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DRAFT STATUTORY INSTRUMENTS

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**2009 No.**

**The Provision of Services Regulations 2009**

**PART 3**

**DUTIES OF COMPETENT AUTHORITIES IN RELATION  
TO PROVISION OF SERVICES IN UNITED KINGDOM**

*Requirements which are prohibited or subject to evaluation*

**Prohibited requirements**

**21.—(1)** A competent authority must not make access to, or the exercise of, a service activity subject to any of the following—

- (a) discriminatory requirements based directly or indirectly on nationality or, in the case of companies, the location of the registered office, including in particular—
  - (i) nationality requirements for the provider of a service, their staff, their shareholders or members of their management or supervisory bodies;
  - (ii) a requirement that a provider, their staff, their shareholders or members of their management or supervisory bodies be resident in the United Kingdom;
- (b) a prohibition—
  - (i) on being established in more than one EEA state, or
  - (ii) on being entered in the registers of, or enrolled with professional bodies or associations of, more than one EEA state;
- (c) restrictions on the freedom of the provider of a service to choose between principal or secondary establishment, in particular—
  - (i) an obligation on the provider requiring principal establishment in the United Kingdom, or
  - (ii) restrictions on the freedom to choose between establishment in the form of an agency, branch or subsidiary;
- (d) conditions of reciprocity with the EEA state in which the provider is already established, other than conditions of reciprocity provided for in Community instruments concerning energy;
- (e) the case-by-case application of an economic test making the granting of authorisation subject to—
  - (i) proof of the existence of an economic need or market demand,
  - (ii) an assessment of the potential or current economic effects of the activity, or
  - (iii) an assessment of the appropriateness of the activity in relation to the economic planning objectives set by the competent authority;

- (f) the direct or indirect involvement of competing operators, including within consultative bodies—
    - (i) in the granting of authorisations, or
    - (ii) in the adoption of other decisions of the competent authorities;
  - (g) an obligation to provide or participate in a financial guarantee or to take out insurance from a person established in the United Kingdom;
  - (h) an obligation—
    - (i) to have been pre-registered, for a given period, in registers held in the United Kingdom, or
    - (ii) to have previously exercised the activity for a given period in the United Kingdom.
- (2) Paragraph (1)(e) does not affect planning requirements that do not pursue economic aims but serve overriding reasons relating to the public interest.
- (3) Paragraph (1)(f)—
- (a) does not prevent professional bodies and associations or other organisations acting as the competent authority, and
  - (b) does not affect the consultation of organisations, such as chambers of commerce or social partners, on matters other than individual applications for authorisation, or a consultation of the public at large.
- (4) Paragraph (1)(g)—
- (a) does not affect any requirement of insurance or a financial guarantee as such, and
  - (b) does not affect requirements relating to the participation in a collective compensation fund, for instance for members of professional bodies or organisations.