Draft Regulations laid before Parliament under paragraph 2(2) of Schedule 2 to the European Communities Act 1972, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2009 No.

PROVISION OF SERVICES

The Provision of Services Regulations 2009

Made - - - -	***
Coming into force - -	***

These Regulations are made in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(**1**).

The Secretary of State is a Minister designated(**2**) in relation to services in the internal market for the purposes of section 2(2) of that Act.

In accordance with paragraph 2(2) of Schedule 2 to that Act a draft of this instrument has been laid before Parliament and approved by resolution of each House of Parliament.

Accordingly the Secretary of State makes the following Regulations.

PART 1

INTRODUCTORY

Citation and commencement

1.—(1) These Regulations may be cited as the Provision of Services Regulations 2009.

(2) These Regulations come into force on 28th December 2009.

"Service"

2.—(1) In these Regulations "service" means any self-employed economic activity normally provided for remuneration (as referred to in Article 50 of the Treaty).

(2) These Regulations do not apply to—

(**1**) 1972 c.68, to which there are amendments not relevant to these Regulations. Under s. 57(1) of the Scotland Act 1998 (c. 46), despite the transfer to Scottish Ministers of functions in relation to implementing obligations under Community law in relation to devolved matters, the function of the Secretary of State in relation to implementing these obligations continues to be exercisable by him as regards Scotland.

(**2**) S.I. 2009/221.

(a) financial services, such as banking, credit, insurance and re-insurance, occupational or personal pensions, securities, investment funds, payment and investment advice, including the services listed in Annex I to Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions(**3**);

(b) electronic communications services and networks, and associated facilities and services, with respect to matters covered by—

Directive 2002/19/EC of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities(**4**),

Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services(**5**),

Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services(**6**),

Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services(**7**), or

Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector(**8**);

(c) services in the field of transport, including port services, falling within the scope of Title V of the Treaty;

(d) services of temporary work agencies (which for the purposes of these Regulations include any employment business as defined by section 13(3) of the Employment Agencies Act 1973(**9**));

(e) healthcare services, whether or not they are provided via healthcare facilities, and regardless of the ways in which they are organised and financed at national level or whether they are public or private;

(f) audiovisual services, including cinematographic services, whatever their mode of production, distribution and transmission, and radio broadcasting;

(g) gambling activities which involve wagering a stake with pecuniary value in games of chance, including lotteries, gambling in casinos and betting transactions;

(h) activities which are connected with the exercise of official authority (as set out in Article 45 of the Treaty);

(i) social services relating to social housing, childcare and support of families and persons permanently or temporarily in need which are provided by the State, by providers mandated by the State or by charities recognised as such by the State;

(j) private security services;

(k) services provided by notaries or bailiffs, if or to the extent that they are appointed by an official act of government to provide those services.

(**3**) OJ No. L177, 30.6.2006, p.l.
(**4**) OJ No. L108, 24.4.2002, p.7.
(**5**) OJ No. L108, 24.4.2002, p.21.
(**6**) OJ No. L108, 24.4.2002, p.33.
(**7**) OJ No. L108, 24.4.2002, p.51.
(**8**) OJ No. L201, 31.7.2002, p.37 as amended by Directive 2006/24/EC (OJ L105, 13.4.2006, p.54).
(**9**) 1973 c. 35.

"Competent authority"

3.—(1) In these Regulations "competent authority" means a body or authority having supervisory or regulatory functions in the United Kingdom in relation to service activities (and includes in particular a professional body, professional association or other professional organisation, that regulates access to, or the exercise of, a service activity).

(2) In paragraph (1)—

(a) the reference to a body or authority includes a body or authority acting on behalf of the Crown;

(b) the reference to supervisory or regulatory functions includes the function of maintaining a register or other record of persons entitled to have access to, or to exercise, a service activity.

(3) Parts 3 to 6 of these Regulations do not apply to competent authorities to the extent that their functions involve the making of subordinate legislation.

Interpretation: general

4. In these Regulations—

"authorisation scheme" means any arrangement which in effect requires the provider or recipient of a service to obtain the authorisation of, or to notify, a competent authority in order to have access to, or to exercise, a service activity;

"enactment" includes Acts of the Scottish Parliament, Northern Ireland legislation, Acts and Measures of the National Assembly for Wales and subordinate legislation;

"establishment", in relation to the provider of a service, means the actual pursuit of an economic activity, as referred to in Article 43 of the Treaty, by the provider for an indefinite period and through a stable infrastructure from where the business of providing services is actually carried out (and references to "established", in relation to the provider of a service, are to be construed accordingly);

"notary"—

(a) in England and Wales, includes a person who, for the purposes of the Legal Services Act 2007(**10**), is an authorised person in relation to any activity which constitutes a notarial activity (within the meaning of that Act), and

(b) in Scotland, means a notary public duly admitted in Scotland;

"professional liability insurance" means insurance taken out by the provider of a service in respect of potential liabilities to recipients and, where applicable, third parties arising out of the provision of the service;

"provider", in relation to a service, means a person who provides, or offers to provide, the service (but see regulation 5(4));

"recipient", in relation to a service, means a person who, for professional or non-professional purposes, uses, or wishes to use, the service (but see regulation 5(3));

"regulated profession" means a professional activity or group of activities—

(a) access to which, the pursuit of which or one of the modes of pursuit of which is subject (directly or indirectly) by virtue of legislative, regulatory or administrative provisions to the possession of specified qualifications, or

(b) the pursuit of which is by persons using a professional title which is limited by legislative, regulatory or administrative provisions to holders of a given professional qualification;

(**10**) 2007 c. 29.

"requirement" includes any obligation, prohibition, condition or limit;

"service" has the meaning given by regulation 2;

"the Services Directive" means Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market(**11**);

"subordinate legislation" means Orders in Council, orders, rules, regulations, schemes, warrants, byelaws and other instruments made or to be made under any Act or under any Act of the Scottish Parliament, Northern Ireland legislation or Act or Measure of the National Assembly for Wales;

"the Treaty" means the Treaty establishing the European Community(**12**).

General exclusions and savings

5.—(1) Nothing in these Regulations—

(a) requires or prohibits—

(i) the opening up to competition of services of general economic interest,

(ii) the privatisation of public entities providing services, or

(iii) the abolition of monopolies;

(b) affects the functions of a competent authority in relation to the granting of aids covered by Community rules on competition;

(c) prevents a competent authority from determining, in accordance with Community law, what it considers to be a service of general economic interest, how services of general economic interest should be organised and financed in compliance with State aid rules and what specific obligations those services should be subject to;

(d) affects the functions of a competent authority in relation to—

(i) the law relating to employment conditions,

(ii) the law relating to working conditions, including health and safety at work and the relationship between employers and workers, or

(iii) the law relating to social security;

(e) affects rules of private international law, in particular rules governing the law applicable to contractual and non-contractual obligations (including those which guarantee that consumers benefit from the protection granted to them in the United Kingdom).

(2) Nothing in these Regulations applies in respect of the field of taxation.

(3) Nothing in these Regulations applies in relation to a recipient of a service who is not—

(a) an individual who is a national of an EEA state or who otherwise benefits from rights conferred by Community acts, or

(b) a legal person (as referred to in Article 48 of the Treaty) who is established in an EEA state.

(4) Nothing in Parts 3 to 9 of these Regulations applies in relation to a provider of a service who is not—

(a) an individual who is a national of, and is established in, an EEA state, or

(b) a legal person (as referred to in Article 48 of the Treaty) who is established in an EEA state.

(**11**) OJ No. L376, 27.12.2006, p.36.
(**12**) A consolidated version can be found at OJ No. C321E, 29.12.2006.

Relationship with other requirements

6.—(1) A requirement imposed by Part 2, 5 or 6 of these Regulations on a competent authority or a provider of a service does not apply if, or to the extent that, the competent authority or provider cannot comply both with that requirement and with a requirement to which this paragraph applies.

(2) Paragraph (1) applies to a requirement imposed by—

(a) a provision of an enactment, where—

(i) the provision relates to specific aspects of access to, or the exercise of, a service activity,

(ii) the provision implements a Community obligation, and

(iii) 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, where—

(i) the provision relates to specific aspects of access to, or the exercise of, a service activity, and

(ii) the instrument comes into force before the day on which these Regulations are made.

(3) A requirement imposed by Part 3 or 4 of these Regulations on a competent authority does not apply if, or to the extent that, the competent authority cannot comply both with that requirement and with a requirement to which this paragraph applies.

(4) Paragraph (3) applies to a requirement imposed by—

(a) a provision of an enactment, where—

(i) the provision relates to specific aspects of access to, or the exercise of, a service activity, and

(ii) 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, where—

(i) the provision relates to specific aspects of access to, or the exercise of, a service activity, and

(ii) the instrument comes into force before the day on which these Regulations are made.

PART 2

DUTIES OF SERVICE PROVIDERS

CHAPTER 1

INFORMATION

Duty to make contact details available

7.—(1) The provider of a service must make available contact details to which all recipients of the service can send a complaint or a request for information about the service.

(2) Those contact details must include in particular—

(a) a postal address, fax number or e-mail address,

(b) a telephone number, and

(c) where the service provider has an official address, that address.