

Subsidiary Legislation made under s. 23(g)(ii).

Provision of Services Regulations 2010

LN.2010/139

Commencement **29.7.2010**

Amending enactments	Relevant current provisions	Commencement date
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Transposing:
Directive 2006/123/EC

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1962-08

Interpretation and General Clauses

2010/139

Provision of Services Regulations 2010

In exercise of the powers conferred on it by section 23(g)(ii) of the Interpretation and General Clauses Act and all other enabling powers, and in order to transpose into the law of Gibraltar Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market, the Government has made the following Regulations—

Part I

Preliminary

Title and commencement.

1. These Regulations may be cited as the Provision of Services Regulations 2010 and shall come into operation on the day of publication.

Interpretation.

2.(1) In these Regulations, unless the context otherwise provides—

“authorisation” includes the grant of a licence or permit;

“authorisation scheme” means any arrangement which in effect requires the service provider or recipient of a service to obtain the authorisation of, or to notify, a competent authority in order to have access to, or to exercise, a service activity;

“establishment”, means the actual pursuit of an economic activity, as referred to in Article 49 of the Treaty, by the provider of that activity for an indefinite period and through a stable infrastructure from where the business of providing services is actually carried out (and references to “established”, in relation to such a provider, are to be construed accordingly);

“Minister” means the Chief Minister or such other Minister as the Chief Minister may, by notice in the Gazette, appoint and different Ministers may be so appointed for different parts of, or activities covered by, these Regulations;

“overriding reasons relating to the public interest” means reasons recognised as such retained EU case law, 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 the urban environment; the health of animals; intellectual property; the conservation of the national historic and artistic heritage; social policy objectives; cultural policy objectives;

“professional liability insurance” means insurance taken out by a service provider in respect of potential liabilities to recipients and, where applicable, third parties arising out of the provision of the service;

“recipient” in relation to a service means a person who, for professional or non-professional purposes, uses or wishes to use a service;

“regulated profession” means a professional activity or group of activities–

- (a) access to which, the pursuit of which or one of the modes of pursuit of which is subject (directly or indirectly) by virtue of legislative, regulatory or administrative provisions to the possession of specified qualifications; or
- (b) the pursuit of which is by persons using a professional title which is limited by legislative, regulatory or administrative provisions to holders of a given professional qualification;

“requirement” includes any obligation, prohibition, condition or limit but does not include rules laid down in collective agreements negotiated by the social partners;

“service” means any self-employed economic activity normally provided for remuneration as referred to in Article 57 of the Treaty;

“service provider” means a person who provides or offers to provide the service;

“temporary work agency” means an agency which concludes contracts of employment with workers to carry out work for other persons temporarily under their supervision and direction;

“the Treaty” means the Treaty on the functioning of the European Union.

(2) In these Regulations “competent authority” means a body or authority having supervisory or regulatory functions in relation to service activities and includes, in particular, administrative authorities, courts acting as such, professional bodies and professional associations or other professional organisations which regulate in a collective manner access to, or the exercise of, a service activity.

(3) In subregulation (2)–

- (a) the reference to a body or authority includes a body or authority acting on behalf of the Government;

- (b) the reference to supervisory or regulatory functions includes the function of maintaining a register or other record of persons entitled to have access to or to exercise, a service activity.

(4) *Deleted.*

(5) Any references in these Regulations to a European Union act or instrument shall be understood to be a reference to that act or instrument as amended from time to time.

Applicability.

3.(1) *Deleted.*

(2) *Deleted.*

(3) These Regulations shall not apply to the following activities–

- (a) non-economic services of general interest;
- (b) financial services, such as banking, credit, insurance and reinsurance, occupational or personal pensions, securities, investment funds, payment and investment advice, including the services listed in Annex 1 to Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 relating to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC;
- (c) electronic communications services and networks, and associated facilities and services, with respect to matters covered by–
 - (i) Directive 2002/19/EC of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities,
 - (ii) Directive 2002/20/EC of 7 March 2002 on the authorisation of electronic communications networks and services,
 - (iii) Directive 2002/21/EC of 7 March 2002 on a common regulatory framework for electronic communications networks and services,
 - (iv) Directive 2002/22/EC of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services, or

- (v) Directive 2002/58/EC of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector;
 - (d) services in the field of transport, including port services, falling within the scope of Title VI of the Treaty;
 - (e) services provided by temporary work agencies;
 - (f) 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;
 - (g) audiovisual services, including cinematographic services, whatever their mode of production, distribution and transmission and radio broadcasting;
 - (h) gambling activities which involve wagering a stake with pecuniary value in games of chance, including lotteries, gambling in casinos and betting transactions;
 - (i) activities which are connected with the exercise of official authority (as set out in article 51 of the Treaty);
 - (j) social services relating to social housing, childcare and support of families and persons in need which are provided by the Government, by service providers mandated by the Government or by charities recognised by the Government;
 - (k) private security services;
 - (l) services provided by notaries or bailiffs if, or to the extent that, they are appointed by the Government to provide those services.
- (4) Nothing in these Regulations shall apply in respect of the field of taxation.
- (4A) Nothing in these Regulations affects the interpretation, application or operation of any provision made by or under the Immigration, Asylum and Refugee Act.
- (5) Nothing in these Regulations—
- (a) requires or prohibits the opening up to competition of services of general economic interest, whether they are reserved to public or private sector entities, the privatisation of public entities providing services or the abolition of monopolies;

- (b) affects the functions of a competent authority in relation to the granting of aid which is covered by retained EU law on competition;
- (c) prevents a competent authority from determining what it considers to be services of general economic interest or how those services should be organised and financed in compliance with State aid rules in retained EU law and to what specific obligations they should be subject;
- (d) prevents measures being taken by the Government to protect or promote cultural or linguistic diversity or media pluralism;
- (e) affects labour laws, social security laws, rules on employment or working conditions, including health and safety at work and the relationship between employers and workers;
- (f) affects the exercise of fundamental rights, the right to negotiate, conclude and enforce collective agreements or the right to take industrial action in accordance with the laws of Gibraltar.

(6) These Regulations do not affect the application of the criminal law of Gibraltar, but the freedom to provide services may not be restricted by the application of criminal law provisions which specifically regulate or affect access to or exercise of a service activity in circumvention of these Regulations.

(7) Nothing in these Regulations shall apply in relation to a recipient of a service who is not—

- (a) an individual who is a Gibraltarian or a national of the United Kingdom; or
- (b) a business undertaking established in Gibraltar;

(8) Nothing in these Regulations shall apply in relation to a service provider who is not—

- (a) established in Gibraltar; and
- (b) either-
 - (i) an individual who is a Gibraltarian or a national of the United Kingdom; or
 - (ii) a business undertaking.

(9) In subregulations (7)(b) and (8)(b)(ii), “business undertaking” means any entity, whether or not a legal person, that is not an individual and includes a body corporate, a corporation sole

and a partnership or other unincorporated association, engaged in activities for the purposes of trading for profit, incorporated or formed under the law of Gibraltar.

Relationship with other legislation.

4.(1) *Deleted.*

(2) If any provision of these Regulations conflicts with a provision which originates in retained EU law governing specific aspects of access to or exercise of a service activity in specific sectors or for specific professions, that other specific provision shall prevail and shall apply to those specific sectors or professions.

(3) These Regulations shall not affect the rules of private international law, in particular rules governing the law applicable to contractual and non-contractual obligations including those which guarantee that consumers benefit from the protection granted to them by consumer protection legislation in force in Gibraltar.

Part II

Duties of service providers

Information on service providers and their services.

5.(1) A service provider shall make the following information available to all the recipients of his services—

- (a) the name of the service provider, his legal status and form, the geographical address at which he is established and details enabling him to be communicated with rapidly and directly and by electronic means;
- (b) where the service provider is registered in a trade or public register, the name of the register and the service provider's registration number or other means of identification in that register;
- (c) where the activity is subject to an authorisation scheme, the particulars of the relevant competent authority;
- (d) if carrying on a regulated profession, any professional body or similar institution with which the service provider is registered and the professional title;
- (e) the general conditions and terms, if any, used by the service provider;
- (f) the existence of contractual terms, if any, used by the service provider concerning the competent courts or the law applicable to the contract;

- (g) the existence of an after-sales guarantee, if any, not imposed by law;
 - (h) the price of the service where a price is pre-determined by the service provider for a given type of service;
 - (i) the main features of the service if not already apparent from the context;
 - (j) information about the professional liability insurance or guarantees, if any, and the contact details of the insurer or guarantor and the territorial coverage of the insurance or guarantee.
- (2) The information in subregulation (1) is made available to the recipient if it–
- (a) is supplied by the service provider on his own initiative;
 - (b) is easily accessible to the recipient at the place where the service is provided or the contract is concluded;
 - (c) is easily accessed by the recipient electronically by means of an address supplied by the service provider;
 - (d) appears in any information documents supplied to the recipient by the service provider which sets out a detailed description of the service.
- (3) A service provider shall, at a recipient's request, supply the following additional information–
- (a) where the price is not pre-determined by the service provider for a given type of service, the price of the service or, if an exact price cannot be given, the method of calculating the price so that it can be checked by the recipient, or a sufficiently detailed estimate;
 - (b) if carrying on a regulated profession, a reference to the professional rules applicable and how to access them;
 - (c) information on other activities and partnerships which are directly linked to the service in question and on the measures taken to avoid conflicts of interest;
 - (d) any codes of conduct to which the service provider is subject to and the address at which these codes may be consulted by electronic means and specifying the language version available;

- (e) where a service provider is subject to a code of conduct or is a member of a trade association or professional body which provides for recourse to a non-judicial means of dispute settlement, information in this respect and the service provider shall specify how to access detailed information on the conditions for the use of non-judicial means of dispute settlement.

(4) The information referred to in subregulation (3)(c) shall be included in any information document in which a service provider gives a detailed description of his services.

(5) The information which a service provider must supply in accordance with these Regulations shall be made available or communicated in a clear and unambiguous manner, and in good time before the conclusion of a contract or where there is no written contract, before the service is provided.

Complaints - information to be supplied.

6.(1) A service provider shall supply the address of its registered office or principal place of business, fax number, e-mail address and telephone number to which all recipients can send a complaint or a request for information about the services provided.

(2) A service provider shall respond to complaints in the shortest possible time and use his best endeavours to find a satisfactory solution to any complaint.

(3) A service provider shall comply with the obligations in these Regulations concerning the supply of accurate information.

(4) *Deleted.*

(5) A service provider who is subject to a code of conduct or is a member of a trade association or professional body which provides for recourse to a non-judicial means of dispute settlement, shall inform the recipient thereof and shall mention that fact in any document which presents his services, specifying how such recourse can be obtained.

Points of single contact.

7.(1) The competent authorities, in consultation with the Minister, shall provide facilities for a service provider for the completion of the following procedures and formalities through a point of single contact for a particular service—

- (a) all procedures and formalities which a service provider needs to comply with to access or to exercise his service activities, in particular, all declarations, notifications or applications necessary to obtain an authorisation from the

appropriate competent authority, including applications for inclusion in a register, a roll or a database or for registration with a professional body or association;

- (b) any application for an authorisation which a service provider needs in order to exercise his service activities.

(2) The establishment of a point of single contact shall be without prejudice to the allocation of functions and powers among Gibraltar's competent authorities.

Professional liability insurance and guarantees.

8.(1) A service provider whose services present a direct and particular risk to the health or safety of the recipient or another person or to the financial security of the recipient shall obtain professional liability insurance appropriate to the nature and extent of the risk to which the provider is exposed or provide a guarantee or similar arrangement which is equivalent to the insurance.

(2) *Deleted.*

(3) *Deleted.*

(4) Subregulation (1) shall not affect professional liability insurance or guarantee arrangements provided for in retained EU law.

(5) For the purposes of this regulation—

“direct and particular risk” means a risk arising directly from the provision of the service;

“health and safety” means, in relation to a recipient or a third person, the prevention of death or serious personal injury;

“financial security” means, in relation to a recipient, the prevention of substantial losses of money or of value of property.

Part III

Duties of competent authorities in Gibraltar

Application of this Part.

9.(1) The provisions of the Part shall have effect for the purposes of the provision of a service in Gibraltar.

(2) *Deleted.*

Simplification of procedures.

10.(1) A competent authority shall ensure that the procedures and formalities set out in any rules applicable to access to, or exercise of, a service are sufficiently simple in accordance with the principles of best practice.

(2) Where the procedures are not sufficiently simple the competent authority shall ensure that those rules are simplified.

(3) *Deleted.*

(4) A competent authority may not require a document to be produced in its original form or as a certified copy or as a certified translation, except in cases provided for in s other retained EU law or where such a requirement is justified by an overriding reason relating to the public interest, public order or security.

(5) A competent authority may require non-certified translations of documents into English.

(6) Subregulations (4) and (5) shall not apply to the documents referred to in—

- (a) section 66 of the Qualifications (Right to Practise) Act 2009;
- (b) regulations 60(1), 60(4) and (5) and 62 of the Procurement (Public Sector Contracts) Regulations 2016;
- (c) article 3(2) of Directive 98/5/EC of the European Parliament and the Council of 16 February 1998 to facilitate practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained;
- (d) *Deleted*
- (e) Part XIV, XV and XVI of the Companies Act 2014.

Right to information.

11.(1) A competent authority shall ensure that the following information is easily accessible to service providers and recipients through a point of single contact referred to in regulation 7—

- (a) requirements applicable to service providers established in Gibraltar including those concerning the procedures and formalities to be completed in order to access and to exercise service activities;

- (b) the contact details of the competent authority responsible for matters concerning the exercise of service activities, including details enabling a direct contact to be established with such an authority;
- (c) the means of and conditions for accessing public registers and databases on service providers and services;
- (d) the means of redress which are available in the event of a dispute between a competent authority and the service provider or the recipient or between the service provider and the recipient or between service providers;
- (e) the contact details of the associations or organisations from which service providers or recipients may obtain practical assistance.

(2) A competent authority shall ensure that service providers and recipients receive at their request general information on the way in which the requirements referred to subregulation (1)(a) are applied.

(3) A competent authority shall ensure that the information and assistance referred to in subregulations (1) and (2) is up to date, is provided in a clear and unambiguous manner and is easily accessible at a distance and by electronic means.

(4) The points of single contact and the competent authorities shall respond as quickly as possible to any meaningful request for information under subregulations (1) to (3) and where the request is faulty or unfounded, they shall inform the applicant accordingly without delay.

(5) The obligation on a competent authority to assist service providers and recipients shall not require the authority to provide legal advice in individual cases but requires it to provide general information on the way in which requirements are usually interpreted or applied.

Procedures by electronic means.

12.(1) A competent authority shall ensure that—

- (a) all procedures and formalities relating to access to a service activity and to the exercise thereof are easily completed at a distance and by electronic means; and
- (b) its website affords access to an electronic assistance facility.

(2) In subregulation (1), the reference to procedures or formalities shall not include procedures or formalities consisting of—

- (a) the inspection of premises or equipment, or
- (b) the physical examination of the capability or professional integrity of a service provider or his staff.

Authorisation schemes.

13.(1) A competent authority shall not make access to a service activity subject to an authorisation scheme unless the following conditions are satisfied—

- (a) *Deleted*
- (b) *Deleted*
- (c) the objective pursued cannot be attained by means of a less restrictive measure, in particular, because an inspection after the commencement of the service activity would take place too late to be genuinely effective.

(2) This regulation and regulations 14 to 17 shall not apply to authorisation schemes to the extent that they are governed, directly or indirectly, by—

- (a) a provision of an enactment other than retained direct EU legislation, which immediately before IP completion day implemented an EU obligation, where the enactment is passed or made before the day on which these Regulations came into operation; or
- (b) a provision of retained direct EU legislation which, immediately before IP completion day, was contained in an EU instrument that came into force before these Regulations were made.

Conditions for the granting of authorisation.

14.(1) An authorisation scheme provided by a competent authority shall be based on criteria which preclude the authority from exercising its power of assessment in an arbitrary manner.

(2) The criteria referred to in subregulation (1) shall be—

- (a) *Deleted*
- (b) *Deleted*
- (c) proportionate to that public interest objective;

- (d) clear and unambiguous;
- (e) objective;
- (f) made public in advance; and
- (g) transparent and accessible.

(3) The conditions for granting authorisation for a new establishment under an authorisation scheme shall not duplicate requirements and controls which are equivalent or comparable to those which the service provider is already subject in Gibraltar.

(4) A service provider shall assist a competent authority by providing any necessary information requested by the authority regarding the requirements and controls referred to in subregulation (3).

(5) *Deleted.*

(6) A competent authority shall grant an authorisation under an authorisation scheme as soon as it establishes that the conditions for authorisation have been met.

(7) Except in the case of the grant of an authorisation any decision from a competent authority including refusal or withdrawal of an authorisation shall be fully substantiated and be open to challenge before a court or other instances of appeal.

15. *Deleted.*

Selection from among several candidates.

16.(1) Where the number of authorisations available for a given activity is limited because of the scarcity of available natural resources or technical capacity, a competent authority shall apply a selection procedure to potential candidates which guarantees impartiality and transparency including adequate publicity about the launch, conduct and completion of the procedure.

(2) Where subregulation (1) applies, a competent authority may grant an authorisation for an appropriate limited period but that authorisation may not be open to automatic renewal nor confer any other advantage on a previously authorised candidate or on a person having any particular links with such a candidate.

(3) Subject to subregulation (1) and to regulations 13 and 14 a competent authority may, in establishing the rules for the selection procedure, take into account, considerations of public health, social policy objectives, the health and safety of employees or self-employed persons,

the protection of the environment, the preservation of cultural heritage and other overriding reasons relating to the public interest in conformity with retained EU law.

Authorisation procedures.

17.(1) Authorisation procedures and formalities provided by a competent authority under an authorisation scheme shall—

- (a) be clear;
- (b) be made public in advance;
- (c) secure that applications for authorisation are dealt with objectively and impartially; and
- (d) be easily accessible.

(2) The authorisation procedures and formalities provided by a competent authority under an authorisation scheme shall—

- (a) not be dissuasive or unduly complicate or delay the provision of the service;
- (b) be easily accessible; and
- (c) secure that applications are processed as quickly as possible and, in any event, within a reasonable period which shall be fixed and made public in advance.

(3) Any charges raised by a competent authority under an authorisation scheme shall be reasonable and proportionate to the cost of the authorisation procedures and formalities and shall not exceed the cost incurred in providing those procedures and formalities.

(4) The period under subregulation (2)(c) shall commence when all the necessary documentation has been received by a competent authority.

(5) When justified by the complexity of the issue, a competent authority may extend the time period under subregulation (2)(c) once, for a limited time and the extension and its duration shall be notified to the applicant with reasons for the action before the original period has expired.

(6) Failing a determination of an application within the time period set or extended in accordance with subregulations (2) to (5), an authorisation shall be deemed to have been granted by a competent authority.

(7) Any different arrangements shall be justified by overriding reasons relating to the public interest including the legitimate interest of third parties.

(8) A competent authority shall acknowledge the receipt of applications as quickly as possible specifying—

- (a) the period referred to in subregulation (2)(c);
- (b) the available means of redress; and
- (c) whether the authorisation is deemed to have been granted in the absence of a response within the period specified.

(9) Where an incomplete application is received, the applicant shall be informed as quickly as possible and asked for any additional documentation and any possible effects on the period referred to in subregulation (2)(c).

(10) Where an application is rejected because it fails to comply with the required procedures and formalities, the applicant shall be informed of the rejection as quickly as possible.

Prohibited requirements.

18.(1) A competent authority shall not make access to, or the exercise of, a service activity subject to any of the following—

- (a) *Deleted*
- (b) *Deleted*
- (c) *Deleted*
- (d) *Deleted*
- (e) the case-by-case application of an economic test making the granting of authorisation subject to proof of the existence of an economic need or market demand, an assessment of the potential or current economic effects of the activity or an assessment of the appropriateness of the activity in relation to the economic planning objectives set by the competent authority;
- (f) the direct or indirect involvement of competing operators including within consultative bodies in the granting of authorisations or in the adoption of other decisions of the competent authority;

(g) *Deleted*

(h) an obligation to have been pre-registered for a given period in the registers held in Gibraltar or to have previously exercised the activity for a given period in Gibraltar.

(2) Subregulation (1)(e) shall not affect planning requirements which do not pursue economic aims but serve overriding reasons relating to the public interest.

(3) Subregulation (1)(f) shall not prevent professional bodies and associations or other organisations acting as the competent authority and shall not affect the consultation of organisations, such as the Chamber of Commerce, or social partners on matters other than individual applications for authorisation or a consultation of the public at large.

Requirements to be evaluated.

19.(1) A competent authority shall ensure that where access to or the exercise of a service activity is subject to any of the requirements in subregulation (2) those requirements meet the conditions laid down in subregulation (3).

(2) The requirements referred to in subregulation (1) are–

- (a) quantitative or territorial restrictions, in particular in the form of limits fixed according to population or of a minimum geographical distance between service providers providing the service activity;
- (b) an obligation on a service provider to take a specific legal form;
- (c) requirements that relate to the shareholding of a company;
- (d) requirements, other than those concerning matters covered by retained EU law which, immediately before IP completion day, implemented an obligation under Directive 2005/36/EC of 7 September 2005 on the recognition of professional qualifications or provided for in other retained EU law, which reserve access to the service activity in question to particular service providers by virtue of the specific nature of the activity;
- (e) a ban on having more than one place of business in Gibraltar;
- (f) requirements fixing a minimum number of employees;
- (g) fixed minimum and/or maximum tariffs with which the service provider must comply; and

- (h) an obligation on the service provider to supply other specific services jointly with its service activity.
- (3) The conditions referred to in subregulation (1) are–
- (a) *Deleted*
 - (b) necessity: requirements shall be justified by an overriding reason relating to the public interest;
 - (c) proportionality: requirements shall be suitable for securing the attainment of the objective pursued, shall not go beyond what is necessary to attain that objective and it must not be possible to replace those requirements with other less restrictive measures that attain the same result.
- (4) Subregulations (1) to (3) shall apply to requirements in the field of services of general economic interest only insofar as the application of those subregulations does not obstruct the performance by the service provider of the particular task assigned to him.
- (5) A competent authority shall notify the Minister of the introduction of any new requirement of a kind specified in subregulation (2) which affects access to or the exercise of a service activity and the reason why the authority considers that the new requirement meets the conditions laid down in subregulation (3).

Part IV
Deleted

20. to 23. *Deleted.*

Part V
Deleted

24. to 26. *Deleted.*

Part VI
Other duties of competent authorities

Commercial communications by the regulated professions.

27.(1) A competent authority shall not impose a total prohibition on the use of commercial communications by service providers who are carrying on a regulated profession.

(2) A competent authority shall ensure that commercial communications by service providers who are carrying on a regulated profession comply with professional rules which relate in particular to the independence, dignity and integrity of that profession and professional secrecy in a manner consistent with the specific nature of that profession.

(3) Rules made by a competent authority in relation to commercial communications by service providers who are carrying on a regulated profession shall be justified by an overriding reason relating to the public interest and proportionate.

(4) In this regulation, “commercial communications” means communications in any form designed to promote directly or indirectly the goods, services or image of a person carrying on a regulated profession other than—

- (a) a communication consisting only of information allowing direct access to the activity of that person, including a postal address, a domain name or an e-mail address; or
- (b) a communication which has been prepared independently of the person making it (and for this purpose, a communication prepared without financial consideration is to be taken to have been prepared independently unless the contrary is shown).

28. to 35. *Deleted.*