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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**

*Introductory*

**Application of this Part**

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

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

*Authorisations*

**Authorisation schemes**

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

(2) The conditions are that—

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

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

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

### **Conditions for the granting of authorisation**

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

(2) The criteria must be—

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

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

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

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

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

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

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

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

### **Duration of authorisation**

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

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

- (c) a limited authorisation period can be justified by an overriding reason relating to the public interest.
- (2) This does not prevent the setting of a maximum period before the end of which the provider of the service must actually commence the activity after receiving authorisation.
- (3) The provider of the service must inform the competent authority of the following changes—
  - (a) the creation of subsidiaries whose activities fall within the scope of the authorisation scheme;
  - (b) changes in the provider's situation that result in the conditions for authorisation no longer being met.
- (4) This regulation does not prevent revocation or suspension of an authorisation when the conditions for authorisation are no longer met.

### **Selection from among several candidates**

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

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

(3) Authorisation granted by the competent authority—

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

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

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

in conformity with Community law.

### **Authorisation schemes: general requirements**

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

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

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

- (a) be dissuasive, or
  - (b) unduly complicate or delay the provision of the service.
- (3) Authorisation procedures and formalities provided for by a competent authority under an authorisation scheme must be easily accessible.
- (4) Any charges provided for by a competent authority which applicants may incur under an authorisation scheme must be reasonable and proportionate to the cost of the procedures and formalities under the scheme and must not exceed the cost of those procedures and formalities.

**Authorisation procedures: time for dealing with application**

- 19.—(1) Authorisation procedures and formalities provided for by a competent authority under an authorisation scheme must secure that applications for authorisation are processed as quickly as possible and, in any event, within a reasonable period running from the time when all documentation has been submitted.
- (2) That period must be fixed and made public in advance.
  - (3) When justified by the complexity of the issue, that period may be extended once, by the competent authority, for a limited time.
  - (4) The extension and its duration must be notified to the applicant, with reasons, before the original period has expired.
  - (5) In the event of failure to process the application within the period set or extended in accordance with the preceding provisions of this regulation, authorisation is deemed to have been granted by a competent authority, unless different arrangements are in place.
  - (6) Any different arrangements must be justified by overriding reasons relating to the public interest, including a legitimate interest of third parties.

**Authorisation procedures: other requirements**

- 20.—(1) All applications to a competent authority for authorisation under an authorisation scheme must be acknowledged as quickly as possible.
- (2) The acknowledgement must specify—
    - (a) the period referred to in regulation 19(1);
    - (b) the available means of redress;
    - (c) whether the authorisation is deemed to have been granted in the absence of a response within the period specified.
  - (3) In the case of an incomplete application, the applicant must be informed as quickly as possible of—
    - (a) the need to supply any additional documentation, and
    - (b) any possible effects on the period referred to in regulation 19(1).
  - (4) When a request is rejected because it fails to comply with authorisation procedures and formalities under an authorisation scheme, the applicant must be informed of the rejection as quickly as possible.

*Requirements which are prohibited or subject to evaluation*

**Prohibited requirements**

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

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

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

(3) Paragraph (1)(f)—

- (a) does not prevent professional bodies and associations or other organisations acting as the competent authority, and
  - (b) does not affect the consultation of organisations, such as chambers of commerce or social partners, on matters other than individual applications for authorisation, or a consultation of the public at large.
- (4) Paragraph (1)(g)—
- (a) does not affect any requirement of insurance or a financial guarantee as such, and
  - (b) does not affect requirements relating to the participation in a collective compensation fund, for instance for members of professional bodies or organisations.

### **Requirements subject to evaluation**

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

- (2) The requirements to which this regulation applies are—
- (a) quantitative or territorial restrictions, in particular in the form of limits fixed according to population or of a minimum geographical distance between persons providing the service;
  - (b) an obligation on a provider of the service to take a specific legal form;
  - (c) requirements relating to the shareholding of a company;
  - (d) requirements, other than those—
    - (i) concerning matters covered by Directive [2005/36/EC](#) of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications<sup>(1)</sup>, or
    - (ii) provided for in other Community instruments,
 which reserve access to the service activity in question to particular persons providing the service by virtue of the specific nature of the activity;
  - (e) a ban on having more than one establishment in the United Kingdom;
  - (f) requirements fixing a minimum number of employees;
  - (g) fixed minimum tariffs or fixed maximum tariffs (or both) with which a provider of the service must comply;
  - (h) an obligation on a provider of the service to supply other specific services jointly with the service activity in question.
- (3) The conditions are—
- (a) non-discrimination, that is, the requirements must be neither directly nor indirectly discriminatory with regard to—
    - (i) nationality, or
    - (ii) in the case of companies, the location of the registered office;
  - (b) necessity, that is, the requirements must be justified by an overriding reason relating to the public interest;
  - (c) proportionality, that is, the requirements—
    - (i) must be suitable for securing the attainment of the objective pursued, and
    - (ii) must not go beyond what is necessary to attain that objective,

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

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

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

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

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

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

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