

BIS | Department for Business
Innovation & Skills

**THE EUROPEAN SERVICES DIRECTIVE
GUIDANCE FOR LOCAL AUTHORITIES**

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The European Services Directive Guidance for Local Authorities

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1 Introduction to the EU Services Directive

The Department for Business, Innovation and Skills (BIS) has issued this guidance to help Local Authorities implement the Services Directive in the UK¹. In order to implement the Directive effectively, we have been working with a cross section of Authorities to gain a better understanding of how practices vary across the UK. We are extremely grateful to the Local Authorities and Devolved Administrations who gave up their time to convene with us and without whose help this guidance would not have been possible: Ashford Borough Council, Wychavon District Council, Royal Borough of Kensington and Chelsea, Cumbria County Council, Blackpool Council, Somerset County Council, North Tyneside Council, Dover District Council, Conwy County Borough Council, Glasgow City Council, Newry and Mourne District Council.

Advice in this booklet is not definitive on how best to implement the Directive; it is intended to highlight suggested directions that Local Authorities may wish to take. As this is a living document, it will be revised and updated later in the year.

Benefits of the Services Directive

It is estimated that the UK economy could benefit up to £4-6 billion annually

The Directive creates significant new opportunities for UK business. It provides for the opening up of the internal market in services through the removal of unjustifiable barriers to service provision and the introduction of measures designed to create more jobs and facilitate the cross-border provision of services.

It aims to make it easier for businesses to set up in other EU countries and to provide services across national borders on a temporary or permanent basis. Some of the potential benefits of implementing the Directive are listed below:

- It is estimated that the economy could benefit up to the tune of £4 to £6 billion annually.
- Up to 80 000 new jobs could be created in the UK.
- Local Authorities may benefit from a greater choice of suppliers for those public services which are already open to competition through public tendering.

¹ Further information, including a link to the text of the Directive, can be found on our website at: <http://www.berr.gov.uk/servicesdirective>

- The removal of unnecessary administrative barriers will free up Local Authority resources.
- The processes for obtaining a number of licences to provide services will be simplified.
- There may be some reduction in the duplications of administrative processes.
- Electronic processing of licence applications will result in cost and time savings for Local Authorities.
- There will be quicker and simpler ways of co-operating with other Local Authorities and Competent Authorities² in the UK and in other EU countries.

These guidance notes are intended as signposts to help Local Authorities implement the Directive, they are not an attempt to change how they operate. Due to the generic nature of this document it is not feasible to give specific advice, therefore **it is strongly recommended that each authority seeks legal advice.**

We believe that by following advice in this booklet, Local Authorities are likely to reduce their exposure to possible legal actions from any aggrieved service providers.

2 What is the EU Services Directive?

The Services Directive must be implemented in the UK by 28 December 2009

The Directive was adopted by EU countries in December 2006. BIS carried out a public consultation³ on the best way to implement the Services Directive in November 2007. The result of this consultation was published in June 2008⁴. **BIS is required to transpose its requirements into UK law and practices before 28 December 2009.**

2 **Competent Authority** – this is used to describe a body with whom registration or membership is mandatory in law for a service provider to operate in a given sector. And/or: membership of the body is mandatory in fact / the body is set up under statute / the body has a monopoly in that sector / the body can be viewed as filling a gap in state regulation. **All Local Authorities are Competent Authorities.**

3 Consultation Document on Implementing the EU Services Directive in the UK (November 2007, BIS)

4 A link to the Consultation Document and the Government's response to it can be found at: <http://www.berr.gov.uk/servicesdirective>

The Directive aims to open up the European internal market to cross-border trade in services by making it easier for service providers to set up business or offer their services in other EU countries. It imposes a number of requirements on all EU countries. The main ones are to:

- Screen UK legislation and amend or repeal non-compliant provisions. This has to be reported back on to the Commission by 28 December 2009.
- Set up the 'Point of Single Contact' (PSC) which will enable service providers to find out what they need to do to operate legally in the UK and to complete all necessary formalities electronically.
- Enhance Administrative Cooperation between regulators in the 27 EU countries. Facilitate use of the Internal Market Information (IMI) system and a UK National Liaison Point (NLP).
- Ensure consistency in the quality of information provided by service providers and transparency of redress procedures via the setting up of a Consumer Portal.

Implementing the Directive should reduce the administrative burdens on Local Authorities

Effects of the Services Directive are likely to be felt by every Local Authority and Government Department across the UK. **Implementing the Directive effectively will reduce the administrative burdens on Local Authorities**, while enabling consumers in the UK to benefit from a greater choice of service providers and lower prices. Businesses from other EU countries will be able to trade more easily in the UK, similarly UK businesses will find it easier and faster to enter and expand into EU markets. The consequences that the Directive has for Local Authorities can be divided into 4 areas. These concern:

- The screening and possible adjustment of the existing legislation and the authorisation schemes in them that are related to the relevant services.
- The electronic completion of procedures.
- Administrative Cooperation.
- Regulations in connection with the rights of recipients of services.

3 The scope of the Directive

Article 4(1) of the Directive defines a 'service'

EU countries will have to ensure that the rules of the Directive apply to a wide variety of service activities, whether provided to business or to consumers. **Article 4(1) of the Directive provides a definition of a 'service' and other key terms.** Core public services such as education, health and social services do not fall within the scope of the Directive (although privately financed education is included). Other Local Authority run services such as leisure and waste services are considered more 'economic' in nature and will fall within its overall scope. Without being exhaustive, the following are examples of services covered by the Directive⁵.

- the activities of most of the regulated professions (such as legal and fiscal advisers, architects, engineers, accountants, surveyors)
- craftspeople
- business-related services (such as office maintenance, management consultancy, the organisation of events, recovery of debts, advertising and recruitment services)
- services in the field of tourism (such as the services of travel agencies)
- leisure services (such as services provided by sports centres and amusement parks)
- building construction and maintenance services
- services comprising the installation and maintenance of industrial or commercial equipment
- information services (such as web portals, news agency activities, publishing, computer programming activities)
- accommodation and food services (such as hotels, restaurants, catering services)
- privately financed services in the area of training and education
- rental (including car rental) and leasing services

⁵ The European Commissions handbook on implementation of the Services Directive (a link to the handbook can be found at: <http://www.berr.gov.uk/servicesdirective>)

Article 2(2) of the Directive lists some important exclusions from its scope

- real estate services
- certification and testing services
- household support services (such as cleaning services, private nannies or gardening services)

Article 2(2) of the Directive lists some important exclusions from its scope, including financial services, transport services, electronic communications and healthcare services, and certain social services. Article 17 lists some specific derogations from the freedom to provide services. However it is important to note that the Directive applies to all services apart from those specifically excluded.

- transport services (including taxis and private hire)
- gambling activities
- audio/visual activities (such as cinemas)
- private security services

4 The Relationship between the Services Directive and other Directives

- The Directive is subordinate to other EU instruments where there is a conflict between their provisions.
- The Directive does not affect:
 - criminal law rules as stated in Article 1(5)
 - labour law or social security legislation as stated in Article 1(6)
 - rules of private international law in force in each EU country, as stated in Article 3(2)
 - fundamental rights and Community law as stated in Article 1(7).

- Article 3(1) states that, *'in case of conflict between a provision of the Directive and a provision of another instrument of secondary Community law, the provision of the latter takes precedence'*. This means that in such cases the provision of the other Community instrument prevails and the provision of the Directive will not be applied⁶. It should be noted that this concerns only the specific conflicting provision and not the remaining provisions of the Directive which still apply.

5 Screening

Legislative practices must be non-discriminatory, necessary and proportionate

Service providers based in one country can be hindered in their attempts to do business in another because of the need to meet the different regulatory requirements in that country. The Directive obliges EU countries to examine all legislation and practices which regulate service provision, and check whether discriminatory, unnecessary or disproportionate provisions which act as a barrier to operating in that country exist. Where rules and requirements cannot be justified, they must be amended or repealed. As most Local Authority regulation is nationally driven, BIS has been working with Government Departments and Devolved Administrations to ensure that legislation is compliant with the Directive. A full list of Acts screened, together with the results, can be found on our website: <http://www.berr.gov.uk/servicesdirective>). The work done so far suggests that the vast majority of our legislation is compatible.

Screening at a local level

Licence applications, **authorisation schemes**⁷, approval regimes, regulations and administrative practices can be specific to a Local Authority. They therefore need to be checked in each region to ensure that they comply with the Directive's criteria. For example they must be **non-discriminatory** (apply equally to providers from all EU countries), **necessary** (justified by some genuine underlying policy objective) and **proportionate** (must not be more stringent or onerous than is necessary to tackle the particular problem it is designed to address).

⁶ The European Commission's handbook on implementation of the Services Directive (a link to the handbook can be found at: <http://www.berr.gov.uk/servicesdirective>).

⁷ **Authorisation Scheme** – this encompasses any procedure under which a provider or recipient is in effect required to obtain from a Competent Authority a formal decision, or implied decision, concerning access to a service activity, or the exercise thereof.

6 Tacit Authorisation

All Licence applications, authorisations and administrative procedures applicable to service providers must be processed within a reasonable time period, which is fixed and made public in advance. When a response to an application does not occur within the time period set (or a set extension time), the authorisation will be deemed to have been granted tacitly (see Article 13).

7 Fees charged to service providers

Fees charged to carry out services vary: they are currently either fixed in the relevant national legislation or set by individual Local Authorities. Fees set must be proportionate to the effective cost of the procedure dealt with and must not be used as an economic deterrent.

8 Point of Single Contact

Service providers and service recipients must be given clear, online information on business regulation within scope of the Directive

The principal aim of the 'Point of Single Contact' (PSC) is to ensure that service providers are able to access information relating to procedures and formalities needed for access to and exercise of their service activity and can complete those procedures and formalities electronically. The Directive requires that a service provider interested in doing business in an EU country be given comprehensive advice through the PSC about the procedures or formalities they might be subject to. We anticipate that the principal users will be small and medium enterprises (SMEs) in the UK and overseas. The UK will have a single PSC built on businesslink.gov.uk and its equivalent sites for Northern Ireland, Scotland and Wales.

A user journey for overseas service providers will be built around businesslink.gov.uk and its equivalent sites. Its aim is to promote the UK as a good place to do business and, for those who have not chosen a location, allow promotion by regions and districts. General advice about starting in the UK will be given, explaining in broad terms what is required, with emphasis on how the UK may vary from their home country. The various options for offering services cross border will be provided. The PSC will use plain English to make it more understandable and a limited amount of content may be available in other languages.

BIS will oversee delivery of the PSC and assist Local Authorities to comply with the Directive

We expect that UK users will continue to access the national business sites as they do now. Service providers will be able to get online advice tailored to the activities they perform. The advice will describe the legal requirements, their main areas of coverage and exclusion and who the regulators are, with links to them available. The site will contain contact details of the competent authorities and other associations who may provide practical assistance. The site will offer additional advice to UK businesses wanting to expand across the EU.

BIS will oversee delivery of the PSC, represent UK interests with the European Commission and other EU countries, assist Local Authorities and other regulators to comply with the Directive and promote the Directive to the business community. **The PSC is a contact point, where no substantive assessment takes place.**

Procedures exempt from PSC

Procedures that are exempt from completion through the PSC are: the inspection of premises on which the service is provided; the inspection of equipment used by the service provider; physical examination of the capability or of the personal integrity of the service provider or of his responsible staff. It may, however, still be possible to start the application process through the PSC and confirm a decision electronically.

Legal obstacles to online completion

BIS is leading a review of Legislation that inhibits online completion, with a view to Government Departments and legislators removing these obstacles by December 2009. **Local Authorities are invited to draw any such conflicts to BIS' attention.**

More detailed guidance on authenticating applicants using electronic means including the use of digital signatures is given in Annex A. BIS recommends that Local Authorities adopt a risk-based approach in considering their need for any additional authentication for applications received through the PSC.

9 Administrative Cooperation (Mutual Assistance)

Local Authorities and regulators must cooperate effectively with their counterparts in other EU countries, to ensure proper regulatory supervision of service providers operating across EU borders and the services they provide. This concerns the supply of information, undertaking of checks, informing within the shortest period of time of any conduct or specific acts by a provider that could cause serious damage, and the provision of information concerning the good repute of a provider. **Effective Administrative Cooperation will reduce regulatory burdens on businesses** in terms of the amount of information that they need to provide to relevant authorities.

Internal Market Information (IMI) system

To enable better communication the EU is building a web based information system

To enable better communication between EU countries, the European Commission is building a web-based EU **Internal Market Information system** that will allow secure messaging for regulators to communicate directly with each other, which Local Authorities are encouraged to use.

The IMI system is an internal portal, which will **allow Local Authorities and Competent Authorities in EU countries to be identified and Administrative Cooperation requests and responses to be electronically submitted to them**. It will be used to securely exchange information (such as files, documents, certificates) on service providers and share service provider registers. This will make the checking of service providers and the resolving of any disputes faster and more efficient. The system will translate any requests and replies into the relevant EU language.

Alert Mechanism

To ensure adequate protection of the public and the environment, it is vital that EU countries are quickly informed about service activities (which are provided on a cross border basis) that may cause serious damage to the health and safety of persons or the environment (see Articles 29(3) and 32). Any EU country that becomes aware of a problem must inform all other EU countries concerned and the Commission within the shortest possible time, the IMI system has been set up to facilitate these alerts. This will enable the Competent Authorities of other EU countries to react quickly, to closely supervise the service provider in question and if required take necessary preventative action in compliance with the Directive.

The Directive will allow EU countries to take action against service providers established in and regulated by another EU country

Case by case derogations

The Directive allows EU countries to take action against service providers established in and regulated by another EU country on the grounds of safety in very limited and specific cases.

The Commission is preparing guidelines for the use of the alert mechanism and case by case derogations and these will be made available later in the year. This guidance will include checklists of steps that need to be fulfilled before sending alerts or using case by case derogations.

Reporting on Administrative Cooperation breakdowns

EU countries will communicate to the Commission information on cases where other EU countries and their Competent Authorities do not fulfil their obligation of Administrative Cooperation. Where necessary, the Commission shall take appropriate steps to ensure compliance.

National Liaison Point (NLP)

There will be one NLP in the UK based in BIS, which will monitor Administrative Cooperation requests involving the UK and oversee the use of the IMI system. It will be able to direct Competent Authorities in other EU countries to their opposite number or relevant authority in the UK, as well as direct Local Authorities and Competent Authorities in the UK to NLPs in other EU countries. The NLP will be on hand to help out with any problems or disputes.

10 Quality of Services

Enhancing consumer confidence in buying services from other EU countries

The Directive clarifies the rights of service recipients in order to enhance their confidence when considering buying services from providers in other EU countries. **It aims to promote high quality service provision and enhance the rights of consumers for cross border services within the EU** while avoiding imposing unnecessary burdens on SMEs (see Articles 19-27 and 37). The Directive will increase transparency, remove restrictions on consumers' rights to access services, improve the information available to consumers about both service provisions and providers in other EU countries, and lay down means for encouraging the voluntary resolution of disputes. Of particular interest to Local Authorities are:

- Article 20(2) imposes a requirement that the general conditions of access to a service, which are made available to the public at large by the provider, do not contain discriminatory provisions relating to the nationality or place of residence of the recipient, although providers are allowed to retain differences where these can be justified by objective criteria.
- Article 22 requires service providers to make certain information about them and their services available to service recipients (who may be either consumers or businesses). This will apply to all service providers in scope of the Directive, even if they do not provide services outside the UK. In practice, these requirements should not be onerous and most reputable service providers should already be providing much of this information.
- Article 27 requires service providers to respond to complaints 'in the shortest possible time' and 'make their best efforts to find a satisfactory solution'. These concepts will be included in legislation as much as is possible and we will provide further information about this in guidance.

We intend to include these provisions under Part 8 of the Enterprise Act, which provides for enforcement by local weights and measures authorities and other organisations such as the Office of Fair Trading (OFT). This will provide for similar enforcement to existing consumer laws where there is a breach that harms the collective interests of consumers.

11 Mutual Evaluation

By 28 December 2009, every EU country will present a report to the Commission, containing the information specified in Article 39 of the Directive, including information on licence applications, authorisation schemes, approval regimes and national requirements. Following this, we will take part in a six-month peer review process considering other EU countries' implementation reports.

12 Action Points for Local Authorities

12a Other EU Directives / Community Law

If Local Authorities are carrying out certain functions in a manner prescribed by other EU Directives or Community law, generally there will be no need to change those working methods. However, Local Authorities must ensure that the way in which any such functions are carried out is due directly to the requirements of the relevant Directives or other requirements of EC law, and does not go beyond the minimum requirement of the other EU Directives.

12b Screening at a local level

Local Authorities will have to carry out the following activities:

- Verify which local regulations, including authorisation schemes, fall under the Directive and screen them.
- Verify which policy rules fall under the Services Directive and screen them.
- Adjust the regulations and policy rules that do not satisfy the criteria of the Directive.

If Local Acts or byelaws apply in your area, you must ensure that there are no unnecessary barriers to service provision.

If you think a local Act or byelaw which is contrary to the Directive can nevertheless be justified, a report will have to be made to the EU Commission. In this situation please contact BIS for advice (email: servicesdirective@bis.gsi.gov.uk).

Local Authorities must screen local legislation and administrative practices to ensure that unnecessary barriers to service provision are removed

Authorisation Scheme barriers

Authorisation scheme justification

Administrative procedures should be examined from the service providers' perspective

Local Authorities must assess whether their administrative procedures are necessary by considering their cost, duration, clarity, accessibility, possible duplication, practical difficulties and the number of different administrative procedures a service provider must undergo. **Justification for authorisation schemes caught by Article 9 can only be made for 'overriding reasons relating to the public interest'** (ORRPI⁸). Article 9 requires that if the objective pursued can be attained by means of a less restrictive measure, the appropriate legislation must be brought in line with the Directive. Administrative procedures should be examined from the service providers' perspective while keeping in mind that their simplification will in turn reduce the administrative burden for a Local Authority.

Selection from among several candidates

Under Article 12, **limitations on the number of available authorisations are only permissible if they are motivated by the scarcity of available natural resources or technical capacity**, or if they are justified by an ORRPI. Where the number of available authorisations is limited there must be a specific selection procedure in order to ensure impartiality and transparency and conditions of open competition. These authorisations may only be granted for a limited period of time and may not be renewed automatically. The period for which authorisations are granted shall be published in advance and allow the service provider to have the opportunity to recoup the cost of investment and to generate a fair return on the investment made.

⁸ **ORRPI "overriding reasons relating to the public interest"** – as defined by Article 4(8), this means reasons recognised as such in the case law of the Court of Justice, including the following grounds: public policy; public security; public safety; public health; preserving the financial equilibrium of the social security system; the protection of consumers, recipients of services and workers; fairness of trade transactions; combating fraud; the protection of the environment and urban environment; the health of animals; intellectual property; the conservation of the national historic and artistic heritage; social policy objectives and cultural policy objectives.

Duration of authorisation

According to Article 11 of the Directive, Local Authorities must ensure that authorisations granted to service providers are not for a limited period. Exceptions to this are the cases in which: the authorisation is automatically renewed or is subject only to the continued fulfilment of requirements; the number of available authorisations is limited due to an ORRPI; a limited authorisation period can be justified by an ORRPI.

Proof that a requirement has been satisfied

Local Authorities should not demand documents to be provided in an original form

The Directive (Article 8) requires that Local Authorities cannot demand originals of documents in most cases. Where Local Authorities require a provider or recipient to supply a document proving that a requirement has been satisfied, they must accept any document from another EU country which serves an equivalent purpose or from which it is clear that the requirement in question has been satisfied. It is **prohibited to request a document from another EU country to be produced in its original form, or as a certified copy or translation, unless such a requirement is justified by an ORRPI**. The mere doubt as to the authenticity of a given document, or its exact content, can be addressed by appropriate contacts between Competent Authorities (in particular with the Competent Authority which has issued the document).

Establishment related barriers

The Directive prohibits a number of requirements on the grounds that they are discriminatory. For example, **Local Authorities cannot under Article 14(1-2) of the Directive take into consideration when granting an authorisation, the nationality of service providers and their staff, the location of a company's registered office** or the number of EU countries in which service providers have establishments. Article 14(3) prohibits requirements which restrict the type of establishment (for example a principal or secondary establishment or a specific type of secondary establishment, such as an agency, branch or a subsidiary) they are allowed. EU countries (including Local Authorities) are also forbidden to enter into any condition of reciprocity with the EU country in which the service provider already has an establishment (Article 14(4)). **Article 14(5) does not allow the case-by-case application of an economic test, for example subjecting the authorisation to proof of the existence of an economic need or market demand.**

Article 15 requires Competent Authorities to evaluate all requirements that they impose on service providers which are severe obstacles to the freedom of establishment, for example limits fixed according to population or a minimum geographical distance between service providers. While the Article does not require all listed obstacles to be abolished, all Competent Authorities must evaluate the need for these requirements on the basis of the criteria of non-discrimination, necessity and proportionality and see if they could be replaced by less restrictive means. **Justification for authorisation schemes caught by Article 15 can be made for ORRPI.**

Barriers to the freedom to provide cross-border services

Article 16 lays down the right of service providers to provide services in an EU country other than the one in which they are established. This Article requires Local Authorities to abstain from imposing their own requirements on incoming service providers except where justified by the reasons listed under Article 16 (1) & (3), which include reasons of public policy, public security, public health or the protection of the environment. There are a number of requirements listed in Article 16(2) that an EU country may not place on a service provider, for example a ban on setting up a certain type of infrastructure in the receiving EU country.

12c Tacit Authorisation

Local Authorities must at the outset indicate the time it will take to grant authorisations and advise the applicant whether tacit authorisation is permissible

All authorisations, license applications and administrative procedures applicable to service providers must be processed within a reasonable time period, which is fixed and made public in advance. When a response to an application does not occur within the time period set (or a set extension time – see below), the authorisation will be deemed to have been granted tacitly unless there are good policy reasons otherwise (see Article 13).

When acknowledging all applications, Local Authorities must provide the following information: time period within which the authorisation should be granted; if tacit authorisation is applicable; exemptions from tacit authorisation together with reasons for this. Local Authorities must ensure their procedures comply with this obligation by screening all licence applications, authorisation schemes and administrative provisions. If it is felt that tacit authorisation will be problematic then please contact BIS (email: servicesdirective@bis.gsi.gov.uk). If other authorities, for example

the Police, need to check or authorise licences, this should be taken into account when publishing your target turnaround times.

Mandatory timescales will run only from the time when all valid documentation has been submitted either via the PSC or direct to the Local Authority. In the case of incomplete applications, the Local Authority must inform applicants as quickly as possible of the need to supply any additional documentation. In exceptional circumstances, the time period may be extended by the Local Authority once, only if it can be justified by the complexity of the issue. The applicant must be notified of the extension and its duration before the original time period has expired. Where applications have been made through the facilities on the PSC, Local Authorities will receive reminders when the tacit authorisation period is coming close.

All charges must be proportionate to the effective cost of the procedure dealt with

12d Fees charged to service providers

Local Authorities must set fees that are proportionate to the effective cost of the procedure dealt with. As costs vary from region to region, central advice on the level of fees will not be appropriate. Local Authorities will need to bear in mind the threat of a legal challenge should a service provider feel that the levels of fee are being used as an economic deterrent or to raise funds for Local Authorities. Enforcement costs should not be assimilated with the application fee. This is to forestall the possibility of an unsuccessful applicant seeking legal remedy due to part of his fees having been used to subsidise his successful competitors.

12e PSC

Local Authorities need to ensure that service providers can obtain all licences, authorisation schemes, approvals etc., that they require to operate their service, through the PSC and ensure that the information is accurate and kept current. This section is an overview and the PSC is under development, so please refer to <http://www.berr.gov.uk/psc> for current and detailed information.

Local Authority websites must provide business information that covers:

- How service providers apply for a permit or licence.
- Relevant contact details.
- How public registers and databases on providers and services can be accessed.
- Means of redress in the event of a dispute.

Local Authorities can supply their own content. However, BIS will be commissioning material from recognised authorities for syndication, allowing Local Authorities to present a mix of locally generated and national best-practice content to site visitors. Local Authorities will be required to supply “deep links” to their sites, so that anyone requiring information on a particular regime is sent directly to the relevant web page and does not have to navigate the Local Authority site.

Service providers must be able to complete all their transactions online

Online transactions

The Directive requires that service providers can transact electronically with regulators. Therefore, an application form, plus any supporting documents and any fee payment must be able to be processed electronically and the Local Authority must be able to notify the applicant of success or failure electronically. As the Directive requires that Local Authorities cannot demand originals of documents in most cases, the PSC will have the capacity to allow service providers and Local Authorities to exchange documents, such as premises plans, electronically. In the absence of digitally signed documents, and, where justified, Local Authorities will be able to use the IMI system (see 12.g) to verify details of service providers new to their area.

If Local Authorities offer online services already, or wish to reap the full benefits of integration with back-office systems from December 2009, they can offer their own online service to which the PSC will link. For national regimes (see the list on the website), BIS will provide standard online forms, document attachment facilities and digital signing facilities. Where a fee is charged, the online form service will integrate with a Local Authority’s online payment facility. **Local Authorities will have to accept fees online by either**

The PSC is not a replacement for a Local Authority's back office technology

extending their existing online payment solutions or using a commercial payment service. There will also be a facility for Local Authorities and service providers to exchange secure messages, with an audit trail kept. Local Authorities will need to describe what their timelines are and how they process applications. The PSC will give Local Authorities some reminders that they need to complete activities but will NOT manage the process for them. It will be possible to send automated responses for some stages of the process.

From December 2009, the PSC's online forms service will require Local Authority staff to log in to the service and download forms and attachments. Facilities will be given to Local Authorities to manage and configure this process, but the PSC is not a replacement for a Local Authority's back office technology. BIS is committed to offering an open, published interface to Local Authorities and their IT suppliers, so that data can be automatically transferred between the PSC and back office systems. This will be available in 2010.

For any one regime, Local Authorities must elect to either supply their own online service or use the BIS service; however, they can readily swap between the two and use a combination of both channels to serve all their regimes. Detailed guidance on how Local Authorities can make the choice is available on the web site. All Local Authorities using the BIS service will be provided with web access to their transactions and messages and a secure connection will be required for this.

- In England and Wales, the 'government-connect' secure extranet (GCSx) (www.govconnect.gov.uk) will be used. All English and Welsh Local Authorities should be accredited for connection to this network by September 2009, in time for the PSC's launch.
- In Scotland the GSX network, to which all Local Authorities are already connected, will be used.
- A solution is being devised for Northern Ireland in cooperation with the Northern Ireland Executive.
- These networks enable secure data sharing up to RESTRICTED level across government and Local Authorities.

While BIS will provide a means of online communication with service providers, it will remain the Local Authority's responsibility to process applications and provide the necessary IT infrastructure. The basic online forms service will be free of charge to Local Authorities during the current public spending round. A list of the formalities covered is provided on the website. If you have regimes within scope of the Directive which are not listed you must tell us about them, as they must be covered by the PSC. BERR may levy charges for value added services such as automatic data transfer.

Reporting

The PSC will give statistics of use such as number of applications submitted. Local Authorities will be expected to supply simple measures of applications processed via other channels such as on paper. This will be required once as part of implementation and then annually.

PSC Training

Online material will be provided and BIS will run a series of PSC workshops. The system is intended to provide the level of usability for Local Authorities that government provides for citizens in eGovernment applications and so training of individual Competent Authorities will not be supplied.

Timeline for the PSC

Given the complexity of the PSC, a series of deadlines will need to be adhered to. These are shown on the website at www.berr.gov.uk/psc. A measure, called "Readiness Level", will be used to provide a simple measure of how Local Authorities are progressing towards implementation of the PSC, by showing which key milestone they have reached.

Local Authorities and regulators must cooperate effectively with their counterparts in other EU countries

12f Administrative Cooperation

The basic principle of Administrative Cooperation is that the request for information ends up with the organisation that has the competence, or is responsible for the administration of the requested information. For Local Authorities, this means that they should only accept requests for information in the areas for which they themselves are responsible.

Local Authorities and regulators must cooperate effectively with their counterparts in other EU countries by replying to information

requests, and if necessary carrying out factual checks, inspections and investigations. The Directive does not require UK authorities to carry out inspections in other EU countries. Rather than doing so, Local Authorities can request Competent Authorities in other EU countries to carry out checks and inspections on their behalf, **but only if the request is properly reasoned**, and the reasons for such a request must be explained. The authority in the other EU country is then obliged to provide information to or gather evidence on behalf of the requesting authority, who can then decide on the appropriate action to take. In liaison with authorities from other EU countries, UK Competent Authorities may on occasion have to take account of the actions of UK service providers operating temporarily in other EU countries.

When information is requested it must be supplied by electronic means and within the shortest possible time. Information exchanged shall be used only in respect of the matter for which it was requested. **If there is difficulty in meeting a request or in carrying out checks, the requesting EU country must be rapidly informed with a view to finding a solution.**

Registers

To limit the number of information requests that authorities send to each other, the Commission is preparing a list of registers which holds information on service providers in each EU country. **Authorities are obliged to check these registers for the information they need and only contact other authorities if they cannot find what they are looking for.** This list will be held on the IMI system and will advise authorities from other EU countries of the type of registers held by UK Local Authorities (e.g. registered food premises). Local Authorities must ensure that registers in which service providers have been entered, and which may be consulted by UK Competent Authorities, may also be consulted on the same basis by Competent Authorities in other EU countries.

12g IMI system

BIS is responsible for overseeing the use of the IMI system in the UK and Local Authorities are strongly encouraged to register for

use of the system. Authorities are obliged to cooperate with their counterparts in other EU countries in the shortest possible time and the IMI will facilitate this. Training packages will be made available over the coming months and BIS will help all authorities who use the system. Some Local Authorities are already signed up to participate in the IMI pilot, which has already begun for certain service sectors. **To register for the system, Local Authorities should contact us at servicesdirective@bis.gsi.gov.uk. Further guidance and training can then be provided.**

Local Authorities must not impose rules that discriminate against service recipients on nationality or place of residence

12h Quality of Services

Article 19 states that service recipients cannot be asked to obtain authorisation from or to make a declaration to their Competent Authorities when wishing to use services of providers established in another EU country. Also, if financial assistance is provided for the use of a specific service, discriminatory limits that are based on the fact that the provider is established or the service is provided in another EU country, must be removed.

Article 20 states that Local Authorities must not impose rules that discriminate against service recipients on nationality or place of residence, and they must ensure that services they charge for (e.g. use of leisure facilities) do not discriminate on nationality or place of residence unless that can be justified by objective criteria.

The Directive requires providers to be able to demonstrate that they are compliant with the information and redress provisions, so we also want to enable a suitable and proportionate enforcement regime to support this. It is sensible that enforcement of these provisions falls under Part 8 of the Enterprise Act in common with other similar legislation such as the Unfair Commercial Practices Directive (UCPD). Enforcement would therefore fall to local weights and measures authorities (i.e. trading standards) as well as the OFT and the Department of Enterprise Trade and Investment Northern Ireland (DETINI). We anticipate that implementing these obligations should not result in a significant increase in Local Authority enforcement activity – the obligations and the risks involved through breaching them are minimal. It is possible that any resulting enforcement activity will form part of a wider action against breaches of other obligations by a service provider. We would also expect these provisions to be enforced in line with existing requirements, notably the Regulators Compliance Code.

13 Further Information

Further information about the implementation of the Directive and related documents can be found on our website, <http://www.berr.gov.uk/servicesdirective>. The Directive, the European Commission's handbook on Implementation, the Consultation Document on Implementing the Directive in the UK and the Government response to Consultation on implementing the Directive in the UK can all be found here.

We are happy to answer any queries you have, please email servicesdirective@bis.gsi.gov.uk.

Annex A Authentication, signatures and security

This section summarises the main issues in these interlinked topics and gives guidance on the use of digital signatures. Additional material will be made available at <http://www.berr.gov.uk/servicesdirective>.

Applicant authentication

The Point of Single Contact (PSC) will not authenticate service providers who use the PSC Forms Service nor is there any other method known to BIS that will at present authenticate service providers across Europe. Providers will need to be registered and logged in to businesslink.gov to make applications but no check is made that the details they supply are correct. Thus, whether authorities use the forms service or accept online applications directly, authorities will need to make their own checks of the applicant when the identity of the applicant is material to that application.

Authorities should undertake a risk analysis of the effect of an applicant applying under a false name or using a real provider's identity. In some cases the severity of the outcome will be negligible and in a few cases human life may be put at risk with other outcomes in-between. This should guide the measures authorities put in place to evaluate the truthfulness of applications.

The risk analysis should extend through the regulatory regime lifecycle and analyse the needs around supplying changes of circumstances, incident reports, requests to de-register, and so forth, online.

All authorities will be expected to accept online applications. If documentation is digitally signed in certain ways (see below), authorities must accept that documentation online in the same way they would accept paper; however, digital signatures do not guarantee an applicant's identity, just one piece of supporting evidence.

If a risk analysis determines that documents supplied online and not appropriately digitally signed cannot be accepted at face value, then other methods can be implemented to verify user identity and authenticate documents, which are set out below.

Checking applications

Various options are available to check the truthfulness of online applications and their related documentation:

1. Electronic signatures – see below.
2. Checking registers. You can request that providers supply details of their “commercial” registration in their country of establishment (i.e. their Companies House equivalent) and trade registers through their online application and check those. (Publicly available registers and databases will be listed on the Internal Market Information (IMI) system, please see Section 5f, page 12.)
3. Criminal Records Bureau (CRB) checks or their equivalent. Directive Art 8.1 allows checks of personal integrity of the service provider and their staff to be made offline and thus if providers are currently required to be checked by the CRB or Police, or by the use of personal references the check can continue in the same way, which can include face-to-face contact.
4. Inspection. If premises or equipment checks are part of the approval process, evidence gathered during them can also be used to check the application.
5. Contact with competent authorities. If there is ground for reasonable doubt about an applicant’s credentials following a check of any register, the IMI system (see Section 5f, page 13) or existing channels can be used to contact those authorities the applicant is known to deal with.
6. Supply of original documents. These can only be demanded when “objectively justified” (Directive recital 47).

It is important that, if these checks delay applications or involve the service provider in additional work, they can be justified. Furthermore, an application on paper with a hand-written signature or a paper document submitted from far away is no more likely to be “real” than its electronic equivalent, so these checks should be broadly the same for paper and electronic applications.

Electronic signatures

For background on electronic signatures refer to <http://www.berr.gov.uk/files/file49952.pdf>

It is helpful to divide these into three groups:

1. "Simple" signatures. Examples include where a user clicks that they comply with a "statement of truth" or scans in a hand-signed document.
2. "Advanced Electronic Signatures". Article 2.2 of the Electronic Signatures Directive 1999/93/EC ("the eSigs Directive") defines an advanced electronic signature as an electronic signature that is uniquely linked to a signatory, and capable of identifying the signatory, and created by means the signatory can maintain under his sole control, and linked to the data being signed such that any change of the data is detectable. These are commonly called "Digital Signatures".
3. "Qualified signatures" Article 5.1(a) of the eSigs Directive requires Member States to ensure that an Advanced Electronic Signature, which is based upon a Qualified Certificate (that is a certificate issued under certain controlled conditions) and is created by a secure-signature-creation device, satisfies the legal requirements of a signature in relation to data in electronic form in the same manner as a hand written signature.

Article 5.2 of the eSigs Directive provides for a harmonised and appropriate legal framework for the use of electronic signatures by ensuring the recognition of all electronic signatures as evidence and this is implemented into UK law through Section 7 of the Electronic Communications Act 2000. This means that any of the above types of signature can be regarded as equivalents of a hand-written signature. It is for the courts to determine in a case what weight should be given to them.

The EC is requiring each member state to produce a "Trust-Service Status List" (TSL), which will list the issuers of Qualified Certificates from within that state, with some central coordination by the EC. It is anticipated that, in time, software products will be available to automatically interrogate these lists. Each state is required to maintain a human readable version and these can be used in the interim.

If the authority implements its own online application, it is responsible for implementing the necessary signature verification process.

Service provider users of the PSC forms service will:

1. Always be expected to supply at least a simple signature alongside an application form, having clicked to say they

understand a statement of truth. The details are then passed to the competent authority.

2. Optionally, be able to digitally sign their application form using their own private key. At the moment this will be generally be an advanced electronic signature as Qualified Certificates are not widely used. The PSC uses a product from Adobe that allows a range of certificates to be used to sign application forms and then checked for validity. The PSC will undertake this check and pass on signed forms, attached to which will be the results of the check and the signature.
3. Because the signature information is passed to the authority, the authority will be able to manually check the TSL of the member state where the certificate was issued to verify whether the signature is based on a qualified certificate or not.

The PSC provides no service for signing documents that may be attached to an application; however, products like MS Office 2007, Open Office and Adobe Acrobat all offer easy to use signing facilities, so service providers may also possess signed documents, which can be attached to applications. The signatory may not be the applicant – it may be a third party such as the educational establishment that the applicant trained with.

Guidance on Electronic Signature use

It is recommended that:

1. Authorities accept documentation supplied with Simple Electronic signatures upon first use of the PSC or of the authority's own online system by a service provider and that the checks outlined in 0 are performed where necessary.
2. If digitally signed documents are supplied on first-use, the authority accepts these without the manual checks outlined in 'Checking Applications' (please see above). This should be always if a qualified signature is supplied (i.e. the certificate's issuer is listed in the appropriate TSL) but conditional upon a certificate's acceptability to an authority if an advanced signature is used.

It is recommended that documentation supplied online from repeat users of the PSC for that authority (i.e. those using the same sign-on credentials), whose documentation or identity has been adequately checked previously, is accepted as valid. If this policy is regarded as unacceptably risky, then likely frequent users are either

encouraged to obtain a suitable digital certificate or are supplied one by the authority.

Authorities will need to install software that can allow appropriate reading of documents that are digitally signed.

The PSC site and BIS will encourage PSC “frequent users” who may interact with many authorities (e.g. intermediaries, supermarket chains) to acquire suitable digital certificates.

Security

The PSC is being developed to handle material up to a protective marking of “RESTRICTED” in government security parlance (see http://www.cabinetoffice.gov.uk/spf/sp2_pmac.aspx for background). This is adequate for the vast majority of regulatory regimes. The Local Authority questionnaire has questions designed to identify the cases where that level of security is not enough and BIS will follow up these on a case-by-case basis.

