



New information requirements for service providers: the Provision of Services Regulations 2009

The EU Services Directive (2006/123/EC) has been implemented in the UK by the Provision of Services Regulations 2009 with effect from 28 December 2009. As a result, most businesses providing services (as opposed to goods) in the UK (wherever they are based) (**service providers**) are now subject to additional requirements on the information they provide to their clients/customers. Service providers should review their documentation, websites and procedures to ensure compliance with the Regulations.

Services caught by the Regulations

The Regulations apply to any economic activity normally provided for remuneration other than employment contracts. Certain services are specifically excluded, including financial services, such as banking, insurance, pensions and investment advice, electronic communications services and networks, transport services, audio visual services, including cinema and radio broadcasting, gambling activities, social services relating to social housing, childcare and support of families and persons in need, private security services and services provided by notaries or bailiffs.

The Regulations will apply to B2B and B2C services and services combining both B2B and B2C elements. As mentioned above, sale of goods will be excluded, as will the manufacture of goods. However, any after-sales type services or maintenance would be likely to fall within the requirements of the Regulations.

Information to be provided

Unless a service falls into one of the excluded categories summarised above, the service provider must make certain specified information available to its clients/customers. A checklist of the information required to be made available is set out at the end of this bulletin.

Ways to make the information available

Information can be made available in the following ways:

- by being provided to the customer on the service provider's own initiative;
- by the information being easily accessible to the customer at the place where the service is provided or where the contract for the services is concluded;
- by the information being easily accessible to the customer electronically by means of an address supplied by the service provider (e.g. on its website); or
- by the information being provided in any information document supplied to the customer by the service provider in which the service provider gives a detailed description of the service.

Quality and timing of information

Unless the information is requested by a client after conclusion of the contract, service providers must make available or supply the necessary information in a clear and unambiguous manner and in good time before the conclusion of the contract or (if there is no written contract) before the service is actually provided. This will give clients/customers enough time to review the information and change their mind about entering into the contract.

Complaints handling

When a service provider receives a complaint from a customer, the Regulations require the service provider to respond to the complaint "as quickly as possible" and to make its best efforts to find a satisfactory solution to any complaint. The Regulations do not set a time limit or provide any further definition of what is meant by "as quickly as possible". However, the Department for Business Innovation & Skills (BIS) has published guidance on the Regulations, which indicates that factors to

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consider will include the means and ease by which the customer can be contacted, the nature and complexity of the case in question, the availability of the customer, whether information is needed from a third party and language issues.

The Regulations and guidance also clarify that service providers are not expected to make best efforts to find a satisfactory solution in the case of vexatious complaints, such as a complaint which is clearly unsubstantiated or malicious. However, the BIS guidance goes on to state that this would not be a reason to avoid replying to complaints which are merely annoying or inconvenient.

Discriminatory provisions

The Regulations also provide that a service provider must not include discriminatory provisions relating to the place of residence of customers who are individuals in its general conditions of access to any service which the service provider makes available to the public at large. "Place of residence" could refer to a town, region or country (discrimination on grounds of nationality is already prohibited under existing Regulations). It is possible however to apply different conditions of access to a service where these are justified by "objective criteria". BIS gives examples of objective criteria such as additional costs incurred because of the distance involved or the technical characteristics of the provision of the service and different market conditions, such as higher or lower demand influenced by seasonality, different holiday periods or pricing by difference competitors.

Enforcement

If breach of the Regulations harms the collective interest of consumers (either consumers generally or a defined group of consumers) enforcement bodies such as the Office of Fair Trading and Local Authority trading standards teams may be able to bring an action against a service provider. However, individual customers (business or consumer) will generally need to seek redress on their own initiative, including by taking action through the courts.

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Checklist of information required

All of the following information must be made available to clients/customers. Much of this will already be available from service providers' websites and business letterhead. However, some of the requirements are new:

- Contact details of where clients/customers can send a complaint or ask for information about the service, including a telephone number, the official address of the service provider (e.g. its registered office or equivalent), and either a postal address, a fax number or an email address
- The name of the service provider
- The service provider's legal status and form (e.g. sole trader, limited company, limited liability partnership, etc.)
- The geographic address at which the service provider is established and details by which it may be contacted rapidly and communicated with directly (including, where available, electronic contact details)
- Where the service provider is registered in a trade or similar public register, the name of the register and the service provider's registration number or other means of identification in the register
- Where the service activity is subject to authorisation in the UK, the particulars of the relevant competent authority or details of the Business Link website address (www.businesslink.gov.uk) (which will include details of competent authorities)
- Where the activity is subject to a scheme equivalent to an authorisation scheme in another EEA state, the particulars of the relevant regulatory authority or body equivalent to Business Link in that state
- Where the service provider is subject to VAT, its VAT registration number
- Where the service provider carries on a regulated profession, details of any professional body or similar institution with which the service provider is registered, the professional title and the EEA state in which that title has been granted
- The general terms and conditions, if any, used by the service provider
- The existence of contractual terms, if any, used by the service provider concerning the competent courts or the law applicable to the contract
- The existence of any after-sales guarantee not imposed by law
- The price of the service, where that price is pre-determined
- The main features of the service, if not already apparent from the context
- Where the service provider is required to hold any professional liability insurance or guarantee, information about that insurance or guarantee including the contact details of the insurer or guarantor and the territorial coverage of the insurance or guarantee

Further information to be supplied on request

On request from a client/customer, a service provider must provide the following information:

- Where the price is not pre-determined for a given type of service, the price of the service or, if an exact price cannot be given, the method for calculating the price so that it can be checked by the client/customer, or a sufficiently detailed estimate

- Where the service provider carries on a regulated profession, a reference to the professional rules applicable in the EU state in which it is established and how to access them
- Information on other activities undertaken by the service provider which are directly linked to the service in question and on the measures taken to avoid conflicts of interest (and this information must also go in any information document in which the provider gives a detailed description of the service)
- Any codes of conduct to which the service provider is subject and the address at which those codes may be consulted by electronic means, specifying the language available

Information about dispute resolution

Any service provider who is subject to a code of conduct, or who is a member of a trade association or professional body which provides a non-judicial dispute resolution procedure must also:

- inform its clients/customers of that fact; and
- mention the fact in any information document in which the provider gives a detailed description of the service, specifying how to access detailed information about the procedure.

"Information documents"

Any of the required information may be provided in any "information document" supplied to a client/customer setting out more detailed information about the service to be provided, but the following information must be included if the service provider has any such "information documents":

- The fact that the service provider is subject to a code of conduct, or is a member of a trade association or professional body which provides a non-judicial dispute resolution procedure and details of how to access detailed information about the procedure.
- Information on other activities undertaken by the service provider which are directly linked to the service in question and on the measures taken to avoid conflicts of interest.

