

CHAPTER 1: Do the Regulations affect my business?

Scope and application (part 1 of the Regulations)

Which service providers are covered?

A service is an economic activity normally provided for remuneration and which is not a contract for employment. This activity could be industrial, or commercial in nature, a craft or the activity of a profession. “Remuneration” should be interpreted broadly, for example, money or payment in kind (but excluding wages/salaries). A service can be business-to-business or business-to-individual activity. Services which are not provided for remuneration are not covered by the Directive. For example, non-remunerated house-to-house collections for charity are not within scope.

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?

In summary, 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 covered by the Directive.
- 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. There are, however, numerous ancillary services relating to goods, such as some aspects of retail, maintenance, or after-sales services to which these Regulations could apply. It is our view that retail premises will generally be providing a service where activity is not exclusively concerned with the sale of goods; for example, where they also provide after-sales service or customer advice. There are also some cases where an activity may comprise a service only where carried out independently; for example, car spray painting is not a service where it forms part of the production of cars, but it is where it is provided independently as part of a car repair business.

Activities which are concerned with the exercise of official authority, and certain other matters, such as taxation and labour law and certain functions of competent authorities are excluded from the Regulations.

Services of general economic interest are excluded if they fall within one of the general exclusions listed in Regulation 2, such as services in the field of transport. Other services of general economic interest are excluded from Regulation 24 (freedom to provide services), including those in the postal, electricity and gas sectors, water distribution and supply, and waste treatment services.

Are both established and temporary service activities covered by the Regulations?

The Regulations contain rules relating to the provision of services by both ‘permanent’ and ‘temporary’ providers. Permanent providers are those (whether individuals or companies) who are ‘established’ or based at premises in the UK, while ‘temporary’ providers are those operating here but based at premises in other EEA states, or vice versa. The main difference arises in the considerations that competent authorities must take into account in authorising service providers (see chapter 4 on what to expect from UK competent authorities). Part 2 of the Regulations, on information obligations, applies to all service providers operating within the UK wherever they are based.

CHAPTER 2: What do the Regulations require from me?

Duties on service providers (part 2 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, and principles of non-discrimination within general conditions. These duties apply to all providers operating in the UK regardless of where they originate (both EEA and rest of the world).

The aim of these requirements is to ensure that service recipients have access to a minimum amount of information and to a complaints procedure. This should enable recipients to make more informed decisions when considering whether to buy services from a particular provider and should widen the choice of providers available to them. These requirements are, in general, already common practice, and we do not expect many service providers to have to make major changes to their procedures.

These requirements should be read alongside the requirements of the Consumer Protection from Unfair Trading Regulations 2008 (SI. 2008/1277) (also known as the Consumer Protection Regulations) and other legislation that may require you to provide information to service recipients.

Information which you must make available

If the services you provide are within scope, then 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 email 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), 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 website address (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. We would not expect to see full details of the insurance held (but you should bear in mind that the Consumer Protection Regulations may require such policies to be made available to recipients). 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.

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.

Further information which you must make available

The following additional item of information about dispute resolution must also be given when applicable:

- 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 recipient, mention it in any information document that describes your service in detail and specify how to access detailed information on the procedure.

Regulation 7 provides that 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 email 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. The Regulations do not specify how you should make this information available, but it is recommended that you use one of the four methods.

The reason why Regulation 7 and 8 both require you to provide contact details is because a business, for example, a restaurant chain, might have different contact details for complaint handling, such as a dedicated complaints helpline which will be different to the contact details of the individual business (restaurant in this example).

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

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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 need to provide contact details of where customers can make a complaint.

You are also required to respond to complaints as quickly as possible. Because the nature of complaints and circumstances vary so much, these 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.

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 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:

- additional costs, incurred because of the distance involved; or the technical characteristics of the provision of the service
- different market conditions, such as higher or lower demand influenced by seasonality; different holiday periods; pricing by different competitors
- extra risks linked to rules differing between EEA states
- 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.

Enforcement

The following paragraphs explain what could happen if you breach Regulations 7-12 (concerning information and complaints) and Regulation 30 (which prohibits a service provider from including certain discriminatory requirements in general conditions of service).

Part 8 of the Enterprise Act enables enforcement bodies such as the Office of Fair Trading (OFT), local weights and measures authorities (Local Authority Trading Standards) and the Department of Enterprise, Trade and Investment in Northern Ireland to take action against breaches of certain consumer laws where this harms the collective interests of consumers i.e. it must affect or have the potential to affect consumers generally or a group of consumers. Enforcers will now have the same powers to take action when there has been a breach of the obligations in these Regulations to provide particular information, respond to complaints, and discriminate on grounds of place of residence.

Further information about Part 8 of the Enterprise Act can be found in the OFT's guidance at: www.of.gov.uk/shared_of/business_leaflets/enterprise_act/oft512.pdf

Part 8 of the Enterprise Act does not apply in relation to business-to-business transactions. Where there is harm to a business recipient, it can seek redress on its own initiative. However, if a provider serves both businesses and consumers then Part 8 could be applicable.

Part 8 cannot be used to intervene in individual consumer disputes with providers and, in such cases, service recipients have the right to take action through the courts. However, it could apply if there has been harm to an individual consumer and there is potential for further harm to the collective interests of consumers.



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