

**EXPLANATORY MEMORANDUM TO**  
**THE PROVISION OF SERVICES (AMENDMENT) REGULATIONS 2014**

**2014 No. 1937**

1. This explanatory memorandum has been prepared by the Department for Business, Innovation and Skills and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

- 2. Purpose of the instrument**

- 2.1 The Provision of Services (Amendment) Regulations 2014 (the ‘Regulations’) amend the Provision of Services Regulations 2009 (S.I. 2009/2999) (the ‘2009 Regulations’) to provide that a service provider, who has been granted a licence allowing access to a service activity by a territorial licensing authority, is able to exercise that service activity throughout the whole of the United Kingdom, where appropriate. This instrument shall address the issues raised by the European Commission in an infraction letter dated 17 October 2013 and give full effect to the United Kingdom’s obligations under Article 10(4) of the EU Directive 2006/123/EC on services in the internal market (the ‘Services Directive’).

- 3. Matters of special interest to the Joint Committee on Statutory Instruments**

- 3.1 None. We would like to inform the Joint Committee on Statutory Instruments that the text of the amendment set out in regulation 2(2) of the Regulations was drafted by Parliamentary Counsel in order to address the infraction. It is drafted in order to ensure that a service provider can exercise a service activity anywhere in the UK while also allowing competent authorities flexibility as to how to implement this requirement.

- 4. Legislative Context**

- 4.1 The Services Directive was adopted by the Council of Ministers on 12 December 2006 and published in the Official Journal of the European Union on 27 December 2006. The Services Directive was implemented in the United Kingdom by the 2009 Regulations. United Kingdom Draft Regulations were laid before Parliament under paragraph 2(2) of Schedule 2 to the European Communities Act 1972, for approval by resolution of each House of Parliament, and entered into force on 28 December 2009. The proposed amendments are made under the powers contained in section 2(2) of the European Communities Act and will amend the 2009 Regulations.

- 4.2 The amendments are expected to be deregulatory with a very limited impact. Businesses and individuals affected will have reduced administrative burdens when applying for a license in more than one jurisdiction in the United Kingdom. There are no direct costs to business.
- 4.3 An explanatory note on the proposed amendments to the 2009 Regulations has been prepared and is annexed to this memorandum with the Regulations.
- 4.4 It is intended that the Regulations will be considered by Parliament without any other sets of regulations. The amendment made by the Regulations is likely to give rise to the need for consequential amendments to specific licensing schemes in order to ensure that affected licensing authorities have the right powers and procedures in place to supervise and enforce against service providers, where necessary. These consequential amendments will be made separately.
- 4.5 The negative resolution procedure applies to the Regulations.

## **5. Territorial Extent and Application**

- 5.1 This instrument extends to all of the United Kingdom.

## **6. European Convention on Human Rights**

- 6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## **7. Policy background**

- 7.1 The main objective of the Services Directive is to remove or reduce the barriers to the European internal market in services.
- 7.2 To this end, Article 10(4) of the Services Directive requires licences to provide services to be applicable throughout the whole of a Member State. However, the 2009 Regulations, which implemented the Services Directive in the United Kingdom, allow licences to apply only in England, Scotland, Wales or Northern Ireland, if issued by a territorial authority. This instrument amends regulations 15(5) and 15(6) of the 2009 Regulations to address this issue and to allow, where applicable, for the UK-wide application of a licence issued by a territorial authority.
- 7.3 The Commission originally raised this issue in the post implementation report in 2011 along with three other unrelated issues. The Government persuaded the Commission to drop three of their concerns but conceded that, while there have been no complaints to the Commission or to the United Kingdom directly, the text of the 2009 Regulations did not give full effect to Article 10(4) of the Services Directive. Since the issue of a Pilot case in November 2012, the United Kingdom

has consulted with the relevant authorities (including the Devolved Administrations) to discuss the best way to resolve the issue. Unfortunately, before it was resolved, the EU Commission launched a ‘zero tolerance’ approach to breaches of single market legislation and this led to the commencement of the infraction process on 17 October 2013.

- 7.4 These Regulations implement a form of mutual recognition in order to ensure that a licence issued by a territorial authority will, where appropriate, allow a service provider to provide the service throughout the whole of the United Kingdom. Exception to the requirement for UK-wide applicability is provided for where there are ‘overriding reasons relating to the public interest’, as provided for in Article 10(4) of the Services Directive. There are relatively few licences affected, which would also account for the lack of complaints.
- 7.5 The proposed amendment to the 2009 Regulations will necessitate a number of consequential amendments to be made to the legislation governing various licensing authorities (including devolved legislation) in order to fully implement a form of mutual recognition, where appropriate. The proposed amendment will come into force on 6 April 2016, to provide time to make these consequential amendments.
- 7.6 In addition to the amendments to address the infraction, BIS has taken the opportunity of this legislative vehicle to make a small administrative amendment. Regulation 2(3) of the Statutory Instrument reflects a change in responsibility at operational level following the introduction of the Government Digital Service. The Services Directive Point of Single Contact (PSC), which is referred to as the “electronic assistance facility” (EAF) within these Regulations, is the electronic user interface for potential service providers, where they can access information on the necessary procedures they must take before being able to operate in the United Kingdom. The EAF was previously operated by SERCO (Businesslink.gov.uk) under contract to HMRC. Responsibility for the provision of this service now rests with the Cabinet Office and this change is reflected in the amendment.

## **8. Consultation outcome**

- 8.1 Following the Pilot letter, the Department for Business, Innovation and Skills ran a public consultation in spring 2013 on proposed changes to the implementing legislation for the Services Directive (the 2009 Regulations) to allow for the national applicability of licences. The proposal was that all licences issued by competent authorities should apply and be recognised throughout the United Kingdom, unless there were good policy reasons otherwise. A summary of the responses received and the action planned was sent to the authorities involved and published on the Department’s website on 23 August 2013. In this, there was broad support for the BIS proposal and argued proposals for exemptions on the grounds of the public interest.

## **9. Guidance**

- 9.1 Guidance will be provided by the relevant Departments with respect to the consequential amendments to be made to the specific legislation governing various licensing authorities by 6 April 2016. BIS will update guidance on the 2009 Regulations to reflect the changes.

## **10. Impact**

- 10.1 There are expected to be no additional (one-off or on-going, monetised or non-monetised) costs for individuals or businesses from this amendment. This change is deregulatory and should remove administrative burden from those looking to operate across a wider geographical area.
- 10.2 Individuals and businesses will benefit from the avoided costs associated with the reduction in administrative costs of gaining authorisation from multiple competent authorities. Once an individual or business has gained the required licence from one competent authority, there should be no further costs incurred for the duration of the licence of activity covered.
- 10.3 Information on the costs and numbers affected was sought as part of the consultation but none was received. It is likely that any impact will be small given the small number of licensing authorities affected by the amendment and that no complaints have been received since the current 2009 Regulations came into force.
- 10.4 Competent authorities may face additional costs from setting up mutual recognition procedures for licenses issued in other parts of the United Kingdom. Given the limited number of occupations affected, these costs are expected to be small. The on-going impact is expected to be neutral as competent authorities cannot make a profit from the services they provide and provision of licensing is demand led. Any reduction in demand for licenses will be matched by an equal amount of resources required.

## **11. Regulating small business**

- 11.1 The Regulations apply to small business.
- 11.2 However, the effect of the amendment will be deregulatory and reduce administrative burdens on these businesses. This should save them time and reduce their costs.

## **12. Monitoring & review**

- 12.1 A Ministerial review to evaluate the effectiveness of the proposed amendments to the 2009 Regulations will take place one year after the coming into force date of these amendments (i.e. April 2017).

### **13. Contact**

- 13.1 Gesa Foerster at the Department for Business, Innovation and Skills can answer any queries regarding the instrument. Tel: 020 7215 3646 or email: [gesa.foerster@bis.gsi.gov.uk](mailto:gesa.foerster@bis.gsi.gov.uk). [Alternate contact person: Duncan Lawson, [duncan.lawson@bis.gsi.gov.uk](mailto:duncan.lawson@bis.gsi.gov.uk), Tel. 020 72 15 54 65.]