



# United Kingdom Internal Market Act 2020

## 2020 CHAPTER 27

### PART 2

#### UK MARKET ACCESS: SERVICES

#### 17 Services: overview

- (1) This Part governs the regulation of service providers in the United Kingdom.
- (2) It makes provision that limits the application and effect of authorisation requirements and regulatory requirements.
- (3) An authorisation requirement is a legislative requirement that a service provider must have the permission of a regulator before carrying on a business of providing particular services.
- (4) A regulatory requirement is a legislative requirement that would if not satisfied (whether at a particular point or on a continuing basis) prevent a service provider from carrying on a business of providing particular services.
- (5) The following are neither authorisation requirements nor regulatory requirements for the purposes of this Part—
  - (a) relevant requirements as defined for the purposes of the mutual recognition principle for goods (see section 3);
  - (b) provision of the sort described in section 24(1) or 28(1) (professional qualifications and regulation) to the extent it has the effect described there;
  - (c) a requirement that—
    - (i) is in force, or otherwise has effect, on the day before the day on which this section comes into force and has not been substantively changed after that day, or
    - (ii) comes into force, or otherwise takes effect, on or after the day on which this section comes into force if it re-enacts or replicates (without substantive change) a legislative requirement in force or having effect immediately before that day;

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*Status: This is the original version (as it was originally enacted).*

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- (d) a requirement that applies to a service provider, but which also applies to persons who do not provide services (for example, a requirement imposing duties on employers);
  - (e) a requirement to notify, or register with, a regulator;
  - (f) a requirement to provide evidence of being authorised to provide services in a part of the United Kingdom other than the part in which the requirement applies.
- (6) Subsection (5)(c) does not exclude (and, accordingly, references to authorisation requirements do include) an authorisation requirement that applies in a part of the United Kingdom if, after the relevant day, a corresponding authorisation requirement in another part of the United Kingdom is substantively changed.
- (7) For the purposes of subsection (6)—
- (a) an authorisation requirement corresponds to another authorisation requirement if it relates to the same, or substantially the same, services;
  - (b) the “relevant day” is the day before the day on which this section comes into force.
- (8) For the purposes of this section, an authorisation requirement is substantively changed if a legislative requirement that would, if not satisfied, prevent a service provider from satisfying the authorisation requirement is substantively changed.
- (9) In this Part—
- “service provider” means a person—
    - (a) that provides, or intends to provide, services in the course of the person’s business, and
    - (b) that has a permanent establishment in the United Kingdom through which that business is wholly or partly carried on;
  - “permanent establishment”—
    - (a) in relation to a company, is to be read in accordance with Chapter 2 of Part 24 of the Corporation Tax Act 2010, and
    - (b) in relation to any other person, is to be read in accordance with that Chapter but as if references in that Chapter to a company were references to that person.

## **18 Services: exclusions**

- (1) Schedule 2 contains—
- (a) a list of services specified in the first column of the table in Part 1 of that Schedule, to which section 19 (mutual recognition) does not apply;
  - (b) a list of services specified in the first column of the table in Part 2 of that Schedule, to which sections 20 and 21 (non-discrimination) do not apply;
  - (c) a list of authorisation requirements in Part 3 of that Schedule, to which section 19 does not apply;
  - (d) a list of regulatory requirements in Part 4 of that Schedule, to which sections 20 and 21 do not apply.
- (2) The Secretary of State must keep Schedule 2 under review, and may by regulations—
- (a) remove entries in the tables in Part 1 or Part 2 of that Schedule or entries in the lists in Part 3 or Part 4 of that Schedule;

- (b) amend entries in those tables or lists;
  - (c) add entries to those tables or lists.
- (3) The power under subsection (2) may, for example, be exercised to give effect to an agreement that—
  - (a) forms part of a common framework agreement, and
  - (b) provides that certain cases, matters, requirements or provision should be excluded from the application of this Part.
- (4) A “common framework agreement” is a consensus between a Minister of the Crown and one or more devolved administrations as to how devolved or transferred matters previously governed by EU law are to be regulated after IP completion day.
- (5) References in this section to devolved or transferred matters include reference to corresponding matters in England.
- (6) When determining whether a matter is a devolved or transferred matter for the purposes of this section, the following provisions are to be ignored—
  - (a) section 30A of the Scotland Act 1998;
  - (b) section 109A of the Government of Wales Act 2006;
  - (c) section 6A of the Northern Ireland Act 1998.
- (7) Regulations under subsection (2) are subject to affirmative resolution procedure.
- (8) Before making regulations under subsection (2), the Secretary of State must seek the consent of the Scottish Ministers, the Welsh Ministers and the Department for the Economy in Northern Ireland.
- (9) If consent to the making of the regulations is not given by any of those authorities within the period of one month beginning with the day on which it is sought from that authority, the Secretary of State may make the regulations without that consent.
- (10) If regulations are made in reliance on subsection (9), the Secretary of State must publish a statement explaining why the Secretary of State decided to make the regulations without the consent of the authority or authorities concerned.
- (11) In this section “devolved administrations” means—
  - (a) the Scottish Ministers,
  - (b) the Welsh Ministers, and
  - (c) a Northern Ireland department.

## **19 Services: mutual recognition of authorisation requirements**

- (1) An authorisation requirement in relation to the provision of services in one part of the United Kingdom does not apply to a person who is authorised to provide those services in another part of the United Kingdom.
- (2) A person is authorised to provide services in a part of the United Kingdom if they have the permission of a regulator that exercises regulatory functions in relation to the whole of that part to carry on a business of providing those services in that part.
- (3) But, for the purposes of this section, a person is not to be treated as authorised to provide services in a part of the United Kingdom where the permission to provide those services only relates to their provision in relation to particular premises or to a particular place or piece of infrastructure.

- (4) Subsection (1) does not apply to an authorisation requirement to the extent it can reasonably be justified as a response to a public health emergency.

## **20 Direct discrimination in the regulation of services**

- (1) A regulatory requirement that directly discriminates against a service provider is of no effect in relation to that service provider.
- (2) A regulatory requirement directly discriminates against a service provider if—
- (a) it has, or would have, the effect of treating the service provider less favourably than other service providers, and
  - (b) the reason for that less favourable treatment is the service provider's relevant connection, or lack of relevant connection, to a part of the United Kingdom.
- (3) A regulatory requirement is not to be taken to directly discriminate against a service provider to the extent the requirement can reasonably be justified as a response to a public health emergency.
- (4) For the purposes of this section, a service provider has a relevant connection to a part of the United Kingdom if the service provider—
- (a) has a registered office, place of business or residence in that part,
  - (b) provides services from that part, or
  - (c) has members, partners, officers or staff with a registered office, place of business, or residence in that part.

## **21 Indirect discrimination in the regulation of services**

- (1) A regulatory requirement that indirectly discriminates against an incoming service provider is of no effect in relation to that incoming service provider.
- (2) A regulatory requirement indirectly discriminates against an incoming service provider if—
- (a) it does not directly discriminate against the incoming service provider (within the meaning of section 20),
  - (b) it puts the incoming service provider at a relevant disadvantage,
  - (c) it has an adverse market effect, and
  - (d) it cannot reasonably be considered a necessary means of achieving a legitimate aim.
- (3) A regulatory requirement puts an incoming service provider at a relevant disadvantage if—
- (a) it puts the incoming service provider at a disadvantage in relation to the provision of services in the part of the United Kingdom in which the requirement applies, and
  - (b) it does not put, or would not put, each local service provider at that disadvantage in relation to the provision of those services in that part (at all or to the same extent).
- (4) A regulatory requirement puts a service provider at a disadvantage in relation to the provision of services in a part of the United Kingdom if it makes it in any way more difficult, or less attractive, for the service provider to provide the services in that part.

- (5) A regulatory requirement has an adverse market effect if, by putting an incoming service provider (or incoming service providers) at a relevant disadvantage in relation to the provision of services, it has a significant adverse effect on competition in the market for those services in the United Kingdom.
- (6) For the purposes of subsections (1) to (5)—
- (a) an “incoming service provider” is a service provider that—
    - (i) provides the services in the part of the United Kingdom in which the regulatory requirement applies, but
    - (ii) does not have a relevant connection to that part;
  - (b) a “local service provider” is a service provider that—
    - (i) provides the services in the part of the United Kingdom in which the regulatory requirement applies,
    - (ii) has a relevant connection to that part, and
    - (iii) does not have a relevant connection to another part of the United Kingdom;
  - (c) a service provider has a “relevant connection” to a part of the United Kingdom if the service provider—
    - (i) has a registered office, place of business or residence in that part, or
    - (ii) provides the services from that part.
- (7) In this section “legitimate aim” means one, or a combination of any, of the following aims—
- (a) the protection of the life or health of humans, animals or plants;
  - (b) the protection of public safety or security;
  - (c) the efficient administration of justice.
- (8) The Secretary of State may by regulations amend subsection (7) so as to add, vary or remove a legitimate aim.
- (9) Regulations under subsection (8) are subject to affirmative resolution procedure.
- (10) Before making regulations under subsection (8), the Secretary of State must seek the consent of the Scottish Ministers, the Welsh Ministers and the Department for the Economy in Northern Ireland.
- (11) If consent to the making of the regulations is not given by any of those authorities within the period of one month beginning with the day on which it is sought from that authority, the Secretary of State may make the regulations without that consent.
- (12) If regulations are made in reliance on subsection (11), the Secretary of State must publish a statement explaining why the Secretary of State decided to make the regulations without the consent of the authority or authorities concerned.
- (13) The application of subsection (2)(d) is to be determined with regard, in particular, to—
- (a) the effects of the requirement in all the circumstances, and
  - (b) the availability of alternative means of achieving the aim in question.

## **22 Duty to review the use of Part 2 amendment powers**

- (1) In this section “the Part 2 amendment powers” are the powers conferred by sections 18(2) and 21(8) (powers to amend certain provisions of Part 2).

- (2) The Secretary of State must, during the permitted period—
- (a) carry out a review of any use that has been made of the Part 2 amendment powers,
  - (b) prepare a report of the review, and
  - (c) lay a copy of the report before Parliament.
- (3) In carrying out the review the Secretary of State must—
- (a) consult the Scottish Ministers, the Welsh Ministers and the Department for the Economy in Northern Ireland,
  - (b) consider any relevant reports made, or advice given, by the Competition and Markets Authority under Part 4, and
  - (c) assess the impact and effectiveness of any changes made under the Part 2 amendment powers.
- (4) The permitted period is the period beginning with the third anniversary of the passing of this Act and ending with the fifth anniversary.
- (5) If either of the Part 2 amendment powers has not been used by the time the review is carried out, this section has effect—
- (a) as if the report required by subsection (2), so far as relating to that power, is a report containing—
    - (i) a statement to the effect that the power has not been used since it came into force, and
    - (ii) such other information relating to that statement as the Secretary of State considers it appropriate to give, and
  - (b) as if the requirements of subsection (3) did not apply in relation to that power.

## 23 Interpretation of Part 2

- (1) In this Part—
- “authorisation requirement” has the meaning given by section 17(3);
  - “legislative requirement” means a requirement imposed by, or by virtue of, legislation;
  - “public health emergency” means an event or a situation that is reasonably considered to pose an extraordinary threat to human health;
  - “regulator” means a person exercising regulatory functions, and includes—
    - (a) a Minister of the Crown,
    - (b) the Scottish Ministers,
    - (c) the Welsh Ministers, and
    - (d) a Northern Ireland department;
  - “regulatory requirement” has the meaning given by section 17(4).
- (2) If a function conferred by legislation may only be exercised in a way that would impose a regulatory requirement in respect of which section 20(1) or 21(1) applies, the function is to be treated as though it were a regulatory requirement for the purposes of those sections (and ignoring section 17(5)).
- (3) Subsection (2) does not affect the continuation in force or the continuing effect of a requirement of the sort described in section 17(5)(c) and not preserved by section 17(6) (existing requirements).

- (4) Any effect of section 5, 20 or 21 (direct and indirect discrimination for goods and services) is to be disregarded when considering whether a person is authorised to provide services in another part of the United Kingdom for the purposes of section 19 (mutual recognition for services).