IMPLEMENTING THE SERVICES DIRECTIVE

Consultation Document on Implementing the EU Services Directive in the UK

NOVEMBER 2007
The Department for Business, Enterprise and Regulatory Reform is seeking views on the implementation of the Directive on Services in the Internal Market (Directive 2006/123/EC) in the UK. The Directive was agreed in December 2006 and the Government is required to transpose its requirements into UK law and practices before 28 December 2009.

The Directive creates significant new opportunities for UK business. It provides for the opening up of the internal market in services through the removal of unjustifiable barriers to service provision and the introduction of measures designed to facilitate the cross-border provision of services. It aims to make it easier for businesses both to set up in other Member States of the EU and to provide services cross-borders or on a temporary basis. It will achieve this through:

- Setting up Points of Single Contact in each Member State through which providers will be able to find the information and complete the formalities necessary to doing business in the Member State in question
- Facilitating greater co-operation between regulatory and authorisation bodies across the EU thereby reducing burdens on business
- Engendering consumer confidence in cross-border service provision through access to information and the high quality of services
- Abolishing restrictive legislation and practices that hinder service providers from setting up in or providing services within the EU

This consultation seeks to explain what our requirements under the Directive are and to set out how we plan to fulfil these obligations. The consultation invites views based around the questions inserted throughout the document, but comments in general are also welcome. The consultation does not seek views on the Directive itself. There is as yet no formal agreement on how this project will be delivered in relation to devolved functions and discussions with the devolved administrations are ongoing.

The Government strongly supports the Directive’s aims and is keen to ensure its effective implementation in the UK. We believe the Directive will be good for the UK economy, UK business and UK consumers. We would consequently like to hear from a broad spectrum of consultation respondents and look forward to receiving your thoughts on our implementation proposals.

Issued 5 November 2007
Respond by 11 February 2008
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The Single Market has generated significant benefits for businesses and consumers alike, creating jobs and wealth whilst enabling greater choice and competition and maintaining essential standards. However, whilst trade in goods has increased rapidly, the same has not been true for service provision. The Services Directive aims to rectify this situation by breaking down barriers to cross border trade in services between EU Member States, making it easier for service providers to set up business and offer their services elsewhere within the EU.

I believe the Services Directive is a genuinely market-opening measure that will bring real benefits to the UK. Our businesses will enjoy easier access to new markets throughout Europe, and our consumers will enjoy greater choice of providers vying for their custom. Economic forecasts suggest that the Directive offers significant quantitative benefits to the UK, to the tune of £4-6 billion per annum to the UK economy and the creation of up to 81,000 jobs.

The Government was strongly supportive of the Services Directive during its negotiation and is pleased with the resultant text. Our task now is to implement the Directive effectively before the 28 December 2009 deadline. We therefore need to address a number of important issues, ranging from the features of the Point of Single Contact to the extent to which particular legislation should be amended to ensure compliance with the Directive. We need your input to get this right. Thank you for taking the time to take part in this consultation process and I look forward to receiving your views on the Government’s plans.

GARETH THOMAS MP
Parliamentary Under Secretary of State for Trade and Consumer Affairs

There are two ways to respond to this consultation. It is possible to read the Executive Summary alone, which will give you a summary view of our plans, and respond to the four overarching questions on pages 7-8. If you want to read the detail of our proposals however, you should refer to the main document and respond to as many questions throughout the relevant chapters and listed on pages 12-17 as you wish.
EXECUTIVE SUMMARY

1. The Services Directive\(^1\) aims to develop the single market in the services sector by breaking down barriers to cross-border trade within the EU. This will make it easier for businesses to set up in another Member State or to provide services across borders or on a temporary basis.

2. The general rule is that the Directive applies to all services sectors other than those specifically excluded from scope: for example, financial services, transport, healthcare, gambling, temporary work agencies; and the area of taxation. The Directive complements other EU legislation aimed at simplifying regulatory frameworks and increasing transparency.

3. The Directive must be implemented by 28 December 2009, after which Member States must report to the European Commission on their progress and will then peer-review implementation by other Member States.

Points of Single Contact

4. Each Member State must set up a point (or points) of single contact to allow users to find out about relevant rules and procedures should they wish to do business in that Member State, and to apply remotely for any necessary licences or authorisations. The UK PSC is primarily intended for service providers established in other Member States, as well as service recipients in other Member States. Competent authorities (authorities with a regulatory or supervisory role) will also be users and it will be accessible by others.

5. A basic Point of Single Contact could simply signpost users to other websites that have relevant information. Whilst this would be relatively inexpensive and simple to set up, it would be unlikely to deliver all the potential benefits of the PSC. At the other extreme, a fully encapsulated decision-making service, whereby all necessary processes, assessments and advice are provided and supported by a single site, would replicate responsibilities of competent authorities, be overly complicated and expensive to build, and would increase the risks of the PSC not being operational by the implementation deadline. The Government therefore proposes to establish a mid-range system based on “proactive and helpful” signposting, which it believes will meet the requirements of the Directive and avoid unnecessary complication. We recommend that the PSC be built on to the existing Business Link although the exact way this should be done needs further investigation.

6. Competent authorities will need to ensure that they can keep track of applications and registration requests from service providers, because the Directive requires that they be processed within a specified period. If the competent authority does not respond in time then the authorisation will be 'deemed to have been granted'.

\(^1\) Text available at: [http://ec.europa.eu/internal_market/services/services-dir/proposal_en.htm](http://ec.europa.eu/internal_market/services/services-dir/proposal_en.htm)
7. We propose to signpost useful information on matters such as taxation and labour law, although these are areas excluded from the Directive. Views are sought on what other information is likely to be of use to service providers looking to do business in the UK.

8. We propose to have information on the PSC in plain English, and to consider making information available in other languages on a cost-benefit basis – views are sought as to which.

9. We seek views on whether there is a need for e-mail and telephone support and the best means of providing it.

10. We do not intend to charge for using the PSC, but seek views on this and on charging for additional services. Fees related to the issuing of a licence might need to be collectable through the PSC.

11. While we do not think it is necessary to create more than one PSC, views are sought as to whether separate PSCs should be set up for different service sectors or in the devolved administrations.

12. The private sector could have a role in operating the PSC although we do not believe there is likely to be a strong enough business case for the private sector to wish to do so.

13. Users will want to be confident that the information on the PSC is accurate and up to date. We propose to impose a legal obligation on contributors to the PSC and seek other views on this issue.

14. Users also need to be confident that they are in the right place and receiving trust-worthy information. We therefore seek views on whether specific PSC EU and/or national branding should be adopted.

**Administrative Cooperation**

15. The Directive requires competent authorities to cooperate effectively with their counterparts in other Member States, providing ‘mutual assistance’ to each other to ensure the proper supervision of service providers operating in more than one Member State. An indicative list of relevant competent authorities is set out in Annex D.

16. We seek views on whether competent authorities’ statutory regimes need to be amended to comply with the mutual assistance requirements and if so how; as well as on the possible net increase in workload. Any registers containing information about service providers which UK competent authorities can consult will need to be accessible by regulators in other Member States on the same basis.

17. National liaison points must be set up to help facilitate mutual assistance requests. We propose to establish a UK liaison point within BERR, and seek views as to whether they should also be set up in Scotland, Wales and Northern Ireland.
18. The European Commission is developing an electronic Internal Market Information system (IMI) to enable competent authorities to communicate mutual assistance requests and responses electronically. We propose to allow competent authorities to decide for themselves whether or not to register with IMI, but they will all need to take part in administrative cooperation where requested, and we seek views on this point.

Ensuring the Quality of Services

19. Member States are required to ensure that service recipients can find out, in their home country, general information about requirements in other Member States relating to consumer protection, means of redress, and contact details of organisations that could provide practical assistance. We propose to do this through an online ‘consumer portal’, and seek views as to what information should be provided and where the portal should be located.

20. Service providers will be obliged to provide certain information to service recipients. Some of this information must always be made available, whilst some must be provided at the recipient’s request. Providers will have a choice of ways in which to make this information available. Service providers must also respond to complaints in the shortest possible time and make their best efforts to find a satisfactory solution. Many businesses do these things already, and we believe that these obligations will not create a significant new burden on service providers. We seek views on whether our approach is sensible, on whether there are existing legal or administrative requirements to provide such information and on how “the shortest possible time” can best be defined.

21. The Government is required to take steps to encourage the voluntary development of charters, codes of conduct, accreditation schemes and so on; we seek views on how this can be done and on current initiatives. The Government must also ensure that information on labels and quality marks is easily accessible: we seek views on whether to establish a website and/or to require organisations responsible for labels to provide the necessary information.

22. Member States are allowed to require service providers operating a ‘high-risk’ service to subscribe to professional liability insurance. We do not intend to change current Government policy by introducing a general requirement of this nature. However where such rules do exist in the UK it will be necessary to recognise equivalent insurance obtained in another Member State. We invite views on these issues.

23. We are required to remove any complete bans on commercial communications by regulated professions. Professional rules on commercial communications are permitted, subject to certain conditions. We seek to find out what professional rules exist and whether they comply with the Directive.
24. The Directive provides that restrictions on multidisciplinary activities are not permitted except in certain circumstances, and we seek views as to how such provisions can be applied.

25. We are required to amend or abolish restrictions on the use of a service from a service provider established in another Member State. Providers must not restrict access to their services on the grounds of nationality or place of residence, although differential treatment may be justified by objective criteria. We intend to impose an obligation in legislation, and seeks views as to what might constitute ‘objective criteria’.

“Screening” the UK’s rules on service provision

26. The Directive requires Member States to “screen” all their legislation and practices affecting services and to check whether discriminatory, unnecessary or disproportionate barriers remain. Requirements that cannot be justified under the terms of the Directive should be repealed or amended.

27. The major programme of simplification work undertaken by the Government already achieves many of the anticipated improvements arising from the Directive. We have built on this in undertaking a thorough review of all primary and secondary legislation and administrative rules.

28. As a result of this review and the previous simplification work we have found little that needs to be changed so far. This process is continuing and we will be publishing updates on our website over the coming months. In this consultation we seek views on barriers that are perceived to exist in the UK that contravene the Directive. We also seek views on barriers to service provision that may exist in other Member States.

Key Questions

29. This consultation includes a variety of questions for respondents, listed on pages 12-17. Respondents should feel free to respond to as many or as few of these as they wish. However the following overarching questions (one for each implementation chapter) cover the breadth of our work; you may prefer to respond to these general questions if you do not wish to go into the detail.

Key Question 1: Do you believe that the Government’s proposals for implementing the Directive’s requirements for the PSC, as set out in more detail in Chapter A, will meet the needs of users and offer appropriate value-for-money for taxpayers?

Key Question 2: Do you agree with the Government’s proposals (set out in detail in Chapter B) for ensuring that authorities with a regulatory or supervisory role cooperate effectively with their counterparts in other Member States?

Key Question 3: Do you agree with the Government’s proposals for implementing the quality of services provisions as set out in detail in Chapter
C? How can these provisions be implemented so that service recipients have greater trust in the services provided from other Member States whilst minimising regulatory burdens on service providers?

Key Question 4: Can you think of any examples of legislation, administrative practices or licensing regimes either in the UK or in other Member States that should be amended in order to comply with the Directive (see pages 73-74 for examples)?

Impact Assessment


Devolution

31. Implementation of this Directive is primarily the responsibility of BERR and this consultation seeks views on how the Directive can best be implemented throughout the UK. However, responsibility for certain legislation within the scope of the Directive is devolved and the Government is therefore in discussion with the Scottish Executive, Welsh Assembly Government and Northern Ireland Executive in developing policy for implementation. The position as to which legislation operates across the whole UK, and which is set out at a devolved level, will vary on a case by case basis - thus, even where a particular matter is devolved in e.g. Scotland, it may not be so in Wales, or in Northern Ireland.

32. Particular issues being consulted on are whether there should be separate Points of Single Contact to cover Scotland, Wales and Northern Ireland (see page 33) and separate national liaison points to cover Scotland, Wales and Northern Ireland (see pages 42-43 and 45). However we are working with the devolved administrations across the whole scope of implementation and will continue to do so following this consultation. All responses received that refer to devolved issues will be shared with the relevant administration(s).

How to respond

33. We are sending this document to all the key interested parties of this consultation. We would welcome suggestions of others who may wish to be involved in this consultation exercise. A list of consultees is at Annex C. A copy of the document is also available on request from the address on the inside front cover or can be found on the BERR website at http://www.berr.gov.uk/consultations/index.html.

34. We welcome comments from readers on any aspects of our consultation. Our major proposals and questions for consultation are set out in the executive summary and we are happy to receive responses to these overall questions alone. In addition, some readers might have a particular interest in certain aspects of our proposals and we would suggest:
• the **Point of Single Contact (PSC)** chapter (pages 23-35) be read by anyone with an interest in how the Point of Single Contact will operate and in the services it should provide, particularly potential users such as business organisations, service recipients and competent authorities.

• the **Administrative Cooperation** chapter (pages 36-47) be read by anyone with an interest in the supervision of service providers, such as competent authorities like regulators and local authorities, and to a lesser extent by those affected by such supervision i.e. businesses.

• the **Quality of Services** chapter (pages 48-62) be read by anyone interested in the sale or purchase of services across national borders, in the rights of consumers and service recipients and in the provision of consumer information. It should be read by businesses as it discusses certain obligations to be placed on them.

• the **Screening** chapter (pages 63-74) be read by anyone interested in how we are examining our legislation and practices for compliance with the Directive. In particular, those with an interest in specific policy areas should read Annex A, which sets out the Government's emerging conclusions on how laws and practices are affected by the Directive.

35. The table of contents on pages 1-2 sets out in greater detail where further information on particular topics covered by this document can be found.

36. This consultation will close on 11 February 2008. A response can be completed online, or can be submitted by post, fax or e-mail to:

Elaine Barley  
BERR  
Bay 4140  
1 Victoria Street  
London  
SW1H 0ET

Fax: 020 7215 2234  
E-mail: servicesconsultation@berr.gsi.gov.uk

37. To complete the response form online, please go to:  
https://www.surveymonkey.com/s.aspx?sm=DjQ4vglgz7I_2fZ1qiNcwMDw_3d_3d  
You will need to refer to this consultation text when responding in this way.

38. However you are responding, please state whether you are doing so as an individual, or as an organisation. If responding on behalf of an organisation, please make it clear whom the organisation represents and, where applicable, how the views of members were assembled.

39. Responses will be analysed and taken into account as the Government’s policy on how best to implement the Directive is finalised. The Government intends to publish its response to this consultation in May 2008.
Additional copies

40. You may make copies of this document without seeking permission, including by printing from our website. Additionally, printed copies of the document (URN: 07/1485) can be obtained from:

BERR Publications Orderline
Admail 528
London SW1W 8YT
Tel: 0845 015 0010
Fax: 0845 015 0020
Minicom: 0845 0150030

www.berr.gov.uk/publications

Confidentiality & Data protection

41. Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004). If you want other information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.

42. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

43. The Department will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

Help with queries

44. Questions about the policy issues raised in the document can be addressed to:

Elaine Barley / Tom Poynton
BERR
Bay 4140
1 Victoria Street
London
SW1H 0ET
020 7215 0028 / 0252
45. If you have comments or complaints about the way this consultation has been conducted, these should be sent to:

Kathleen McKinlay, Consultation Co-ordinator
BERR
Better Regulation Team
1 Victoria Street
London
SW1H 0ET

E-mail: kathleen.mckinlay@berr.gsi.gov.uk
Tel: 020 7215 2811
Fax: 020 7215 2235

46. A copy of the Code of Practice on Consultation is in Annex G.
LIST OF QUESTIONS

Key Questions

Key Question 1: Do you believe that the Government's proposals for implementing the Directive’s requirements for the PSC, as set out in Chapter A, will meet the needs of users and offer appropriate value-for-money for taxpayers?

Key Question 2: Do you agree with the Government’s proposals in Chapter B for ensuring that authorities with a regulatory or supervisory role cooperate effectively with their counterparts in other Member States?

Key Question 3: Do you agree with the Government’s proposals for implementing the quality of services provisions in Chapter C? How can these provisions be implemented so that service recipients have greater trust in the services provided from other Member States whilst minimising regulatory burdens on service providers?

Key Question 4: Can you think of any examples of legislation, administrative practices or licensing regimes either in the UK or in other Member States that should be amended in order to comply with the Directive (see pages 73-74 for examples)?

General Question: Do you have any comments in general on implementation of the Services Directive in the UK?

Chapter A: Points of Single Contact (pages 23-35)

Q1 What facilities will the following users need in order to interact effectively with the PSC:
   a) Service Providers?
   b) Service Recipients?
   c) Competent Authorities?

Q2 Are there any other potential users of the PSC?

Q3 “The PSC must be easily navigable and clearly laid out to provide an agreeable user experience. It should be clear on what can be achieved via the portal and direct users quickly”. How best do you think the PSC could achieve this aim?

Q4 Do you agree with the Government’s proposed approach to the role of the PSC?

Q5 Do you agree with the recommendation that the Business Link functionality should be at the heart of the PSC? If not, what alternative do you prefer and why?

Q6 Do you agree that, regardless of the scope of the Directive, the UK PSC should attempt to signpost useful information, for example taxation and labour law?
Q7 Which are the most important pieces of information necessary for service providers to do business in the UK, specifying up to five?

Q8 Which sectors of the services industry do you think are best placed to benefit quickly from the opportunity to access the market provided by the UK PSC?

Q9 Which sectors of the UK services industry do you think are best placed to benefit quickly from the opportunity to access other EU markets provided by the Directive?

Q10 Do you think that the PSC should be made available in additional EU language(s)? If so which one(s) and to what extent?

Q11 Do you think that dedicated email and/or telephone support is necessary for the PSC from day one?

Q12 What sort of queries do you think users will need support with?

Q13 As a user would you be prepared to pay for telephone support for the PSC - e.g. through a chargeable rate call line?

Q14 Do you agree that access to the PSC should be free? If not how much would you as a user be willing to pay to use the PSC service?

Q15 Do you agree that any additional advice and services could be charged for independently, if necessary? Do you have views as to what types and level of charge would be appropriate?

Q16 Do you think there should be one PSC for the UK or should it be divided up? If divided, what should the basis of that division be?

Q17 Do you agree that the Government should be responsible for funding the PSC? If not, who should provide it and on what terms?

Q18 Do you agree with the proposed approach for ensuring that the PSC remains up to date and accurate? How do you think the obligations on those contributing content can be best enforced?

Q19 Do you agree that the Government should await the review of existing website liability arrangements rather than drawing up a specific policy for the Services Directive?

Q20 Do you agree that an EU PSC brand alongside a national identifier would be beneficial to users of Points of Single Contact?
Chapter B: Administrative Cooperation (pages 36-47)

Q21 How great a net increase in workload might you expect competent authorities to face as a result of the administrative cooperation provisions of the Directive?

Q22 Are there any additional competent authorities who regulate areas of service provision within the scope of the Directive but which are not listed in Annex D?

Q23 Are you aware of any competent authorities whose statutory regime would need to change to comply with Article 30(2)?

Q24 Do you have any comments on the implementation of Article 30(2)?

Q25 Are you aware of any competent authorities whose statutory regimes would need to change to be able to comply with the obligations to provide mutual assistance?

Q26 Do you have any comments on the method of implementation of the mutual assistance obligations?

Q27 Are you aware of any registers containing information on service providers and which UK competent authorities can consult, for which the access rights would need to be changed in order to comply with the Directive?

Q28 Do you have any further comments on the obligations to give competent authorities in other EU Member States access to consult registers in which providers have been entered, on the same basis as their equivalent UK competent authority?

Q29 A national liaison point needs to be established to comply with the Directive. Do you have any comments about the proposal to establish one such national liaison point in the Department for Business, Enterprise and Regulatory Reform?

Q30 Do you have any comments as to whether national liaison points should also be established within Scotland, Wales and/or Northern Ireland?

Q31 Do you agree that option 3 should be the option adopted for the way competent authorities are registered with IMI? If so, why? If not, which option would you favour and why?

Q32 Do you have any comments on the proposed approach to IMI coordinators?

Q33 Do you have any comments on the proposed approach to training for use of IMI?
Chapter C: Ensuring the Quality of Services (pages 48-62)

Q34 Do you have any comments on what basic information should be available on the ‘consumer portal’?

Q35 Which of the options listed do you think is best placed to deliver the consumer portal required under Article 21? Is there an alternative not identified that you prefer?

Q36 Do you have any comments on the use of mutual assistance procedures to obtain information for service recipients?

Q37 In your area of expertise, are you aware of any legal or administrative requirements to make information available to service recipients?

Q38 Do you agree that the legislative approach outlined in relation to the information and redress requirements is sensible? If not, what alternatives can you propose?

Q39 Do you have a view on how we should define “in the shortest possible time”? What factors or constraints might be relevant in determining the time needed to respond to complaints?

Q40 What approach do you think should be taken to enforcement of the information and redress provisions?

Q41 Are you aware of any instances where a financial guarantee is required for compliance with a judicial decision in the UK?

Q42 Do you agree with the proposed approach of encouraging providers to take action on the provisions in Articles 26 and 37? What would be effective ways for encouraging providers to take action? What current initiatives are you aware of in this regard?

Q43 Which of the three options for providing information on labels and quality marks is preferable? What alternatives are there?

Q44 To what extent is information on labels and quality marks already available? How could this be improved?

Q45 Do you agree that professional liability insurance should not be a general mandatory requirement in law for ‘high-risk’ service provision in the UK? What are your reasons?

Q46 If you work in a profession where professional indemnity insurance is a requirement to practice, or if you oversee such rules, we would be interested to hear your views on whether changes are required to your professional rules for them to meet the Directive’s requirements.

Q47 Do you have any comments on the application of Article 22(1)(k)?
Q48 What professional rules relating to commercial communications by the regulated professions already exist? How should we ensure that all professional rules comply with the Directive?

Q49 We invite views on how best to ensure the provisions on multidisciplinary activities are workable, particularly from respondents in those areas falling under the two affected groupings. Are you aware of any restrictions on multidisciplinary activities in the UK?

Q50 Do you agree with the suggested approach to the obligation on providers concerning their general conditions of service?

Q51 Can you suggest examples of ‘objective criteria’ that might justify the use of different terms for different service recipients in a provider’s general conditions of access?

Chapter D: Screening the UK’s Rules on Service Provision (pages 63-74)

Q52 Do you agree that, as a general rule, it is better to regulate in an identical way for both temporary and established (i.e. UK-based) service providers?

Q53 Do you agree that the information contained in implementation reports to the Commission should be made publicly available?

Annex A: Summary Findings of Screening Exercise (pages 76-92)

Q54 Are you aware of any rules, whether in law or elsewhere, which govern the legal services and may conflict with the Directive?

Q55 Do you agree that there are strong public policy grounds for retaining the UK’s existing system of alcohol licensing, including for sales by temporary providers?

Q56 Do you agree that requirements in the Insolvency Act for the authorisation of all practitioners from another Member State should be relaxed? Do you have suggestions on what other arrangements might be appropriate?

Q57 Do you agree that the proposed changes to hallmarking regulation meet our obligations under the Directive?

Q58 Do you have any other suggestions or comments relating to the proposed changes to hallmarking regulation, for example regarding enforcement and the safeguarding of UK consumers?

Q59 The Hallmarking Act currently prevents UK assay office marks being applied outside the UK. Do you believe, in principle, that UK assay offices should be able to apply their UK assay office marks outside the UK?
Q60 Are you aware of any legal or administrative obligations relating to hallmarking in other Member States’ which limit access to their market?

Q61 If you consider that there are any requirements within a particular byelaw which might directly or indirectly affect service provision, then please let us know.
THE EU DIRECTIVE ON SERVICES IN THE INTERNAL MARKET

Background Information

History

1. The Services Directive was published in its first form in January 2004. Following extensive negotiations and some significant textual changes it was agreed by the European Council in May 2006 and by the European Parliament in November 2006. The Directive was formally adopted in December 2006 and a three-year implementation period began.

Rationale

2. The internal market has brought real benefits to the EU, but while it is facilitating the free movement of goods, people and capital around Europe, this is less true for services. This is in spite of the fact that the free movement of services is a fundamental right under the Treaty establishing the European Union. The European Commission has identified more than 90 barriers where competition is restricted, resulting in less choice and lower quality of services at often increased prices. For example, in some Member States:

   • professionals such as lawyers are not allowed to mention their particular specialisation in communications with the public, limiting non-established lawyers' ability to attract new custom
   • estate agents are required to have a physical presence in the country
   • tourist guides from other EU countries are required to pass a local examination before receiving a local licence
   • there can be no more than one driving school for every 1500 people

3. The Services Directive intends to change this position by making the internal market for services a reality. It will remove barriers to trade, cut unnecessary red tape, and open up services markets across Europe. It will play an important role under the Lisbon agenda in boosting growth and employment and is essential to the EU’s longer-term competitiveness as it faces economic challenges from emerging economies.

Aims

4. The Services Directive seeks to remove barriers to cross-border trade in services within the EU through making it easier for business:

   • To set up in another Member State; or
   • To provide services across borders or on a temporary basis to another Member State

5. It will do this through the simplification of existing legislation pertinent to the supply of services, the establishment of online portals to facilitate doing business in other Member States, the facilitation of contact between
regulators who supervise service providers, and requirements relating to the enhanced quality of services.

Benefits

6. The Services Directive will open up the internal market to facilitate the free movement of service provision within the EU. In particular, UK businesses will gain easier access to markets in the rest of the EU, and UK consumers will benefit from a wider choice and greater competition between service providers. It will reduce the cost of complying with legislative and administrative requirements in other Member States, increasing trade and competition. In addition, by gaining access to a larger market, businesses may be better able to specialise in particular services, expand their output and develop economies of scale. Businesses will spend less time setting up in another Member State, obtaining necessary authorisations at a distance through Points of Single Contact, and there will be less need to contact regulators as they will be communicating more between each other.

7. It is estimated\(^2\) that the Directive will result in significant benefits to the UK, to the tune of:

- £4-6 billion per annum to the economy
- up to 81,000 jobs created
- an increase in real wages of up to 0.7%

8. The attached Impact Assessment details the benefits associated with the implementation options.

Small Businesses

9. Small businesses in particular stand to benefit from the Services Directive. Crucially, it will be easier to test the waters in new markets through the temporary service provisions, more lenient by comparison with the rules for establishment, before deciding whether to set up on a more permanent basis. The Directive explicitly refers to SMEs on a number of occasions, recognising that they are particularly affected by the barriers to service provision that the Directive seeks to address. The Directive also recognises that provisions creating obligations for business should be implemented without imposing unnecessary burdens on SMEs: the Government is fully supportive of this position.

Scope

10. The Directive is generalist in nature in that it applies across the services sector rather than to specific professions. Therefore unless a service sector is specifically excluded, it comes within the Directive’s scope.

11. In broad terms, excluded areas are:

\(^2\) See Impact Assessment
• Non-economic services of general interest
• Financial services
• Electronic communications services and networks
• Transport (including port services)
• Temporary work agencies
• Healthcare services
• Audiovisual services
• Gambling
• Activities connected with the exercise of official authority
• Social services
• Private security services
• Notaries and Bailiffs appointed by official government act
• Taxation

12. Some of these areas (e.g. financial, transport and electronic communications services) are excluded because applicable Community legislation is already in place. Note that this list is subject to various qualifications – a more complete run-down of exclusions is available in Annex F.

13. The Directive is subordinate to other EU instruments should their provisions come into conflict in any way. For example, the Mutual Recognition of Professional Qualifications Directive, which is relevant to many service providers, takes precedence.

14. The Directive applies to service provision between service providers whose main branch is in one EU Member State and service recipients who are located in a different EU Member State (meaning it can apply, for example, to a UK provider with a subsidiary in France that is trading to a French-based recipient).

**Wider context**

15. The Services Directive is in general a deregulatory measure aimed at facilitating the provision of services through simplification of rules and the abolition of unjustifiable barriers. As such it reflects much of the Government’s recent drive for better regulation and simplification, such as initiatives arising out of the Hampton report concerning regulation and enforcement (see box on page 69 for more information).

16. The Directive seeks to allow businesses and recipients to access online information and to obtain authorisations and complete procedures online, as well as promoting more joined-up working between those who regulate services. This is consistent with the Government’s Transformational Government agenda, which is concerned with improving the way Government uses IT to deliver services designed around business and citizens through more co-ordinated delivery channels, reducing burdens on the user and improving efficiency.

17. The Directive complements a range of other EU legislation, such as rules concerning e-commerce, Distance Selling and Unfair Commercial
Practices. These measures are all aimed at making business within the EU easier, and providing consumer certainty in choosing providers. Taken together this provides for a more effective internal market for all service providers within the EU.
PROPOSALS FOR IMPLEMENTING THE SERVICES DIRECTIVE IN THE UK

1. The following chapters detail the obligations on the UK under the various elements of the Services Directive, seeking input through questions and discussion of the options, including proposals for implementation where these have been formulated. Responses to any of the questions included, as well as general comments, are all welcome.

2. In common with the other Member States of the EU, the UK has until 28 December 2009 to implement the provisions laid out in the Directive. There are four principal parts to this:

A. Establishing Points of Single Contact
B. Ensuring the UK is capable of participating in administrative cooperation procedures
C. Implementing proposals ensuring the high quality of services and rights for service recipients
D. Ensuring all UK legislation, licensing regimes and administrative practices are compliant with the requirements of the Directive

3. Each of these is taken in turn in the following chapters A to D.

4. Please note that the consultation is concerned with how the Government should implement its obligations under the Services Directive – it is not seeking views on the Directive itself.

5. You may wish to refer to the Directive text in responding to this consultation. If you do, this is available at: http://ec.europa.eu/internal_market/services/services-dir/proposal_en.htm

ADDITIONAL COMMENTS

Although we have raised particular questions throughout this consultation on specific areas, we are also interested to receive general comments on implementation or on issues not covered in depth by this document. If you have such further comments to make, we would be pleased to receive them.

General Question: Do you have any comments in general on implementation of the Services Directive in the UK?
A: POINTS OF SINGLE CONTACT

This chapter should be read by anyone with an interest in how the Point of Single Contact will operate and in the services it should provide. It will be particularly useful to hear from business organisations, service recipients and competent authorities as the PSC is intended to be used by all these groups.

Key Question 1: Do you believe that the Government's proposals for implementing the Directive's requirements for the PSC, as set out in Chapter A, will meet the needs of users and offer appropriate value-for-money for taxpayers?

A1. This chapter covers Articles 6, 7 and 8.

Purpose

A2. Many service providers are dissuaded from embarking on cross-border trade because it is often difficult to clarify the requirements they need to meet to do business in other Member States. The Services Directive addresses this by requiring the creation of a point (or points) of single contact in each Member State, through which service providers will be able to find the relevant information, and complete the necessary procedures, necessary to doing business there. This will benefit UK businesses wishing to provide services elsewhere in the EU.

A3. The UK Point of Single Contact (PSC) will make it easier for anyone thinking of providing services in the UK to find out what they need to do to set up here or to provide services on a temporary basis. At present, in order to get this sort of information businesses may need to visit the UK and perhaps employ third parties (such as lawyers) to do research and advise them, a costly and time-consuming process. The Point of Single Contact should speed this up, by bringing all the information together and making it possible to apply remotely for any licences or approvals needed.

CASE STUDY – Tourism

What was the problem?
A small UK travel agent was set up in 1993 to offer small group bus tours, personalised holidays and city breaks in Scotland. They decided to expand their business by setting up as a travel agent in another EU country. Under the present law, to set up there they would have to deal with numerous different authorities often at national, regional and local level all with different procedures and forms.

How could the Point of Single Contact help?
• Under the Services Directive, the company would be able to identify and complete all necessary authorisation processes at all levels of government through the relevant point of single contact. They could do this
electronically and from their own office without having to travel to the
country in question.
- All their on-line applications through the point of single contact would be
clearly identified and would involve a definite time period for notification,
which would give them certainty in their business planning.

Summary of Obligations

A4. The basic requirements for the PSC are set out in Article 6. The PSC
must enable service providers to complete all procedures and
formalities needed and to apply for any necessary licences online
through it. Although it might be possible to deliver the necessary
service using a manned contact point with electronic communications,
we believe that in practice if the UK PSC is to provide a timely service
then there needs to be an online portal through which businesses can
interact with competent authorities.

The PSC: A Web Portal

As a web portal\(^3\) we would see the PSC working with the websites of
competent authorities, for example regulators and licensing authorities, to
determine specific user needs and provide the relevant information and
advice. Ideally, users would arrive at the UK PSC front page, provide basic
information about what they were seeking to do and where – e.g. set up an
advertising agency in Bristol - and this would allow the PSC to identify the
information and any licences and so on that they need, steering them through
to complete the process with the relevant competent authorities.

A5. Article 7 requires Member States to ensure the following information is
easily available electronically to service providers and recipients in a
clear and unambiguous manner through PSCs and kept up to date:

- Requirements to be met by service providers established in the
  Member State
- Contact details of all competent authorities (CAs)
- How to access public registers and databases on providers and
  services
- Complaint procedures for disputes between CAs and a provider or
  recipient, between a provider and a recipient, and between providers
- Contact details of other organisations, apart from CAs, who can give
  practical assistance to providers/recipient

A6. The Article also specifies that:

- CAs are required to provide general assistance comprising information
  on normal application of requirements (including where appropriate a
  step by step guide) but not legal advice in individual cases

\(^3\) A single access point to a network of services and sites
• CAs and the PSC should respond as soon as possible to any requests for information or assistance and to inform applicants without delay of incomplete or unacceptable requests or applications
• Member States and the Commission are to encourage PSCs to supply information in other Community languages

A7. Article 8 makes clear that procedures and formalities which a service provider needs to complete in order to provide a service must be capable of being completed at a distance and electronically through the PSC and with relevant CAs, except where the Directive states this requirement does not apply, for example when physical examination or inspection is justified and necessary. For example, if the granting of authority is dependent on a confirmatory inspection that the premises meet a certain standard, then clearly not all the procedures relevant to the issue of that licence could be completed remotely.

User Requirements Study

A8. Earlier in 2007, BERR (then DTI) commissioned some research to get an idea of what potential users might want from the PSC, seeking views on a range of issues including scope, cost and content and the range of delivery vehicles. These views have contributed to the policy assessment and the proposed approach to the UK PSC set out below.

IMPLEMENTATION ISSUES & PROPOSALS

Users

A9. The UK PSC is primarily intended for:

• Service providers established in another EU Member State or their advisers
• Service recipients in other Member States

Competent authorities will also be users of the PSC.

A10. Service provider requirements are discussed elsewhere in this chapter.

A11. The Directive stipulates that service recipients must be directed to appropriate sources of information e.g. in the instance of seeking redress. Some of these provisions will probably be met elsewhere such as through Direct.gov (and see Chapter C on Quality of Services), but the PSC is a potential provider or signpost for this information.

A12. Competent authorities, including local authorities, must be able to rely on the information passed to them through the PSC and may have requirements in terms of format of the information they receive. CAs

must also be able to check that the material they themselves provide to the PSC is up to date and accurate, and will be responsible for ensuring that accuracy. The Directive (in Article 13(3)) requires CAs to process applications and registration requests within a specified period. The Commission believes that this time period should commence once the PSC receives the request from the user so it will be important that the request is delivered to the relevant CAs promptly. If the CA does not respond within the specified timeframe authorisation will have been “deemed to have been granted” (Article 13(4)), so CAs will need to keep track of the date of receipt to ensure a timely response is delivered. There may also be issues concerning identification of applicants and confirming proper authorisation.

A13. Additionally, it is likely that the PSC will be of use to a domestic UK audience setting up business in the UK. The UK PSC may also be visited by UK service providers seeking information on providing services elsewhere in the EU; links between different Member States’ PSCs would therefore be beneficial.

Q1 What facilities will the following users need in order to interact effectively with the PSC:
   a) Service Providers?
   b) Service Recipients?
   c) Competent Authorities?

Q2 Are there any other potential users of the PSC?

A14. It will be important that the PSC makes clear to users what they can expect from the portal. The User Requirements study concluded that:

“The PSC must be easily navigable and clearly laid out to provide an agreeable user experience. It should be clear on what can be achieved via the portal and direct users quickly “

Q3 How best do you think the PSC could achieve this aim?

Point of Information / Point of Decision

A15. There are a range of options when considering the role of the PSC, as depicted on the arrow diagram (overleaf). Towards one end of the range, as a Point of Information, the PSC would merely refer users to other websites containing relevant information, whereas, towards the other end of the range, as a “Point of Decision” all the relevant data would be on the PSC site itself and all decisions would take place there. In general, the further towards the Point of Decision the PSC moves, the more complicated and costly it becomes.
A16. A fully encapsulated service (a Point of Decision) would see the PSC authorising the provision of a very wide range of services. This sort of “one-stop-shop” \(^5\) would enable users of the PSC to access all necessary information and monitor the progress of authorisation requests until the PSC takes a decision on them. As a result service providers would only need to interact with the PSC, which would undertake the complete authorisation process. However, it would also require the PSC to take on responsibilities currently performed by the competent authorities, thereby either replacing them or providing duplicate procedures. This would make high demands on staff and resources for the PSC, greatly increasing the cost of delivery.

A17. Such a system, though undoubtedly convenient for users, is likely to be extremely expensive to construct with some estimates suggesting set up costs of several hundred million pounds if all possible services are to be covered\(^6\). The scale of this approach also increases the risks of the PSC not being implemented when due and of it providing incorrect information following any changes to requirements, should the organisation responsible for those requirements delay in adding the changes to the PSC.

A18. More generally, the Government does not believe that a system of this nature is necessary to comply with the Directive and we therefore consider that such an approach may be overly ambitious at this stage.

A19. At the other extreme the PSC could simply provide a “list of links” to the relevant competent authority websites. Whilst relatively cheap and easy to establish, we do not believe such a system would meet the Directive’s requirements, as it would mean the user would have to establish what the relevant requirements were him or her self.

\(^5\) This would be much more elaborate than the “one-stop-shop” for establishment envisaged under the Lisbon Agenda.

A20. In between these two options, the User Requirements study envisaged a range of provision which it described as “Pro-active Signposting” - more than just a list of links, but not incorporating all the functionality into one system. Under this approach, the PSC would help the user identify what licences and permissions were needed, the information required by the relevant CAs, and then to apply to the appropriate authorities. In effect, the PSC would facilitate a seamless electronic journey from information gathering through to completion of requests for authorisations. It may also be possible to monitor progress of applications with CAs through such a PSC. This would achieve some of the benefits of a “point of decision” without the duplication of responsibilities. The extent to which this is technically feasible needs further exploration, but it may be a feature that could be added to the PSC over time.

A21. A “do nothing” option would not allow us to meet our commitments under the Directive. Finally, whilst it may be theoretically possible for the EU to create a single EU-wide point of single contact for service providers throughout Europe it would not be possible to impose such a solution on Member States as a result of the Directive. This approach would, in any case be highly risky, likely to require a massive programme of standardisation across the EU and be at odds with the principle of subsidiarity. Funding for this is not currently available and the timescales for such a solution would inevitably be much longer than the two years remaining for implementing the Directive.

A22. In terms of the practical delivery of the UK PSC we therefore recommend that we build a PSC that fits the description “pro-active signposting” and utilises existing approval mechanisms as much as possible.

Q4 Do you agree with the Government’s proposed approach to the role of the PSC?

Delivering the PSC

A23. As discussed previously it would be possible, if challenging, to build a new fully fledged standalone system for the PSC from scratch integrating all transactional processes on a single database. However, the Government believes that the costs and risks associated with a build of this sort are too high to make it a viable option.

Building on an existing service

A24. A more attractive alternative would be full or partial integration with existing services. The most appropriate current services are Business Link or UKInvest.gov. The former is focussed on helping UK businesses, the latter primarily on overseas businesses seeking to invest in the UK.
A25. Of the two, the closest match to the PSC’s requirements is Business Link as it is an interactive system that already contains much of the information and functionality that the PSC needs. It would also allow users to register with the Government Gateway system. The Government’s Transformational Government Strategy is that Government IT services for business should be focussed on Business Link and be developed in a customer focused manner.

A26. There are two possible ways forward consistent with that strategy:

- Keep the Business Link brand and expand the 'behind the scenes' IT to cover all the things we are required to do under the Directive
- Develop a distinctive 'front page' for the PSC which will steer the inquirer according to the sector in which he/she operates and his/her particular needs, using existing/expanded Business Link functions in the background

A27. We therefore propose that, if possible, the core functionality behind Business Link should be integrated into the PSC and that further investigation be undertaken into the benefits of the two ways forward outlined above.

Q5 Do you agree with the recommendation that the Business Link functionality should be at the heart of the PSC? If not, what alternative do you prefer and why?

Scope of the PSC

A28. The Services Directive applies to all services other than those which the text specifically excludes (see Annex F). Whilst these exclusions shed light on what is not covered by the Directive, they could make the Point of Single Contact less helpful to users. Knowing the UK’s labour laws and taxation policy, for example, will be useful (and possibly essential) for service providers that are trying to establish themselves in the UK.

A29. Given that this information is of a type which we would want users to be able to access, and that a lot of this sort of information is electronically available already in the UK, we propose that the PSC signpost the appropriate websites so service providers can access the information.

Q6 Do you agree that, regardless of the scope of the Directive, the UK PSC should attempt to signpost useful information, for example taxation and labour law?

A30. The User Requirements study looked at a hierarchy of different types of information that could be provided directly or indirectly by the PSC, grouped into different areas such as structure, content, design and usability. These are described pictorially below.
Q7 Which are the most important pieces of information necessary for service providers to do business in the UK, specifying up to five?

A31. The PSC may be particularly useful for certain sectors of the services industry both from an inward investment and export perspective. The Government is interested in views as to which sectors might be best placed to benefit quickly from the implementation of the Directive at the end of 2009.

Q8 Which sectors of the services industry do you think are best placed to benefit quickly from the opportunity to access the market provided by the UK PSC?

Q9 Which sectors of the UK services industry do you think are best placed to benefit quickly from the opportunity to access other EU markets provided by the Directive?

Language

A32. The Directive does not require the PSC to be made available in more than the host country language(s), but it does encourage Member States to make information available in more than one EU language.

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We agree with the User Requirements study recommendation that the PSC should use plain English to make it more understandable by those that have English as a second or third language, but one option would be to have at least the main introduction page(s) available in other languages as well. The report also recommended decisions on additional language provision should be taken on a cost benefit basis, taking into account the likely demand from different countries and the capacity to deliver a service in the UK without speaking English.

Q10 Do you think that the PSC should be made available in additional EU language(s)? If so which one(s) and to what extent?

**Multi-channel Support**

A33. The User Requirements study identified possible value from supplementing the PSC with a helpline and/or email support, concluding:

“… that the PSC should offer at least email support for individual enquiries and probably telephone support in addition to this (subject to cost-benefit analysis.”

A34. It is difficult to forecast the nature and demand there would be for such services at present. Would queries be mainly technical related to actual use of the PSC, or would they be more concerned with authorisation procedures (and therefore more relevant to the CAs)? It is potentially quite expensive to set up such a service from scratch. One way forward might be to use existing resources (possibly including the Business Link helpline or the SOLVIT Centre) in the first instance and monitor the demand that resulted. Business Link and UKTI Inward Investment advisers could also provide assistance to users depending on the nature of their query.

Q11 Do you think that dedicated email and/or telephone support is necessary for the PSC from day one?

Q12 What sort of queries do you think users will need support with?

Q13 As a user would you be prepared to pay for telephone support for the PSC - e.g. through a chargeable rate call line?

**SOLVIT** is an alternative dispute resolution mechanism established by the European Commission to try and resolve misapplication of EU Rules informally and speedily and thereby remove the need for formal procedures.

**Charging**

A35. The Directive allows that the PSC can be charged for, providing that charges are proportionate to the procedures and formalities dealt with.
This would help offset the net costs of running the PSC and reduce costs to the taxpayer, although charging would only produce an income stream once the PSC was operational. Therefore, funding for the actual PSC build would still be needed, though this could possibly be recouped over the longer term.

A36. However, charging could very possibly deter the system’s use, meaning that unless all Member States charge for access to their PSCs the UK services market could be less competitive than might otherwise be the case. It might also act as a disincentive to potential inward investors from considering the UK as a base from which to provide services. We are not aware that any other Member State has yet taken a firm decision on charging.

A37. Introducing a charging mechanism would also add to the build and maintenance costs of the PSC, and may reduce the revenue benefits, though, where there are fees related to the issuing of licences, these may need to be collectable through the PSC.

A38. The Business Link system which currently provides much of, but not all, the information that will be available to the PSC, is not charged for.

A39. The User Requirements study’s key conclusions in this regard were:

“Charging for this service was deemed inappropriate for basic level information. Beyond this, charging to cover costs may be introduced in line with complexity and value-added of services provided, although this would be likely to lead to a greater degree of risk in terms of liability for accuracy of the service provision.”

A40. We therefore recommend that basic access to the UK PSC should be free for all users.

Q14 Do you agree that access to the PSC should be free? If not how much would you as a user be willing to pay to use the PSC service?

A41. A small number of additional services might be charged for, in line with the requirement study’s findings above. Though these might be relatively few, the PSC could potentially provide links to third parties that could offer assistance e.g. on managing a business, training or recruitment. It would also be possible to charge for assistance through any telephone helpline. This would not be the same as charging for access to the PSC itself but could be a way of partially funding the support services.

Q15 Do you agree that any additional advice and services could be charged for independently, if necessary? Do you have views as to what types and level of charge would be appropriate?
(See also previous section on Multi-channel support and related question)

**Single / Multiple PSCs**

A42. The Directive allows Member States to have more than one PSC. For example, there could be separate PSCs in each of the Devolved Administrations (a geographical split) or a given group of services could have its own PSC (a sectoral split). In this latter scenario there would still need to be a PSC that dealt with those service sectors that did not have their own dedicated PSC.

A43. The PSC obligations could possibly be met by requiring competent authorities to put in place the information and application provisions for their sectors through their own websites. Each competent authority would be responsible for its sector, however, some way of linking them together would be necessary. This suggests a central entry point with simple links, but the Commission’s vision of the PSC goes further than this and we do not think such a basic system would deliver the benefits of the Directive.

A44. While there may well be differences in how rules are applied in different parts of the UK, we do not think this necessitates the creation of separate PSCs. Furthermore, if there were to be several PSCs, there would need to be links between them, maybe through a central UK PSC entry point. This would be necessary so that information on providing a service in different parts of the UK was available through all PSCs and to cope with service providers that operate in more than one area.

A45. The User Requirements study noted that regional and sectoral differences would need to be catered for but that there were benefits from having just one PSC in the UK. This is an issue that will need to be further researched and discussed, including with the Devolved Administrations and in the light of views expressed in the consultation.

Q16 Do you think there should be one PSC for the UK or should it be divided up? If divided, what should the basis of that division be?

**Management: Public or Private Sector**

A46. Member States are free to decide whether the PSC should be run and managed by the state, or whether the private sector, Trade Associations or Chambers of Commerce could deliver part or all of the service.

A47. The PSC could be delivered privately, but the funding is likely to have to come from central government unless private investment can be attracted. For that, there would need to be potential return for the private sector be interested in financing the PSC. As a commercial exercise the PSC would have a substantive Government funded rival in
Business Link, which would make it difficult to charge for access to the site itself (although Business Link has hitherto been targeted at a UK business audience). For this reason, we think it unlikely that the private sector would be willing to provide the investment necessary to set up the PSC and that it will therefore need to be provided by Government.

Q17 Do you agree that the Government should be responsible for funding the PSC? If not, who should provide it and on what terms?

**Liability**

A48. A strong message from the User Requirements study is that users have to be confident that the advice the PSC provides is both accurate and up to date. We therefore plan to ensure that competent authorities and others contributing PSC content are under an obligation to make the necessary information available and to keep it up to date.

A49. All Government websites currently contain a clear caveat which restricts the liability of the website. We would want the PSC to be consistent with wider Government policy and so do not propose to have a specific liability policy for the Services Directive and the PSC. We will however ensure that any comments regarding liability are taken into account in any future consideration of this policy area.

Q18 Do you agree with the proposed approach for ensuring that the PSC remains up to date and accurate? How do you think the obligations on those contributing content can be best enforced?

Q19 Do you agree that we should adopt a liability policy for the PSC consistent with the general approach across Government? Do you have any comments on that approach?

**Brand**

A50. The User Requirements study concluded that it was important that users of the PSC be aware that they are in the right place and receiving trustworthy information from the official PSC. Both EU and National identity were seen as important, not only to identify to users that they were in the right place (i.e. on the UK PSC), but also to provide some reassurance on the validity of the information provided.

Q20 Do you agree that an EU PSC brand alongside a national identifier would be beneficial to users of Points of Single Contact?

**Data Protection and Privacy**

A51. The Directive is subject to the rules regarding the protection of personal data and the PSC must comply with these (as specified in Article 43). It will be important that the PSC is secure when dealing with the transfer
of information between users and competent authorities and that information is treated in line with the relevant data protection provisions.

**Next Steps in the Implementation Process**

A52. Consultation responses will inform a technical study that will define the functional specification of the PSC and on which the actual build of the PSC will be based. This study will need to be completed by June 2008, leaving 18 months for the PSC to be built, tested and put into operation.
This chapter should be read by anyone with an interest in the supervision of service providers, by competent authorities like regulators and local authorities; and to a lesser extent by those affected by such supervision i.e. businesses.

Key Question 2: Do you agree with the Government’s proposals in Chapter B for ensuring that authorities with a regulatory or supervisory role cooperate effectively with their counterparts in other Member States?

B1. This chapter covers Articles 28-34 and 10(3).

Purpose

B2. The Articles covered by this chapter are designed to ensure that competent authorities (bodies with a regulatory or supervisory role regarding service provision, such as licensing authorities) cooperate effectively with their counterparts in other Member States, providing ‘mutual assistance’ to each other to ensure proper supervision of service providers operating in more than one Member State.

B3. Effective administrative cooperation will ensure proper regulatory supervision of service providers is maintained, providing reassurance to consumers, whilst reducing the regulatory burden on businesses operating in more than one Member State. The responsibility for supervising service providers will be split between the competent authority (CA) in the Member State where the service provider is established (the ‘home State’) and the competent authority in the Member State where the service is being provided (the ‘host State’).

B4. Effective administrative cooperation will also reduce the burden on business of providing the same information to competent authorities in different Member States. Competent authorities in a host State will be able to find out, either direct from their opposite numbers or via national liaison points, the type of information that a service provider has already provided in its home State.

Summary of Obligations

B5. These Articles require the Government to put in place measures to ensure effective cooperation between competent authorities, and remove certain legislative barriers to this which may currently exist. To help facilitate mutual assistance requests, these Articles also require the Government to establish national liaison points, and to cooperate with the European Commission in establishing an electronic system for the secure exchange of information. This system will be the Internal Market Information system (IMI). Competent authorities in one Member State
will be able to communicate with competent authorities in another Member State either indirectly via national liaison points, or directly, using the IMI system.

The **Internal Market Information system** (IMI) is an internet portal, being developed by the European Commission, through which competent authorities in other Member States can be identified; requests for mutual assistance can be submitted to other competent authorities; and information can be submitted in reply. The system will translate these requests and replies into the relevant Member State’s language.

**COMPETENT AUTHORITIES**

B6. The Government will need to work with competent authorities affected by the Services Directive in implementing the administrative cooperation provisions. We are in the process of working with competent authorities to identify the extent of any changes that will need to be made to comply with the administrative cooperation requirements. It is difficult to forecast the likely additional demand on CAs resulting from this, or the benefits arising from use of the IMI system. The Copenhagen Economics forecast in the Impact Assessment predicts an increase in service imports of about 3.5%.

**Q21** How great a net increase in workload might you expect competent authorities to face as a result of the administrative cooperation provisions of the Directive?

B7. An indicative list of competent authorities who regulate areas of service provision within the scope of the Directive, and who will need to be able to participate in administrative cooperation, is shown in Annex D. In this context it should be noted that some service activities in Northern Ireland may be regulated by competent authorities with a remit covering both Northern Ireland and the Republic of Ireland, but not the rest of the United Kingdom. How this is addressed will require an agreement with the Republic of Ireland and we will be holding separate discussions with their implementing authorities.

**Q22** Are there any additional competent authorities who regulate areas of service provision within the scope of the Directive but which are not listed in Annex D?
IMPLEMENTATION ISSUES & PROPOSALS

Supervision of Service Providers by the Home and Host Member State

B8. Articles 29 - 31 set out the division of regulatory responsibilities between competent authorities in the Member State in which a service provider is established and those in the Member State in which a service is being provided. The Member State of establishment is to ensure its competent authorities enforce their requirements on service providers established on its territory in accordance with their existing supervisory powers. This includes where the services are being provided in other Member States, where the competent authorities will need to work with their counterparts in those Member States to check compliance. Competent authorities in the Member State where the service is being provided should continue to supervise service providers with respect to requirements which can be imposed under Articles 16 and 17 (see page 67).

B9. To ensure consistent supervision by regulatory authorities is maintained, a key requirement, in Article 30(2), is that competent authorities in the Member State in which a service provider is established do not refrain from taking supervisory or enforcement action on the grounds that a service has been provided or damage caused in another Member State. Where necessary, the statutory regimes of these competent authorities will need to be changed to ensure this is the case. The Government is currently looking at the statutory regimes of the UK’s competent authorities to identify where, if at all, any changes will need to be made.

Q23 Are you aware of any competent authorities whose statutory regime would need to change to comply with Article 30(2)?

Q24 Do you have any comments on the implementation of Article 30(2)?

Mutual Assistance

Requests for mutual assistance

B10. To enable the division of regulatory responsibilities between the home and host state to work in practice, competent authorities in each will need to assist each other in ensuring their respective regulatory regimes are being respected. Such mutual assistance will enable competent authorities to discharge their regulatory or supervisory responsibilities by asking competent authorities in other Member States to provide or obtain information on their behalf. This could include providing information about a service provider which a competent authority already holds, so that the service provider does not have to provide it again; or requests to make checks or inspections, where the provider is established or operating outside their territory.

B11. Articles 28 - 33 set out the types of mutual assistance which may be requested from competent authorities. This could consist of requests for
information obtained about service providers, including information on good repute (note that where a competent authority supplies information on the good repute of service providers, the competent authority is obliged to inform the service provider of this). Competent authorities in other Member States will need to be able to consult registers in which service providers are entered, under the same conditions as the equivalent authorities in the UK. Also, where necessary, requests could be made to carry out checks, inspections or investigations of service providers. Competent authorities which have the powers to meet such requests will need to be obliged to do so. To avoid spurious requests, the Articles state that any requests must be properly reasoned and should specify those reasons, for example that a check is necessary to enforce a specific regulation. Any information provided may then only be used for that purpose.

**Alert mechanism**

B12. Articles 29(3) and 32 describe an alert mechanism to be used by competent authorities to ensure a quick response in cases where knowledge is received of conduct, circumstances or specific acts relating to provision of a service by a service provider operating in more than one Member State, which could cause serious damage to the health or safety of persons or the environment. Upon receiving such information, competent authorities in the Member State of establishment will be obliged to alert authorities in all other Member States, along with the European Commission. Competent authorities in the Member State of service provision will be obliged to alert the Member State of establishment, any other Member States concerned and the European Commission.

**Data protection**

B13. Article 43 states that implementation of the Services Directive shall respect rules on the protection of personal data (such as the Data Protection Act 1998 in the UK). In meeting the mutual assistance obligations of the Services Directive, competent authorities may be acting as data processors or data controllers. Any bodies which are UK data controllers, or data processors acting on behalf of UK data controllers, will need to comply with the Data Protection Act 1998 and other relevant UK and EU legislation.

B14. Article 28(6) requires that competent authorities provide any information in response to a mutual assistance request by electronic means and within the shortest possible period of time. Competent authorities will need to ensure that in the communication of any personal data to other competent authorities, they do so with regard to the seventh principle of data protection, ‘that appropriate technical and organisational measures shall be taken against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data.’ Security of data communication would need to be
appropriate to the data being transferred, and have regards to the state of technological development and the cost of implementing measures. The European Commission is developing an internet portal for the exchange of such information (the Internal Market Information system), which is intended to meet these data protection and security requirements.

Statutory regimes of competent authorities

B15. Where necessary, the statutory regimes of competent authorities will need to be changed to enable administrative cooperation with other Member States. In summary, competent authorities need to be able to:

- disclose information held about service providers to relevant competent authorities in other Member States in which they are operating, including information about the outcomes of any disciplinary or administrative actions or criminal sanctions, and be obliged to do so upon receiving a properly reasoned request
- exercise their powers, if they have any, to carry out checks, inspections or investigations, upon request of competent authorities in other Member States, and be obliged to do so upon receiving a properly reasoned request
- disclose information relating to service providers to other Member States and the European Commission, where the health or safety of persons or the environment are at risk, and be obliged to do so upon gaining such knowledge

B16. The Government is currently looking at the statutory regimes of the UK's competent authorities to identify where, if at all, any changes will need to be made.

B17. In addition, so that competent authorities in other Member States can contact them with mutual assistance requests, competent authorities will need to be obliged to keep their contact details up to date with a national liaison point.
<table>
<thead>
<tr>
<th>COMPETENT AUTHORITY IN HOME MEMBER STATE</th>
<th>COMPETENT AUTHORITY IN HOST MEMBER STATE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Supervises service providers established on its territory, including where services being provided elsewhere.</td>
<td>Supervises service providers with respect to requirements which can be imposed under Articles 16 and 17.</td>
</tr>
<tr>
<td>Provides information required of a service provider in another Member State, and which they already hold, to competent authority in that Member State.</td>
<td>Provides mutual assistance to competent authorities of Member State of establishment, in respect of other requirements.</td>
</tr>
<tr>
<td>Confirms to competent authorities in Member State of service provision when service provider is established in that country and operating lawfully.</td>
<td>Requests information required of a service provider, but which has already been provided to the home Member State, from the competent authority in that Member State.</td>
</tr>
<tr>
<td>On request of the Member State of service provision, takes supervisory actions, (checks, inspections or investigations), and advises of the results.</td>
<td>On own initiative, can conduct proportionate, non-discriminatory spot checks on service providers (as long as not motivated by the fact that the provider is established in another Member State).</td>
</tr>
<tr>
<td>In cases of risk of serious damage to health or safety of persons or the environment, raises alert mechanism as described in Article 29(3).</td>
<td>In cases of risk of serious damage to health or safety of persons or the environment, raises alert mechanism as described in Article 32.</td>
</tr>
</tbody>
</table>
Q25 Are you aware of any competent authorities whose statutory regimes would need to change to be able to comply with the obligations to provide mutual assistance?

Q26 Do you have any comments on the method of implementation of the mutual assistance obligations?

Access rights to registers

B18. Where necessary, the access rights to registers containing information about service providers, and which UK competent authorities can consult, will need to be changed to ensure competent authorities in other Member States can consult them in accordance with the same conditions as equivalent UK competent authorities. The Government is currently looking at the statutory regimes of the UK’s competent authorities to identify where, if at all, any changes will need to be made.

Q27 Are you aware of any registers containing information on service providers and which UK competent authorities can consult, for which the access rights would need to be changed in order to comply with the Directive?

Q28 Do you have any further comments on the obligations to give competent authorities in other EU Member States access to consult registers in which providers have been entered, on the same basis as their equivalent UK competent authority?

National Liaison Points

B19. Article 28 states that each Member State should establish national liaison points to help facilitate mutual assistance requests. The UK’s national liaison point(s) would need to be able to direct competent authorities in other Member States to the correct competent authorities in the UK, as well as direct competent authorities in the UK to national liaison points in other Member States. Where possible, however, the expectation is that CAs will contact their opposite numbers directly rather than going through the national liaison point.

B20. Article 10(3) requires liaison points to be able to inform competent authorities in other Member States about the information requirements faced by service providers in their country. The competent authorities could then get in touch with the competent authority that holds that information to request it, if needed to supervise a service provider. This will reduce the burden on business of providing duplicate information to multiple regulators.

B21. It is proposed that a UK national liaison point be established in the Department for Business, Enterprise and Regulatory Reform. This would mean the national liaison point could be sited alongside the current UK SOLVIT centre, which has other internal market responsibilities. The
option is open as to whether national liaison points should also be established within Scotland, Wales and Northern Ireland. Any such liaison points would still need to be able to direct competent authorities from other Member States, where necessary, to any relevant UK competent authorities outside of Scotland, Wales or Northern Ireland.

**SOLVIT** is an Alternative Dispute Resolution mechanism established by the European Commission to try and resolve misapplication of EU Rules informally and speedily and thereby remove the need for formal procedures.

**Q29** A national liaison point needs to be established to comply with the Directive. Do you have any comments about the proposal to establish one such national liaison point in the Department for Business, Enterprise and Regulatory Reform?

**Q30** Do you have any comments as to whether national liaison points should also be established within Scotland, Wales and/or Northern Ireland?

**Internal Market Information System (IMI)**

**B22.** It is recognised that the Directive’s administrative cooperation elements may be difficult to deliver given the 23 different official EU languages and differing administrative approaches. To help address this, Article 34 obliges the European Commission to establish an electronic system to enable the exchange of such information as has been described above. The system being developed, with the cooperation of Member States, is the Internal Market Information system (IMI). The system would enable mutual assistance requests and responses to be transmitted electronically over the internet, directly between competent authorities. Direct communication between competent authorities will reduce the burden on national liaison points and speed and simplify the communication process.

**B23.** Different administrative cultures, structures and languages as well as a lack of agreed procedures and clearly identified partners create barriers to the cooperation of competent authorities in different Member States across the EU. The IMI system should be able to solve these problems, helping with the identification of the correct competent authority to which a mutual assistance request should be addressed, and translating the requests and information provided. An example of how IMI might work is shown in Figure four. Whilst it is not obligatory to use the IMI it will be obligatory to provide mutual assistance where requested under the Directive and the IMI system is likely to be one of the easiest ways to do this.

**B24.** In advance of the implementation of the Services Directive, from 2008 the same IMI system will already be in use by regulators of professions in relation to the EU Mutual Recognition of Professional Qualifications Directive (2005/36/EC).
B25. The European Commission is developing IMI to work in compliance with the EU Directives on data protection (95/46/EC) and e-privacy (2002/58/EC). The IMI system is proposed as being the most appropriate and secure method for mutual assistance communications. Standard security constraints will be taken into account in the development of the system. Member States will be responsible for the registering and authentication of users accessing the system, who would be given a unique, secure PIN for access. This level of security could be built upon, as the state of technology and interoperability of electronic identification systems develops. The IMI system itself would not keep a store of the information provided about service providers by the competent authorities in response to mutual assistance requests – the IMI system would only forward the information on to the requesting competent authority.

B26. Once the IMI system was developed, competent authorities would then need to be registered on to the system. This would be done by a system of IMI coordinators in each Member State, which identify, register and authenticate users of the system. These IMI coordinators would also need to provide training and help to users, ensure requests are responded to in a timely manner and help resolve difficulties encountered by users. There will need to be one, single National IMI Coordinator to act as interlocutor with the Commission on IMI matters, but Delegated IMI Coordinators could execute other responsibilities.

B27. There are four options as to how competent authorities are registered on to the IMI system:

**Option 1:** all competent authorities are legally obliged to register with IMI. This would ensure full coverage of competent authorities and reduce central costs which would be faced by a national liaison point forwarding on mutual assistance requests to non-registered competent authorities.

**Option 2:** only large, national regulators are obliged to register with IMI. This could mean competent authorities who might only respond to mutual assistance requests infrequently, would not need to retain knowledge as to how to use IMI. However some competent authorities, while only local in scope, might still face reasonably frequent mutual assistance requests.

**Option 3:** individual competent authorities are given the option as to whether to register with IMI. The requirement to respond to mutual assistance requests from other competent authorities will be a legal obligation, and as IMI should be the simplest way to do so, those competent authorities who face a reasonable level of mutual assistance requests could be expected to seek to register on IMI themselves. This should mean that only those competent authorities for whom access to IMI would be an advantage, would be registered on IMI.

**Option 4:** no competent authorities are registered with IMI. This would mean that all queries requiring use of the IMI system would have to be directed through the national liaison point. This would be a costly approach for the national liaison point, slow down the communication process, and
reduce the advantages to business of implementing the Services Directive. This option is strongly discouraged.

B28. We recommend that option 3 is the chosen approach to the registration of competent authorities on IMI, as this would give IMI the most appropriate coverage of competent authorities.

Q31 Do you agree that option 3 should be the option adopted for the way competent authorities are registered with IMI? If so, why? If not, which option would you favour and why?

B29. It is recommended that the central national liaison point proposed for the Department for Business, Enterprise and Regulatory Reform in paragraph B21 also be designated National IMI Coordinator. Any other national liaison points that may be proposed for Scotland, Wales or Northern Ireland could be designated Delegated IMI Coordinators and would be able to add CAs to the relevant part of the system. Other Delegated IMI Coordinators could be designated with respect to non-Services Directive related uses of IMI, such as for cooperation under the Mutual Recognition of Profession Qualifications Directive.

Q32 Do you have any comments on the proposed approach to IMI coordinators?

B30. While use of the IMI system, as illustrated in Figure Four overleaf, is designed to be as simple as possible, it is recommended that initial training be provided for competent authorities using the system. It is recommended this initial training be provided and funded by the Department of Business, Enterprise and Regulatory Reform.

Q33 Do you have any comments on the proposed approach to training for use of IMI?
1. Belgian architect, Maurice Mangin, has approached the Royal Institute of Architects of Ireland. He already operates in Belgium, and would like to operate in the same way in Ireland.

Dervla Cotter at the Royal Institute of Architects of Ireland is handling the case. She needs to check that Maurice really does legally operate in Belgium. To do this she needs to communicate with the body which regulates architects in Belgium, which she can do using IMI.

Dervla logs on to IMI using her secure ID.

2. Dervla is recognised on IMI. She inputs that she is seeking a regulator dealing with architects and selects the country, Belgium. IMI selects as the relevant regulator the Belgian National Council of Architects. Contact details are given.

3. Dervla uploads a copy of a certificate offered by Maurice Mangin, ticking questions she wishes to ask, such as ‘Is this certificate still valid?’ and ‘What services does the certificate allow the holder to provide?’
4. Francois Legrand, of the Belgian National Council of Architects, receives an e-mail alerting him that a case is waiting for him on IMI. He logs on to IMI and selects the case. He sees a list of questions that have been asked of him. These questions have been translated into French. Francois submits the information he is able to provide.

5. Dervla receives an e-mail alerting her to a change of status in the case of Maurice Mangin. She logs on and finds the information she has requested and can close the case. She can now make a decision as to whether Maurice Mangin can operate as an architect in Ireland.
C: ENSURING THE QUALITY OF SERVICES

This chapter should be read by anyone interested in the sale or purchase of services across national borders, in the rights of consumers and service recipients and in the provision of consumer information. It should be read by businesses as it discusses certain obligations to be placed on them.

Key Question 3: Do you agree with the Government's proposals for implementing the quality of services provisions in Chapter C? How can these provisions be implemented so that service recipients have greater trust in the services provided from other Member States whilst minimising regulatory burdens on service providers?

C1. This chapter covers Articles 19-27 and 37

Purpose

C2. Articles 19 to 27, together with Article 37, are intended to enhance the rights of service recipients, particularly consumers, in relation to cross-border service provision within the EU and to promote high quality service provision, while avoiding imposing unnecessary burdens on SMEs. They aim to increase transparency, remove restrictions on recipients’ rights to access services, improve the information available to service recipients about both service provision in other Member States and service providers, and to lay down means for encouraging the voluntary resolution of disputes. This should in turn increase consumer confidence and the ability to make well-informed decisions in purchasing services from providers from across the EU.

Summary of Obligations

C3. These Articles of the Directive require us to:

i. Ensure that UK consumers and service recipients can find out from within the UK about the service provision and consumer protection frameworks in other Member States (Article 21)

ii. Oblige UK service providers to make available certain information about them and their services to service recipients (Article 22)

iii. Ensure that providers make available to recipients information concerning where they can send complaints or requests for information, that they demonstrate compliance with the information provisions of the Directive and actively pursue complaints (Article 27)

iv. Recognise equivalent professional liability insurance taken out in another Member State where the UK requires such insurance (Article 23)

v. Encourage the voluntary development of charters, codes of conduct, accreditation schemes, assessments, standards and co-operation in general at Community level to facilitate the quality of service provision; and ensure that information on labels and quality marks is easily accessible (Articles 26 and 37)

vi. Remove total bans on commercial communications by the regulated professions and on multidisciplinary activities (Articles 24 and 25)
vii. Remove certain requirements on service recipients that restrict their access to services (should any exist), in particular discriminatory requirements based on nationality or place of residence (Articles 19 and 20)

IMPLEMENTATION ISSUES & PROPOSALS

Article 21 – Assistance for Recipients

C4. This Article requires us to ensure that UK-based service recipients (consumers, or recipients of business to business services) can find out, from within the UK:

- General information on other Member States' requirements applicable in relation to accessing or exercising service activities, in particular those relating to consumer protection
- General information on the means of redress available in the case of disputes between provider and recipient
- Contact details of associations or organisations from which practical assistance can be sought e.g. European Consumer Centres Network

C5. The information has to be clear and unambiguous, up to date, and easily accessible at a distance including by electronic means. In effect, this requires us to establish a ‘consumer portal’, where service recipients can obtain the specified information online (or by e-mail).

C6. This Article also requires that the body charged with responsibility for this service should, if needed, contact the relevant body in the other Member State to obtain the necessary information if it is not already available on the portal. This implies mutual assistance arrangements, similar to those described in Chapter B on Administrative Co-operation (although the organisations involved will of course be different).

Q34 Do you have any comments on what basic information should be available on the ‘consumer portal’?

CASE STUDY – Article 21

A consumer living in Gloucester is thinking about employing an architect based in Slovakia to design a garden for her new house. She has heard of his good reputation, however she is unsure about employing an architect from a different country, having no knowledge of what would happen if things went wrong with the service provided. She therefore accesses the online consumer portal to find out what levels of consumer protection are like in Slovakian law, including how she can seek redress in the case of needing to make a complaint. The consumer portal also provides her with the contact details of organisations from which she can seek practical assistance. Armed with this knowledge, the consumer is now in a better position to proceed to contacting the architect to begin to discuss the possible work.
Options for choice of ‘consumer portal’

C7. As the Directive requires the information specified to be accessible to recipients electronically and at a distance, we believe the best means of achieving this is through an online portal. The options include:

- The Point of Single Contact
- Euro Info Centres
- The UK European Consumer Centre
- Consumer Direct
- A new website

C8. The first three of these options are specifically mentioned as possibilities in the Directive text.

The **Euro Info Centre Network** was established by the European Commission in order to help SMEs gain easier access to the opportunities presented by Europe and the single market. It provides expert information, assistance and advice in over 250 centres in Member States and beyond. There are several centres located around the UK and which advise UK business. See [www.euro-info.org.uk](http://www.euro-info.org.uk).

The **European Consumer Centre Network**: The UK ECC provides free and confidential information on consumer rights in the EU and assists consumers with cross-border disputes. It is part of a network of centres in each Member State across the EU. Its objective is to provide a full service to consumers from information to dispute resolution to enable them to take full advantage of the internal market, without risk to their health, safety and economic interests. It is co-financed by the Department for Business, Enterprise and Regulatory Reform (BERR) and the European Commission. See [www.ukecc.net](http://www.ukecc.net).

**Consumer Direct** is the government-funded telephone and online service offering information and advice on consumer issues. It is funded by the Office of Fair Trading and delivered in partnership with Local Authority Trading Standards Services. See [www.consumerdirect.gov.uk](http://www.consumerdirect.gov.uk).

C9. The Government currently has no set preference for the delivery of the consumer portal, although we would prefer not to create an entirely new service. Some discussion of the options is included below.

C10. We think a case can be made against using the PSC to deliver the consumer portal, as it has a quite different primary audience. The PSC’s principal audience is anticipated to be service providers based in other Member States, whereas this consumer portal is aimed at service recipients based in the UK. Moreover, whilst Article 7 of the Directive does require that recipients in other Member States can access information about the UK through the UK PSC, this Article is concerned with a means of providing information to UK recipients on requirements in other Member States i.e. the other way around. However, as the portal will be expected to handle information requests on UK service
provision coming in from its equivalent in other Member States, in order to avoid any unnecessary duplication of information on the two sites, links could be introduced between them.

C11. If the PSC is built based on Business Link (see Chapter A), this reinforces the argument against using the PSC, as Business Link is aimed at a business audience after information on how to do business.

C12. The Euro Info Centres are similarly aimed at a business audience and so may also be a less attractive option for the role in question here, although the information service they offer (if not the content) is similar in nature to what is required by Article 21.

C13. Consumer Direct is a well-known brand offering consumer advice to UK consumers. However, although it contains some information on European matters, this is not its focus. It is set up to provide basic, general information of the kind required under Article 21(1) but is not currently resourced to take on information requests and pass them onto other similar organisations in other Member States, as required by Article 21(3), or to handle incoming requests from organisations in other Member States.

C14. Conversely, the UK European Consumer Centre has the ability to handle specific individual cases but is not currently a host-source for the more general type of information. An advantage of the UK ECC is that it is focussed on providing information and support for consumers shopping across the EU, and so already operates in the context of cross-border transactions and the provision of information relating to the EU. However it is not currently resourced for the additional tasks that would be required.

C15. Both Consumer Direct and the ECC also have the advantage of being already in place, obviating the need to create a new service from scratch.

C16. We believe therefore that there is a good case for delivering our obligations under Article 21 through either Consumer Direct or the UK European Consumer Centre, with a link from the other and from the UK Point of Single Contact, in the event that consumers looking for information access those websites first. However as stated we are open to all options at this stage, although we would prefer not to add another consumer website to the existing mix if possible.

Q35 Which of the options discussed do you think is best placed to deliver the consumer portal required under Article 21? Is there an alternative not identified that you prefer?

C17. In order that service recipients are aware of the consumer portal and its role in providing information, we envisage a corresponding campaign publicising the service once it is in place.
Consideration of mutual assistance arrangements

C18. The consumer portal will need to have a facility whereby users can ask it to obtain information not already covered by that provided on the portal itself. This will be done through mutual assistance arrangements, similar to those considered in Chapter B, between those responsible for the portals in the relevant Member States (although the bodies in question and the exact procedures will of course be different). We will have to place an obligation on the designated body in the UK to obtain information through these arrangements.

C19. We will need to develop a system to enable service recipients to contact the organisation responsible for the consumer portal and put in a request for information. Options include a simple online form, e-mail or phone. Once received the information request will be transmitted to the equivalent body responsible for the consumer portal in the relevant Member State, from whom an answer will be communicated to the recipient via the UK designated body.

C20. The Government will seek to encourage that a means of facilitating this mutual assistance, and a practical means of obtaining the general information needed for the basic consumer portal explored above, be established with the Commission and other Member States during the implementation period. Given the requirement for information to be provided in a clear and unambiguous way, we will need to establish whether there is any responsibility at any point for translating information provided in another EU language into English.

Q36 Do you have any comments on the use of mutual assistance procedures to obtain information for service recipients?

Articles 22 & 27 – Information on Providers and Services / Settlement of Disputes

C21. Article 22 requires us to oblige service providers to provide certain information to service recipients. There are two lists – one of information that is always to be made available, the other of information that is to be made available at the recipient’s request. Providers will have a choice of ways in which to make available this information, which must be communicated in a clear and unambiguous manner and in good time before a contract is concluded or the service provided (in the absence of a contract). Additionally, Article 27 requires providers to make information available concerning redress.

Figure five: Information Obligations under Articles 22 and 27

1. Information to be made available always
   o The name of the provider, his legal status and form, geographic address of establishment, and contact details that allow for direct and rapid communication
If registered in any trade or similar public register, the name of that register and any registration number or equivalent means of identification
If subject to an authorisation scheme, the particulars of the relevant competent authority or single point of contact
VAT identification number, if there is one
For regulated professions, any professional body or similar institution registered with, the professional title and the Member State in which that title was granted
General conditions and clauses used
Existence of any contractual clauses used by the provider with respect to the law applicable to the contract and/or the competent courts
Existence of any after-sales guarantee not imposed by law
Price of the service, if pre-determined by the provider for a given type of service
Main features of the service, if not apparent from the context
Insurance and guarantees referred to in Article 23(1), in particular the contact details of the insurer and territorial coverage (but see page 59)

2. Information to be made available on request
Price of the service, the method of calculating the price or a sufficiently detailed estimate, if the price is not pre-determined by the provider for a particular type of service
For regulated professions, a reference to the professional rules applicable in the Member State of establishment and how they might be accessed
Information on service providers’ multidisciplinary activities and partnerships that are directly linked to the service being provided and on measures taken to avoid conflicts of interest (to be included in any detailed information document setting out providers’ services)
Any codes of conduct relevant to the service provider and the name of the website they can be found in (and languages in which they are available)

3. Means by which providers can make information available
Supplied by provider on own initiative
Easily accessible to recipient at the place where the service is provided or contract concluded
Easily accessible electronically/at a website, the address being supplied by the provider
In any information documents sent to the recipient by the provider that set out a detailed description of services to be provided.

4. Information to be made available concerning redress
Contact details (including a postal address, legal address (if different), fax number or e-mail address and telephone number) to which all recipients (including those outside that Member State) can send a complaint or a request for information about the service provided
Those service providers that are subject to a code of conduct or are members of a trade association or professional body which provides for recourse to a non-judicial means of dispute settlement must inform the recipient of this (including in any detailed document setting out their
services) and specify how to access detailed information about any such mechanism

C22. These are minimum information requirements. Where additional requirements on particular professions exist, for example through professional rules, these are allowed to remain (unless simplified or abolished through other better regulation exercises or through application of the Directive’s underpinning simplification drive (under Article 5)).

C23. In considering the transposition of these requirements into law, we have been investigating where information obligations of this sort already exist in UK law and practices. For example, similar (though not identical) obligations already exist in the regulations implementing the e-commerce Directive. Existing obligations within the scope of the Directive will need to be checked to make sure they do not conflict with these new requirements. Where existing obligations do not fulfil the Directive’s requirements, they will need to be amended unless they derive from an EU obligation.

**Existing Information Obligations**

One example of an existing obligation whereby providers are required to make information available is the Consumer Protection (Distance Selling) Regulations 2000. These require the seller to provide information to the customer in good time, prior to the conclusion of the contract, about the identity of the supplier and (where payment is required in advance) the supplier's address. In the case of telephone communication, the supplier's identity and the commercial purpose of the call should be made clear at the start of the conversation with the consumer, and subject to this the supplier should ensure that his commercial purpose is made clear when providing the required information about their identity and address.

Q37 In your area of expertise, are you aware of any legal or administrative requirements to make information available to service recipients?

C24. In most cases, there will be no information requirements already in place. We will therefore need to place these obligations on service providers that supply a service falling within the scope of the Directive. We intend to do this through legislation, listing the information requirements and making clear the four options providers have for making the information available.

C25. Article 27 also requires us to ensure providers:

- respond to complaints “in the shortest possible time and make their best efforts to find a satisfactory solution”.
- demonstrate compliance with the Directive’s information obligations and demonstrate that the information is accurate.
C26. As for the information obligations, we intend to place in legislation a general obligation on providers to comply with these points. This could be done in tandem with placing a requirement on providers to ensure their general conditions of access to a service are in line with Article 20 (see pages 61-62).

Q38 Do you agree that the legislative approach outlined in relation to the information and redress requirements is sensible? If not, what alternatives can you propose?

C27. We will need to determine what is meant by “the shortest possible time”, which may vary depending on the complaint in question. Rather than attempting a precise definition (i.e. a certain number of days or weeks), it may be more helpful to determine what factors could affect the time taken to respond to complaints, and issue guidance accordingly. We are also keen to find a means to ensure that business is not required to respond to vexatious complaints.

Q39 Do you have a view on how we should define “in the shortest possible time”? What factors or constraints might be relevant in determining the time needed to respond to complaints?

C28. We do not think that introducing these information obligations will impose a significant new burden on service providers. Most providers undoubtedly make much of the necessary information available to their customers already. In the case where a business is not already compliant, the choice of ways in which a provider can make the information available also reduces any potential burden. For information that does not change, such as name and general conditions of service, a one-off action will in many cases be sufficient to add the information to a page on the provider’s website. Other information, such as price, can be communicated “at the provider’s own initiative”, which could mean in a written document, leaflet or contract, or over the phone, or by any other means. Indeed, all the necessary information can be supplied “at the provider’s own initiative”.

C29. We will need to communicate these obligations to service providers to ensure they are aware of them and will do this through an information campaign in advance of the Directive’s implementation deadline (December 2009).

CASE STUDY – Information Provisions

A firm of management consultants in Brighton already has most of the required information on its website and in its standard documentation sent to clients prior to commencing a project. They realise though that they have not disclosed that they are members of the Management Consultancies Association, and must therefore abide by its Code of Professional Conduct. By amending their website and client documentation by adding a short

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8 Source of information: Management Consultancies Association website [www.mca.org.uk](http://www.mca.org.uk)
amount of text and a link to further information on the Management Consultancies Association’s website, they are able to provide greater reassurance to potential and existing clients that they will act in a proper manner and that a mechanism is available to resolve any complaints without recourse to the courts.

Enforcement

C30. We intend that the enforcement of the obligations in Articles 22 and 27 should be light-touch. As stated above, we believe the obligations are not onerous.

C31. If a service recipient feels that a provider is in breach of any of the information requirements, or is slow in responding to complaints, the recipient will be able to seek redress through the ways outlined to them in the information on the consumer portal in their Member State. This will contain information specifying the means of redress available to them in the case of a dispute with the provider in the UK.

C32. It may be possible to add these provisions of the Services Directive to Part 8 of the Enterprise Act, which provides for enforcement by OFT, local weights and measures authorities and the Department of Enterprise, Trade and Investment in Northern Ireland. This is how the e-commerce Directive information provisions are enforced and is the means of civil enforcement for the Unfair Commercial Practices Directive obligations. However, Part 8 cannot be used in relation to all business to business transactions, meaning further consideration of this issue is necessary.

C33. Otherwise, we will need to set out both the requirements and the means of enforcement in new legislative measures that cover both business to business and business to consumer transactions.

C34. In the case of the obligation to demonstrate compliance with the information requirements, we would expect that there would not be a requirement on providers to show on a regular basis that they are compliant, but that they would need to be in a position to demonstrate this at the request of a relevant enforcement agency, for example in the case of redress action.

C35. Any enforcement or inspection powers conferred will need to be proportionate, consistent and in line with Hampton principles of risk-based enforcement. We will also need to consider what might be appropriate penalties for non-compliance with these provisions.

Q40 What approach do you think should be taken to enforcement of the information and redress provisions?

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**Article 27(3): Financial guarantees**

C36. Article 27(3) provides that, where a financial guarantee is required for compliance with a judicial decision, we are obliged to recognise equivalent guarantees lodged with an authorised credit institution or insurer established in another Member State\(^\text{11}\).

C37. We will be investigating to what extent this applies to the legal systems in the UK and what steps, if any, we need to take to ensure that the UK complies with this requirement.

**Q41** Are you aware of any instances where a financial guarantee is required for compliance with a judicial decision in the UK?

**Articles 26 & 37: Policy on Quality of Services and Codes of Conduct**

C38. These Articles require us to take steps to encourage the voluntary development of charters, codes of conduct, accreditation schemes, assessments, standards and co-operation in general at Community level in order to facilitate the quality of service provision.

C39. The Government supports the development of such schemes where they are clearly likely to benefit both businesses and consumers. Where this is the case, we will continue to encourage their development and to identify opportunities for encouraging participation, working with the Commission to this end. There are many ways to achieve this, such as including information on a website, encouraging the holding of workshops, or supporting initiatives already underway by organisations. There are indeed initiatives like the CHESSS programme that are already taking similar programmes forward and in which the UK is already involved.

**Q42** Do you agree with the proposed approach of encouraging providers to take action on the provisions in Articles 26 and 37? What would be effective ways for encouraging providers to take action? What current initiatives are you aware of in this regard?

**CHESSS** (CEN Horizontal European Service Standardisation Strategy) is an initiative examining the feasibility of a generic approach to European service standardisation. It aims to identify how standardisation might usefully apply across multiple service sectors, rather than take a sector-specific approach. Further information can be found at: [www.chesss.eu](http://www.chesss.eu).

**Labels and Quality Marks**

C40. Article 26 also requires us to ensure that information about certain labels and quality marks is easily accessible to providers and

\(^{11}\) That is, for credit institutions, authorised in accordance with Directive 2006/48/EC; and for insurers, as appropriate, with First Council Directive 73/239/EEC and Directive 2002/83/EC.
recipients. This therefore differs from the rest of the Article in that it requires us to take action, rather than encourage it. We consider that this requires us to make information available on labels applicable in the UK, as well as Community-level labels. We intend to explore whether we could link to information about labels in other Member States.

C41. To implement this, we could:

- introduce legislation to require organisations that are responsible for labels to provide information on them themselves
- seek to make this information available on business and/or consumer information websites, such as Business Link / the Point of Single Contact, or Consumer Direct, or an entirely new website
- take a combined approach, with a responsibility on relevant organisations to provide information on their labels but achieving this through the general website

C42. We believe it would be preferable to use a website, either on its own or combined with legislation requiring relevant organisations to provide the information needed. A central website would gather all the information in one place and thus be more user-friendly and efficient, and would be helpful for recipients as well as for providers from other Member States looking at doing business in the UK. If organisations had to supply information individually, this could be confusing as the information would be in several places and would not help increase transparency.

Q43 Which of the three options for providing information on labels and quality marks is preferable? What alternatives are there?

Q44 To what extent is information on labels and quality marks already available? How could this be improved?

Article 23: Professional Liability Insurance

C43. This Article specifies that Member States may make it mandatory for service providers operating a ‘high-risk’ service to subscribe to professional liability insurance. A ‘high-risk’ service is one that, according to the Directive, “presents a direct and particular risk to the health or safety of the recipient or a third person, or to the financial security of the recipient”.

‘Direct and particular risk’: a risk arising directly from the provision of the service
‘Health and safety’: in relation to a recipient or third person, the prevention of death or serious personal injury
‘Financial security’: in relation to a recipient, the prevention of substantial losses of money or of value of property
‘Professional liability insurance’: insurance taken out by a provider in respect of potential liabilities to recipients and, where applicable, third parties arising out of the provision of the service
C44. Currently, there is no general requirement in law that makes it mandatory for all providers of ‘high-risk’ services in the UK to hold professional liability insurance, although in certain situations mandatory insurance requirements do exist. For instance, lawyers are required to have appropriate professional indemnity insurance and horse riding establishments are required to have appropriate public liability insurance in place.

C45. The Government does not intend to use the Services Directive to change its policy relating to mandatory insurance requirements. Therefore, although Article 23 allows it, we do not intend to introduce a general obligation in law requiring all providers of ‘high-risk’ services to take up professional indemnity insurance. We believe that imposing a blanket requirement on EU service providers where such a requirement does not already exist may impose disproportionate burdens on service providers, as well as insurance companies, and could therefore distort competition and prevent UK consumers from being able to select from the widest range of services possible.

Q45 Do you agree that professional liability insurance should not be a general mandatory requirement in law for ‘high-risk’ service provision in the UK? What are your reasons?

C46. Where professional rules in the UK do require practitioners to hold professional liability insurance, these requirements will still be permitted under the Directive and will be applicable to EU providers in those professions establishing in the UK. However, the Directive prohibits any stipulation that the insurance has to be obtained from a UK-based insurance provider, and makes it obligatory to accept equivalent or essentially comparable insurance obtained in another Member State. Additional insurance may however be required where this equivalence is only partial.

Q46 If you work in a profession where professional indemnity insurance is a requirement to practice, or if you oversee such rules, we would be interested to hear your views on whether changes are required to your professional rules for them to meet the Directive’s requirements.

Relationship with Article 22(1)(k)

C47. Given that we do not intend to make professional liability insurance a mandatory requirement under the terms of Article 23, we believe it is possible to argue that providers operating a ‘high-risk’ service in the UK do not need to provide the information required by Article 22(1)(k), which refers to “the insurance or guarantees referred to in Article 23(1)”, as no such requirements to hold insurance or guarantees will exist. We are considering whether those professional rules that do require professional liability insurance fall within the scope of Article 23(1), with the consequence that those providers affected would have to comply with Article 22(1)(k).
Q47 Do you have any comments on the application of Article 22(1)(k)?

**Articles 24 & 25 – Commercial Communications and Multidisciplinary Activities**

C48. These Articles require us to remove any complete bans on commercial communications by the regulated professions and on restrictions preventing service providers carrying out more than one activity, or carrying out different activities jointly or in partnership.

C49. We are therefore, in the first instance, obliged to screen our legislation and administrative practices for compliance. This is being done through the process outlined in Chapter D. So far, we have not discovered any restrictions that would need to be abolished under Article 24, or restrictions of the sort mentioned in Article 25.

C50. Article 24 then requires us to ensure that commercial communications comply with professional rules, relating to the independence, integrity and dignity of the profession in question, as well as to professional secrecy, in a manner consistent with the specific nature of each profession. These professional rules are to be non-discriminatory, justifiable through an overriding reason relating to the public interest, and proportionate.

Q48 What professional rules relating to commercial communications by the regulated professions already exist? How should we ensure that all professional rules comply with the Directive?

C51. Article 25 allows us to retain bans on multidisciplinary activities on providers from:

- The regulated professions
- Providers of accreditation, certification, technical monitoring, trial or test services

where such bans are justifiable to ensure their independence and impartiality, and, in the case of the regulated professions, to guarantee compliance with rules governing professional ethics and conduct.

C52. Where multidisciplinary activities between providers from either of these categories are authorised, we are required to ensure that:

- Conflicts of interest and incompatibilities between certain activities are prevented
- The independence and impartiality required for certain activities is secured
- The rules governing professional ethics and conduct for different activities are compatible with one another, especially regarding professional secrecy

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C53. As part of the report we are required to submit to the Commission at the end of the implementation process, we are obliged to report, in relation to Article 25, who is subject to multidisciplinary requirements, what these requirements are and why they are justifiable.

Q49 We invite views on how best to ensure the provisions on multidisciplinary activities are workable, particularly from respondents in those areas falling under the two affected groupings. Are you aware of any restrictions on multidisciplinary activities in the UK?

**Articles 19 & 20 – Removal of Restrictions on Recipients of Services**

C54. Article 19 requires us to screen our legislation for requirements that restrict the use of a service provided by a service provider established in another Member State, in particular:

- An obligation to obtain authorisation from or to make a declaration to their competent authorities
- Discriminatory limits on the grant of financial assistance because the provider is established in another Member State or because of the place at which the service is provided

C55. If such requirements do exist then they must be abolished or amended to comply. We are investigating these as part of our screening work (see chapter D).

C56. Article 20 requires us to ensure that service recipients do not face discriminatory requirements based on their nationality or place of residence. Again, we are screening our legislation and practices to identify if any such requirements exist.

**General conditions of access to a service**

C57. Article 20 also requires us to ensure that the general conditions of access to a service made available by providers to the public at large do not discriminate against recipients based on their nationality or place of residence. Providers are however able to retain differences in the conditions of access to a service where these differences are justified by objective criteria (such as differing prices for postage and packaging depending on where the client is).

C58. We are considering imposing this requirement on providers through a general obligation in legislation, in the same way as for implementing the information and redress obligations under Articles 22 and 27, as explained on pages 54-55.
Examples of Objective Criteria according to the Directive

- Additional costs because of distance involved or technical characteristics of the provision of the service
- Different market conditions such as higher or lower demand influenced by seasonality, different holiday periods in Member States and pricing by different competitors
- Extra risks linked to rules differing from those of the Member State of establishment
- Lack of required intellectual property rights in a particular territory

Q50 Do you agree with the suggested approach to the obligation on providers concerning their general conditions of service?

Q51 Can you suggest examples of ‘objective criteria’ that might justify the use of different terms for different service recipients in a provider’s general conditions of access?
This chapter should be read by anyone interested in how we are examining our legislation and practices for compliance with the Directive. In particular, those with an interest in specific policy areas should read Annex A, which sets out the Government's emerging conclusions on how laws and practices are affected by the Directive.

Key Question 4: Can you think of any examples of legislation, administrative practices or licensing regimes either in the UK or in other Member States that should be amended in order to comply with the Directive (see pages 73-74 for examples)?

D1. This chapter principally covers Articles 5, 9-13, 14-18, 19-20 and 39

Screening

- The Directive requires Member States to review all their legislation and administrative practices, to amend them if they are not compliant with the Directive, or, in those circumstances allowed by the Directive, to keep them if they can be justified by an expressly permitted policy aim.
- We have asked some specific questions in this chapter, but we are also keen to hear of any legal or administrative barriers to cross-border trade in services within the UK that you are particularly concerned about.
- We would like to receive views on the approach we are taking and the provisional conclusions we have reached so far.

Purpose

D2. Service providers based in one EU country can be hindered in their attempts to do business in another because of the need to meet the different regulatory requirements in that country. While these requirements were often introduced for good reason, when examined closely they can sometimes be seen to serve no useful purpose, or indeed to have no other effect than to frustrate overseas providers from entering the market.

D3. The Directive essentially obliges Member States to screen all legislation and practices which affect service provision, and check whether discriminatory, unnecessary or disproportionate barriers of this sort remain. Where the process of scrutiny reveals that a particular requirement cannot be justified, it will either have to be repealed, or else amended in line with what the Directive allows. The end result will be that service providers across Europe will have fewer obligations to comply with overall and there should be significantly fewer barriers to entering new markets. Those obligations which remain should be as simple as possible. For example, an architects firm based in the UK should in future find it easier to set up in another Member State.
Licensing requirements to establish as a provider of architectural services

- Data are missing for Greece, Poland, Hungary, Czech Republic and Slovak Republic for 1996 so changes between 1996 and 2003 are not commented on.
- No licensing barriers in Denmark, Netherlands, Sweden and the UK, according to the OECD.
- Further information is available from: [http://www.oecd.org/document/1/0,3343,en_2825_495698_2367297_1_1_1_1,00.html](http://www.oecd.org/document/1/0,3343,en_2825_495698_2367297_1_1_1_1,00.html)

**CASE STUDY – UK Construction Advisory Firm**

**What was the problem?**
A large partnership providing advisory services to the construction industry has a significant history of successfully establishing in other EU Member States. They decided to establish a business from scratch, having won a major contract in the case study Member State. A British senior member of staff spent approximately a year trying to overcome difficulties to establish the business, facing unnecessary and disproportionate bureaucratic procedures. For example:

- Different organisations requiring the same information but in different formats and with different certifications
- Long delays in receiving approvals and answers to applications
- Personal representation by senior staff needed to obtain authorisations

**How could the Directive help?**
The Directive should greatly simplify the administrative procedures that were so problematic in this case largely making personal representation unnecessary. The Directive says:

- Member States may not impose authorisation conditions which duplicate equivalent requirements or controls to which the provider is already subject in the same or another Member State
- Authorisation procedures should provide applicants with a guarantee that their application will be processed as quickly as possible and, in any event, within a reasonable period of time which is both fixed and made public in advance
Summary of Obligations

D4. There are several aspects to the screening obligations in the Directive. The following section briefly explains what these consist of, taking them in turn. However, the provisions on temporary service providers outlined in paragraphs D13-D20 may be particularly crucial in the UK context, for reasons discussed there.

Authorisation schemes

D5. A significant potential barrier to cross-border services is authorisation schemes – obligations on a service provider to be in some way authorised, accredited, licensed or registered before it can operate in a particular country.

D6. The Directive does not outlaw authorisation schemes, but it does subject them to some strict tests to ensure that they are genuinely necessary and are as non-obstructive as possible. Any authorisation scheme must therefore be:

- **Non-discriminatory** - it must apply equally to providers from all EU countries
- **Proportionate** – it must not be more stringent or onerous than is necessary to tackle the particular problem it is designed to address
- **Necessary** – it must be justified by some genuine underlying policy objective\(^\text{12}\).

D7. The three-stage test above flows from existing caselaw at European level on the freedom of establishment and services, and in many ways these themes of non-discrimination, proportionality and objective justification represent key threads running through all aspects of the Directive.

Exceptions to the Authorisation Tests

The only exception to following these rules strictly is in relation to those aspects of an authorisation scheme which are required or expressly permitted by another Community instrument. These do not have to be screened against the authorisation provisions in the Directive. An example might be the Waste Directive, which requires that certain activities relating to waste water are subject to authorisation regimes. However, it is important to remember that the EU Treaty principles will still apply to such regimes.

D8. In addition to these three tests, the Directive places other restrictions on authorisation schemes. These include requirements that the

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\(^{12}\) The Directive refers to these as Overriding Reasons Related to the Public Interest (ORRPI), and a non-exhaustive list is provided in Recital 40 to the Directive – for example public health, consumer protection, the prevention of fraud, animal welfare, and many other factors.
authorities who grant authorisations operate according to clear and objective criteria, and the procedures which they follow must be clear, public, objective and accessible.

D9. Service providers will also no longer be obliged to submit again to authorisation conditions which they have already satisfied in their home state, provided those requirements are essentially comparable in their nature.

D10. The Directive also limits the circumstances in which authorities can (in effect) ration the number of providers by granting authorisations only for a temporary period. It ensures that clear procedures must be followed where, due to scarcity of resources or technical capacity, only a limited number of authorisations can be granted.

Prohibited requirements

D11. The Directive sets out, in Article 14, a list of absolutely prohibited requirements – for example, making authorisation dependent on certain economic tests such as proof of market demand; involving competitors in the granting of authorisations in most circumstances; or requiring the provision of financial guarantees or insurance from a provider in the same Member State. Perhaps most importantly, the prohibited requirements include a number relating to nationality and physical location.

Prohibited Requirements – Nationality and Physical Location

No requirements can be imposed which discriminate on the basis of the nationality of, for example, the service provider, her staff, a company’s shareholders or directors. It will therefore be forbidden to require that only companies owned by nationals can undertake a particular service activity or that their managers need to reside in the territory. It will also be impossible to require the service provider to maintain its principal establishment in a particular state, or to prevent it from being established in more than one state.

Other restrictions

D12. Article 15 goes wider than authorisation schemes to look at other types of restrictions that might be imposed on service providers - for example, requirements that they take a particular legal form, operate on a certain limited territorial basis, have a minimum number of employees, and so on. These types of requirements may sometimes be justifiable, but equally they can sometimes have the effect of limiting service competition for no good reason. Countries can therefore only impose these sorts of restrictions if they satisfy the three key tests – non-discrimination, proportionality, and necessity for a public interest reason (as set out in recital 40).

D13. The checklists on pages 73-74 set out restrictions covered by Articles 14 and 15 in more detail.
Temporary service providers

D14. Articles 16 and 17 are particularly important. They deal with the requirements which can be imposed on service providers from one country who are providing services in another on a temporary basis - either remotely (for example, over the internet) or by operating only temporarily in another country, without "establishing" themselves there permanently. Under the Directive, Member States will have less discretion to impose requirements on these sorts of service providers than on providers who are established in their own territory. In other words, it establishes stricter tests which Member States must satisfy if they want to regulate for these providers. This in part reflects an expectation that temporary service providers may already be subject to regulation in their home state, it should be noted that certain services are specifically excluded from the scope of these provisions relating to temporary providers. The exclusions are listed in Article 17.

D15. Some countries in Europe impose different requirements on providers who are established in their own territory to those imposed on overseas providers offering services on a cross-border basis. In the UK, however, regulation generally operates on an equal basis for all and does not expressly discriminate against, or make special provision for, overseas as opposed to UK suppliers. This regulatory approach has important consequences for the way the UK implements the Directive. In effect, we can either ensure that the totality of our regulation complies with the stricter tests in Article 16 for regulating temporary providers, or else we would need to introduce differential treatment within the regulatory landscape as between established and temporary suppliers. The latter approach would generally be unusual in the UK, and may be unattractive for that reason and because it would lead to greater regulatory complexity. Our working assumption is therefore that all our regulation should be screened to ensure compliance with the stricter tests in Article 16.

Q52 Do you agree that, as a general rule, it is better to regulate in an identical way for both temporary and established (i.e. UK-based) service providers?

D16. The strict tests in Article 16 which limit the extent to which Member States can regulate temporary providers once again operate on the basis of the three key principles of non-discrimination, proportionality, and necessity, but the important difference here is that the grounds on which policies can be justified as necessary are much more limited. The only reasons which will be acceptable in justifying restrictions on temporary service providers will be:

- public health
- public safety
- environmental protection
• *public policy* (which covers only the most fundamental interests of society such as public order).

D17. No other justifications will be sufficient\(^\text{13}\).

D18. There is a check list (in Article 16(2)) of particular types of requirement which it will be very difficult ever to justify imposing on temporary service providers (for example requirements for prior authorisation). This largely reflects the position under the existing European caselaw. While it may not be impossible, on an exceptional basis, to justify the retention of provisions of this sort in some circumstances, as a general rule they would fall foul of the fundamental three-test rule.

D19. The provisions on temporary service providers cut across a very large number of sectors, and it has been suggested by the European Commission that one way of ensuring full implementation of these provisions might be to adopt what they refer to as a horizontal framework approach. Instead of - or in addition to - making any necessary specific changes to individual items of legislation or practices in particular sectors, we could put in place a general law specifically disapplying any existing requirements which are in breach of the temporary service rules.

D20. A general provision of this sort would provide certainty that we had fulfilled our obligations to implement this aspect of the Directive. However, horizontal measures of this sort are relatively unusual (though not unheard of) in the UK, and adopting a horizontal approach to the rules on temporary service provision might also risk enshrining differences of treatment between temporary and established service providers which, as discussed above, might not be an attractive approach for the UK.

D21. Importantly, while a horizontal measure would provide legal certainty at a general level, it would not in itself seem to provide any greater practical certainty for interested parties themselves – for service providers, regulatory authorities and so on. While a provision of this sort therefore remains a possibility, we do not believe that it should provide a substitute for the more detailed work of analysis of specific legislation that is now underway, so that we can (as far as possible) reach a definitive view on all changes that need to be made in whatever sectors they may be, and can introduce specific legal changes to set out as clearly as we can what the new law will comprise.

**Recipients of Services**

D22. Articles 19 and 20 ensure that the limits the Directive imposes on a country’s ability to restrict the free movement of services cannot be circumvented by instead placing requirements on the recipients of

\(^\text{13}\) In exceptional circumstances, it may be possible to impose requirements on a particular incoming temporary provider in the interest of safety (see Article 18).
Our Approach to the Screening Exercise

D23. The UK is in a relatively fortunate position in that there has been much work done in recent years to simplify the regulatory landscape and reduce administrative burdens on business. This has provided a good platform to work from in implementing the Services Directive, which is a fundamentally deregulatory measure. However, our existing simplification work, although very much with the grain of the Directive, does not prevent us from having to scrutinise all potentially relevant domestic laws and practices for compliance with the specific and detailed requirements of the Directive.

Simplification Initiatives

The UK Government has done a great deal of work in reforming regulation to simplify and remove unnecessary burdens on business over recent years. Simplification plans published by Departments in December 2006 (and updated annually) identify approximately £2bn worth of administrative burdens which the Government is now committed to removing through some 500 initiatives. Simplification measures cover a wide spectrum of policy areas such as company law, health and safety law, planning, employment and the environment.

Other initiatives include the Hampton and Rogers reviews (which focus on regulatory enforcement), and the Transformational Government programme (focusing on the use of new e-technologies).

The UK has one of the best regulatory environments for business in the developed industrial world. According to a World Bank report (2007) the UK is ranked sixth in the world amongst major economies for regulatory quality, in the top ten world-wide for best business conditions and first in Europe.

D24. This is a huge exercise. We have begun by working with all central Government departments to identify and exclude those policy areas and laws that fall outside the scope of the Directive, and to screen the remainder for any requirements that would affect service provision directly or indirectly in any way. In cases of doubt as to whether a particular area falls within scope, we have generally preferred to work on the basis of the widest possible interpretation, both because this is the safest approach and because it maximises the potential deregulatory benefits of the Directive.

Local Authorities and regulators

D25. While the initial focus of the screening exercise has been on primary legislation, the Directive equally applies to any requirements found in regulations, licences, and administrative practices. These are often the responsibility of other regulators outside central Government, who are
generally the first point of contact for overseas service providers looking to operate in the UK. We are therefore working with Local Authorities and other regulators to identify legal and administrative barriers at grassroots level – that is, at the level where a business’ obligation to meet certain requirements is first apparent.

**Trade and professional bodies**

D26. The Directive also applies to any requirements which are imposed on service providers by the rules of organisations such as trade associations or other professional bodies. Organisations will need to check their own procedures to ensure that they do not impose any requirements of a sort which cannot be justified under the Directive. We hope that this consultation document will serve as a useful summary of the issues which need to be considered, and we would be keen to hear from any organisation which would like help in understanding its potential obligations under the Directive and what may need to be done.

**Devolved administrations**

D27. We have also been working closely with devolved administrations in Scotland, Wales and Northern Ireland, in the first instance to identify those areas which are specifically their responsibility, and which are not legislated for at national level, so that they can screen those areas for compliance with the Directive just as UK Government Departments have been screening the national legislation. However, as a general rule it is likely that the broad analysis of legislative areas contained in this consultation document will hold equally valid for more specific legislation at devolved level. For example, if a piece of legislation which applies to, say, England and Wales is considered to fall within one of the exclusions from the Directive and to be out of scope, it is very probable that the same will be true of any broadly similar legislation which has been put in place in Scotland or in Northern Ireland.

D28. Devolved administrations are continuing to scrutinise their legislation and practices, and where any requirements are identified which conflict with the Services Directive, details will be published for comment on the BERR website, and on the relevant administration’s website, under the arrangements discussed below on web updates. Amendments will then need to be made to a common timescale to ensure implementation across the whole country by the due date.

D29. For the purposes of the current consultation, and given the likely broad similarity in the analysis of legislation across the UK (irrespective of its provenance), we would be keen to hear views from consultees anywhere in the UK, whether in England, Wales, Scotland or Northern Ireland.
Communicating the Results

D30. Each Member State is obliged to report to the European Commission before the end of the transposition period (i.e. by 28 December 2009). The report must provide information on the outcome of the screening exercise, and in particular give details of:

- those authorisation schemes (Article 9) which the UK proposes to keep, and our reasons for doing so including the appropriate justification
- those other requirements (Article 15) which the UK proposes to keep, and our reasons for doing so including the appropriate justification; and those which it proposes to amend or abolish
- any requirements which apply specifically to service providers operating here temporarily or remotely (Article 16) which we propose to keep, and our reasons for doing so including the appropriate justification
- any multi-disciplinary requirements (Article 25, as discussed at pages 60-61)

D31. The European Commission and other EU countries will have the opportunity in the first six months of 2010 to check the detail of the UK’s screening report and assess the thoroughness of our implementation processes. Similarly, the UK Government will be able to review those of other countries. This is an important part of the evaluation process and gives teeth to the Directive. The UK strongly supports this reporting process and has used its influence in Europe to promote a robust and simple reporting format; but one which produces standardised responses so that we can understand what requirements each Member State imposes on service providers and why.

D32. The UK will ensure that the substance of its report to the Commission is made public so that all interested parties will have the chance to review it. We will encourage other Members States to do the same.

Q53 Do you agree that the information contained in implementation reports to the Commission should be made publicly available?

D33. It is important to recognise that the Directive has continuing effect. Any new measures introduced by Member States following the implementation date will need to comply with its provisions, and will need to be reported to the Commission where relevant.

Impact of the Directive on our Regulatory Regimes

D34. Annex A contains a summary of our findings from the screening exercise so far. We have structured the information by Government department to enable you to find more easily the areas which are of most interest to you. We believe we have gone a long way towards screening all potentially relevant national legislation, and many of the most important regulations and practices, but this is an enormous
exercise overall, with several thousand pieces of legislation needing to be scrutinised. Given the scale of the task, the information provided in Annex A is neither exhaustive nor definitive, but it provides an indication of where we think the main areas of UK legislation stand under the Directive.

D35. The Annex includes details of one or two areas where we have identified existing UK provisions which seem to be in conflict with the Directive, and which we are likely to need to repeal or amend. These are on pages 83 and 85-86 and relate to insolvency and hallmarking respectively. However, we have not found very many changes of this sort. While the Directive has potentially very wide application, we have found that much of our legislation does not contain requirements directly or indirectly affecting service provision, and thus does not need to be checked against the Directive’s provisions. This of course may differ in other Member States who may historically have chosen to regulate service providers on a much greater scale. In other cases, where UK legislation does apply requirements, we have found these to be necessary, non-discriminatory, and proportionate – often reflecting the work done in recent years in the UK to simplify the regulatory landscape and remove unnecessary burdens on business already.

**Updated Information on www.berr.gov.uk**

The screening exercise is not yet complete, and the conclusions set out in this document represent an early view of the position (albeit one that already represents the product of a great deal of work across all Departments in scrutinising many hundreds of items of legislation).

We want to ensure that the best and most up to date information continues to be publicly available. We will therefore be using the Services Directive pages of the BERR website[^14] to disseminate further outputs from the screening exercise as and when they become available. The website already includes details of all the legislation which we feel is potentially within the scope of the Directive (in whole or in part) and we will update this information regularly, as well as providing any other information which we think could be helpful to consultees. In particular we will provide full details of any further changes to UK legislation or practices which we think might be required by the Directive, so that consultees can have a full and informed understanding of the latest position.

The website includes an e-mail link – servicesconsultation@berr.qsi.gov.uk - allowing you to provide comments as easily as possible.

D36. As has been asked elsewhere in this document, we would be interested in general to know of any barriers to service provision falling within the scope of the Directive that you believe exist, either in the UK, or indeed elsewhere in the EU. This is the key question for this chapter and is repeated here.

[^14]: [http://www.berr.gov.uk/europeandtrade/europe/services-directive/page9583.html](http://www.berr.gov.uk/europeandtrade/europe/services-directive/page9583.html)
Key Question 4: Can you think of any examples of legislation, administrative practices or licensing regimes either in the UK or in other Member States that should be amended in order to comply with the Directive (see pages 73-74 for examples)?

Prohibited Requirements Checklist

The following requirements are absolutely prohibited under the Directive. We would be interested in any evidence of the existence of any of these requirements.

- discriminatory requirements based directly or indirectly on nationality or location of a company’s registered office (including nationality or residence requirements for those holding the share capital). For example, a rule which requires managers to live in the UK could be prohibited.\(^{15}\)

- prohibitions on having an establishment in more than one state or being enrolled with professional bodies in more than one state. For example, in the case of a company, a rule which forbids registration in another Member State could be prohibited.

- restrictions on the freedom of a provider to choose between having its principal or a secondary establishment in the UK. For example, it could be prohibited to oblige a provider to form a subsidiary (rather than a branch) when operating in another Member State.

- conditions of reciprocity with the state in which the provider already has an establishment. For example, only permitting enrolment on a professional register if the other Member States reciprocates could be prohibited.

- the case by case application of an economic test. For example, making the conditions for granting a licence subject to evidence of economic or market need could be prohibited.

- direct or indirect involvement of competitors in an authorisation process. For example, rules involving potential competitors in making a decision on whether to grant a licence to a new operator could be prohibited.

- obligations to provide a financial guarantee or to take out insurance from a provider or body established in this country, rather than a Member State of their choice.

- obligations to be pre-registered in the UK or to have previously exercised the activity in this country. For example, an obligation to have been established in the UK for one year before being able to register to provide a service could be prohibited.

Checklist of Requirements which need to be Justified

The extent to which the following requirements are permitted, and the strictness of the tests against which they might be justified, will depend on a number of factors, and in particular on whether the requirement in question

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\(^{15}\) The examples on this and the following page come from the European Commission’s “Handbook on Implementation of the Services Directive”
applies to temporary service providers, established service providers, or both. For the purposes of responding to this consultation, however, **we would be interested in any evidence of the existence of any of these requirements** so that we can assess them for compliance with the Directive.

- obligations on the provider to have an **establishment** (for example, a branch or office) in the UK, thereby removing the possibility of operating on a temporary basis.
- obligations to obtain an **authorisation** (such as a licence) from a UK authority (including registration with a professional body) before they can commence the activity.
- **banning** the provider from setting up a **certain type of infrastructure** or office in this country. For example, preventing a temporary service provider from setting up an office in order to receive clients.
- applying **contractual arrangements** between the provider and the recipient which prevent or restrict the provision of the service by the self-employed.
- requiring the provider to have **identity documents** issued by UK authorities before they can carry out the service activity.
- requirements which restrict the **use of equipment** as part of the service provided (unless for reasons of health and safety at work). *For example, obligations to use particular types or brands of technical machinery.*
- restrictions on the freedom to provide services by imposing **requirements on the recipients** of the service.
- **quantitative or territorial restrictions.** *For example, rationing the numbers of service providers allowed or specifying the geographical distance between them.*
- an obligation to take a **specific legal form.** *For example, only legal persons (and not natural persons) are able to take up a service activity.*
- certain requirements relating to the **shareholding** of a company. *For example, obligations to hold a minimum amount of capital.*
- **reserving access** to the service activity in question to **particular providers** (except where permitted by other EU legislation). *For example, requiring that only certain specified providers can offer a given service.*
- a ban on having **more than one establishment** in the UK. *For example, rules stating that an operator could not open more than one driving school in a Member State.*
- requirements fixing a **minimum number of employees.** *For example, requiring a specified number of employees carry out an activity.*
- **fixed** minimum or maximum **tariffs** for the service. *For example, setting the prices with which operators must comply when offering their services.*
- an obligation on the provider to **supply other services** alongside the **service in question.** *For example, obliging a service provider to offer other types of service on the premises.*
WHAT HAPPENS NEXT?

*Government Response to the consultation*

The Government will consider carefully the responses received to this consultation and we intend to publish our response to it within three months of its close, i.e. no later than 11 May 2008. We will use the consultation responses to help us shape future policy decisions concerning implementation and will continue to provide updates after the official response is released on our website.

If you would like to receive regular e-bulletins on progress, please e-mail servicesconsultation@berr.gsi.gov.uk to request this.

*Online Screening Consultation*

Concurrently to this consultation, we will be making information available arising from our exercise screening legislation and practices on the Services Directive pages of the BERR website. This will provide the opportunity for comment on any changes that we identify after the publication of this consultation document.

*Point of Single Contact build*

In order to meet the implementation deadline we will need to commence work to construct the Point of Single Contact in early 2008. Plans for this will be refined once policy is finalised as a result of this consultation.

*Wider Implementation*

We will continue to work with other Member States and the Commission to encourage consistent implementation of the Directive across the EU. We view this as a critical element of the implementation process.

*Report to Commission*

The implementation deadline is 28 December 2009. We are required to submit a report to the European Commission on certain aspects of implementation by this date. Following this we will take part in a six-month peer review process considering other Member States’ implementation reports.
ANNEX A: Summary Findings of Screening Exercise

Department for Environment, Food and Rural Affairs (Defra)

1. Defra has a disparate range of policy responsibilities which include animal health and welfare, farming, marine environment and fisheries, horticulture, plants and seeds, wildlife and countryside, rural affairs, food and drink, environmental protection (including water and waste management), and sustainable development (some aspects are shared with BERR).

2. Most of these policy areas deal with goods or products which are subject to separate European rules to ensure free movement and are therefore outside the scope of the Services Directive. This is significant: for example, of the nearly 500 pieces of primary legislation Defra considered as part of its review of legislation, only around 200 may be in scope because they potentially affect services. Most of them are also likely to be based on European legislation which means that either they have built into their provisions compliance with free movement principles, or that rules in the originating EU measure take precedence if in conflict with the Services Directive.

3. However, this does not negate the need for them to be reviewed against the requirements of the Services Directive. Many of the requirements will involve authorising (in most cases licensing) a particular activity or activities. Furthermore, Defra recognises that even where the prime purpose of the legislation is to regulate goods or products, there may be an indirect or subsidiary impact on service provision. They have therefore looked very carefully at requirements in these areas and particularly at licensing arrangements.

Examples

Each of the following Acts requires an authorisation from the relevant local authority which considers animal welfare conditions e.g. suitable accommodation or provision of food and drink.

Performing Animals Act 1925: cannot exhibit or train performing animals unless registered with the Local Authority
Animal Boarding Establishments Act 1963: cannot keep a kennel or cattery unless licensed
Riding Establishments Act 1964: cannot operate a riding establishment unless suitably qualified and licensed
Breeding of Dogs Act 1973: cannot keep a breeding establishment for dogs unless licensed.

All can be justified within Article 16 by public policy requirements, in this case the protection of animal health and welfare.
Example of simplification work that reduces barriers

4. In other instances, changes that might have been needed under the Services Directive are already taking place because of the Government’s continuing emphasis on promoting better regulation. This means that the Government has already pre-empted some of the Directive’s requirements in pursuing its domestic policies. An example of this is the Environmental Permitting Programme.

Environmental Permitting Programme (EPP)

5. The Environmental Permitting Programme is a joint Defra, Environment Agency and Welsh Assembly Government initiative. It focuses on streamlining and simplifying the nuts and bolts of environmental permitting and compliance systems (e.g. the processes of obtaining, varying and transferring permits), beginning with Waste Management Licensing (WML) and Pollution Prevention and Control (PPC). There will be no change to environmental standards, who the regulator is or what is regulated. The Programme is designed so that it can be extended to other systems in future.

6. Savings of around £76 million over ten years are forecast, through a reduction of the administrative burden on business and regulators and through wider economic benefits.

7. In addition, the Environmental Permitting Regulations are contributing to the Government’s drive to simplify legal requirements. The Regulations combine over 40 separate legal instruments into a single set of Regulations, reducing them to less than one third of the length. They clearly describe: who needs a permit; who needs to register an exemption; a single system for permitting and compliance; how Directive and national policy requirements are delivered. The Regulations deliver a risk-based and proportionate approach by merging the WML and PPC regimes into a streamlined and simplified system.

8. It is intended that the Regulations will come into force in England and Wales on 6 April 2008.

The distinction between goods and services

9. Annex B of this consultation document describes the complex issue of distinguishing between goods and services for the purposes of the Directive. It explains that while the Directive does not deal with manufacturing of goods there may be ancillary services, such as aspects of retail, maintenance, and after-sales, which could fall in the scope of the Directive. It is possible that while much of Defra’s legislation is not directly concerned with the provision of services, it may still be necessary to consider how ancillary or subsidiary services will be affected.
How the distinction between goods and services may impact on Defra

The Government believes, on the basis of the present European Court of Justice case law, that the abstraction, impounding, treatment and generation of water, gas and electricity are outside the scope of the Directive.

Agricultural production, forestry and fishing are also not generally deemed to be services for the purposes of the Directive. While this is the view the Government has taken, there are some notable exceptions which touch on the ancillary services issue, for example agricultural crop spraying. Service providers from another Member State wishing to set up a crop spraying operation in the UK are required to apply for a Certificate of Competence for public health and safety reasons. We will be checking this requirement for compliance with the Directive.

Department of Health

10. Most of the policy and legislation administered by the Department of Health falls under the healthcare exclusion in Article 2(2)(f) of the Services Directive. It is defined more specifically in Recital 22 as ‘healthcare and pharmaceutical services provided by health professionals to patients to assess, maintain or restore their state of health where those activities are reserved to a regulated health profession in the Member State in which the services are provided.’ Services provided to the hospital or to the healthcare professional are not covered by this exclusion.

11. Under this exclusion, legislation dealing with the activities of healthcare professionals such as doctors, chiropractors, dentists, and opticians has been considered to be out of scope of the Directive. There is an ancillary question raised by arrangements for selling eyewear, either on the high street or through the medium of the Internet. Much of the activity in bringing together a range of products in one place or on one site, and in offering a variety of services (other than those offered by members of healthcare professions, which are outside the Directive) aimed at inducing the customer to buy, could be considered a service and therefore within the scope of the Services Directive (for more discussion of these issues see Annex B). In this context, we have looked at existing legislation which requires that qualified healthcare professionals supervise the sale of all sight-correcting eyewear. Our view is that this particular requirement falls outside the scope of the Services Directive both because it relates to the healthcare exemption and because it relates specifically to the sale of goods rather than the associated retail services. Equally, sight testing falls out of scope as it relates to the healthcare exemption.

12. Other legislation dealing with medicines and medicinal products includes licences for the manufacture of goods (in this case, medicines) or the prescription of medicines and are out of scope of the Directive. Legislation dealing with the registration of pharmacies is out of scope under the healthcare exclusion, as it relates to the dispensing of medicines. It is important to note that while the activity of pharmacies in dispensing and selling licensed medical products and NHS pharmaceutical services is
excluded by the healthcare exclusion, any other retailing services that they carry out, such as arranging perfumes for sale, must be viewed as within scope.

13. The access of healthcare professionals to other EU countries will be governed by the Mutual Recognition of Professional Qualifications Directive which came into force in the UK in mid October 2007.

**Department of Work and Pensions (DWP)**

14. The main areas of responsibility of the Department of Work and Pensions fall within the scope of two specific exclusions: Article 1(6) and Article 2(2)(b).

15. Article 1(6) says that the Directive does not affect social security legislation. Recital 34 also makes it clear in relation to social security and social assistance that the state is not providing a service within the meaning of the EC Treaty when it is carrying out activities in the context of its duties in the social field and in the management of social security schemes. This is because the state is not engaging in an economic activity. It is difficult to envisage social security as an area where barriers to service provision could arise. Nevertheless, there are wider obligations in Community law and DWP is examining the relevant legislation against these obligations.

16. Article 2(2)(b) excludes from the scope of the Directive financial services including occupational and personal pensions. DWP has responsibility for legislation concerned with occupational and personal pensions.

17. The Disability Discrimination Act 1995 is unaffected by the Directive by virtue of Recital 11 and Articles 1(6) and 1(7).

**Home Office**

18. A good deal of the legislation belonging to the Home Office is concerned with criminal activity, and the Directive explicitly does not affect rules of criminal law, provided they are not used specifically to regulate service activity in circumvention of the Directive’s rules. The Directive also does not deal with regulation which does not specifically affect service activity, but needs to be respected equally by all, including individuals in their private capacity. For these reasons a good deal of the work of the Home Office – ranging from control of firearms to money laundering – is unaffected by the Directive.

19. Another large area of Home Office activity concerns border control and managed migration policies. Generally speaking, rules in this area apply to non-EU nationals. Nonetheless, it needs to be borne in mind that service providers may often employ or otherwise rely upon non-EU nationals, and restrictions in relation to such persons may have some impact on service provision, although it seems unlikely that any such impact would be inconsistent with the Services Directive. The Home Office will however
continue to keep the requirements of the Directive very much in mind as it
takes forward detailed policies in these areas.

20. The Home Office is also responsible for counter-terrorism legislation.
While this includes restrictions on, for example, publication and circulation
of certain types of material, the Government believes such measures are
non-discriminatory, proportionate, and fully justified for reasons of public
security.

21. The UK legislative and regulatory framework relating to animal
research has also been reviewed and appears fully compliant with the
Directive. The legislation, and its associated administrative controls, is
non-discriminatory and proportionate (and continuously reviewed to
improve its efficiency). Although in some respects the regulatory
framework exceeds the minimum EU requirements, the additional
controls reflect a balance between the legitimate needs of science and the
desire to enhance animal welfare standards, and are justified for that
reason.

Ministry of Justice (MoJ)

22. A large part of the legislation for which the Ministry of Justice is
responsible concerns the operation of the justice system – for example,
establishing the jurisdiction of the courts, and regulating the sorts of cases,
evidence and witnesses which can be brought before them. Provisions of
this sort are largely unaffected by the Services Directive because they
generally do not affect “services” within the meaning of the Directive, e.g.
rules regulating the appointment or functions of the judiciary. Rules relating
to the ways in which people gain access to and participate in the justice
system – how they should bring actions, how and where they may appeal,
and so on – are, generally speaking, common rules which must be
respected by service providers just as by ordinary individuals, and thus fall
outside the scope of the Directive. To the extent, if any, that Court rules
substantially impede the provision of services, these will need to be
checked for compliance with the Directive.

23. The Ministry is also responsible for the regulation of legal service provision
and the legal professions, and it is clearly important that the regulatory
environment for these activities should be consistent with the Directive. In
fact, in this context, the UK already operates one of the most liberal
legislative frameworks in the EU and the overall regime is being further
reformed through the Legal Services Act which received Royal Assent at
the end of October 2007. As part of the implementation process, the
existing framework which enables EU lawyers to practice in the UK will
also be reviewed, and MoJ will ensure that these rules take account of the
Directive’s requirements as well as the other EU legislation governing legal
services.

24. The professional bodies for the legal professions also have rules and
codes which form part of the regulation of the provision of legal services.
Where the Services Directive applies, these rules will also need to be
compliant. The Government thinks it unlikely that any such rules will fail to
comply with the principles of the Directive, but would be interested in views.

Q54 Are you aware of any rules, whether in law or elsewhere, which govern the legal services and may conflict with the Directive?

Department for Culture, Media and Sport (DCMS)

25. A number of the areas for which DCMS is responsible are explicitly excluded from the scope of the Directive – for example, broadcasting and audiovisual services, or gambling.

26. In its responsibilities for protecting national heritage, DCMS does place legislative restrictions on the kinds of work that can be conducted at listed buildings and other types of protected site, and this could be said to impact on the provision of (for example) building or conservation services at these places. But these restrictions would apply whether an independent service provider was contracted to do the work or whether it was carried out in some other way (for example by the owners themselves). Our view is that these restrictions apply equally to service providers and individuals acting in a private capacity and thus fall outside the Directive. In a similar way, obligations on those publishing printed works in the UK to deposit copies with national deposit libraries (e.g. the British Library) apply equally to individuals. All of the above regulations are in any event non-discriminatory, proportionate, and necessary to important public policy goals relating to the national heritage.

27. One area that DCMS has looked at particularly closely is the regulations for the sale of alcohol and the provision of late night refreshment (hot food and drink served between 11pm and 5am). It is likely that the licensing of the sale of alcohol and late night refreshment falls outside the scope of the Directive since it concerns the provision of goods as opposed to the provision of services (authorisation is only required in relation to the physical supply of alcohol or hot food and drink and does not apply to any associated activities of the seller). However, the distinction between goods and services is not always a firm one, particularly in the case of retail activities (as discussed in Annex B), and the licensing regime for these activities in England and Wales also covers regulated entertainment which is likely to be considered a service. DCMS has therefore also checked these arrangements for compatibility with the Directive.

28. The restrictions and authorisation regime which apply cover nearly all sales of alcohol or late night refreshment as well as regulated entertainment, including plays, cinema, live music and indoor sport, whether at an established premises or on a more temporary basis – from a stall in a market, say, or a temporary concert in a park. It is therefore important that these arrangements should be justifiable against the very strict tests which the Directive applies, in Article 16, for any conditions imposed on temporary service providers - otherwise, the system might need to be changed or abolished. In the Government’s view, the licensing arrangements would meet these strict tests and therefore should not be changed. They are necessary for important reasons of public policy – for
example, public security and the prevention of crime, and the protection of young persons. In relation to public safety, for example, the licensing process enables authorities responsible for health and safety issues to assess arrangements made to ensure that there are no foreseeable risks to the public of injury and to raise concerns with the licensing authority if those arrangements are unsatisfactory. The licensing process provides a similar safeguard in relation to crime prevention and child protection issues.

Q55 Do you agree that there are strong public policy grounds for retaining the UK’s existing system of alcohol licensing, including for sales by temporary providers?

**Department for Transport (DfT)**

29. There is a wide exclusion from the Directive for “services in the field of transport, including port services”. Recital 21 states that “Transport services, including urban transport, taxis and ambulances as well as port services, should be excluded from the scope of [the Directive]”. DfT consider that virtually all their legislation is unaffected for the principal reasons that either it does not affect the access to or exercise of a service activity; or it relates to the technical standards for goods used in the provision of services (for example, the construction and equipment standards for ships); or it falls within the wide exclusion for services in the field of transport. Some of DfT’s requirements derive from community instruments and those instruments will prevail over the Services Directive where there is a conflict.

**Department for Business, Enterprise and Regulatory Reform (BERR)**

**Energy**

30. BERR is responsible for the energy sector. This is another area where it is arguable that the legislation in question relates to the production and sale of goods rather than the provision of services. EU case law is clear that electricity is a good, and it is likely that many aspects of the electricity industry, as well as of industries relating to the production and transport of physical substances such as coal, oil and gas, fall under EU law relating to goods rather than under the Services Directive itself. On the other hand, the principles of non-discrimination, proportionality and so on which inform the Services Directive are generally equally applicable in the context of goods; and we have preferred to err on the side of caution. Except in cases where there is little or no doubt, BERR has therefore screened its energy legislation against the Services Directive.

31. Nonetheless, the sector has been subject to significant regulation at European level over recent years, and has also been examined carefully in the context of the Government’s better regulation agenda for any ways in which processes can be simplified and unnecessary burdens on business removed. No obvious legislative requirements of a sort which would give rise to compliance issues with the Directive have been identified in the legislation relating to the electricity market.
32. Of course, much of the detailed operation of the regulatory system is contained in the licensing process which is handled independently by Ofgem. Ofgem is committed to the better regulation agenda, and has principles such as non-discrimination and proportionality very much in mind in its administrative work. We would therefore not expect there to be any compliance problems and, where particular licences and practices have been looked at, no difficulties have been found.

**Insolvency**

33. Existing insolvency law requires anyone practicing in Great Britain as an insolvency practitioner (a profession to which various functions are reserved by statute) to be authorised according to British procedures. It is arguable that there could be a conflict between this requirement and the Services Directive, in so far as it relates to the freedom for service providers from other Member States to provide services temporarily in this country; and in any event EU Directive 2005/36 on the Mutual Recognition of Professional Qualifications explicitly now provides that there should be no need for a full authorisation process in one Member State where a practitioner is already qualified and legally established in another, and is operating in the country only temporarily or occasionally.

34. There may be a case (as allowed for under the MRPQ Directive) to put in place some form of aptitude test to ensure that a practitioner wishing to establish themselves in Great Britain is sufficiently well-informed about laws and procedures here. Essentially however, BERR proposes in the light of the two Directives to amend the Insolvency Act 1986 to remove the automatic requirement for British authorisation for those practitioners operating in Great Britain only temporarily or occasionally.

35. The Insolvency Service will consult specifically on any such changes in due course.

**Q56** Do you agree that requirements in the Insolvency Act for the authorisation of all practitioners from another Member State should be relaxed? Do you have suggestions on what other arrangements might be appropriate?

**Company law**

36. BERR has policy responsibility for company law and is currently considering the extent to which company legislation generally falls within the scope of the Services Directive. An example of the type of provision that might be relevant is sections 342 to 344 of the Companies Act 2006 concerning independent assessors of polls. Essentially, the only requirement is that the person fulfilling the function must be independent and no other qualification is required. Our view is that this requirement is compatible with the Directive
37. BERR has responsibility for legislation in the field of consumer protection, including rules relating or applying to estate agents, timeshares, package travel, pricing rules, misleading advertising, supply of goods and services, fireworks, distance selling, hire purchase, Sunday trading and Christmas Day trading.

38. There has been a great deal of simplification work carried out in this area in recent years as part of the Government’s commitment to achieving a reduction in administrative burdens on business by 2010. For example, through the implementation into UK law of the Unfair Commercial Practices Directive we will repeal consumer protection provisions in 22 pieces of legislation. Many of these will be repealed outright. We are also developing a simpler and more effective system of consumer representation, providing greater certainty of redress for utility consumers and better value for money for industry and consumers through a more coherent organisation, Consumer Voice.

39. The Government is committed to delivering a consumer protection regime which is at the level of the best in the world. Additionally, the current regulatory landscape for consumer protection has developed over several decades in response to many different stimuli. As a result there may be room for simplification. The Government is launching a review of the consumer protection regime in the UK, to report by spring 2008.

40. In our view, therefore, the simplification obligations in the Directive are likely to be met. However, we have specifically checked our domestic consumer protection laws for compliance with the Directive. The Directive recognises the importance of empowering and protecting consumers and sets out a framework of rights and protections which should help increase consumer confidence when purchasing services from EU providers (see Chapter C on Quality of Services).

41. For service providers established in the UK, consumer protection is listed as a valid reason for concluding that a requirement placed on a service provider is necessary. However, similar to other bodies of domestic law, our consumer protection law does not usually place different obligations on foreign and UK service providers. We will therefore continue checking that the obligations we impose on service providers – whether operating here temporarily from another Member State, or established here - meet the tests applicable for temporary service providers. So far, the consumer protection laws reviewed either appear to be compliant with the Directive or are already being repealed by some other measure. There are still some specific requirements and authorisation schemes which need to be analysed further to ensure they are accessible to EU service providers.

Examples

- The Fireworks Regulations 2004 require the licensing of all-year round fireworks suppliers and require retailers to display a notice. We believe neither the licensing of suppliers nor the displaying of a notice by suppliers
cause conflict with the Directive. In summary it is considered that the
scheme does not discriminate against particular providers and that the
scheme is justified and in the public interest. The conditions on granting
authorisation are objective and transparent.

- **The Business Advertisements (Disclosure) Order 1977** requires traders
to make reasonably clear in advertisements that the goods they are selling
are being sold in the course of a business. This order will be revoked by
the Consumer Protection from Unfair Trading Regulations which will
implement the Unfair Commercial Practices Directive from 6 April 2008 (a
broadly similar requirement will form part of the package of consumer
protection measures required by that Directive).

- Although the vast majority of consumer credit related activity falls outside
the scope of the Directive by virtue of the exemption in Article 2, it would
appear that **debt collection services** do fall within scope. Providers of
such services will still need to be licensed or authorised to carry out this
activity. The introduction of the Directive should, however, make it easier
for providers of debt collecting services to operate in other EU Member
States provided that they can satisfy regulators that they have been
properly authorised to carry out this activity.

### National Weights and Measures Laboratory (NWML)

42. Hallmarking is a service provided to the precious metal industry, mainly in
the jewellery sector. Assay offices test articles made of precious metals
and hallmark them to indicate that they are of a minimum standard of
purity. Hallmarking is carried out in the UK by four assay offices. NWML
regulates the industry on behalf of the Secretary of State and is assisted
and advised in many regulatory activities by the British Hallmarking
Council. The British Hallmarking Council also has certain regulatory
functions in relation to the assay offices.

43. The service activity for hallmarking that falls under the Services Directive is
the assaying and hallmarking of precious metals, which is carried out in
the UK by the four assay offices. All assay offices in the UK must be
authorised by the Secretary of State in order to carry out these activities.

44. To achieve compliance with the Directive and to help stimulate cross
border provision of this service, we are considering making changes to the
UK’s hallmarking regime. The hallmarking regime must achieve a balance
between improved transparency and fewer burdens for hallmarking service
providers, whilst ensuring consumers continue to be properly protected.

45. Firstly, we intend to make the administrative process for gaining
authorisation to set up an assay office in the UK (required by section 16 of
the Hallmarking Act 1973) more transparent. Whilst the authorisation of
assay offices is necessary for providers established in the UK to ensure
consumer protection, at present the process is not sufficiently clear to
meet the standards set out in Article 10. It is also anticipated that changes
will be necessary to the arrangements that allow the British Hallmarking
Council to advise the Secretary of State when deciding whether to grant an
authorisation. The current arrangement could contravene Article 14(6) by permitting potential competitors to be involved in the decision-making process.

46. Secondly, to meet the requirements of Article 16, if a hallmarking service provider from another Member State providing an equivalent hallmarking service wishes to operate in the UK on a temporary basis, we may not require them to gain an authorisation from the Secretary of State if they hold an equivalent authorisation in the Member State of establishment. The question of equivalence would be decided by the relevant hallmarking authorities in the UK.

47. Thirdly, to recognise equivalent hallmarks struck in the UK by EU temporary hallmark service providers as approved hallmarks. Only articles struck with approved hallmarks may be described as precious metals in the course of a trade or business.

48. Finally, we may amend the Hallmarking Act to permit UK hallmarking service providers to apply UK assay office marks in other EU Member States - thereby granting them access to other EU markets.

Q57 Do you agree that the proposed changes to hallmarking regulation meet our obligations under the Directive?

Q58 Do you have any other suggestions or comments relating to the proposed changes to hallmarking regulation, for example regarding enforcement and the safeguarding of UK consumers?

Q59 The Hallmarking Act currently prevents UK assay office marks being applied outside the UK. Do you believe, in principle, that UK assay offices should be able to apply their UK assay office marks outside the UK?

Q60 Are you aware of any legal or administrative obligations relating to hallmarking in other Member States which limit access to their market?

Communities and Local Government (CLG)

49. CLG lead, amongst other matters, on the policy aspects of town and country planning, building regulations, the regulation of architects and housing.

Planning

50. The UK planning system is a “plan-led” system. This means that the law requires that any development which takes place in the UK must be in accordance with a “development plan” unless material considerations indicate otherwise. The plan-led system ensures that development takes place in a strategic way and that those applying for planning permission can plan proposed development within the framework that has been established by the planning authority.
51. Unlike some EU countries, the UK planning system is concerned only with controlling and regulating the development and use of land. It is not normally concerned with the person proposing to carry out the development. If granted, planning permission is, in most cases, given for the benefit of the land – not specifically to the person who at that time owns or controls the land. Consequently there may be instances where a service provider can undertake development using an existing planning permission.

52. The planning system is reviewed regularly to ensure that development meets economic, social and environmental objectives in an integrated and sustainable way, and that the system is effective, efficient and user-friendly. For example, applications for planning permission can now be submitted electronically whilst a single national planning application form is being developed which can be used to apply for planning permission to any local planning authority.

53. The planning system includes many “requirements” that fall within the meaning of the Services Directive, but many of these apply to service providers in the same way as they apply to any individual. The Directive is not intended to impact on those rules which do not specifically affect the access to or exercise of a service activity (see Annex B). That said, there may be some instances where “requirements” have no practical effect on private individuals and non-service providers – but may do on service providers. Such requirements will need to be clearly identified and checked for compliance with the Directive. An example of a planning requirement that needs to be investigated further to establish whether it falls within the scope of the Directive is given here.

**Example**

The Town and Country Planning (Control of Advertisements) Regulations 2007 govern the display of advertisements. These Regulations provide that no advertisement may be displayed unless consent for its display has been granted. These Regulations apply universally, so although they will affect private individuals and service providers equally, it is arguable that these Regulations will have more practical impact on service providers and other businesses because business users are more likely to use outdoor advertising than private individuals.

**Building Regulations**

54. Building regulations generally set standards to which buildings are to be constructed, rather than regulating those that build them and therefore are applicable to all, whether a service provider from any part of the EU or someone constructing their own house. To the extent that building regulations might fall within scope, it is not considered that any aspect of the building control legislation and practices would contravene the provisions of the Directive.

**Architects**
55. Services provided by architects are covered by the Services Directive. Architects are an example of a regulated profession which also benefit from the mutual recognition of their professional qualifications across Europe. This means, for example, that the regulator in the UK must automatically recognise the qualifications of European architects which are specified in the MRPQ Directive. This enables European architects to operate more easily in Member States other than their own, and UK architects can also take advantage of the freedom to move. The requirements imposed on European architects which derive from the MRPQ Directive are excluded from consideration under the Services Directive. However, the operation of the regulatory system concerning the provision of architectural services in the UK has been checked against the Services Directive, and is compatible.

**Example**

There is a requirement for architects to be registered under the Architects Act 1997. Service providers must apply to the Architects Registration Board for registration on the Register before they can practise in the UK under the title of “architect”. This constitutes an authorisation scheme for the purposes of the Services Directive. Those aspects of the scheme which simply require service providers to possess professional qualifications which meet the minimum training conditions for architects as harmonised across Europe are permitted by the Mutual Recognition of Professional Qualifications Directive and fall outside the scope of the Services Directive.

**Housing**

56. The Government does not believe that the Services Directive impacts on rules relating to housing or the provision of social housing by virtue of Article 2(2)(j).

**Department for Children, Schools and Families (DCSF)**

57. The Department for Children, Schools and Families has responsibility for policy in the fields of childcare, educational services, extended schools services, school meals and adventure holidays.

**Primary and Secondary Education**

58. The Directive targets those services which are capable of being traded across borders and could benefit from greater competition. For this reason, only those services “normally provided for remuneration” (see Article 4) are covered by the Directive. Services which are non-economic in nature are therefore not within scope. We therefore consider that legislation governing the running of schools (including maintained schools and academies) and safety checks will not be impacted\(^\text{16}\).

\(^\text{16}\) However independent schools are likely to be covered
59. It is likely that services related to education but which are private in nature do fall within the scope. This might include breakfast clubs, after school activities for pupils at school and holiday play schemes. The provision of school meals may also be a service which a school buys in, bringing rules governing this service within scope.

Example

Section 114A of the Education Act 1996 and the Education (Nutritional Standards and Requirements for School Food) (England) Regulations 2007 put in place nutritional standards for school food. They are a key element of the Government’s programme to improve the quality of food and drink provided in schools. The requirements are non-discriminatory because they apply equally to food provided by any provider, whether British or from another Member State, are justified on public health grounds as they should help stop the rise in obesity, and are proportionate because they are a means of ensuring healthy food is provided to children in school, but do not go beyond what is necessary to do that. They do not, for example, affect packed lunches brought in by children themselves. Nor do they affect food provided at boarding schools after 6 pm or at weekends.

60. School transport should remain unaffected as in our view it falls within the exclusion for services in the field of transport (Article 2(2)(d)).

Childcare Services

61. Again, where childcare services are “provided by the State” or “mandated by the State” they will not normally be impacted by the Directive (see Article 2(2)(j)). In addition, the Commission has issued a Declaration stating:

“Social services relating to social housing, childcare and support of families and persons in need are a manifestation of the principle of social cohesion and solidarity in society and are provided by the State, by service providers on behalf of the State or by acknowledged charitable organisations…”

62. This means that generally legislation and registration schemes dealing with adoption, fostering, residential family centres and children in need and other state-provided social services for children and families should be unaffected. We have however erred on the side of caution and checked certain pieces of legislation such as the Childcare Act 2006 (see example).

Example

The Childcare Act 2006 is a key part of the Government’s Ten Year Strategy to help transform childcare and early years services in England. A number of requirements are made on childcare providers, in particular in relation to the process of registration, and the standards with which they should comply once registered. The requirements are non-discriminatory because they apply to anyone who provides childcare in England. They are justified under the head
of public policy because they provide for the welfare of children (see Recital 41). They are proportionate for a number of reasons: the regulatory regime provides the Chief Inspector with a wide range of responses for dealing with childcare providers who do not meet requirements; a formal procedure is to be followed in circumstances where the Chief Inspector enforces regulatory provisions, and there is an appeals mechanism; also, the end to which Part 3 of the Childcare Act is directed (the welfare of children) is very important.

Department for Innovation, Universities and Skills (DIUS)

Higher and Further Education

63. The Department for Innovation, Universities and Skills has responsibility for legislation in this area. Requirements on providing higher and further education, such as rules relating to the setting up of a university in the UK are covered by the Directive, and have been checked for compliance. One interesting issue concerns the fact that some higher and further educational services are capable of being provided on a temporary basis, for example summer schools. In these temporary situations, the usual quality assurance provisions that would apply to established providers do not apply. It is important that students are protected against bogus universities offering bogus degrees and, accordingly, it is a criminal offence under the Education Reform Act 1988 to grant a degree without authorisation unless the institution takes reasonable steps to inform the public that the award is not granted by a UK institution. For the purposes of justifying this requirement under the Directive, the protection of educational standards is not specified as one of the grounds on which requirements can be imposed on temporary providers. However, the Directive also requires Member States to ensure that providers (both established and temporary) make certain information available to recipients, under Article 22 on quality of services (see pages 52-54). The information requirement in the Education Reform Act 1988 overlaps with Article 22 and therefore complies with the Directive.

Cabinet Office

64. The Cabinet Office has policy responsibility for civil contingencies, legislative and regulatory reform and charity law and regulation. Of these areas of policy responsibility, our understanding is that only charity law and regulation is relevant for the purposes of the Services Directive.

65. We are currently considering the extent to which charity legislation generally falls within the scope of the Services Directive. However, we are aware that there are some specific requirements within the legislation that exist in respect of certain activities that charities conduct or certain services provided to charities. Such requirements are likely to fall within the scope of the Directive. One example is a licensing regime for public charitable collections which in our view complies with the Services Directive, as it is non-discriminatory, justified by an overriding reason relating the public interest and proportionate.

HM Treasury (HMT)
66. Most of HM Treasury's legislative responsibilities are likely to be excluded from the scope of the Directive by Article 2(2)(b) (exclusion for financial services) and Article 2(3) (exclusion of the field of taxation).

67. However, in the financial services field, certain HMT legislation also deals with other services. For instance, the legislation applying to friendly societies and to Industrial and Provident Societies does not only deal with financial services provided by those bodies. Friendly societies are formed for the benefit of their members and they may engage in activities such as working men's clubs and old people's homes. Industrial and Provident Societies are co-operative businesses or businesses conducted for the benefit of the community and may operate in any industry or trade. HM Treasury is not aware that provisions of this legislation raise any issues in respect of the implementation of the Services Directive.

Health and Safety Executive (HSE)

68. The Services Directive does not affect labour law. This includes legal provisions on health and safety at work. This means that workers employed by temporary or established service providers will continue to be protected under British health and safety law.

Byelaws

69. A byelaw is a local law made by a statutory body, such as a local authority or a railway authority, under an enabling power conferred by an Act of Parliament. Byelaws regulate activities in a local area, for instance to address behaviour which might cause a nuisance to others. A typical example of a local authority byelaw provision, applying to a local park, is:

Golf

No person shall on the land drive, chip or pitch a hard golf ball, except on land set aside by the byelaw-making authority for use as a golf course, golf driving range, golf practice area or putting course.

70. Many government departments which act as the confirming authority for byelaws have published model byelaws, which set out standard drafting on the matters most frequently addressed by byelaw-making authorities. Examples of model byelaws published by CLG and various Departments can be viewed from http://www.communities.gov.uk/publications/localgovernment/modelbyelaw

71. BERR and the Departments with responsibilities for confirming byelaws (CLG, DCMS, DEFRA, DfT, DH) are reviewing their model byelaws and consider so far that none of these appear to present restrictions to trade in services. In consultation with local authority representative bodies and the relevant regulators it has therefore been provisionally agreed that byelaws do not create requirements which need to be reviewed under the Services Directive. However:
Q61 If you consider that there are any requirements within a particular byelaw which might directly or indirectly affect service provision, then please let us know.
ANNEX B: Issues of Interpretation

Goods and services

1. The Services Directive does not deal with requirements relating to the rules on goods in the EU Treaty, e.g. those relating to the manufacture or sale of goods. There are however ancillary services such as some aspects of retail, maintenance, or after-sales services which may fall within the scope of the Directive. Distinguishing between what is a good and what is a service is not always easy. The distinction comes from the EU Treaty and so we are obliged to refer to the judgments of the European Court of Justice in determining the boundary. Unfortunately, it is sometimes difficult to extract clear principles from these judgments.

2. It is particularly difficult to make the distinction where a particular transaction consists of a mixture of activities, some involving goods, some involving services. This is the case, for example, in the retail industry. At the core of retailing is the sale of goods, but retailing also involves offering consumers a variety of products brought together in one place and a range of additional services e.g. after-sales servicing in order to induce them to buy. Our view is that these activities constitute retail services which are covered by the Directive. This view is shared by the Commission and reflected in Recital 33 which includes “distributive trades” in the list of service activities covered by the Directive.

3. The Directive only applies to services, but restrictions on goods still benefit from the free movement rules in the EU Treaty. In order to fulfil our obligations to provide a report on service restriction to the European Commission, we must reach a view as to where the boundaries between goods and services lie.

Official Authority

4. The exclusion which applies to activities connected with the exercise of official authority as described in Article 2(2)(i) of the Directive is a very narrow exception for use by Member States only in relation to activities of such sensitivity that they are reserved to nationals. These occur rarely. The Services Directive does not introduce a new concept by including the official authority exception; it is merely a codification of existing European case-law.

Rules of universal application (Recital 9)

5. The Directive only applies to those requirements which affect the access to or exercise of a service activity (i.e. the ability to enter the market and operate within it). Rules and obligations which apply to service providers and citizens in the same way are not affected. For example, road traffic rules have universal application - they apply to service providers just like any other individual. However, if there are instances where rules having universal application prohibit or substantially impede the provision of services, these will need to be checked for compliance (see page 87 for an example).
Private International Law

6. As stated in Article 3(2), the Directive does not affect rules of private international law. We are currently exploring the extent to which some of our laws would be covered by the Article 3(2) exclusion. For example, we are considering whether laws which imply terms into a contract such as the Unfair Contract Terms Act and the Supply of Goods and Services Act 1982 would be covered by this exclusion.

Mutual Recognition of Professional Qualifications (MRPQ)

7. The Regulations implementing Directive 2005/36/EC came into force on 19 October 2007. The MRPQ Directive consolidates and simplifies earlier EU legislation in this area and introduces new rules to facilitate the movement of qualified professionals who wish to provide their services cross borders, whether on a temporary or established basis. The objective is to make it easier for qualified professionals to practise their professions in European countries other than their own. The Directive simplifies the recognition procedures. For example, to provide services on a temporary basis, providers need only show that they are lawfully established in their profession in their home state and on that basis cannot, subject to conditions, be restricted in providing their services in another Member State.

8. The combination of a number of Articles in the Services Directive (3(1), 15(2)(d) and 17(6)) means that the two Directives run in parallel. UK service providers will benefit both from the laws requiring that their qualifications are recognised in other EU Member States, and also from the simplification and removal of barriers beyond those relating to training and qualifications.

17 The specific provisions not implemented by these Regulations will be implemented by other Departments.
ANNEX C: List of Individuals and Organisations consulted

This is a list of all those organisations and individuals who have been informed about the consultation directly. If you are aware of any organisations who should be consulted, please pass this information to Elaine Barley using the contact information on page 9. Competent authorities in Annex D have also been informed about the consultation.

ABTA
ActionAid UK
Aga Khan Development Network
Aggregate Industries UK Ltd
Alliance of Industry Associations
Alliance Pharmacy
Amazon.co.uk
Amenity, Environment and Agricultural Industry
Amicus
Anglo American
Architects Registration Board
Arval Ltd
AS Biss & Co
ASDA
Asset Based Finance Association
Asset Performance Group
International Association for Consultancy and Engineering
Association of British Insurers
Association of British Offshore Oil Industries (ABOI)/ Ports and Terminals Group
Association of British Pharmaceutical Industry
Association of Chartered Certified Accountants (ACCA)
Association of Consultancy and Engineering
Association of British Pharmacists
Association of the British Pharmaceutical Industry
Association of Visitor Attraction
AstraZeneca
Atos Origin
Aurora Gender Capital
Management
BALPPA
Banking Code Standards Board
BCCA
BIAZA - British and Irish Association of Zoos and Aquariums
Bingo Association
BioIndustry Association
Bond (British Overseas NGOs for Development)
British American Tobacco
British Apparel & Textile Confederation
British Apparel and Textiles Federation
British Bankers Association (BBA), The Voice of Banking and Financial Services
British Brands Group
British Cables Association
British Ceramics Confederation
British Chambers of Commerce
British Council
British Dental Association
British Dental Trade Association, The
British Expertise - Promoting Professional Service Worldwide
British Film Institute
British Hallmarking Council
British Holiday & Home Parks Association
British Hospitality Association
British Music Rights
British Pharma Group (The)
British Phonographic Industry (BPI)
British Retail Consortium
British Security Industry Association
British Shops and Stores Association
British Standards Association
British Telecom (BT)
British Vehicle Rental & Leasing Association
Broadcasting Entertainment
Cinematograph and Theatre Union
BSI
BSkyB
BT Group
Business Application Software
Developer Association
Business for New Europe
Business in Sport and Leisure
Business Services Association
CAFOD
Camelot Group plc
Caravan Club, The
Cargill plc
Chamber of Shipping
Charles Stanley & Company Limited
Chartered Institute of Building (CIOB), The
Chartered Institute of Marketing, The
Chartered Institute of Patent Attorneys
Chartered Institute of Purchasing & Supply, The
Chemicals Industry Association
Christian Aid
Chronos Technology Ltd
Citizens Advice
City University
CityLink Telecommunications Limited
Civil Engineering Contractors Association
Clifford Chance LLP
Commonwealth Business Council
Commonwealth Secretariat
Communities Scotland
Company Law International Limited
Compassion in World Farming (CIWF)
Confederation of Business and Industry (CBI)
Confederation of Passenger Transport (UK)
Construction Confederation
Construction Industry Council
Construction Products Association
Consumer News
Consumer Unity & Trust Society (CUTS)
Cophall Associates Ltd
Copyright Licensing Agency
Convention of Scottish Local Authorities
Cosmetic, Toiletry & Perfumery Association Ltd
Council for Licensed Conveyances
Council of Bars and Law Societies of Europe
Council of Mortgage Lenders
Coventry University
Credit Services Association
Design and Artists Copyright Society (DACS)
Direct Marketing Association (UK) Ltd, The
Direct Selling Association
DLA Piper UK LLP
Dolphin Head Group Holdings plc
EEF
Electrical Contractors' Association Ltd
Electrical Distributors Association
Electronic Data Systems
Energy Industries Council
Engineering Employers Forum
Engineering Construction Industry Association
Engineering Council UK
Engineering Industries Association
English Association of Self Catering Operators
Environmental Industries Commission
Environmental Services Association
eSynergy Group Limited
ETAG
Ethical Trading Initiative
European Group of Surveyors (EGoS)
European Services Forum
European Services Forum (ESF)
Faculty of Advocates
Fair Trade Foundation
Federation of Small Businesses
Federation of Tour Operators
Finance & Leasing Association
Food and Drink Federation
Forum of Private Business
Friends of the Earth
Gala Coral Group Limited
Gas Industry Safety Group
GE Lighting Ltd
Gemserv Ltd
General Chiropractic Council
General Council of the Bar, The
General Council, Bar of England and Wales, The
General Medical Council
General Optical Council
<table>
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<tr>
<th>Organization Name</th>
<th>Organization Name</th>
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<tr>
<td>General Osteopathic Council</td>
<td>International Chamber of Commerce</td>
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<tr>
<td>General Teaching Council</td>
<td>International Underwriting Association</td>
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<tr>
<td>General Teaching Council for Scotland</td>
<td>Internet Services Providers' Association</td>
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<tr>
<td>Gin and Vodka Association of Great Britain, The</td>
<td>ISBA</td>
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<tr>
<td>GlaxoSmithKline plc</td>
<td>ITV</td>
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<td>Goldman Sachs International</td>
<td>KPMG LLP</td>
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<td>Grace Consulting</td>
<td>LACORS</td>
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<tr>
<td>Green Alliance</td>
<td>Landscape Institute</td>
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<tr>
<td>Griffin Security Group and the Association of Security Consultants</td>
<td>Liberalisation of Trade in Services (LOTIS)</td>
</tr>
<tr>
<td>Griffiths &amp; Armour Professional Risks</td>
<td>Lifting Equipment Engineers Association, The</td>
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<tr>
<td>Guild of Healthcare Pharmacists-Unite Amicus Section</td>
<td>Lighting Industry Federation Ltd</td>
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<tr>
<td>Health Professions Council</td>
<td>Lloyds TSB Group</td>
</tr>
<tr>
<td>Healthcare Commission</td>
<td>Local Government Association</td>
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<tr>
<td>Hearing Aid Council, The</td>
<td>Local Government International Bureau</td>
</tr>
<tr>
<td>Heating &amp; Ventilating Contractors Association</td>
<td>London School of Economics</td>
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<tr>
<td>Heating Hotwater Industry Council</td>
<td>LTE Scientific Ltd</td>
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<tr>
<td>Herne Consultants Ltd</td>
<td>Management Consulting Group PLC</td>
</tr>
<tr>
<td>Highlands and Islands Enterprise Home Builders Federation</td>
<td>Market Research Society</td>
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<tr>
<td>I C B C S Limited</td>
<td>Marks and Spencer Group plc</td>
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<tr>
<td>Ian Salisbury Ltd</td>
<td>Medical Device Consultancy</td>
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<tr>
<td>IBM UK Ltd</td>
<td>Mobile Electronic &amp; Security Federation</td>
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<tr>
<td>ICC United Kingdom</td>
<td>National Caravan Council</td>
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<tr>
<td>ICSTIS (PhonepayPlus)</td>
<td>National Consumer Council</td>
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<tr>
<td>ICUS (GLOBAL) LTD</td>
<td>National Consumer Federation</td>
</tr>
<tr>
<td>IFSL Liberalisation of Trade in Services (LOTIS)</td>
<td>National Farmers Union</td>
</tr>
<tr>
<td>Independent Coach Travel (Wholesaling) Ltd</td>
<td>National Hairdressers' Federation</td>
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<tr>
<td>Institute of Chartered Accountants in England and Wales</td>
<td>National House-Building Council</td>
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<tr>
<td>Institute of Credit Management</td>
<td>National Lottery Commission</td>
</tr>
<tr>
<td>Institute of Development Studies</td>
<td>National Market Traders' Federation</td>
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<tr>
<td>Institute of Directors (IoD)</td>
<td>National Union of Teachers</td>
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<tr>
<td>Institute of Historic Building Conservation</td>
<td>NIPSA - The Leading Public Service Union</td>
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<tr>
<td>Institute of Hospitality</td>
<td>Northern Ireland Local Government Association</td>
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<tr>
<td>Institute of Legal Executives (ILEX)</td>
<td>Nuclear Industry Association</td>
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<tr>
<td>Institute of Materials, Minerals and Mining, The</td>
<td>Nursing and Midwifery Council</td>
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<tr>
<td>Institute of Social and Ethical Account Ability, The</td>
<td>Office of the Scottish Charity Regulator</td>
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<tr>
<td>Institution of Engineering and Technology, The</td>
<td>One World Action</td>
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<tr>
<td>Institution of Occupational Safety and Health</td>
<td>Oxfam</td>
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<td>Pilkington Group Limited</td>
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<td>Practical Law Company Limited</td>
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<td>PriceWaterhouseCooper</td>
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ANNEX D: Competent Authorities

This list indicates some of those competent authorities that regulate areas of service provision considered to be within the scope of the Services Directive.

Association of Chartered Certified Accountants
Cadw
Centre for Environment, Fisheries and Aquaculture Science
Charity Commission
Companies House
Countryside Council for Wales
Department for Children, Schools & Families
Department for Environment, Food and Rural Affairs
DETI (NI)
Employment Agency Standards Inspectorate
English Heritage
Environment Agency
Environment & Heritage Service (NI)
Health & Safety Executive
Historic Scotland
Home Office
Information Commissioner’s Office
Insolvency Practitioners Association
Insolvency Service
Institute of Chartered Accountants in England & Wales
Institute of Chartered Accountants in Ireland
Institute of Chartered Accountants of Scotland
Law Society of England and Wales
Law Society of Northern Ireland
Law Society of Scotland
Local Authorities – inc. Borough, County, District, Metropolitan and Unitary
National Weights & Measures Laboratory
Natural England
Office of Fair Trading
Ofgem
Ofsted
Pesticides Safety Directorate
Postcomm
Royal College of Veterinary Surgeons
Rural Payments Agency
Scottish Natural Heritage
Solicitors Regulation Authority
UK Intellectual Property Office
Veterinary Medicines Directorate
ANNEX E: Glossary of Terms

Authorisation scheme
A procedure requiring a service provider or recipient of services to take steps in order to obtain a decision from a competent authority for the purposes of securing access to, or permission to exercise, a service activity.

Competent authority
Body with a regulatory or supervisory role over the provision of a service, such as a professional body (for example the Law Society or the Royal Institute of British Architects) or a local authority.

Directive
A binding instrument of Community law, which Member States must transpose into their national law.

Established service provider
A service provider with a stable presence in a Member State and providing services there on a continuous basis.

IMI
A web-based system being developed by the European Commission to facilitate direct communication and cooperation between competent authorities in the Member States.

Member State
A country that belongs to the European Union, currently: Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the United Kingdom. NB the Directive also applies to Iceland, Liechtenstein and Norway.

Multidisciplinary activities
Where a service provider carries out more than one activity, or carries out different activities jointly or in partnership.

Mutual assistance
Where a competent authority in one Member State provides assistance in the supervision of service providers to a counterpart in another Member State e.g. providing information or obtaining information on their counterpart’s behalf.

Point of Single Contact
A portal through which a service provider will be able to find information and complete the formalities necessary to do business in a Member State.
**Recipient**
Any person who is a national of a Member State or who has acquired EU rights or any organisation established in a Member State who uses or wishes to use a service.

**Regulated profession**
A profession where access to or practice of that profession is restricted by national rules to those holding specific qualifications or which is listed as a regulated profession by a Member State on account of its purpose of promoting and maintaining a high standard in the professional field concerned.

**Service**
An economic activity (normally provided for remuneration) supplied by a service provider.

**Temporary service provider**
A service provider who provides services in a Member State other than on a permanent basis.

See also Article 4 of the Directive 'Definitions' for an explanation of some of these and other terms used in the Directive.
ANNEX F: List of exclusions from scope of Services Directive

Article 2 of the Directive sets out those service activities and groupings excluded from the scope of the Directive. In summary, these are:

- Non-economic services of general interest (SGIs)
- Financial services such as banking, credit, insurance and re-insurance, occupational or personal pensions, securities, investment funds, payment and investment advice
- Electronic communications services and networks
- Transport services
- Temporary work agencies
- Healthcare services, regardless of how they are organised and financed at national level or whether they are operating in the public or private sector
- Audiovisual services, including cinematographic services, and radio broadcasting
- Gambling activities including lotteries, gambling in casinos and betting transactions
- Activities that are connected with the exercise of official authority as set out in Article 45 of the EC Treaty
- Social services relating to social housing, childcare and support of families and persons in need which are provided by the State, by providers mandated by the State or by charities
- Private security services
- Services provided by notaries and bailiffs, who are appointed by an official act of government
- Taxation

Article 1 states that the Directive does not deal with or affect the following matters. In summary, they are:

- the liberalisation of services of general economic interest, reserved to public or private entities and the privatisation of public entities providing services
- the abolition of monopolies providing services or aids granted by Member States covered by EC competition rules
- measures taken in accordance with EC law to protect or promote cultural or linguistic diversity or media pluralism
- rules of criminal law although Member States may not restrict the freedom to provide services by applying requirements which circumvent the rules of the Directive
- labour law, namely any legal or contractual provision concerning employment conditions, working conditions, including health and safety at
work and the relationship between employers and workers. Social security legislation is also unaffected

- fundamental rights and the right to negotiate, conclude and enforce collective agreements and to take industrial action

**Article 3** states, in summary, that the Directive is subordinate to other EU instruments where there is a conflict between a provision of the Directive and another EU instrument; it also states that the Directive does not concern rules of private international law.

It should be noted that certain services are specifically excluded from the scope of the provisions relating to temporary providers. The exclusions are listed in **Article 17**.
ANNEX G: The Consultation Code of Practice Criteria

1. Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.

2. Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.

3. Ensure that your consultation is clear, concise and widely accessible.

4. Give feedback regarding the responses received and how the consultation process influenced the policy.

5. Monitor your Department’s effectiveness at consultation, including through the use of a designated Consultation Co-ordinator.

6. Ensure your consultation follows better regulation best practice, including carrying out an Impact Assessment if appropriate.

The complete code is available on the Better Regulation Executive section of the BERR website:
