

## Provision of Services Regulations 2009

These came into force in December 2009. They apply to most – not all – service businesses in the UK

### WHICH SERVICE PROVIDERS ARE COVERED?

Some examples of the types of services that the Regulations *will* apply to include:

- business services: management consultancy; professional services such as lawyers, accountants and actuaries; advertising; certification and testing; facilities management, including office maintenance; fitting and maintenance of equipment; renting of equipment; logistics; waste management; training providers; and the services of commercial agents.
- services provided to both business and to consumers: estate agents and letting agents; conveyancing; construction services such as architects and builders; restaurants and catering services; distributive trades; postal services; storage services; financial advisers; and the organisation of trade fairs.
- consumer services: tourism, including tour operators and tour guides; travel agents; leisure services and sports centres; child minders; amusement parks; private schools and universities; providers of post graduate studies, language schools, vocational training; driving instructors; MOT services; entertainment; beauty services; veterinarians; gardeners; cleaners; plumbers; joiners; and electricians.

### WHICH SERVICE PROVIDERS ARE NOT COVERED?

The main exclusions, as set out in regulation 2(2), are:

- Financial services, such as banking, credit, insurance and re-insurance, occupational and personal pensions, securities, investment funds, payment and investment advice.
- Electronic communications services and networks, and associated facilities and networks as defined in five 2002 Directives on electronic communications and related matters. These Directives were largely implemented in the UK by the Communications Act 2003. Such services and networks include, for example, voice telephony and electronic mail services.
- Services in the field of transport including air transport, maritime and inland waterways

transport, including port services, as well as road and rail transport, in particular urban transport, taxis and ambulances. Examples of services which are *not* covered by this exclusion (i.e. are in scope of the regulations) are removal services, car rental services, driving instructors, MOT service centres, funeral services and aerial photography services. Neither does the exclusion extend to commercial activities in ports such as shops and restaurants.

- Services of temporary work agencies. The government's view is that this exclusion covers only the hiring out and placement of workers in temporary work; other relevant services provided by the same agency are outside the exclusion and therefore in the scope of the regulations.
- Healthcare services, whether or not they are provided via healthcare facilities, and regardless of the ways in which they are organised and financed at national level, or whether they are public or private.
- Audiovisual services, including cinemas and broadcast services.
- Gambling services, which involve wagering a stake for monetary value in a game of chance, including lotteries, gambling in casinos and betting transactions.
- Social services relating to social housing, childcare and the support of families in need, where these are provided by the State, by providers mandated by the State or by charities recognised as such by the State. The government's view is that housing services provided on a charitable basis by Registered Social Landlords are out of scope of the directive. Services provided on a commercial basis by registered charitable organisations or their trading subsidiaries are, however, in scope of the directive.
- Private security services.
- Services provided by notaries and bailiffs, if or to the extent that they are appointed by an official act of government to provide those services.

The Regulations do not affect the manufacture or sale of goods. They *do* affect services applied to goods (eg: not to manufacture of cars, but to later spray painting of manufactured cars)

## WHAT IS THE EFFECT OF THE REGULATIONS?

If your business falls within the scope of the Regulations you will need to observe certain requirements about –

- the provision of information to service recipients
- the handling of complaints
- non-discrimination in your terms and conditions.

## WHAT INFORMATION MUST YOU MAKE AVAILABLE?

Regulation 8(1) provides that you must make the following information available to recipients:

- a) the name of your business.
- b) your legal status and form (for example, whether you are a sole trader or limited company).
- c) the geographic address at which you are established and details by which you may be contacted rapidly and communicated with directly and, if you can be contacted by electronic means, the relevant details (for example an e-mail address or a number for text messages).
- d) if you are registered in a trade or other similar public register, the name of that register and your registration number, or equivalent means of identification in that register. For example if your business is registered with the "Gas Safe Register" ([www.gassaferegister.co.uk](http://www.gassaferegister.co.uk)), you should state that this is the case and provide your ID number or registration number.
- e) if you are subject to an authorisation scheme in the UK, the particulars of the relevant competent authority or the [businesslink.gov.uk](http://businesslink.gov.uk) website address ([www.businesslink.gov.uk](http://www.businesslink.gov.uk)) (where details of the competent authority could be found). Following the example in (d) above, you would have to state that you are registered with CAPITA, who operate the Gas Safe Register.
- f) if you are subject to an authorisation scheme in another EEA state, the particulars of the relevant authority, or the point of single contact in that state.
- g) if you exercise an activity which is subject to VAT, the identification number.
- h) if you are carrying on a regulated profession, any professional body or similar institution with which you are registered, the professional title and the EEA state in which that title has been granted. So, for example, an insolvency

practitioner might state "I am licensed to act as an insolvency practitioner in the UK by the Association of Chartered Certified Accountants".

- i) the general terms and conditions, if any, that you use.
- j) the existence of contractual terms, if any, that you use concerning the competent courts (for example, that the English courts have jurisdiction) or the law applicable to the contract (for example, that it is governed by English law).
- k) the existence of an after-sales guarantee, if any, not imposed by law. For example, a window fitter may provide a guarantee that they will make any repairs to the windows if anything is to go wrong within a year of fitting them.
- l) the price of the service, where a price is pre-determined by your business for a given type of service. For example, the price per copy a photocopying service charges would be a pre-determined price.
- m) the main features of the service, if not already apparent from the context.
- n) if you are subject to a requirement to hold professional liability insurance or a guarantee, information about your cover and, in particular, the contact details of the insurer or guarantor and the territorial coverage. This does not mean providing full details of the insurance held, but the Consumer Protection Regulations may require such policies to be made available to consumers. Where it is the case that only you, as the provider, can lodge a claim with the insurer, or that the insurer will only deal with you as the provider, this provision does not change that. In other words, this provision does not change the recipient's legal rights with regards to the insurer.

## HOW CAN YOU MAKE THE INFORMATION AVAILABLE?

Regulation 8(2) provides that you can make this information available in any of the following ways:

- a) Supply it to the recipient on your own initiative
- b) Make it easily accessible to the recipient at the place where the service is provided or the contract concluded, for example, at your premises
- c) Make it easily accessible by the recipient electronically by means of an address you supply, for example, by providing the exact address of where the information

can be found on a publicly available website

- d) Include it in any information documents that you supply to the recipient, which set out a detailed description of the service you provide.

### **SPECIAL INFORMATION ABOUT DISPUTE RESOLUTION**

If you are subject to a code of conduct or are a member of a trade association or professional body that gives access to a non-judicial dispute resolution procedure, then you should inform the customer, mention it in any information document that describes your service in detail and specify how to access detailed information on the procedure.

You must also make available contact details where recipients can request information or make a complaint - this must include a telephone number and one or more of a postal address, fax number or e-mail address. If you have one, you should also give your official address (that is, an address required of you by law for receiving communications). If this is the same as your postal address, there is no need to give it twice.

### **EXTRA INFORMATION WHICH YOU MUST SUPPLY IF ASKED**

Additionally, regulation 9(1) provides that you must supply the following information if the recipient asks for it (you may choose to make this information available in all cases if you prefer):

- a) Where the price is not pre-determined by your business for a given type of service, the price of the service or, if an exact price cannot be given, the method for calculating the price so that it can be checked by the recipient, or a sufficiently detailed estimate.
- b) If you are carrying on a regulated profession, a reference to the professional rules applicable in your EEA state of establishment and how to access them - so recipients can easily find the rules, for example, on a website.
- c) Information on any other activities carried out by you or your business, which are directly linked to the service in question and on the measures taken to avoid conflicts of interest. That information should be included in any information document in which you give a detailed description of your services.
- d) Any codes of conduct to which you are subject and the websites from which

these codes are available, specifying the language version available.

All the information that you are required to give under Part 2 of the Regulations must be given in a clear and unambiguous manner so that it can be easily understood, taking into account the choice of words and style, as well as factors such as the format and structure. The information must also be given in good time before the contract is concluded or before the service is provided when there is no written contract. This is so that the recipient has enough time to digest the information and change their mind about entering into the contract. The duty to give information before conclusion of the contract does not apply if the consumer asks for it after conclusion of the contract (assuming that the relevant information is of the sort that you must supply if asked).

### **WHAT YOU MUST DO IF YOU RECEIVE A COMPLAINT**

You must respond to complaints as quickly as possible. Because the nature of complaints and circumstances vary so much, the regulations do not define this further or set a time limit, but factors to consider include:

- The means and ease by which the recipient can be contacted.
- The nature and complexity of a specific case.
- The availability of the complainant.
- Whether information is needed from a third party.
- Language issues.

You must also make your best efforts to find a satisfactory solution to complaints. However, you are not expected to do so in the case of vexatious complaints, which may include a complaint which is clearly unsubstantiated or malicious. You should not use this provision to avoid replying to complaints which are merely annoying or inconvenient.

If you have already responded to and done your best to resolve a complaint that is made repeatedly, you do not need to take further action. However, you do need to have made your best efforts to resolve the complaint in a way in which a recipient could reasonably be expected to be satisfied.

### **AVOIDING DISCRIMINATION**

In your general conditions, you must not discriminate on the grounds of nationality or place of residence in the general conditions you make available to the public at large. Your general

conditions include conditions found in any non-contractual material such as information in an advertisement, in promotional literature, or on a website, as well as in contractual documentation. So, for example, you cannot offer different terms and conditions, provide a different standard of service, or refuse to offer a service, on the sole basis of place of residence, which can refer to a town, region, or country. Existing obligations already prevent discrimination on grounds of nationality. The duty applies where the customer is an individual but not where it is a purely legal person (such as a company).

However, you will be able to retain different conditions where these are justified by 'objective criteria'. 'Objective criteria' are objective reasons which justify your offering different conditions according to the recipient's place of residence. It will be for you to determine what you consider to be objective criteria based on your own individual circumstances, but they could include:

- a) additional costs, incurred because of
  - i) the distance involved; or

- ii) the technical characteristics of the provision of the service
- b) different market conditions, such as higher or lower demand influenced by
  - i) seasonality;
  - ii) different holiday periods;
  - iii) pricing by different competitors;
- c) extra risks linked to rules differing between EEA states;
- d) the absence of sufficient intellectual property rights in a particular territory.

You can use objective criteria such as these to justify an outright refusal to provide the service, but this will be more difficult to justify than adapting your conditions - for example, by charging a higher price to cover any additional costs. You would need to be sure that providing the service to the relevant location would put an excessive strain on your business before refusing.

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