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DRAFT STATUTORY INSTRUMENTS

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**2009 No.**

**The Provision of Services Regulations 2009**

**PART 3**

**DUTIES OF COMPETENT AUTHORITIES IN RELATION  
TO PROVISION OF SERVICES IN UNITED KINGDOM**

*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.