
DRAFT STATUTORY INSTRUMENTS

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

Requirements subject to evaluation

22.—(1) A competent authority must not make access to, or the exercise of, a service activity subject to any of the requirements specified in paragraph (2) unless the conditions specified in paragraph (3) are met.

(2) The requirements to which this regulation applies are—

- (a) quantitative or territorial restrictions, in particular in the form of limits fixed according to population or of a minimum geographical distance between persons providing the service;
- (b) an obligation on a provider of the service to take a specific legal form;
- (c) requirements relating to the shareholding of a company;
- (d) requirements, other than those—

- (i) concerning matters covered by Directive [2005/36/EC](#) of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications⁽¹⁾, or

- (ii) provided for in other Community instruments,

which reserve access to the service activity in question to particular persons providing the service by virtue of the specific nature of the activity;

- (e) a ban on having more than one establishment in the United Kingdom;
- (f) requirements fixing a minimum number of employees;
- (g) fixed minimum tariffs or fixed maximum tariffs (or both) with which a provider of the service must comply;
- (h) an obligation on a provider of the service to supply other specific services jointly with the service activity in question.

(3) The conditions are—

- (a) non-discrimination, that is, the requirements must be neither directly nor indirectly discriminatory with regard to—
 - (i) nationality, or
 - (ii) in the case of companies, the location of the registered office;

(1) OJNo. L255, 30.9.2005, p.22.

- (b) necessity, that is, the requirements must be justified by an overriding reason relating to the public interest;
- (c) proportionality, that is, the requirements—
 - (i) must be suitable for securing the attainment of the objective pursued, and
 - (ii) must not go beyond what is necessary to attain that objective,and it must not be possible to replace those requirements with other, less restrictive measures that attain the same result.
- (4) The preceding paragraphs of this regulation do not apply in relation to any requirement applying to a person entrusted with the provision of a service of general economic interest where the requirement is proportionate and necessary for the provision of that service by that person.
- (5) In paragraph (4) “service of general economic interest” means a service which the competent authority determines, in accordance with Community law, to be of general economic interest.
- (6) A competent authority must notify the Secretary of State of—
 - (a) any proposal to introduce a new requirement specified in paragraph (2) affecting access to, or the exercise of, a service activity, and
 - (b) the reasons for that requirement.
- (7) The notification must state the reasons why the authority considers that the application of the requirement meets the conditions in paragraph (3).