

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

**PROVISION OF SERVICES REGULATIONS 2010**

**(LN. 2010/139)**

*Commencement*      **29.7.2010**

**EU Legislation/International Agreements involved:**

Directive 2006/123/EC

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*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);

“EEA State” means a Member State of the European Communities or a State which is a Contracting Party to the Agreement on the European Economic Area signed at Oporto on 2 May 1992, as amended for the time being but does not include Gibraltar;

“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 in the case law of the European Court of Justice, including the following grounds: public policy; public security;

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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;

“the Services Directive” means Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market;

“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) A word or expression which is used in these Regulations and in the Services Directive has the same meaning in these Regulations as it has in that Directive.

(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) These Regulations establish general provisions facilitating the exercise of the freedom of establishment for service providers and the free movement of services.

(2) Subject to subregulations (3) to (8), these Regulations shall apply to services supplied by service providers who are established in Gibraltar or in an EEA State.

(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 2006/48/EC of 14

June 2006 relating to the taking up and pursuit of the business of credit institutions;

- (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.

(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 European Union rules on competition;
- (c) prevents a competent authority from determining, in conformity with European Union law, 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 and to what specific obligations they should be subject;
- (d) prevents measures being taken by the Government, in conformity with European Union law, 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

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right to take industrial action in accordance with the laws of Gibraltar and in conformity with European Union law.

(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 national of an EEA State or who otherwise benefits from rights conferred by European Union acts; or
- (b) a legal person (as referred to in article 54 of the Treaty) who is established in an EEA State or in Gibraltar.

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

- (a) an individual who is a national of and is established in an EEA State or in Gibraltar; or
- (b) a legal person (as referred to in article 54 of the Treaty) who is established in an EEA State or in Gibraltar.

**Relationship with other legislation.**

4.(1) Where, at any time, any provision of any enactment, for the time being in force (other than an enactment with a provision which originates in a European Union measure to which subregulation (2) applies) is inconsistent with, or any conflict arises with any provision of, these Regulations, the provision of these Regulations shall prevail and the first mentioned provision shall be deemed to be modified to that extent.

(2) If any provision of these Regulations conflicts with a provision which originates in a European Union measure 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, the professional title and the EEA State in which the title has been granted;
- (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, including those resident in an EEA State, 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) Where a financial guarantee is required for compliance with a judicial decision, equivalent guarantees lodged with a credit institution or an insurer established in an EEA State in accordance with the following European Union instruments shall be acceptable—

- (a) Directive 2006/48/EC of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions;
- (b) First Council Directive 73/239/EEC of 24 July 1973 on the co-ordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of direct insurance other than life assurance; and
- (c) Directive 2002/83/EC of 5 November 2002 concerning life assurance.

(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) When a service provider establishes itself in Gibraltar a competent authority shall not require him to take out professional liability insurance or obtain an equivalent guarantee if he is already covered by such a guarantee issued in the EEA State in which the service provider is already established.

(3) Where equivalence is only partial the service provider may be required to take out supplementary professional liability insurance or provide a supplementary guarantee to cover those aspects not already covered.

(4) Subregulations (1) to (3) shall not affect professional liability insurance or guarantee arrangements provided for in a European Union instrument.

(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 except as specified in subregulation (2).

(2) The provisions of this Part shall not have effect for the purposes of or in connection with the exercise of the freedom of the service provider who is established in an EEA State to provide the service in Gibraltar from that State.

#### **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) Where a competent authority requires a service provider or recipient to supply a certificate, attestation or any other document proving that a requirement has been satisfied it shall accept any document from a competent authority in an EEA State which serves an equivalent purpose or from which it is clear that that requirement has been satisfied.

(4) A competent authority may not require a document from a competent authority in an EEA State to be produced in its original form or as a certified copy or as a certified translation, except in cases provided for in specific legislation giving effect to European Union measures 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 (3) to (5) shall not apply to the documents referred to in—

- (a) article 7(2) and 50 of Directive 2005/36/EC;
- (b) articles 45(3), 46, 49 and 50 of Directive 2004/18/EC of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts;
- (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) the First Council Directive 68/151/EEC of 9 March 1968 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of article 58 of the Treaty with a view to making such safeguards equivalent throughout the Community; and
- (e) the Eleventh Council Directive 89/666/EEC of 21 December 1989 concerning disclosure requirements in respect of branches opened in a Member State by certain types of company governed by the law of another State.

#### **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 in other European Union language if appropriate) 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) the authorisation scheme does not discriminate against the service provider;
- (b) the need for an authorisation scheme is justified by an overriding reason relating to the public interest; and
- (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 implementing a European Union obligation where the enactment is passed or made before the day on which these Regulations came into operation; or
- (b) a provision of a directly applicable European Union instrument coming into force before that day.

**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) non-discriminatory;
- (b) justified by an overriding reason relating to the public interest;
- (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 or in an EEA State.

(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) An authorisation granted by a competent authority under an authorisation scheme shall enable the service provider to have access to the service activity or to exercise that activity including the setting up of agencies, subsidiaries, branches or offices except where an authorisation for each individual establishment is justified by an overriding reason relating to the public interest.

(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.

**Duration of an authorisation.**

15.(1) An authorisation granted to a service provider by a competent authority under an authorisation scheme shall be for an indefinite period, except where—

- (a) the authorisation is automatically renewed or is subject only to the continued fulfillment of requirements;
- (b) the number of available authorisations is limited by an overriding reason relating to the public interest; or
- (c) a limited authorisation period can be justified by an overriding reason relating to the public interest.

(2) Subregulation (1) shall not prevent a maximum period being set before the end of which the service provider must commence his activity after receiving authorisation.

(3) A service provider shall inform the competent authority or the relevant contact point of the following changes to his circumstances—

- (a) the creation of subsidiaries whose activities fall within the scope of the authorisation scheme; and
- (b) changes in the service provider's situation which result in the conditions for authorisation no longer being met.

(4) This regulation shall not prevent a competent authority from revoking or suspending an authorisation when the conditions for the authorisation are no longer met.

**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 European Union 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) discriminatory requirements based directly or indirectly on nationality or, in the case of a company, the location of the registered office including—
  - (i) nationality requirements for the service provider, his staff, persons holding the share capital or members of the service provider's management or supervisory bodies,

- (ii) a requirement that the service provider, his staff, persons holding the share capital or members of the service provider's management or supervisory bodies be resident in Gibraltar;
- (b) a prohibition on having a place of business in more than one EEA State (including Gibraltar) or on being entered in the registers or enrolled with professional bodies or associations of more than one EEA State (including Gibraltar);
- (c) restrictions on the freedom of a service provider to choose between a principal or a secondary establishment, in particular, an obligation on the service provider to have his principal place of business in Gibraltar or restrictions on the freedom to choose between establishment in the form of an agency, branch or subsidiary;
- (d) conditions of reciprocity with the EEA State in which the service provider already has a place of business, except in the case of conditions of reciprocity provided for in European Union instruments concerning energy;
- (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) an obligation to provide or participate in a financial guarantee or to take out insurance from an insurer established in Gibraltar;
- (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.

(4) Subregulation (1)(g) shall not affect any requirement for an insurance or for a financial guarantee and shall not affect requirements relating to the participation in a collective compensation fund for members of professional bodies or organisations.

#### **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 Directive 2005/36/EC of 7 September 2005 on the recognition of professional qualifications or provided for in other European Union instruments, 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) non-discrimination: requirements shall not be directly or indirectly discriminatory according to nationality nor, with regard to companies, according to the location of the registered office;
- (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 (for onward transmission to the Commission) 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

### *Services provided from an EEA State*

#### **Application of this Part.**

20.(1) The provisions of this Part shall have effect for the purposes of, and in connection with, the exercise of the freedom of a service provider who is established in an EEA State to provide the service in Gibraltar from that State.

(2) In this Part “service provider” means a service provider exercising that freedom and references to access to, or the exercise of, a service activity are

references to access to, or the exercise of, the activity by the service provider in the exercise of that freedom.

**Freedom to provide services.**

21.(1) A competent authority shall not make access to or exercise of a service activity subject to compliance with any requirements that do not respect the following principles—

- (a) non-discrimination: the requirement shall not be directly nor indirectly discriminatory with regard to nationality or, in the case of companies, with regard to the EEA State in which they are established;
- (b) necessity: the requirement shall be justified for reasons of public policy, public security, public health or the protection of the environment;
- (c) proportionality: the requirement shall be necessary for attaining the objective pursued and shall not go beyond what is necessary to attain that objective.

(2) A competent authority shall not restrict the freedom of a service provider from an EEA State to provide services in Gibraltar by imposing any of the following requirements—

- (a) an obligation on the service provider to have a place of business in Gibraltar;
- (b) an obligation on the service provider to obtain an authorisation from a competent authority in Gibraltar including entry in a register or registration with a professional body or association in Gibraltar except where provided for in these Regulations or in an enactment implementing a European Union instrument;
- (c) a ban on the service provider setting up a certain form or type of infrastructure in Gibraltar including an office or chambers which the service provider needs in order to supply the services in question;
- (d) the application of specific contractual arrangements between the service provider and the recipient that prevent or restrict service provision by the self-employed;



- (e) an obligation on the service provider to possess an identity document issued by a competent authority in Gibraltar specific to the exercise of a service activity;
- (f) requirements, except for those necessary for health and safety at work, that affect the use of equipment and material that are an integral part of the service provided; or
- (g) restrictions on the freedom to provide the services referred to in regulation 24.

(3) Subregulation (2) shall not prevent a competent authority from—

- (a) imposing requirements which are justified for reasons of public policy, public security, public health or the protection of the environment which comply with subregulation (1); or
- (b) applying, in accordance with European Union law, rules regarding employment conditions including those laid down in collective agreements.

## **Derogations from the freedom to provide services.**

22. Regulation 21 shall not apply to—

- (a) the following services of general economic interest—
  - (i) in the postal sector: services covered by Directive 97/67/EC of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of service;
  - (ii) in the electricity sector, services covered by Directive 2003/54/EC of 26 June 2003 concerning common rules for the internal market in electricity;
  - (iii) in the gas sector, services covered by Directive 2003/55/EC of 26 June 2003 concerning common rules for the internal market in natural gas;
  - (iv) water distribution and supply services and waste water services; and
  - (v) the treatment of waste;

- (b) matters covered by Directive 96/71/EC of 16 December 1996 concerning the posting of workers in the framework of the provision of services;
- (c) matters covered by Directive 95/46/EC of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data;
- (d) matters covered by Council Directive 77/249/EEC of 22 March 1977 to facilitate the effective exercise by lawyers of freedom to provide services;
- (e) the activity of judicial recovery of debts;
- (f) matters covered by Title II of Directive 2005/36/EC of 7 September 2005 on the recognition of professional qualifications and requirements in the Member State where the service is provided which reserve an activity to a particular profession;
- (g) matters covered by Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community;
- (h) as regards administrative formalities concerning the free movement of persons and their residence, matters covered by the provisions of Directive 2004/38/EC of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States that lay down administrative formalities with which beneficiaries must comply;
- (i) as regards third country nationals who move to Gibraltar in the context of the provision of a service, the possibility to require visa or residence permits for them or to require compliance with any other obligation under the Immigration, Asylum and Refugee Act;
- (j) as regards the shipment of waste, matters covered by Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste;
- (k) copyright, related rights and rights covered by Council Directive 87/54/EEC of 16 December 1986 on the legal

protection of topographies of semiconductor products and rights covered by Directive 96/9/EC of 11 March 1996 on the legal protection of databases, as well as industrial property rights;

- (l) acts requiring by law the involvement of a notary;
- (m) matters covered by Directive 2006/43/EC of 17 May 2006 on statutory audit of annual accounts and consolidated accounts;
- (n) the registration of vehicles leased in an EEA State; and
- (o) the provisions regarding contractual or non-contractual obligations, including the form of contracts, determined pursuant to the rules of private international law.

## **Derogations in relation to safety of service.**

23.(1) In exceptional circumstances only, a competent authority may, in respect of a service provider from an EEA State, take measures relating to the safety of services.

(2) The measures provided for in subregulation (1) may be taken only if the mutual assistance procedure laid down in regulation 34 is complied with and the following conditions are satisfied—

- (a) the provisions in accordance with which the measure is taken have not been subject to European Union harmonisation in the field of the safety of services;
- (b) the measures provide for a higher level of protection of the recipient than would be the case in a measure taken by the EEA State in which the service provider is established in accordance with its national provisions;
- (c) any measures taken by the EEA State in which the service provider is established are insufficient as compared with those referred to in regulation 34(2); and
- (d) the measures are proportionate.

(3) This regulation shall be without prejudice to provisions laid down in European Union instruments which guarantee the freedom to provide services or which allow derogations therefrom.

## Interpretation and General Clauses

## PROVISION OF SERVICES REGULATIONS 2010

This version is out of date

**Part V***Recipients of services***Prohibited restrictions.**

24. A competent authority shall not impose on a recipient requirements which restrict the use of a service supplied by a service provider from an EEA State, in particular the following requirements—

- (a) an obligation to obtain an authorisation from or to make a declaration to the competent authority; or
- (b) discriminatory limits on the grant of financial assistance by reason of the fact that the service provider is from an EEA State or by reason of the location of the place at which the service is provided.

**Non-discrimination.**

25.(1) A competent authority shall not subject a recipient of a service to discriminatory requirements based on his nationality or place of residence.

(2) The general conditions of access to a service made available to the public at large by the service provider shall not be discriminatory in relation to the nationality or place of residence of the recipient.

(3) Subregulation (2) shall not preclude the possibility for the service provider to apply differences in the conditions of access where those differences are directly justified by objective criteria.

**Assistance for recipients.**

26.(1) Recipients shall be able to obtain the following information from a competent authority—

- (a) general information on the requirements applicable in an EEA State relating to access to, and exercise of, service activities in particular those relating to consumer protection;
- (b) general information on the means of redress available in the case of a dispute between a service provider and a recipient; and

- (c) the contact details of associations or organisations, including the European Consumer Centres Network from which service providers or recipients may obtain practical assistance.

(2) Advice from a competent authority shall include a simple step-by-step guide with up to date information and assistance in a clear and unambiguous manner which should be easily accessible at a distance, including by electronic means.

(3) The competent authority approached by the recipient shall request the appropriate body in the EEA State concerned to provide the information requested as soon as possible and, on receipt, shall forward the information to the recipient and the authorities shall assist and co-operate with each other in this respect.

## 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 non-discriminatory, 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).

**Multi-disciplinary activities.**

28.(1) A competent authority shall not subject a service provider to any requirement which obliges the provider to exercise a specific service activity exclusively or which restricts the exercise jointly or in partnership with different activities.

(2) Subregulation (1) shall not prevent–

- (a) a competent authority for a regulated profession from imposing requirements which are justified in order to guarantee compliance with the rules governing professional ethics and conduct in that profession and which are necessary in order to ensure their independence and impartiality;
- (b) a competent authority from imposing requirements on providers of certification, accreditation, technical monitoring, test or trial services, in so far as is justified in order to ensure their independence and impartiality.

(3) A competent authority shall ensure that–

- (a) conflicts of interest and incompatibilities between certain activities are avoided;
- (b) independence and impartiality are secured; and
- (c) the rules governing professional ethics and conduct for different activities are compatible with one another particularly as regards matters of professional secrecy.

**Mutual assistance - general obligations.**

29.(1) A competent authority shall put in place measures for mutual assistance and for effective cooperation with corresponding competent authorities in EEA States in order to ensure the supervision of service providers and their services.

(2) Information supplied to a competent authority in an EEA State pursuant to this Part shall be supplied as quickly as possible through the

electronic system for the exchange of information established pursuant to article 34 of the Services Directive.

(3) A competent authority is not obliged under this Part to meet a request for information, or a request to carry out any check, inspection or investigation which is not for a proper purpose or for which no reason is given.

(4) Where a competent authority receives a request for information from a competent authority in an EEA State about a service provider established in Gibraltar, that service provider shall provide the competent authority in Gibraltar all the information necessary to enable the activities of the service provider to be supervised.

(5) In the event of difficulty in meeting a request from a competent authority in an EEA State for information or in carrying out checks, inspections or investigations, the competent authority so requested shall inform the requesting authority and both authorities shall liaise to find a solution as quickly as possible.

(6) Any register of service providers held by a competent authority and which is accessible to other competent authorities in Gibraltar shall be accessible on the same conditions to competent authorities with equivalent functions in EEA States.

(7) A competent authority shall provide information about a service provider, when requested to do so by a competent authority in an EEA State where that provider is providing services and, in particular, shall confirm that the service provider is established in Gibraltar and whether it is exercising his activities or otherwise in a lawful manner.

(8) A competent authority shall undertake the checks, inspections and investigations requested by a competent authority in an EEA State and inform the latter of the results of the measures taken.

(9) A competent authority with knowledge of any conduct or specific act by a service provider established in Gibraltar which also provides services in an EEA State which could cause serious damage to the health or safety of persons or to the environment shall provide the information to the competent authorities in the EEA States and to the European Commission as quickly as possible.

**Supervision of the temporary movement of a service provider to an EEA State.**

30.(1) A competent authority shall introduce and maintain the necessary supervision of service providers established in Gibraltar where they are providing services on a temporary basis in an EEA State.

(2) A competent authority shall not refrain from taking supervisory or enforcement measures against a service provider on the grounds that his service has caused damage in an EEA State.

(3) The obligations in subregulation (1) shall not place a duty on a competent authority to carry out checks and controls in the territory of the EEA State where the service is provided.

(4) A competent authority may request that such checks and controls be carried out by the competent authorities of the EEA State where the service provider is providing services on a temporary basis.

**Supervision of temporary movement of a service provider from an EEA State.**

31.(1) A competent authority shall supervise the activity in Gibraltar of a service provider from an EEA State in respect of requirements imposed pursuant to regulation 21 or 22.

(2) A competent authority shall—

- (a) take all necessary measures to ensure that the service provider complies with those requirements as regards the access to and the exercise of the activity; and
- (b) carry out the checks, inspections and investigations necessary to supervise the service activities.

(3) A competent authority shall not refrain from taking supervisory or enforcement measures on the grounds that the service has caused damage in an EEA State.

(4) Where a service provider moves temporarily to Gibraltar to provide a service a competent authority shall participate in the supervision of the provider in accordance with subregulations (5) and (6).

(5) A competent authority shall carry out any checks, inspections and investigations necessary for ensuring the effective supervision of the provider by the EEA State of establishment when requested to do so and shall take the most appropriate measures in each individual case in order to meet the request.



(6) A competent authority may, on its own initiative, carry out any of the controls referred to in subregulation (5), but in such cases it shall act in a non-discriminatory and proportionate manner.

**Alert mechanism.**

32. If a competent authority becomes aware of serious specific acts or circumstances relating to a service activity which could cause serious damage to the health or safety of persons or to the environment in Gibraltar or in the territory of an EEA State, the competent authority shall inform the appropriate competent authority in the EEA State of establishment and the competent authorities of other EEA States concerned as quickly as possible.

**Information on the good repute of service providers.**

33.(1) Where a competent authority in an EEA State requests a competent authority in Gibraltar to supply information on disciplinary or administrative actions or criminal sanctions and decisions concerning insolvency or bankruptcy involving fraud taken by the competent authority in respect of a service provider which are directly relevant to the service provider's competence or professional reliability, the authority in Gibraltar shall supply such information in every case where the request is duly substantiated, in particular, as regards the reasons for the request for information.

(2) Nothing in this regulation shall require or permit a competent authority to disclose information which it could not otherwise lawfully disclose.

(3) Where a competent authority may not lawfully supply information pursuant to a request under subregulation (1) without the consent of the service provider it shall make a request to the provider to give that consent.

(4) A competent authority shall inform the service provider it has supplied the information to the relevant competent authority in an EEA State.

(5) A competent authority shall—

- (a) only communicate the sanctions and actions referred to in subregulation (1) if a final decision has been taken and no further appeal is possible;
- (b) with regard to the other enforceable decisions referred to in subregulation (1), specify whether the decision is final or whether an appeal has been lodged in respect of it and, where

relevant, provide an indication of the date when the outcome of the appeal is expected.

(6) A competent authority shall, in every case referred to in subregulation (5) specify the provisions of Gibraltar laws pursuant to which the service provider was found guilty or penalised.

**Mutual assistance in the event of case-by-case derogations – Gibraltar the place where the service is being provided.**

34.(1) This regulation shall apply where a service provider who is established in an EEA State provides a service in Gibraltar and–

- (a) pursuant to regulation 23, a competent authority in Gibraltar proposes to take measures relating to the safety of the service; and
- (b) pursuant to the procedure in article 35 of the Services Directive, that competent authority requests a competent authority in an EEA State to supply information on the service and the circumstances of the case.

(2) Following receipt of a response from the competent authority in the EEA State of establishment to a request made under subregulation (1)(b), the competent authority in Gibraltar shall notify the Commission and the competent authority in the EEA State of establishment of its intention to take measures and stating–

- (a) the reasons why it believes the measures taken or envisaged by the competent authority in the EEA State of establishment are inadequate; and
- (b) the reasons why it believes the measures it intends to take fulfill the conditions laid down in regulation 23.

(3) No measures shall be taken until fifteen working days have elapsed after the date of notification in subregulation (2).

**Mutual assistance in the event of case-by-case derogations – Gibraltar the place where the service provider is established.**

35.(1) This regulation shall apply where a service provider who is established in Gibraltar provides services in an EEA State and–

- (a) pursuant to article 18 of the Services Directive, a relevant competent authority in that State proposes to take measures relating to the safety of the service; and
- (b) pursuant to the procedure in article 35 of the Services Directive, that competent authority requests a competent authority in Gibraltar to supply information on the service and the circumstances of the case.

(2) Following receipt of a request from the competent authority in the EEA State in accordance with article 35 of the Services Directive, the competent authority in Gibraltar shall check, within the shortest possible period of time, whether the service provider is operating lawfully and verify the facts underlying the request.

(3) The competent authority in Gibraltar shall inform the requesting competent authority in an EEA State, within the shortest possible period of time, of the measures taken or envisaged to be taken or, as the case may be, of the reasons why it has not taken any measures.