

2009 No. 2999

PROVISION OF SERVICES

The Provision of Services
Regulations 2009

Made - - - - - 11th November 2009

Coming into force - - 28th December 2009



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These Regulations are made in exercise of the powers conferred by section 2(2) of the European Communities Act 1972^(a).

The Secretary of State is a Minister designated^(b) in relation to services in the internal market for the purposes of section 2(2) of that Act.

In accordance with paragraph 2(2) of Schedule 2 to that Act a draft of this instrument has been laid before Parliament and approved by resolution of each House of Parliament.

Accordingly the Secretary of State makes the following Regulations.

PART 1
INTRODUCTORY

Citation and commencement

- 1.—(1) These Regulations may be cited as the Provision of Services Regulations 2009.
- (2) These Regulations come into force on 28th December 2009.

“Service”

- 2.—(1) In these Regulations “service” means any self-employed economic activity normally provided for remuneration (as referred to in Article 50 of the Treaty).
- (2) These Regulations do not apply to—

(a) 1972 c.68, to which there are amendments not relevant to these Regulations. Under s. 57(1) of the Scotland Act 1998 (c. 46), despite the transfer to Scottish Ministers of functions in relation to implementing obligations under Community law in relation to devolved matters, the function of the Secretary of State in relation to implementing these obligations continues to be exercisable by him as regards Scotland.

(b) S.I. 2009/221.

- (a) financial services, such as banking, credit, insurance and re-insurance, occupational or personal pensions, securities, investment funds, payment and investment advice, including the services listed in Annex I to Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions**(a)**;
- (b) electronic communications services and networks, and associated facilities and services, with respect to matters covered by—
 - Directive 2002/19/EC of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities**(b)**,
 - Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services**(c)**,
 - Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services**(d)**,
 - Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services**(e)**, or
 - Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector**(f)**;
- (c) services in the field of transport, including port services, falling within the scope of Title V of the Treaty;
- (d) services of temporary work agencies (which for the purposes of these Regulations include any employment business as defined by section 13(3) of the Employment Agencies Act 1973**(g)**);
- (e) healthcare services, whether or not they are provided via healthcare facilities, and regardless of the ways in which they are organised and financed at national level or whether they are public or private;
- (f) audiovisual services, including cinematographic services, whatever their mode of production, distribution and transmission, and radio broadcasting;
- (g) gambling activities which involve wagering a stake with pecuniary value in games of chance, including lotteries, gambling in casinos and betting transactions;
- (h) activities which are connected with the exercise of official authority (as set out in Article 45 of the Treaty);
- (i) social services relating to social housing, childcare and support of families and persons permanently or temporarily in need which are provided by the State, by providers mandated by the State or by charities recognised as such by the State;
- (j) private security services;
- (k) services provided by notaries or bailiffs, if or to the extent that they are appointed by an official act of government to provide those services.

(a) OJ No. L177, 30.6.2006, p.1.

(b) OJ No. L108, 24.4.2002, p.7.

(c) OJ No. L108, 24.4.2002, p.21.

(d) OJ No. L108, 24.4.2002, p.33.

(e) OJ No. L108, 24.4.2002, p.51.

(f) OJ No. L201, 31.7.2002, p.37 as amended by Directive 2006/24/EC (OJ L105, 13.4.2006, p.54).

(g) 1973 c. 35.

“Competent authority”

3.—(1) In these Regulations “competent authority” means a body or authority having supervisory or regulatory functions in the United Kingdom in relation to service activities (and includes in particular a professional body, professional association or other professional organisation, that regulates access to, or the exercise of, a service activity).

(2) In paragraph (1)—

- (a) the reference to a body or authority includes a body or authority acting on behalf of the Crown;
- (b) the reference to supervisory or regulatory functions includes the function of maintaining a register or other record of persons entitled to have access to, or to exercise, a service activity.

(3) Parts 3 to 6 of these Regulations do not apply to competent authorities to the extent that their functions involve the making of subordinate legislation.

Interpretation: general

4. In these Regulations—

“authorisation scheme” means any arrangement which in effect requires the provider or recipient of a service to obtain the authorisation of, or to notify, a competent authority in order to have access to, or to exercise, a service activity;

“enactment” includes Acts of the Scottish Parliament, Northern Ireland legislation, Acts and Measures of the National Assembly for Wales and subordinate legislation;

“establishment”, in relation to the provider of a service, means the actual pursuit of an economic activity, as referred to in Article 43 of the Treaty, by the provider for an indefinite period and through a stable infrastructure from where the business of providing services is actually carried out (and references to “established”, in relation to the provider of a service, are to be construed accordingly);

“notary”—

(a) in England and Wales, includes a person who, for the purposes of the Legal Services Act 2007^(a), is an authorised person in relation to any activity which constitutes a notarial activity (within the meaning of that Act), and

(b) in Scotland, means a notary public duly admitted in Scotland;

“professional liability insurance” means insurance taken out by the provider of a service in respect of potential liabilities to recipients and, where applicable, third parties arising out of the provision of the service;

“provider”, in relation to a service, means a person who provides, or offers to provide, the service (but see regulation 5(4));

“recipient”, in relation to a service, means a person who, for professional or non-professional purposes, uses, or wishes to use, the service (but see regulation 5(3));

“regulated profession” means a professional activity or group of activities—

(a) access to which, the pursuit of which or one of the modes of pursuit of which is subject (directly or indirectly) by virtue of legislative, regulatory or administrative provisions to the possession of specified qualifications, or

(b) the pursuit of which is by persons using a professional title which is limited by legislative, regulatory or administrative provisions to holders of a given professional qualification;

“requirement” includes any obligation, prohibition, condition or limit;

“service” has the meaning given by regulation 2;

(a) 2007 c. 29.

“the Services Directive” means Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market^(a);

“subordinate legislation” means Orders in Council, orders, rules, regulations, schemes, warrants, byelaws and other instruments made or to be made under any Act or under any Act of the Scottish Parliament, Northern Ireland legislation or Act or Measure of the National Assembly for Wales;

“the Treaty” means the Treaty establishing the European Community^(b).

General exclusions and savings

5.—(1) Nothing in these Regulations—

- (a) requires or prohibits—
 - (i) the opening up to competition of services of general economic interest,
 - (ii) the privatisation of public entities providing services, or
 - (iii) the abolition of monopolies;
- (b) affects the functions of a competent authority in relation to the granting of aids covered by Community rules on competition;
- (c) prevents a competent authority from determining, in accordance with Community law, what it considers to be a service of general economic interest, how services of general economic interest should be organised and financed in compliance with State aid rules and what specific obligations those services should be subject to;
- (d) affects the functions of a competent authority in relation to—
 - (i) the law relating to employment conditions,
 - (ii) the law relating to working conditions, including health and safety at work and the relationship between employers and workers, or
 - (iii) the law relating to social security;
- (e) affects rules of private international law, in particular rules governing the law applicable to contractual and non-contractual obligations (including those which guarantee that consumers benefit from the protection granted to them in the United Kingdom).

(2) Nothing in these Regulations applies in respect of the field of taxation.

(3) Nothing in these Regulations applies in relation to a recipient of a service who is not—

- (a) an individual who is a national of an EEA state or who otherwise benefits from rights conferred by Community acts, or
- (b) a legal person (as referred to in Article 48 of the Treaty) who is established in an EEA state.

(4) Nothing in Parts 3 to 9 of these Regulations applies in relation to a provider of a service who is not—

- (a) an individual who is a national of, and is established in, an EEA state, or
- (b) a legal person (as referred to in Article 48 of the Treaty) who is established in an EEA state.

Relationship with other requirements

6.—(1) A requirement imposed by Part 2, 5 or 6 of these Regulations on a competent authority or a provider of a service does not apply if, or to the extent that, the competent authority or provider cannot comply both with that requirement and with a requirement to which this paragraph applies.

(a) OJ No. L376, 27.12.2006, p.36.

(b) A consolidated version can be found at OJ No. C321E, 29.12.2006.

- (2) Paragraph (1) applies to a requirement imposed by—
- (a) a provision of an enactment, where—
 - (i) the provision relates to specific aspects of access to, or the exercise of, a service activity,
 - (ii) the provision implements a Community obligation, and
 - (iii) the enactment is passed or made before the day on which these Regulations are made, or
 - (b) a provision of a directly applicable Community instrument, where—
 - (i) the provision relates to specific aspects of access to, or the exercise of, a service activity, and
 - (ii) the instrument comes into force before the day on which these Regulations are made.
- (3) A requirement imposed by Part 3 or 4 of these Regulations on a competent authority does not apply if, or to the extent that, the competent authority cannot comply both with that requirement and with a requirement to which this paragraph applies.
- (4) Paragraph (3) applies to a requirement imposed by—
- (a) a provision of an enactment, where—
 - (i) the provision relates to specific aspects of access to, or the exercise of, a service activity, and
 - (ii) the enactment is passed or made before the day on which these Regulations are made, or
 - (b) a provision of a directly applicable Community instrument, where—
 - (i) the provision relates to specific aspects of access to, or the exercise of, a service activity, and
 - (ii) the instrument comes into force before the day on which these Regulations are made.

PART 2
DUTIES OF SERVICE PROVIDERS
CHAPTER 1
INFORMATION

Duty to make contact details available

7.—(1) The provider of a service must make available contact details to which all recipients of the service can send a complaint or a request for information about the service.

- (2) Those contact details must include in particular—
- (a) a postal address, fax number or e-mail address,
 - (b) a telephone number, and
 - (c) where the service provider has an official address, that address.

(3) In paragraph (2)(c) “official address” means an address which a person is required by law to register, notify or maintain for the purpose of receiving notices or other communications.

Other information to be made available

8.—(1) The provider of a service must make the following information available to a recipient of the service—

- (a) the provider’s name;
- (b) the provider’s legal status and form;

- (c) the geographic address at which the provider is established and details by which the provider may be contacted rapidly and communicated with directly (including, where the provider may be contacted and communicated with by electronic means, the details of how the provider may be so contacted and communicated with);
 - (d) where the provider is registered in a trade or other similar public register, the name of the register and the provider's registration number or equivalent means of identification in that register;
 - (e) where the activity is subject to an authorisation scheme in the United Kingdom, the particulars of the relevant competent authority or the electronic assistance facility referred to in regulation 38;
 - (f) where the activity is subject in another EEA state to a scheme equivalent to an authorisation scheme, the particulars of the authority involved or the single point of contact in that state;
 - (g) where the provider exercises an activity which is subject to VAT, the identification number referred to in Article 22(1) of the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the member states relating to turnover taxes – Common system of value added tax: uniform basis of assessment^(a);
 - (h) where the provider is carrying on a regulated profession, any professional body or similar institution with which the provider is registered, the professional title and the EEA state in which that title has been granted;
 - (i) the general terms and conditions, if any, used by the provider;
 - (j) the existence of contractual terms, if any, used by the provider concerning the competent courts or the law applicable to the contract;
 - (k) the existence of any after-sales guarantee not imposed by law;
 - (l) the price of the service, where a price is pre-determined by the provider for a given type of service;
 - (m) the main features of the service, if not already apparent from the context;
 - (n) where the provider is subject to a requirement to hold any professional liability insurance or guarantee, information about the insurance or guarantee and in particular—
 - (i) the contact details of the insurer or guarantor, and
 - (ii) the territorial coverage of the insurance or guarantee.
- (2) For the purposes of paragraph (1), information is made available to the recipient if—
- (a) it is supplied by the provider to the recipient on the provider's own initiative,
 - (b) it is easily accessible to the recipient at the place where the service is provided or the contract for the service is concluded,
 - (c) it is easily accessible to the recipient electronically by means of an address supplied by the provider, or
 - (d) it appears in any information document supplied to the recipient by the provider in which the provider gives a detailed description of the service.

Information to be supplied on request etc

9.—(1) The provider of a service must, on the request of a recipient of the service, supply the following information to the recipient—

- (a) where the price is not pre-determined by the provider for a given type of service—
 - (i) the price of the service, or

^(a) OJ No. L145, 13.6.1977, p.1, as last amended by Directive 2006/18/EC (OJ No. L51, 22.2.2006, p.12).

- (ii) if an exact price cannot be given, the method for calculating the price so that it can be checked by the recipient, or a sufficiently detailed estimate;
- (b) where the provider is carrying on a regulated profession, a reference to the professional rules applicable in the EEA state in which the provider is established and how to access them;
- (c) information on other activities undertaken by the provider which are directly linked to the service in question and on the measures taken to avoid conflicts of interest;
- (d) any codes of conduct to which the provider is subject and the address at which these codes may be consulted by electronic means, specifying the language available.

(2) The information referred to in paragraph (1)(c) must be included in any information document in which the provider gives a detailed description of the service.

Information about dispute resolution

10. The provider of a service who is subject to a code of conduct, or is a member of a trade association or professional body, which provides for recourse to a non-judicial dispute resolution procedure must—

- (a) inform a recipient of the service of that fact, and
- (b) mention it in any information document in which the provider gives a detailed description of the service,

specifying how to access detailed information about that procedure.

General

11. Information which must be made available or supplied by the provider of a service in accordance with the provisions of this Chapter must be made available or supplied—

- (a) in a clear and unambiguous manner, and
- (b) in good time before the conclusion of the contract or, where there is no written contract, before the service is provided (unless the information is requested as specified in regulation 9 after the provision of the service).

CHAPTER 2
COMPLAINTS

Complaints

12.—(1) The provider of a service must—

- (a) respond to complaints from recipients of the service as quickly as possible, and
- (b) make their best efforts to find a satisfactory solution to complaints from such recipients.

(2) Paragraph (1)(b) does not apply to complaints that are vexatious.

PART 3
DUTIES OF COMPETENT AUTHORITIES IN RELATION TO PROVISION OF
SERVICES IN UNITED KINGDOM

Introductory

Application of this Part

13.—(1) The provisions of this Part have effect in relation to the provision of a service in the United Kingdom, except as specified in paragraph (2).

(2) The provisions of this Part do not have effect for the purposes of, or in connection with, the exercise of the freedom of the provider of a service who is established in another EEA state to provide the service in the United Kingdom from that state (see Part 4).

Authorisations

Authorisation schemes

14.—(1) A competent authority must not make access to, or the exercise of, a service activity subject to an authorisation scheme unless the following conditions are satisfied.

(2) The conditions are that—

- (a) the authorisation scheme does not discriminate against a provider of the service,
- (b) the need for an authorisation scheme is justified by an overriding reason relating to the public interest, and
- (c) the objective pursued cannot be attained by means of a less restrictive measure, in particular because inspection after commencement of the service activity would take place too late to be genuinely effective.

(3) This regulation and regulations 15 to 20 do not apply to authorisation schemes to the extent that they are governed, directly or indirectly, by—

- (a) a provision of an enactment implementing a Community obligation, where the enactment is passed or made before the day on which these Regulations are made, or
- (b) a provision of a directly applicable Community instrument coming into force before that day.

Conditions for the granting of authorisation

15.—(1) An authorisation scheme provided for by a competent authority must be based on criteria which preclude the competent authority from exercising its power of assessment in an arbitrary manner.

(2) The criteria must be—

- (a) non-discriminatory,
- (b) justified by an overriding reason relating to the public interest,
- (c) proportionate to that public interest objective,
- (d) clear and unambiguous,
- (e) objective,
- (f) made public in advance, and
- (g) transparent and accessible.

(3) The conditions imposed by a competent authority for granting authorisation for a new establishment under an authorisation scheme must not duplicate requirements and controls—

- (a) to which the provider of the service is already subject in the United Kingdom or in another EEA state, and
- (b) that are equivalent or essentially comparable as regards their purpose.

(4) The provider of the service must assist the competent authority by providing any necessary information requested by the competent authority regarding the requirements and controls referred to in paragraph (3); and paragraph (3) does not apply if the provider has not provided that information within a reasonable time of being requested to do so.

(5) An authorisation granted by a competent authority under an authorisation scheme must enable the provider of the service to have access to the service activity, or to exercise that activity, throughout the United Kingdom, including by means of setting up agencies, subsidiaries, branches or offices, except where an authorisation for each individual establishment or a limitation of the

authorisation to a particular part or area of the United Kingdom is justified by an overriding reason relating to the public interest.

(6) In the case of a competent authority whose functions relate only to part of the United Kingdom, references in paragraph (5) to the United Kingdom are to that part of the United Kingdom.

(7) A competent authority must grant an authorisation under an authorisation scheme as soon as it is established, in the light of an appropriate examination, that the conditions for authorisation have been met.

(8) Except in the case of the granting of an authorisation, any decision of the competent authority relating to an authorisation under an authorisation scheme, including refusal or withdrawal of an authorisation, must be fully reasoned.

Duration of authorisation

16.—(1) An authorisation granted to the provider of a service by a competent authority under an authorisation scheme must be for an indefinite period, except where—

- (a) the authorisation—
 - (i) is automatically renewed, or
 - (ii) is subject only to the continued fulfilment of requirements,
- (b) the number of available authorisations is limited by an overriding reason relating to the public interest, or
- (c) a limited authorisation period can be justified by an overriding reason relating to the public interest.

(2) This does not prevent the setting of a maximum period before the end of which the provider of the service must actually commence the activity after receiving authorisation.

(3) The provider of the service must inform the competent authority of the following changes—

- (a) the creation of subsidiaries whose activities fall within the scope of the authorisation scheme;
- (b) changes in the provider's situation that result in the conditions for authorisation no longer being met.

(4) This regulation does not prevent revocation or suspension of an authorisation when the conditions for authorisation are no longer met.

Selection from among several candidates

17.—(1) This regulation applies where the number of authorisations available from a competent authority under an authorisation scheme for a given service activity is limited because of the scarcity of available natural resources or technical capacity.

(2) The selection procedure established by the competent authority must fully secure impartiality and transparency, including, in particular, adequate publicity about the launch, conduct and completion of the procedure.

(3) Authorisation granted by the competent authority—

- (a) must be granted for an appropriate limited period, and
- (b) may not—
 - (i) be open to automatic renewal, or
 - (ii) confer any other advantage on a previously authorised candidate or on a person having any particular links with such a candidate.

(4) Subject to paragraph (2) and to regulations 14 and 15, a competent authority may, in establishing the rules for the selection procedure, take into account—

- (a) considerations of public health,

- (b) social policy objectives,
 - (c) the health and safety of employees or self-employed persons,
 - (d) the protection of the environment,
 - (e) the preservation of cultural heritage, and
 - (f) other overriding reasons relating to the public interest,
- in conformity with Community law.

Authorisation schemes: general requirements

18.—(1) Authorisation procedures and formalities provided for by a competent authority under an authorisation scheme must—

- (a) be clear,
- (b) be made public in advance, and
- (c) secure that applications for authorisation are dealt with objectively and impartially.

(2) Authorisation procedures and formalities provided for by a competent authority under an authorisation scheme must not—

- (a) be dissuasive, or
- (b) unduly complicate or delay the provision of the service.

(3) Authorisation procedures and formalities provided for by a competent authority under an authorisation scheme must be easily accessible.

(4) Any charges provided for by a competent authority which applicants may incur under an authorisation scheme must be reasonable and proportionate to the cost of the procedures and formalities under the scheme and must not exceed the cost of those procedures and formalities.

Authorisation procedures: time for dealing with application

19.—(1) Authorisation procedures and formalities provided for by a competent authority under an authorisation scheme must secure that applications for authorisation are processed as quickly as possible and, in any event, within a reasonable period running from the time when all documentation has been submitted.

(2) That period must be fixed and made public in advance.

(3) When justified by the complexity of the issue, that period may be extended once, by the competent authority, for a limited time.

(4) The extension and its duration must be notified to the applicant, with reasons, before the original period has expired.

(5) In the event of failure to process the application within the period set or extended in accordance with the preceding provisions of this regulation, authorisation is deemed to have been granted by a competent authority, unless different arrangements are in place.

(6) Any different arrangements must be justified by overriding reasons relating to the public interest, including a legitimate interest of third parties.

Authorisation procedures: other requirements

20.—(1) All applications to a competent authority for authorisation under an authorisation scheme must be acknowledged as quickly as possible.

(2) The acknowledgement must specify—

- (a) the period referred to in regulation 19(1);
- (b) the available means of redress;
- (c) whether the authorisation is deemed to have been granted in the absence of a response within the period specified.

(3) In the case of an incomplete application, the applicant must be informed as quickly as possible of—

- (a) the need to supply any additional documentation, and
- (b) any possible effects on the period referred to in regulation 19(1).

(4) When a request is rejected because it fails to comply with authorisation procedures and formalities under an authorisation scheme, the applicant must be informed of the rejection as quickly as possible.

Requirements which are prohibited or subject to evaluation

Prohibited requirements

21.—(1) A competent authority must not make access to, or the exercise of, a service activity subject to any of the following—

- (a) discriminatory requirements based directly or indirectly on nationality or, in the case of companies, the location of the registered office, including in particular—
 - (i) nationality requirements for the provider of a service, their staff, their shareholders or members of their management or supervisory bodies;
 - (ii) a requirement that a provider, their staff, their shareholders or members of their management or supervisory bodies be resident in the United Kingdom;
- (b) a prohibition—
 - (i) on being established in more than one EEA state, or
 - (ii) on being entered in the registers of, or enrolled with professional bodies or associations of, more than one EEA state;
- (c) restrictions on the freedom of the provider of a service to choose between principal or secondary establishment, in particular—
 - (i) an obligation on the provider requiring principal establishment in the United Kingdom, or
 - (ii) restrictions on the freedom to choose between establishment in the form of an agency, branch or subsidiary;
- (d) conditions of reciprocity with the EEA state in which the provider is already established, other than conditions of reciprocity provided for in Community instruments concerning energy;
- (e) the case-by-case application of an economic test making the granting of authorisation subject to—
 - (i) proof of the existence of an economic need or market demand,
 - (ii) an assessment of the potential or current economic effects of the activity, or
 - (iii) an assessment of the appropriateness of the activity in relation to the economic planning objectives set by the competent authority;
- (f) the direct or indirect involvement of competing operators, including within consultative bodies—
 - (i) in the granting of authorisations, or
 - (ii) in the adoption of other decisions of the competent authorities;
- (g) an obligation to provide or participate in a financial guarantee or to take out insurance from a person established in the United Kingdom;
- (h) an obligation—
 - (i) to have been pre-registered, for a given period, in registers held in the United Kingdom, or
 - (ii) to have previously exercised the activity for a given period in the United Kingdom.

(2) Paragraph (1)(e) does not affect planning requirements that do not pursue economic aims but serve overriding reasons relating to the public interest.

(3) Paragraph (1)(f)—

- (a) does not prevent professional bodies and associations or other organisations acting as the competent authority, and
- (b) does not affect the consultation of organisations, such as chambers of commerce or social partners, on matters other than individual applications for authorisation, or a consultation of the public at large.

(4) Paragraph (1)(g)—

- (a) does not affect any requirement of insurance or a financial guarantee as such, and
- (b) does not affect requirements relating to the participation in a collective compensation fund, for instance for members of professional bodies or organisations.

Requirements subject to evaluation

22.—(1) A competent authority must not make access to, or the exercise of, a service activity subject to any of the requirements specified in paragraph (2) unless the conditions specified in paragraph (3) are met.

(2) The requirements to which this regulation applies are—

- (a) quantitative or territorial restrictions, in particular in the form of limits fixed according to population or of a minimum geographical distance between persons providing the service;
- (b) an obligation on a provider of the service to take a specific legal form;
- (c) requirements relating to the shareholding of a company;
- (d) requirements, other than those—
 - (i) concerning matters covered by Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications^(a), or
 - (ii) provided for in other Community instruments, which reserve access to the service activity in question to particular persons providing the service by virtue of the specific nature of the activity;
- (e) a ban on having more than one establishment in the United Kingdom;
- (f) requirements fixing a minimum number of employees;
- (g) fixed minimum tariffs or fixed maximum tariffs (or both) with which a provider of the service must comply;
- (h) an obligation on a provider of the service to supply other specific services jointly with the service activity in question.

(3) The conditions are—

- (a) non-discrimination, that is, the requirements must be neither directly nor indirectly discriminatory with regard to—
 - (i) nationality, or
 - (ii) in the case of companies, the location of the registered office;
- (b) necessity, that is, the requirements must be justified by an overriding reason relating to the public interest;
- (c) proportionality, that is, the requirements—
 - (i) must be suitable for securing the attainment of the objective pursued, and
 - (ii) must not go beyond what is necessary to attain that objective,

(a) OJ No. L255, 30.9.2005, p.22.

and it must not be possible to replace those requirements with other, less restrictive measures that attain the same result.

(4) The preceding paragraphs of this regulation do not apply in relation to any requirement applying to a person entrusted with the provision of a service of general economic interest where the requirement is proportionate and necessary for the provision of that service by that person.

(5) In paragraph (4) “service of general economic interest” means a service which the competent authority determines, in accordance with Community law, to be of general economic interest.

(6) A competent authority must notify the Secretary of State of—

- (a) any proposal to introduce a new requirement specified in paragraph (2) affecting access to, or the exercise of, a service activity, and
- (b) the reasons for that requirement.

(7) The notification must state the reasons why the authority considers that the application of the requirement meets the conditions in paragraph (3).

PART 4

DUTIES OF COMPETENT AUTHORITIES IN RELATION TO PROVIDERS OF SERVICES PROVIDED FROM ANOTHER EEA STATE

Application of this Part

23.—(1) The provisions of this Part have effect for the purposes of, and in connection with, the exercise of the freedom of the provider of a service who is established in another EEA state to provide the service in the United Kingdom from that state.

(2) Accordingly, in this Part—

- (a) references to the provider of a service are references to the provider of a service exercising that freedom;
- (b) references to access to, or the exercise of, a service activity are references to access to, or the exercise of, the activity by the provider of a service in the exercise of that freedom.

Freedom to provide services

24.—(1) A competent authority must not make access to, or the exercise of, a service activity subject to compliance with any requirement that does not respect the following principles—

- (a) non-discrimination, that is, that the requirement must be neither directly nor indirectly discriminatory with regard to nationality or with regard to an EEA state in which the provider of a service is established;
- (b) necessity, that is, that the requirement must be justified for reasons of public policy, public security, public health or the protection of the environment;
- (c) proportionality, that is, that the requirement must be suitable for attaining the objective pursued and must not go beyond what is necessary to attain that objective.

(2) A competent authority may not restrict the right of the provider of a service to provide the service by imposing any of the following requirements—

- (a) an obligation on the provider to be established in the United Kingdom;
- (b) an obligation on the provider to obtain an authorisation from a competent authority in the United Kingdom, including entry in a register or registration with a professional body or association in the United Kingdom, except where provided for by—
 - (i) a provision of an enactment implementing a Community obligation, where the enactment is passed or made before the day on which these Regulations are made, or
 - (ii) a provision of any directly applicable Community instrument coming into force before that day;

- (c) a ban on the provider setting up a certain form or type of infrastructure in the United Kingdom, including an office or chambers, which the provider needs in order to supply the services in question;
 - (d) the application of specific contractual arrangements between the provider and a recipient of the service which prevent or restrict service provision by the self-employed;
 - (e) an obligation on the provider to possess an identity document issued by a competent authority in the United Kingdom specific to the exercise of a service activity;
 - (f) requirements, except for those necessary for health and safety at work, affecting the use of equipment and material that are an integral part of the service provided;
 - (g) requirements referred to in regulation 29(1).
- (3) Paragraph (2) does not prevent a competent authority from—
- (a) imposing requirements that are justified for reasons of public policy, public security, public health or the protection of the environment (and which comply with paragraph (1)), or
 - (b) applying, in accordance with Community law, rules in force in the United Kingdom as regards employment conditions, including those laid down in collective agreements.

Derogations from the freedom to provide services

25. Regulation 24 does not apply to—

- (a) the following services of general economic interest—
 - (i) in the postal sector, services covered by Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of service^(a);
 - (ii) in the electricity sector, services covered by Directive 2003/54/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in electricity^(b);
 - (iii) in the gas sector, services covered by Directive 2003/55/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in natural gas^(c);
 - (iv) water distribution and supply services and waste water services;
 - (v) the treatment of waste;
- (b) other services which the relevant competent authority determines, in accordance with Community law, to be of general economic interest;
- (c) matters covered by Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services^(d);
- (d) matters covered by Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data^(e);
- (e) matters covered by Council Directive 77/249/EEC of 22 March 1977 to facilitate the effective exercise by lawyers of freedom to provide services^(f);
- (f) the activity of judicial recovery of debts;

(a) OJ No. L15, 21.1.1998, p.14, as last amended by Regulation (EC) No. 1882/2003 (OJ No. L284, 31.10.2003, p.1).
 (b) OJ No. L176, 15.7.2003, p.37, as last amended by Commission Decision 2006/653/EC (OJ L270, 29.9.2006, p.72).
 (c) OJ No. L176, 15.7.2003, p.57.
 (d) OJ No. L18, 21.1.1997, p.1.
 (e) OJ No. L281, 23.11.1995 p.31, as amended by Regulation (EC) No. 1882/2003 (OJ No. L284, 31.10.2003, p.1).
 (f) OJ No. L78, 26.3.1977, p.17.

- (g) matters covered by Title II of Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications, as well as requirements in the EEA state where the service is provided which reserve an activity to a particular profession;
- (h) matters covered by Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community(a);
- (i) as regards administrative formalities concerning the free movement of persons and their residence, matters covered by the provisions of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the member states that lay down administrative formalities with which beneficiaries must comply(b);
- (j) as regards third country nationals who move to the United Kingdom in the context of the provision of a service, the operation of the Immigration Acts(c);
- (k) as regards the shipment of waste, matters covered by Council Regulation (EEC) No 259/93 of 1 February 1993 on the supervision and control of shipments of waste within, into and out of the European Community(d);
- (l) copyright, related rights, rights covered by Council Directive 87/54/EEC of 16 December 1986 on the legal protection of topographies of semiconductor products(e) and rights covered by Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases, as well as industrial property rights(f);
- (m) acts requiring by law the involvement of a notary;
- (n) matters covered by Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audit of annual accounts and consolidated accounts(g);
- (o) the registration of vehicles leased in another EEA state;
- (p) the rules of private international law regarding contractual or non-contractual obligations, including the form of contracts.

Derogation relating to the safety of a service

26.—(1) In exceptional circumstances only, a competent authority may, in respect of the provider of a service, take measures relating to the safety of the service.

(2) Such measures may be taken only if the requirements of regulation 27 are complied with and the following conditions are fulfilled.

(3) The conditions are that—

- (a) the provisions in accordance with which the measure is taken have not been subject to Community harmonisation in the field of the safety of services,
- (b) the measures provide for a higher level of protection of the recipient than would be the case in a measure taken by the EEA state in which the provider is established in accordance with its national provisions,
- (c) that EEA state has not taken any measures, or has taken measures which are insufficient as compared with those requested under regulation 27(2), and
- (d) the measures are proportionate.

(a) OJ No. L149, 5.7.1971, p.2.

(b) OJ No. L158, 30.4.2004, p.77.

(c) See definition in Schedule 1 to the Interpretation Act 1978 (c.30).

(d) OJ No. L30, 6.2.1993, p.1.

(e) OJ No. L24, 27.1.1987, p.36.

(f) OJ No. L77, 27.3.1996, p.20.

(g) OJ No. L157, 9.6.2006, p.87.

Procedure relating to derogation under regulation 26

27.—(1) The requirements referred to in regulation 26(2) are as follows.

(2) Before taking measures under regulation 26 the competent authority must request the relevant authority in the EEA state in which the provider is established to take measures with regard to the provider, supplying all relevant information on the service in question and the circumstances of the case.

(3) If, when that relevant authority has informed the competent authority of the measures taken or envisaged, or of the reasons why it has not taken any measures, the competent authority intends to take measures under regulation 26, the competent authority must notify the Secretary of State of its intention.

(4) Notification under paragraph (3) must state—

- (a) the reasons why the competent authority believes that the measures taken or envisaged by the EEA state in which the provider is established are inadequate, and
- (b) the reasons why it believes the measures it intends to take fulfil the conditions referred to in regulation 26(3).

(5) On being notified as specified in paragraph (3) the Secretary of State must notify the relevant authority in the EEA state in which the provider is established, and the Commission, of the matters referred to in paragraph (4).

(6) The competent authority may not take the measures under regulation 26 until the end of the period of fifteen days beginning with the date of notification under paragraph (5).

(7) The requirements of the preceding provisions of this regulation do not apply in cases of urgency.

(8) But in such cases—

- (a) a competent authority must, as quickly as possible, notify the Secretary of State of the measures under regulation 26 that it is taking, giving the reasons for urgency, and
- (b) the Secretary of State must, as quickly as possible, notify the relevant authority in the EEA state in which the provider is established, and the Commission, accordingly.

Duty to notify Secretary of State of new requirements

28.—(1) A competent authority must notify the Secretary of State of any proposal to introduce new requirements affecting access to, or the exercise of, a service activity.

(2) The notification must state the reasons why the authority considers that the application of those requirements respects the principles referred to in regulation 24(1) or falls within regulation 24(3).

PART 5

RECIPIENTS OF SERVICES

Restrictions on use of service supplied by provider established in another EEA state

29.—(1) A competent authority may not impose on the recipient of a service any requirements which restrict the use of the service as supplied from another EEA state by a provider established in that state.

(2) The requirements referred to in paragraph (1) include in particular—

- (a) an authorisation scheme;
- (b) a discriminatory limit on the grant of financial assistance to a recipient by reason of the fact that the provider is established in another EEA state or by reason of the location of the place at which the service is provided.

Requirements based on nationality or place of residence

30.—(1) A competent authority may not subject recipients of a service who are individuals to discriminatory requirements based on their nationality or place of residence.

(2) The provider of a service may not, in the general conditions of access to a service which the provider makes available to the public at large, include discriminatory provisions relating to the place of residence of recipients who are individuals.

(3) Paragraph (2) does not apply to differences in conditions of access which are directly justified by objective criteria.

PART 6

OTHER DUTIES OF COMPETENT AUTHORITIES IN RELATION TO PROVIDERS AND RECIPIENTS

Certificates and other documents

31.—(1) This regulation applies where a competent authority requires the provider or recipient of a service to supply a certificate, attestation or any other document proving that a requirement has been satisfied.

(2) The competent authority must accept any document—

- (a) which serves an equivalent purpose, or
- (b) from which it is clear that the requirement has been satisfied.

(3) The competent authority may not require a document to be produced in its original form, or as a certified copy or certified translation, except—

- (a) as provided for in another Community instrument, or
- (b) where such a requirement is justified by an overriding reason relating to the public interest, including public order and security.

(4) This regulation does not prevent a competent authority from requiring a non-certified translation of a document into English.

(5) This regulation does not apply to the documents referred to in—

- (a) section 5A(3) of, and paragraphs 5(3) and 6(5)(b) of Schedule 1B to, the Veterinary Surgeons Act 1966(a);
- (b) in the case of a company incorporated in an EEA state other than the United Kingdom, the First Council Directive on co-ordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, with a view to making such safeguards equivalent throughout the Community (68/151/EEC)(b);
- (c) section 4A(2)(a) of, and paragraphs 3(4) and 6(6)(b) of Schedule 1A to, the Architects Act 1997(c);
- (d) regulation 16(2) of the European Communities (Lawyer's Practice) Regulations 2000(d);
- (e) regulation 16(2) of the European Communities (Lawyer's Practice) (Scotland) Regulations 2000(e);

(a) 1966 c. 36. Relevant amendments to section 5A and Schedule 1B were made by the Veterinary Surgeons' Qualifications (European Recognition) Regulations 2008 (S.I. 2008/1824).

(b) OJ No. L65, 14.3.1968, p.8 (OJ/SE Series I Chapter 1968 (J) P.0041) as last amended by Directive 2003/58/EC of the European Parliament and of the Council (OJ No. L221, 4.9.2003, p.13).

(c) 1997 c. 22. Section 4A and Schedule 1A were inserted by the Architects (Recognition of European Qualifications etc and Saving and Transitional Provision) Regulations 2008 (S.I. 2008/1331).

(d) S.I. 2000/1119, to which there are amendments not relevant to these Regulations.

(e) S.S.I. 2000/121, to which there are amendments not relevant to these Regulations.

- (f) sections 17 and 396 of the Companies Act 2006(a);
- (g) regulations 23(5), 24(1) and 25 of the Public Contracts Regulations 2006(b);
- (h) regulations 23(5), 24(1) and 25 of the Public Contracts (Scotland) Regulations 2006(c);
- (i) regulations 11, 12, 31, 32 and 33 of the European Communities (Recognition of Professional Qualifications) Regulations 2007(d);
- (j) the Overseas Companies Regulations 2009(e).

Electronic procedures

32.—(1) A competent authority must ensure that—

- (a) all procedures and formalities relating to access to, or the exercise of, a service activity may be easily completed, at a distance and by electronic means (through the electronic assistance facility referred to in regulation 38 or otherwise), and
- (b) its website affords access to that electronic assistance facility.

(2) In paragraph (1), the reference to procedures or formalities does not include procedures or formalities consisting of—

- (a) the inspection of premises or equipment, or
- (b) physical examination of the capability or professional integrity of—
 - (i) a provider of the service, or
 - (ii) the staff of such a provider.

Insurance

33.—(1) A competent authority may not require professional liability insurance or a guarantee from the provider of a service if, or to the extent that, the provider is already covered, in another EEA state in which the provider is established, by professional liability insurance or a guarantee meeting the condition in paragraph (2).

(2) That condition is that the professional liability insurance or guarantee is equivalent or essentially comparable as regards—

- (a) its purpose, and
- (b) the cover it provides in terms of—
 - (i) the risk covered,
 - (ii) the amount covered, and
 - (iii) exclusions from the cover.

(3) Where a competent authority requires the provider of a service to have professional liability insurance or a guarantee, the authority must accept as sufficient evidence attestations of such cover issued by credit institutions and insurers established in another EEA state.

(4) Paragraphs (1) and (2) do not apply to the regulation of lawyers exercising their right under Article 2 of Directive 98/5/EC of the European Parliament and of the Council of 16 February 1998 to facilitate practice of the profession of lawyer on a permanent basis in a member State other than that in which the qualification was obtained(f).

(a) 2006 c. 46.

(b) S.I. 2006/5, to which there are amendments not relevant to these Regulations.

(c) S.S.I. 2006/1, to which there are amendments not relevant to these Regulations.

(d) S.I. 2007/2781.

(e) S.I. 2009/1801.

(f) OJ No. L77, 14.3.1998, p.36, as last amended by Council Directive 2006/100/EC (OJ No. L 363, 20.12.2006, p.141).

Commercial communications by regulated professions

34.—(1) A competent authority may not impose a total prohibition on the use of commercial communications by providers of a service who are carrying on a regulated profession.

(2) The relevant competent authority must ensure that commercial communications by providers of a service who are carrying on a regulated profession comply with professional rules which relate in particular to—

- (a) the independence, dignity and integrity of that profession, and
- (b) professional secrecy,

in a manner consistent with the specific nature of that profession.

(3) Rules made by a competent authority in relation to commercial communications by providers of a service who are carrying on a regulated profession must be—

- (a) non-discriminatory,
- (b) justified by an overriding reason relating to the public interest, and
- (c) proportionate.

(4) In this regulation, “commercial communications” means communications in any form designed to promote, directly or indirectly, the goods, services or image of a person carrying on a regulated profession, other than—

- (a) a communication consisting only of information allowing direct access to the activity of that person, including a postal address, a domain name or an e-mail address, or
- (b) a communication which has been prepared independently of the person making it (and for this purpose, a communication prepared without financial consideration is to be taken to have been prepared independently unless the contrary is shown).

Multi-disciplinary activities

35.—(1) A competent authority may not subject the provider of a service to any requirement which—

- (a) obliges the provider to exercise a specific service activity exclusively, or
- (b) restricts the exercise, jointly or in partnership, of different activities.

(2) Paragraph (1) does not prevent a competent authority for a regulated profession from imposing a requirement if or to the extent that—

- (a) the requirement is justified in order to guarantee compliance with the rules governing ethics and conduct in that profession, and
- (b) the requirement is necessary in order to ensure the impartiality and independence of that profession.

(3) Paragraph (4) applies where a competent authority has not imposed on a provider of a service carrying on a regulated profession—

- (a) an obligation within paragraph (1)(a), or
- (b) a restriction within paragraph (1)(b) that prohibits the exercise of different activities.

(4) The competent authority must ensure that—

- (a) conflicts of interest are avoided,
- (b) independence and impartiality are secured as required, and
- (c) the rules governing professional ethics and conduct for different activities are compatible with one another (including in particular in relation to matters of professional secrecy).

(5) In the case of certification, accreditation, technical monitoring, test or trial services, paragraph (1) does not prevent a competent authority from imposing a requirement if, or to the extent that, the requirement is necessary in order to ensure the independence and impartiality of the provider of the service.

(6) Paragraph (7) applies where a competent authority has not imposed on a provider of a service referred to in paragraph (5)—

- (a) an obligation within paragraph (1)(a), or
- (b) a restriction within paragraph (1)(b) that prohibits the exercise of different activities.

(7) The competent authority must ensure that—

- (a) conflicts of interest are avoided,
- (b) independence and impartiality are secured as required, and
- (c) the rules governing the provision of that service, and the carrying on of the other activity, are compatible (including in particular in relation to matters of professional secrecy).

PART 7

PROVISION OF INFORMATION BY COMPETENT AUTHORITIES

Information to be provided to the Secretary of State

36.—(1) The competent authority for a service activity must provide the following information in electronic form to the Secretary of State (or secure that it is accessible to the Secretary of State in electronic form)—

- (a) the requirements applicable to providers of the service established in the United Kingdom, and in particular any authorisation scheme relating to the service activity which involves the competent authority;
- (b) the contact details of the competent authority;
- (c) the means of, and conditions for, accessing public registers and databases on—
 - (i) providers of the service, and
 - (ii) the service;
- (d) the means of redress which are generally available in the event of a dispute—
 - (i) between the competent authority and a provider or recipient of the service,
 - (ii) between a provider and a recipient of the service, or
 - (iii) between providers of the service;
- (e) the contact details of associations or organisations, other than the competent authority, from which providers or recipients of the service may obtain practical assistance.

(2) The relevant competent authority must on request provide to the Secretary of State general information on the requirements applicable in the United Kingdom relating to access to, and the exercise of, a service activity, in particular those relating to consumer protection.

(3) The information provided under this regulation must be clear and unambiguous.

(4) The information provided or made accessible under paragraph (1) must be kept up-to-date by the competent authority.

(5) In the case of a competent authority whose functions relate only to part of the United Kingdom, the references in paragraphs (1) and (2) to the United Kingdom are to that part of the United Kingdom.

Information to be provided to providers and recipients on request

37.—(1) The competent authority for a service activity must, on the request of a provider or recipient of the service, provide that person with information on the way in which the requirements referred to in regulation 36(1)(a) are generally interpreted and applied.

(2) The information provided under paragraph (1) must be—

- (a) clear and unambiguous, and

- (b) provided by electronic means.
- (3) A competent authority must respond to a request under paragraph (1) as quickly as possible.
- (4) Where a competent authority is requested to provide information referred to in paragraph (1) but the request is not one which it is required to respond to under this regulation, the competent authority must inform the person making the request as quickly as possible.
- (5) This regulation does not require the provision of legal advice in individual cases.

PART 8

ELECTRONIC ASSISTANCE FACILITY

Duty to provide an electronic assistance facility

38.—(1) The Secretary of State and the Commissioners for Revenue and Customs must jointly provide a facility for—

- (a) the completion by electronic means of procedures and formalities relating to access to, or the exercise of, a service activity, and
- (b) the provision by electronic means of the information referred to in regulation 36(1) to providers and recipients of services.

(2) The facility referred to in paragraph (1) must include the provision of help and support (electronically or by telephone) for its users.

(3) The facility referred to in paragraph (1) may also be used for the following purposes—

- (a) the provision of information and guidance by governmental and regulatory authorities in the United Kingdom in relation to the matters specified in paragraph (4);
- (b) communications with those authorities in relation to those matters;
- (c) the completion of procedures and formalities relating to those matters.

(4) The matters referred to in paragraph (3) are—

- (a) regulatory matters affecting business, and
- (b) support for business.

(5) In this regulation, references to procedures or formalities do not include procedures or formalities consisting of—

- (a) the inspection of premises or equipment, or
- (b) physical examination of the capability or professional integrity of—
 - (i) a provider of the service, or
 - (ii) the staff of such a provider.

PART 9

ADMINISTRATIVE CO-OPERATION BETWEEN EEA STATES

General obligations

39.—(1) A competent authority must for the purposes of Chapter VI of the Services Directive provide assistance to relevant authorities in other EEA states, and put in place measures for effective co-operation with such authorities, in order to ensure the supervision of providers of services and the services they provide.

(2) A competent authority is not obliged under this Part to meet a request for information, or a request to carry out any check, inspection or investigation, that is not for a proper purpose or for which no reason is given.

(3) Where under Chapter VI of the Services Directive a competent authority receives a request for information, or a request to carry out any check, inspection or investigation from a relevant authority in another EEA state, but—

- (a) considers that the request is not for a proper purpose or that no reason has been given for it, or
- (b) finds that the request is one which it has difficulty in meeting,

it must promptly notify the requesting authority and the Secretary of State accordingly.

(4) Information supplied to an authority in another EEA state pursuant to this Part must be supplied—

- (a) through the electronic system for the exchange of information established pursuant to Article 34 of the Services Directive, and
- (b) as quickly as possible.

(5) Any register of providers of a service held by a competent authority and which is accessible to other competent authorities in the United Kingdom must be accessible on the same conditions to authorities with equivalent functions in other EEA states.

Provision of information where provider established in UK

40.—(1) This regulation applies in relation to a provider of a service who is established in the United Kingdom and is providing the service in another EEA state.

(2) The competent authority must, when requested to do so by a relevant authority in another EEA state, supply information about the provider to that authority.

(3) The information referred to in paragraph (2) includes in particular—

- (a) confirmation that the provider is established in the United Kingdom;
- (b) whether, to the competent authority's knowledge, the provider is authorised to provide the service.

(4) The competent authority must, when requested to do so by a relevant authority in another EEA state—

- (a) carry out checks, inspections or investigations in relation to the provider,
- (b) inform the requesting authority of the results, and
- (c) if it thinks it appropriate to take any measures in relation to the provider, inform the requesting authority of those measures.

(5) Nothing in paragraph (4) permits or requires a competent authority to do anything which it could not otherwise lawfully do.

Provision of information where services provided in UK

41.—(1) This regulation applies in relation to a provider of a service who provides the service in the United Kingdom but is not established there.

(2) The competent authority must, when requested to do so by a relevant authority in an EEA state where the provider is established, carry out any checks, inspections or investigations in relation to the provider that are necessary to ensure effective supervision by that authority.

(3) Nothing in paragraph (2) permits or requires a competent authority to do anything which it could not otherwise lawfully do.

Alert mechanism

42. If a competent authority becomes aware of serious specific acts or circumstances relating to a service activity that could cause serious damage to—

- (a) the health or safety of persons in the United Kingdom or in another EEA state, or
- (b) the environment in the United Kingdom or in another EEA state,

the competent authority must inform the Secretary of State as quickly as possible.

Information relating to disciplinary action etc taken in relation to providers

43.—(1) Where a relevant authority in another EEA state requests a competent authority to supply information on any of the matters in paragraph (2) in relation to the provider of a service, the competent authority must do so, subject to and in accordance with this regulation.

(2) The matters referred to in paragraph (1) are—

- (a) disciplinary or administrative actions,
- (b) criminal sanctions, and
- (c) decisions concerning insolvency or bankruptcy involving fraud,

taken or imposed by an authority in the United Kingdom in respect of the provider which are directly relevant to the provider's competence or professional reliability.

(3) Nothing in this regulation requires or permits a competent authority to disclose information which it could not otherwise lawfully disclose.

(4) But where a competent authority may not lawfully supply information pursuant to a request under paragraph (1) without the consent of the provider, it must make a request to the provider to give that consent.

(5) Information as to the matters referred to in paragraph (2)(a) and (b) is not to be supplied unless a final decision has been taken in relation to the action or sanction and no further appeal is possible (ignoring any possibility of an appeal out of time).

(6) Information supplied pursuant to paragraph (1) must specify the legal provisions pursuant to which the action or decision was taken or the sanction was imposed.

(7) Information as to the decisions referred to in paragraph (2)(c) must specify whether the decision is final or whether an appeal has been lodged (in which case the competent authority must indicate the date on which the decision on appeal is expected).

(8) A competent authority which supplies information pursuant to a request under paragraph (1) must inform the provider that it has provided information to the requesting authority and what that information was.

Mutual assistance in the event of case-by-case derogations

44.—(1) This regulation applies where the provider of a service who is established in the United Kingdom provides the service in another EEA state and—

- (a) pursuant to Article 18 of the Services Directive, a relevant authority in that state proposes to take measures relating to the safety of the service, and
- (b) pursuant to the procedure in Article 35 of the Services Directive, that authority requests a competent authority to supply information on the service and the circumstances of the case.

(2) The competent authority must—

- (a) check whether the provider is authorised to provide the service,
- (b) verify the facts underlying the request, and
- (c) inform the requesting authority and the Secretary of State of the measures taken or envisaged or of the reasons why it has not taken any measures.

PART 10
SUPPLEMENTARY AND MISCELLANEOUS

Street trading

45.—(1) In section 3 of the Pedlars Act 1871(a) (interpretation)—

- (a) the words “mender of chairs” are omitted;
- (b) the words “, or selling or offering for sale his skill in handicraft” are omitted.

(2) Paragraphs (3) and (4) apply where—

- (a) a person obtains a certificate under the Pedlars Act 1871 before the coming into force of this paragraph, and
- (b) at any time after the coming into force of this paragraph, and before the date on which the certificate expires, the person carries on an activity which, but for paragraph (1), would have been carried on under the authority of the certificate.

(3) In England and Wales, a person referred to in paragraph (2) is for the purposes of Schedule 4 to the Local Government (Miscellaneous Provisions) Act 1982(b) to be regarded as carrying on the activity under the authority of the certificate.

(4) In Northern Ireland, a person referred to in paragraph (2) is for the purposes of the Street Trading Act (Northern Ireland) 2001(c) to be regarded as carrying on the activity, where it is carried out by means of visits from house to house, under the authority of the certificate.

Disclosure of information under Employment Agencies Act 1973

46. In section 9(4) of the Employment Agencies Act 1973(d) (information obtained during inspection), in paragraph (a), at the end insert—

“; or

- (vi) to an authority in another EEA state pursuant to Part 9 of the Provision of Services Regulations 2009.”.

Sex establishments

47.—(1) Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 (control of sex establishments) is amended as specified in paragraphs (2) to (4).

(2) In paragraph 10, for sub-paragraph (14) substitute—

“(14) A copy of an application for the grant, renewal or transfer of a licence under this Schedule shall be sent to the chief officer of police—

- (a) in a case where the application is made by means of a relevant electronic facility, by the appropriate authority not later than 7 days after the date the application is received by the authority;
- (b) in any other case, by the applicant not later than 7 days after the date of the application.

(14A) In sub-paragraph (14) above “relevant electronic facility” means—

- (a) the electronic assistance facility referred to in regulation 38 of the Provision of Services Regulations 2009, or
- (b) any facility established and maintained by the appropriate authority for the purpose of receiving applications under this Schedule electronically.”.

(a) 1871 c. 96.
(b) 1982 c. 30.
(c) 2001 c. 8 (N.I.).
(d) 1973 c. 35.

(3) In that paragraph, in sub-paragraph (20) omit—

- (a) “, if required to do so by the applicant or holder of the licence,”, and
- (b) “within 7 days of his requiring them to do so”.

(4) In paragraph 12(1)(c) and (d), for “the United Kingdom”, substitute “an EEA state”.

(5) For the purposes of regulation 19(5), the arrangements made by paragraph 10 of that Schedule fall within the “different arrangements” referred to in regulation 19(5).

Enforcement

48. In Schedule 13 to the Enterprise Act 2002(a) (listed Directives and Regulations), after paragraph 9C insert—

“**9D.** Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market.”.

Licensing

49.—(1) The Licensing Act 2003(b) is amended as follows.

(2) In section 17 (application for a premises licence)—

- (a) in subsection (5), omit paragraph (b);
- (b) after subsection (5) insert—

“(6) The Secretary of State may by regulations—

- (a) require an applicant to give notice of his application to each responsible authority, and such other persons as may be prescribed, within the prescribed period, and
- (b) in a case where the application is made by means of a relevant electronic facility, require the relevant licensing authority to give notice of the application to such persons as may be prescribed, within the prescribed period.”.

(3) In section 34 (application to vary premises licence), for subsection (5), substitute—

“(5) The functions of the Secretary of State under subsections (5) and (6) of section 17 (advertisements etc. of application) apply in relation to applications under this section as they apply in relation to applications under that section.”.

(4) In section 37 (application to vary licence to specify individual as a premises supervisor), in subsection (4), for the words from “The holder” to “his application” substitute “Notice of an application under this section must be given”.

(5) In that section, after subsection (4) insert—

“(4A) Notice under subsection (4)(a) is to be given by—

- (a) the relevant licensing authority, in a case where the holder of the premises licence submitted the application to the relevant licensing authority by means of a relevant electronic facility;
- (b) the holder of the premises licence, in any other case.

(4B) Notice under subsection (4)(b) is to be given by the holder of the premises licence.”.

(6) In section 42 (application for transfer of premises licence), in subsection (5), for “applicant must give notice of his” substitute “relevant person must give notice of the”.

(7) In that section, after subsection (5) insert—

“(5A) In subsection (5), “relevant person” means—

(a) 2002 c. 40.

(b) 2003 c. 17.

- (a) the relevant licensing authority, in a case where the applicant submitted the application to the relevant licensing authority by means of a relevant electronic facility;
 - (b) the applicant, in any other case.”.
- (8) In section 47 (interim authority notice following death etc of licence holder), after subsection (7) insert—
- “(7A) Where the interim authority notice was given to the relevant licensing authority by means of a relevant electronic facility—
- (a) subsection (7)(a) does not apply, and
 - (b) the relevant licensing authority must forthwith give a copy of the notice to the chief officer of police for the police area (or each police area) in which the premises are situated.”.
- (9) In section 71 (application for a club premises certificate)—
- (a) in subsection (6), omit paragraph (b);
 - (b) after subsection (6) insert—
- “(7) The Secretary of State may by regulations—
- (a) require an applicant to give notice of his application to each responsible authority, and such other persons as may be prescribed, within the prescribed period, and
 - (b) in a case where the application is made by means of a relevant electronic facility, require the relevant licensing authority to give notice of the application to such persons as may be prescribed, within the prescribed period.”.
- (10) In section 84 (application to vary club premises certificate), for subsection (4), substitute—
- “(4) The functions of the Secretary of State under subsections (6) and (7) of section 71 (advertisements etc. of application) apply in relation to applications under this section as they apply in relation to applications under that section.”.
- (11) In section 100 (temporary event notice), in subsection (7)(a), omit “(in duplicate)”.
- (12) In section 104 (objection to notice by the police), after subsection (1) insert—
- “(1A) Where the premises user gave the temporary event notice to the relevant licensing authority by means of a relevant electronic facility—
- (a) subsection (1) does not apply, and
 - (b) the relevant licensing authority must give a copy of the notice to the relevant chief officer of police no later than the end of the first working day after the day on which the notice was given to the relevant licensing authority.”.
- (13) In that section, in subsections (2) and (3), after “subsection (1)” insert “or (1A)”.
- (14) In section 193 (other definitions), after the definition of “regulations” insert—
- ““relevant electronic facility” means—
- (a) the electronic assistance facility referred to in regulation 38 of the Provision of Services Regulations 2009, or
 - (b) any facility established and maintained by a licensing authority for the purpose of receiving applications, notices or representations electronically;”.
- (15) In section 194 (index of defined expressions), after the entry relating to “regulations” insert—
- ““relevant electronic facility”.....section 193”.

11th November 2009

Ian Lucas
Minister for Business and Regulatory Reform
Department for Business, Innovation and Skills

EXPLANATORY NOTE

(This note is not part of the Order)

These Regulations implement Directive 2006/123/EC of the European Parliament and of the Council on services in the internal market (OJ No. L 376, 27.12.2006, p.36) (“the Directive”).

Part 1 contains interpretative, scoping, exclusion and savings provisions.

Regulation 2(2) sets out those services excluded from the scope of the Regulations. Regulations 5(1) and 5(2) specify areas of law and policy and functions of competent authorities that are not affected by the Regulations. Regulations 5(3) and 5(4) limit the application of the Regulations in respect of service providers and recipients who are not individual nationals of an EEA state or legal persons established in an EEA state.

Regulation 6 concerns the relationship between the Regulations and other legislation. Competent authorities and service providers do not have to comply with a requirement imposed by Part 2, 5 or 6 of the Regulations if they cannot comply with both that requirement and a requirement relating to services imposed by an earlier directly applicable Community instrument or enactment which implements Community law. Competent authorities do not have to comply with a requirement imposed by Part 3 or 4 of the Regulations if they cannot comply with both that requirement and a requirement relating to services imposed by an earlier directly applicable Community instrument or enactment (whether or not the enactment implements Community law).

Part 2 imposes requirements on service providers. Regulations 7 to 11 require service providers to communicate prescribed information about themselves and their services to recipients. Regulation 12 specifies how service providers must handle complaints from recipients.

Part 3 applies to the provision of services in the United Kingdom, except in relation to the provision of services from another EEA state by a provider established in that state (which is the subject of Part 4).

Regulation 14 provides that a competent authority must not make access to or the exercise of a service activity subject to an authorisation scheme unless certain conditions are satisfied. Regulation 15 makes provision about the conditions for granting authorisations and regulation 16 provides that an authorisation must be for an indefinite period except in certain circumstances. Regulation 17 applies where the number of authorisations available for a competent authority under an authorisation scheme are limited because of scarcity of available natural resources or technical capacity.

Regulations 18 to 20 contain requirements for procedures and formalities under an authorisation scheme. Regulation 21 lists requirements to which a competent authority must not make access to, or the exercise of, a service activity subject. Regulation 22 lists requirements which must satisfy the conditions of non-discrimination, necessity and proportionality. It imposes a duty on competent authorities to notify the Secretary of State about proposals to introduce new requirements affecting access to or the exercise of a service activity.

Part 4 has effect in relation to the exercise of the freedom of a provider established in another EEA state to provide a service in the UK from that state.

Regulation 24 provides that a competent authority must not make access to or the exercise of a service activity subject to compliance with any requirements which do not respect the principles of non-discrimination, necessity and proportionality. It lists requirements which may only be imposed in limited circumstances. Regulation 25 contains exclusions.

Regulation 26 allows a competent authority in exceptional circumstances to take measures relating to the safety of a service in the case of a provider established in another EEA state. The procedure is set out in regulation 27. (See regulation 44 for the inverse scenario.)

Regulation 28 imposes a duty on competent authorities to notify the Secretary of State about proposals to introduce new requirements affecting access to or the exercise of a service activity.

Part 5 concerns the rights of recipients of services. Regulation 29 prohibits competent authorities from restricting recipients' usage of services from other EEA states. Regulation 30 prohibits competent authorities from discriminating on the basis of recipients' nationality or place of residence, and service providers from discriminating in their general conditions on the basis of recipients' place of residence.

Part 6 imposes duties on competent authorities. Regulation 31 prohibits competent authorities from requiring specific documents where an equivalent document shows that the requirement in question has been satisfied. Regulations 33 to 35 limit the extent to which competent authorities may impose requirements on service providers in relation to professional liability insurance, commercial communications and multidisciplinary activities.

Part 7 imposes information requirements on competent authorities. Regulation 36(1) requires the provision of information to the Secretary of State (for the purposes of the electronic assistance facility referred to in regulation 38). Regulation 36(2) requires the provision of certain other information to the Secretary of State on request. Regulation 37 requires competent authorities to provide providers or recipients, on request, with information on the interpretation of authorisation procedures.

Regulation 32 and Part 8 together ensure that authorisation procedures may be completed electronically. Regulation 38 obliges Her Majesty's Government to establish an electronic facility for the completion of authorisation procedures related to services which will act as the point of single contact for the United Kingdom.

Part 9 contains provisions relating to administrative cooperation between competent authorities in different EEA states. Regulation 39 sets out the general obligations of competent authorities to assist and co-operate with authorities in other EEA states. Regulation 40 deals with the provision of information by competent authorities in relation to a provider established in the UK who is providing a service in another EEA state. Regulation 41 deals with the provision of information by competent authorities in relation to providers established in another EEA state who are providing a service in the UK.

Regulation 42 requires competent authorities to inform the Secretary of State as soon as possible if they become aware of acts or circumstances relating to a service activity which could cause serious damage to the health and safety of persons or the environment.

Regulation 43 deals with the supply of information by a competent authority to an authority in another EEA state in relation to disciplinary or administrative actions, criminal sanctions and decisions involving insolvency or bankruptcy involving fraud in relation to a provider of a service.

Regulation 44 deals with cases where an authority in another EEA state proposes, exceptionally, to take measures relating to the safety of a service as provided by a provider established in the UK. (See regulations 26 and 27 for the inverse scenario).

Part 10 contains supplementary, miscellaneous and enforcement provisions.

Regulation 45 amends the Pedlars Act 1871 so as to remove services from the scope of that Act.

Regulation 46 amends the Employment Agencies Act 1973 so as to allow information obtained during inspections of business premises under section 9 of that Act to be disclosed for the purposes of Part 9 to competent authorities in other EEA states.

Regulation 47 amends the Local Government (Miscellaneous Provisions) Act 1982. Under paragraph 10 of Schedule 3, where an application is made in relation to a sex establishment licence, a copy must be sent to the chief officer of police. Regulation 47 makes provision as to how that copy is sent in cases where the application is made through the electronic assistance facility referred to in regulation 38 or an electronic facility maintained by a local authority. Regulation 47 also allows EEA residents or bodies corporate incorporated in other EEA states to obtain sex establishment licences. In addition, local authorities will be required to provide reasons for refusing to grant, transfer or renew a licence, whether or not requested by the applicant.

Regulation 48 amends Schedule 13 to the Enterprise Act 2002 so that the duties imposed on service providers in regulations 7 to 12 and 30 can be enforced under Part 8 of that Act.

Regulation 49 amends the Licensing Act 2003 to ensure that applications and notices which are submitted to local authorities through the electronic assistance facility referred to in regulation 38 or electronic facilities maintained by local authorities do not need to be separately notified to other public authorities by the persons submitting them.

A transposition note and an impact assessment of the effect that this instrument will have on the costs to business and the voluntary sector are available from the BIS website (www.bis.gov.uk). They are also annexed to the Explanatory Memorandum which is available alongside the instrument on the OPSI website <http://www.opsi.gov.uk>. Copies have also been placed in the Libraries of both Houses of Parliament.

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