better position to make an informed decision based on their previous experience of the directory publisher.
73. The authorisation process will only be disapplied where there has not been a significant change in form, content or distribution of the directory. This will ensure that a business's previous experience will be relevant to the decision they are being asked to make.
74. For repeat entries, the position will in general be governed by ordinary contractual principles. A business will still have to signify agreement to the directory publisher to continue the arrangement.
75. There were two types of scam that the 1971 Act was introduced to afford protection against – the first involved directory publishers sending documents which asked for verification of company details but which sought to hide the effect of such verification in the small print. The Control of Misleading Advertisements Regulations 1988 (the “1988 Regulations”) provide that in certain circumstances the Office of Fair Trading may apply for an injunction to stop publication of misleading advertisements. The 1988 Regulations define an advertisement as “any form of representation which is made in connection with a trade, business, craft or profession in order to promote the supply or transfer of goods or services...” An advertisement is deemed misleading if it, broadly speaking, in any way, including its presentation, deceives persons and by reason of its deceptive nature is likely to affect their economic behaviour. The 1988 Regulations could provide alternative protections against such practices for repeat entries where such documents are deemed to be misleading advertisements.
76. The second type of scam which the 1971 Act sought to provide protection against involved a directory publisher sending an invoice for an unsolicited directory entry in the hope that it was deemed to constitute a legitimate right to payment and was consequently paid. Such behaviour would still be prohibited under section 3(2) of the 1971 Act for initial entries but would not be punishable under section 3(2) for repeat or renewed entries. In our view this protection is not necessary for subsequent entries – it is unlikely that a directory publisher would follow the authorisation process for an initial entry and then revert to dubious business practices for subsequent entries. The

strength of protection of the 1971 Act as it currently operates, lies in the authorisation procedure for initial entries filtering out rogue directory publishers.

Rights and Freedoms

77. This proposal will entail that there is no statutory right to require certain written evidence of a contract for a repeat or renewed entry, as currently required by the 1971 Act. However, principles of contract law will in general still govern repeat or renewed entries, and a business wishing to advertise within a directory could still make a written contract a requirement prior to giving their consent to advertise in a directory. In our view, the current right provides no benefit to businesses who pay to advertise in directories and it is not a right that they could “reasonably” expect to continue to exercise in the same terms as currently.

Burdens

78. The aim of this proposal is to *reduce* the burdens in section 3 of the 1971 Act by disapplying the authorisation requirements for repeat and renewed entries.

Proposal B – telephone authorisation for initial entries

79. The proposal to allow telephone authorisation of initial entries involves amending section 3 of the 1971 Act to allow those who wish to pay for an entry in a directory to agree to an entry without receiving any written details. This is on the condition that they have been verbally provided with specific information by the directory publisher and wish to pay by credit or debit card.

Necessary protections

80. Under the telephone authorisation proposal, the directory publisher will still have to provide specific information. If a business that wishes to pay for the directory entry is concerned about the veracity of the caller or the directory, they can still opt to use the alternative authorisation procedures and make the decision not to provide credit or debit card details over the phone – a decision they make when considering providing such details for *any* telephone transaction.
81. The two types of scam which the 1971 Act was introduced to provide protection against are both document based. Allowing telephone authorisation will not undermine protections against such document based scams. Specifically, protection against the scam involving hiding authorisation in the small print of documents will still exist for initial entries as section 3 requirements of the 1971 Act are not being repealed. As argued above, it is our view that such protections for subsequent entries are not necessary. There will also be protections against scams involving sending unsolicited invoices by virtue of section 3(1) and 3(2) of the 1971 Act.
82. The telephone authorisation proposal would bring the industry into line with other areas that offer business services by allowing services to be paid for immediately over the phone. Such a change may allow rogue operators to run novel telephone based scams, by attempting to gain credit card details from businesses for non-existent or misrepresented directories. However, our view is that the directory publishing field is not at a greater risk of such scams than

other areas and that the proposal itself is unlikely to lead to an increase in scams.

Rights and freedoms

83. In our view the proposal does not prevent any person from continuing to exercise any right or freedom which they might reasonably expect to continue to enjoy. Initial authorisation procedures involving certain written evidence may be used where parties do not wish to enter into a purely oral arrangement.

Burdens

84. The proposal aims to reduce existing burdens in section 3 by allowing purely oral authorisation in certain circumstances, rather than imposing a new burden.

Proposal C – Amending the 1975 Regulations to include electronic documents

Necessary protections

85. The proposal to extend the 1975 Regulations to cover electronic as well as paper documents aims to prevent businesses being misled as to the status of an electronic document stating the amount of any payment, and erroneously considering such a document as asserting a right to payment. As such, the proposal will extend the current protections offered by the 1975 Regulations.

Rights and Freedoms

86. Currently, electronic documents stating the amount of any payment need not comply with the requirements of the 1975 Regulations. Thus, it may not be readily apparent to a business that there is no obligation on their part to make a payment.
87. It is our view that directory publishers (and suppliers to which section 2 of the 1971 Act applies) cannot reasonably expect that the format of electronic documents are not regulated when paper documents are.

Burden

88. The proposal to extend the 1975 Regulations imposes a new requirement or burden and as such needs to be considered against the tests required by the Regulatory Reform Act 2001.

i) Proportionality: The proposed burden updates a piece of legislation that, when originally drafted, did not anticipate modern methods of communication. The requirement is minor – it is only applicable in very specific circumstances (where directory publishers or suppliers to which section 2 of the 1971 Act applies wish to send an electronic document stating an amount of payment but without wishing to assert a right to the payment), and is not unduly onerous. The proposal will benefit businesses and individuals by making clear an electronic document is not making a demand for payment, where there is no right to payment.

A breach of the 1975 Regulations means that the document in question will be

regarded as asserting a right to payment. This is relevant in determining whether an offence has been committed under section 2 and section 3(2) of the 1971 Act. However, there is no proposal to amend the punishments contained within the 1971 Act, thus any breach could only incur the level of sanction currently available.

ii) Fair balance test: The proposed regulatory reform order will, as a whole, reduce burdens for directory publishers and those who choose to pay for an entry in a directory. This particular proposal will impose a burden on a small category of persons, namely those who wish to send electronic documents that state an amount of payment but who do not wish to assert a right to that payment. This burden will widen the protection available to businesses and individuals who might be the target of invoicing scams. In our view, the regulatory reform order as a whole, strikes a fair balance between the interests of the public and the interests of the small category of persons affected by the new burden. The proposals protect businesses and individuals generally from scams, while imposing a small burden on a small category of persons.

iii) Desirability test: It is our view that the proposed regulatory reform order is desirable. It provides a large and tangible benefit for directory publishers and those who choose to pay to advertise in directories by reducing existing burdens while only imposing a slight burden on a small category of persons. The proposed order will allow directory publishers to streamline their business processes and will reflect the modern commercial environment.

Costs and savings

89. The costs and savings of the proposals are set out in detail in the Partial Regulatory Impact Assessment at Annex E. The proposal concerning authorisation requirements will save directory publishers money by allowing more efficient business practices to be implemented. For example, in a response to previous consultation the Directory and Database Publishers Association estimated that some of the 1971 Act's authorisation requirements cost 25% more than methods that would be considered good practice within other industries. The proposals will also save businesses time and money by allowing them to take advantage of simpler payment methods for initial directory entries. It is also possible that new lower cost directory products become available as directory publishers take advantage of reduced burdens.
90. The only costs that arise from the proposals involve the money it would take to develop new efficient business practices (should directory publishers choose to take advantage of changes to the 1971 Act). There is no reason to expect any increase in scams as a result of the proposals given the protections that will remain.
91. The proposal to amend the 1975 Regulations will not impose any costs on legitimate businesses but may produce savings if it dissuades would be scammers from using electronic documents to avoid the current regulations.

ANNEX A: LIST OF CONSULTEES

Advertising Association
Alliance of Independent Retailers
AP Information Services Ltd
British Chambers of Commerce
British Retail Consortium
British Tourist Authority
BT
Centre for Commercial Law Studies
Chamber Wales
Citizen's Advice Scotland
Community Enterprise Wales
Confederation of British Industry
Confederation of British Industry (Wales)
Consumers' Association
Department of Economic Development
Direct Marketing Association (UK) Ltd
Directory and Database Publishers Association
Faculty of Advocates
Federation of Small Business
Federation of Small Business (Wales)
Hollis Publishing Ltd
HM Treasury
Institute of Consumer Affairs
Institute of Directors
Institute of Directors (Wales)
Kemps Publishing Ltd
Law Commission
Law Society
Local Authorities Co-ordinators of Regulatory Services
Local Government Association
National Anti Fraud Network
National Association of Citizens' Advice Bureaux
National Caravan Council Ltd
National Consumers Federation
National Council for Voluntary Organisations
National Federation of Consumer Groups
Newspaper Society
Office of Fair Trading
Reed Publishing
Scottish Consumer Council
Scottish Enterprise
Scottish Executive
Scottish Law Commission
Small Business Council
The Forum for Private Business
The Law Society of Scotland
The National Assembly for Wales
The National Federation of Community Organisations
The Welsh Assembly
Thomson Directories
Trade Services Information Ltd
Trading Standards Institute

Welsh Consumer Council
Welsh Council for Voluntary Action
Welsh Local Government Association
Yell

ANNEX B: RESPONSE FORM

Please use this form as a cover sheet for responses

Respondent Details	Please return by 27 June 2003 to:
Name:	Rohan Biggs
Organisation:	Department of Trade and Industry Better Regulation, Consumer & Competition Policy
Address:	V610 1 Victoria Street London SW1H 0ET
Postcode:	Tel: 020-7215 0349
Telephone:	Fax: 020-7215 2837
Fax:	Email: UGSA@dti.gsi.gov.uk
email:	

If you are replying on behalf of a representative group please summarise the people or organisations your group represents:

Tick this box if you are requesting non-disclosure of your response:

Consultees are invited to give reasons for their answers.

Questions

1. Generally speaking, do you support the proposals for reforming the Unsolicited Goods and Services Act 1971?
2. Do you support the extension of the Unsolicited Goods and Services Act (Invoices etc) Regulations 1975 to include electronic documents?
3. Do you think that any of the proposals would reduce necessary protections from scams? Do you think any other necessary protections would be removed by any of the proposals?
4. Do you think that any of the proposals would prevent a person or business from exercising rights or freedoms they might reasonably expect to continue to exercise?
5. (This question is aimed primarily at the directory publishing industry) Do you think the proposals will save the directory publishing industry or your business money? Are you able to quantify any savings you expect? Do you agree with the costs mentioned in the Regulatory Impact Assessment at Annex E?
6. Do you think any group will incur costs if the proposals are implemented? Are you able to quantify any costs you expect?

7. Can you think of any non-monetary costs or benefits that would flow from the proposals?
8. The Unsolicited Goods and Services Act (Invoices etc) Regulations 1975 (to extend its scope to electronic documents) imposes a new burden, by insisting on electronic communications having to be clearly labelled as not being a bill, if they were to avoid asserting a right to payment. Your views on whether the tests of proportionality, fair balance and desirability are satisfied, as explained at Annex F, are sought
9. Do you have any other comments?

ANNEX C:

Regulatory Reform Proposals and Orders – Consultation and Parliamentary Consideration

1. These reform proposals in relation to the Unsolicited Goods and Services Act 1971 will require changes to primary legislation in order to give effect to them. The Minister could achieve these changes by introducing a Regulatory Reform Order under the Regulatory Reform Act 2001. Regulatory Reform Orders are subject to preliminary consultation and to extended Parliamentary scrutiny (by Committees in each House of Parliament) of any subsequently proposed Order. On that basis, the Minister invites comments on these reform proposals as measures that might be carried forward by a Regulatory Reform Order.

Regulatory reform proposals

2. This consultation document has been produced because the starting point for regulatory reform proposals is thorough and effective consultation with interested parties. In undertaking this preliminary consultation, the Minister is expected to seek out actively the views of those concerned, including those who may be adversely affected, and then to demonstrate to the Scrutiny Committees that he or she has addressed those concerns.
3. Following the consultation exercise, when the Minister lays proposals before Parliament under the Regulatory Reform Act, he or she must also lay a report for consideration by the Scrutiny Committees setting out a summary of:
 - the burden imposed by the existing law;
 - whether any of those burdens are proposed to be removed or reduced;
 - how the proposals otherwise further the other objects of the Regulatory Reform Act (re-enacting proportionate burdens, introducing new but proportionate burdens, removing inconsistencies and anomalies);
 - whether there is 'necessary protection' and how it is to be continued;
 - how any reasonable expectation of the exercise of rights or freedoms is affected (if at all) and how the exercise can be continued;
 - how new burdens (if any) are both proportionate and, taking the proposals as a whole, strike a fair balance between the public interest and the interests of the persons affected by the new burdens;
 - whether an Order that imposes burdens is desirable in terms either of the burdens it removes or the other benefits it brings;
 - whether any parts of the proposed Order are being designated as 'subordinate provisions', allowing them to be changed by less elaborate Parliamentary procedures in the future;
 - what cost savings or increases are expected, and why;
 - what other benefits there will be from the proposals;
 - details of the consultation process;
 - any representations received as a result of that consultation; and
 - the changes made as a result.

4. On the day the Minister lays the proposals and report, the period for Parliamentary consideration begins. It lasts for 60 days, excluding Parliamentary recesses of more than four days. If you want a copy of the proposals and the Minister's report, you will be able to get them either from the Government department concerned or by visiting the Cabinet Office's website at www.cabinet-office.gov.uk/regulation/act/index.htm.

Parliamentary scrutiny

5. Both Houses of Parliament scrutinise regulatory reform proposals and draft orders. This is done by the Scrutiny Committees.
6. Standing Orders in the Commons stipulate that the Committee there considers whether proposals:
 - (a) appear to make an inappropriate use of delegated legislation;
 - (b) remove or reduce a burden or the authorisation or requirement of a burden;
 - (c) continue any necessary protection;
 - (d) have been the subject of, and take appropriate account of, adequate consultation;
 - (e) impose a charge on the public revenues or contain provisions requiring payments to be made to the Exchequer or any government department or to any local or public authority in consideration of any licence or consent or of any services to be rendered, or prescribe the amount of any such charge or payment;
 - (f) purport to have retrospective effect;
 - (g) give rise to doubts whether they are *intra vires*;
 - (h) require elucidation, are not written in plain English, or appear to be defectively drafted; or
 - (i) appear to be incompatible with any obligation resulting from membership of the European Union;
 - (j) prevent any person from continuing to exercise any right or freedom which he might reasonably expect to continue to exercise;
 - (k) satisfy the conditions of proportionality between burdens and benefits set out in sections 1 and 3 of the Act;
 - (l) satisfy the test of desirability set out in section 3(2)(b) of the Act;
 - (m) have been the subject of, and take appropriate account of, estimates of increases or reductions in costs or other benefits which may result from their implementation; or
 - (n) include provisions to be designated in the draft order as subordinate provisions; and in the case of the latter consideration the committee shall report its opinion whether such a designation should be made, and to what parliamentary proceedings any subordinate provisions orders should be subject.
7. The Committee in the House of Lords will consider each proposal in terms of similar criteria, although these are not laid down in Standing Orders.
8. Each Committee might take oral or written evidence to help it decide these matters, and each Committee could then be expected to report:
 - whether the Minister should proceed to lay a draft order in the same terms as the original proposal, or

- whether amendment is necessary, or
 - whether the order-making power should not be used (for example, because of the significance or sensitivity of the proposal).
9. Copies of Committee Reports, as Parliamentary papers, can be obtained through HMSO. They are also available on the Parliament website at:
 - http://www.parliament.uk/parliamentary_committees/regulatory_reform_committee.cfm for the Regulatory Reform Committee in the Commons; and
 - <http://www.parliament.the-stationery-office.co.uk/pa/ld/lddereg.htm> for the Delegated Powers and Regulatory Reform Committee in the Lords.
 10. After the 60 days for Parliamentary consideration, the Minister can lay a draft order before both Houses, this time for the approval of Parliament.
 11. Each of the Scrutiny Committees examines the draft order to see how far its views have been taken into account. They report, within 15 sitting days, whether the draft order should be approved or not, and it would then be for the relevant House itself to take its final decision.
 12. The final draft order then has to be approved by both Houses of Parliament before becoming law.

How to make your views known

13. Responding to this consultation document is your first and main opportunity to make your views known to the relevant department as part of the consultation process. You should send your views to the person named in the consultation document. When the Minister lays proposals before Parliament you are welcome to put your views before either or both of the Scrutiny Committees.
14. In the first instance, this should be in writing. The Committees will normally decide on the basis of written submissions whether to take oral evidence.
15. Your submission should be as concise as possible, and should focus on one or more of the criteria listed in paragraph 6 above.

16. The Scrutiny Committees appointed to scrutinise Regulatory Reform Orders can be contacted at:

Delegated Powers and
Regulatory Reform Committee
House of Lords
London
SW1A 0PW
Tel: 020-7219 3103
Fax: 020-7219 2571
email: DPDC@parliament.uk

Regulatory
Reform Committee
House of Commons
7 Millbank
London
SW1P 3JA
Tel: 020-7219 2833/2837
Fax: 020-7219 2509
email: regrefcom@parliament.uk

Non-disclosure of responses

17. Section 7 of the Act provides what should happen when someone responding to the consultation exercise on a proposed order requests that their response should not be disclosed.

18. The name of the person who has made representations will always be disclosed to Parliament. If you ask for your representation not to be disclosed, the Minister should not disclose the content of that representation without your express consent and, if the representation relates to a third party, their consent too. Alternatively, the Minister may disclose the content of the representation in such a way as to preserve your anonymity and that of any third party involved.

Information about third parties

If you give information about a third party which the Minister believes may be damaging to the interests of that third party, the Minister does not have to pass on such information to Parliament if he does not believe it is true or he is unable to obtain the consent of the third party to disclosure. This applies whether or not you ask for your representation not to be disclosed.

The Scrutiny Committees may, however, be given access on request to all representations as originally submitted, as a safeguard against improper influence being brought to bear on Ministers in their formulation of regulatory reform orders.

ANNEX D – CONSULTATION CRITERIA

The criteria in the Code of Practice on Written Consultation issued by the Cabinet Office is as follows:

- A Timing of consultation should be built into the planning process for a policy or service from the start, so that it has the best prospect of improving the proposals concerned, and so that sufficient time is left for it at each stage.
- B It should be clear who is being consulted, about what questions, in what timescale and for what purpose.
- C A consultation document should be as simple and concise as possible. It should include a summary, in two pages at most, of the main questions it seeks views on. It should make it as easy as possible for readers to respond, make contact or complain.
- D Documents should be made widely available, with the fullest use of electronic means (though not to the exclusion of others), and effectively drawn to the attention of all interested groups and individuals.
- E Sufficient time should be allowed for considered responses from all groups with an interest. Twelve weeks should be the standard minimum period for a consultation.
- F Responses should be carefully and open-mindedly analysed, and the results made widely available, with an account of the views expressed, and reasons for decisions finally taken.
- G Departments should monitor and evaluate consultations, designating a consultation co-ordinator who will ensure the lessons are disseminated.

The complete Code is available on the Cabinet Office's website, at <http://www.cabinet-office.gov.uk/servicefirst/index/consultation.htm>

Comments or complaints

If you wish to comment on the conduct of this consultation or make a complaint about the way this consultation has been conducted, please write to Mr Philip Martin, DTI Consultation Co-ordinator, Room 564, 1 Victoria Street, London SW1H 0ET, or telephone him on 020 7215 6206, or e-mail <mailto:philip.martin@dti.gsi.gov.uk>

ANNEX E: PARTIAL REGULATORY IMPACT ASSESSMENT

Proposed Unsolicited Goods and Services Act 1971 Regulatory Reform Order

Objective

1. The Unsolicited Goods and Services Act 1971 (the “1971 Act”) contains requirements governing the manner in which a directory publisher must gain authorisation from a business or individual that wishes to pay for an entry in a directory, prior to claiming payment for the entry. The 1971 Act was passed to protect businesses and individuals from rogue directory publishers who operated certain types of scams.
2. The authorisation requirements are burdensome for both directory publishers and those who pay to advertise in directories insofar as they require the authorisation process to be followed for all directory entries including repeat or renewed entries. That is, regardless of whether there is an existing business relationship, the 1971 Act requires a complex and time-consuming authorisation procedure to take place. The 1971 Act’s requirements also prevent efficient methods of payment, such as using credit or debit cards over the telephone, being utilised in the absence of certain written formalities.
3. The proposals aim to reduce the administrative burden for directory publishers, by relaxing authorisation requirements while still ensuring that businesses and individuals who choose to pay for directory entries retain necessary protection from scams. In particular, it is proposed that the strict authorisation requirements for a repeat or a renewed entry in a directory be disapplied, and that businesses and individuals be given the opportunity to enter into an agreement for an initial entry immediately over the telephone, without the need for any written communications, provided they are given sufficient information to make an informed decision and provided they pay for the entry via debit or credit card. This is to take into account standard modern commercial practices.
4. There is also a supplementary proposal to amend the Unsolicited Goods and Services (Invoices etc) Regulations 1975 (the “1975 Regulations”), governing the contents of “invoices and similar documents”, in order to update them so that they apply to electronic as well as paper based documents.
5. The 1971 Act extends to Wales and the subject matter is reserved under Section C7 of Schedule 5 to the Scotland Act 1998. The 1971 Act does not extend to Northern Ireland.

Background

6. Section 3 of the 1971 Act contains regulations governing the authorisation of, and payment for, entries in directories. (Other provisions of the 1971 Act deal with protections for businesses receiving unsolicited goods and offences regarding certain unsolicited publications). Following lobbying by directory publishers, the Consumer White Paper “Modern Markets: Confident Consumers” (July 1999) included a commitment to simplify the provisions set out in the 1971 Act on charging for entries in directories.

7. The 1971 Act makes no distinction between a business and an individual (that is, persons acting in a non-business capacity) who chooses to take out a paid entry in a directory - a directory publisher is required to follow a rigorous authorisation process when accepting an entry from either. However, in practice few individuals choose to place paid entries in directories. For convenience this Regulatory Impact Assessment will generally refer only to business clients. Unless otherwise indicated, such references include individual clients.

Purpose of the 1971 Act

8. Prior to 1971, some rogue 'directory publishers' had the practice of sending businesses invoices for entries in directories without having gained their approval for inclusion. Some businesses would unwittingly pay such invoices (especially where follow up demands for payment and threats of retribution were made). Those responsible for such scams were often not 'directory publishers' at all, but simply claimed to have produced a non-existent directory. Where publications were produced, they were not generally of any commercial value and were not the type of production that a legitimate directory publisher would choose to be involved with or that a business would choose to advertise in.
9. Alternatively, some directory publishers would send businesses documents, often asking for verification of details such as address and phone number, but which included 'small print'. The small print provides that the effect of verifying details is to grant authority to the directory publisher for inclusion of an entry in the directory and to give consent to be charged for that entry. The directory publishers involved would say they had received due authorisation and claim payment. Again, this type of action was taken by people who would not produce a commercially viable publication, and it was not a tactic used by the bona fide directory publishing industry.
10. The 1971 Act addresses these issues by allowing businesses to refuse payment for **unauthorised** directory entries and to reclaim any such payments made. It also makes it an offence to claim payment for a directory entry without knowing or having reasonable cause to believe that the entry was authorised in accordance with the procedures laid out in the 1971 Act.
11. The 1971 Act prescribes three methods of **authorising** payment:
 - A business can sign an 'order'. This is essentially a request for a directory entry on the business's own letterhead paper. This method is subject to the least requirements on the basis the business needs to proactively and consciously produce a document requesting the entry.
 - A business can sign a 'note'. A note is a document produced by a directory publisher and must state:
 - The amount of the charge directly above the place for signature
 - The date of publication of the directory or the issue in which the entry is to be included
 - The name and address of the publisher
 - The price at which the directory is to be placed on sale for
 - The minimum number of copies to be made available for sale or if the directory is free, how many copies will be distributed

- Reasonable particulars of the entry

A copy of the note must be supplied to the business prior to their signing it, for their retention.

- A business can send an electronic communication which includes a statement that the business agrees to the charge, as long as it has received a set of information from the directory publisher broadly similar to that required by the 'note' before the electronic communication is transmitted.
12. The 1975 Regulations were made under section 3A of the 1971 Act. The 1971 Act provides that any invoice or similar document stating the amount of any payment *and not complying* with the requirements of regulations made under section 3A shall be regarded as asserting a right to payment.
 13. Section 3(2) ("directory entries") of the 1971 Act makes it an offence, amongst other things, to assert a right to payment for a directory entry without knowing or having reasonable cause to believe that the entry has been duly authorised in accordance with the 1971 Act. Section 2 ("Demands and threats regarding payment") of the 1971 Act makes it an offence to assert a right to payment for what are known to be unsolicited goods sent to a *business* where there is not reasonable cause to believe there is a right to payment.
 14. The 1975 Regulations specify the requirements as to content and form with which an invoice or similar document must comply in order for it *not to be regarded* as asserting a right to payment for the purposes of sections 2 and 3 of the 1971 Act. The aim of the 1975 Regulations is to enable business recipients of unsolicited goods *and* directory entrants to identify at a glance whether a particular document is an invoice which should legitimately be paid (or, for example, is simply an advert). The requirements of the 1975 Regulations include that the document must state "THIS IS NOT A DEMAND FOR PAYMENT. THERE IS NO OBLIGATION TO PAY" or "THIS IS NOT A BILL".

The problem to be addressed

15. While the 1971 Act provides protection for businesses from rogue directory publishers, it also places a number of burdens on legitimate directory publishers and on those who choose to pay for directory entries. Recent concerns have been voiced that the requirement for written formalities to be followed ignores the realities of the modern business world. However, the main issue, which has been raised in the past by lobby groups (for example, the Directory and Database Publishers Association) concerns renewed entries.
16. The 1971 Act requires the same set of formalities regarding authorisation 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. This is placing an unnecessary burden on the reputable publishing industry which is trying to compete in an increasingly international marketplace.
17. The world of directory publishing has changed dramatically in recent years. On-line directories are now commonplace and clients can update their entries

on a much more regular basis. In this context, the need to make a prescribed authorisation for every repeat entry has become increasingly burdensome. Since on-line directories may be based anywhere in the world, more burdensome compliance requirements place British directory publishers at a disadvantage compared to other European publishers¹.

18. A further issue that is raised by the requirements of the 1971 Act is that businesses cannot opt to pay for a directory over the phone immediately with a credit or debit card, without the need to follow prescribed written formalities. A paper or electronic document, containing specific information, must be sent by the business to authorise an entry prior to payment being made. This process necessitates a further phone call should a business wish to pay over the phone with a credit or debit card. As the directory publishing industry competes with the advertising industry generally for advertising budgets, the requisite authorisation process and associated costs place them at a competitive disadvantage. It is also frustrating for businesses who wish to utilise an immediate and direct payment method.
19. It is our view that while an authorisation process in some form is required for initial entries to ensure that necessary protections remain, there is little justification for requiring it for repeat or renewed entries. Nor is there justification for the authorisation process precluding initial entries being authorised over the phone if a business is provided with sufficient information to make an informed decision and is confident enough to pay for the entry immediately via a credit or debit card.
20. The requirements when entering into a contract for an entry in a directory are incongruous with most business relationships where general contract law is deemed sufficient. As directory publishers compete for advertising budgets, this places them at a disadvantage to other advertising mediums where no such requirements exist. For example, there are no regulated authorisation requirements for placing an advertisement in a newspaper, allowing the newspaper industry to choose efficient authorisation and payment processes and subsequently keep their costs down.
21. The 1975 Regulations governing the form of “invoice(s) or similar document(s) stating the amount of any payment” only apply to paper based documents and, while there is no evidence yet of electronically based invoicing scams, it is appropriate to amend the Regulations to mitigate the risk.

Risk assessment

¹ The Electronic Commerce (EC Directive) Regulations 2002 provide that businesses within the European Economic Area (EEA) which provide “information society services” are subject to the laws of their own country and can not be hindered by the national law of other EEA states in which they operate where such provisions impose requirements restricting freedom to provide the service. In other words, these Regulations allow an EEA directory publisher to operate electronically in Britain without being subject to the 1971 Act and 1975 Regulations where these are considered to impose such a restriction. Further details of the Electronic Commerce (EC Directive) Regulations 2002 can be found at http://www.dti.gov.uk/cii/ecommerce/europeanpolicy/ecommerce_directive.shtml

22. The four groups that would be affected by changes to the 1971 Act and 1975 Regulations are:
- Directory Publishers
 - Businesses generally (who either advertise in directories or who could be targeted by rogue directory publishers) and
 - To a much lesser extent, individuals acting in a non-business capacity (consumers) who choose to pay for an entry in a directory
 - The proposal to amend the 1975 Regulations will also affect suppliers who do not wish to be regarded as asserting a right to payment for certain unsolicited goods for the purposes of section 2 of the 1971 Act.
23. There are risks both if the 1971 Act and 1975 Regulations are changed and if they are not changed. This section considers the four groups affected and the risks concerned if the 1971 Act and 1975 Regulations are amended or left as they are.

Directory Publishers

24. The primary aim of the 1971 Act is to protect businesses from rogue directory publishers although the burdens of the Act affect the way legitimate directory publishers must gain authorisation in order to claim payment for a directory entry.
25. Anecdotal evidence suggests that some legitimate directory publishers do not follow the 1971 Act correctly for repeat or renewed entries. Such behaviour is unlikely to come to the attention of authorities as the directory publishers are providing a service their advertisers are happy to pay for. The risk faced if the 1971 Act is not amended, is that bona fide directory publishers may be prosecuted for a criminal offence, for behaving in a manner that, while not being technically legal, does not 'scam' or harm anyone involved.
26. A further risk to legitimate directory publishers who fail to comply entirely with the 1971 Act is that section 3 could allow their business clients to reclaim any money paid for their directory entries, if none of the three authorisation methods have been followed precisely. Again, while this situation is unlikely to occur (as the behaviour of the legitimate directory publishers is satisfactory to their clients), it seems appropriate to legitimise actions that are not viewed as harmful to those who pay to place entries in directories.
27. With the advent of online publishing and an increasingly global market place, there is also a risk that British firms who have devoted the resources to comply with the 1971 Act will be put at a competitive disadvantage to foreign competitors who are not burdened with the Act's requirements. Furthermore, the competitiveness of directory publishers within the general advertising industry in Britain is compromised by the restrictions of the 1971 Act – the authorisation requirements do not burden classified newspaper publishers for example.
28. There would be no additional risk for directory publishers if the 1971 Act is amended.

Businesses

29. If the 1971 Act is *not amended*, businesses will not incur any additional risks from rogue directory publishers.
30. The details of the proposal for repeat entries ensure that the authorisation process will only be disapplied where the transaction takes place between the original contracting parties. That is, there must be an existing business relationship for the authorisation requirements to be disapplied. A business will thus be in a better position to make an informed decision based on their previous experience of the directory publisher.
31. The authorisation process for repeat entries will only be disapplied where there has not been a significant change in form, content or distribution of the directory. Again, this will ensure that a business's previous experience is relevant to its decision.
32. For repeat entries, the position will in general be governed by ordinary contractual principles. A business will still have to signify agreement to the directory publisher to continue the arrangement.
33. There were two types of scam that the 1971 Act was introduced to afford protection against – the first involved directory publishers sending documents which asked for verification of details but which sought to hide the effect of such verification in the small print. The Control of Misleading Advertisements Regulations 1988 (the "1988 Regulations") provide that in certain circumstances the Office of Fair Trading may apply for an injunction to stop publication of misleading advertisements. The 1988 Regulations define an advertisement as "any form of representation which is made in connection with a trade, business, craft or profession in order to promote the supply or transfer of goods or services...". An advertisement is deemed misleading if it, broadly speaking, in any way, including its presentation, deceives persons and by reason of its deceptive nature is likely to affect their economic behaviour. The 1988 Regulations could provide alternative protections against such practices for repeat entries where such documents are deemed misleading advertisements.
34. The second type of scam which the 1971 Act sought to provide protection against involved a directory publisher sending an invoice for an unsolicited directory entry in the hope that it was deemed to constitute a legitimate right to payment and was consequently paid. Such behaviour would still be prohibited under section 3(2) of the 1971 Act for initial entries but would not be punishable under section 3(2) for repeat or renewed entries. In our view this protection is not necessary for subsequent entries – it is unlikely that a directory publisher would follow the authorisation process for an initial entry and then revert to dubious business practices for subsequent entries. The strength of protection of the 1971 Act as it currently operates, lies in the authorisation procedure for initial entries filtering out rogue directory publishers.
35. The proposal to allow telephone authorisation of initial entries involves amending section 3 of the 1971 Act to allow those who wish to pay for an entry in a directory to agree to the entry without complying with any written formalities. This is on the condition that they have been verbally provided with specific information by the directory publisher and wish to pay by credit or debit card.

36. Under the telephone authorisation proposal, the directory publisher will still have to provide specific information. If a business that wishes to pay for the directory entry is concerned about the veracity of the caller or the directory, they can still opt to use the alternative authorisation procedures and make the decision not to provide credit or debit card details over the phone – a decision they make when considering providing such details for *any* telephone transaction.
37. The telephone authorisation proposal would bring the industry into line with other areas that permit services to be paid for immediately over the phone without following written formalities. Such a change may allow rogue operators to run novel telephone based scams, by attempting to gain credit card details from businesses for non-existent or misrepresented directories. However, our view is that the directory publishing field is not at a greater risk of such scams than other areas and that the proposal itself is unlikely to lead to an increase in scams.
38. A proposed change to the 1975 Regulations, which currently apply only to paper-based documents, will reduce the risk that rogue directory publishers will attempt to circumvent the restrictions by operating electronically based scams.

Consumers

39. If the 1971 Act is not amended, consumers will not incur any additional risks from rogue directory publishers.
40. If the 1971 Act is amended, then consumers will still have all the protections outlined above that businesses enjoy.

Suppliers under section 2 of the 1971 Act

41. The 1975 Regulations apply to suppliers who wish to send documents to businesses stating the amount of any payment, but who do not wish to be regarded as asserting a right to payment. If the proposal to extend the 1975 Regulations to cover electronic documents is not taken forward, there is a risk that such suppliers will attempt to circumnavigate the 1975 Regulations, without fear of sanction, by utilising electronic communications to send documents that could be mistaken by businesses for legitimate invoices that require payment.

Business sectors affected

42. The proposals directly affect directory publishers and those who pay to advertise in directories, while they indirectly affect all businesses which could be targeted by rogue directory publishers. They also affect suppliers under section 2 of the 1971 Act, but only to a very minor extent.
43. Advice received from the Directory and Database Publishers Association (DPA) in 2000 indicated that:
 - there are around 1100 organisations in the United Kingdom that publish a directory or directories
 - around 87 businesses have directory publishing as their principal business

- there are around 750-800 businesses who derive part of their turnover from commercial directory or database publishing
- DPA members account for 80% of the turnover in the sector

Issues of equity and fairness

44. The key question of equity and fairness concerns whether the benefits of the proposals for the directory publishing industry and for those who choose to pay to advertise in directories, justify any increased risk for businesses from rogue directory publishers.
45. The proposals provide tangible benefits for the legitimate directory publishing industry and their clients, and this is not considered to come at any increased risk. The section on risk assessment (above) outlines the necessary protections that, in our view, will remain.
46. Furthermore, the 1971 Act does not currently provide comprehensive protection for businesses. For example, the 1971 Act does not of itself have jurisdiction over rogue directory publishers based overseas and there are cases of such companies targeting British businesses. A recent instance involved the European City Guide based in Barcelona, which was prosecuted by Spanish authorities in March 2001 following international cooperation with the Office of Fair Trading.
47. There appears to be little knowledge of the 1971 Act. There are currently a number of rogue directory publishers, based in Britain, targeting British businesses. There is little prosecution data to suggest that the 1971 Act is being used to protect businesses from this behaviour – there was 1 prosecution made under the Act in the years 2000 and 2001. Given the lack of general awareness of the 1971 Act, it seems unlikely that such behaviour would immediately increase should a change be made. Regardless, the proposed changes still include protections for business.
48. We consider that there are tangible benefits offered by the proposals for legitimate directory publishers and their advertisers, and that these will not place the general business community or individual consumers at risk.

Options

49. Option 1 – Do nothing
50. Option 2 – Define repeat or renewed directory entries and exempt them from the authorisation requirements of the 1971 Act, and allow those who choose to pay for directory entries to authorise an entry over the telephone in certain circumstances and in the absence of written communications
51. Option 3 – Repeal section 3 of the 1971 Act

Benefits

Option 1 Do Nothing

52. The 'do nothing' option retains maximum protection for businesses from rogue directory publishers. It is not possible to gauge the value this provides

businesses- i.e., it is difficult to ascertain what cost businesses would incur from scams if the 1971 Act did not exist (there is no pre 1971 data available for comparison). This option would not advance the objective of reducing burdens on directory publishers.

Option 2 Define repeat or renewed directory entries and exempt them from the authorisation requirements of the 1971 Act, and allow those who choose to pay for directory entries to authorise an entry over the telephone in certain circumstances and in the absence of written communications

53. The proposal to disapply the authorisation requirements for repeat or renewed entries retains all the protections of the 1971 Act for businesses for their first entry in a directory. If the business decides to place a renewed or repeated entry in a directory, the publisher will not have to go through as rigorous an authorisation procedure thus saving them time and money via a streamlined business process.
54. It is our view that the majority of protection offered by the 1971 Act can be kept by retaining the authorisation requirements for initial entries, while the majority of the burden of the 1971 Act can be reduced by disapplying the requirements for repeat or renewed entries. The major strength of protection offered by the 1971 Act is to filter out rogue companies via the authorisation process for initial entries – the benefit of the 1971 Act's requirements for subsequent entries is significantly less clear. It is thought that removing the authorisation requirements for *initial* entries provides only marginal benefits for directory publishers (most of the requirements reflect good practice for the reputable directory publishing industry when establishing a business relationship via an initial entry) while significantly increasing levels of risk for business.
55. The presumption is that the business in a repeat or renewed entry scenario is able to make an informed decision – they have now formed a relationship with the publisher, they have seen one edition of the directory, and are happy to proceed with another.
56. Previous consultation has indicated that benefits of the proposed changes are hard to quantify, in part because business has long since adapted to the current requirements. The DPA has estimated that some of the 1971 Act's authorisation requirements cost 25% more than methods that would be considered good practice within other industries. There are also significant opportunity costs arising from the time taken in administrative tasks rather than in obtaining sales.
57. There will be savings in time and paperwork for those who choose to pay for directory entries by allowing them to do so over the phone immediately, with a credit or debit card, upon receipt of specific information. It would also allow directory publishers to use more efficient processes. If those who choose to pay for a directory entry were not certain about the product being offered or the legitimacy of the publisher, they would still be able to use the alternative methods of authorisation specified by the 1971 Act and have some written evidence of the agreement. It is our view that this authorisation option is still sufficient to filter out rogue directory publishers.
58. This option would reduce the majority of the burden imposed by the 1971 Act on directory publishers.

Option 3 – Repeal section 3 of the 1971 Act

59. This option would have the greatest financial benefit for directory publishers, who would generally be bound by contract law in their dealings with businesses, rather than by the 1971 Act. This would allow directory publishers to tailor their business processes. However, it is our view that this option would only provide marginal benefits over the second option, and would increase unacceptably the risk to business from scams.

Costs for business, charities and voluntary organisations

Compliance costs

Option 1 Do Nothing

60. The 'no change' option would not cause any implementation or policy costs. It would not, however, allow any potential benefits to be realised.

Option 2 – Define repeat or renewed directory entries and exempt them from the authorisation requirements of the 1971 Act, and allow those who choose to pay for directory entries to authorise an entry over the telephone in certain circumstances and in the absence of written communications

61. Option 2 will not directly lead to costs for directory publishers, although it provides the opportunity to amend business processes to take advantage of relaxed authorisation requirements. Such changes would presumably involve costs.
62. The possibility that these changes may lead to increased numbers of rogue directory publishers cannot be entirely ruled out. However, given alternative statutory instruments and protections that would remain, the minimum standards of behaviour required by this option, and the general lack of awareness of the 1971 Act, it is not thought that any increase in scams will result.

Option 3 – Repeal section 3 of the 1971 Act

63. The third option has the same costs for directory publishers as option 2. However, repeal of *all* the provisions protecting businesses does potentially introduce costs for them via the risk of scams. The rationale behind option 2 is that businesses do not need protection from a directory publisher who has demonstrated good practice for their initial entry, and if a business chooses to pay over the phone by credit or debit card without the need for written formalities, they should not be prevented from doing so.
64. The risk of repealing all authorisation requirements is that rogue directory publishers will have no specified minimum standard and may take advantage of this to implement both novel scams and those the 1971 Act sought to provide protection against, or practices that, while ripping off businesses, avoid breaking the law.

Costs for a typical business

65. Directory publishers would incur costs initially by taking advantage of relaxed authorisation procedures in order to make longer term savings.

Consultation with Small Business

66. The directory publishing industry has a small number of large companies that account for the majority of the turnover in the industry and a larger number of smaller companies. See the 'Business sectors affected' section above for details.
67. An initial sounding of small businesses, via visits and telephone conversations, within the directory publishing industry has indicated that they would welcome the proposed changes and would not be adversely affected. Previous consultation on the subject also generated universal support for the proposed measures from directory publishers of all sizes.
68. The general small business population could theoretically be affected by the changes if they became the targets of rogue directory publishers that targeted them for scams. Again, the actual likelihood of such action increasing in response to the proposed changes to the 1971 Act is slim. The possibility has been raised with the Small Business Service and responses to this consultation document will be used to gauge levels of concern.

Competition assessment

69. The proposed changes to the 1971 Act are not considered to have any adverse impact on competition. The markets considered relevant to the proposals include:
- British directory publishers
 - The advertising industry
70. Within the directory publishing industry itself, the proposals were welcomed by all the firms approached, regardless of their size. The proposals would not limit competition within the industry or allow any one firm or type of firm to gain a competitive advantage over rivals. The proposals should reduce administration costs for directory publishers and this may allow them to compete more effectively within the wider advertising industry.

Enforcement and Sanctions

71. Trading Standards Authorities throughout Britain are responsible for the enforcement of the 1971 Act, and would continue to be so under the proposals. While it would be necessary for staff to be aware of any changes, it is not envisaged that they would incur any costs in doing so, or in enforcing the amended Act.
72. There is no proposal to amend any of the sanctions associated with the 1971 Act.
73. Trading Standards Authorities are being consulted via their representative body Local Authorities Coordinators of Regulatory Services (LACORS).

Monitoring and review

74. Officers within the Department of Trade and Industry will retain responsibility for the 1971 Act. Monitoring of scams and rogue directory publishers will continue as part of the day to day activities of the Department. No official follow up is planned.

Consultation

75. The Regulatory Reform Order consultation document, of which this Partial Regulatory Impact Assessment forms a part, has a list of the organisations and groups being consulted about the proposals. It also details where the document can be accessed should further copies be required.
76. Previous consultation has been carried out on aspects of these proposals, the paper *Simplification of the Unsolicited Goods and Services Act 1971 (as amended)* – December 1999 is available at:
<http://www.dti.gov.uk/CACP/ca/consultation/goodserv.htm>

Summary and Recommendation

77. We recommend that, pending the outcome of consultation, option 2 be implemented.
78. Option 1 involves no change, and while this continues to provide maximum protections for businesses from scams it does not address the burdens faced by legitimate directory publishers and thus does not advance the policy objective.
79. Option 3 involves repeal of authorisation requirements specific to directory publishers. This option advances the policy objective of reducing burdens for directory publishers but as it does not specify any minimum standards of behaviour it risks allowing businesses to be taken advantage of.
80. Option 2 advances the policy objective of reducing the large majority of operational burdens for directory publishers. It also maintains protection for businesses by retaining the authorisation process for initial entries albeit with amendment.
81. Quantified costs and benefits are difficult to ascertain, however we view that option 2 strikes a balance between saving directory publishers money by reducing burdens, and preventing businesses incurring costs due to scams.

ANNEX F: LEGAL TESTS THAT A REGULATORY REFORM ORDER PROPOSAL MUST SATISFY

1. Each proposal for a Regulatory Reform Order must satisfy a number of legal tests. The questions in this document are designed to elicit the information that the Minister will need in order to satisfy the Committees that, among other things, the proposal satisfies these tests. In particular, the Regulatory Reform Act requires information on:
 - whether any of the proposals could remove any necessary protection;
 - whether any of the proposals could prevent any person from continuing to exercise any right or freedom which he might reasonably expect to continue to exercise and, if so, how he is to be enabled to continue to exercise that right or freedom;
 - whether any burdens are being imposed on any person in the carrying out of an activity;
 - whether any savings or increases in cost are estimated to result from the proposals and, if so,
 - the reasons why savings or increases in cost should be expected, and
 - if it is practicable to make an estimate of the amount, that amount and how it is calculated,
 - any benefits (other than savings in cost) which are expected to flow from the implementation of the proposals.
2. For this reason, we would particularly welcome your views on how each aspect of the proposed changes in this consultation document meets the following tests:
 - **Necessary protection** - the Minister making a Regulatory Reform Order (RRO) must be of the opinion that it does not remove any necessary protection. This means that no order can be made unless the Minister is of the opinion that it would maintain any protections that the Minister considers to be necessary. Such protection relates to the checks and balances associated with a particular regulatory regime. The protection does not have to be statutory in nature and does not have to be for the purposes originally intended by Parliament. If the Minister considers a particular protection to be no longer necessary, he or she must provide the Parliamentary scrutiny committees with compelling evidence to support this view.
 - **Rights and freedoms** - an RRO cannot be made unless the Minister is satisfied that it does not prevent any person from continuing to exercise any right or freedom which they might reasonably expect to enjoy. This test recognises that there are certain rights that it would not be fair to take away from people under these procedures.

Other safeguards

3. In order to provide for the effective reform of regulatory regimes, RRO's can re-state existing burdens and create new burdens. But where that is the case stringent additional safeguards apply:

- **proportionality** - If a new legal burden is being imposed, or an existing burden retained or increased, then the Minister must ensure that it is proportionate to the benefit it brings. This means, for example, that imposing a burden of several thousand pounds on charities for some negligible benefit would not pass the test.
- **fair balance** - before proposing any RRO that has the effect of imposing legal burdens, the Minister must be of the opinion that a fair balance is being struck between the interests of the person affected by the Order and the interests of the wider public. In this context, fairness does not mean that everyone must benefit. What it does mean is that the benefit to society as a whole must be such as to justify the additional burden on a small group or the individual.
- **desirability** - the Minister making the RRO must be of the opinion that the extent to which it removes burdens or brings other benefits makes the Order as a whole desirable.