
DRAFT STATUTORY INSTRUMENTS

2009 No.

The Provision of Services Regulations 2009

PART 3

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

Requirements which are prohibited or subject to evaluation

Prohibited requirements

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

- (a) discriminatory requirements based directly or indirectly on nationality or, in the case of companies, the location of the registered office, including in particular—
 - (i) nationality requirements for the provider of a service, their staff, their shareholders or members of their management or supervisory bodies;
 - (ii) a requirement that a provider, their staff, their shareholders or members of their management or supervisory bodies be resident in the United Kingdom;
- (b) a prohibition—
 - (i) on being established in more than one EEA state, or
 - (ii) on being entered in the registers of, or enrolled with professional bodies or associations of, more than one EEA state;
- (c) restrictions on the freedom of the provider of a service to choose between principal or secondary establishment, in particular—
 - (i) an obligation on the provider requiring principal establishment in the United Kingdom, or
 - (ii) restrictions on the freedom to choose between establishment in the form of an agency, branch or subsidiary;
- (d) conditions of reciprocity with the EEA state in which the provider is already established, other than conditions of reciprocity provided for in Community instruments concerning energy;
- (e) the case-by-case application of an economic test making the granting of authorisation subject to—
 - (i) proof of the existence of an economic need or market demand,
 - (ii) an assessment of the potential or current economic effects of the activity, or
 - (iii) an assessment of the appropriateness of the activity in relation to the economic planning objectives set by the competent authority;

- (f) the direct or indirect involvement of competing operators, including within consultative bodies—
 - (i) in the granting of authorisations, or
 - (ii) in the adoption of other decisions of the competent authorities;
 - (g) an obligation to provide or participate in a financial guarantee or to take out insurance from a person established in the United Kingdom;
 - (h) an obligation—
 - (i) to have been pre-registered, for a given period, in registers held in the United Kingdom, or
 - (ii) to have previously exercised the activity for a given period in the United Kingdom.
- (2) Paragraph (1)(e) does not affect planning requirements that do not pursue economic aims but serve overriding reasons relating to the public interest.
- (3) Paragraph (1)(f)—
- (a) does not prevent professional bodies and associations or other organisations acting as the competent authority, and
 - (b) does not affect the consultation of organisations, such as chambers of commerce or social partners, on matters other than individual applications for authorisation, or a consultation of the public at large.
- (4) Paragraph (1)(g)—
- (a) does not affect any requirement of insurance or a financial guarantee as such, and
 - (b) does not affect requirements relating to the participation in a collective compensation fund, for instance for members of professional bodies or organisations.

Requirements subject to evaluation

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

- (2) The requirements to which this regulation applies are—
- (a) quantitative or territorial restrictions, in particular in the form of limits fixed according to population or of a minimum geographical distance between persons providing the service;
 - (b) an obligation on a provider of the service to take a specific legal form;
 - (c) requirements relating to the shareholding of a company;
 - (d) requirements, other than those—
 - (i) concerning matters covered by Directive [2005/36/EC](#) of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications⁽¹⁾, or
 - (ii) provided for in other Community instruments,
 which reserve access to the service activity in question to particular persons providing the service by virtue of the specific nature of the activity;
 - (e) a ban on having more than one establishment in the United Kingdom;
 - (f) requirements fixing a minimum number of employees;

(1) OJNo. L255, 30.9.2005, p.22.

- (g) fixed minimum tariffs or fixed maximum tariffs (or both) with which a provider of the service must comply;
 - (h) an obligation on a provider of the service to supply other specific services jointly with the service activity in question.
- (3) The conditions are—
- (a) non-discrimination, that is, the requirements must be neither directly nor indirectly discriminatory with regard to—
 - (i) nationality, or
 - (ii) in the case of companies, the location of the registered office;
 - (b) necessity, that is, the requirements must be justified by an overriding reason relating to the public interest;
 - (c) proportionality, that is, the requirements—
 - (i) must be suitable for securing the attainment of the objective pursued, and
 - (ii) must not go beyond what is necessary to attain that objective,and it must not be possible to replace those requirements with other, less restrictive measures that attain the same result.
- (4) The preceding paragraphs of this regulation do not apply in relation to any requirement applying to a person entrusted with the provision of a service of general economic interest where the requirement is proportionate and necessary for the provision of that service by that person.
- (5) In paragraph (4) “service of general economic interest” means a service which the competent authority determines, in accordance with Community law, to be of general economic interest.
- (6) A competent authority must notify the Secretary of State of—
- (a) any proposal to introduce a new requirement specified in paragraph (2) affecting access to, or the exercise of, a service activity, and
 - (b) the reasons for that requirement.
- (7) The notification must state the reasons why the authority considers that the application of the requirement meets the conditions in paragraph (3).