

**BIS**

Department for Business  
Innovation & Skills

Guidance for Business  
on the Provision of Services  
Regulations

OCTOBER 2009

*This guidance document is aimed at **businesses** and **advisers** who are involved in the **service industry**, with the main exceptions of financial services, electronic communications, transport, temporary work agencies, healthcare, audiovisual, gambling, and social services.*

*It explains what the Provision of Services Regulations 2009 mean and how they apply in practice.*

*It will be relevant to you if you are **wanting to, or are currently offering or providing relevant services within the UK**. It will also be relevant to you if you are **wanting to, or are currently providing relevant services within the European Economic Area** (i.e. the EU plus Iceland, Liechtenstein and Norway).*

*It tells you what your **obligations** are with regards to providing information to the users of your services; about the opportunity to **apply online for authorisation and licences**; and what to expect from the authorities that regulate your service business.*

*This guidance may also be useful to users of relevant services, and competent authorities.*

*The Provision of Services Regulations 2009 apply UK-wide and come into force on 28 December 2009.*

# Contents

<b>INTRODUCTION</b>	<b>3</b>
What does the Services Directive do?	3
Do the Regulations affect my business?	4
What will I have to do differently?	4
What are the benefits to my business?	5
<b>CHAPTER 1: DO THE REGULATIONS AFFECT MY BUSINESS?</b>	<b>6</b>
<b>Scope and application (Part 1)</b>	<b>6</b>
Which service providers are covered?	6
Which service providers are not covered?	6
Are both established and temporary service activities covered by the Regulations?	8
<b>CHAPTER 2: WHAT DO THE REGULATIONS REQUIRE FROM ME?</b>	<b>9</b>
<b>Duties on Service Providers (Part 2)</b>	<b>9</b>
Information which you must make available	9
Further information which you must make available	11
Information which you must supply if asked	12
What you must do if you receive a complaint	13
Discrimination in your general conditions	13
Enforcement	14
Other obligations on service providers	15
<b>CHAPTER 3: APPLYING FOR AUTHORISATION AND LICENCES ONLINE</b>	<b>16</b>
Applying for authorisation and licences online (Part 8)	16
Accuracy of Information	20

<b>CHAPTER 4: WHAT TO EXPECT FROM UK COMPETENT AUTHORITIES (PART 3 &amp; 4)</b>	<b>23</b>
Conditions before a UK competent authority can require you to be authorised	23
Requirements that UK competent authorities may not impose on service providers seeking to establish in UK	23
Requirements that must now meet certain conditions	24
Freedom to provide services in the UK from another EEA state	25
Supervision of service providers operating temporarily in the UK	25
Changes to how a UK competent authority must handle an application from a service provider	26
What changes will there be to UK legislation in line with Parts 4 & 5 of the Regulations?	30
What to do if you think that an EEA state is imposing illegal requirement	31
<b>CHAPTER 5: COMMUNICATION BETWEEN EEA REGULATORS ON SERVICE PROVIDERS (PART 9)</b>	<b>32</b>
<b>CHAPTER 6: WHAT IS THE RELATIONSHIP WITH OTHER LEGISLATION?</b>	<b>34</b>
<b>CHAPTER 7: INFORMATION FOR CONSUMERS</b>	<b>37</b>
<b>CHAPTER 8: MORE HELP</b>	<b>38</b>
<b>ANNEXES</b>	<b>39</b>
Annex A – Definitions	39
Annex B – Existing national legislation and administrative practices that will be changed because of these Regulations or the Directive	42
Annex C – Authorities that fall within the remit of the Regulations	51

# Introduction

1. The Provisions of Services Regulations 2009 (“the Regulations”) transpose the EU Services Directive (“the Directive”) into UK legislation. The Directive sets out how the internal market in those services covered by the Directive should operate.
2. Services account for around 70% of both EU output and EU employment, yet account for relatively low shares of intra-EU trade (24%) and investment. The aim of the Directive is to help open up the internal market in services further and is expected to increase output in the UK by an estimated £4 – 6 billion per year<sup>1</sup>, increase employment opportunities and increase trade.
3. This guidance explains what the Regulations mean and how they apply in practice to affected service providers. The Regulations apply UK-wide and come into force on 28 December 2009.
4. A glossary of terms used in this guidance is at Annex A. In particular, you should bear in mind in reading this that:
  - **Competent authority** means a body with a regulatory or supervisory role over the provision of a service, such as a professional body, for example, the Institute of Actuaries, or a central or local government authority. Annex C gives a list of competent authorities, although there may be others that do not appear on the list.
  - **Provider** means a body or individual that provides a relevant service within the EEA. Most of the Regulations only apply to providers who are established in at least one EEA state.
  - **Service** means a self employed economic activity (normally provided for remuneration).

## WHAT DOES THE SERVICES DIRECTIVE DO?

5. The Directive has been incorporated into the EEA Agreement and accordingly applies in relation to the EEA states of Iceland, Liechtenstein and Norway in addition to the EU Member States. The Services Directive requires each EEA state to:
  - remove unjustifiable or discriminatory requirements affecting the setting up or carrying on of a relevant service activity.

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<sup>1</sup> These figures should be treated with some caution due to the uncertainties arising from the economic downturn.

- set up a point of single contact enabling service providers to apply and pay for authorisations (to offer or provide services) online.
  - provide for competent authorities in different states to co-operate, including by sending requests for information through an internal market information system, reducing the burden on services providers.
  - require service providers to make certain information available for recipients of their services.
  - set up a portal to enable consumers to find out what their rights are in each country of the EEA, thus increasing confidence in using services.
6. If you are a service provider within scope of the Regulations, you will need to take steps, by the time these Regulations come into force, to ensure that you meet the information provisions set out in chapter 2 of this guidance and regulations 7 – 12. In addition, regulations 15(4) and 16(3) set out information which a service provider must, if asked, provide to a competent authority in relation to an application to be authorised.

## DO THE REGULATIONS AFFECT MY BUSINESS?

7. The Regulations apply to all businesses operating in a services sector, with important exclusions. The Regulations work on the principle of ‘if you’re not specifically excluded, you’re in’, so examining the list of excluded sectors may clarify what is in scope. The sectors excluded are summarised in the section on scope below.
8. The Regulations apply to service providers offering or providing services in the UK, both providers of UK origin and those from other EEA states. The Regulations apply whether the provider has a UK establishment from which the service is provided (as in Part 3 of the Regulations) or is established in another EEA state and comes to the UK temporarily or operates remotely (as in Part 4). Part 2, *Duties on service providers*, applies to **all** service providers offering or providing relevant services in the UK regardless of where they are established (i.e. they can be based anywhere in the world). You do not have to be doing business outside the UK to fall within the remit of the Regulations, or to benefit from them.

## WHAT WILL I HAVE TO DO DIFFERENTLY? (SUMMARY)

9. There are some legal obligations for businesses to provide information and respond to complaints, which are explained in Chapter 2.

## WHAT ARE THE BENEFITS TO MY BUSINESS? (SUMMARY)

10. If you are a service provider, the main benefits to you are that:

- competent authorities, whether in the UK or other EEA states, cannot make the access to or carrying out of a service activity subject to an authorisation scheme or requirement unless this can be justified against specified criteria;
- you will have access to an on-line facility through which you can apply for all licences needed to do business in the UK. This is available through the Government's main communication channel for business at [www.businesslink.gov.uk](http://www.businesslink.gov.uk). (For more detail, go to the section 'Applying for authorisation and licences online'.)
- if you are looking to expand into Europe you will have access to a Point of Single Contact in all other EEA states. In addition, the Regulations provide for a UK competent authority to pass relevant documentation already in its possession to the competent authority in the country concerned, rather than a business having to do so itself.

# Chapter 1: Do the Regulations affect my business?

## Scope and application (Part 1 of the Regulations)

### WHICH SERVICE PROVIDERS ARE COVERED?

11. A service is an economic activity normally provided for remuneration and which is not a contract for employment. This activity could be industrial, or commercial in nature, a craft or the activity of a profession. "Remuneration" should be interpreted broadly, for example, money or payment in kind (but excluding wages/salaries). A service can be business-to-business or business-to-individual activity. Services which are not provided for remuneration are not covered by the Directive. For example, non-remunerated house to house collections for charity are not within scope.
12. Some examples of the types of services that the Regulations will apply to include:
  - **Business Services:** management consultancy; professional services such as lawyers, accountants and actuaries; advertising; certification and testing; facilities management, including office maintenance; fitting and maintenance of equipment; renting of equipment; logistics; waste management; training providers; and the services of commercial agents.
  - **Services provided to both business and to consumers:** estate agents and letting agents; conveyancing; construction services such as architects and builders; restaurants and catering services; distributive trades; postal services; storage services; financial advisers; and the organisation of trade fairs.
  - **Consumer Services:** tourism, including tour operators and tour guides; travel agents; leisure services and sports centres; child minders; amusement parks; private schools and universities; providers of post graduate studies, language schools, vocational training; driving instructors; MOT services; entertainment; beauty services; veterinarians; gardeners; cleaners; plumbers; joiners; and electricians.

### WHICH SERVICE PROVIDERS ARE NOT COVERED?

13. In summary, the main exclusions, as set out in regulation 2(2), are:
  - Financial services, such as banking, credit, insurance and re-insurance, occupational and personal pensions, securities, investment funds, payment and investment advice.

- Electronic communications services and networks, and associated facilities and networks as defined in five 2002 Directives on electronic communications and related matters. These Directives were largely implemented in the UK by the Communications Act 2003. Such services and networks include, for example, voice telephony and electronic mail services.
- Services in the field of transport including air transport, maritime and inland waterways transport, including port services, as well as road and rail transport, in particular urban transport, taxis and ambulances.  
Examples of services which are not covered by this exclusion (i.e. are in scope of the Regulations) are removal services, car rental services, driving instructors, MOT service centres, funeral services and aerial photography services. Neither does the exclusion extend to commercial activities in ports such as shops and restaurants.
- Services of temporary work agencies. The Government's view is that this exclusion covers only the hiring out and placement of workers in temporary work; other relevant services provided by the same agency are covered by the Directive.
- 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.
- Audiovisual services, including cinemas and broadcast services.
- Gambling services, which involve wagering a stake for monetary value in a game of chance, including lotteries, gambling in casinos and betting transactions.
- Social services relating to social housing, childcare and the support of families in need, where these are provided by the State, by providers mandated by the State or by charities recognised as such by the State. The Government's view is that housing services provided on a charitable basis by Registered Social Landlords are out of scope of the Directive. Services provided on a commercial basis by registered charitable organisations or their trading subsidiaries are, however, in scope of the Directive.
- Private security services.
- Services provided by notaries and bailiffs, if or to the extent that they are appointed by an official act of government to provide those services.

14. The Regulations do not affect the manufacture or sale of goods. There are, however, numerous ancillary services relating to goods, such as some aspects of retail, maintenance, or after-sales services to which these Regulations could apply. It is our view that retail premises will generally be providing a service where activity is not exclusively concerned with the sale of goods; for example, where they also provide after-sales service or customer advice. There are also some cases where an activity may comprise a service only where carried out independently; for example, car spray painting is not a service where it forms part of the production of cars, but it is where it is provided independently as part of a car repair business.

15. Activities which are concerned with the exercise of official authority, and certain other matters, such as taxation and labour law and certain functions of competent authorities are excluded from the Regulations.
16. Services of general economic interest are excluded if they fall within one of the general exclusions listed in regulation 2, such as services in the field of transport. Other services of general economic interest are excluded from regulation 24 (freedom to provide services), including those in the postal, electricity and gas sectors, water distribution and supply, and waste treatment services.

### **ARE BOTH ESTABLISHED AND TEMPORARY SERVICE ACTIVITIES COVERED BY THE REGULATIONS?**

17. The Regulations contain rules relating to the provision of services by both “permanent” and “temporary” providers. Permanent providers are those (whether individuals or companies) who are “established” or based at premises in the UK, while “temporary” providers are those operating here but based at premises in other EEA states, or vice versa. The main difference arises in the considerations that competent authorities must take into account in authorising service providers (see chapter 4 on what to expect from UK competent authorities). Part 2 of the Regulations, on information obligations, applies to all service providers operating within the UK wherever they are based.

## Chapter 2: What do the Regulations require from me?

### Duties on service providers (Part 2 of the Regulations)

18. If your business falls within the scope of the Regulations you will need to observe certain requirements about the provision of information to service recipients, the handling of complaints, and principles of non-discrimination within general conditions. These duties apply to all providers operating in the UK regardless of where they originate (both EEA and rest of the world).
19. The aim of these requirements is to ensure that service recipients have access to a minimum amount of information and to a complaints procedure. This should enable recipients to make more informed decisions when considering whether to buy services from a particular provider and should widen the choice of providers available to them. These requirements are, in general, already common practice, and we do not expect many service providers to have to make major changes to their procedures.
20. These requirements should be read alongside the requirements of the Consumer Protection from Unfair Trading Regulations 2008 (SI. 2008/1277) (also known as the Consumer Protection Regulations) and other legislation that may require you to provide information to service recipients.
21. For more information on the relationship between these Regulations and other legislation, see paragraphs 116 – 120.

### INFORMATION WHICH YOU MUST MAKE AVAILABLE

22. If the services you provide are within scope then regulation 8(1) provides that you must make the following information available to recipients:
  - a) the name of your business.
  - b) your legal status and form (for example, whether you are a sole trader or limited company).
  - c) the geographic address at which you are established and details by which you may be contacted rapidly and communicated with directly and, if you can be

contacted by electronic means, the relevant details (for example an e-mail address or a number for text messages).

- d) if you are registered in a trade or other similar public register, the name of that register and your registration number, or equivalent means of identification in that register. For example if your business is registered with the "Gas Safe Register" ([www.gassaferegister.co.uk](http://www.gassaferegister.co.uk)), you should state that this is the case and provide your ID number or registration number.
- e) if you are subject to an authorisation scheme in the UK, the particulars of the relevant competent authority or the [businesslink.gov.uk](http://businesslink.gov.uk) website address ([www.businesslink.gov.uk](http://www.businesslink.gov.uk)) (where details of the competent authority could be found). Following the example in (d) above, you would have to state that you are registered with CAPITA, who operate the Gas Safe Register.
- f) if you are subject to an authorisation scheme in another EEA state, the particulars of the relevant authority, or the point of single contact in that state.
- g) if you exercise an activity which is subject to VAT, the identification number.
- h) if you are carrying on a regulated profession, any professional body or similar institution with which you are registered, the professional title and the EEA state in which that title has been granted. So, for example, an insolvency practitioner might state "I am licensed to act as an insolvency practitioner in the UK by the Association of Chartered Certified Accountants".
- i) the general terms and conditions, if any, that you use.
- j) the existence of contractual terms, if any, that you use concerning the competent courts (for example, that the English courts have jurisdiction) or the law applicable to the contract (for example, that it is governed by English law).
- k) the existence of an after-sales guarantee, if any, not imposed by law. For example, a window fitter may provide a guarantee that they will make any repairs to the windows if anything is to go wrong within a year of fitting them.
- l) the price of the service, where a price is pre-determined by your business for a given type of service. For example, the price per copy a photocopying service charges would be a pre-determined price.
- m) the main features of the service, if not already apparent from the context.

- n) if you are subject to a requirement to hold professional liability insurance or a guarantee, information about your cover and, in particular, the contact details of the insurer or guarantor and the territorial coverage. We would not expect to see full details of the insurance held (but you should bear in mind that the Consumer Protection Regulations may require such policies to be made available to recipients). Where it is the case that only you, as the provider, can lodge a claim with the insurer, or that the insurer will only deal with you as the provider, this provision does not change that. In other words, this provision does not change the recipient's legal rights with regards to the insurer.
23. Regulation 8(2) provides that you can make this information available in any of the following ways:
- a) Supply it to the recipient on your own initiative
  - b) Make it easily accessible to the recipient at the place where the service is provided or the contract concluded, for example, at your premises
  - c) Make it easily accessible by the recipient electronically by means of an address you supply, for example, by providing the exact address of where the information can be found on a publicly available website
  - d) Include it in any information documents that you supply to the recipient, which set out a detailed description of the service you provide.

## **FURTHER INFORMATION WHICH YOU MUST MAKE AVAILABLE**

24. The following additional item of information about dispute resolution must also be given when applicable:
- a) if you are subject to a code of conduct or are a member of a trade association or professional body that gives access to a non-judicial dispute resolution procedure, then you should inform the recipient, mention it in any information document that describes your service in detail and specify how to access detailed information on the procedure.
25. Regulation 7 provides that you must also make available contact details where recipients can request information or make a complaint – this must include a telephone number and one or more of a postal address, fax number or e-mail address. If you have one, you should also give your official address (that is, an address required of you by law for receiving communications). If this is the same as your postal address, there is no need to give it twice. The Regulations do not specify

how you should make this information available, but it is recommended that you use one of the four methods set out in paragraph 23.

26. The reason why regulation 7 and 8 both require you to provide contact details is because a business, for example, a restaurant chain, might have different contact details for complaint handling, such as a dedicated complaints helpline which will be different to the contact details of the individual business (restaurant in this example).

### **INFORMATION WHICH YOU MUST SUPPLY IF ASKED**

27. Additionally, regulation 9(1) provides that you must supply the following information if the recipient asks for it (you may choose to make this information available in all cases if you prefer):
  - a) where the price is not pre-determined by your business for a given type of service, the price of the service or, 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) if you are carrying on a regulated profession, a reference to the professional rules applicable in your EEA state of establishment and how to access them – so recipients can easily find the rules, for example, on a website.
  - c) information on any other activities carried out by you or your business, which are directly linked to the service in question and on the measures taken to avoid conflicts of interest. That information should be included in any information document in which you give a detailed description of your services.
  - d) any codes of conduct to which you are subject and the websites from which these codes are available, specifying the language version available.
28. All the information that you are required to give under Part 2 of the Regulations must be given in a clear and unambiguous manner so that it can be easily understood, taking into account the choice of words and style, as well as factors such as the format and structure. The information must also be given in good time before the contract is concluded or before the service is provided when there is no written contract. This is so that the recipient has enough time to digest the information and change their mind about entering into the contract. The duty to give information before conclusion of the contract does not apply if the consumer asks for it after conclusion of the contract (assuming that the relevant information is of the sort that you must supply if asked).

## WHAT YOU MUST DO IF YOU RECEIVE A COMPLAINT

29. You need to provide contact details of where customers can make a complaint, as explained at paragraph 25.
30. You are also required to respond to complaints as quickly as possible. Because the nature of complaints and circumstances vary so much, these Regulations do not define this further or set a time limit, but factors to consider include:
- The means and ease by which the recipient can be contacted.
  - The nature and complexity of a specific case.
  - The availability of the complainant.
  - Whether information is needed from a third party.
  - Language issues.
31. You must also make your best efforts to find a satisfactory solution to complaints. However, you are not expected to do so in the case of vexatious complaints which may include a complaint which is clearly unsubstantiated or malicious. You should not use this provision to avoid replying to complaints which are merely annoying or inconvenient.
32. If you have already responded to and done your best to resolve a complaint that is made repeatedly, you do not need to take further action. However, you do need to have made your best efforts to resolve the complaint in a way in which a recipient could reasonably be expected to be satisfied.

## DISCRIMINATION IN YOUR GENERAL CONDITIONS

33. You must not discriminate on the grounds of nationality or place of residence in the general conditions you make available to the public at large. Your general conditions include conditions found in any non-contractual material such as information in an advertisement, in promotional literature, or on a website, as well as in contractual documentation. So, for example, you cannot offer different terms and conditions, provide a different standard of service, or refuse to offer a service, on the sole basis of place of residence, which can refer to a town, region, or country. Existing obligations already prevent discrimination on grounds of nationality. The duty applies where the customer is an individual but not where it is a legal person (such as a company).
34. However, you will be able to retain different conditions where these are justified by 'objective criteria'. 'Objective criteria' are objective reasons which justify your offering different conditions according to the recipient's place of residence. It will be for you to determine what you consider to be objective criteria based on your own individual circumstances, but they could include:

- a) additional costs, incurred because of
    - i) the distance involved; or
    - ii) the technical characteristics of the provision of the service;
  - b) different market conditions, such as higher or lower demand influenced by
    - i) seasonality;
    - ii) different holiday periods;
    - iii) pricing by different competitors;
  - c) extra risks linked to rules differing between EEA states;
  - d) the absence of sufficient intellectual property rights in a particular territory.
35. You can use objective criteria such as these to justify an outright refusal to provide the service, but this will be more difficult to justify than adapting your conditions – for example, by charging a higher price to cover any additional costs. You would need to be sure that providing the service to the relevant location would put an excessive strain on your business before refusing.

## ENFORCEMENT

36. The following paragraphs explain what could happen if you breach regulations 7-12 (concerning information and complaints) and regulation 30 (which prohibits a service provider from including certain discriminatory requirements in general conditions of service).
37. Part 8 of the Enterprise Act enables enforcement bodies such as the Office of Fair Trading (OFT), local weights and measures authorities (Local Authority Trading Standards) and the Department of Enterprise, Trade and Investment in Northern Ireland to take action against breaches of certain consumer laws where this harms the collective interests of consumers i.e. it must affect or have the potential to affect consumers generally or a group of consumers. Enforcers will now have the same powers to take action when there has been a breach of the obligations in these Regulations to provide particular information, respond to complaints, and discriminate on grounds of place of residence.
38. Further information about Part 8 of the Enterprise Act can be found in the OFT's guidance at: [http://www.offt.gov.uk/shared\\_offt/business\\_leaflets/enterprise\\_act/oft512.pdf](http://www.offt.gov.uk/shared_offt/business_leaflets/enterprise_act/oft512.pdf)
39. Part 8 of the Enterprise Act does not apply in relation to business to business transactions. Where there is harm to a business recipient, it can seek redress on its

own initiative. However, if a provider serves both businesses and consumers then Part 8 could be applicable.

40. Part 8 cannot be used to intervene in individual consumer disputes with providers and, in such cases, service recipients have the right to take action through the courts. However, it could apply if there has been harm to an individual consumer and there is potential for further harm to the collective interests of consumers.

### **OTHER OBLIGATIONS ON SERVICE PROVIDERS**

41. In addition, see paragraphs 69 and 91 for regulations 15 (4) and 16 (3), which set out information that a service provider must provide to a competent authority in relation to an application to be authorised and after authorisation has been granted.

## Chapter 3: Applying for authorisation and licences online

### APPLYING FOR AUTHORISATION AND LICENCES ONLINE (PART 8)

42. Under the terms of the Directive, all EEA states must set up points of single contact (PSCs) that will make it possible for a service provider to apply and pay for authorisations fully on line. So, if you are a UK service provider interested in establishing or trading in, for example, Spain, you will be able to find out what you need to do by looking on the Spanish PSC. See paragraph 51 below for how you will be able to find other EEA states' PSCs. Annex C provides the full list of UK authorisations that we believe are in scope in these Regulations, and that will be available on line on the PSC.
43. Regulation 38 sets out the obligation on the Secretary of State and HMRC to provide an electronic assistance facility, which will be the UK's PSC. Businesslink.gov.uk, which is managed by HMRC, will host the UK's PSC. You can use it whether you are a UK or non-UK service provider.
44. You will be able to choose whether to apply online or to use existing non-electronic means of applying; it will be for you to decide on the method that suits you best.

#### ***How will businesslink.gov.uk help me with UK authorisations?***

45. By interrogating the businesslink.gov.uk site, you will be able to:
  - i) find information relevant to your business, that is either generally valid for the UK or, where appropriate, specific local information managed by local authorities and regional bodies;
  - ii) apply electronically and remotely either by using the businesslink.gov.uk online forms service or by a direct link to the relevant local authority's or regulator's online form (where available);
  - iii) track progress of an application and receive updates electronically on an application's progress;
  - iv) set up and personalise your businesslink.gov.uk account so that any research can be saved and you can be notified of relevant events; and

- v) access other basic information about doing business generally within the UK, for example, complying with tax requirements or employment law.
46. You will be able to find information more easily and so make better informed choices about where and how to set up business in the UK. This will include information on, for example, any fees, the length of time a formality will take to process, whether “tacit authorisation” (see paragraph 88) applies (or not), and contact details within the authority. You will also be able to research which formalities apply in a particular geographic area.
  47. The site will also allow secure messaging between you and an authority about an application submitted via the site, as well as allow you to upload additional information electronically. (Secure messaging may not be an option when you use the authority’s own online application process.)
  48. You will need to bear in mind that some formalities or procedures cannot be completed online, for example, the physical examination of premises or equipment, or the physical examination of the capability or professional integrity of a service provider and their staff. You should therefore ensure that you are also able to meet these particular requirements, where necessary.

***How will non-UK businesses access the UK’s PSC?***

49. Part of the businesslink.gov.uk site will be designed specifically with the international service provider in mind. This part will come with a “UK Welcomes Business” header with the aim to enable businesses from across other EEA states that may be unfamiliar with the UK to:
  - i) be clear about the basis upon which they can provide their services on a temporary or cross border basis;
  - ii) identify sources of additional advice, including translation facilities where necessary;
  - iii) access summaries of more detailed guides held elsewhere on the businesslink.gov.uk site;
  - iv) establish and personalise an account so that research can be saved and they can be notified of relevant events in their own language or sector or location; and

v) follow links to the other sites around Europe that are part of the EUGO brand network of PSCs (more information on the EUGO branding can be found in paragraph 51 below).

50. They will also be able to search for information relevant to their sector, apply remotely online and track the progress of their applications in a similar manner to a UK user.

### ***How will a service provider know that they've reached the PSC in another EEA state?***

51. If you are a UK service provider seeking information about selling your services elsewhere in the EEA, the [businesslink.gov.uk](http://businesslink.gov.uk) site will link you to the PSC in other member states. In addition, the European Commission is providing a web gateway to all the PSCs across Europe, which will carry the EUGO brand. This will provide another way that you can search for a PSC. The EUGO branding has been adopted by the European Commission in order to provide reassurance that the site you are using is authoritative and clearly indicates that it is one of the official EEA websites for advice and support operating in that member state. Its purpose is to reassure you that you have arrived at an official site and that the information it contains can be trusted. (This site can be found directly at [www.eu-go.eu](http://www.eu-go.eu) and contains basic information on each of the country sites and links to the relevant home pages as well as to other relevant information sources.)

### ***Do I have to pay for using the PSC sites?***

52. Access to the UK site ([businesslink.gov.uk](http://businesslink.gov.uk)) will be free but there may be a charge in other EEA states. The EUGO portal should make it clear whether a charge is to be made by a particular country's PSC.

### ***Are electronic signatures compulsory?***

53. There is no general requirement for you to possess a digital signature in order to use the [businesslink.gov.uk](http://businesslink.gov.uk) online forms. However, if you do have a digital signature, you can use it if you want to and the information will be passed on to the competent authority. Individual formalities may have additional requirements in terms of identity or commitment that could be met by a digital signature. In these instances, the information about the formality will give full details of the requirements and the available options for meeting it.

54. Other countries may require a UK-based service provider to use a digital signature in respect of certain formalities when using their site. The UK will use its best efforts to ensure that this does not become a barrier to you setting up business in other EEA









## Chapter 4: What to expect from UK competent authorities (Part 3 and 4 of the Regulations)

64. This chapter sets out how a UK competent authority must handle authorisations to do business in the UK to ensure requirements and processes are consistent with the Directive. We go on to explain what changes are being made to UK legislation and how you can find out which requirements have been retained and justified against the conditions set out in the Directive.
65. Part 3 of the Regulations applies to requirements imposed on service providers established or seeking to establish in the UK. Part 4 of the Regulations applies to requirements imposed on temporary service providers.

### CONDITIONS BEFORE A UK COMPETENT AUTHORITY CAN REQUIRE YOU TO BE AUTHORISED

66. Part 3 of the Regulations sets out the conditions under which a UK competent authority can make access to, or carrying out of a service activity in scope, subject to an authorisation scheme. Any requirements which oblige you to hold a licence or to obtain some sort of approval before providing your service must meet these conditions. An authorisation scheme can only be imposed if, broadly speaking:
- The scheme is non-discriminatory;
  - It can be justified by an overriding reason relating to the public interest, such as public policy, public security or public health; and
  - The objective of the authorisation cannot be attained by less restrictive means.
67. This principle is set out in more detail in regulation 14. It applies to UK businesses and businesses seeking to establish in the UK.

### REQUIREMENTS THAT UK COMPETENT AUTHORITIES MAY NOT IMPOSE ON SERVICE PROVIDERS SEEKING TO ESTABLISH IN THE UK

68. In addition, regulation 15 provides that, in general, you should not have to satisfy criteria when applying for a licence if you have already met equivalent or essentially comparable requirements or controls in the UK or another EEA state. For example, you should not be made to retake examinations when you already have equivalent qualifications.

69. You may be asked to assist a competent authority in determining whether this is the case by providing any necessary information that they ask you for. Regulation 15(4) provides that you must provide the requested information within a reasonable time of being asked to do so; otherwise the competent authority may subject you to duplicate requirements.
70. If a UK competent authority does authorise the access to or carrying out of a service activity, certain requirements are **now prohibited**. These include:
- Specifying that a business's registered office or main establishment must be in the UK or a particular area of the UK.
  - Requiring that a business's staff, shareholders, management members or supervisory bodies are British or are resident in the UK.
  - Preventing a business from being established in the UK if it is also established in another EEA state.
  - Prohibiting a business from being entered on the registers or enrolled with professional bodies or associations of the UK if it already is in another EEA state.
71. Regulation 21 sets out the full list of these prohibited requirements.

## REQUIREMENTS THAT MUST NOW MEET CERTAIN CONDITIONS

72. In addition, regulation 22 provides that UK competent authorities can only impose certain other requirements if these are **non-discriminatory, necessary and proportionate**. These requirements include:
- Limits on the number of businesses according to the population size or a minimum geographical distance between businesses providing the same service.
  - Allowing or disallowing a service to be provided by a business taking a specific legal form, for example, a company with individual ownership.
  - Requirements relating to the shareholding of a company, for example, obligations to hold a minimum amount of capital, or requirements that the capital is directly owned by members of the regulated profession providing the service.
73. A requirement is 'non-discriminatory' if it does not directly or indirectly discriminate against a service provider on grounds of nationality or, in the case of companies, the location of the registered office. A 'necessary' requirement is one that is justified by an overriding reason relating to the public interest, for example, public policy, public security, public health, protection of the environment, animal welfare, or road safety. A 'proportionate' requirement must not go beyond what is necessary to attain the objective pursued and must be suitable for attaining it. It must not be possible to replace any retained barrier with other, less restrictive measures that achieve the

same result. Regulation 22 sets out the full list of requirements which must be evaluated by UK competent authorities in this way.

## **FREEDOM TO PROVIDE SERVICES IN THE UK FROM ANOTHER EEA STATE**

74. Part 4 of the Regulations provides that, where a service provider established in another EEA state wants to provide services in the UK (but not to establish itself), a UK competent authority can only impose a requirement on that provider if it is:
- Non-discriminatory;
  - Necessary; and
  - Proportionate.
75. These conditions are set out in more detail in regulation 24. They are slightly different from the conditions applying to requirements imposed on businesses establishing in the UK, which are set out in regulation 22.
76. In particular, a UK competent authority *may not* impose certain requirements on a temporary service provider from elsewhere in the EEA unless the condition of necessity and other conditions in regulation 24(1) are met. For example, a competent authority may not oblige you to establish in the UK or require an identity document issued by a competent authority in the UK specific to the exercise of the service activity concerned.
77. The freedom to provide services principles set out in regulation 24 do not apply to certain activities or matters and so in these cases UK competent authorities can continue to apply the requirements in regulation 24 without the need for justification. Such areas include professional qualifications linked to regulated professions, the posting of workers, and services of general economic interest, including those in the postal, electricity, gas and water services. See regulation 25 for a full list.
78. Also excluded from this regulation is the application of rules on employment conditions, in accordance with Community law, that are in force in the UK, including those laid down in collective agreements. See regulation 24(3)(b).

## **SUPERVISION OF SERVICE PROVIDERS OPERATING TEMPORARILY IN THE UK**

79. Article 30(2) of the Services Directive concerns the regulation of service providers that are established in one EEA state but operating in another on a temporary basis. The Article states that, in these instances, the competent authority from the country

where that service provider is established should not refrain from taking enforcement action.

80. The Government has not included anything specific in the Regulations to implement this Article. Most of the UK's legislation has been justified and will apply to all service providers, including those operating here on a temporary basis. So, a service provider from another EEA state operating in the UK can expect to be supervised by the UK's competent authorities.
81. Some UK competent authorities can take account of offences committed by UK businesses operating in other EEA states and will continue to do so. For example, OFT can take offences that occur in other EEA states into account when enforcing consumer protection measures under Part 8 of the Enterprise Act, but the expectation is that the regulators in the country where the service is provided will have primary regulatory responsibility.
82. Competent authorities from all EEA states will share information and carry out checks and inspections on behalf of one another, to ensure service providers operating in several countries are regulated effectively.
83. The Government will keep the issue of regulatory responsibility under review, as there may be areas identified in discussions with other EEA states that are more suited to enforcement action by competent authorities in the country where the service provider is established, rather than responsibility resting with the country in which the service is provided. The Government will consider whether changes to UK legislation are necessary to facilitate this once a common approach has been agreed with other EEA states.
84. If areas are identified where service providers operating temporarily in the UK from another EEA state are supervised by their home country, regulations 26 and 27 ensure that appropriate levels of safety are maintained. These regulations provide that a UK competent authority can step in and take measures relating to the safety of that service, provided that the certain conditions and process are met.

## **CHANGES TO HOW A UK COMPETENT AUTHORITY MUST HANDLE AN APPLICATION FROM A SERVICE PROVIDER**

85. The Regulations set out a number of rules designed to make the process of application more efficient and equitable. In particular:

***Fees must be proportionate***

86. Under regulation 18, fees charged in relation to authorisations must be proportionate to the effective cost of the process e.g. to cover the actual cost of the application process. Fees should not be used as an economic deterrent to certain activities or to raise funds. As now, if you believe the fee to be disproportionate, you can contest it with the authority concerned.

***Applications must be processed promptly***

87. The key objective of regulations 19 and 20 is to provide you with certainty about when and whether you can start doing business.

88. Under the terms of these Regulations:

- all applications must be processed within a reasonable time period, which is made public in advance.
- failure to respond within the advertised time implies that your licence has been granted thus enabling you to start doing business. This is known as “tacit authorisation”.
- the clock will not start until all the valid documentation has been submitted, whether online and/or by post. However, if something is missing, the competent authority is required to flag this up with you as soon as possible.
- competent authorities must notify you as soon as possible if additional documentation or information is required.

89. The competent authority *must* acknowledge your application and make you aware of the following:

- whether or not tacit authorisation applies. Tacit authorisation can be prevented (under regulation 19(6)) by putting different arrangements in place if justified by overriding reasons relating to the public interest, including a legitimate interest of third parties. For example, the Solicitors Regulation Authority’s practising regulations set out alternative provisions, which apply to solicitors’ Practising Certificate applications in light of the risks posed to the public by an individual being entitled to practise as a solicitor without the appropriate qualifications or character to do so.
- The time period within which you can expect the authorisation to be granted. Competent authorities will determine what the time period should be unless already prescribed in legislation, although they are required to make this public in advance and the chosen time period must be reasonable. A competent authority

may extend the deadline once only if it is a complex application and must notify you that this is happening and the reasons for it.

- The available means of redress.

### ***Authorisations must generally be for an indefinite period***

90. A competent authority must grant the service provider an authorisation for an indefinite period except where the circumstances set out in regulations 16 and 17 apply. For example, a competent authority may limit the duration of the authorisation where the number of authorisations is limited because an overriding reason relating to public interest such as public health or public safety applies. It may limit the number of authorisations for a service activity because of the scarcity of available natural resources or technical capacity. This is to prevent the number of available authorisations from running out in the long-term, where a limitless number of authorisations could result in a deficiency of natural resources, or risk reaching saturation of technical capacity.

### ***Your obligation to tell the competent authority if your circumstances change***

91. If you are granted an authorisation under regulation 16, you must continue to inform the relevant competent authority about the creation of subsidiaries, the activities of which fall within the authorisation scheme. You must also tell the competent authority about any changes to your situation that mean you no longer meet the conditions for authorisation.

### ***Recognition of equivalent or comparable professional liability insurance***

92. In instances where the holding of professional liability insurance or a guarantee is compulsory to operate in the UK, competent authorities overseeing that requirement must recognise equivalent or comparable cover that you have obtained in another EEA state, and accept as evidence of that cover attestations issued by credit institutions and insurers established in other EEA states. Where equivalence is only partial, competent authorities are allowed to require a 'top-up' to take the cover to the required level. This provision applies if you are establishing in the UK and if you are operating in the UK temporarily. This regulation does not apply if you are a lawyer qualified in another EEA state exercising your right to practise in the UK on a permanent basis.

### ***Prohibition of total bans on commercial communications***

93. Competent authorities are prevented from imposing total bans on commercial communications by the regulated professions (this means complete bans on all

forms of advertising as well as on a specific form of advertising such as TV advertising).

94. Competent authorities are required to ensure that commercial communications comply with professional rules relating to the independence, integrity and dignity of the profession in question, as well as to professional secrecy, in a manner consistent with the specific nature of each profession. These professional rules must be non-discriminatory, justified by an overriding reason relating to the public interest, and proportionate. A commercial communication can mean communication in any form intended to promote the services being provided, except where it consists of information allowing direct access to the service in question or where it has been prepared independently (for example without financial consideration) of the person making it.

#### ***Requirement not to restrict multidisciplinary activities***

95. Regulation 35 stipulates that service providers should not be restricted from engaging in multidisciplinary activities. Competent authorities cannot oblige providers within scope of the Regulations to engage exclusively in a specific service activity, or do anything that restricts the exercise, jointly or in partnership, of different activities.
96. However, these Regulations do not prevent competent authorities for a regulated profession from imposing a requirement that is justified in order to guarantee compliance with the rules governing ethics and conduct in that profession, and is necessary to ensure the impartiality and independence of the profession.
97. These Regulations also do not prevent competent authorities from imposing requirements on providers of certification, accreditation, technical monitoring, test or trial services where this is necessary to ensure the independence and impartiality of the service provider.
98. Where multidisciplinary activities are permitted, the competent authority must ensure that conflicts of interest are avoided, independence and impartiality are secured and relevant professional rules are compatible.

#### ***Requirements which may not be placed on recipients of services***

99. Regulations 29 and 30 prevent a competent authority from imposing on a recipient of services any requirement which restricts the use of a service provided from another EEA state by a provider established in that state, or which subjects individuals to discriminatory requirements based on their nationality or place of residence. This is

mentioned for completeness since a business may also be a service recipient to which regulations 29 and 30 apply.

## WHAT CHANGES WILL THERE BE TO UK LEGISLATION IN LINE WITH PARTS 4 AND 5 OF THE REGULATIONS?

100. The Government has screened over 6000 items of national legislation to check whether any requirements which are prohibited by the Directive exist and, where they do, to justify or abolish these. As a result of regulatory simplification work in recent years, the Government has identified relatively few requirements that need to be amended to make them compatible with the Directive. Annex B sets out the legislation that will be changed.
101. In conjunction with this, the Devolved Administrations in Scotland, Wales, and Northern Ireland have been screening all their legislation on devolved matters. Details of any requirements that need to be changed as a result of this can also be found in Annex B. Local Authorities throughout the UK have also been reviewing their locally used Acts, bylaws, procedural rules and other requirements that they place on business to ensure that they are all allowed by the Directive. Any amendments that they are making to their requirements will be communicated by them to the business community.

### ***How do I find out what requirements have been retained because government has justified them?***

102. The results of the Government's screening exercise can be found on our website (<http://www.berr.gov.uk/whatwedo/europeandtrade/europe/services-directive/implementation/implementationupdates/page43431.html>), where we have listed all the legislation screened. Each piece of legislation will have next to it one of the following statements:
- **“not in scope”**: no further action required
  - **“in scope – justified”**: the Government believes that, although the activity falls within the scope of the Directive, the restrictions set out in existing legislation are justified as permitted by the Directive. The Government will prepare a report for the European Commission setting out our reasons for wanting to retain these particular requirements. If local authorities have gone beyond the legal requirement in any way then they will be amending their processes, practices, and standing orders accordingly.
  - **“in scope – not justified”**: the Government is changing the legislation to ensure that it is compatible with the Directive. Local authorities will be amending their

own processes and practices that flow from any such amended national legislation.

103. Any new requirement or legislation that is introduced or amended and affects the access to or exercise of a service activity will need to be screened by the relevant Government Department or competent authority and the outcome reported to the European Commission. Requirements that are prohibited under the Directive will be abolished; those that are not will be adopted.

### **WHAT TO DO IF YOU THINK AN EEA STATE IS IMPOSING ILLEGAL REQUIREMENTS**

104. The requirements that UK regulators can no longer apply to a business wishing to provide their services in the UK (except in specific circumstances), equally cannot be applied by other EEA states to service providers wishing to operate there. You should therefore find it easier to set-up and enter new European markets as there will be fewer obligations to comply with, and those that remain should be as simple as possible.
105. If you believe an EEA state is not meeting its requirements under the Directive, for example, a barrier to trade that should have been removed is still there, or regulators are not behaving as they should be, you can bring this to the Government's attention by contacting the UK SOLVIT centre ([solvit@bis.gsi.gov.uk](mailto:solvit@bis.gsi.gov.uk)). It may then be possible to raise this with the other country or the European Commission to see whether the requirement can be removed or modified.

## Chapter 5: Communication between EEA regulators on service providers (Part 9)

106. The Services Directive aims to increase the ease for which UK service providers can establish their business and offer their services elsewhere in the EEA. As it is anticipated that the Directive will result in more service providers operating in countries other than their own, the Directive puts in place several measures to ensure they are regulated effectively, whilst minimising the burden on the businesses themselves.
107. Businesses that operate solely in the UK will not be affected by Part 9 of the Regulations. UK regulators will only need to share information on UK businesses with other EEA regulators if those businesses are operating abroad. UK businesses operating in another EEA state can expect to be subjected to that country's rules and regulations, although any discriminatory, unnecessary or disproportionate barriers to providing services in that country should have been removed.
108. When a UK business is seeking to operate in another EEA state, there are obligations on the UK regulator to ensure they provide 'Administrative Cooperation' with their corresponding authority in the other country. This will ensure that all businesses operating across borders are properly supervised and regulated. Administrative cooperation means that Regulators from other countries will be able to request information from their UK equivalents, and ask them to carry out checks and inspections on their behalf. The UK regulator will be obliged to respond as quickly as possible.
109. To avoid spurious requests, each one must be justified with a valid reason – the requesting authority cannot ask for information or request an inspection without providing justification. Any information provided must only be used for the purposes stated. A request for assistance could be because documents or other information are needed before a business can operate in that territory, to verify information that has been provided alongside an application or where an authority is concerned that a UK business is in breach of that country's regulations.
110. Exchanges of information between competent authorities will be sent via the Internal Market Information System (IMI). This is an electronic, web based portal developed by the European Commission, which identifies regulators in all of the EEA states. It enables messages and information to be exchanged and translated in a secure environment, and complies with data protection rules. **This facility is only open to competent authorities** who regulate in a specific area and any information that is exchanged is only visible to the authorities involved.

## INFORMATION ON THE GOOD REPUTE OF A SERVICE PROVIDER

111. Where a sound reason is given, regulators from other EEA states may request information on the good repute of a UK service provider, including details of any disciplinary actions or criminal sanctions. UK regulators will be expected to disclose this information if it is available and they are lawfully able to disclose it. Where a regulator cannot lawfully supply the information requested without the consent of the service provider it must obtain this consent.
112. If a UK regulator sends this type of information to a regulatory body in another EEA state, they must inform the relevant business of their actions and of exactly what information was provided.

## PROVIDING INFORMATION ON YOUR BEHALF

113. Businesses who operate in several different countries may find themselves being asked for the same information by the regulators in each country, for example, proof of qualification or licence. However, if you have already provided documents to a UK regulator, rather than sending further copies to a regulator in another EEA state, it is possible for them to liaise with the UK authority (through the IMI system) which will provide copies of all the documents required. This will minimise the burdens on businesses operating across the EEA.

## ALERT MECHANISM

114. In order to ensure that service providers who are operating in more than one EEA state are not causing either serious damage to the environment or a danger to public health or safety an 'Alert Mechanism' facility has been built into the IMI system. This enables competent authorities who regulate specific areas and who have become aware of a business undertaking such activity, to immediately inform the competent authorities in other EEA states where it is known that this service provider operates. As such, a UK IMI coordinator will inform regulators in all EEA states where a service provider is operating that there is a potential risk, so that they are able to take the appropriate actions.
115. Alerts have to be justified following a series of pre-defined checks. They will not be sent unless there is specific evidence of a business causing a serious danger to either the environment, public health or safety and will not therefore damage the reputation or service of a business operating within the rules. All other breaches of regulations will be dealt with using the normal channels.

## Chapter 6: What is the relationship with other legislation?

### RELATIONSHIP BETWEEN PART 2 AND INFORMATION REQUIREMENTS IN OTHER LEGISLATION

116. The requirements in Part 2 with regards to providing information to recipients of your service should apply in addition to information requirements in other legislation. Other legislation that may be relevant includes:

- Companies Act 2006 (and its subordinate legislation, such as the Companies (Trading Disclosures) Regulations 2008 (S.I. 2008/495))
- Consumer Protection (Distance Selling) Regulations 2000 (S.I. 2000/2334)
- Electronic Commerce (EC Directive) Regulations 2002 (S.I. 2002/2013)
- Consumer Protection from Unfair Trading Regulations 2008 (S.I. 2008/1277)

117. See Chapter 2 for more details on information requirements.

118. Paragraphs 119 – 120 below explain how businesses should approach inconsistencies between information obligations in Part 2 and other legislation implementing Community law.

### OTHER EU INSTRUMENTS

119. Regulation 6 applies to information requirements imposed on service providers by Part 2 of the Regulations. It also applies to requirements placed on competent authorities by Parts 3, 4, 5 and 6 of the Regulations. It applies to requirements in existing legislation relating to the provision of services, but does not apply to legislative changes which are made after the Regulations.

120. The effect of regulation 6 for service providers is that a requirement in Part 2 of these Regulations does not apply if it is impossible to comply with that requirement and with a provision found in an EC Regulation or in UK legislation implementing another EU instrument. This means that you should attempt to comply with both requirements if it is possible to do so. If it is impossible to comply with both, then you should comply only with the relevant requirement in the other legislation.

## **EXAMPLE OF RELATIONSHIP WITH INFORMATION REQUIREMENTS IN OTHER LEGISLATION**

Although the Regulations and the Consumer Protection (Distance Selling) Regulations 2000 (“the Distance Selling Regulations”) contain slightly different requirements regarding when and how information should be given to consumers, it is possible to comply with both.

Assuming a business is subject to both sets of regulations, regulation 8 of the Distance Selling Regulations requires the business to provide consumers with information about any after-sales guarantees but permits them to do this while the service is being provided. The Provision of Services Regulations require similar information to be communicated before the service is provided. To comply with both sets of requirements, a business should fulfil the earlier timing requirement of the two.

Similarly, both sets of regulations contain different requirement as to the format in which the information is provided. The Provision of Services Regulations allow the information to be communicated in a number of ways, such as providing a website address where the information is published or making it accessible at the place the service is provided. Regulation 8 of the Distance Selling Regulations require that the information is provided in writing or another durable medium. So, it is possible to comply with both by providing the information in writing.

Taking these two issues together, you could therefore comply with both sets of regulations by providing the information in writing before the service is provided. However, if supplying the information in writing at an early stage would cause an unacceptable delay in providing a service (e.g. in an emergency), you could take a different approach to meeting both sets of regulations. You could comply with the Provision of Services Regulations by making the information accessible in a clear and unambiguous way before providing the service (e.g. by including it on your website), and then comply with the Distance Selling Regulations by providing the information again in writing, during the time you are providing the service.

## **UK LEGISLATION WHICH DOES NOT IMPLEMENT COMMUNITY LAW**

121. Regulation 6 requires competent authorities to consider whether they can comply with requirements in Parts 3 and 4 of the Regulations and requirements in EC Regulations or in domestic legislation whether or not they implement Community law. This is to ensure that competent authorities are still subject to domestic requirements which appear to conflict with the Regulations but remain on the statute book because they are justified under the terms of the Directive.

## **RULES OF PRIVATE INTERNATIONAL LAW**

122. Nothing in the Regulations affects the rules of private international law; in particular, rules which determine which country's law should apply in contractual and non-contractual disputes between a service provider and a recipient based in a different EEA state. This includes private international law rules which guarantee that consumers benefit from protection granted to them by UK laws governing their relationship with service providers.

## Chapter 7: Information for consumers

123. Further to the provisions in regulations 36(1)(d)(ii) and 36(2), we are creating an online portal that will enable users to find out general information on consumer laws and rights in other EEA states as well as contact details for organisations that could provide practical assistance in the case of dispute. This should make it easier for customers to make more informed choices when buying services and therefore easier to choose a new and unfamiliar service provider. This should then make it easier for firms to gain new customers beyond their traditional markets.
124. The website will be provided by the Trading Standards Institute, and will be closely linked to the European Consumer Centre network ([www.ukecc.net](http://www.ukecc.net)).

## Chapter 8: More help

125. For more detailed guidance on how the Regulations relate to your business, we recommend you contact a Trade Association in your sector, or seek independent advice.
126. If you want to make contact with a competent authority, you can do this through the Point of Single Contact (provided through [businesslink.gov.uk](http://businesslink.gov.uk)). If you are having problems using the facility, or need further assistance, you can go to the dedicated help page on the site.
127. If you are coming across barriers to service provision in the EEA that are unjustified, then you can contact the UK SOLVIT Centre ([solvit@bis.gsi.gov.uk](mailto:solvit@bis.gsi.gov.uk)) who may be able to help. If you are coming across unjustified barriers to service provision specifically within the UK, then please let us know at [servicesdirective@bis.gsi.gov.uk](mailto:servicesdirective@bis.gsi.gov.uk).
128. If you have any feedback on this guidance document, please contact [servicesdirective@bis.gsi.gov.uk](mailto:servicesdirective@bis.gsi.gov.uk).

# Annex A: Definitions

Regulations 2(1), 3 and 4 define certain terms used throughout the Regulations, and regulations 5(3) and 5(4) explain to whom the Regulations apply. Some of the main words and phrases used in the Regulations and guidance are explained below:

## **AUTHORISATION SCHEME**

A procedure requiring a service provider or recipient of services to take steps in order to notify or obtain a decision from a competent authority for the purposes of securing access to, or permission to exercise, a service activity.

## **COMPETENT AUTHORITY**

A body with a regulatory or supervisory role over the provision of a service, such as a professional body, for example, the Institute of Actuaries or a central or local government authority.

## **DIRECTIVE**

A binding instrument of Community law, which EU Member States must transpose into their national law.

## **EEA STATE**

A country that belongs to the European Economic Area, which includes EU member states and Iceland, Liechtenstein and Norway.

## **ESTABLISHED SERVICE PROVIDER**

A service provider with stable business premises in an EEA state and providing services there on a continuous basis.

## **FORMALITY**

A process where a service provider is required to give information to a competent authority by way of an application, authorisation request, renewal, return, declaration or notification whether or not a formal response is required before the service provided may commence operation in the UK.

## **INTERNAL MARKET INFORMATION SYSTEM (IMI)**

A web-based system developed by the European Commission to facilitate direct communication and cooperation between competent authorities in the EEA states.

## **MEMBER STATE**

A country that belongs to the European Union, currently: Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the United Kingdom. NB the Directive also applies to the EEA states of Iceland, Liechtenstein and Norway.

## **MULTIDISCIPLINARY ACTIVITIES**

Where a service provider carries out more than one activity, or carries out different activities jointly or in partnership.

## **MUTUAL ASSISTANCE**

Where a competent authority in one EEA state provides assistance in the supervision of service providers to a counterpart in another EEA state e.g. providing information or obtaining information on their counterpart's behalf.

## **POINT OF SINGLE CONTACT**

A portal required by the Directive through which a service provider will be able to find information about providing their service in the relevant EEA state and complete the formalities necessary to do business there. In the UK, [businesslink.gov.uk](http://businesslink.gov.uk) will be the Point of Single Contact (PSC) and will include pages dedicated to international visitors to the site at [www.businesslink.gov.uk/ukwelcomes](http://www.businesslink.gov.uk/ukwelcomes) that are designed to help newcomers understand doing business in the UK.

## **PROVIDER**

A body or individual that provides or offers a service within the EEA.

## **RECIPIENT**

A person who, for professional or non-professional purposes, uses, or wishes to use, a service.

## **REGULATED PROFESSION**

A professional activity or group of activities to which access is subject to the possession of specified qualifications, and the pursuit of which is limited to holders of a given professional qualification.

## **REQUIREMENTS**

Any obligations, prohibitions, conditions, or limits.

## **SERVICE ACTIVITY**

A self-employed economic activity (normally provided for remuneration).

## **TEMPORARY SERVICE PROVIDER**

A service provider based in one EEA state who provides services in another EEA state without becoming established there.

## Annex B: Existing national legislation and administrative practices that will be changed because of these Regulations or the Directive

The following list is as complete as possible at the time of publishing. The Government continues to check that existing national legislation and administrative practices are compliant with the Directive. There may be additions to this list, in particular from the Devolved Administrations.

<b>Act</b>	<b>Lead Department</b>	<b>Details of Amendments</b>	<b>How the amendment is being made</b>
<p><b>Administration of Justice Act 1985</b> An Act to make further provision with respect to the administration of justice and matters connected therewith.</p>	Ministry of Justice	<p>Legal Services Act (LSA 2007) extends the Law Society's intervention powers. It also extends the Society's power to regulate entities such as partnerships and unincorporated bodies, and allows legal disciplinary practices and impose conditions on their recognition. LSA 2007 also deals with conveyancing licences and amends the definition of conveyancing services to include activities defined as "reserved instrument activities".</p>	Secondary legislation through powers in the Legal Services Act 2007.

<b>Act</b>	<b>Lead Department</b>	<b>Details of Amendments</b>	<b>How the amendment is being made</b>
<p><b>Care Standards Act 2000</b> – registration of children’s homes, Residential family centres, fostering agencies, voluntary adoption agencies (also known as registered adoption societies), adoption support agencies, registration of social workers.</p>	<p>Department of Health</p>	<p>Act and relevant secondary legislation is to be repealed by the Health and Social Care Act 2008 in October 2010.</p>	<p>Administrative changes will be introduced to ensure registration processes for adult placement schemes, care homes and domiciliary care are compliant in the meantime and these changes will be carried forward to the new system under the Health and Social Care Act 2008.</p>
<p><b>Civic Government (Scotland) Act 1982</b></p>	<p>Scottish Government</p>	<p>Possible changes to ensure application process complies with the Services Directive and to amend provisions which may discriminate against non-UK corporate bodies re sex shop licences.</p>	<p>Secondary legislation by the Scottish Ministers under powers in the European Communities Act 1972, by end of year.</p>

<b>Act</b>	<b>Lead Department</b>	<b>Details of Amendments</b>	<b>How the amendment is being made</b>
<b>County Courts Act 1984</b>	Ministry of Justice	Legal Services Act 2007 amends the definition of 'legal representative'. It is now defined as a person who, for the purposes of the Legal Services Act 2007, is an authorised person in relation to an activity which constitutes the exercise of a right of audience or the conduct of litigation.	Secondary legislation through powers in the Legal Services Act 2007.
<b>Courts and Legal Services Act 1990</b>	Ministry of Justice	LSA 2007 amends provisions relating to registered foreign lawyers, in order to achieve consistency with provision made elsewhere.	Secondary legislation through powers in the Legal Services Act 2007.
<b>Education Act 2002</b>	Department for Children, Schools and Families	Changes are necessary to ensure independent school applications are dealt with within a fixed timescale of 6 months.	Guidance will be amended to reflect this by the end of 2009.

<b>Act</b>	<b>Lead Department</b>	<b>Details of Amendments</b>	<b>How the amendment is being made</b>
<p><b>Housing (Scotland) Act 2001</b></p> <p><b>Part 3 – Regulation of social landlords</b></p>	<p>Scottish Government</p>	<p>Section 58 requires that to be eligible for registration as a social landlord in Scotland, a body must have its registered office in Scotland. Section 58 will be amended to ensure that a body which does not have a registered office in Scotland will have the same access to registration as a body which does.</p>	<p>Secondary legislation by the Scottish Ministers under powers in the European Communities Act 1972 by the end of 2009.</p>
<p><b>Insolvency Act 1986</b></p>	<p>Department for Business Innovation and Skills</p>	<p>1. Insolvency practitioners authorised in Northern Ireland act as insolvency practitioners in Great Britain. 2. To provide for persons authorised to act solely as nominees and supervisors of company voluntary arrangements and individual voluntary arrangements (authorised persons) in Northern Ireland to act as authorised persons in Great Britain.</p>	<p>Changes will be via Statutory Instrument by December 2009.</p>

<b>Act</b>	<b>Lead Department</b>	<b>Details of Amendments</b>	<b>How the amendment is being made</b>
<b>Insolvency and Insolvency Services Account (Fees) Order 2003</b>	Department for Business Innovation and Skills	Amended to allow a refund to be made to unsuccessful applicants of the monitoring element of the application fee.	Changes will be via Statutory Instrument by December 2009.
<b>Insolvency (Northern Ireland) Order 1989 (Article 350)</b>	Department of Enterprise, Trade and Investment NI	The Order is being amended to remove the requirement for a recognised professional body to have an established place of business in the United Kingdom.	Secondary legislation through powers in section 2(2) of the European Communities Act 1972. This will be done by end November 2009.

<b>Act</b>	<b>Lead Department</b>	<b>Details of Amendments</b>	<b>How the amendment is being made</b>
<b>Insolvency Practitioners Regulations 2005</b>	Department for Business Innovation and Skills	<ol style="list-style-type: none"> <li>1. Replace the current (maximum) period of authorisation of 3 years for a practitioner to authorisation period of 1 year which will be renewed automatically subject to continued fulfilment of conditions.</li> <li>2. To allow an insolvency practitioner from another Member State to meet the strict insolvency bonding requirements where that person has professional liability insurance cover or a guarantee already obtained for cover in that Member State.</li> <li>3. To relax the requirement that all insolvency practitioners send the original bond or caution to their authorising body and allow electronic copies to be sent instead.</li> <li>4. To reduce the insolvency experience requirement for applicants seeking authorisation from 7000 hours to 2000 hours.</li> </ol>	Changes will be via Statutory Instrument by December 2009.

<b>Act</b>	<b>Lead Department</b>	<b>Details of Amendments</b>	<b>How the amendment is being made</b>
<b>Regulation 10 of the Insolvency Practitioners Regulations (Northern Ireland) 2006</b>	Department of Enterprise, Trade and Investment NI	Regulation 10 will be amended to provide for automatic annual renewal of authorisation of insolvency practitioners.	Secondary legislation through powers in section 2(2) of the European Communities Act 1972.
<b>Licensing Act 2003</b>	Department for Culture, Media and Sport	The Act is being amended to remove the requirement for applicants/notifiers to copy applications/ notifications to responsible authorities.	<p>Changes will be made as part of the Provision of Services Regulations, to be laid by BIS in October 2009.</p> <p>Further changes to the Licensing Regulations to facilitate electronic applications are being consulted on by DCMS in autumn 2009.</p>
<b>Licensing (Scotland) Act 2005</b>	Scottish Government	Possible changes to ensure application process complies with the Services Directive and to exclude current licence holders from involvement in granting authorisations.	Secondary legislation by the Scottish Ministers under powers in the European Communities Act 1972.

<b>Act</b>	<b>Lead Department</b>	<b>Details of Amendments</b>	<b>How the amendment is being made</b>
<b>Local Government (Miscellaneous Provisions) Act 1982</b>	Communities and Local Government	<p>1. Amended so that where an applicant has submitted an application a copy of their application does not need to be sent separately to the chief officer of police.</p> <p>2. Changed so that a person does not need to be resident in the UK for 6 months immediately preceding the date of the application.</p>	Changes will be made as part of the Provision of Services Regulations to be laid by BIS in October 2009.
<b>Local Government (Miscellaneous Provisions) (Northern Ireland) Order 1985</b>	Department of Environment, NI	Schedule 2 of the Act stipulates that a licence can only be given to people resident in the UK for 6 months immediately preceding the date of the application, and to a body corporate that is incorporated in the UK.	The Department of the Environment will lead on the changes to Schedule 2 (Licensing of Sex Establishments).
<b>Pedlars Act 1871</b>	Department for Business Innovation and Skills & the Scottish Government	The Act will be amended so that it no longer applies to pedlars of services and only applies to the sale of goods.	Changes will be made as part of the Provision of Services Regulations, to be laid by BIS in October 2009.

<b>Act</b>	<b>Lead Department</b>	<b>Details of Amendments</b>	<b>How the amendment is being made</b>
<b>Transmissible Spongiform Encephalopathy (England) Regulations 2008</b>	Department for Environment Food and Rural Affairs	These regulations effectively debar any laboratory outside the UK from being approved for the UK's TSE testing programme.	DEFRA are amending the regulations to remove the requirement for laboratories to be located in the UK. These changes will come into force during January 2010.
<b>Transmissible Spongiform Encephalopathies (Scotland) Regulations 2006</b>	The Scottish Government	Current regulations effectively debar any laboratory outside the UK from being approved for the UK's TSE testing programme.	The Scottish Government are amending them to remove the requirement for laboratories to be located in the UK.

## Annex C: Authorities that fall within the remit of the Regulations

Below is a non-exclusive list of regulators, local authorities, and other bodies who are classed as Competent Authorities for the purposes of the Regulations. Please be aware that this list will be subject to change.

### COMPETENT AUTHORITY

Association of Chartered Certified Accountants  
Access NI  
Adventure Activities Licensing Authority  
Animal Health  
Animals Scientific Procedures Division, Home Office  
Architects Registration Board  
Association of Law Costs Draftsmen  
Bar Standards Board  
British Waterways Board  
CADW  
Chartered Accountants Regulatory Board  
Care and Social Services Inspectorate Wales  
Care Quality Commission  
Council for the Curriculum, Examinations and Assessment  
Centre for Environment, Fisheries and Aquaculture Science  
Claims Management Regulation  
Communities Interest Companies Regulator  
Companies House  
Construction Industry Council  
Council for Licensed Conveyancers  
Countryside Council for Wales  
Criminal Records Bureau  
Department of Agriculture and Rural Development (Northern Ireland)  
Communities and Local Government  
Department for Culture Media and Sports  
Department for Environment Food and Rural Affairs  
Department of Education Northern Ireland  
Department of Enterprise, Trade and Investment Northern Ireland  
Department of Finance and Personnel Northern Ireland  
Department of Health, Social Services and Public Safety, Northern Ireland  
Driving Standards Agency

Driver and Vehicle Licensing Agency  
Employment Agency Standards Inspectorate  
Energy assessor accreditors  
Environment Agency  
Faculty of Advocates  
Farriers Registration Council  
Food Standards Agency  
Forestry Commission  
Gas Safe Register  
Health Inspectorate Wales  
Historic Scotland  
Her Majesty's Inspectorate of Education (Scotland)  
Health and Safety Executive  
Health and Safety Executive Northern Ireland  
Institute of Chartered Accountants in England and Wales  
Information Commissioner's Office  
Insolvency Practitioners Association  
Insolvency Service  
Institute of Actuaries  
Institute of Chartered Accountants of Scotland  
Institute of Legal Executives  
Law Society of Northern Ireland  
Law Society of Scotland  
Local Authorities  
Marine Fisheries Agency  
Marine Scotland  
Meat Hygiene Service  
Metropolitan Police  
Natural England  
Northern Ireland Health and Social Care Trusts  
Northern Ireland Authority for Utility Regulation (NIAUR)  
Northern Ireland Court Service  
Northern Ireland Environment Agency  
Northern Ireland Executive  
Northern Ireland Housing Executive  
Northern Ireland Office  
Northern Ireland Tourist Board  
Office of Fair Trading  
Ofgem  
Ofqual  
Ofsted  
Postcomm

Privy Council  
Police Service of Northern Ireland  
Royal College of Veterinary Surgeons  
Scottish Animal Movement Unit  
Scottish Commission for the Regulation of Care  
Scottish Environment Protection Agency  
Scottish Housing Regulator  
Scottish Licensing Boards  
Scottish Ministers  
Scottish Natural Heritage  
Scottish Water  
Solicitors Regulation Authority  
Scottish Qualification Authority  
Surveyors Ombudsman Service  
Tenants Services Authority  
The Bar Council of Northern Ireland  
The Property Ombudsman Limited  
Vehicle and Operator Services Agency  
Waterways Ireland  
Welsh Ministers

