
DRAFT STATUTORY INSTRUMENTS

2009 No.

The Provision of Services Regulations 2009

PART 9

ADMINISTRATIVE CO-OPERATION BETWEEN EEA STATES

General obligations

39.—(1) A competent authority must for the purposes of Chapter VI of the Services Directive provide assistance to relevant authorities in other EEA states, and put in place measures for effective co-operation with such authorities, in order to ensure the supervision of providers of services and the services they provide.

(2) A competent authority is not obliged under this Part to meet a request for information, or a request to carry out any check, inspection or investigation, that is not for a proper purpose or for which no reason is given.

(3) Where under Chapter VI of the Services Directive a competent authority receives a request for information, or a request to carry out any check, inspection or investigation from a relevant authority in another EEA state, but—

- (a) considers that the request is not for a proper purpose or that no reason has been given for it, or
- (b) finds that the request is one which it has difficulty in meeting,

it must promptly notify the requesting authority and the Secretary of State accordingly.

(4) Information supplied to an authority in another EEA state pursuant to this Part must be supplied—

- (a) through the electronic system for the exchange of information established pursuant to Article 34 of the Services Directive, and
- (b) as quickly as possible.

(5) Any register of providers of a service held by a competent authority and which is accessible to other competent authorities in the United Kingdom must be accessible on the same conditions to authorities with equivalent functions in other EEA states.

Provision of information where provider established in UK

40.—(1) This regulation applies in relation to a provider of a service who is established in the United Kingdom and is providing the service in another EEA state.

(2) The competent authority must, when requested to do so by a relevant authority in another EEA state, supply information about the provider to that authority.

(3) The information referred to in paragraph (2) includes in particular—

- (a) confirmation that the provider is established in the United Kingdom;

- (b) whether, to the competent authority's knowledge, the provider is authorised to provide the service.
- (4) The competent authority must, when requested to do so by a relevant authority in another EEA state—
 - (a) carry out checks, inspections or investigations in relation to the provider,
 - (b) inform the requesting authority of the results, and
 - (c) if it thinks it appropriate to take any measures in relation to the provider, inform the requesting authority of those measures.
- (5) Nothing in paragraph (4) permits or requires a competent authority to do anything which it could not otherwise lawfully do.

Provision of information where services provided in UK

- 41.**—(1) This regulation applies in relation to a provider of a service who provides the service in the United Kingdom but is not established there.
- (2) The competent authority must, when requested to do so by a relevant authority in an EEA state where the provider is established, carry out any checks, inspections or investigations in relation to the provider that are necessary to ensure effective supervision by that authority.
- (3) Nothing in paragraph (2) permits or requires a competent authority to do anything which it could not otherwise lawfully do.

Alert mechanism

- 42.** If a competent authority becomes aware of serious specific acts or circumstances relating to a service activity that could cause serious damage to—
- (a) the health or safety of persons in the United Kingdom or in another EEA state, or
 - (b) the environment in the United Kingdom or in another EEA state,
- the competent authority must inform the Secretary of State as quickly as possible.

Information relating to disciplinary action etc taken in relation to providers

- 43.**—(1) Where a relevant authority in another EEA state requests a competent authority to supply information on any of the matters in paragraph (2) in relation to the provider of a service, the competent authority must do so, subject to and in accordance with this regulation.
- (2) The matters referred to in paragraph (1) are—
- (a) disciplinary or administrative actions,
 - (b) criminal sanctions, and
 - (c) decisions concerning insolvency or bankruptcy involving fraud,
- taken or imposed by an authority in the United Kingdom in respect of the provider which are directly relevant to the provider's competence or professional reliability.
- (3) Nothing in this regulation requires or permits a competent authority to disclose information which it could not otherwise lawfully disclose.
- (4) But where a competent authority may not lawfully supply information pursuant to a request under paragraph (1) without the consent of the provider, it must make a request to the provider to give that consent.

(5) Information as to the matters referred to in paragraph (2)(a) and (b) is not to be supplied unless a final decision has been taken in relation to the action or sanction and no further appeal is possible (ignoring any possibility of an appeal out of time).

(6) Information supplied pursuant to paragraph (1) must specify the legal provisions pursuant to which the action or decision was taken or the sanction was imposed.

(7) Information as to the decisions referred to in paragraph (2)(c) must specify whether the decision is final or whether an appeal has been lodged (in which case the competent authority must indicate the date on which the decision on appeal is expected).

(8) A competent authority which supplies information pursuant to a request under paragraph (1) must inform the provider that it has provided information to the requesting authority and what that information was.

Mutual assistance in the event of case-by-case derogations

44.—(1) This regulation applies where the provider of a service who is established in the United Kingdom provides the service in another EEA state and—

- (a) pursuant to Article 18 of the Services Directive, a relevant authority in that state proposes to take measures relating to the safety of the service, and
- (b) pursuant to the procedure in Article 35 of the Services Directive, that authority requests a competent authority to supply information on the service and the circumstances of the case.

(2) The competent authority must—

- (a) check whether the provider is authorised to provide the service,
- (b) verify the facts underlying the request, and
- (c) inform the requesting authority and the Secretary of State of the measures taken or envisaged or of the reasons why it has not taken any measures.