
DRAFT STATUTORY INSTRUMENTS

2009 No.

The Provision of Services Regulations 2009

PART 6

**OTHER DUTIES OF COMPETENT AUTHORITIES
IN RELATION TO PROVIDERS AND RECIPIENTS**

Certificates and other documents

31.—(1) This regulation applies where a competent authority requires the provider or recipient of a service to supply a certificate, attestation or any other document proving that a requirement has been satisfied.

(2) The competent authority must accept any document—

- (a) which serves an equivalent purpose, or
- (b) from which it is clear that the requirement has been satisfied.

(3) The competent authority may not require a document to be produced in its original form, or as a certified copy or certified translation, except—

- (a) as provided for in another Community instrument, or
- (b) where such a requirement is justified by an overriding reason relating to the public interest, including public order and security.

(4) This regulation does not prevent a competent authority from requiring a non-certified translation of a document into English.

(5) This regulation does not apply to the documents referred to in—

- (a) section 5A(3) of, and paragraphs 5(3) and 6(5)(b) of Schedule 1B to, the Veterinary Surgeons Act 1966⁽¹⁾;
- (b) in the case of a company incorporated in an EEA state other than the United Kingdom, the First Council Directive on co-ordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, with a view to making such safeguards equivalent throughout the Community (68/151/EEC)⁽²⁾;
- (c) section 4A(2)(a) of, and paragraphs 3(4) and 6(6)(b) of Schedule 1A to, the Architects Act 1997⁽³⁾;
- (d) regulation 16(2) of the European Communities (Lawyer's Practice) Regulations 2000⁽⁴⁾;

(1) 1966 c. 36. Relevant amendments to section 5A and Schedule 1B were made by the Veterinary Surgeons' Qualifications (European Recognition) Regulations 2008 (S.I. 2008/1824).

(2) OJNo. L65, 14.3.1968, p.8 (OJ/SE Series I Chapter 1968 (J) P.0041) as last amended by Directive 2003/58/EC of the European Parliament and of the Council (OJ No. L221, 4.9.2003, p.13).

(3) 1997 c. 22. Section 4A and Schedule 1A were inserted by the Architects (Recognition of European Qualifications etc and Saving and Transitional Provision) Regulations 2008 (S.I. 2008/1331).

(4) S.I. 2000/1119, to which there are amendments not relevant to these Regulations.

- (e) regulation 16(2) of the European Communities (Lawyer's Practice) (Scotland) Regulations 2000⁽⁵⁾;
- (f) sections 17 and 396 of the Companies Act 2006⁽⁶⁾;
- (g) regulations 23(5), 24(1) and 25 of the Public Contracts Regulations 2006⁽⁷⁾;
- (h) regulations 23(5), 24(1) and 25 of the Public Contracts (Scotland) Regulations 2006⁽⁸⁾;
- (i) regulations 11, 12, 31, 32 and 33 of the European Communities (Recognition of Professional Qualifications) Regulations 2007⁽⁹⁾;
- (j) the Overseas Companies Regulations 2009⁽¹⁰⁾.

Electronic procedures

32.—(1) A competent authority must ensure that—

- (a) all procedures and formalities relating to access to, or the exercise of, a service activity may be easily completed, at a distance and by electronic means (through the electronic assistance facility referred to in regulation 38 or otherwise), and
- (b) its website affords access to that electronic assistance facility.

(2) In paragraph (1), the reference to procedures or formalities does not include procedures or formalities consisting of—

- (a) the inspection of premises or equipment, or
- (b) physical examination of the capability or professional integrity of—
 - (i) a provider of the service, or
 - (ii) the staff of such a provider.

Insurance

33.—(1) A competent authority may not require professional liability insurance or a guarantee from the provider of a service if, or to the extent that, the provider is already covered, in another EEA state in which the provider is established, by professional liability insurance or a guarantee meeting the condition in paragraph (2).

(2) That condition is that the professional liability insurance or guarantee is equivalent or essentially comparable as regards—

- (a) its purpose, and
- (b) the cover it provides in terms of—
 - (i) the risk covered,
 - (ii) the amount covered, and
 - (iii) exclusions from the cover.

(3) Where a competent authority requires the provider of a service to have professional liability insurance or a guarantee, the authority must accept as sufficient evidence attestations of such cover issued by credit institutions and insurers established in another EEA state.

(4) Paragraphs (1) and (2) do not apply to the regulation of lawyers exercising their right under Article 2 of Directive 98/5/EC of the European Parliament and of the Council of 16 February 1998

⁽⁵⁾ S.S.I. 2000/121, to which there are amendments not relevant to these Regulations.

⁽⁶⁾ 2006 c. 46.

⁽⁷⁾ S.I. 2006/5, to which there are amendments not relevant to these Regulations.

⁽⁸⁾ S.S.I. 2006/1, to which there are amendments not relevant to these Regulations.

⁽⁹⁾ S.I. 2007/2781.

⁽¹⁰⁾ S.I. 2009/1801.

to facilitate practice of the profession of lawyer on a permanent basis in a member State other than that in which the qualification was obtained⁽¹¹⁾.

Commercial communications by regulated professions

34.—(1) A competent authority may not impose a total prohibition on the use of commercial communications by providers of a service who are carrying on a regulated profession.

(2) The relevant competent authority must ensure that commercial communications by providers of a service who are carrying on a regulated profession comply with professional rules which relate in particular to—

- (a) the independence, dignity and integrity of that profession, and
- (b) professional secrecy,

in a manner consistent with the specific nature of that profession.

(3) Rules made by a competent authority in relation to commercial communications by providers of a service who are carrying on a regulated profession must be—

- (a) non-discriminatory,
- (b) justified by an overriding reason relating to the public interest, and
- (c) proportionate.

(4) In this regulation, “commercial communications” means communications in any form designed to promote, directly or indirectly, the goods, services or image of a person carrying on a regulated profession, other than—

- (a) a communication consisting only of information allowing direct access to the activity of that person, including a postal address, a domain name or an e-mail address, or
- (b) a communication which has been prepared independently of the person making it (and for this purpose, a communication prepared without financial consideration is to be taken to have been prepared independently unless the contrary is shown).

Multi-disciplinary activities

35.—(1) A competent authority may not subject the provider of a service to any requirement which—

- (a) obliges the provider to exercise a specific service activity exclusively, or
- (b) restricts the exercise, jointly or in partnership, of different activities.

(2) Paragraph (1) does not prevent a competent authority for a regulated profession from imposing a requirement if or to the extent that—

- (a) the requirement is justified in order to guarantee compliance with the rules governing ethics and conduct in that profession, and
- (b) the requirement is necessary in order to ensure the impartiality and independence of that profession.

(3) Paragraph (4) applies where a competent authority has not imposed on a provider of a service carrying on a regulated profession—

- (a) an obligation within paragraph (1)(a), or
- (b) a restriction within paragraph (1)(b) that prohibits the exercise of different activities.

(4) The competent authority must ensure that—

⁽¹¹⁾ OJ No. L77, 14.3.1998, p.36, as last amended by Council Directive [2006/100/EC](#) (OJ No. L 363, 20.12.2006, p.141).

- (a) conflicts of interest are avoided,
 - (b) independence and impartiality are secured as required, and
 - (c) the rules governing professional ethics and conduct for different activities are compatible with one another (including in particular in relation to matters of professional secrecy).
- (5) In the case of certification, accreditation, technical monitoring, test or trial services, paragraph (1) does not prevent a competent authority from imposing a requirement if, or to the extent that, the requirement is necessary in order to ensure the independence and impartiality of the provider of the service.
- (6) Paragraph (7) applies where a competent authority has not imposed on a provider of a service referred to in paragraph (5)—
- (a) an obligation within paragraph (1)(a), or
 - (b) a restriction within paragraph (1)(b) that prohibits the exercise of different activities.
- (7) The competent authority must ensure that—
- (a) conflicts of interest are avoided,
 - (b) independence and impartiality are secured as required, and
 - (c) the rules governing the provision of that service, and the carrying on of the other activity, are compatible (including in particular in relation to matters of professional secrecy).