

# Review

## Commercial & IP

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## The Provision of Services Regulations 2009

The Provision of Services Regulations 2009 (the Regulations) implement the EU Services Directive (2006/123/EC) into UK legislation and come into force on 28 December 2009.

The Regulations are aimed at reducing and simplifying red tape in EU Member States in order to facilitate greater provision of cross-border services within the EU, which should benefit UK businesses who want to enter the EU market. Whilst the majority of obligations in the Regulations fall on regulatory and state bodies there are a number of obligations which apply directly to businesses supplying services in the UK including the requirement to provide various pre-contractual information to customers.

### WHICH SECTORS WILL BE AFFECTED?

The Regulations apply 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.

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

Although the Regulations only apply to the provision of services, the Department for Business Innovation & Skills (BIS) has advised that retailers will fall under the Regulations where their activities are not exclusively concerned with the sale of goods; for example, where they also provide after sales services or customer advice.

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**The Regulations impose a number of obligations on businesses providing services within the UK.**

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## WHAT WILL BUSINESSES HAVE TO DO?

The Regulations oblige businesses providing services in the UK to make certain information available to their customers and also to respond to complaints “as quickly as possible” using their “best efforts” to find a satisfactory solution.

The information that must be made available is fairly detailed and includes:

- details of where customers can send a complaint or a request for information;
- the service provider’s name, address, legal status and VAT number;
- details of any trade registrations or authorisation schemes to which the service provider is subject;
- the main features of the services and details of any after sales guarantees offered;
- details of any professional liability insurance which the service provider is required to hold; and
- details of any dispute resolution procedure available under a code of conduct to which the service provider is subject or a trade organisation or professional body of which the service provider is a member.

The Regulations provide various alternative ways that the information is to be made available to customers including by way of a website notified to the customer or inclusion of the information in various pre-contractual documentation supplied to the customer.

Service providers must also make certain other information available to customers where the customer specifically requests it including the method of calculating the price where an exact price cannot be given.

Service providers also must not discriminate on the grounds of nationality or place of residence in their general terms and conditions unless it can be justified by “objective criteria”. For example, a service provider must not offer less favourable terms or refuse to supply to customers based in Manchester as compared to those based in London, unless it can be objectively justified. There is little guidance on what “objective criteria” means but BIS has suggested that additional costs, market conditions and lack of necessary intellectual property rights in a particular territory may qualify.

## WHAT ARE THE CONSEQUENCES OF NON-COMPLIANCE?

The Office of Fair Trading and various other consumer bodies are able to take action against businesses in breach of the Regulations where the breach harms the collective interests of consumers. However, businesses and individual consumers are left to seek redress for any non-compliance on their own initiative through the courts.

## WHAT SHOULD BUSINESSES DO NOW?

Businesses that fall under the Regulations should review their practices to ensure that all necessary information is provided to customers in accordance with the Regulations, that complaints are properly and efficiently handled and that any difference in terms offered to customers in different places of residence are objectively justifiable.

## FURTHER INFORMATION

For further information on the impact of the Regulations please contact:



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