



## 2010 CHAPTER 15

### *Control of charges for directory entries*

#### **Control of charges for directory entries**

1.—(1) A person (“P”) shall not be liable to make any payment (and shall be entitled to recover any payment made) by way of charge for including or arranging for the inclusion in a directory of an entry relating to P or P’s trade or business, unless the requirements of section 2, 3, 4 or 5 are met.

(2) Nothing in this section affects the rights of any consumer under the [Consumer Protection \(Distance Selling\) Regulations 2000 \(No. 2334\)](#).

#### *Permitted charges*

#### **Charge permitted if order form signed**

2. The requirements of this section are met if there has been signed by or on behalf of P an order made by means of an order form or other stationery belonging to P (which may be sent electronically) and which bears P’s name and address (or one or more of P’s addresses).

#### **Charge permitted if note of agreement to charge signed**

3. The requirements of this section are met if—
- (a) there has been signed by or on behalf of P a note of P’s agreement to the charge which—
    - (i) specifies the particulars set out in paragraph 1 of the Schedule; and
    - (ii) gives reasonable particulars of the entry in respect of which the charge would be payable; and

- (b) before the note was signed, a copy of it was supplied for retention by P to P or a person acting on P's behalf.

#### **Charge permitted in certain cases of electronic communication**

- 4.—(1) The requirements of this section are met if—
- (a) there has been transmitted by or on behalf of P an electronic communication which includes a statement that P agrees to the charge; and
  - (b) before the electronic communication was transmitted the following information was communicated to P—
    - (i) the particulars set out in paragraph 1 of the Schedule; and
    - (ii) reasonable particulars of the entry in respect of which the charge would be payable; and
  - (c) the electronic communication can readily be produced and retained in a visible and legible form.
- (2) In this section “electronic communication” has the same meaning as in the Electronic Communications Act (Northern Ireland) 2001 (c. 9).

#### **Charge permitted in certain cases of renewed or extended contract**

- 5.—(1) The requirements of this section are met if the charge arises under a contract in relation to which the conditions in subsection (2) are met.
- (2) Those conditions are met in relation to a contract (“the new contract”) if—
- (a) P has entered into an earlier contract (“the earlier contract”) for including or arranging for the inclusion in a particular issue or version of a directory (“the earlier directory”) of an entry (“the earlier entry”) relating to P or P's trade or business;
  - (b) P was liable to make a payment by way of a charge arising under the earlier contract for including or arranging for the inclusion of the earlier entry in the earlier directory;
  - (c) the new contract is a contract for including or arranging for the inclusion in a later issue or version of a directory (“the later directory”) of an entry (“the later entry”) relating to P or P's trade or business;
  - (d) the form, content and distribution of the later directory is materially the same as the form, content and distribution of the earlier directory;
  - (e) the form and content of the later entry is materially the same as the form and content of the earlier entry;
  - (f) if the later directory is published other than in electronic form—
    - (i) the earlier directory was the last, or the last but one, issue or version of the directory to be published before the later directory, and

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*Status: This is the original version (as it was originally enacted).*

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- (ii) the date of publication of the later directory is not more than 13 months after the date of publication of the earlier directory;
  - (g) if the later directory is published in electronic form, the first date on which the new contract requires the later entry to be published is not more than the relevant period after the last date on which the earlier contract required the earlier entry to be published;
  - (h) if it was a term of the earlier contract that P renew or extend the contract—
    - (i) before the start of the new contract the other party to that contract has given notice in writing to P containing the information set out in paragraph 2 of the Schedule; and
    - (ii) P has not written to that other party withdrawing P’s agreement to the renewal or extension of the earlier contract within the period of 21 days starting when P receives the notice referred to in subparagraph (i); and
  - (j) if the parties to the earlier contract and the new contract are different—
    - (i) the parties to both contracts have entered into a novation agreement in respect of the earlier contract; or
    - (ii) the other party to the new contract has before the conclusion of that contract given P the information set out in paragraph 3 of the Schedule.
- (3) For the purposes of subsection (2)(d) and (e), the form, content or distribution of the later directory, or the form or content of the later entry, shall be taken to be materially the same as that of the earlier directory or the earlier entry (as the case may be), if a reasonable person in P’s position would—
- (a) view the two as being materially the same; or
  - (b) view that of the later directory or the later entry as being an improvement on that of the earlier directory or the earlier entry.
- (4) For the purposes of subsection (2)(g) “the relevant period” means the period of 13 months or (if shorter) the period of time between the first and last dates on which the earlier contract required the earlier entry to be published.

### *Offence*

#### **Offence to demand payment where section 1 contravened**

6.—(1) A person commits an offence if, in a case where a payment in respect of a charge would be recoverable from the person in accordance with section 1(1), that person demands payment, or asserts a present or prospective right to payment, of the charge or any part of it, without having reasonable cause to believe that the requirements of section 2, 3, 4 or 5 have been met.

- (2) A person guilty of an offence under subsection (1) is liable—
- (a) on summary conviction to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment to a fine.

(3) For the purposes of this section any invoice or similar document stating the amount of any payment shall be regarded as asserting a right to the payment unless it complies with the conditions set out in paragraph 4 of the Schedule.

### *Supplementary*

#### **Power to amend the Schedule**

7.—(1) The Department of Enterprise, Trade and Investment may by order subject to negative resolution amend the Schedule.

- (2) An order under subsection (1) may—
- (a) contain transitional provisions; and
  - (b) make consequential amendments to any statutory provision (including a provision of this Act) which refers to the Schedule.

#### **Amendment and repeals**

8.—(1) In Article 2(3) of the [Unsolicited Goods and Services \(Northern Ireland\) Order 1976 \(NI 1\)](#) for “the requirements of regulations made under Article 6 applicable thereto” substitute “the conditions set out in paragraph 4 of the Schedule to the Unsolicited Services (Trade and Business Directories) Act (Northern Ireland) 2010”.

(2) Articles 5 and 6 of the [Unsolicited Goods and Services \(Northern Ireland\) Order 1976 \(NI 1\)](#) are repealed.

#### **Short title and commencement**

9.—(1) This Act may be cited as the Unsolicited Services (Trade and Business Directories) Act (Northern Ireland) 2010.

(2) This Act comes into operation two months after the day on which it receives Royal Assent.

(3) Nothing in this Act applies to a payment due under a contract entered into—

- (a) before this Act comes into operation; or
- (b) by the acceptance of an offer made before this Act comes into operation.