

**dti**

**ELECTRONIC “BUSINESS ORDER  
FORMS” FOR ADVERTISERS  
WANTING TO PUT ENTRIES IN  
BUSINESS DIRECTORIES**

Consultation on proposed  
regulatory change to ensure  
Section 3 of the Unsolicited  
Goods and Services 1971  
complies with Article 9 of the  
European E-Commerce Directive

CONSULTATION DOCUMENT

MARCH 2004

URN 04/826

## Executive Summary

We are seeking your views on a proposal to allow Business Order Forms for entries in business directories to be sent electronically. This proposal is complementary to other changes to the Unsolicited Goods and Services Act 1971 (UGSA), which we consulted on in March 2003 (CCP 003/03). We seek responses on the attached response sheet by 18 June 2004.

The issue is that UGSA does not allow Business Order Forms to be sent electronically. This does not mean that an advertiser cannot contract for a directory entry electronically. What it does mean, however, is that the directory publisher must give certain specified information to the business before any electronic documentation is sent. If such information is not given then they might find that the advertising order is deemed invalid.

We have advice that they may constitute an obstacle to the use of electronic contracts, and therefore be incompatible with Article 9 of the European E-Commerce Directive. This is because the same information requirements do not apply where an advertiser sends a paper Business Order. We also see these information requirements as a potential burden on businesses that may wish to contract for entries via electronic means.

We are required to ensure that UK legislation is compliant with the European Directive on E-Commerce. However, we have some discretion as to how we implement certain provisions. Therefore, we ask a number of questions around how we might implement an electronic Business Order Form for entries in Business Directories - one that is both easy for business and maintains appropriate protections.

We are intending to bring these changes into force at the same time as the broader changes to the Unsolicited Goods and Services Act, which should be in the later half of 2004.

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## **Purpose of this consultation**

This consultation seeks your views on a regulatory change to bring the Unsolicited Goods and Services Act 1971 (UGSA) into compliance with Article 9 of the European E-Commerce Directive. This change is being made in the broader context of changes to UGSA in relation to directory publishing, being pursued by a Regulatory Reform Order (RRO).

## **Responses**

You can respond to this consultation

By email: [Bryan.pay@dti.gsi.gov.uk](mailto:Bryan.pay@dti.gsi.gov.uk)

By post: Bryan Pay  
Consumer and Competition Policy Directorate  
Room 613  
Department of Trade and Industry  
1 Victoria Street  
London, SW1H 0ET  
Telephone 020 7215 0349

## **Closing date**

Responses must be received by 18 June 2004

## **Outcome**

We aim to publish the outcome of this consultation by 15 July 2004

## **Confidentiality**

Your response to this consultation document may be made publicly available in whole or in part at the Department's discretion. If you do not wish all or part of your response (including your identity) to be made public, you must state in the response which parts you wish us to keep confidential. Where confidentiality is not requested, responses may be made available to any enquirer, including enquirers outside the UK, or published by any means, including on the Internet. Please be aware that any e-mail response sent from a corporate system may carry an automatically generated notice 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.

## **Consultees**

We are sending this document to the consultees listed in Annex B. Please tell us if you know of others who would be interested in receiving this consultation. It is also available by request from the sources listed on our website, [www.dti.gov.uk/ccp/consultations.htm](http://www.dti.gov.uk/ccp/consultations.htm).

## **What is this all about?**

- 1.1 Department of Trade and Industry wants to be seen as an exemplar of best practice in terms of consulting on government initiatives that impact on business.
- 1.2 We are required to ensure that UK legislation is compliant with the European Directive on E-Commerce<sup>1</sup>, though we have some discretion as to how we implement certain provisions.
- 1.3 So we are asking your views on how we might ensure that the rules on entries in business directories are compliant with Article 9 of the directive, which relates to electronic contracting.

## **What is being consulted on?**

- 2.1 We are under a requirement to implement the European E-Commerce Directive to remove obstacles to contracting by electronic means.<sup>2</sup> We need to make it easier for businesses wanting to put an advertisement in a business directory to do so electronically. We think this is complementary to other changes to the Unsolicited Goods and Services Act 1971 (UGSA), which the Department is already making through a Regulatory Reform Order (Consultation Document no. CCP 003/03 refers).
- 2.2 This consultation is about making the requirements around sending Business Order Forms electronically the same as for their written counterparts.
- 2.3 The 1971 Act prescribes three methods of authorising payment for placing an entry in a business directory. These are:
  - The Business Order Form Method, which is where a request for a directory entry is sent on the business' own order form or other stationary belonging to the business and bearing in print its name and address (referred to as "Business Order Forms" in this consultation document);

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<sup>1</sup> The full title of the Directive is "Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on Electronic Commerce).

<sup>2</sup> The Directive requires Member States, including the UK, to "ensure that their legal system allows contracts to be concluded by electronic means", and "in particular, ensure that the legal requirements applicable to the contractual process neither create obstacles for the use of electronic contracts nor result in such contracts being deprived of legal effectiveness and validity on account of their having been made by electronic means". When the UK started to implement the Directive in 2002, we gave a commitment to tackle any remaining legal obstacles to electronic contracts on a case-by-case basis.

- The Business 'Note' method, which is where a 'note' agreeing to the charge is produced by a directory publisher and signed by the business; and
- The Electronic Communications method, which is where an electronic communication agreeing to the charge is sent by the business.

**2.4** We are consulting here on a change to the Business Order Form method. At present, Business Order Forms –as defined by UGSA– cannot be sent electronically. Should a directory publisher wish to accept an electronic order for a directory entry, it must use the third method of authorising payment set out above.

**2.5** What this means is that the directory publisher must give certain specified information to the business before the electronic communications is sent. Such specified information is required to be given for both the second and third methods of authorising payment for entries. The information requirements are set out in paragraph 9.2 below. This requirement is regardless of the fact that the business itself may have originated the request for the directory entry.

### **Why is this change needed?**

**3.1** We need to make these changes to remove a potential "incompatibility" between section 3 of UGSA and the European E-Commerce Directive. Article 9 of the European E-Commerce Directive requires Member States to ensure that "requirements applicable to the contractual process do not create obstacles for the use of electronic contracts". UGSA requires certain specified information be given to a purchaser (generally a business) before it agrees to a charge by way of an electronic communication. As this information is not required for paper-based Business Order Forms, this potentially puts obstacles in the way of contracting electronically.

**3.2** We also see this proposal as helping to lift burdens and potential burdens on businesses that might wish to contract for entries in business directories via electronic means.

### **Risks and consequences of doing nothing**

**4.1** The risk of not making changes to UGSA is that the UK will not have implemented the European E Commerce Directive properly in respect of the on-line contracting for directory entries.

## **Who will this proposal affect?**

5.1 The proposals will affect

- Directory publishers
- Current and potential advertisers in directories

## **How will this proposal be taken forward and when will it be implemented?**

6.1 We intend to implement these proposals through a regulation under section 2(2) of the European Communities Act 1972. This procedure should allow the regulation to come into force on the same day as the other changes to UGSA being advanced by the RRO. We consider both should come into force in the later half of 2004.

## **What will be the financial impact of the change?**

7.1 As with the other changes, there may be some initial costs in amending business procedures. However, these are dependent on directory publishers wishing to take advantage of the proposed change. These costs should be minimised by harmonising the commencement dates for both reforms. In the longer term, this should be an additional medium for directory publishers to promote more efficient business practices.

## **This Consultation**

8.1 We are asking your views on how UGSA should be amended to comply with the directive. We ask for responses by *18 June 2004*.

## **The proposal in more detail ...**

### *An obstacle to electronic contracting*

9.1 The E-Commerce Directive says that requirements applicable to the contractual process must not create obstacles to the use of electronic contracts. The present information requirements associated with electronically transmitted Orders could be seen as unnecessary requirements, given the ease with which both paper and electronically sent Orders could be altered fraudulently.

### *Policy rationale for different information requirements*

9.2 The specified information which UGSA requires to be given to the business before the electronic communication is sent is as follows:

- amount of charge
- name of directory/proposed directory
- name of person producing directory
- his geographical address
- if directory in printed form, proposed date of publication of directory or issue in which entry appears
- if directory to be put on sale, its price and minimum number of copies available for sale
- if directory is free, minimum number of copies to be distributed
- if directory in non-printed form, adequate details of how it may be accessed
- reasonable particulars of entry in the directory/proposed directory

9.3 The reason for these detailed information requirements is business protection. The rationale for the approach in UGSA is that directory entry orders that are made on headed business paper are more likely to come from purchasers who intend to buy, and who would have had a chance to ask for or be offered proper information about the service in question. UGSA does not ask for the above information to be given, because the business' "own" stationary, name and address give a reasonable indication that the business genuinely requested and is willing to be charged for the directory entry.

9.4 At the time that online orders were first authorised, it was believed there would be more difficulties in determining the authenticity and origin of electronically sent Business Orders, and so it was felt necessary these be subject to special conditions. UGSA therefore required the information to be provided in these cases.

9.5 The issue is the level of proof that a business proactively and consciously produced a document requesting the entry. It is not clear that the extra conditions around electronic contracting provide much in the way of additional protection. With modern technology, details on and of paper-based and electronically transmitted Orders can be added in or altered fraudulently. There is, therefore, also a policy rationale for introducing parity in the requirements between written and electronically transmitted Orders.

### **What we want to do**

10.1 We propose to remove the information requirements around electronically transmitted Orders in a way that minimises any

reduction in the protection that UGSA provides. This means making an electronically transmitted Business Order **equivalent** to one sent on a “business’ own order form or other stationary belonging to the business and bearing in print its name and address”.

### **Particular issues/questions of interest**

- 11.1 We want your views on how we should implement this. Our questions revolve around what in the electronic medium would substitute for an order on a business’ “own order form or other stationary”. We envisage the Business Order Form sporting a name and address, and another identifying particular. The notion of “stationary” does not transfer well to the ether. We would envisage such an identifier as being a recognisable logo or electronic letterhead.
- **Would this work for the directory publishing business? Would requiring an electronic letterhead to qualify for being a “Business Order Form” pose difficulties for smaller advertisers?**
- 11.2 There is also the question of what would constitute the letterhead, for example whether some form of clip art would suffice. In most cases, we understand, a business order would be sent after some prior communication between the advertiser and the Directory Publisher. So in many cases there may have been an opportunity to discuss how the Order might be identified as genuine, requiring a less robust letterhead.
- **What requirements do you think should be around the letterhead? Should it be trademarked or registered in some way, and what would be the implications of this for the Directory publishing industry?**
- 11.3 The issue of ensuring authenticity by a directory publisher is potentially quite important. If a directory publisher does not determine the authenticity of an Order, they might find that their advertising contract was declared invalid. There are also potential criminal charges from attempting to demand payment.
- **In practical terms, is checking of authenticity likely to be an issue? What double-checking is carried out now for paper Business Order Forms?**
- 11.4 Of course, we might just accept an emailed name and address as sufficient, and determine that “own stationary” refers to the originating email address.

- **Would requiring name and address only significantly reduce the protections that should be provided for electronic contracting for directory entries?**

### **Further questions**

12.1 We have envisaged implementing this aspect of the European E-Commerce Directive through design of an electronic "Business Order Form". Perhaps you have other ideas of how this aspect of the directive should be implemented?

12.2 Attached are some further questions you might consider answering, and other questions where we seek to understand more about the role of electronic contracting in the directory publishing industry. We ask that you provide your responses on the attached Response Form, which is Annex C.

- **Can you think of any other way, apart from creating an electronic Business Order Form, of bringing compliance with the E-Commerce Directive?**
- **Is there any other form that you think the e-mailed Business Order should take?**
- **Do you think that important consumer or business protections are being retained by this proposal? And if not what additional requirements or safeguards would ensure that they were?**
- **Do you do much of your contracting by email? Or do you have plans to do so in the future?**
- **What impact do you think this proposal would have on your business? (Question for Directory Publishers and Advertisers). These include costs of implementation and benefits, as well as non-monetary costs and benefits.**
- **Do you have any other comments?**

## ANNEX A

### The Consultation Code of Practice Criteria

1. Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.
2. Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.
3. Ensure that your consultation is clear, concise and widely accessible.
4. Give feedback regarding the responses received and how the consultation process influenced the policy.
5. Monitor your department's effectiveness at consultation, including through the use of a designated consultation coordinator.
6. Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.

The complete code is available on the Cabinet Office's web site, address <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 Philip Martin, DTI Consultation Coordinator, Room 723, 1 Victoria Street, London SW1H 0ET or telephone him on 020 7215 6206 or email to: Philip.Martin@dti.gsi.gov.uk

## **ANNEX B: LIST OF CONSULTEES**

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 (NI)  
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  
Office of Fair Trading  
Reed Publishing  
Scottish Consumer Council  
Scottish Enterprise  
Scottish Executive  
Scottish Law Commission  
Small Business Council

The Advertising Association  
The Forum for Private Business  
The Law Society of Scotland  
The National Assembly for Wales  
The National Federation of Community Organisations  
The National Assembly for Wales  
The Newspaper Society  
Thomson Directories  
Trade Services Information Ltd  
Trading Standards Institute  
Welsh Consumer Council  
The Welsh Council for Voluntary Action  
The Welsh local Government Association  
Yell

## ANNEX C: RESPONSE FORM

*Please use this form as a cover sheet for responses*

Respondent Details	Please return by 11 June 2004 to:
Name:	Bryan Pay
Organisation:	Department of Trade and Industry Better Regulation and Markets, Consumer & Competition Policy V 613
Address:	1 Victoria Street London SW1H 0ET
Postcode:	Tel: 020-7215 0349
Telephone:	Fax: 020-7215 2837
Fax:	Email: <a href="mailto:bryan.pay@dti.gsi.gov.uk">bryan.pay@dti.gsi.gov.uk</a>
Email:	

*If you are replying on behalf of a representative group please summarize the people or organizations your group represents:*

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

*Consulters are invited to give reasons for their answers.*

Questions

- 1. Would this work for the directory publishing business? Would requiring an electronic letterhead to qualify for being a "Business Order Form" pose difficulties for smaller advertisers?**
- 2. What requirements do you think should be around the letterhead? Should it be trademarked or registered in some way, and what would be the implications of this for the Directory publishing industry?**
- 3. In practical terms, is checking of authenticity likely to be an issue? What double-checking is carried out now for paper Business Order Forms?**

4. **Would requiring name and address only significantly reduce the protections that should be provided for electronic contracting for directory entries?**
5. **Can you think of any other way, apart from creating an electronic Business Order Form, of bringing compliance with the E-Commerce Directive?**
6. **Is there any other form that you think the e-mailed Business Order should take?**
7. **Do you think that important consumer or business protections are being retained by this proposal? And if not what additional requirements or safeguards would ensure that they were?**
8. **Do you do much of your contracting by email? Or do you have plans to do so in the future?**
9. **What impact do you think this proposal would have on your business? (A question for Directory Publishers and Advertisers). These include costs of implementation and benefits, as well as non-monetary costs and benefits.**
10. **Do you have any other comments?**