



STATUTORY INSTRUMENTS.

S.I. No. 533 of 2010



EUROPEAN UNION (PROVISION OF SERVICES) REGULATIONS
2010

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EUROPEAN UNION (PROVISION OF SERVICES) REGULATIONS
2010

I, BATT O'KEEFFE T.D., Minister for Enterprise, Trade and Innovation, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972), and for the purpose of giving effect to Directive No. 2006/123/EC of the European Parliament and of the Council of 12 December 2006¹ on services in the internal market, hereby make the following regulations:

PART 1

PRELIMINARY PROVISIONS

Citation

1. These Regulations may be cited as the European Union (Provision of Services) Regulations 2010.

Interpretation

2. (1) In these Regulations—

“authorised officer” means a person appointed to be an authorised officer under Regulation 45;

“certificate” includes an attestation;

“consumer” means a natural person who is acting for a purpose that is outside the scope of the person’s trade, business or profession;

“Credit Institutions Directive” means Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006² relating to the taking up and pursuit of the business of credit institutions;

“Data Protection Directive” means Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995³ on the protection of individuals with regard to the processing of personal data and on the free movement of such data;

“EEA Agreement” has the same meaning as it has in the European Communities (Amendment) Act 1993 (No. 25 of 1993);

“employee” means a person of any age who has entered into or works under (or, where the employment has ceased, entered into or worked under) a contract of employment and references, in relation to an employer, to an employee shall be construed as references to an employee employed or formerly employed, as the case requires, by that employer;

¹ OJ L 376, 27.12.2006, p. 36.

² OJ L 177, 30.06.2006, p. 1.

³ OJ L 281, 23.11.1995, p. 31.

“enactment” has the same meaning as in section 2(1) of the Interpretation Act 2005 (No. 23 of 2005);

“European act” means an act adopted by an institution of the European Union, an institution of the European Communities or any other body competent under the treaties governing the European Union;

“European Commission” means the Commission of the European Union;

“investigation” includes inspection and check;

“liaison officer” means the person designated as liaison officer under Regulation 34;

“Member State” includes a state that is a contracting party to the EEA Agreement;

“Minister” means the Minister for Enterprise, Trade and Innovation;

“nationality” includes citizenship;

“organisation” includes an association and an association of organisations;

“point of single contact” means, subject to paragraph (2), a person designated under Regulation 31(1);

“Privacy Directive” means Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002⁴ concerning the processing of personal data and the protection of privacy in the electronic communications sector;

“professional body”—

(a) in relation to a regulated profession, means a body or organisation required or authorised by or under a law of the State to supervise or regulate the conduct of persons engaged in the profession, and, if the body is not a body corporate, also means the persons elected or appointed to administer the affairs of the body, and

(b) includes a professional association, professional institute and any other professional organisation;

“Qualifications Directive” means Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005⁵ on the recognition of professional qualifications;

“Services Directive” means Directive No. 2006/123/EC of the European Parliament and of the Council of 12 December 2006⁶ on services in the internal market;

⁴ OJ L 201, 31.07.2002, p. 37.

⁵ OJ L 255, 30.9.2005 p. 22.

⁶ OJ L 376, 27.12.2006, p. 36.

“TFEU” means the Treaty on the Functioning of the European Union;

“third country” means any country other than a Member State, and includes any dependent territory, and any state, province, region or other part, of such a country.

(2) A reference in these Regulations to a point of single contact includes, unless the context otherwise requires, the National Point of Single Contact operated within the Department of Enterprise, Trade and Innovation.

(3) A word or expression used in these Regulations that is also used in the Services Directive has, unless the contrary intention appears, the same meaning in these Regulations as it has in the Services Directive.

Application of Regulations

3. (1) Subject to paragraphs (2) and (3), these Regulations apply to services supplied by providers established in the State or established in any other Member State.

(2) These Regulations do not apply to the following services:

- (a) non-economic services of general interest;
- (b) 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 1 to the Credit Institutions Directive;
- (c) electronic communications services and networks, and associated facilities and services, to which any of the following applies:
 - (i) Directive 2002/19/EC of the European Parliament and of the Council of 7 March 2002⁷ on access to, and interconnection of, electronic communications networks and associated facilities;
 - (ii) Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002⁸ on the authorisation of electronic communications networks and services;
 - (iii) Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002⁹ on a common regulatory framework for electronic communications networks and services;
 - (iv) Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002¹⁰ on universal service and users’ rights relating to electronic communications networks and services;
 - (v) the Privacy Directive;

⁷ OJ L 108, 24.04.2002, p. 7.

⁸ OJ L 108, 24.04.2002, p. 21.

⁹ OJ L 108, 24.04.2002, p. 33.

¹⁰ OJ L 108, 24.4.2002, p. 51.

- (d) transport services (including port services) that are covered by Title VI of the TFEU;
- (e) services provided by a temporary work agency, where the agency is a person who enters into contracts of employment or employment relationships with workers in order to assign those workers to user undertakings to work or provide a service there temporarily under the undertaking's supervision and direction;
- (f) healthcare and pharmaceutical services provided by health professionals to patients to assess, maintain or restore the patients' state of health where those activities are reserved to a regulated profession in the State, and whether or not these services are provided by way of healthcare facilities and whether or not they are public or private, and irrespective of the ways in which they are organised and financed in the State;
- (g) audiovisual services (including cinematographic services) whatever their mode of production, distribution and transmission, and radio broadcasting;
- (h) gambling activities which involve wagering a stake with pecuniary value in games of chance, including lotteries, gambling in casinos and betting transactions;
- (i) services provided in relation to activities that are connected with the exercise of official authority as set out in Article 51 of the TFEU;
- (j) social services, to the extent that they are not already excluded under subparagraphs (a) or (f), relating to social housing, childcare and support of families and persons permanently or temporarily in need, that are provided by—
 - (i) the State,
 - (ii) a provider mandated by or under an enactment,
 - (iii) a registered charitable organisation within the meaning of the Charities Act 2009 (No. 6 of 2009), or
 - (iv) a person or a trust in respect of which—
 - (I) there is an entitlement to an exemption under section 207 or 208 of the Taxes Consolidation Act 1997 (No. 39 of 1997), and
 - (II) the Revenue Commissioners have issued a number (commonly referred to as a “CHY number”) for the purposes of such exemption;
- (k) private security services;

(l) services provided by notaries and bailiffs, who are appointed in accordance with an enactment.

(3) These Regulations do not apply to the field of taxation.

(4) Nothing in these Regulations shall be taken to affect labour law, that is rules of law of the State concerning employment conditions, working conditions, including health and safety at work and the relationship between employers and workers.

(5) These Regulations do not deal with the abolition of monopolies providing services or with aids granted by the State which are covered by any European Act on competition.

Relationship of Regulations with other enactments

4. (1) A provision of these Regulations does not apply if, or to the extent that, it is inconsistent with—

(a) an enactment that relates to specific aspects of access to, or the performance of, a service activity if the enactment implements an obligation imposed by a European act, or

(b) a European act that relates to specific aspects of access to, or the performance of, a service activity, where the act is directly applicable to the State.

(2) Every enactment relating to the provision or availing of a service shall, subject to any other rules of law relating to the construction of that enactment, be construed in a manner that is consistent with these Regulations.

(3) If it is not possible to construe an enactment referred to in paragraph (2) in a manner consistent with these Regulations, then, in so far as the enactment is inconsistent with a provision of these Regulations, the enactment does not apply to the extent of the inconsistency.

(4) These Regulations do not limit the operation of the rules of private international law, in particular those rules of law applicable to contractual and non-contractual obligations (including those that guarantee that consumers benefit from the protection granted to them by the law of the State relating to consumer protection).

PART 2

RIGHTS AND OBLIGATIONS OF PROVIDERS AND RECIPIENTS

Chapter 1

*Providers**Reference to freedom to provide a service*

5. A reference in this Chapter to a provider established in another Member State having the freedom to provide a service in the State includes a reference to the provider having the freedom to have access to, and to perform, a relevant service activity in the State.

Freedom to provide a service

6. (1) Subject to Regulation 7 and Regulation 8, a relevant competent authority in the State may impose on a provider established in another Member State a requirement restricting the provider's freedom to provide a service in the State only if the requirement is non-discriminatory, necessary and proportionate.

(2) For the purpose of paragraph (1)—

- (a) a requirement is non-discriminatory if it is neither directly nor indirectly discriminatory with regard to nationality or, in the case of a provider who is a legal person, with regard to the Member State in which that provider is established;
- (b) a requirement is necessary if it is justified for reasons of public policy, public security, public health or the protection of the environment;
- (c) a requirement is proportionate if it is necessary for attaining the objective pursued and does not exceed what is necessary to attain that objective.

(3) A competent authority in the State may not restrict the freedom of a provider established in another Member State to provide services in the State by imposing on the provider any of the following:

- (a) a requirement to maintain an establishment in the State;
- (b) a requirement to be authorised by the authority or by any other competent authority in the State, or to be registered with a professional body established in the State, unless such a requirement is otherwise expressly provided for by the Services Directive or some other European act;
- (c) a prohibition on the provider establishing a particular kind of infrastructure in the State, such as an office or chambers, that the provider may need in order to provide a particular service;

- (d) a requirement that a specific contractual arrangement be applied between the provider and a recipient that prevents or restricts the provision of a service by persons who are self-employed;
 - (e) a requirement that the provider possess an identity document issued by the authority or another competent authority in the State that specifically relates to the performance of a service activity;
 - (f) a requirement that affects the use of equipment and material that are an integral part of the service provided by the provider unless such a requirement is necessary in order to protect the health and safety of persons at work;
 - (g) any restriction of the kind referred to in Regulation 9.
- (4) Paragraph (3) does not prevent a competent authority in the State from imposing a requirement in relation to the performance of a service activity if the requirement is—
- (a) justified for reasons of public policy, public security, public health, or the protection of the environment, and
 - (b) consistent with paragraphs (1) and (2).

(5) Paragraph (3) does not prevent a competent authority in the State from imposing a requirement in relation to the performance of a service activity if the requirement relates to employment conditions, including those prescribed in collective agreements.

(6) A requirement imposed in contravention of this Regulation has no effect.

Additional derogations from the freedom to provide a service

7. Nothing in Regulation 6 confers any right on a provider established in another Member State to provide a service in the State in relation to any of the following matters:

- (a) services of general economic interest, including—
 - (i) in the postal sector, services covered by Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997¹¹ on common rules for the development of the internal market of Community postal services and the improvement of quality of service,
 - (ii) in the electricity sector, services covered by Directive 2003/54/EC of the European Parliament and of the Council of 26 June 2003¹² concerning common rules for the internal market in electricity,

¹¹ OJ L 15, 21.1.1998, p. 14.

¹² OJ L 176, 15.7.2003, p. 37.

- (iii) in the gas sector, services covered by Directive 2003/55/EC of the European Parliament and of the Council of 26 June 2003¹³ concerning common rules for the internal market in natural gas,
 - (iv) water distribution and supply services and waste water services, and
 - (v) treatment of waste;
- (b) matters covered by Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996¹⁴ concerning the posting of workers in the framework of the provision of services;
 - (c) matters covered by the Data Protection Directive;
 - (d) matters covered by Council Directive 77/249/EEC of 22 March 1977¹⁵ to facilitate the effective exercise by lawyers of freedom to provide services;
 - (e) the activity of judicial recovery of debts;
 - (f) matters covered by Title II of the Qualifications Directive;
 - (g) any enactment that reserves the performance of an activity to members of a particular profession;
 - (h) matters covered by Council Regulation (EC) No. 1408/71 of 14 June 1971¹⁶ on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community;
 - (i) the provisions of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004¹⁷ 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 of the competent authorities in the State with which beneficiaries must comply;
 - (j) as regards the nationals of third countries who move to the State from another Member State in the context of providing a service, the right of the State—
 - (i) to require those nationals to hold a visa or a residence permit, or
 - (ii) to require those nationals to report to the relevant competent authority in the State on or after their entry;

¹³ OJ L 176, 15.07.2003, p. 57

¹⁴ OJ L 18, 21.1.1997, p. 1.

¹⁵ OJ L 78, 26.3.1977, p. 17.

¹⁶ OJ L 149, 5.7.1971, p. 2.

¹⁷ OJ L 158, 30.4.2004, p. 77.

- (k) as regards the shipment of waste, matters covered by Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006¹⁸ on shipments of waste;
- (l) copyright, neighbouring rights and rights covered by Council Directive 87/54/EEC of 16 December 1986¹⁹ on the legal protection of topographies of semiconductor products and Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996²⁰ on the legal protection of databases;
- (m) industrial property rights;
- (n) acts requiring by law the involvement of a notary;
- (o) matters covered by Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006²¹ on statutory audits of annual accounts and consolidated accounts;
- (p) the registration of vehicles leased in another Member State;
- (q) provisions regarding contractual and non-contractual obligations, including the form of contracts, determined in accordance with the rules of private international law.

Competent authority in the State may allow derogations on a case by case basis

8. (1) Subject to paragraph (2), in exceptional circumstances, a relevant competent authority in the State may, in respect of a provider established in another Member State, take a measure relating to the safety of services provided by that provider.

(2) A measure referred to in paragraph (1) may be taken only if the mutual assistance procedure set out in Regulation 41 is complied with and the following conditions are fulfilled:

- (a) the provisions in accordance with which the measure is taken have not been subject to European Union harmonisation as regards the safety of services;
- (b) the measure provides for a higher level of protection of the recipient than would be the case if a measure was taken by the Member State of establishment in accordance with its national provisions;
- (c) the Member State of establishment has not taken any measure or has taken a measure that is insufficient as compared with the measure the competent authority in the State intends to take; and
- (d) the measure is proportionate.

¹⁸ OJ L 190, 12.7.2006, p. 1.

¹⁹ OJ L 24, 27.1.1987, p. 36.

²⁰ OJ L 77, 27.3.1996, p. 20.

²¹ OJ L 157, 9.6.2006, p 87.

(3) Paragraphs (1) and (2) are without prejudice to European acts that guarantee the freedom to provide services or allow derogations from that freedom.

Chapter 2

Recipients

Recipients entitled to unimpeded access to services provided by providers established in other Member States

9. (1) A competent authority in the State shall not impose on a recipient a condition that restricts the use by the recipient of a service supplied by a provider established in another Member State.

(2) The conditions referred to in paragraph (1) include—

- (a) an obligation to obtain an authorisation from, or to make a declaration to, the competent authority, and
- (b) the imposition of discriminatory limits on the grant of financial assistance because the provider is established in another Member State or because of where the service is provided.

(3) A condition imposed in contravention of this Regulation has no effect.

Recipients not to be discriminated against on basis of nationality or place of residence

10. (1) A competent authority in the State shall not impose on a recipient a discriminatory requirement that is based on the recipient's nationality or place of residence.

(2) Subject to paragraph (3), a provider who provides a service to the general public shall not discriminate in the conditions on which the service is provided to a recipient on the basis of the recipient's nationality or place of residence.

(3) A provider may provide for differences in the conditions of access where those differences are directly justified by objective criteria.

(4) A requirement or condition imposed in contravention of this Regulation has no effect.

Recipients' entitlement to information about providers and service activities

11. (1) Every recipient in the State is entitled to obtain the following information from an information officer:

- (a) general information on the requirements applicable in other Member States relating to access to, and exercise of, service activities, in particular those relating to consumer protection;
- (b) general information on the means of redress available in the case of a dispute between a provider and a recipient;

(c) information as to the contact details of organisations, including the European Consumer Centres Network, from which providers or recipients (or both) may obtain practical assistance.

(2) The Minister may appoint one or more persons (in these Regulations referred to as an “information officer”) to be responsible for providing information referred to in paragraph (1) to recipients and the Minister shall publish notice of any such appointment in *Iris Oifigiúil*.

(3) The appointment of an information officer under paragraph (2) shall be for a period of 3 years.

(4) The Minister may extend the period referred to in paragraph (3) in a particular case for a further period of 3 years or indefinitely.

(5) The Minister may terminate the appointment of an information officer.

(6) The Minister shall inform the European Commission of the names and contact details of any information officer appointed under paragraph (2).

(7) Where a recipient requests information referred to in paragraph (1) and the request relates to a provider established in another Member State, the information officer shall, if necessary, request the equivalent person in the other Member State to provide the information as soon as possible and, on receipt, shall forward the information to the recipient.

(8) Every information officer shall assist and co-operate with the equivalent person in every other Member State.

(9) Every information officer shall co-operate with the European Commission and with equivalent persons in the other Member States with a view to establishing practical arrangements necessary for the implementation of paragraph (1).

(10) At the request of an information officer, a competent authority in the State shall provide advice in relation to a service activity to a recipient of the service where the competent authority has a supervisory or regulatory role in respect of that service activity.

(11) In giving advice to a recipient under paragraph (10), a competent authority in the State shall, if appropriate, include as part of the advice a simple step-by-step guide with respect to the use of the service and shall ensure—

(a) that information and assistance to a recipient is given in a clear and unambiguous manner and is easily accessible at a distance (including by electronic means), and

(b) that all such information is up-to-date.

PART 3

FREEDOM OF ESTABLISHMENT FOR PROVIDERS

Chapter 1

*Special provisions applicable to authorisation schemes**Application of this Chapter*

12. This Chapter does not apply to those aspects of authorisation schemes that are governed directly or indirectly by European acts other than the Services Directive.

When providers are subject to authorisation schemes

13. A competent authority in the State responsible for administering an authorisation scheme relating to a service activity shall not make access to, or the performance of, the service activity by a provider subject to the scheme unless—

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

General requirements for authorisation schemes

14. (1) Every competent authority in the State responsible for administering an authorisation scheme shall ensure that the authorisation procedures and formalities applicable to the scheme—

- (a) are clear and easily accessible,
- (b) are made public in advance,
- (c) ensure that applicants for an authorisation will have their applications dealt with objectively and impartially, and
- (d) are not dissuasive and do not unduly complicate or delay the provision of a service by providers who are subject to the scheme.

(2) Every competent authority in the State which administers an authorisation scheme shall ensure the fees (if any) that applicants may incur under the scheme are reasonable and proportionate to the cost of administering the scheme and do not exceed that cost.

Criteria and conditions for granting an authorisation

15. (1) A competent authority in the State responsible for administering an authorisation scheme shall exercise its power of assessment in relation to the operation of the scheme on the basis of criteria that are not arbitrary.

(2) The criteria referred to in paragraph (1) shall 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) Subject to paragraph (5), a competent authority in the State responsible for administering an authorisation scheme shall ensure that any conditions to be fulfilled prior to granting an authorisation to a provider to enable the provider to become established in the State do not duplicate requirements that are equivalent or are essentially comparable, as regards their purpose, to those to which the provider is already subject whether in the State or in another Member State.

(4) A provider to whom paragraph (3) applies and the liaison officer, shall assist a competent authority in complying with that paragraph by providing the necessary information regarding the requirements referred to in that paragraph.

(5) Paragraph (3) shall not apply to a provider who fails to assist the competent authority when requested to do so under paragraph (4) within a reasonable time after such request.

(6) A competent authority in the State that grants an authorisation to a provider relating to a service activity shall ensure that the authorisation enables the provider to have access to, and to perform, the activity throughout the State, including by means of setting up agencies, subsidiaries, branches or offices in the State.

(7) An authorisation may limit the provider to whom it is granted, to providing its services—

- (a) in respect of a particular establishment, or
- (b) to a specified part of the State,

if such limitation is justified by an overriding reason relating to the public interest.

(8) Upon receipt of an application for authorisation from a provider, the competent authority in the State responsible for administering the authorisation scheme in respect of the provider's service activity shall—

- (a) grant the authorisation under the scheme as soon as it is satisfied, in the light of an appropriate examination, that any applicable conditions for authorisation have been met, or
- (b) refuse the authorisation and give reasons for its decision.

(9) Where at any time after granting an authorisation in accordance with paragraph (8), a competent authority withdraws the authorisation, it shall give reasons for such withdrawal.

(10) For the avoidance of doubt, the decision of a competent authority under paragraph (8)(b) or paragraph (9) is subject to judicial review.

Duration of authorisations

16. (1) Subject to paragraph (2), an authorisation granted to a provider by a competent authority in the State shall be for an unlimited period except where—

- (a) the authorisation is automatically renewable, or its renewal is subject only to the continued compliance with the conditions subject to which the authorisation was granted,
- (b) the number of available authorisations is limited by an overriding reason relating to the public interest, or
- (c) a limited period can be justified by an overriding reason relating to the public interest.

(2) A competent authority may require a provider to begin performing the service activity to which the authorisation relates within a specified period after granting the authorisation to the provider.

(3) A provider who has been granted an authorisation shall notify the competent authority in the State responsible for administering the scheme to which the authorisation relates of the occurrence of either of the following:

- (a) any creation of a subsidiary (within the meaning of the Companies Acts) whose activities fall within the scope of the scheme;
- (b) any change in relation to the provider in consequence of which any condition subject to which the authorisation was granted, is no longer being met.

(4) This Regulation does not affect the power of a competent authority in the State to withdraw an authorisation if a provider is no longer complying with any condition subject to which the authorisation was granted.

Power of competent authority in the State to apply a selection procedure in certain cases

17. (1) If the number of authorisations available for a given activity is limited because of a scarcity of available natural resources or a lack of technical capacity, the competent authority in the State responsible for issuing authorisations for that activity shall comply with paragraph (2).

(2) A competent authority in the State referred to in paragraph (1) shall apply selection procedures which provide potential candidates for those authorisations with a guarantee of impartiality and transparency, including, in particular, adequate publicity about the launch, conduct and completion of the selection procedures.

(3) In the circumstances referred to in paragraph (1), the responsible competent authority in the State—

(a) shall grant an authorisation only for an appropriate limited period, and

(b) shall ensure that—

(i) the authorisation is not open to automatic renewal, and

(ii) the authorisation does not confer any advantage on a provider whose authorisation has just expired or on any person having a link with that provider.

(4) Subject to paragraph (1) and to Regulations 12, 13 and 15, in establishing rules for a selection procedure, a competent authority in the State may take into account (in so far as consistent with the law of the European Union) the following matters:

(a) public health considerations;

(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;

(f) other overriding reasons relating to the public interest.

Time limits for dealing with applications for authorisations

18. (1) Every competent authority in the State responsible for administering an authorisation scheme shall ensure that—

(a) the procedures and formalities under the scheme provide applicants for an authorisation with an assurance that their applications will be processed as quickly as possible and, in any case, within a reasonable period that is fixed and publicly notified in advance, and

(b) if in a particular case an extension is made under paragraph (4) to the period referred to in subparagraph (a), that extension is notified to the applicant before the period referred to in that subparagraph has expired.

(2) For the purposes of paragraph (1)(a), a period that exceeds 60 days is not reasonable.

(3) The period referred to in paragraph (1) does not begin to run until an applicant for an authorisation has complied with all requirements of the competent authority in the State relating to the production of documents.

(4) If justified by the complexity of the matter, a competent authority in the State may, before the end of the period referred to in paragraph (1)(a), extend that period once for a further period not exceeding 28 days, and if it does so, it shall notify the applicant concerned in writing of that extension and the period of the extension giving reasons for the extension to the applicant before the period referred to in paragraph (1)(a) has expired.

(5) Subject to paragraph (7), if a competent authority in the State fails to determine an application within the decision period the application is taken to have been granted at the end of the decision period.

(6) For the purposes of paragraph (5), the decision period for an application is the period that is made up of—

- (a) the publicly notified period referred to in paragraph (1)(a) in relation to the application, and
- (b) if the competent authority concerned has extended that period in relation to the application under paragraph (4), the period of that extension.

(7) A competent authority in the State may put different arrangements in place that are justified by overriding reasons relating to the public interest (including the legitimate interest of third parties) and where such arrangements are in place, paragraph (5) shall not apply.

Other requirements relating to applications for authorisations

19. (1) As soon as practicable after receiving an application for an authorisation, a competent authority in the State shall acknowledge in writing receipt of the application.

(2) In the acknowledgement, the authority shall specify—

- (a) the period referred to in Regulation 18(1)(a),
- (b) the possibility of extension of that period under Regulation 18(4),

(c) either—

- (i) that in the absence of a determination of that application before the end of the period referred to in Regulation 18(1)(a) (or, if that period is extended under Regulation 18(4), that period as so extended), the authorisation is taken to have been granted at the end of that period or extended period, or
 - (ii) if arrangements of the kind referred to in Regulation 18(7) are in place, a statement of the general effect of those arrangements,
- and

(d) the available means of redress if an application is refused.

(3) Where an application for an authorisation is incomplete in any respect, the competent authority to whom the application is made shall, in writing and without delay, inform the applicant of—

- (a) the additional information or any document required, and
- (b) the effect that failure to promptly supply the additional information or any document, as the case may be, may have on the period within which the application is to be determined.

(4) A competent authority in the State that refuses an application for an authorisation because the application fails to comply with the required procedures or formalities shall notify the applicant in writing and without delay of the refusal and the reasons for that refusal.

Chapter 2

Requirements prohibited or subject to evaluation

Prohibited requirements

20. (1) A competent authority in the State shall not make access to, or the performance of, a service activity by a provider subject to any of the following:

- (a) a discriminatory requirement based directly or indirectly on nationality or, in the case of a provider that is a body corporate, the location of that body's registered office, including—
 - (i) a requirement relating to the nationality of the provider, the provider's staff, persons holding the share capital or members of the provider's management or supervisory bodies, or
 - (ii) a requirement that the provider, the provider's staff, persons holding the share capital or members of the provider's management or supervisory bodies be resident in the State;

- (b) a prohibition—
 - (i) on being established in more than one Member State, or
 - (ii) on being entered in a register kept by, or on being enrolled with, a professional body established in more than one Member State;
- (c) a restriction on the freedom of the provider to choose between a principal and a secondary establishment, in particular—
 - (i) an obligation on the provider to have its principal establishment in the State, or
 - (ii) a restriction on the freedom to choose between establishments in the form of an agency, branch or subsidiary in the State;
- (d) a condition requiring reciprocity with a Member State in which the provider is already established, except in the case of a condition requiring reciprocity in accordance with a European act concerning energy;
- (e) subject to paragraph (2), the case-by-case application of an economic test making the granting to the provider of an 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 authority;
- (f) subject to paragraph (3), the direct or indirect involvement of competing operators—
 - (i) in the granting of an authorisation by the authority, or
 - (ii) in adopting other decisions made by any other competent authority in the State (other than a professional body or other organisation acting as the relevant competent authority in the State);
- (g) subject to paragraph (4), a requirement to provide or participate in a financial guarantee or to take out insurance from a person established in the State;
- (h) a requirement that the provider-
 - (i) has been pre-registered, for a specified period, in a register kept in the State, or

(ii) has previously exercised the activity for a specified period in the State.

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

(3) Paragraph (1)(f) does not apply to any consultation with organisations (such as chambers of commerce or organisations representative of employers and employees) on matters other than individual applications for authorisations, or to a consultation with the public at large.

(4) The prohibition on the imposition of a requirement referred to in paragraph (1)(g) does not affect—

- (a) any requirement on a provider to provide an insurance or financial guarantee as such, or
- (b) any requirement relating to the participation in a collective compensation fund (such as for members of a professional body or organisation).

Requirements relating to gaining access to, and performing, a service activity

21. (1) A competent authority in the State shall not make access to, or the exercise of, a service activity by a provider or recipient subject to any of the requirements set out in paragraph (2) unless those requirements are non-discriminatory, necessary and proportionate.

(2) The requirements referred to in paragraph (1) are:

- (a) quantitative or territorial restrictions, including in particular restrictions fixing limits according to population, or according to a minimum geographical distance between providers;
- (b) that a provider assumes a specific legal status, such as that of a body corporate;
- (c) in the case of a provider that is a company that has issued shares, a requirement that relates to the holding of shares in the company;
- (d) a requirement that, because of the specific nature of the service activity concerned, restricts access to that activity to particular providers (other than a requirement relating to a matter covered by the Qualifications Directive or another European act);
- (e) that a provider have more than one establishment in the State;
- (f) fixing a minimum number of employees that a provider is obliged to employ;

- (g) fixing a minimum or maximum tariff with which a provider must comply;
- (h) that a provider provide other specified services in addition to the services that the provider normally provides.

(3) For the purpose of paragraph (1)—

- (a) a requirement is non-discriminatory if it does not directly or indirectly discriminate against a person according to the person's nationality or, if the person is a company, according to the location of the company's registered office;
- (b) a requirement is necessary only if it is justified by an overriding reason relating to the public interest;
- (c) a requirement is proportionate if the requirement—
 - (i) is suitable for attaining the objective sought to be achieved,
 - (ii) does not go beyond what is necessary to attain that objective, and
 - (iii) cannot be replaced with another, less restrictive requirement that attains the same result.

(4) Paragraphs (1), (2) and (3) apply in relation to a requirement that applies to a person entrusted with the provision of a service of general economic interest only insofar as the application of those paragraphs does not impede the performance of the particular task assigned to that person.

(5) A competent authority in the State which imposes a requirement set out in paragraph (2) by means of an administrative provision shall notify the Minister of the provision, together with the reasons for the imposition of the requirement as soon as possible after the imposition.

(6) The Minister shall notify the European Commission of any new enactment or administrative provision which introduces a requirement set out in paragraph (2), together with the reasons for the imposition of the requirement.

PART 4

QUALITY OF SERVICES

Obligation of providers to give certain information about their services to recipients

22. (1) Every provider of a service shall make available the following information to a recipient of the service:

- (a) the name of the provider, the provider's legal status, the address at which the provider is established and details enabling the provider to be contacted directly and without delay, and if feasible, by electronic means;
- (b) if the provider is registered in a trade or other similar public register the name of the register, the provider's registration number (if any) or equivalent means of identification in that register, and details of where the register is kept;
- (c) if the activity undertaken by the provider is subject to an authorisation scheme, details of the competent authority in the State that administers the scheme or the point of single contact;
- (d) where the provider exercises an activity which is subject to value-added tax, the identification number referred to in section 9 of the Value-Added Tax Act 1972 (No. 22 of 1972);
- (e) if the provider is a member of, or registered with, a regulated profession, professional body or similar institution, the professional title (if any) and the Member State where that title was granted;
- (f) the general terms and conditions (if any) used by the provider;
- (g) if the provider includes in a contract for the provision of services contractual clauses concerning the law applicable to the contract, details of the clauses and of the courts (if any) competent to resolve disputes arising under the contract;
- (h) if the provider gives an after-sales guarantee not imposed by law, details of the guarantee;
- (i) if the service provided by the provider is one for which the provider has pre-determined the price, the price to be paid for the service;
- (j) the main features of the service, if not already apparent from the context;
- (k) if the provider is required to hold professional liability insurance or a guarantee, information about the insurance or guarantee, in particular—

- (i) the contact details of the insurer or guarantor, and
 - (ii) the territorial coverage of the insurance or guarantee.
- (2) For the purposes of paragraph (1), a provider makes information available to a recipient if, at the option of the provider—
- (a) the information is easily accessible to the recipient at the place where the service is provided or the contract for the provision of the service is entered into,
 - (b) the information can be easily accessed by the recipient electronically through an address supplied by the provider, or
 - (c) the information is contained in an information document that the provider supplies to the recipient, and the document gives a detailed description of the service that the provider provides.
- (3) At the request of a recipient, a provider shall also give the following information in respect of a service to be provided by the provider:
- (a) if the provider has not pre-determined the price of the service—
 - (i) the price of the service, or
 - (ii) if an exact price cannot be given, either the method by which the price can be calculated so that it can be checked by the recipient or a sufficiently detailed estimate of the price to be paid for the service;
 - (b) if the provider is a member of, or registered with, a regulated profession—
 - (i) a reference to the professional rules (if any) that are applicable to the provider in the Member State of establishment, and
 - (ii) details of how to access those rules;
 - (c) information on the multidisciplinary activities and partnerships which are directly linked to the service in question and on the measures taken to avoid conflicts of interest;
 - (d) if the provider is subject to a code of conduct, the electronic address at which the code can be located and what language versions of the code are available;
 - (e) if the provider is subject to a code of conduct, or is a member of a trade association or professional body that provides for disputes to be resolved by non-judicial means, details of the dispute resolution process, including how the recipient can obtain details about the characteristics of, and conditions for, the use of those means.

(4) In giving a description of a service by means of an information document, the provider shall ensure that the information referred to in paragraph (3) is also included in that information document.

(5) A provider shall ensure that the information required to be given in accordance with this Part is made available or communicated—

- (a) in a clear and unambiguous manner, and
- (b) before the terms of the relevant contract for the provision of the relevant service are settled or, if there is no written contract, before the service is provided.

Obligations of providers in dealing with complaints and the settlement of disputes

23. (1) Every provider shall make available to a recipient, including a recipient resident in another Member State—

- (a) details of where a complaint, or a request for information, about the services of the provider can be sent, and
- (b) the address of the provider's usual place of business if it is not the provider's usual address for correspondence.

(2) The details referred to in paragraph (1)(a) shall include a postal address, a fax number or an electronic mailing address, together with a telephone number.

(3) A provider who receives a complaint or request from a recipient about the service the provider provides shall—

- (a) acknowledge receipt in writing of the complaint or request not later than 14 days after such receipt, and
- (b) in the case of a complaint, make every effort to resolve the complaint satisfactorily and without delay.

(4) Paragraph (3)(b) does not apply to a complaint that is vexatious.

(5) If a provider, in providing a service, is obliged to provide a financial guarantee in order to comply with a judicial decision, the obligation is satisfied by the production of an equivalent guarantee lodged with:

- (a) a credit institution established in another Member State and authorised in that Member State in accordance with the Credit Institutions Directive;
- (b) an insurer established in another Member State and authorised in that Member State in accordance with—
 - (i) First Council Directive 73/239/EEC of 24 July 1973²² on the coordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of direct insurance other than life assurance, and

²² OJ L 228, 16.8.1973 p. 1.

- (ii) Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002²³ concerning life assurance.

(6) A provider who is subject to a code of conduct, or is a member of a trade association or professional body, shall, if the code, association or body provides for recourse to a non-judicial dispute resolution procedure—

- (a) inform the recipient of the availability of the procedure, and
- (b) in any document that gives a detailed description of the service it provides, specify—
 - (i) the existence of the procedure, and
 - (ii) how a recipient can access detailed information about the procedure.

Obligations of certain providers to have professional liability insurance cover

24. (1) The Minister may, after consultation with the Minister for Finance and any other Minister of the Government that he or she considers appropriate, give a direction in writing in accordance with paragraph (2) to a provider whose services present, in the Minister's opinion, a direct and particular risk to—

- (a) the health or safety of a recipient of the service concerned or any other person, or
- (b) the financial security of a recipient of the service concerned.

(2) A direction under paragraph (1) shall require the person the subject of the direction to—

- (a) obtain and maintain professional liability insurance in respect of a risk specified in the direction, or
- (b) undertake to indemnify a recipient of that service in respect of any loss incurred by the recipient in that receipt,

within a period specified in the direction.

(3) When a provider established in another Member State becomes or seeks to become established in the State, the provider is not obliged to obtain professional liability insurance if the provider is already covered in the other Member State by professional liability insurance or a guarantee that is equivalent, or essentially comparable, as regards—

- (a) its purpose, and
- (b) the cover it provides in terms of—
 - (i) the insured risk,

²³ OJ L 345, 19.12.2002. p. 1.

- (ii) the insured amount or a ceiling for the guarantee, and
- (iii) possible exclusions from the cover,

in the other Member State.

(4) If professional liability insurance held, or a guarantee provided by, a provider established in another Member State is not equivalent (within the meaning given by paragraph (3)), a relevant competent authority in the State may require the provider to obtain additional professional liability insurance or a further guarantee to cover those aspects not already covered.

(5) Where a provider is required to obtain professional liability insurance, or to provide a guarantee or enter into some equivalent arrangement, a competent authority in the State shall accept as sufficient evidence of that insurance cover a certificate issued by a credit institution or insurer established in a Member State where the provider is already established.

(6) Paragraphs (1) to (5) do not affect professional liability insurance or guarantee arrangements provided for in any European act.

Commercial communications by members of regulated professions

25. (1) A competent authority in the State shall not impose a total prohibition on the use of commercial communications by providers of a service who are carrying on a regulated profession.

(2) A competent authority in the State that regulates or supervises a regulated profession shall ensure that commercial communications by providers of a service who are carrying on the regulated profession comply with professional rules that, in particular, relate to—

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

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

(3) A competent authority in the State shall not make rules in relation to commercial communications by providers of a service who are carrying on a regulated profession unless the rules—

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

Multidisciplinary activities

26. (1) Subject to paragraph (2), a competent authority in the State shall not impose a requirement on a provider—

- (a) that the provider perform a specific service activity to the exclusion of other service activities, or
 - (b) that restricts the provider from performing different service activities jointly or in partnership with one or more other persons.
- (2) A competent authority in the State may impose a requirement referred to in paragraph (1)—
- (a) where the authority is responsible for a regulated profession, on members of the profession if—
 - (i) the requirement is justified in order to guarantee compliance with the rules governing the ethics and conduct of the members of that profession, and
 - (ii) the requirement is necessary to ensure the independence and impartiality of those members, or
 - (b) where the authority is responsible for supervising or regulating the activities of providers of certification, accreditation, technical monitoring, test or trial services if the requirement is justified in order to ensure the independence and impartiality of those providers.
- (3) When providers of a class referred to in subparagraph (a) or (b) of paragraph (2) are authorised to undertake multidisciplinary activities between themselves, the competent authority or authorities in the State responsible for supervising or regulating those activities shall ensure that—
- (a) conflicts of interest and incompatibilities as between providers undertaking those activities are prevented,
 - (b) the independence and impartiality required for undertaking those activities are secured, and
 - (c) the rules governing professional ethics and conduct for those activities are compatible with one another, especially as regards matters of professional secrecy.

Use of labels and quality marks

27. A competent authority in the State that has responsibility for supervising or regulating a service activity shall ensure that information on the significance of labels, and the criteria for applying labels and other quality marks, relating to that activity is easily accessible by the providers of services engaged in that activity and the recipients of those services.

PART 5

ADMINISTRATIVE SIMPLIFICATION

Obligation of competent authority in the State to accept certain equivalent certificates and other documents from other Member States

28. (1) If an enactment relating to performing a service activity in the State requires a provider or a recipient to supply a certificate or other document for the purpose of proving that a particular requirement of the enactment has been satisfied, the competent authority in the State responsible for supervising or regulating the activity in the State shall accept from another Member State a document that appears to it to serve an equivalent purpose, or from which it is clear that the requirement has been satisfied.

(2) A competent authority in the State may not require a document referred to in paragraph (1) emanating from another Member State to be produced in its original form, or as a certified copy or as a certified translation, except—

(a) where the document is required under a European act, or

(b) when such a requirement is justified by an overriding reason relating to the public interest, including public order and security.

(3) Paragraph (2) does not prevent a competent authority in the State from requiring a non-certified translation of a document into the English or Irish language.

(4) The requirements of paragraphs (1) and (2) do not apply to documents referred to in any of the following:

(a) Articles 7(2) and 50 of the Qualifications Directive;

(b) any enactment that reserves the performance of an activity to members of a particular profession;

(c) Articles 45(3), 46, 49 and 50 of Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004²⁴ on the co-ordination of procedures for the award of public works contracts, public supply contracts and public service contracts;

(d) Article 3(2) of Directive 98/5/EC of the European Parliament and of the Council of 16 February 1998²⁵ 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;

(e) the First Council Directive 68/151/EEC of 9 March 1968²⁶ on co-ordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies

²⁴ OJ L 134, 30.4.2004, p. 114.

²⁵ OJ L 77, 14.3.1998, p. 36.

²⁶ OJ L 65, 14.3.1968, p. 8.

within the meaning of the second paragraph of Article 58 of the Treaty, with a view to making such safeguards equivalent throughout the Community;

- (f) the Eleventh Council Directive 89/666/EEC of 21 December 1989²⁷ concerning disclosure requirements in respect of branches opened in a Member State by certain types of company governed by the law of another State.

Information to be provided to the Minister, point of single contact, providers and recipients

29. (1) A competent authority in the State shall provide the information specified in paragraph (2) in respect of the service activity it regulates or supervises in electronic form (or ensure that it is accessible in electronic form) to the Minister and the point of single contact.

(2) The information referred to in paragraph (1) is:

- (a) any requirements applicable to providers established in the State, in particular those requirements concerning the procedures and formalities to be completed in order to access and to perform the service activity;
- (b) details of the authority sufficient to enable it to be contacted directly;
- (c) if the authority keeps a public register or database in relation to a service or the providers of a service, the means of, and conditions for, accessing the public register or database;
- (d) the means of redress that are generally available should a dispute arise—
 - (i) between the authority and a provider or recipient,
 - (ii) between a provider and a recipient, or
 - (iii) between providers;
- (e) the contact details of any organisation (other than a competent authority in the State) from which a provider or a recipient can obtain practical assistance regarding access to, or the performance of, a particular service activity.

(3) The information referred to in paragraph (1) shall be made available to providers and recipients through the point of single contact.

(4) A point of single contact shall—

- (a) respond as soon as practicable after receiving a request for information under paragraph (3), and

²⁷ OJ L 395, 30.12.1989, p. 36.

(b) if the request is defective or unfounded, inform the person making the request accordingly without delay.

(5) The information provided by the competent authority under paragraph (1) shall be—

(a) clear and unambiguous, and

(b) kept up-to-date by the authority.

Competent authority to provide certain information

30. (1) A competent authority in the State responsible for supervising or regulating a particular service activity shall comply with a request by a provider or recipient for information on the way in which the requirements referred to in Regulation 29(2)(a) are generally interpreted and applied by the authority or any other person authorised to interpret and apply the requirements.

(2) In providing information in compliance with paragraph (1), a competent authority in the State shall ensure that the information is in plain and intelligible language and where appropriate, includes a simple step-by-step guide.

(3) Information provided to a recipient or provider under this Regulation shall—

(a) be clear and unambiguous,

(b) be easily accessible at a distance and by electronic means, and

(c) be up to date.

(4) The obligation of a competent authority in the State to provide information to providers and recipients under this Regulation, requires the authority only to provide general information on the way in which requirements are usually interpreted or applied and does not require the authority to provide legal advice in an individual case.

(5) A competent authority in the State shall—

(a) respond as soon as practicable after receiving a request for information under this Regulation, and

(b) if the request is defective or unfounded, inform the person making the request accordingly without delay.

Power of Minister to designate person to undertake the responsibilities of a point of single contact in respect of a particular service activity

31. (1) The Minister may designate by notice in writing a person to carry out the functions of a point of single contact under these Regulations with respect to a particular service activity, on such conditions as the Minister deems appropriate and in accordance with these Regulations.

(2) Where there is a relevant competent authority in the State in respect of a particular service activity, the Minister shall consult with the authority before designating a person under paragraph (1).

(3) The Minister may, at any time, revoke a designation under paragraph (1) if the conditions referred to in paragraph (1) are not complied with.

(4) In this Regulation, reference to a point of single contact does not include the National Point of Single Contact referred to in Regulation 2(2).

Completion of certain procedures by electronic means

32. (1) Every competent authority shall ensure that—

- (a) all procedures and formalities relating to access to a service activity which it supervises or regulates, and relating to the ability to perform the activity, can be easily completed through the authority at a distance by electronic means, and
- (b) the website of the authority in the State provides access to the point of single contact.

(2) A point of single contact shall ensure that all procedures and formalities relating to access to a service activity, and to the ability to perform the activity, can be easily completed through the point of single contact at a distance by electronic means.

(3) Paragraphs (1) and (2) shall not apply to—

- (a) the inspection of premises on which the service is provided or of equipment used by the provider, or
- (b) the examination of the capability or personal integrity of—
 - (i) a provider of the service, or
 - (ii) the staff of such a provider.

PART 6

CO-OPERATION WITH OTHER MEMBER STATES

Mutual assistance — general obligations

33. (1) Every competent authority in the State shall use the Internal Market Information System for the exchange of information in order to co-operate with and provide assistance to other Member States and for the purposes of complying with this Part.

(2) In this Regulation, “Internal Market Information System” means the information system described in Article 1 of Commission Decision 2009/739/EC of 2 October 2009²⁸ setting out the practical arrangements for the exchange of information by electronic means between Member States under chapter VI of Directive 2006/123/EC of the European Parliament and of the Council on services in the internal market.

Minister to designate person as liaison officer

34. (1) The Minister shall designate in writing a suitably qualified person to be the liaison officer for the purposes of this Part and of Regulation 15(4), subject to such conditions as the Minister may specify.

(2) As soon as practicable after designating a person to be the liaison officer, the Minister shall notify the name and contact details of the person to the European Commission and to the other Member States.

Requests for information

35. (1) Any request under this Part made to a competent authority of another Member State by a competent authority in the State or the liaison officer to provide information or to carry out any investigation shall be made in good faith and for a specified reason.

(2) A competent authority in the State or the liaison officer shall ensure that information provided by a competent authority of another Member State pursuant to a request under paragraph (1) is used only in respect of the matter for which it was requested.

(3) As soon as practicable after becoming aware that a competent authority of another Member State has not complied with a request for assistance under paragraph (1), the relevant competent authority in the State or the liaison officer shall inform the European Commission of that non compliance.

(4) A relevant competent authority in the State or, if there is no relevant competent authority in the State, the liaison officer, shall respond to a request under this Part for assistance from a competent authority of another Member State to provide information on, or to carry out an investigation into, a provider established in the State as soon as practicable after receiving it, but only if satisfied that the request is made in good faith and for a specified reason.

²⁸ OJ L 263, 7.10.2009, p. 32.

(5) If a relevant competent authority in the State or the liaison officer is for any reason unable to fulfil, or encounters difficulty in fulfilling, a request made by the European Commission, or a relevant competent authority in another Member State under paragraph (4), to provide information or to carry out an investigation, the competent authority in the State or liaison officer shall immediately—

- (a) inform the European Commission and the relevant authority who made the request (if any) of the inability or difficulty, and
- (b) co-operate with the European Commission and that authority (if any) with a view to resolving the matter as quickly as possible.

(6) A competent authority in the State or the liaison officer shall give information requested under this Part by electronic means as soon as practicable.

Entitlement to certain information in registers

36. (1) Subject to paragraph (2), a competent authority of another Member State is entitled to consult any register in the State in which there is recorded the names and other details of providers.

(2) The person who is responsible for a register referred to in paragraph (1) shall ensure that the register can be consulted by any competent authority of another Member State on the same conditions as a competent authority in the State may do so.

Responsibility to notify certain acts or circumstances that could cause serious damage to health or safety or the environment

37. As soon as practicable after a relevant competent authority in the State or the liaison officer becomes aware of any serious specific act or circumstance relating to the performance in the State of a service activity that could cause serious damage to the health or safety of persons in, or to the environment of, the State or another Member State, the authority or officer shall notify the act or circumstance to—

- (a) the Minister,
- (b) the European Commission, and
- (c) the competent authority of the other Member State and of any other Member State likely to be affected by the act or circumstance.

Information relating to disciplinary or other action taken in relation to providers

38. (1) Subject to paragraph (4), on being requested to do so by a competent authority of another Member State, the relevant competent authority in the State shall provide information, in compliance with the law of the State (and in particular the Data Protection Acts 1988 and 2003), about any of the matters specified in paragraph (2).

(2) The matters referred to in paragraph (1) are—

- (a) any disciplinary or administrative action taken,
- (b) any criminal sanction imposed, and
- (c) any decision taken concerning insolvency or bankruptcy involving fraud,

by an administrative or a judicial authority of the State, or by a person in the State with authority in respect of the matter referred to in subparagraphs (a), (b) or (c), in respect of a provider, being a matter that is directly relevant to the provider's competence or professional reliability.

(3) A competent authority in the State that provides information about a provider in accordance with paragraph (1) shall inform the provider that it has supplied the information to the competent authority of the other Member State.

(4) A competent authority in the State shall respond to a request under paragraph (1) only if satisfied with the reasons for the request.

(5) A competent authority in the State shall communicate information in accordance with paragraph (1) about an action or sanction referred to in subparagraphs (a) or (b) of paragraph (2) only if a final decision has been taken in respect of the matter and no further appeal is possible.

(6) A competent authority in the State shall specify whether a decision referred to in paragraph 2(c) is final or is subject to an appeal that has been lodged in respect of it, in which case the authority shall specify a date when the decision on appeal is expected to be taken.

(7) In providing information in accordance with paragraph (1), the competent authority in the State shall specify the enactment or other provision under which the action was taken, the sanction was imposed or (in the case of a decision referred to in paragraph 2(c)) the decision was given.

(8) If there is no relevant competent authority in the State to respond to a request for information relating to a matter under paragraph (2), the liaison officer shall fulfil the obligations imposed on a competent authority in the State by this Regulation.

Supervision by competent authority in the State when service is provided by provider established in another Member State

39. (1) If a provider established in another Member State performs a service activity in the State, the competent authority responsible for supervising or regulating the activity in the State is responsible for supervising the provider as regards requirements that are or may be imposed in accordance with Regulation 6 or 7.

(2) The competent authority in the State referred to in paragraph (1) shall—

- (a) take all measures necessary to ensure the provider complies with those requirements as regards the access to, and the performance of, the activity, and
- (b) carry out such investigations as are necessary to ensure that the provider is effectively supervised.

(3) Where a provider established in another Member State moves to the State temporarily in order to perform a service activity in the State and does not become established in the State, the competent authority responsible for supervising or regulating the activity in the State shall co-operate with the Member State of establishment in the supervision of the provider as provided by paragraphs (4) to (7).

(4) On receiving a request from the competent authority of the Member State of establishment concerning a provider referred to in paragraph (3), the competent authority in the State responsible for supervising or regulating the service activity concerned shall carry out such investigations as are necessary to ensure the effective supervision of the provider by the Member State of establishment.

(5) It is for the competent authority in the State receiving such a request to decide on the most appropriate measures to be taken in each particular case in order to satisfy the request.

(6) The competent authority in the State may, on its own initiative, carry out an investigation (including an on-the-spot investigation) in relation to the service activities in the State of a provider established in another Member State, if and only if the investigation—

- (a) is not discriminatory, and
- (b) is not motivated by the fact that the provider is established in another Member State, and
- (c) is proportionate.

Supervision by competent authority in the State where provider established in the State provides services in another Member State

40. (1) Where a provider established in the State provides a service in another Member State, the competent authority responsible for supervising or regulating the activities of that provider in the State—

- (a) shall continue to supervise the provider in accordance with the law of the State applicable to providers undertaking that activity in the State even though the provider is providing services in another Member State, and

(b) shall not refrain from taking supervisory or enforcement measures in respect of the provider only because the provider has provided the service, or caused damage, in another Member State.

(2) The obligation imposed by paragraph (1)(a) does not require the competent authority to carry out factual checks or to exercise any other controls within the other Member State where the service is provided.

(3) Where factual checks or controls are required, the competent authority shall request the competent authority of the other Member State where the service is provided to carry out those checks or exercise those controls to ensure the effective supervision by the competent authority in the State.

Mutual assistance in a case-by-case derogation

41. (1) Subject to paragraphs (6) and (7), where a competent authority in the State intends to take a measure under Regulation 8, paragraphs (2) to (5) apply notwithstanding the existence of any court proceedings (including preliminary proceedings) and acts carried out in the framework of a criminal investigation.

(2) Where a competent authority in the State intends to take any measure under Regulation 8 in respect of a provider established in another Member State, the competent authority, with the consent of the Minister if he or she considers it appropriate to do so, may—

(a) request the competent authority of the Member State of establishment to take a measure in respect of the provider, and

(b) include in or with the request all relevant information on the service concerned and the circumstances of the case.

(3) As soon as practicable after receiving a response from the competent authority of the Member State of establishment to a request made under paragraph (2), the competent authority in the State may request the Minister to authorise it to take a measure under Regulation 8, and where the Minister authorises the measure, the competent authority in the State shall notify the European Commission and the competent authority of the Member State of establishment in writing that the measure has been so authorised.

(4) The notice under paragraph (3) shall also state the reasons why the competent authority in the State believes that—

(a) the measure taken or envisaged (if any) by the Member State of establishment contained in the response received from that Member State is inadequate, and

(b) the measure that the competent authority intends to take satisfies the conditions set out in Regulation 8.

(5) A competent authority in the State shall not take any measure under Regulation 8 until 15 working days have elapsed after the date of the notification by the competent authority in the State referred to in paragraph (3).

(6) On being notified by a competent authority in the State that a measure under Regulation 8 needs to be taken urgently, the Minister may, if satisfied that the measure needs to be taken urgently, authorise the taking of the measure and in those circumstances paragraphs (2) to (5) do not apply.

(7) Where the Minister authorises the taking of a measure in accordance with paragraph (6), he or she shall, as soon as possible notify the European Commission and direct the competent authority in the State to notify the relevant competent authority of the Member State of establishment, of the measure intended to be taken by the competent authority in the State and the notification shall state the reasons the Minister believes the matter to be urgent.

(8) Where there is no competent authority in the State to undertake the responsibilities imposed by this Regulation, the liaison officer shall undertake those responsibilities.

(9) The Minister may at any time, by notice in writing, require a competent authority in the State to provide him or her with such written information as he or she considers necessary to enable him or her to carry out his or her functions under this Regulation.

(10) For the purposes of carrying out any function assigned to the Minister under this Regulation, where the Minister does not have responsibility for the service activity which the competent authority in the State supervises or regulates, the Minister shall obtain the agreement of the Minister of the Government who has responsibility for that service activity before carrying out the function.

Action to be taken if request received from another Member State under a provision corresponding to Regulation 41(2)(a)

42. As soon as possible after a competent authority in the State or, if there is no relevant competent authority in the State, the liaison officer, receives a request from another Member State under a law corresponding to paragraph (2)(a) of Regulation 41, the authority or the liaison officer shall—

- (a) investigate whether the provider concerned is operating lawfully and verify the facts underlying the request, and
- (b) inform the person who made the request of the measure (if any) that the authority or liaison officer has taken or proposes to take and, if no such action has been taken and is not proposed, the reasons for the inaction.

Provision of information where provider established in the State

43. (1) This Regulation applies in relation to a provider who is established in the State and is providing a service in another Member State.

(2) The competent authority in the State which supervises or regulates a service activity shall, when requested to do so by a competent authority in another Member State, supply information about a provider of the service to the authority.

(3) The information referred to in paragraph (2) shall include—

- (a) confirmation that the provider is established in the State, and
- (b) whether, to the knowledge of the competent authority in the State, the provider is providing the service in a lawful manner.

(4) A competent authority in the State which supervises or regulates a service activity shall, when requested to do so by a competent authority in another Member State—

- (a) carry out an investigation in relation to a provider of the service,
- (b) inform the requesting authority of the results of the investigation, and
- (c) if it thinks appropriate to take any measures in relation to the provider, inform the requesting authority of those measures.

(5) If a competent authority in the State becomes aware of serious specific acts or circumstances, relating to a service activity it regulates or supervises, that could cause serious damage to—

- (a) the health or safety of persons in the State or in another Member State, or
- (b) the environment in the State or in another Member State,

the competent authority in the State shall notify the Minister as soon as possible.

(6) The Minister shall inform the Commission and all other Member States of any notification received by the Minister under paragraph (5) as soon as possible after receipt of notification.

(7) Where there is no relevant competent authority in the State to undertake the responsibilities imposed by this Regulation, the liaison officer shall undertake those responsibilities.

PART 7

ENFORCEMENT OF REGULATIONS

Register of competent authorities in the State

44. (1) The Minister shall establish and maintain a register of competent authorities in the State.

(2) A competent authority in the State shall apply to the Minister to be registered in the register of competent authorities—

- (a) in the case of a competent authority that already exists, not later than 3 months from the coming into operation of these Regulations, or
- (b) in the case of a competent authority that becomes a competent authority after the coming into operation of these Regulations, not later than 3 months of becoming a competent authority.

(3) If a competent authority referred to in paragraph (2) does not make an application to be registered in the register of competent authorities within the period specified in that paragraph, the Minister may give a direction in writing to the competent authority to make an application within such period as may be specified in the direction.

(4) Where the Minister gives a direction to a competent authority under paragraph (3), the competent authority shall comply with the direction.

(5) An application shall—

- (a) be in writing,
- (b) specify the name of the competent authority,
- (c) specify the address, telephone number, electronic mail address and website of the competent authority,
- (d) describe the services in respect of which the competent authority performs its functions, and
- (e) describe the functional area of the competent authority.

(6) The Minister may, as soon as practicable after he or she receives an application under paragraph (2), or an application in compliance with a direction under paragraph (3), enter the competent authority and the particulars set out in subparagraphs (b) to (e) of paragraph (5) in the register of competent authorities.

(7) The Minister shall publish the register of competent authorities on the internet and in such other manner as he or she considers appropriate.

(8) The Minister may amend an entry in or delete an entry from the register of competent authorities.

Appointment of authorised officers

45. (1) A competent authority for the time being entered in the register of competent authorities or the Minister may appoint such and such number of persons as the competent authority or Minister, as the case may be, considers appropriate to be authorised officers to examine and verify providers' compliance with these Regulations and the Services Directive.

(2) On appointing a person to be an authorised officer under paragraph (1), the authority or Minister, as the case may be, shall furnish the person appointed with a warrant of his or her appointment.

(3) When performing functions conferred on him or her by these Regulations, an authorised officer shall, if requested by any person thereby affected, produce his or her warrant to that person for inspection.

Authorised officers

46. (1) An authorised officer may for the purposes of these Regulations—

- (a) subject to paragraph (3), enter (if necessary by the use of reasonable force), at all reasonable times any premises at which he or she has reasonable grounds for believing that any service is being carried on or any activity in connection with a service activity is being, or has been carried on, or that records in relation to that service activity are kept,
- (b) at the premises inspect and take copies of, any books, records, other documents (including documents stored in non-legible form) or extracts therefrom, which he or she finds in the course of his or her inspection,
- (c) remove any such books, records or documents from the premises and detain them for such period as he or she reasonably considers to be necessary for the purposes of his or her functions,
- (d) carry out, or have carried out, such examinations, tests, inspections and checks of—
 - (i) the premises,
 - (ii) any product or any article or substance used in the provision of a service which is at the premises, or
 - (iii) any equipment or machinery at the premises,
 as he or she reasonably considers to be necessary for the purposes of his or her functions,
- (e) require any person at the premises or the owner or person in charge of the premises and any person employed there to give to him or her such assistance and information and to produce to him or her any books, documents or other records (and in the case of documents or

records stored in non-legible form, produce to him or her a legible reproduction thereof) that are in that person's possession or procurement, or under that person's control, as he or she reasonably requires for the purposes of his or her functions,

- (f) examine with regard to any matter under these Regulations or the Services Directive any person at the premises or the owner or person in charge of the premises and any person employed there and require the person to answer such questions as the authorised officer may ask relative to those matters and to make a declaration of the truth of the answers to those questions,
- (g) require any person by or on whose behalf equipment is or has been used or any person having charge of, or otherwise concerned with the operation of, the equipment or any associated apparatus or material related to a service activity, to afford the authorised officer all reasonable assistance in relation to it and assist in the retrieval of information connected with the operation of such equipment, apparatus or material,
- (h) take samples of any product or any article or substance used in a service activity found at the premises for the purposes of analysis and examination,
- (i) direct that any records, books or documents found at the premises relating to a service activity not be moved from the premises, without his or her consent, and
- (j) secure for later inspection any premises or part of any premises used in relation to a service activity in which a product, substance or article is found or ordinarily kept, or records, books or documents are found or ordinarily kept, for such period as is reasonably necessary for the purposes of his or her functions.

(2) When performing a function under these Regulations, an authorised officer may, subject to any warrant under paragraph (4), be accompanied by such number of authorised officers or members of the Garda Síochána as he or she considers appropriate.

(3) An authorised officer shall not enter a dwelling, other than—

- (a) with the consent of the occupier, or
- (b) in accordance with a warrant issued under paragraph (4).

(4) Upon the application of an authorised officer, a judge of the District Court may, if satisfied that there are reasonable grounds for believing that—

- (a) a product or any substance or article relating to a service activity is to be found in a dwelling, or is being or has been subjected to any process or stored in a dwelling,

- (b) books, records or other documents (including documents stored in non-legible form) relating to a service activity are being stored or kept in a dwelling, or
- (c) a dwelling is used in whole or in part by a provider engaged in the provision of a service,

issue a warrant authorising a named authorised officer accompanied by such other authorised officers or members of the Garda Síochána as may be necessary, at any time or times, within one month of the date of issue of the warrant, to enter the dwelling and perform the functions of an authorised officer under subparagraphs (b), (c), (d), (e), (f), (g), (h), (i) and (j) of paragraph (1).

(5) Any person who obstructs or interferes with an authorised officer or a member of the Garda Síochána in the course of exercising a power conferred on him or her by these Regulations or impedes the exercise by the officer or member of such power or fails or refuses to comply with a requirement made by, or to answer a question asked by, the officer or member pursuant to this Regulation, or in purported compliance with such requirement or in answer to such question gives information to the officer or member that he or she knows to be false or misleading in any material respect, shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding €5,000 or to imprisonment for a term not exceeding 6 months or both.

(6) Where an authorised officer, upon reasonable grounds, believes that a person has committed an offence under paragraph (5), the officer may require that person to provide him or her with his or her name and the address at which he or she ordinarily resides.

(7) A statement of admission made by a person pursuant to a requirement under paragraph (1)(e) or paragraph 1(f) shall not be admissible as evidence in proceedings brought against that person for an offence (other than an offence under paragraph (5)).

(8) In this Regulation—

“premises” means any place, ship or other vessel, aircraft, or other vehicle;

“record” includes, in addition to a record in writing—

- (a) a disc, tape, sound-track or other device in which information, sounds or signals are embodied so as to be capable (with or without the aid of some other instrument) of being reproduced in legible or audible form,
- (b) a film, tape or other device in which visual images are embodied so as to be capable (with or without the aid of some other instrument) of being reproduced in visual form, and
- (c) a photograph,

and a reference to a copy of a record includes—

- (i) in the case of a record to which paragraph (a) applies, a transcript of the sounds or signals embodied in it,
- (ii) in the case of a record to which paragraph (b) applies, a still reproduction of the images embodied in it, and
- (iii) in the case of a record to which paragraphs (a) and (b) apply, such a transcript together with such a still reproduction;

“vehicle” means any conveyance in or by which any person or thing, or both, is transported which is designed for use on land, or in water or in the air, or in more than one of those ways, and includes—

- (a) part of a vehicle,
- (b) an article designed as a vehicle but not capable of functioning as a vehicle,
- (c) a skip or other container designed for use or used for carriage on a vehicle, and
- (d) a trailer designed for use or used with a vehicle.

Regulations and competent authorities

47. Nothing in these Regulations permits or requires a competent authority in the State to do anything that it could not otherwise lawfully do.

Court’s power to order compliance with Regulations

48. Where a person is not complying or has failed to comply with these Regulations, an application may be made to the High Court—

- (a) by the competent authority in the State which regulates or supervises the service activity, where the person is a provider, and
- (b) by the Minister where the person is a competent authority or a provider,

for an order directing the person to comply, and the Court may make such order, including an order relating to costs, as it sees fit.

PART 8

MISCELLANEOUS PROVISIONS

Responsibility of competent authorities in the State with respect to codes of conduct

49. A competent authority in the State that maintains a code of conduct with respect to the service activity which it supervises or regulates shall ensure that the code is made available on the internet.

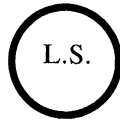
Protection of personal data

50. (1) In applying these Regulations, a competent authority in the State shall comply with the rules on the protection of personal data as provided for in any enactment which gives effect to—

(a) the Data Protection Directive, and

(b) the Privacy Directive.

(2) A person who, in accordance with these Regulations, obtains personal data in relation to a provider shall comply with the rules referred to in paragraph (1).



GIVEN under my Official Seal,
10 November 2010.

BATT O'KEEFFE,
Minister for Enterprise, Trade and Innovation.

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation)

These Regulations were made for the purposes of giving effect in Irish Law to Directive No. 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market (Services Directive).

The purpose of these Regulations is to create a single market in services in the European Union. The Regulations make it easier for service providers to avail of the Single Market by removing barriers to trade and by providing procedures that facilitate providers who wish to establish a service business in a Member State.

They will facilitate consumers by removing barriers that prevent them from obtaining services from other Member States and by providing them with information and assistance to facilitate their use of the Single Market.

Article 42 of the Services Directive was transposed, separately, in the European Communities (Court Orders for the Protection of Consumer Interests) Regulations 2010 (S.I. No. 555 of 2010).

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