

Review

Commercial & IP



Draft Services Regulations: Providing services in the EU

The Department of Business, Innovation and Skills (BIS) has recently published the draft Services Regulations (the Regulations) which implement the Services Directive (2006/123/EC) in the UK.

The Regulations are aimed at reducing and simplifying administrative provisions in Member States in order to facilitate greater provision of cross-border services within the EU, which should be of benefit to UK businesses who want to enter the EU market. Whilst the majority of obligations within the Regulations fall on regulatory and state bodies there are a number of obligations which apply directly to businesses supplying services within the UK.

The deadline for implementation of the Directive throughout the Member States is 27 December 2009. BERR is inviting interested parties to comment on the Regulations, which must be submitted by 9 July 2009.

AIM OF THE SERVICES DIRECTIVE

There are currently a number of barriers to providing cross-border services within the EU which deter businesses from expanding their operations within Europe and hinder growth, consumer choice and free competition. Recent reports have shown that services account for only 20% of cross-border trade in the EU despite accounting for 70% of GDP in the EU.

Some examples of barriers include difficulties in sourcing information on what formalities or authorisations are required, nationality restrictions, burdensome authorisation procedures and requirements to provide excessive financial guarantees (making it difficult for SMEs to compete with larger businesses).

The Directive aims to abolish restrictive legislation and practices which hinder cross-border provision of services and to simplify any permitted administrative procedures and requirements. The Directive also provides that Member States must ensure that any procedures or requirements are proportionate and do not discriminate against businesses which are established in a different EU country. Note that the Member States are free to impose any formalities and requirements that they see fit on businesses which are established outside of the EU.

Furthermore, the Directive requires Member States to establish a 'Point of Single Contact' through which businesses will have access to information and will be able to complete any formalities necessary to provide services in that Member State. In the UK this will be set up through the Business Link website. 'Competent Authorities' (regulators and licence issuers) in each Member State will also be required to cooperate in the supervision of service providers including carrying out checks, inspections and investigations when requested to do so by a Competent Authority in another Member State.

WHICH SECTORS WILL BE AFFECTED?

The Directive applies to many service sectors including:

- **Services to businesses:** marketing, advertising, consultancy, maintenance, commercial agents.
- **Services to both businesses and consumers:** estate agents, architects, distributive trades.
- **Services to consumers:** tourism, tour operators, leisure services, sports centres, plumbers, electricians, decorators.

There are a number of barriers to providing cross-border services within the EU which deter businesses from expanding their operations.

The Directive does not apply to a number of specifically excluded service sectors including financial services, electronic communications, transport, healthcare, temporary work agencies, audiovisual services and gambling.

WHAT WILL BUSINESSES HAVE TO DO?

Most of the obligations under the Regulations fall upon the Member States themselves to establish the Point of Single Contact and communicate with other Member States. However, the Regulations do oblige businesses providing services in the UK to make certain information available to their customers and to respond to complaints "as quickly as possible" using their "best efforts" to find a satisfactory solution.

Examples of the information that must be made available includes details of where customers can send a complaint or a request for information, the provider's name, address and legal status, details of any trade registrations or authorisation schemes to which they are subject, the provider's VAT number, any general terms and conditions or contractual terms used, the main features of the service, any after sale guarantees and details of any professional liability insurance which the provider is required to hold.

The information will be deemed to be made available where it is supplied to the customer on the service provider's own initiative, is easily accessible to the customer either by way of a website notified to the customer or at the place where the service is provided or it appears in any information supplied to the customer. The Regulations provide that the information is to be made available prior to the service being carried out and any contract being formed.

The Regulations are also unclear on what the consequences will be for any business found to be in breach. Provision is made for injunctive action to be brought by the Office of Fair Trading and various public and consumer bodies in circumstances where the breach is harmful to the collective interest of consumers, however, there is no specific provision which clarifies the position where the breach affects businesses. This is hopefully something that will be clarified by BERR in the final draft.

WHAT SHOULD BUSINESSES DO NOW?

The Regulations are currently only in draft form and may be subject to change prior to the deadline for implementation on 27 December 2009. Whilst there may be some change to the obligations falling on businesses it is unlikely that they will be reduced to any significant extent. As such, whilst there is no need for businesses to take any action at this time, businesses should be prepared to take steps to comply with the disclosure and complaints handling obligations when the final draft of the Regulations is published.

FURTHER INFORMATION

For more information relating to this article, please contact:

Tom Bridgford

Partner

T: +44 (0)161 830 5368

E: tom.bridgford@hammonds.com

WWW.HAMMONDS.COM

If you do not wish to receive further legal updates or information about our products and services, please write to: Richard Green, Hammonds LLP, Freepost, 2 Park Lane, Leeds, LS3 2YY or email richard.green@hammonds.com.

These brief articles and summaries should not be applied to any particular set of facts without seeking legal advice. © Hammonds LLP 2009.

Hammonds LLP is a limited liability partnership registered in England and Wales with registered number OC 335584 and is regulated by the Solicitors Regulation Authority of England and Wales. A list of the members of Hammonds LLP and their professional qualifications is open to inspection at the registered office of Hammonds LLP, 7 Devonshire Square, London EC2M 4YH. Use of the word "Partner" by Hammonds LLP refers to a member of Hammonds LLP or an employee or consultant with equivalent standing and qualification.