
DRAFT STATUTORY INSTRUMENTS

2009 No.

The Provision of Services Regulations 2009

PART 4

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

Application of this Part

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

(2) Accordingly, in this Part—

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

Freedom to provide services

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

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

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

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

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

Derogations from the freedom to provide services

25. Regulation 24 does not apply to—

- (a) the following services of general economic interest—
 - (i) in the postal sector, services covered by Directive [97/67/EC](#) of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of service⁽¹⁾;
 - (ii) in the electricity sector, services covered by Directive [2003/54/EC](#) of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in electricity⁽²⁾;
 - (iii) in the gas sector, services covered by Directive [2003/55/EC](#) of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in natural gas⁽³⁾;
 - (iv) water distribution and supply services and waste water services;
 - (v) the treatment of waste;
- (b) other services which the relevant competent authority determines, in accordance with Community law, to be of general economic interest;
- (c) matters covered by Directive [96/71/EC](#) of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services⁽⁴⁾;
- (d) matters covered by Directive [95/46/EC](#) of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data⁽⁵⁾;
- (e) matters covered by Council Directive [77/249/EEC](#) of 22 March 1977 to facilitate the effective exercise by lawyers of freedom to provide services⁽⁶⁾;

(1) OJ No. L15, 21.1.1998, p.14, as last amended by Regulation (EC) No. 1882/2003 (OJ No. L284, 31.10.2003, p.1).

(2) OJ No. L176, 15.7.2003, p.37, as last amended by Commission Decision [2006/653/EC](#) (OJ L270, 29.9.2006, p.72).

(3) OJ No. L176, 15.7.2003, p.57.

(4) OJ No. L18, 21.1.1997, p.1.

(5) OJ No. L281, 23.11.1995 p.31, as amended by Regulation (EC) No. 1882/2003 (OJ No. L284, 31.10.2003, p.1).

(6) OJ No. L78, 26.3.1977, p.17.

- (f) the activity of judicial recovery of debts;
- (g) matters covered by Title II of Directive [2005/36/EC](#) of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications, as well as requirements in the EEA state where the service is provided which reserve an activity to a particular profession;
- (h) matters covered by Regulation [\(EEC\) No 1408/71](#) of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community⁽⁷⁾;
- (i) as regards administrative formalities concerning the free movement of persons and their residence, matters covered by the provisions of Directive [2004/38/EC](#) of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the member states that lay down administrative formalities with which beneficiaries must comply⁽⁸⁾;
- (j) as regards third country nationals who move to the United Kingdom in the context of the provision of a service, the operation of the Immigration Acts⁽⁹⁾;
- (k) as regards the shipment of waste, matters covered by [Council Regulation \(EEC\) No 259/93](#) of 1 February 1993 on the supervision and control of shipments of waste within, into and out of the European Community⁽¹⁰⁾;
- (l) copyright, related rights, rights covered by Council Directive [87/54/EEC](#) of 16 December 1986 on the legal protection of topographies of semiconductor products⁽¹¹⁾ and rights covered by Directive [96/9/EC](#) of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases, as well as industrial property rights⁽¹²⁾;
- (m) acts requiring by law the involvement of a notary;
- (n) matters covered by Directive [2006/43/EC](#) of the European Parliament and of the Council of 17 May 2006 on statutory audit of annual accounts and consolidated accounts⁽¹³⁾;
- (o) the registration of vehicles leased in another EEA state;
- (p) the rules of private international law regarding contractual or non-contractual obligations, including the form of contracts.

Derogation relating to the safety of a service

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

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

(3) The conditions are that—

- (a) the provisions in accordance with which the measure is taken have not been subject to Community harmonisation in the field of the safety of services,
- (b) the measures provide for a higher level of protection of the recipient than would be the case in a measure taken by the EEA state in which the provider is established in accordance with its national provisions,

⁽⁷⁾ OJ No. L149, 5.7.1971, p.2.

⁽⁸⁾ OJ No. L158, 30.4.2004, p.77.

⁽⁹⁾ See definition in Schedule 1 to the Interpretation Act [1978 \(c.30\)](#).

⁽¹⁰⁾ OJ No. L30, 6.2.1993, p.1.

⁽¹¹⁾ OJ No. L24, 27.1.1987, p.36.

⁽¹²⁾ OJ No. L77, 27.3.1996, p.20.

⁽¹³⁾ OJ No. L157, 9.6.2006, p.87.

- (c) that EEA state has not taken any measures, or has taken measures which are insufficient as compared with those requested under regulation 27(2), and
- (d) the measures are proportionate.

Procedure relating to derogation under regulation 26

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

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

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

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

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

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

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

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

(8) But in such cases—

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

Duty to notify Secretary of State of new requirements

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

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