WHAT TO DO IF YOUR WORK AFFECTS SERVICE BUSINESSES

Guidance for Departments and Competent Authorities on the Provision of Services Regulations 2009

January 2010
Who is this guidance for?
This guidance is aimed at those bodies who set rules or requirements which service providers have to comply with, and those who are involved in authorising service providers (i.e. ‘competent authorities’). These bodies include Government Departments, Devolved Administrations, local authorities, licensing and authorisation bodies and other authorities such as professional bodies or bodies who maintain required registers or deliver required training qualifications.

What do you need to do?
The flowcharts on pages 4-6 of this guidance document will guide you through the steps that you need to take, which include the following:

- You will need to check that any new policies and rules comply with the Provision of Services Regulations 2009 (the “Regulations”)
- You will need to notify the European Commission (via BIS) of new requirements for service providers
- You may need to add forms for formalities that you authorise to the Point of Single Contact (PSC)
- You may need to register with the Internal Market Information (IMI) System
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Flowcharts

Please use this table to identify which flowchart you need to use. If you are a Government Department, a Devolved Administration, a new or existing competent authority, which includes local authorities and licensing and authorisation bodies, select the relevant flowcharts in the table to be taken to the correct page. The flowcharts will guide you through the steps you will need to take, and point you to the section of the guidance that you will need to look at.

<table>
<thead>
<tr>
<th>Flowcharts which apply to you</th>
</tr>
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<tr>
<td>Government Departments (including those in the Devolved Administrations)</td>
</tr>
<tr>
<td>Local Authorities</td>
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*If you are responsible for creating a new competent authority you must ensure that they are compliant with the Provision of Services Regulations.

**Competent authorities include local authorities, Government Departments, Devolved Administrations, licensing and authorisation bodies and other authorities such as professional bodies or bodies who maintain required registers or deliver required training qualifications.
Is the proposed policy in scope of the Provision of Services Regulations?

No → No further action

Yes → Check proposed policy for compliance, considering forms/tacit authorisation/fees/period of licence/MRPQ Directive. Is it compliant with the Provision of Services Regulations?

No → Ensure that it is compliant

Yes → Are you creating a new licence/permit?

No → No further action

Yes → Identify the enforcer/regulator of the new policy:

and → Report to BIS on justification

and → BIS report to European Commission

and → Regulator registers for IMI

Regulator speaks to BIS about Point of Single Contact.

Submit required information to BIS on forms/tacit authorisation/fees/period of licence.

Remember to tell service providers about the need to notify the relevant competent authority of changes to their situation
New rules

Is the new rule in scope of the Provision of Services Regulations?

Yes

Check proposed policy for compliance, considering forms/tacit authorisation/fees/period of licence/MRPQ Directive. Is it compliant with the Provision of Services Regulations?

No

Ensure that it is compliant

Yes

Are you creating a new rule/licence/permit?

No

No further action

Yes

Speak to BIS about Point of Single Contact.

and

Report to BIS on justification

Submit required information to BIS on forms/tacit authorisation/fees/period of licence.

BIS report to European Commission

Section of Guidance

Introduction

Checking Compliance; General

N/A

Checking Compliance

Point of Single Contact;

Checking compliance; Point of Single Contact

Checking compliance; General

Remember to tell service providers about the need to notify the relevant competent authority of changes to their situation
Is the new rule in scope of the Provision of Services Regulations?

Yes → Check proposed policy for compliance, considering forms/tacit authorisation/fees/period of licence/MRPQ Directive. Is it compliant with the Provision of Services Regulations?

Yes → Are you creating a new licence/permit?

No → No further action

Yes → Identify the enforcer/regulator of the new rule:

and → Report to BIS on justification

and → BIS report to European Commission

and → Regulator registers for IMI

Regulator speaks to BIS about Point of Single Contact.

Submit required information to BIS on forms/tacit authorisation/fees/period of licence.

Remember to tell service providers about the need to notify the relevant competent authority of changes to their situation.
Chapter 1 – Introduction and Background

1. The Services Directive (the “Directive”) is aimed at opening up the internal market for service provision in the EU. It applies to the 27 EU Member States plus Norway, Iceland and Liechtenstein (European Economic Area), all referred to below as “Member States”.

2. The Directive aims to break down barriers to cross-border trade in services between Member States, making it easier for service providers to set up business and offer their services elsewhere within the European Economic Area (EEA). It will achieve this by:
   - Removing regulatory and administrative barriers that make it difficult for service providers to trade across borders
   - Requiring each Member State to set up online portals termed Points of Single Contact (PSC) where providers can find the information they need and apply for authorisations online to do business in that Member State
   - Facilitating greater co-operation between authorities across the EEA, thereby improving supervision across the single market and reducing burdens on business
   - Giving consumers more confidence to shop for cross-border services through better access to information.

3. The Directive came into force across the EEA on the 28th December 2009. It is implemented into UK legislation by the Provision of Services Regulations 2009 (the “Regulations”).

4. Some key documentation on the background and general aspects of the Directive can be found below:
• Regulations and Explanatory Memorandum: http://www.opsi.gov.uk/si/si2009/uksi_20092999_en_1
• FAQs: www.bis.gov.uk/servicesdirective, on left hand side of page.

5. **Which services are covered?**

A service is an economic activity normally provided in exchange for remuneration and which is not provided under a contract for employment. This activity could be industrial or commercial in nature, a craft or the activity of a profession. “Remuneration” should be interpreted broadly, for example, money or payment in kind (but excluding wages/salaries). A service can be business-to-business or business-to-individual activity. Services which are not provided for remuneration are not covered by the Directive. For example, non-remunerated house-to-house collections for charity do not fall in scope of the Directive.

6. A service is within scope of the Directive unless it is explicitly excluded from it. The following is the list of services excluded from the Directive:

1) **Financial services**, such as banking, credit, insurance and re-insurance, occupational and personal pensions, securities, investment funds, payment and investment advice, including the business of credit institution.

2) **Electronic communications services and networks** and associated facilities and networks, as defined in five other 2002 Directives which also relate to electronic communications. These Directives were largely implemented in the UK by the Communications Act 2003. Such services and networks include, for example, voice telephony and electronic mail services.

3) **Services in the field of transport** including air transport, maritime and inland waterways transport (including port services), as well as road and rail transport, in particular urban transport, taxis and ambulances.

Examples of services which are not covered by this exclusion are removal services, car rental services, funeral services and aerial photography services. Neither does the exclusion cover commercial activities in ports such as shops and restaurants.
4) **Services of temporary work agencies.**
The Government’s view is that this covers only the hiring out and placement of workers in temporary work, and does not cover other services provided by the same agency.

5) **Healthcare services.** This exclusion covers healthcare and pharmaceutical services provided by health professionals to patients to assess, maintain or restore their state of health where those activities are reserved to a regulated health professional in the Member State in which the services are provided.

6) **Audiovisual services, including cinemas and broadcast services.** In the Government’s view, this does not cover the storage of celluloid material, for which a licence is currently required.

7) **Gambling services,** which involve wagering a stake for monetary value in a game of chance, including lotteries, gambling in casinos and betting transactions.

8) **The exercise of official authority** as set out on Article 45 of the Treaty.

9) **Social services relating to social housing, childcare and the support of families in need,** where these are provided by the State, by providers mandated by the State or by charities recognised as such by the State. The Government’s view is that services provided on a charitable basis by Registered Social landlords are out of scope of the Directive. Services provided on a commercial basis by charitable organisations or their trading subsidiaries are, however, in scope of the Directive.

10) **Private security services.**

11) **Services provided by notaries and bailiffs**
appointed by an Act of Parliament.

7. Services of a general economic interest (such as the Post Office), non-economic services of a general interest and taxation are also excluded from the Directive.
Some examples of the types of services that the Regulations will apply to include:

- **business services**: management consultancy; professional services such as lawyers, accountants and actuaries; advertising; certification and testing; facilities management, including office maintenance; fitting and maintenance of equipment; renting of equipment; logistics; waste management; training providers; the services of commercial agents; and the organisation of trade fairs.

- **Services provided to both business and to consumers**: estate agents and letting agents; conveyancing; construction services such as architects and builders; restaurants and catering services; distributive trades; postal services; storage services; and financial advisers.

- **Consumer services**: tourism, including tour operators and tour guides; travel agents; leisure services and sports centres; child minders; amusement parks; private schools and universities; providers of post graduate studies, language schools, vocational training; driving instructors; MOT services; entertainment; beauty services; veterinarians; gardeners; cleaners; plumbers; joiners; and electricians.
Chapter 2 – What is a Competent Authority?

8. The Regulations have a substantial impact on “competent authorities”. A competent authority is defined as a body which has “supervisory or regulatory functions in the UK in relation to service activities” (and including, in particular, a professional body, association or organisation).

9. In broad terms, a competent authority is a body that regulates specific activities related to service provision, or which is responsible for authorisations and/or other formalities (registers, licences, permits, notifications), with which a business must comply in order to provide a service which is in scope of the Directive. Thus Government Departments, Devolved Administrations, all local authorities, large UK regulators (e.g. the Health and Safety Executive (HSE) and the Environment Agency), sector specific regulators (e.g. Ofsted and the Care Quality Commission), self regulatory professional bodies and others are competent authorities for the purposes of the Regulations.

10. A full list of the UK’s competent authorities, compiled at the time the Regulations were made, can be found in Annex C of the Guidance for Business on the Provision of Services Regulations: http://www.berr.gov.uk/files/file53100.pdf. A wide array of bodies is caught by the Regulations, due to the broad scope of the Directive. The Regulations cover a huge range of services and, unless a service is specifically excluded, it will be in scope of the Directive. Chapter 1 contains further details of what services are excluded and examples of services which are in scope of the Regulations.

11. If you regulate a service activity in scope of the Regulations, or if a business must seek your authorisation or notify you in order to have access to or carry out all or part of that service, then you are a competent authority for the purposes of the Regulations.
This only applies to bodies whose authorisation is **obligatory**. For example, there are some professional bodies with whom a business must register before operating in the UK, such as the Architects Registration Board (ARB). All architects have to register with the ARB if they want to operate in the UK; therefore, the ARB is a competent authority. This can be contrasted with the rules applying to hairdressers. Although there may be benefits to a hairdresser joining the Hairdressing Council before offering their services in the UK, it is not a compulsory requirement. A hairdresser can work in the UK without joining the Hairdressing Council, and so the Hairdressing Council is not a competent authority. This position would change if it became obligatory for a hairdresser to join the Hairdressing Council before offering their services in the UK.

13. Some service providers may only need to seek authorisation for a particular activity which they carry out as part of their overall service, rather than requiring authorisation in respect of the entire service. As this would be an obligatory requirement affecting the exercise of a service, the authorising body will be a competent authority for the purposes of the Regulations.

For example, builders in general do not have to obtain a licence from the Environment Agency before operating in the UK, but they may need a licence or a permit from the Agency in order to manage waste. The Agency is therefore a competent authority with respect to those builders.

14. If you are a competent authority caught by the Regulations then you should read the rest of this guidance, which explains what you have to do in order to comply with the Regulations. If you have already complied with the Regulations, you will need to apply this guidance to any newly created rules or requirements with which businesses have to comply, please see the flowchart table on page 3.
Chapter 3 – Checking requirements for compliance with the Regulations

Checking old requirements (those in force before December 28th 2009)

15. All legislation which affects service providers should have been checked for compatibility with the Directive, so you may find that the legislation you enforce has already been screened by a Government Department. Legislation made before December 28th 2009 should feature on the list of screened legislation which can be found at [http://www.berr.gov.uk/whatwedo/europeandtrade/europe/services-directive/implementation/implementationupdates/page43431.html](http://www.berr.gov.uk/whatwedo/europeandtrade/europe/services-directive/implementation/implementationupdates/page43431.html). Checking what has already been reported will give a good indication of whether the body responsible for enforcing this legislation or issuing authorisations under its provisions is a competent authority. Any queries should be directed to the Department responsible for that legislation, and BIS may be able to offer advice: servicesdirective@bis.gsi.gov.uk

Checking new requirements (those in force after December 28th 2009)

16. Government Departments, Devolved Administrations, local authorities and other competent authorities must ensure that all new requirements (in force after December 28th 2009) imposed on service providers in the UK are compliant with the Regulations: [http://www.opsi.gov.uk/si/si2009/uksi_20092999_en_1](http://www.opsi.gov.uk/si/si2009/uksi_20092999_en_1).

Any new requirements (for example authorisation schemes (see the glossary for a full explanation), including certification and registration processes and approval systems, and continuing requirements) that affect the access to, or the exercise of, a service activity must be checked to ensure that they are non-discriminatory, suitable for obtaining the objective pursued (proportionate) and necessary (see paragraphs 31-32). They must also be reported on via BIS to the European Commission, as explained in paragraphs 36-38. Authorisations and associated information will also need to be accessible remotely and electronically through businesslink.gov.uk (the UK PSC).
17. If a requirement cannot be justified under the terms of the Regulations or is in conflict with its requirements (for example, if an application cannot be submitted electronically), it will need to be removed or amended.

18. We have published two flowcharts to help you assess whether your legislation is in scope and compliant with the Regulations. The flowcharts can be found in Annex A, with further information in paragraphs 30-38 on how to use them.

**Government Department and Devolved Administration obligations**

19. You must ensure that all new UK policy and legislation (and amendments to existing legislation) that is imposed on service providers is compliant with the Regulations. New legislation and requirements that are compliant with the Regulations can be adopted but they must also be reported on via BIS to the European Commission for their scrutiny (see paragraphs 36-38).

20. You must also ensure that any competent authority that you set up is compliant with the Regulations and continues to be aware of its obligations (see chapter 2).

**Local authority and other competent authority obligations**

21. The responsible Government Department or Devolved Administration will check the compliance of any new UK legislation or legislation applying in a Devolved area that they introduce and report on it to BIS.

22. You must check that any new requirements (including administrative or procedural rules and practices, and conditions attached to licences, which are part of authorisation processes) that you impose on service providers and which are derived from existing or new **local legislation** (local Acts, county Acts, bylaws) comply with the Regulations (including the requirement for these to be accessible remotely and electronically), and report on these to BIS as explained in paragraphs 36-38.
23. Many competent authorities will have responsibility for overseeing authorisation schemes or enforcing requirements that have been implemented in national legislation. Where this is the case, the relevant legislation will be checked by the responsible Department. If you have responsibility for imposing your own requirements and authorisation schemes, then you will have to check your requirements as explained in the flowcharts and, if necessary, notify BIS as explained in paragraphs 36-38.

Other considerations for local authorities and other competent authorities

24. Competent authorities, including local authorities, must also take the following into account (these points do not feature in the flowcharts):

Commercial communications

25. You must not impose total bans on commercial communications by the regulated professions (this means complete bans on all forms of advertising, as well as on a specific form of advertising such as TV advertising.)

26. You are required to ensure that commercial communications comply with professional rules relating to the independence, integrity and dignity of the profession in question, as well as to professional secrecy, in a manner consistent with the specific nature of each profession. These professional rules must be non-discriminatory, justified by an overriding reason relating to the public interest (ORRPI), and proportionate.

Multidisciplinary activities

27. You must not restrict service providers from engaging in multidisciplinary activities. You cannot oblige providers to engage exclusively in a specific service activity, or do anything that restricts the exercise, jointly or in partnership, of different activities.

28. However, you may impose such a requirement on a regulated profession, as long as it is justified in order to guarantee compliance with the rules governing ethics and conduct in that profession, and is necessary to ensure the impartiality and independence of the profession. Also, you may impose a requirement on providers of certification, accreditation, technical monitoring, test or trial services where this is necessary to ensure the independence and impartiality of the provider.
29. Where multidisciplinary activities are permitted, you must ensure that conflicts of interest are avoided, independence and impartiality are secured and relevant professional rules are compatible.

Handling applications from service providers

The Regulations set out a number of rules designed to make the process of application more efficient and equitable. In particular:

Fixed timescales and tacit authorisation

All authorisations, licence applications and administrative procedures applicable to service providers must be processed within a reasonable time period, which must be fixed and made public in advance. Mandatory timescales will run only from the time when all valid documentation has been submitted, online and/or by post.

When a response to an application does not occur within the time period set (or a set extension time – see below), the authorisation will be deemed to have been granted tacitly. Therefore, if a competent authority does not process an application in time, the applicant can presume their application has been authorised. This concept of tacit authorisation can be circumvented if a derogation can be justified by an ORRPI (please see the Glossary for a full explanation of ORRPI, and regulation 191).

For example, tacit authorisation will not apply to the Solicitors Regulation Authority’s Practising Certificate applications, in light of the risks posed to the public by an individual being entitled to practise as a solicitor without the appropriate qualifications or character to do so.

In the case of incomplete applications, you must inform applicants as quickly as possible of the need to supply any additional documentation.

The fixed time period only starts when all valid documentation has been submitted by the service provider.

1 This is one of the provisions which we believe does not affect bodies already caught by the Mutual Recognition of Professional Qualifications (MRPQ) Directive. See chapter 4.
You must grant the service provider an authorisation for an indefinite period except where the circumstances set out in regulations 16 and 17 apply.

In exceptional circumstances, the time period may be extended by the competent authority once only. This can only be done if a sufficiently complex issue arises in the course of an application. The applicant must be notified of the extension and its duration before the original time period has expired. Where applications have been made through the facilities in the PSC on businesslink.gov.uk, competent authorities will receive reminders when the tacit authorisation period is coming to an end.

Acknowledging applications

You must acknowledge all applications received and make applicants aware of the following:

- whether or not tacit authorisation applies
- the time period within which you can expect the authorisation to be granted
- the available means of redress

The Regulations do not specify how this information should be provided to service providers, only that they must be informed. Businesslink.gov.uk will provide this information to all applicants. You must therefore provide these details when inputting new applications onto the PSC on businesslink.gov.uk (see chapter 5 for further details).

Authorisations must generally be for an indefinite period

You must grant the service provider an authorisation for an indefinite period except where the circumstances set out in regulations 16 and 17 apply.

For example, a competent authority may limit the duration of the authorisation where the number of authorisations is limited because of an ORRPI such as public health or public safety.

It may limit the number of authorisations for a service activity because of the scarcity of available natural resources or technical capacity. This is to prevent the number of available authorisations from running out in the long-term, where a limitless number of authorisations could result in a deficiency of natural resources or risk reaching saturation of technical capacity.
Under regulation 18, fees charged in relation to authorisations must be proportionate to the effective cost of the process, i.e. must cover no more than the actual cost of the authorisation process.

Authorisations must generally be for the whole of the UK

Regulation 15(5) requires that, in general, an authorisation granted by a competent authority must enable a service provider to operate throughout the UK. Similarly, Article 10(4) of the Directive requires Member States to provide for this. For example, to ensure compliance with this Article, the Provision of Services (Insolvency Practitioners) Regulations 2009 have enabled insolvency practitioners authorised in Northern Ireland to act as insolvency practitioners in Great Britain.

However, the directive also provides for competent authorities to exercise their authority only within a specific region or area rather than across the UK where appropriate. This is reflected in regulation 15(6). Obvious examples of this are Local Authorities. Authorisations which they grant, for example food premises or entertainment licences, will only have effect in relation to that area.

Duties on service providers to notify changes

Any service provider, which has been granted an authorisation by a competent authority under regulation 16 must continue to inform that authority about the creation of subsidiaries, the activities of which fall within the authorisation scheme. The service provider must also tell the competent authority about any changes to their situation that mean they no longer meet the conditions for authorisation. The Regulations do not specify how this information should be provided.

Fees charged to service providers

Under regulation 18, fees charged in relation to authorisations must be proportionate to the effective cost of the process, i.e. must cover no more than the actual cost of the authorisation process. Fees should not be used as an economic deterrent to certain activities or to raise funds. If a service provider believes the fee to be disproportionate, they can contest it with the authority concerned. Enforcement costs should not be assimilated with the application fee. This is to forestall the possibility of an unsuccessful applicant seeking legal remedy due to part of its fees having been used to subsidise successful competitors.
The test for necessity is narrower in relation to service providers who are not seeking to establish in the UK. For such service providers, a ‘necessary’ requirement can only be justified as being ‘necessary’ on one or more of four specified grounds: public policy, public security, public health or protection of the environment.

Recognition of equivalent or comparable professional liability insurance

In instances where the holding of professional liability insurance or a guarantee is compulsory to operate in the UK, competent authorities overseeing that requirement must recognise equivalent or comparable cover that the service provider obtained in another EEA state. Attestations issued by credit institutions and insurers established in other EEA states must also be accepted as evidence of this cover. This does not apply to lawyers qualified in other EEA states wanting to practise in the UK on a permanent basis. Where equivalence is only partial, competent authorities are allowed to require a ‘top-up’ to take the cover to a required level. This applies whether a service provider is establishing in the UK or operating in the UK temporarily.

Flowcharts for checking the compliance of new requirements with the Regulations

30. In Annex A there are two flowcharts. The first one should be used to check the compliance with the Regulations of authorisation schemes that are imposed on service providers established in the UK. The second flowchart should be used to check the compliance with the Regulations of other requirements that are imposed on service providers operating in the UK, whether they are established in the UK or elsewhere.

Non-discriminatory, proportionate and necessary requirements

31. Requirements that apply to service providers seeking to establish in the UK have different considerations from requirements that apply to service providers who want to provide their service in the UK but do not want to establish in the UK. You should refer to the Regulations, in particular regulations 14.1 to 14.2, 22.1 to 22.3 and 24.1 to 24.3 in order to find out which considerations apply.

A necessary requirement

32. One point to note is that the test for necessity is narrower in relation to service providers who are not seeking to establish in the UK. For such service providers, a ‘necessary’ requirement can only be justified as being ‘necessary’ on one or more of four specified grounds: public policy, public security, public health or protection of the environment. An explanation
Where a service provider intends to establish in the UK, a ‘necessary’ requirement may be justified on wider grounds i.e. by an ORRPI.

Documents to help you use the flowcharts

33. To help you use the flowcharts, please take a look at the worked examples in Annex C, the Regulations http://www.opsi.gov.uk/si/si2009/uksi_20092999_en_1 and these two documents, which show screening decisions made on formalities and legislation made before December 28th 2009:

List of screened national legislation – for legislation made before December 28th 2009

34. http://www.berr.gov.uk/whatwedo/europeandtrade/europe/services-directive/implementation/implementationupdates/page43431.html shows you the screening decisions that were made on legislation in England, Wales, Scotland and Northern Ireland.

List of formalities in scope of the Directive – for formalities introduced before December 28th 2009

35. http://www.berr.gov.uk/whatwedo/europeandtrade/europe/services-directive/local%20authority/page50031.html shows you which formalities (for example licences, certificates, registrations) managed by local authorities in England, Wales, Scotland and Northern Ireland were found to be in scope of the Directive.

Reporting form for new in-scope requirements

36. As a result of using the flowcharts, you may need to complete a reporting form explaining why an in-scope requirement is non-discriminatory, suitable for obtaining the objective pursued (proportionate) and necessary (see paragraphs 31-32). These forms are required by the European Commission and must be sent to BIS, who will check them and send them to the Commission. Please note these forms are different to the Interactive Policy Making (IPM) forms that were used in the screening process before December 28th 2009.
37. You only need to use one of the forms [A] or [B] when notifying a new requirement. Blank copies of the forms can be found in Annex B and examples of completed forms can be found in Annex C. Please look at the following table which will help you quickly identify the correct form to use, together with a fuller explanation below. Please note that the table should be read downwards. For example, if your requirement is imposed on established service providers and is listed under regulation 21, you will find ticks against both of these in column 1 and so you should complete reporting form A:

<table>
<thead>
<tr>
<th>Nature of requirement</th>
<th>Reporting Form</th>
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<tbody>
<tr>
<td>Imposed on cross-border service providers</td>
<td>✗ ✗ ✔ ✔</td>
</tr>
<tr>
<td>Imposed on established service providers</td>
<td>✔ ✔ ✗ ✔</td>
</tr>
<tr>
<td>Regulation 21 requirement</td>
<td>✔ ✗ ✗ ✔</td>
</tr>
<tr>
<td>Authorisation scheme</td>
<td>✗ ✔ ✗ ✗</td>
</tr>
</tbody>
</table>

Please use Form A if:

(i) The new requirement applies only to service providers established in the UK and is one of the requirements listed in regulation 21. This is an outcome of the flowchart for requirements, please see example 3 in Annex C.

(ii) The authorisation scheme applies only to service providers established in the UK (regulation 14). This is an outcome of the flowchart for authorisation schemes, please see example 1 in Annex C.

It is unlikely that the last option (Form A (ii)) will arise as most authorisation schemes that are imposed on service providers established in the UK are also applied to cross border service providers (Form B (ii) option). If you think that the authorisation scheme only applies to service providers established in the UK please complete Form A, do not tick any of the boxes under point 7, and under point 8 please indicate that the authorisation scheme only applies to those established in the UK.
Please use Form B if:

(i) The new **requirement** applies to **cross border service providers** (including those requirements listed in **regulation 24**). This is an outcome of the flowchart for requirements, please see example 4 in Annex C.

(ii) The new **requirement** applies to **cross border service providers** and providers established in the UK, **and** is one of the requirements listed in **regulation 21**. This is an outcome of the flowchart for requirements.

Please note that Form B lists the requirements that can be applicable to cross border service providers under regulation 22.2 and regulation 24.2, so you can tick the box next to the requirement on which you are reporting. In addition it lists three examples of ‘other requirements’ that would be caught by regulation 24 and need to be checked for compliance with the Regulations:

- an obligation on a service provider to make a declaration to or to notify a competent authority in our territory (the UK)
- an obligation on a service provider to have an address or to designate a representative in our territory (the UK)
- an obligation on a service provider to take out insurance or to subscribe to a guarantee or similar arrangement

38. If you need to report to BIS on a new authorisation scheme or requirement please fill in and print the relevant reporting form from Annex B and send it to BIS (servicesdirective@bis.gsi.gov.uk) who will check it and log it with the European Commission.

Review of new requirements by EEA states and the European Commission

39. When the European Commission is notified of a new requirement in scope of the Directive, they will ask all EEA states, including the UK, to review the new requirement. BIS will receive these notifications and analyse the requirements. The Commission will also analyse them and if necessary issue requests for the non-adoption or the abolishment of the new requirements at regular intervals: every 3 months for regulation 21 requirements, and every 12 months for regulation 24 requirements.
Challenges on the UK’s compliance with the Directive

40. The UK could be challenged by the European Commission on whether an authorisation scheme or requirement complies with the Directive. Before deciding to commence the formal infraction procedure (which is briefly discussed in chapter 9) the Commission may contact the relevant Department informally about the issue. If the Commission contacts BIS in the first instance, BIS will contact the relevant responsible Department or authority. If the Commission then brings infraction proceedings against the UK, the Government will follow the formal procedures when responding.

41. If you are successfully challenged, please follow the steps in this guidance to ensure that your provisions and procedures imposed on service providers are fully compliant with the Regulations (please see the ‘setting up a new policy’ and ‘new rules’ flowcharts on pages 4-5).

42. If you have any questions on the above please contact Stella d’Italia (email: stella.ditalia@bis.gsi.gov.uk or telephone: 020 7215 6056), Paul Reynolds (email: paul.reynolds1@bis.gsi.gov.uk or telephone: 020 7215 5359) or servicesdirective@bis.gsi.gov.uk
Chapter 4 – The Relationship with other legislation

43. Regulation 6 explains the relationship between the Regulations and other legislation. It applies only to requirements in legislation passed or made before the Regulations were made. If you are introducing new legislation or imposing new requirements which affect service providers, then you can ignore this chapter and refer to chapter 3 on ‘Checking requirements for compliance with the Regulations’.

44. Regulation 6 implements Article 3(1) of the Directive, which states that where provisions of the Directive conflict with a provision in other European Community legislation governing specific aspects of access to, or exercise of, a service activity, then the provision in the other legislation takes precedence. Regulation 6 applies only to requirements in legislation passed or made before the Regulations were made.

45. Of the parts of the Regulations covered by regulation 6, parts 3, 4, 5 and 6 affect competent authorities.

**Part 3** requires competent authorities to ensure that authorisation schemes and other requirements governing the access to or exercise of a service activity by a provider established in the UK satisfy certain conditions.

**Part 4** requires competent authorities to ensure that restrictions on the access to or the exercise of a service activity in the UK by providers from other EEA states comply with certain principles unless covered by an exception.

**Part 5** obliges competent authorities to refrain from imposing restrictions or discriminatory requirements on a recipient’s ability to access a service.

**Part 6** imposes duties on competent authorities relating to: documents attesting that a particular requirement has been satisfied; professional liability insurance; commercial communications and multidisciplinary activities; and the electronic completion of authorisation procedures.

46. A requirement in earlier domestic legislation implementing EU law or an earlier EC Regulation takes precedence if it is impossible for a competent authority to comply with that requirement and a requirement in parts 5 or 6.
47. If it is impossible for a competent authority to comply with a requirement in Part 3 or 4 of the Regulations and with a requirement in earlier domestic legislation, the requirement in the earlier domestic legislation takes precedence, whether or not it implements EU law. This goes further than the approach taken with Parts 5 and 6, ensuring that competent authorities are still subject to domestic requirements which appear to conflict with the Regulations but remain on the statute book because they are justified under the terms of the Directive. Without this provision there could be legal uncertainty over whether such requirements might apply.

48. Here is an example of how regulation 6 operates:

The Solicitors Regulation Authority (SRA) regulates European lawyers who register with the Authority under the European Communities (Lawyers’ Practice) Regulations 2000, which implement the Lawyers’ Establishment Directive 98/5/EC. Under regulations 12 and 13 of those Regulations, registered European lawyers who gained their professional qualifications in certain European states are permitted to undertake specified conveyancing and probate matters, whereas those who qualified in other European states are not. This is because lawyers in certain European states are accustomed to doing conveyancing and probate work, whereas in other European states they are prohibited from doing such work. In complying with regulations 12 and 13 of the European Communities Regulations, the SRA is unable to comply with the requirements of regulation 21 of the Regulations, which prohibit authorisation schemes which discriminate directly or indirectly on the basis of nationality. However regulation 6 of the Regulations disapplies the requirements of regulation 21 where such a conflict exists.

The Mutual Recognition of Professional Qualifications (MRPQ) Directive

49. One particular piece of legislation which has considerable overlap with the Regulations is Directive 2005/36/EC (known as the Mutual Recognition of Professional Qualifications Directive, or MRPQ Directive). Several competent authorities caught by the Regulations already comply with the requirements of the MRPQ Directive. The Europe Open website has information for individuals whose profession is regulated and caught by MRPQ: http://www.europeopen.org.uk/Home/
50. Because of the overlap between the two statutory regimes, we believe that the MRPQ Directive takes precedence over most of the provisions in Part 3 of the Regulations. This means that any authorisation schemes already caught by and compliant with the MRPQ Directive are assumed to be justified and proportionate and do not need to be amended or abolished because of the Regulations.

51. However, professional bodies caught by the MRPQ Directive still need to assess their authorisation schemes against regulation 16, which contains provisions relating to the duration of authorisations granted to service providers. Because of rules already imposed by the MRPQ Directive, competent authorities who oversee authorisation schemes already caught by the MRPQ Directive need not implement the requirements in regulation 19, which require a fixed timescale for processing applications and the concept of tacit consent (these provisions are explained in more detail in chapter 3).

52. Competent authorities whose regimes are already caught by the MRPQ Directive will still have to review their rules against the ‘prohibited requirements’ and ‘requirements to be evaluated’ in regulations 21 and 22. Because of an exemption in regulation 25(g), they will not have to check these rules against the provisions in regulation 24, which relate to the rules that may be imposed on services providers from other EEA states operating on a cross border or temporary basis.

53. The remaining provisions of the Regulations will still apply to bodies already featured under the MRPQ Directive, including the Quality of Services and PSC provisions that are covered in more detail elsewhere is this guidance. For example, all competent authorities will have to ensure their application procedures can be completed electronically.
Chapter 5 – Point of Single Contact on businesslink.gov.uk

54. A key requirement of the Services Directive is that Governments must establish a Point of Single Contact from which service providers in scope of the Regulations can find out the information they need to do business in a particular area, for example, in the London Borough of Westminster, or in a specific sector, for example, in order to set up a construction business. The UK’s PSC is on businesslink.gov.uk and is set up to have two “sides”. The business facing side, where service providers can access information and apply for authorisations. And the competent authority facing side where authorities are able to access [and manage] applications made by business on businesslink.gov.uk. The competent authority side is called the Electronic Licence Management System (ELMS). ELMS contains detailed guidance on what competent authorities need to do to link up to businesslink.gov.uk (and to set up and manage applications). ELMS can be found on: http://elmsportal.businesslink.gov.uk/

55. The ELMS portal is an electronic training and information resource which sets out the key tasks a competent authority needs to take in order to be ready to use the PSC and ELMS. It provides step-by-step guidance on how to complete a particular task plus links to further information, including FAQs, user manuals and guidance documents, training and other events, support and contact details. For local authorities, tasks 4 to 18 on ELMs apply. For other competent authorities, including any new bodies set up after 28th December 2009, tasks 3 to 18 apply.

Putting your authorisations on-line

56. If you are a competent authority, and must therefore put a relevant authorisation on-line through businesslink.gov.uk, there are two solutions available to you:

(i) You can choose to incorporate an electronic form into your own website enabling a service provider to apply and pay for an authorisation. The PSC on businesslink.gov.uk will link directly to that form. Your website and electronic form will need to comply with all the relevant requirements of the Regulations (see paragraphs 56-61) and you will need to provide the correct deep links.
(ii) If you do not choose to put the electronic form(s) on your own website, a form can be incorporated into businesslink.gov.uk. You will be able to include information on fees, timescales, whether tacit authorisation applies and contact details. You will also be able to access and manage any application you receive through this route. Please see the box below for how to create a new form on businesslink.gov.uk.

**How to create a new form**

If you need to have your own specific form for an application or regulation that you administer please follow this process:

- Check whether an existing form could be used as the basis for your specific form.
- Contact the BIS Services Directive engagement team (servicesdirective@bis.gsi.gov.uk) with a full specification of the form you require (full details on how to do this can be found on the elms portal under Task 3 – General form Definitions at: [http://elmsportal.businesslink.gov.uk/authority/tasks/5](http://elmsportal.businesslink.gov.uk/authority/tasks/5) and, if appropriate, the name of any existing form you wish to use as a basis for the new form (first bullet refers).
- BIS will obtain a quotation for the development of the form and inform you of the estimated cost.
- Upon your agreement to cover this cost, BIS will commission the work from the supplier. Please note this work may take two to three months in total.
- The supplier will provide you with a draft form for comments.
- Following your comments, a final version of the form will be produced for you to ‘approve and sign off’.
- Upon receipt of the formal sign off, the supplier will make the form live on businesslink.gov.uk.

57. For the implementation, BIS has worked with the Society of Technology and Information Management (SOCITM) to develop generic forms on businesslink.gov.uk for all national licensing and other authorisation schemes that are administered by local authorities. These are for use by local authorities that do not already have electronic forms on their own websites. Generic local authority forms will continue to be developed in future for any new national authorisation scheme but it will be the responsibility of the relevant lead Department to make sure this happens and that they allow sufficient time to complete the required steps.
Developing electronic application forms on your own website:

58. **You will need to consider the following things if you choose the option of developing electronic forms on your own website:**

59. An electronic application must do all of the following:
   - Be in a format that can be submitted genuinely electronically (i.e. not need an original signature and have to be posted or faxed in)
   - Have the ability to accept other electronic documents, if needed
   - Provide for electronic payment of the fee (if a fee is applicable)
   - Potentially, have the ability to accept an electronically signed document, up to and including, a Qualified Electronic Signature (compliant with the Electronic Communications Act 2000) where such a level of security can be justified.

60. Furthermore, if the application is sent electronically, the response and application outcome notification must also be electronic (though a physical copy can be sent subsequently).

61. Whether you choose to develop an electronic application through your own website or choose to use forms incorporated into businesslink.gov.uk (see paragraph 56) you will need to:
   - Provide an appropriate link to the businesslink.gov.uk site.
   - Ensure your own website meets the information requirements of the Regulations, including details on fees, timescales, tacit authorisation, contact details for a specific authorisation and, for a local authority, any particular local requirements or conditions that also need to be met.
   - Provide information on your website about what public registers are available, how they can be accessed and, where appropriate, provide a link to that page.
   - Identify the means of redress which are generally available in the event of a dispute.
• Check that your own administrative processes are compliant with the Regulations and provide the contact details of other associations or organisations from whom an applicant may obtain practical assistance.

• Ensure you are able to accept electronic payments i.e. procure the services of a payment provider. (If you are not using your own electronic forms, please note that the PSC on businesslink.gov.uk supports four payment providers only i.e. Capita (Axis), Civica (ICON), Northgate (Paris) or Worldpay. If you are using your own forms then you are free to use any payment provider.) You will need to build in sufficient time to meet any internal procurement requirements your authority has for obtaining such a service.

Make sure you leave enough time to do the work:

62. As a competent authority (whether you are a Government Department, Devolved Administration, local authority or other competent authority) you are responsible for ensuring that any relevant authorisation is available on the PSC via businesslink.gov.uk in time. You must allow enough time for this process to be completed (at least 3 months if the form is to go on the PSC on businesslink.gov.uk: please see box “How to create a new form”).

Changing electronic forms incorporated into businesslink.gov.uk

63. Any changes requested by local authorities to application forms already held on ELMS will need to be agreed by the Local Government Association (LGA) Group and the relevant lead department on behalf of all local authorities and fed into the ELMS Technical Engagement Team for further consideration.

64. Any changes to forms requested by other competent authorities should be fed into the ELMS Technical Engagement Team directly by the competent authority that requires the change to be made.

65. Legislative changes or enhancements that result in new versions of forms will be communicated to authorities via an email from the ELMS Technical Engagement Team and also via a system notification when authorities access ELMS.
Meeting the costs of incorporating forms on businesslink.gov.uk

66. BIS will meet the development costs for those authorisations that existed before 28th December 2009 and were notified to us by 28th February 2010. After this point, the responsible Department, Devolved Administration and/or other competent authority will be expected to bear the cost of developing forms for incorporation on businesslink.gov.uk. The cost and timescales for any changes requested to existing forms or for developing new forms will be determined on a case by case basis by BIS.

Keeping information on businesslink.gov.uk up to date

67. It is your responsibility to ensure that your information on the PSC on businesslink.gov.uk is kept up to date.

It is your responsibility to ensure that your own authority’s website continues to meet the information requirements set out in the Regulations. You should ensure that your authority’s own information, for example, any changes to fees, the time taken to process an application, tacit authorisation and contact details, is kept up to date on your website and via ELMS if you are using the forms held on businesslink.gov.uk. You should also ensure that your “web portal officer” maintains your web links to businesslink.gov.uk via updates to LocalDirectGov. Detailed information on all these actions is available under ‘Tasks’ on the ELMS portal. If you are using your own electronic forms, in addition to the information referred to above, you should ensure that links to the PSC on businesslink.gov.uk are provided and maintained, and that service providers are able to complete applications etc and receive confirmation of decisions electronically.

General information held on businesslink.gov.uk about licensing regimes will be reviewed as part of businesslink.gov.uk’s rolling programme of regular reviews of the site content. Businesslink.gov.uk will do this in consultation with a designated person within the relevant department or authority (a “proxy approver”) who will be responsible for authorising any amendments to your information. Local authorities will also need to maintain a list of the authorisation schemes they administer through ELMS. In the case of national regulators and professional bodies, much of this content is provided by these bodies initially and they will be expected to approve changes thereafter.
Chapter 6 – Administrative Cooperation

68. Competent authorities are obliged to cooperate fully and effectively with their counterparts in other EEA states. This will ensure proper regulatory supervision of service providers operating across EEA borders and reduce the burden on businesses in terms of the amount of information that they have to supply to relevant authorities.

69. Competent authorities will need to reply to information requests in areas where they have responsibility and, if necessary, carry out factual checks, inspections and investigations. To avoid spurious requests, each request must be justified with a valid reason: the requesting authority cannot ask for information or request an inspection without providing justification. In addition, competent authorities must inform of any conduct or specific acts by a service provider that could cause serious damage (see ‘alert mechanism’ in paragraph 121), and provide information concerning the good repute of a service provider.

70. When information is requested it **must** be supplied by electronic means and within the shortest possible time. The European Commission has created the Internal Market Information System (IMI) for these purposes (see chapter 7). A National Liaison Point (NLP) within BIS will be available to assist with any queries concerning IMI requests. If there is difficulty in meeting a request or in carrying out checks, the requesting authority and the NLP must be rapidly informed with a view to finding a solution. Stewart Gibbon is the BIS NLP and contactable at: sdimi@bis.gsi.gov.uk

71. The Directive does not require authorities to carry out inspections in other EEA states. Instead, competent authorities can ask their equivalents in other EEA states to carry out inspections on their behalf, but only if the request is properly justified. So, a UK authority is obliged to gather evidence or provide information if it receives a justified request from another EEA state, and vice versa. The requesting authority can then decide on the appropriate action to take.
**Information on the good repute of a service provider**

73. Where a sound reason is given, competent authorities from other EEA states may request information on the good repute of a UK service provider, including details of any disciplinary actions or criminal sanctions. UK authorities are expected to disclose this information if it is available and they are lawfully able to disclose it. Where a competent authority cannot lawfully supply the information requested without the consent of the service provider, it must obtain this consent.

74. If a competent authority sends this type of information to a regulatory body in another EEA state, they must inform the relevant service provider of their actions and of exactly what information was provided.

75. Information on a person’s disciplinary history, including criminal records, is deemed to be sensitive data under data protection rules. Paragraphs 129-130 on data protection provide links and further guidance on ensuring compliance with data protection requirements.

**Providing information on behalf of service providers**

76. Businesses who operate in several different countries may find themselves being asked for the same information by competent authorities in each country, for example, proof of registration or licence. If a UK service provider wants to provide services in another EEA state, they can ask the relevant competent authority in that country to contact their equivalent in the UK for any documentation they require.
Regulating service providers

77. Where a business has established itself in the UK, it will be regulated by any applicable UK laws and licensing procedures, provided that these can be justified under the Regulations. Similarly, UK authorities can only regulate temporary service providers where the requirements are non-discriminatory, justified on certain grounds (although these grounds are narrower than for established providers) and proportionate (see paragraphs 31-32 for further details).

78. At the time the Regulations were implemented, the UK had justified most of its legislation on the grounds set out in the Directive, so that UK competent authorities will continue to apply their requirements to service providers from other countries operating here temporarily as well as to providers established here. However some provisions were amended to ensure compliance.

79. This issue of who regulates temporary service providers will be kept under review. Discussions with other EEA states may raise issues that are more suited to enforcement action by competent authorities in the country where the service provider is established, rather than in the country in which the service is provided on a temporary basis. BIS will consider whether changes to UK legislation are necessary to facilitate this once any common approach has been agreed with other EEA states. In the meantime, competent authorities who can currently take enforcement measures in relation to offences committed by UK businesses operating in other EEA states will continue to be able to do so.

Case by case derogations

80. The Directive allows EEA states to take action against service providers established in and regulated by another EEA state on the grounds of safety in very limited and specific cases. This is in instances where a service provider is operating temporarily in an EEA state but regulatory responsibility remains with the country in which they are established. As mentioned above, UK authorities will continue to regulate temporary service providers operating in the UK, so will not have need to trigger a derogation. Should areas of regulatory responsibility shift to the country where a business is established, then BIS will issue further guidance on the use of derogations.
Chapter 7 – The Internal Market Information (IMI) System

81. Competent authorities are obliged to cooperate with their counterparts in other EEA states using the IMI system. The European Commission adopted a comitology decision on 2nd October 2009, confirming the use of IMI for the purposes of administrative cooperation between EEA states. This decision can be found here: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32009D0739:EN:NOT

82. IMI is an internet-based, secure messaging system developed by the European Commission, which provides an effective platform for communicating directly with corresponding competent authorities and hence ensure administrative cooperation in a timely and secure manner.

83. The IMI system will allow competent authorities in EEA states to be easily identified and information requests and responses to be electronically submitted. The IMI system is used to securely exchange information (including files, documents, certificates) on service providers and so ensure that they are suitably regulated and any disputes are resolved in a fast and efficient manner. The system uses pre-translated questions and translates any requests and replies into the relevant EEA state language. It also includes an area for free text.

84. Competent authorities have to register on the IMI system in order to reply to and make requests for assistance from other EEA states. The IMI system is used to provide administrative cooperation in two different legislative areas – the MRPQ Directive and the Services Directive. Some authorities are caught by both Directives and will therefore use both areas of IMI. Authorities who are unsure whether they need to register under both legislative areas can contact the NLP for advice: sdimi@bis.gsi.gov.uk

85. The European Commission has a dedicated IMI website: http://ec.europa.eu/internal_market/imi-net/index_en.html The ‘Important Documents’ link directs you to further information material and guidance documents. The important steps for registering with and using IMI have been summarised below, along with links to guidance for each step.
86. BIS has tailored the Commission’s user handbook for UK users. This can be found, along with other guidance, at: http://www.berr.gov.uk/whatwedo/europeandtrade/europe/services-directive/implementation/page52185.html

National Liaison Point (NLP)

87. A UK NLP based in BIS monitors the use of the IMI system for administrative cooperation requests involving the UK and is on hand to help out with any problems or disputes. The NLP can direct competent authorities in other EEA states to their opposite number or to the relevant authority in the UK, and vice versa. The NLP will also be able to liaise with their counterparts in other EEA states if UK authorities experience delays in obtaining information from other authorities. You can contact the NLP at: sdimi@bis.gsi.gov.uk

Registration for IMI

88. Registration for the use of IMI must be done through BIS. To receive a link to an application form, authorities should contact BIS at: sdimi@bis.gsi.gov.uk

89. The NLP will subsequently be informed whenever an online application form has been completed. The NLP will then have to check the details and confirm the registration.

90. The ‘first user’ (see below) will receive two automatically generated emails, one of which will contain a temporary password. The username will be communicated to the first user separately, outside of the system by the NLP.

91. Further information on registration is available here: http://elmsportal.businesslink.gov.uk/page/internalmarketinformation

Logging into IMI for the first time

92. Once you have received your temporary password and username, you will have access to the IMI system.

93. The log in page is available here (please note that users should use the ‘Access to IMI’ site and NOT the ‘IMI Training System’): http://ec.europa.eu/internal_market/imi-net/index_en.html

94. When logging in for the first time, users must change the temporary password and choose and enter a 12 digit security code, which must be a combination of letters and numbers. The password is case sensitive and users are allowed three chances to enter the correct details before being locked out.
95. If the ‘first user’ is locked out they should contact the NLP, who will be able to reset the password.

96. If a subsequent user is locked out they should contact a Local Data Administrator (LDA) in their authority (the first user will have these rights) who will be able to reset the password.

97. Further information on the log in procedure is available here: http://ec.europa.eu/internal_market/imi-net/training/getting_started_en.html#training

Registering additional users

98. Once the ‘first user’ has been registered on the system, they are encouraged to register additional users within their authority. At least one additional user should be registered with LDA rights who will be able to reset passwords and add additional users. Further guidance on the different user roles is available below.

99. To register additional users within your authority, log into the IMI system. On the first page, click on the tab at the top of the page marked ‘Administration’ and the link ‘Manage my authority’s users’. On the subsequent page there is the facility to add a new user.

100. Once the new user has been added, remember to communicate to this user their username. They will receive automatically generated email, which will contain a temporary password.

101. Further information on registering additional users is available here: http://ec.europa.eu/internal_market/imi-net/training/getting_started_en.html#training

Different user roles

102. When registering new users onto the IMI system, it is possible to define their user rights and responsibilities. This will enable users to undertake different tasks and responsibilities within the system. There are 4 different roles that can be allocated to new users. Below is a guide to what each user role can and cannot do within the system.

103. Further information for the LDA is available here: http://ec.europa.eu/internal_market/imi-net/docs/local_data_admin_en.pdf

104. Further information on user roles is available here: http://ec.europa.eu/internal_market/imi-net/docs/training/files/08.pdf
User Administration and Management

105. Updating information and user management is the responsibility of the individual authority.

106. The ‘first user’ of an authority is automatically given all user rights including those of LDA. This means that they are able to add additional users within the authority and define their individual user roles, update data concerning their authority such as address, telephone numbers etc and edit the legislative settings of the authority.

107. Further information on user administration and management is available here: http://ec.europa.eu/internal_market/imi-net/training/first_steps_en.html

Search for a competent authority

108. In order to ensure that the correct competent authority in another EEA state can be easily located a search facility is available. Only registered users can log into the system and use the search facility.

109. On the IMI home screen there is a tab at the top of the screen entitled ‘Search for a competent authority’. The more information that can be provided here the more accurate the search will be.

110. Key words entered into the search function must be exact. For example, a search of ‘Insolvent’ for the ‘Insolvency Service’ would return no items.

111. Further information on searching for a competent authority is available here: http://ec.europa.eu/internal_market/imi-net/training/handling_request_en.html

Creating and sending a request

112. Only users who have been given ‘request handler’ rights can create and send requests. When creating the request, all fields marked with an asterisk (*) must be filled out in order for the request to be sent and only one question set per request may be selected. If the correct competent authority cannot be found then the sender should contact the NLP who can assist.

113. Further information on creating and sending a request is available here: http://elmsportal.businesslink.gov.uk/page/internalmarketinformation

115. And: http://ec.europa.eu/internal_market/imi-net/training/handling_request_en.html

Accepting a request and sending a reply

116. When a request is received by an authority they will be alerted by an email that is sent to the generic email address provided and also to all users with ‘request handler’ status. ‘Request handlers’ can log into the system and view the request that has been received.

Before accepting the request the user must ensure that they are the correct authority and are able to provide an answer.

Once they have established that they are the correct authority they can accept the request and will be granted access to the service provider’s details and the request in full.

117. When replying to a request users have the facility to send a full reply or a partial reply if only a portion of the information is immediately accessible. However, if a partial reply is sent this information cannot be changed when the full reply is sent at a later date.

118. Further information on accepting a request and sending a reply is available here: http://ec.europa.eu/internal_market/imi-net/training/handling_request_en.html

Accepting a reply and closing a request

119. After receiving a reply, the requesting authority should ensure that all the information provided is adequate and then close the request.

Should the answer that is received not be adequate, the requesting authority has the facility to ask for further information.

Should the further information that is provided not be adequate, the requesting authority may refer the request to the NLP. This is known as the ‘Referral Process’. The IMI coordinator will liaise with their counterpart in the relevant Member State to resolve the issue.

120. Further information on the Referral Process is available here: http://ec.europa.eu/internal_market/imi-net/training/coordinators_en.html
Alert Mechanism

121. In order to ensure that service providers who are operating in more than one EEA state are not causing serious damage to the environment or to the health or safety of persons, an ‘Alert Mechanism’ facility has been built into the IMI system. This enables competent authorities who regulate these specific areas and who have become aware of a business undertaking activities which could give rise to such damage to immediately inform the competent authorities in other EEA states where it is known that this service provider operates.

It will enable the competent authorities of relevant EEA states to react quickly, to closely supervise the service provider in question and if required, take necessary preventative action in compliance with the Directive.

122. Given that alerts should only be sent where a competent authority becomes aware of activities of a service provider which could cause serious damage to the environment or to the health or safety of persons, not all competent authorities will ever need to trigger an alert. All other breaches of Regulations will be dealt with using the normal channels. We do not expect that there will be many cases which will require an alert to be sent. We expect that the HSE and the Environment Agency (EA) (along with the equivalent bodies in the devolved administrations) may occasionally need to send an alert, and possibly local authorities. Given that alerts should only be triggered in the event of a risk of serious damage to the environment or to the health or safety of persons, any local authorities who are thinking of raising an alert should consider consulting HSE or the EA (or equivalent) first, if they have not already done so.

123. Regulation 42 requires competent authorities to notify the Secretary of State as quickly as possible if they need to trigger an alert. This involves completing an alert notification on the IMI system and notifying the UK’s NLP in BIS. However, it is up to the competent authority to ensure the details sent are accurate, and to update the alert information on the IMI system when necessary. The requesting authority should indicate to which other countries the alert should be sent, and, if known, which authorities in that country should receive the alert.
124. Alerts have to be justified following a series of pre-defined checks which have been set out by the Commission in guidelines. These are:

- There is a serious potential danger related to a service activity or the conduct of a service provider
- The service activity is in scope of the Directive
- There is a danger of serious damage to the health or safety of persons or the environment
- There is a causal link between the service provision and the potential serious damage
- There is a real risk of the serious damage occurring
- There is a risk that the potential damage will occur in other Member States

125. An alert should not be sent unless all of these criteria are met. Detailed guidance on these criteria has been published by the Commission and can be found here: http://ec.europa.eu/internal_market/imi-net/docs/Alerts_EN.pdf

Registers

126. IMI has a list of registers of service providers held in each EEA state.

Authorities are obliged to check these registers and look for the information they need before contacting the relevant competent authority, thereby reducing the number of information requests.

The registers are only available to registered users of the IMI system.

127. Upon registering on IMI, all UK competent authorities should inform the NLP of any registers of service providers they hold, and provide a link to these registers or details of how to access them. These registers must be available to competent authorities in other EEA states on the same basis that they are made available to those in the UK. This would include any public registers of service providers, or any non-public registers which are shared with other UK competent authorities. There is no need to notify any registers which are for internal use only.
128. When sending a request via IMI, authorities must indicate that they have checked to see whether the information they require is available on a register before sending the request. The authority to which the request is sent may reject it on the grounds that the information can be found in an accessible register (with details of how to access that register).

Data protection

129. Any organisation that collects personal data should already be aware of and comply with data protection rules. As most, if not all, competent authorities collect personal data from the people they regulate, they should be familiar with these rules. The Information Commissioner’s Office (ICO) website contains a wealth of useful information: http://www.ico.gov.uk/

130. As IMI is used to exchange personal data and some sensitive data, the European Commission issued a recommendation in March 2009 on the exchange of data via IMI (a copy can be found at http://ec.europa.eu/internal_market/imi-net/docs/recommendation_2009_C2041_en.pdf). Much of this recommendation outlines the parameters for using IMI and covers good practice which is already observed in the UK, but competent authorities should check that they comply with these recommendations. In particular, there are a couple of specific actions which competent authorities need to consider.

Informing service providers – privacy notices

131. The Commission recommend that competent authorities tell service providers that their personal data may be exchanged with other authorities via IMI, and advise them of their rights of access. Although it is up to each competent authority to decide how to convey this information, a simple solution would be to include something in a privacy notice.

132. A privacy notice is a statement that individuals are given when information is collected about them. Most, if not all, authorities already publish a privacy notice on their website. Where appropriate, authorities could add some text to their existing notices to inform service providers about the exchange of information via IMI.
133. It is up to each authority to decide what to include in their privacy notices, but there are some important points which should be reflected:

- IMI is a web based portal developed by the European Commission. It enables messages and information to be exchanged between authorities in a secure environment, and complies with data protection rules.

- Competent authorities will use the system to exchange information on service providers who are in scope of the Directive. Authorities must have good reason to request information, and provide justification when submitting a request.

- Only competent authorities involved in a request for information can see the personal data of a service provider.

- All personal data is automatically deleted from the system six months after the closure of a request.

- UK competent authorities are obliged to notify service providers if they supply sensitive data about them to other authorities, such as data relating to disciplinary action or criminal sanctions.

134. Existing privacy notices should already include information about rights of access and contact details. For further guidance, consult the “Privacy notices code of practice” published by the Information Commissioner’s Office (ICO), which can be found at http://www.ico.gov.uk/upload/documents/library/data_protection/detailed_specialist_guides/privacy_notices_cop_final.pdf

Amending your ICO notification

135. All UK bodies that process personal data should already be registered with the ICO. As exchanging information via IMI will be a new use of personal data for most competent authorities, all authorities using IMI should amend their notification entry with the ICO to reflect this. Please see the ICO website for simple instructions on how to do this: http://www.ico.gov.uk/what_we_cover/data_protection/notification/keeping_up_to_date.aspx
Chapter 8 – Requirements to be met by businesses within the service sector

136. There are some requirements for relevant service providers to follow with regards to information they must supply to recipients.

137. These requirements will be enforced by the Office of Fair Trading, local weights and measures authorities (Local Authority Trading Standards) and the Department of Enterprise, Trade and Investment in Northern Ireland. For more information on enforcement, see paragraphs 36-40 of the Guidance for Business on the Provision of Services Regulations 2009.

Information for business

138. Guidance on the requirements on service providers and the benefits and opportunities of the Directive for business can be found in the documents below:

- Guidance for Business on the Provision of Services Regulations 2009 (which include information on which service providers are in scope):

- Summary flyers: ‘Sell Your Services to Europe’:
  ‘Keeping Your Customers Informed’:
Chapter 9 – Challenge

139. If the European Commission believes that the UK has not implemented the Directive correctly, or receives a complaint about the incorrect application of the Directive, it may instigate infraction proceedings (please also see paragraphs 40-42 on challenges to the compliance of an authorisation scheme or requirement with the Directive). Infraction (or infringement) proceedings are the legal process by which the Commission takes a Member State to the European Court of Justice (ECJ) for breach of its obligations under the EC Treaty.

140. The Commission would contact BIS or another Government Department directly before deciding to commence the formal infraction procedure. If the Commission decides to commence infraction proceedings, the Government’s usual procedures for handling and responding to infraction proceedings will apply. The relevant Government Departments and authorities will be involved in responding to the complaint.

141. There is also the possibility that service providers may seek to bring legal proceedings against a competent or local authority if they consider that the authority has not fulfilled its obligations under the Regulations.
Glossary

Regulations 2(1), 3 and 4 define certain terms used throughout the Regulations, and regulations 5(3) and 5(4) explain to whom the Regulations apply. Some of the main words and phrases used in the Regulations and guidance are explained below:

**Authorisation scheme**
A procedure requiring a service provider or recipient of services to take steps in order to notify or obtain a decision from a competent authority for the purposes of securing access to, or permission to exercise, a service activity. This includes licences, permits, certification, registration processes and approval systems.

**Competent authority**
A body with a regulatory or supervisory role over the provision of a service, such as a professional body, for example, the Institute of Actuaries or a central or local Government authority.

**Directive**
A binding instrument of European Community law, which EU Member States must transpose into their national law.

**EEA state**
A country that belongs to the European Economic Area, which includes EU member states and Iceland, Liechtenstein and Norway.

**Established service provider**
A service provider with stable business premises in an EEA state and providing services there on a continuous basis.

**Formality**
A process where a service provider is required to give information to a competent authority by way of an application, authorisation request, renewal, return, declaration or notification, whether or not a formal response is required before the service provided may commence operation in the UK.

**Internal Market Information system (IMI)**
A web-based system developed by the European Commission to facilitate direct communication and cooperation between competent authorities in the EEA states.

**Member State**
A country that belongs to the European Union, currently: Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the United Kingdom. NB the Directive also applies to the EEA states: Iceland, Liechtenstein and Norway.

**Multidisciplinary Activities**
Where a service provider carries out more than one activity, or carries out different activities jointly or in partnership.
Mutual assistance
Where a competent authority in one EEA state provides assistance in the supervision of service providers to a counterpart in another EEA state, e.g. providing information or obtaining information on their counterpart’s behalf.

ORRPI (overriding reasons relating to the public interest)
As defined by Article 4(8) of the Directive, and explained fully in Recital 40 of the Directive. This means reasons recognised as such in the case law of the Court of Justice, including the following grounds: public policy; public security; public safety; public health; preserving the financial equilibrium of the social security system; the protection of consumers, recipients of services and workers; fairness of trade transactions; combating fraud; the protection of the environment and urban environment; the health of animals; intellectual property; the conservation of the national historic and artistic heritage; social policy objectives and cultural policy objectives.

PSC (Point of Single Contact)
This is a web-based portal in each EEA state or region, on which service businesses can find information about providing their service and complete the formalities necessary to do business. Under the Directive each EEA state is required to have a PSC. In the UK, businesslink.gov.uk will be the PSC. International visitors to the site will be directed to www.businesslink.gov.uk/ukwelcomes, which will contain pages designed to help newcomers understand doing business in the UK.

Provider
A body or individual that provides or offers a service within the EEA.

Recipient
A person who, for professional or non-professional purposes, uses, or wishes to use, a service.

Regulated profession
A professional activity or group of activities to which access is subject to the possession of specified qualifications, and the pursuit of which is limited to holders of a given professional qualification.

Requirements
Any obligations, prohibitions, conditions, or limits.

Service Activity
A self-employed economic activity (normally provided for remuneration).

Temporary service provider
A service provider based in one EEA state who provides services in another EEA state without becoming established there.
Annex Index

Annex A: Flowcharts for checking the compliance with the Regulations of new authorisation schemes and other requirements that are imposed on service providers

- Flowchart for checking the compliance with the Regulations of new authorisation schemes that are imposed on service providers who want to establish in the UK
- Flowchart for checking the compliance with the Regulations of new requirements that are imposed on service providers operating in the UK (whether established in the UK or elsewhere)

Annex B: Forms for reporting new in-scope requirements to BIS and the European Commission

- Reporting Form A
- Reporting Form B

Annex C: Flowchart and Reporting Form Examples

- Example 1: Form A – Riding establishment licence (Riding Establishments Act 1964)
- Example 2: TSE testing and monitoring programme (Transmissible Spongiform Encephalopathy (England) Regulations 2008)
- Example 3: Form A – Licences for supply, distribution and transmission of electricity (The Electricity (Northern Ireland) Order 1992)
- Example 4: Form B – Animal Boarding Establishment licence (Animal Boarding Establishments Act 1963)
Annex A

Flowchart for checking the compliance with the Regulations of new authorisation schemes that are imposed on service providers who want to establish in the UK

(a) Does the authorisation scheme comply with regulations 14.1-14.3, in particular is it non-discriminatory and proportionate, and can it be justified by an overriding reason relating to the public interest? (see example 1)

(b) Does the authorisation scheme comply with regulations 15.1-15.7, for example is it based on criteria that prevent power being exercised in an arbitrary manner?

(c) Does the authorisation scheme comply with regulations 16.1-16.4, for example is it indefinite in duration unless there are good reasons otherwise?

(d) If the number of authorisations is limited due to a shortage of natural resources or technical capacity, then does the authorisation scheme comply with regulations 17.1-17.4, e.g., is there a fair selection procedure?

(e) Does the authorisation scheme comply with regulations 18.1-20, for example in relation to clarity, time limits, tacit consent and charges?

A
Please complete a reporting form setting out the reasons why you believe this is the case.

B
Please take steps to ensure that you comply with the Directive.
Flowchart for checking the compliance with the Regulations of new requirements that are imposed on service providers operating in the UK (whether established in the UK or elsewhere)

**Requirements imposed on all service providers who want to establish in the UK**

Is the access to or exercise of a service activity subject to any of the requirements listed in regulation 21?

- Yes: Go to A
- No: No further action

A: Please take steps to ensure that you comply with the Directive

Is the access to or exercise of a service activity subject to any of the requirements listed in regulation 22.2?

- Yes: Does the requirement apply to a person who provides a service of general economic interest, and is it necessary and proportionate for that purpose (regulation 22.4)?
  - Yes: Go to C
  - No: No further action

B: Is the requirement non-discriminatory, necessary and proportionate?

- Yes: Please complete a reporting form setting out the reasons why you believe this is the case
- No: Go to D

C: Please complete a reporting form setting out the reasons why you believe this is the case

- Yes: No further action
- No: Go to D

D: Please either abolish the requirement or amend it to ensure that it complies with the Directive

**Requirements imposed on service providers who want to provide services in the UK but do not want to establish in the UK**

Is the access to or exercise of a service activity subject to any of the requirements listed in regulation 21?

- Yes: Is the access to or exercise of a service activity subject to any of the requirements listed in regulation 22.2?
  - Yes: Is the access to or exercise of a service activity subject to any requirements, in particular those listed in regulations 24.1 and 24.2?
    - Yes: Is the requirement exempt from regulations 24.1 and 24.3 due to the exclusions listed in regulation 25?
      - Yes: No further action
      - No: Go to D
  - No: No further action

- No: No further action

**1 Derogations from Regulation 24 due to the MRPO Directive**

Regulations 24 is not applicable to professional bodies already complying with the MRPO Directive, in this case you do not have to check whether your rules comply with Regulation 24.

**2 Derogations from Regulation 24 in Regulations 25 and 26**

Regulation 25 specifies fifteen categories of services in relation to which regulation 24 does not apply.

Regulations 26 contains measures allowing competent authorities to take action in spite of the rules in regulation 24 in exceptional circumstances, if necessary to ensure the safety of services.
Annex B

REPORTING FORM A

FORM FOR THE NOTIFICATION OF NEW REQUIREMENTS APPLICABLE TO ESTABLISHED PROVIDERS IN THE UK AND FALLING WITHIN REGULATIONS 22 AND 14 OF THE PROVISION OF SERVICES REGULATIONS 2009

This form should be used to notify new laws, regulations or administrative provisions containing requirements falling within one of the eight categories listed in regulation 22.2¹ that you intend to apply to service providers established in the UK. This will allow compliance with notification obligations under regulation 22.7¹.

This form should also be used to notify new authorisation schemes that fall within the scope of regulation 14² that you intend to apply to services providers established in the UK. Please indicate this by not ticking any of the boxes under point 7 and stating under point 8 that the authorisation scheme only applies to those established in the UK.

1. Member State

2. Title and references of the act containing the notified requirement (please enclose copy of the act containing the notified requirement)

3. The requirement is imposed (please tick one box below):
   - □ by the State at national level
   - □ by a State entity at regional level, namely
   - □ by a State entity at local level, namely
   - □ by another body than a State body (for example a professional body), namely

4. Date (or expected date) of entry into force

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¹ Regulation 22 implements Article 15 of the Services Directive
² Regulation 14 implements Article 9 of the Services Directive

Please return this reporting form to BIS (servicesdirective@bis.gsi.gov.uk) who will check it and log it with the European Commission.
5. Specific provision/article in the act which contains the notified requirement

6. Services activity/ies to which the notified requirement applies (or, if relevant, indication that the notified requirement is a “horizontal” requirement which applies in a general manner across a number of services activities)

7. The notified requirement is (please tick one box below):

- a quantitative and territorial restriction, in particular in the form of limits fixed according to population or of a minimum geographical distance between providers
- an obligation on a provider to take a specific legal form
- a requirement which relates to the shareholding of a company
- a requirement, other than those concerning matters covered by Directive 2005/36/EC or provided for in other Community instruments, which reserves access to the service activity in question to particular providers by virtue of the specific nature of the activity
- a ban on having more than one establishment in the territory of our Member State
- a requirement fixing a minimum number of employees
- a requirement laying down fixed minimum and/or maximum tariffs with which the provider must comply
- an obligation on the provider to supply other specific services jointly with his service

8. Short description of the notified requirement

1 Regulation 22 implements Article 15 of the Services Directive
2 Regulation 14 implements Article 9 of the Services Directive

Please return this reporting form to BIS (servicesdirective@bis.gsi.gov.uk) who will check it and log it with the European Commission.
9. Is the notified requirement necessary for the fulfilment of a particular task assigned to a service of general economic interest (in accordance with regulation 22.4)?

☐ Yes (go to questions 9a and 9b to complete the notification – In this case questions 10 and 11 do not need to be answered)

☐ No (go to questions 10 and 11 to complete the notification)

9a What is the service of general economic interest?

9b. What is the task assigned to the service of general economic interest and why is the requirement necessary for the fulfilment of that particular task?

10. What is the overriding reason relating to the public interest that you consider justifies the adoption of the notified requirement3?

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1 Regulation 22 implements Article 15 of the Services Directive
2 Regulation 14 implements Article 9 of the Services Directive
3 According to Article 4(1) of the Services Directive, “overriding reasons relating to the public interest” means reasons recognised as such in the case-law of the Court of Justice, including the following grounds: public policy, public security, public safety, public health preserving the financial equilibrium of the social security system, the protection of consumers, recipients of services and workers, fairness of trade transactions, combating fraud, the protection of the environment and urban environment, the health of animals, intellectual property; the conservation of the national historic and artistic heritage; social policy objectives and cultural policy objectives. This list is not exhaustive and other public interest objectives pursued by Member States with the adoption of a specific measure could also constitute overriding reasons relating to the public interest for the purposes of the Services Directive. However, it has to be noted that, according to the constant case-law of the European Court of Justice, economic reasons, such as the protection of competitors, cannot constitute overriding reasons capable to justify restrictions to the fundamental freedoms of the Internal Market.

Please return reporting forms to BIS (servicesdirective@bis.gsi.gov.uk) who will check them and log them with the European Commission.
11. Detailed statement of grounds: reason why you consider that the notified requirement is non-discriminatory and suitable for attaining the pursued objective and why this objective cannot be attained by a less restrictive measure?

1 Regulation 22 implements Article 15 of the Services Directive
2 Regulation 14 implements Article 9 of the Services Directive
3 According to Article 4(8) of the Services Directive, "overriding reasons relating to the public interest" means reasons recognised as such in the case-law of the Court of Justice, including the following grounds: public policy, public security, public safety, public health preserving the financial equilibrium of the social security system, the protection of consumers, recipients of services and workers, fairness of trade transactions, combating fraud, the protection of the environment and urban environment, the health of animals, intellectual property, the conservation of the national historic and artistic heritage; social policy objectives and cultural policy objectives. This list is not exhaustive and other public interest objectives pursued by Member States with the adoption of a specific measure could also constitute overriding reasons relating to the public interest for the purposes of the Services Directive. However, it has to be noted that, according to the constant case-law of the European Court of Justice, economic reasons, such as the protection of competitors, cannot constitute overriding reasons capable to justify restrictions to the fundamental freedoms of the Internal Market.

Please return reporting forms to BIS (servicesdirective@bis.gsi.gov.uk) who will check them and log them with the European Commission.
Annex B

REPORTING FORM B

FORM FOR THE NOTIFICATION OF NEW REQUIREMENTS COVERED BY REGULATION 24 OF THE PROVISION OF SERVICES REGULATIONS 2009 THAT YOU INTEND TO APPLY TO CROSS-BORDER PROVIDERS ESTABLISHED IN OTHER MEMBER STATES.

This form should be used to notify new laws, regulations or administrative practices containing requirements falling within the scope of regulation 24\(^1\) that you intend to apply to cross-border service providers. This will allow compliance with notification obligations under regulation 28\(^2\).

If, in addition to it being applicable to cross-border providers, the notified requirement also applies to established service providers and falls in one of the eight categories listed in regulation 22.2\(^3\) you should specify it under point 11 of this form. This will allow compliance, in this specific circumstance, with notification obligations under both regulations 28\(^2\) and 22\(^3\)(thus a separate form A will not need to be completed in such a case).

1. Member State

2. Title and references of the act containing the notified requirement (please enclose copy of the act containing the notified requirement)

3. The requirement is imposed (please tick one box below):

- [ ] by the State at national level
- [ ] by a State entity at regional level, namely __________________________
- [ ] by a State entity at local level, namely __________________________
- [ ] by another body than a State body (for example a professional body), namely __________________________

1. Regulation 24 implements Article 16 of the Services Directive
2. Regulation 28 implements Article 39(5) of the Services Directive
3. Regulation 22 implements Article 15 of the Services Directive

Please return this reporting form to BIS (servicesdirective@bis.gsi.gov.uk) who will check it and log it with the European Commission.
4. Date (or expected date) of entry into force

5. Specific provision/article in the act which contains the notified requirement

6. Services activity/ies to which the notified requirement applies (or, if relevant, indication that the notified requirement is a “horizontal” requirement which applies in a general manner across a number of service activities)

7. The notified requirement is (please tick one box below):

Regulation 24\(^1\) requires you to transmit to the Commission any new requirement falling within its scope, which you intend to apply to cross border providers established in other Member States. To facilitate notifications, examples of requirements, including those listed under regulation 22.2\(^3\), are in the list below. Requirements set out in regulation 24.2\(^1\) are also listed in this form although their application to cross border services is in principle prohibited by regulation 24\(^1\) and can only be justified in exceptional cases.

The notification obligation under regulation 28\(^2\) is not limited to the requirements mentioned in the non-exhaustive list below. If you adopt or intend to adopt requirements covered by regulation 24\(^1\) other than those listed as examples in this form, you should tick the box “another obligation on cross service providers”.

☐ an obligation on a service provider to make a declaration to or to notify a competent authority in our territory

☐ an obligation on a service provider to have an address or to designate a representative in our territory

☐ an obligation on a service provider to take out insurance or to subscribe to a guarantee or similar arrangement

☐ a quantitative or territorial restriction, in particular in the form of limits fixed according to population or of a minimum geographical distance between providers

☐ an obligation on a provider to take a specific legal form

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1. Regulation 24 implements Article 16 of the Services Directive
2. Regulation 28 implements Article 39(5) of the Services Directive
3. Regulation 22 implements Article 15 of the Services Directive

Please return this reporting form to BIS (servicesdirective@bis.gsi.gov.uk) who will check it and log it with the European Commission.
a requirement which relates to the shareholding of a company

a requirement, other than those concerning matters covered by Directive 2005/36/EC or provided for in other Community instruments, which reserves access to the service activity in question to particular providers by virtue of the specific nature of the activity

a ban on having more than one establishment in the territory of our Member State

a requirement fixing a minimum number of employees

a requirement laying down fixed minimum and/or maximum tariffs with which the provider must comply

an obligation on the provider to supply other specific services jointly with his service

an obligation on the provider to have an establishment in the territory of our Member State

an obligation on a service provider to obtain an authorisation from a competent authority, including entry in a register or registration with a professional body or association in our territory, except where provided for in the Services Directive or other instruments in Community law

a ban on a service provider setting up a certain form or type of infrastructure in our territory, including an office or chambers, which the provider needs in order to supply the services in question

the application of specific contractual arrangements between the provider and the recipient which prevent or restrict service provision by the self-employed

an obligation on the provider to possess an identity document issued by our competent authorities specific to the exercise of a service activity

requirements, except for those necessary for health and safety at work, which affect the use of equipment and material which are an integral part of the service provided

1. Regulation 24 implements Article 16 of the Services Directive
2. Regulation 28 implements Article 39(5) of the Services Directive
3. Regulation 22 implements Article 15 of the Services Directive

Please return this reporting form to BIS (servicesdirective@bis.gsi.gov.uk) who will check it and log it with the European Commission.
☐ a requirement imposed on service recipients mentioned in Article 19 of the Services Directive

☐ Another obligation imposed on cross border service providers

8. Short description of the notified requirement

9. The application of the notified requirement to cross border service providers is considered to be justified for reasons of

☐ public policy
☐ public security
☐ public health
☐ protection of the environment

10. Detailed statement of grounds: reason why you consider the application of the requirement to cross-border providers to be non-discriminatory and suitable for attaining the objective pursued and why such objective cannot be attained by a less restrictive measure

11. Is the requirement a requirement set out in regulation 22.2 or which is applicable both to cross border providers and to providers established in your Member State and is notified for the purposes at the same time of regulation 28 and 22.7?

☐ Yes
☐ No

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1. Regulation 24 implements Article 16 of the Services Directive
2. Regulation 28 implements Article 39(5) of the Services Directive
3. Regulation 22 implements Article 15 of the Services Directive

Please return this reporting form to BIS (servicesdirective@bis.gsi.gov.uk) who will check it and log it with the European Commission.
Annex C

Flowchart and Reporting Form Examples

The following examples are of authorisation schemes, requirements and Acts (made before December 28th 2009) that were screened at a national level for compliance with the Services Directive.

The worked examples and example reporting forms demonstrate how authorisation schemes, requirements and Acts should be checked for compliance with the Regulations and reported on forms A and B.

Example 1: Form A

Riding Establishment licence (Riding Establishments Act 1964)

a. Does the authorisation scheme comply with regulations 14.1-14.3, in particular is it non-discriminatory and proportionate, and can it be justified by an overriding reason relating to the public interest?

Yes, Go to A:

Please complete a reporting form setting out the reasons why you believe this is the case.

Please see example 1 – form A

b. Does the authorisation scheme comply with regulations 15.1-15.7, for example is it based on criteria that prevent power being exercised in an arbitrary manner?

Yes: No further action

c. Does the authorisation scheme comply with regulations 16.1-16.4, for example is it indefinite in duration unless there are good reasons otherwise?

Yes: No further action

d. If the number of authorisations is limited due to a shortage of natural resources or technical capacity, then does the authorisation scheme comply with regulations 17.1-17.4, for example is there a fair selection procedure?

N/A

e. Does the authorisation scheme comply with regulations 18.1-20, for example in relation to clarity, time limits, tacit consent and charges?

Yes: No further action
Example 2

The TSE testing and monitoring programme (Transmissible Spongiform Encephalopathy (England) Regulations 2008)

Is the access to or exercise of a service activity subject to any of the requirements listed in regulation 21?

Yes: Go to A

Please take steps to ensure that you comply with the Directive

For example, DEFRA during the screening process found that Paragraph 4 (3) of the Transmissible Spongiform Encephalopathy (TSE) (England) Regulations 2008 was not compliant with the Directive as it effectively debarred any laboratory outside the UK from being approved for the TSE testing programme. The revoked and remade TSE Regulations, containing an authorisation scheme which will be compliant with the Directive, have been circulated for consultation and are expected to come into force in late March 2010.

The amended authorisation scheme will be compliant with regulations 14.1-14.3 (please see the flowchart for checking the compliance with the Regulations of new authorisation schemes that are imposed on service providers who want to establish in the UK) and so will be reported on form A (see above example 1 – form A).

Example 3: Form A

Licences for supply, distribution and transmission of electricity (The Electricity (Northern Ireland) Order 1992)

Is the access to or exercise of a service activity subject to any of the requirements listed in regulation 22.2?

Yes: Does the requirement apply to a person who provides a service of general economic interest, and is it necessary and proportionate for that purpose (regulation 22.4)?

No: Go to B

Is the requirement non-discriminatory, necessary and proportionate?

Yes: C – Please complete a reporting form setting out the reasons why you believe this is the case

Please see example 3 – form A

Example 4: Form B

Animal Boarding Establishment licence (Animal Boarding Establishments Act 1963)

Is the access to or exercise of a service activity subject to any requirements, in particular those listed in regulations 24.1 and 24.2?

Yes: Does the requirement comply with regulations 24.1 to 24.3?

Yes: C – Please complete a reporting form setting out the reasons why you believe this is the case

Please see example 4 – form B
EXAMPLE 1 – REPORTING FORM A

FORM FOR THE NOTIFICATION OF NEW REQUIREMENTS APPLICABLE TO ESTABLISHED PROVIDERS IN THE UK AND FALLING WITHIN REGULATIONS 22 AND 14 OF THE PROVISION OF SERVICES REGULATIONS 2009

This form should be used to notify new laws, regulations or administrative provisions containing requirements falling within one of the eight categories listed in regulation 22.2\(^1\) that you intend to apply to service providers established in the UK. This will allow compliance with notification obligations under regulation 22.7\(^1\).

This form should also be used to notify new authorisation schemes that fall within the scope of regulation 14\(^2\) that you intend to apply to services providers established in the UK. Please indicate this by not ticking any of the boxes under point 7 and stating under point 8 that the authorisation scheme only applies to those established in the UK.

1. Member State
   UK – England

2. Title and references of the act containing the notified requirement (please enclose copy of the act containing the notified requirement)
   http://www.opsi.gov.uk/acts/acts2006/pdf/ukpga_20060045_en.pdf and
   http://www.defra.gov.uk/animalh/welfare/act/las_qanda.htm

3. The requirement is imposed [please tick one box below]:
   - [ ] by the State at national level
   - [ ] by a State entity at regional level, namely ____________________________
   - [ ] by a State entity at local level, namely ____________________________
   - [ ] by another body than a State body (for example a professional body), namely ____________________________

1 Regulation 22 implements Article 15 of the Services Directive
2 Regulation 14 implements Article 9 of the Services Directive

Please return this reporting form to BIS (servicesdirective@bis.gsi.gov.uk) who will check it and log it with the European Commission.
4. Date (or expected date) of entry into force
N/A

5. Specific provision/article in the act which contains the notified requirement
Section 1

6. Services activity/ies to which the notified requirement applies (or, if relevant, indication that the notified requirement is a “horizontal” requirement which applies in a general manner across a number of service activities)
Riding Establishments

7. The notified requirement is (please tick one box below):

☐ a quantitative or territorial restriction, in particular in the form of limits fixed according to population or of a minimum geographical distance between providers

☐ an obligation on a provider to take a specific legal form

☐ a requirement which relates to the shareholding of a company

☐ a requirement, other than those concerning matters covered by Directive 2005/36/EC or provided for in other Community instruments, which reserves access to the service activity in question to particular providers by virtue of the specific nature of the activity

☐ a ban on having more than one establishment in the territory of our Member State

☐ a requirement fixing a minimum number of employees

☐ a requirement laying down fixed minimum and/or maximum tariffs with which the provider must comply

☐ an obligation on the provider to supply other specific services jointly with his service

8. Short description of the notified requirement

A valid licence issued by the relevant local authority is required to keep a riding establishment. An applicant must be over 18 years of age, and not be disqualified from running a similar animal establishment or from keeping animals. They must also be suitable and qualified (either by experience or through holding an approved certificate).

This authorisation scheme only applies to those established in the UK (and so this is why none of the tick boxes have been ticked in point 7).

1 Regulation 22 implements Article 15 of the Services Directive
2 Regulation 14 implements Article 9 of the Services Directive

Please return this reporting form to BIS (servicesdirective@bis.gsi.gov.uk) who will check it and log it with the European Commission.
9. Is the notified requirement necessary for the fulfilment of a particular task assigned to a service of general economic interest (in accordance with regulation 22.4)?

☐ Yes (go to questions 9a and 9b to complete the notification – In this case questions 10 and 11 do not need to be answered)

☐ No (go to questions 10 and 11 to complete the notification)

9a. What is the service of general economic interest?
N/A

9b. What is the task assigned to the service of general economic interest and why is the requirement necessary for the fulfilment of that particular task?
N/A

10. What is the overriding reason relating to the public interest that you consider justifies the adoption of the notified requirement?

Public policy, protection of animal welfare.

11. Detailed statement of grounds: reason why you consider that the notified requirement is non-discriminatory and suitable for attaining the pursued objective and why this objective cannot be attained by a less restrictive measure?

The authorisation scheme is justified as public policy in accordance with Recital 41 of the Directive concerning issues relating to the protection of animal welfare. It is also justified for the protection of recipients of services.

It is non-discriminatory, applying to all nationalities.

It is proportionate, ensuring the minimum standards necessary to achieve adequate welfare conditions for animals.

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1 Regulation 22 implements Article 15 of the Services Directive
2 Regulation 14 implements Article 9 of the Services Directive
3 According to Article 4(8) of the Services Directive, “overriding reasons relating to the public interest” means reasons recognised as such in the case-law of the Court of Justice, including the following grounds: public policy, public security, public safety, public health preserving the financial equilibrium of the social security system, the protection of consumers, recipients of services and workers, fairness of trade transactions, combating fraud, the protection of the environment and urban environment, the health of animals, intellectual property; the conservation of the national historic and artistic heritage; social policy objectives and cultural policy objectives. This list is not exhaustive and other public interest objectives pursued by Member States with the adoption of a specific measure could also constitute overriding reasons relating to the public interest for the purposes of the Services Directive. However, it has to be noted that, according to the constant case-law of the European Court of Justice, economic reasons, such as the protection of competitors, cannot constitute overriding reasons capable to justify restrictions to the fundamental freedoms of the Internal Market.

Please return this reporting form to BIS (servicesdirective@bis.gsi.gov.uk) who will check it and log it with the European Commission.
EXAMPLE 3 – REPORTING FORM A

FORM FOR THE NOTIFICATION OF NEW REQUIREMENTS APPLICABLE TO ESTABLISHED PROVIDERS IN THE UK AND FALLING WITHIN REGULATIONS 22 AND 14 OF THE PROVISION OF SERVICES REGULATIONS 2009

This form should be used to notify new laws, regulations or administrative provisions containing requirements falling within one of the eight categories listed in regulation 22.21 that you intend to apply to service providers established in the UK. This will allow compliance with notification obligations under regulation 22.71.

This form should also be used to notify new authorisation schemes that fall within the scope of regulation 142 that you intend to apply to services providers established in the UK. Please indicate this by not ticking any of the boxes under point 7 and stating under point 8 that the authorisation scheme only applies to those established in the UK.

1. Member State
   UK-Northern Ireland

2. Title and references of the act containing the notified requirement (please enclose copy of the act containing the notified requirement)

   The Electricity (Northern Ireland) Order 1992 –
   Part II – Articles 8 – 19 inclusive (Licences)

   This legislation applies in Northern Ireland only and is managed by the NI Authority for Utility Regulation (NIAUR).

3. The requirement is imposed (please tick one box below):

   ■ by the State at national level
   □ by a State entity at regional level, namely ____________________________
   □ by a State entity at local level, namely ____________________________
   □ by another body than a State body (for example a professional body), namely ____________________________

1 Regulation 22 implements Article 15 of the Services Directive
2 Regulation 14 implements Article 9 of the Services Directive

Please return this reporting form to BIS (servicesdirective@bis.gsi.gov.uk) who will check it and log it with the European Commission.
4. Date (or expected date) of entry into force
N/A

5. Specific provision/article in the act which contains the notified requirement
Part II – Articles 8 – 19

6. Services activity/ies to which the notified requirement applies (or, if relevant, indication that the notified requirement is a “horizontal” requirement which applies in a general manner across a number of service activities)
Licences for supply, distribution and transmission of electricity

7. The notified requirement is (please tick one box below):

☐ a quantitative or territorial restriction, in particular in the form of limits fixed according to population or of a minimum geographical distance between providers

☐ an obligation on a provider to take a specific legal form

☐ a requirement which relates to the shareholding of a company

☐ a requirement, other than those concerning matters covered by Directive 2005/36/EC or provided for in other Community instruments, which reserves access to the service activity in question to particular providers by virtue of the specific nature of the activity

☐ a ban on having more than one establishment in the territory of our Member State

☐ a requirement fixing a minimum number of employees

☐ a requirement laying down fixed minimum and/or maximum tariffs with which the provider must comply

☐ an obligation on the provider to supply other specific services jointly with his service

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1 Regulation 22 implements Article 15 of the Services Directive
2 Regulation 14 implements Article 9 of the Services Directive

Please return this reporting form to BIS (servicesdirective@bis.gsi.gov.uk) who will check it and log it with the European Commission.
8. Short description of the notified requirement

The Electricity (Northern Ireland) Order 1992 allows the Department of Enterprise, Trade and Investment and the Northern Ireland Authority for Utility Regulation to give consent to parties who make an application to one of the following functions within electricity – supply, distribution and transmission. In order to carry out these functions legally within Northern Ireland, a potential licensee is required to hold a licence approved from the Department and the Utility Regulator.

The principal statutory objective of the Utility Regulator in carrying out its electricity functions is to protect the interests of consumers by authorised suppliers, wherever appropriate by promoting effective competition between persons engaged in, or in commercial activities connected with, the distribution, transmission and supply of electricity.

Persons wishing to operate in electricity supply, distribution or transmission are approved by the Department and the Utility Regulator under the Electricity Order. Such persons must demonstrate that they are fit and proper persons to operate within the electricity industry and that they possess the necessary technical competence in the type of work carried out.

Guidelines on licence applications, in order to operate within the electricity industry, are available on the Utility Regulator’s website (“Plain Mans Guide” for Electricity Licensing). The application form and the timetable for the consideration of electricity supply, distribution and transmission applications is solely dealt with by the Utility Regulator.

9. Is the notified requirement necessary for the fulfilment of a particular task assigned to a service of general economic interest (in accordance with regulation 22.41)?

☐ Yes (go to questions 9a and 9b to complete the notification – In this case questions 10 and 11 do not need to be answered)

☐ No (go to questions 10 and 11 to complete the notification)

9a. What is the service of general economic interest?

N/A

9b. What is the task assigned to the service of general economic interest and why is the requirement necessary for the fulfilment of that particular task?

N/A

1 Regulation 22 implements Article 15 of the Services Directive
2 Regulation 14 implements Article 9 of the Services Directive

Please return this reporting form to BIS (servicesdirective@bis.gsi.gov.uk) who will check it and log it with the European Commission.
10. What is the overriding reason relating to the public interest that you consider justifies the adoption of the notified requirement?

Protection of recipients of services, protection of consumers

11. Detailed statement of grounds: reason why you consider that the notified requirement is non-discriminatory and suitable for attaining the pursued objective and why this objective cannot be attained by a less restrictive measure?

The objective cannot be attained by a less restrictive measure as electricity is a regulated utility and must continue to be so for the protection of Northern Ireland consumers and for recipients of electricity services such as supply, distribution and transmission.

Persons wishing to operate in electricity supply, distribution or transmission are approved by the Department and the Utility Regulator under the Electricity Order. Such persons must demonstrate that they are fit and proper persons to operate within the electricity industry and that they possess the necessary technical competence in the type of work carried out.

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1 Regulation 22 implements Article 15 of the Services Directive
2 Regulation 14 implements Article 9 of the Services Directive
3 According to Article 4(8) of the Services Directive, “overriding reasons relating to the public interest” means reasons recognised as such in the case-law of the Court of Justice, including the following grounds: public policy, public security, public safety, public health preserving the financial equilibrium of the social security system, the protection of consumers, recipients of services and workers, fairness of trade transactions, combating fraud, the protection of the environment and urban environment, the health of animals, intellectual property, the conservation of the national historic and artistic heritage; social policy objectives and cultural policy objectives. This list is not exhaustive and other public interest objectives pursued by Member States with the adoption of a specific measure could also constitute overriding reasons relating to the public interest for the purposes of the Services Directive. However, it has to be noted that, according to the constant case-law of the European Court of Justice, economic reasons, such as the protection of competitors, cannot constitute overriding reasons capable to justify restrictions to the fundamental freedoms of the Internal Market.

Please return this reporting form to BIS (servicesdirective@bis.gsi.gov.uk) who will check it and log it with the European Commission.
EXAMPLE 4 – REPORTING FORM B

FORM FOR THE NOTIFICATION OF NEW REQUIREMENTS COVERED BY REGULATION 24 OF THE PROVISION OF SERVICES REGULATIONS 2009 THAT YOU INTEND TO APPLY TO CROSS-BORDER PROVIDERS ESTABLISHED IN OTHER MEMBER STATES.

This form should be used to notify new laws, regulations or administrative practices containing requirements falling within the scope of regulation 24\(^1\) that you intend to apply to cross border service providers. This will allow compliance with notification obligations under regulation 28\(^2\).

If, in addition to it being applicable to cross-border providers, the notified requirement also applies to established service providers and falls in one of the eight categories listed in regulation 22.2\(^3\) you should specify it under point 11 of this form. This will allow compliance, in this specific circumstance, with notification obligations under both regulations 28\(^2\) and 22\(^3\) (thus a separate form A will not need to be completed in such a case).

1. Member State
   UK – England

2. Title and references of the act containing the notified requirement (please enclose copy of the act containing the notified requirement)

Animal Welfare licensing/registration legislation:
- the Animal Boarding Establishments Act 1963

3. The requirement is imposed (please tick one box below):
   ■ by the State at national level
   □ by a State entity at regional level, namely ________________________________
   □ by a State entity at local level, namely ________________________________
   □ by another body than a State body (for example a professional body), namely ________________________________

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1 Regulation 24 implements Article 16 of the Services Directive
2 Regulation 28 implements Article 39(5) of the Services Directive
3 Regulation 22 implements Article 15 of the Services Directive

Please return this reporting form to BIS (servicesdirective@bis.gsi.gov.uk) who will check it and log it with the European Commission.
4. **Date (or expected date) of entry into force**

Section 1

5. **Specific provision/article in the act which contains the notified requirement**

Businesses that run dog kennels and catteries

6. **Services activity/ies to which the notified requirement applies (or, if relevant, indication that the notified requirement is a “horizontal” requirement which applies in a general manner across a number of service activities)**

Licences for supply, distribution and transmission of electricity

7. **The notified requirement is (please tick one box below):**

   Regulation 24\(^1\) requires you to transmit to the Commission any new requirement falling within its scope, which you intend to apply to cross border providers established in other Member States. To facilitate notifications, examples of requirements, including those listed under regulation 22.2\(^3\), are in the list below. Requirements set out in regulation 24.2\(^1\) are also listed in this form although their application to cross border services is in principle prohibited by regulation 24\(^1\) and can only be justified in exceptional cases.

   The notification obligation under regulation 28\(^2\) is not limited to the requirements mentioned in the non-exhaustive list below. If you adopt or intend to adopt requirements covered by regulation 24\(^1\) other than those listed as examples in this form, you should tick the box “another obligation on cross service providers”.

   - □ an obligation on a service provider to make a declaration to or to notify a competent authority in our territory
   - □ an obligation on a service provider to have an address or to designate a representative in our territory
   - □ an obligation on a service provider to take out insurance or to subscribe to a guarantee or similar arrangement

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1 Regulation 24 implements Article 16 of the Services Directive
2 Regulation 28 implements Article 39(5) of the Services Directive
3 Regulation 22 implements Article 15 of the Services Directive

Please return this reporting form to BIS (servicesdirective@bis.gsi.gov.uk) who will check it and log it with the European Commission.
☐ a quantitative or territorial restriction, in particular in the form of limits fixed according to population or of a minimum geographical distance between providers

☐ an obligation on a provider to take a specific legal form

☐ a requirement which relates to the shareholding of a company

☐ a requirement, other than those concerning matters covered by Directive 2005/36/EC or provided for in other Community instruments, which reserves access to the service activity in question to particular providers by virtue of the specific nature of the activity

☐ a ban on having more than one establishment in the territory of our Member State

☐ a requirement fixing a minimum number of employees

☐ a requirement laying down fixed minimum and/or maximum tariffs with which the provider must comply

☐ an obligation on the provider to supply other specific services jointly with his service

☐ an obligation on the provider to have an establishment in the territory of our Member State

☐ an obligation on a service provider to obtain an authorisation from a competent authority, including entry in a register or registration with a professional body or association in our territory, except where provided for in the Services Directive or other instruments in Community law

☐ a ban on a service provider setting up a certain form or type of infrastructure in our territory, including an office or chambers, which the provider needs in order to supply the services in question

☐ the application of specific contractual arrangements between the provider and the recipient which prevent or restrict service provision by the self-employed

1 Regulation 24 implements Article 16 of the Services Directive
2 Regulation 28 implements Article 39(5) of the Services Directive
3 Regulation 22 implements Article 15 of the Services Directive

Please return this reporting form to BIS (servicesdirective@bis.gsi.gov.uk) who will check it and log it with the European Commission.
an obligation on the provider to possess an identity document issued by our competent authorities specific to the exercise of a service activity

requirements, except for those necessary for health and safety at work, which affect the use of equipment and material which are an integral part of the service provided

a requirement imposed on service recipients mentioned in Article 19 of the Services Directive

Another obligation imposed on cross border service providers

8. Short description of the notified requirement

Under section 1 of the Animal Boarding Establishments Act 1963, no-one shall keep an animal boarding establishment (catteries and dog kennels) except under the authority of a licence granted in accordance with the provisions of the Act unless they have a valid licence issued by the relevant local authority. An applicant must be over 19 years’ of age and not be disqualified from running a similar animal establishment or from keeping animals.

In deciding whether to grant a licence, the local authority must give consideration to the welfare conditions (e.g. animals kept in suitable accommodation, provision of suitable food and drinks, etc.)

9. The application of the notified requirement to cross border service providers is considered to be justified for reasons of

- public policy

- public security

- public health

- protection of the environment

1 Regulation 24 implements Article 16 of the Services Directive
2 Regulation 28 implements Article 39(5) of the Services Directive
3 Regulation 22 implements Article 15 of the Services Directive

Please return this reporting form to BIS (servicesdirective@bis.gsi.gov.uk) who will check it and log it with the European Commission.
10. Detailed statement of grounds: reason why you consider the application of the requirement to cross-border providers to be non-discriminatory and suitable for attaining the objective pursued and why such objective cannot be attained by a less restrictive measure.

The requirement allows local authority officers to investigate reports of poor welfare at animal boarding establishments. All the above provisions are non-discriminatory – they apply to all nationalities which may wish to provide those services. They are also proportionate – in that they ensure the minimum standards necessary to achieve adequate welfare conditions for animals. The requirement for operators of the above establishments to be licensed/registered is justified as public policy in accordance with Recital 41 of the Directive concerning issues relating to the protection of animal welfare.

11. Is the requirement a requirement set out in regulation 22.2\(^3\) which is applicable both to cross border providers and to providers established in your Member State and is notified for the purposes at the same time of regulation 28\(^2\) and 22.7\(^3\)?

- Yes
- No

1 Regulation 24 implements Article 16 of the Services Directive
2 Regulation 28 implements Article 39(5) of the Services Directive
3 Regulation 22 implements Article 15 of the Services Directive

Please return this reporting form to BIS (servicesdirective@bis.gsi.gov.uk) who will check it and log it with the European Commission.