



An Roinn Fiontar, Trádála agus Fostaíochta
Department of Enterprise, Trade and Employment

Consultation Document

on the

EU Services Directive

Directive 2006/123/EC

**Department of Enterprise, Trade and
Employment, Ireland**

August 2009

Introduction

The Services Directive is one of the most important initiatives adopted by the EU in recent years. Its objective is to create a Single Market in commercial services in the European Union so that both businesses and consumers can take advantage of the opportunities it offers.

Ireland was the 10th largest exporter of services in the world in 2007 with total services exports valued at €66b but the economic downturn can be expected to affect those figures. This means that the Services Directive is now more important than ever in order for Irish service providers to be able to compete on a level playing field with others in the EU, and for Irish consumers to access services at more competitive prices.

In 2008, the Forfas Services Strategy Group, in its report *Catching the Wave* highlighted the increasing importance of services in developed economies and their potential to contribute to economic growth in Ireland. Timely and proper transposition of the Services Directive is crucial in this regard.

While the Directive covers a wide range of services it does not cover all services. The approach taken by the Directive is to list those services that are excluded. All other services, to a greater or lesser extent, are included. It is important to note, however, that even services that are excluded continue to be fully subject to the EU law generally, as set out in the EU Treaty and in the case law of the European Court of Justice (ECJ).

As well as addressing the right to engage in a service, the Directive enhances the rights of recipients of services, be they consumers in the normal sense, i.e. persons acting outside the scope of their trade, business or profession, or business consumers, i.e. a business buying services from another business. It also contains provisions that enable recipients to find out about the rules on the provision or receipt of services in other Member States. And there are provisions encouraging service providers to adopt codes of practice about the quality of services they provide. In addition, the Directive includes important and legally binding provisions on administrative co-operation

between Member States that are intended to create trust and confidence in the Single Market on the part of service providers and service recipients.

The Directive sets out general rules about the right to establish, exercise or receive a service that Ireland must give effect to under our legislation. It does not, however, relate to specific aspects of the provision of services such as standards and qualifications. Those matters are covered by other Community measures. All existing rules on services that come within the scope of the Directive are being “screened” (i.e. checked) for compatibility with the Directive. As a result of the screening process, a number of existing pieces of legislation and other rules are being changed to bring them into line with the Directive.

Those provisions of the Directive that require to be transposed into national law will be implemented by means of Regulations, an indicative draft of which is included in this Consultation Document. In addition, any existing rules covering services that need to be changed to comply with the Directive will be addressed by the relevant Department. The Directive must be transposed before 28 December 2009. Changes to existing legislation and rules that are required on foot of the Directive must also be made before 28 December.

Not every provision of the Directive needs to be reflected in national law. Some provisions are of an administrative nature and are being provided for by administrative means. Other provisions are addressed to the European Commission and do not require direct action on Ireland’s part.

This Consultation Document covers every article of the Directive and sets out the means by which it will be transposed, i.e. by means of Regulations to be made by the Minister for Enterprise, Trade and Employment under the European Communities Acts, by administrative means or by both administrative means and Regulations. Provisions addressed to the European Commission are also covered in the Consultation Document.

The Consultation Document takes the form of an outline of the transposing legislation (a set of Regulations) with explanatory notes inserted after each draft Regulation.

The Consultation Document should be read in conjunction with the Handbook on the Implementation of the Services Directive, which was published by the European Commission in 2007 and is available on their website at:

http://ec.europa.eu/internal_market/services/services-dir/proposal_en.htm.

The Department of Enterprise, Trade and Employment is seeking the views of stakeholders on the Consultation Document. The Document highlights a number of provisions about which the Department is particularly interested in receiving the views of stakeholders.

The deadline for receipt of comments (which will be published on the Department's website) is 30 September 2009.

Draft

REGULATIONS

entitled

**European Communities (Services in the Internal Market) Regulations 2009
(S.I. No. --- of 2009)**

I, _____, Minister for Enterprise, Trade and Employment, in exercise of the powers conferred on me by section 3 of the European Communities Act, 1972 (No. 27 of 1972), and for the purpose of giving effect to certain provisions of Directive No. 2006/123EC¹ of the European Parliament and of the Council of 12 December 2006 on services in the internal market, hereby make the following regulations:

Citation and commencement.

1. (1) These Regulations may be cited as the European Communities (Services in the Internal Market) Regulations 2009.

(2) These Regulations shall come into operation on 27 December 2009.

Explanatory Note

The Regulations transpose the Directive on services in the internal market (Services Directive) into Irish law. Member States are required under Article 44 of the Directive to bring it into force before 28 December 2009. The date above (27 December 2009) may be brought forward if circumstances permit it.

Purpose, and subject matter of these Regulations.

2. (1) These Regulations establish general provisions facilitating the exercise of the freedom of establishment for service providers and the free movement of services, while maintaining a high quality of services.

(2) These Regulations do not deal with the liberalization of services of general economic interest, whether they are public sector or private sector entities. Nor do they deal with the privatization of public entities providing services.

(3) These Regulations do not deal with the abolition of monopolies providing services nor with aids granted by the State that are covered by Community rules on competition.

(4) These Regulations do not affect the right of the State to define, in conformity with Community law, what it considers to be services of general economic interest, how those services should be organized and financed, in compliance with the State aid rules, and to what specific obligations they should be subject.

(5) These Regulations do not affect measures taken at national level, in conformity with Community law, to protect or promote cultural or linguistic diversity or media pluralism.

(6) These Regulations do not affect the criminal law of the State. The State may not, however, restrict the freedom to provide services by applying criminal law provisions that specifically regulate or affect access to or exercise of a service activity in circumvention of the rules laid down in these Regulations.

(7) These Regulations do not affect labour law, that is any legal or contractual provision concerning employment conditions, working conditions,

¹ OJ L 376, 27.12.2006, P.36

including health and safety at work and the relationship between employers and workers, which the State applies in accordance with national law which respects Community law.

(8) These Regulations do not affect the social security legislation of the State.

(9) These Regulations do not affect the exercise of fundamental rights as recognized by the State. Nor do they affect the right to negotiate, conclude and enforce collective agreements and to take industrial action in accordance with national law and practices that respect Community law.

Explanatory Note

Regulation 2, which transposes Article 1 of the Directive, deals with the subject matter of the Regulations. The Directive was adopted to facilitate service providers who wish to set up in business in a Member State, including their own Member State, or who wish to provide services to another Member State without being established there. In the latter case, the provider would have to be established in at least one State.

Regulation 2(1) sets out the subject matter of the Regulations.

Regulation 2(2) states that the Regulations do not liberalize the rules relating to **services of general economic interest (SGEI)** (which are equivalent to public utilities, such as the ESB, Bord Gais, Aer Lingus, etc.).

Regulation 2(3) states that the Regulations do not abolish monopolies providing services. Nor does it affect the rules on State aids that apply in this country in accordance with EU rules.

Regulation 2(4) states that the Regulations do not affect Ireland's right to define what we consider to be an SGEI. In defining an entity as an SGEI, Ireland must, however, comply with Community law. Regulation 2(4) also makes it clear that Ireland is free to determine how SGEIs should be organized and financed, provided the rules on the financing are in conformity with the European Union's rules on State aids, and the specific obligations to which SGEIs should be subject.

Regulation 2(5) states that the Regulations do not affect Ireland's right to take measures to protect or promote cultural or linguistic diversity or media pluralism.

Regulation 2(6) states that the Regulations do not affect the criminal law of the State. Under Regulation 2(6), however, Ireland cannot use the criminal law to get around the Regulations.

Regulation 2(7) states that the Regulations do not affect our laws relating to employment rights, employment conditions, working conditions, including health and safety at work, and the relationship between employers and workers.

Regulation 2(8) states that the Regulations do not affect our social security legislation.

Regulation 2(9) states that the Regulations do not affect the exercise of our fundamental rights. Nor does it affect people's rights to negotiate, conclude and enforce collective agreements and to take industrial action.

Regulation 2 provides clarifications about areas of activity that Member States were concerned about during the negotiation of the Services Directive.

Scope of Regulations.

3. (1) These Regulations apply to services supplied by providers who are established in a Member State.
 - (2) These Regulations do not apply to the following activities:
 - (a) non-economic services of general interest,
 - (b) financial services, such as banking, credit, insurance and re-insurance, occupational or personal pensions, securities, investment funds, payment and investment advice, including the services listed in the Schedule to the European Communities (Licensing and Supervision of Credit Institutions) Regulations 1992 (S.I. No. 395 of 1992),
 - (c) electronic communications services and networks, and associated facilities and services, with respect to matters covered by the European Communities (Electronic Communications Networks and Services) (Access) Regulations 2003 (S.I. No. 305 of 2003), the European Communities (Electronic Communications) (Authorization) Regulations 2003 (S.I. No. 306 of 2003), the Communications Regulation Act 2002 (No. 20 of 2002), the European Communities (Electronic Communications) (Framework) Regulations 2003 (S.I. No. 307 of 2003), the European Communities (Electronic Communications) (Universal Service and Users' Rights) Regulations 2003 (S.I. No. 308 of 2003), and the European Communities (Electronic Communications Networks and Services) (Data Protection and Privacy) Regulations 2003 (S.I. No. 535 of 2003),
 - (d) transport services, including port services, falling within the scope of Title V of the Treaty establishing the European Communities,
 - (e) services provided by temporary work agencies,
 - (f) healthcare services whether or not they are provided via healthcare facilities, and regardless of the ways in which they are organized and financed at national level or whether they are public or private,
 - (g) audiovisual services, including cinematographic services, whatever their mode of production, distribution and transmission, and radio broadcasting, as regulated by the Broadcasting Act 2009 (No. 18 of 2009),

- (h) activities covered by the Gaming and Lotteries Act 1956-2003, and the National Lottery Act, 1986 (No. 28 of 1986),
 - (i) activities that are connected with the exercise of official authority as set out in Article 45 of the Treaty of the European Communities,
 - (j) social services, to the extent that they are not already excluded under (2) (a) or (2) (f) of this Regulation, relating to social housing, childcare and support of families and persons permanently or temporarily in need, which are provided by the State, by providers mandated by the State or by charities recognized as such by the State,
 - (k) services covered by the Private Security Services Act 2004, (No. 12 of 2004), and
 - (l) services provided by notaries and bailiffs, who are appointed by an official act of government.
- (3) These Regulations do not apply to the field of taxation.

Explanatory Note

Regulation 3, which transposes Article 2 of the Directive, sets out the scope of the Regulations, i.e. the activities that they cover and the activities that are excluded.

Regulation 3(1) states that the Regulations apply to services supplied by providers established in a Member State of the European Union. The Regulations do not apply to services supplied by providers who are established solely in a third country. The Regulations do apply to services supplied by providers from third countries who are also established in a Member State.

Regulation 3(2) lists the services that are excluded from the scope of the Regulations.

Regulation 3(2)(a) excludes “non-economic services of general interest” i.e. public services. Services of general economic interest (SGEI) are covered by these Regulations but various provisions determine the extent to which they are covered.

Regulation 3(2)(b) excludes financial services. Financial services are defined in Regulation 4.

Regulation 3(2)(c) excludes electronic communications services and networks, and associated facilities and services, covered by specific legislation.

Regulation 3(2)(d) excludes some, but not all, transport services from the scope of the Regulations. The services excluded are those that are in line with the wording of Article 2(2)(d) of the Directive.

Regulation 3(2)(e) excludes the services of temporary work agencies from the scope of the Regulations. Section 3 of the Employment Agencies Regulation Bill, 2009, sponsored by the Department of Enterprise, Trade and Employment, deals with temporary work agencies.

Regulation 3(2)(f) excludes healthcare services whether they are provided by the public or private sector.

Regulation 3(2)(g) excludes audiovisual services, as regulated by the Broadcasting Act, 2009, which replaced all previous broadcasting acts.

Regulation 3(2)(h) excludes gambling activities.

Regulation 3(2)(i) – Article 45 of the EC Treaty provides that the provisions on freedom of establishment (for services) do not apply to activities which in the Member State are connected, even occasionally, with the exercise of official authority.

Regulation 3(2)(j) excludes certain social services.

Regulation 3(2)(k) excludes private security services that are regulated by the Private Security Services Act 2004.

Regulation 3(2)(l) excludes services provided by notaries and bailiffs, who are appointed by an official act of government.

Regulation 3(3) excludes taxation in line with Article 2(3) of the Directive.

Relationship with other legislation giving effect to Community law.

4. (1) If any provision of these Regulations conflicts with a legislative provision that originates in a Community measure governing specific aspects of access to or exercise of a service activity in specific sectors or for specific professions, the other provision shall prevail and shall apply to the specific sector or profession. The other legislative provisions include:

- (a) Section 20 of the Protection of Employees (Part-Time Work) Act 2001 (No. 45 of 2001),
- (b) Regulation (EEC) No 1408/71²,
- (c) The European Communities (Television Broadcasting) Regulations, 1991 (S.I. No. 251 of 1991) and the Broadcasting Act 2009 (No. 18 of 2009),
- (d) The Building Control Act 2007 (No. 21 of 2007),
- (e) The Building Control Act (Commencement) Order 2008 (S.I. No. 50 of 2008),
- (f) The European Communities (Lawyers Establishment) (Amendment) Regulations 2008 (S.I. No. 96 of 2008),

² OJ L 28, 30.1.1997 [consolidated version]

- (g) The European Communities (Freedom to Provide Services) (Lawyers) (Amendment) Regulations 2008 (S.I. No. 97 of 2008),
- (h) The Recognition of Professional Qualifications (Directive 2005/36/EC) Regulations 2008 (S.I. No. 139 of 2008),
- (i) The Recognition of Professional Qualifications (Health and Social Care Professions) (Directive 2005/36/EC) Regulations 2008 (S.I. No. 166 of 2008),
- (j) The European Communities (Veterinary Practice Act 2005) (Qualifications in Veterinary Medicine) Regulations 2007 (S.I. No. 745 of 2007),

(2) Paragraph 1 of this Regulation, however, does not, of itself, exclude any measure (including those listed in paragraph 1) from the scope of the Regulations nor does it change the fact that the measures listed in paragraph 1 and these Regulations operate in compliance with the rules of the Treaty regarding the right of establishment and the free movement of services with the European Union.

(3) These Regulations do not concern the rules of private international law, in particular rules governing the law applicable to contractual and non contractual obligations, including those that guarantee that consumers benefit from the protection granted to them by the consumer protection rules laid down in legislation in force in the State.

Explanatory Note

Regulation 4 transposes Article 3 of the Directive, which deals with the relationship between the Services Directive and other Community measures. The Services Directive is an addition to the existing body of Community law. The Directive recognizes, however, that there may be conflicts between certain provisions of the Directive and those of other Directives that cover specific aspects of a particular sector. See Regulation 4(1). Where a conflict arises from the general principles in the Services Directive and a specific provision in another Directive, the latter takes precedence and the Services Directive does not apply to that specific provision. The Services Directive does apply, however, to the other provisions of the Directive in question. See Regulation 4(2).

The screening process undertaken by all Departments to identify any conflicts between existing legislation on services and the Services Directive has not, to date, revealed any conflicts. On that basis, the legislation referred to in paragraph 1 of this Regulation would be subject, in its entirety, to these Regulations.

Regulation 4(3) states that the Services Directive does not affect the rules of private international law. Private international law determines, for example, what rules are applicable in the case of a dispute between two parties to a contract in different countries. It can also determine in what country a dispute between two parties in different countries will be heard. The operation of private international law does not of course determine what public law applies in a particular situation. "Public law" refers to the general body of laws enacted by Parliaments or Regulations made by Ministers using powers set out in Acts.

Interpretation.

5. (1) In these Regulations, unless the context otherwise requires –

“authorised officer” means an officer appointed under Regulation 40;

“authorization scheme” means any procedure under which a provider or recipient is in effect required to take steps in order to obtain from a competent authority a formal decision, or an implied decision, concerning access to a service activity or the exercise thereof;

“commercial communication” means any form of communication designed to promote, directly or indirectly, the goods, services or image of an undertaking, organization or person engaged in commercial, industrial or craft activity or practising a regulated profession. The following do not in themselves constitute commercial communications:

- (a) information enabling direct access to the activity of the undertaking, organization or person, including in particular a domain name or an electronic-mailing address,
- (b) communications relating to the goods, services or image of the undertaking, organization or person, compiled in an independent manner, particularly when provided for no financial consideration.

“Commission” means the Commission of the European Communities;

“Community act” means an act adopted by an institution of the European Communities;

“competent authority” means any body or authority that has a supervisory or regulatory role in the State in relation to service activities, including, in particular, administrative authorities, including courts acting as such, professional bodies, and those professional associations or other professional organizations which, in the exercise of their legal autonomy, regulate in a collective manner access to service activities or the exercise thereof;

“consumer” means a natural person who is acting for purposes that are outside the scope of his or her trade, business or profession;

“Directive” means Directive No. 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the Internal Market;

“enactment” includes an instrument made under an enactment;

“establishment” means the actual pursuit of an economic activity, as referred to in Article 43 of the Treaty, by the provider for an indefinite period and through a stable infrastructure from where the business of providing services is actually carried out;

"Member State" means –

- (a) a Member State of the European Communities, or
- (b) a State that is a contracting party to the Agreement on the European Economic Area signed at Oporto on 2 May 1992, as amended for the time being;

“Member State of establishment” means the Member State in whose territory the provider of the service concerned is established;

“Member State where the service is provided” means the Member State where the service is supplied by a provider established in another Member State;

“Minister” means the Minister for Enterprise, Trade and Employment;

“Minister of the Government” means any person appointed by the President to be a member of the Government;

“overriding reasons relating to the public interest” means reasons recognized as such in the case law of the Court of Justice of the European Communities, including the following grounds: public policy; public security; public safety; public health; preserving the financial equilibrium of the social security system; the protection of consumers, recipients of services and workers; fairness of trade transactions; combating fraud; the protection of the environment and the urban environment; the health of animals; intellectual property; the conservation of the national historic and artistic heritage; social policy objectives and cultural policy objectives;

“provider” means any natural person who is a national of a Member State, or any legal person as referred to in Article 48 of the Treaty of the European Communities and established in a Member State, who offers or provides a service;

“recipient” means any natural or legal person who is a national of a Member State and who, for professional ends or otherwise, uses or wishes to use a service;

“regulated profession” means a professional activity or group of professional activities, access to which, the pursuit of which, or one of the modes of pursuit of which, is subject, directly or by virtue of legislative, regulatory or administrative provisions to the possession of specific professional qualifications: in particular, the use of a professional title limited by legislative, regulatory or administrative provisions to holders of a given professional qualification shall constitute a mode of pursuit. Where the first sentence of this definition does not apply, a profession referred to in Regulation 2(2) of the Recognition of Professional Qualifications (Directive 2005/36/EC) Regulations, 2008 (SI. No. 139 of 2008) shall be treated as a regulated profession;

“requirement” means any obligation, prohibition, condition or limit provided for in the laws, regulations or administrative provisions or in consequence of case law, administrative practice, the rules of professional bodies, or the collective rules of professional associations or other professional organizations, adopted in the exercise

of their legal autonomy; rules laid down in collective agreements negotiated by the social partners shall not as such be seen as requirements within the meaning of these Regulations;

“rules” means any procedure laid down, including by law, governing a service; rule includes the procedures of a competent authority or a professional association or any other body or entity, which, in the exercise of its function, regulates a service;

“service” means any self-sustaining economic activity, normally provided for remuneration;

“temporary work agency” means any natural or legal person who, in compliance with national law, concludes contracts of employment or employment relationships with temporary agency workers in order to assign them to user undertakings to work there temporarily under their supervision and direction.

(2) In these Regulations -

- (a) a reference to a Regulation is a reference to a Regulation of these Regulations unless it is indicated that reference to another enactment is intended,
- (b) a reference to a paragraph or subparagraph is a reference to the paragraph or subparagraph of the provision in which the reference occurs unless it is indicated that reference to some other provision is intended.

(3) A word or expression that is used in these Regulations and is also used in the Directive has, unless the contrary intention appears, the same meaning in these Regulations as it has in the Directive.

Explanatory Note

All legislation defines certain terms that have a particular meaning in that measure. The terms defined in Regulation 5(1) include those that are defined in Article 4 of the Services Directive. The definitions are the same as those used in Article 4 except where the wording has to be modified to reflect the fact that the Regulations apply in this country. Paragraphs 2 and 3 of this Regulation are standard provisions.

Regulation 5 is the last of the general provisions in the Regulations, which transpose Chapter I of the Directive

Simplification of procedures.

6. (1) There shall be a general obligation on the State to ensure that the procedures and formalities set out in any rules applicable to access to, or exercise of, a service are sufficiently simple in accordance with the principles of good regulation. Where the procedures are not sufficiently simple, the Minister of the Government with ultimate responsibility for the rules shall ensure that they are simplified.

(2) Where there is a requirement in force in the State for a provider or recipient to supply a certificate, attestation or any other document proving that a requirement has been satisfied, the relevant competent authority shall accept any document from another Member State that serves an equivalent purpose or from which it is clear that the requirement in question has been satisfied.

(3) A competent authority may not require a document from another Member State to be produced in its original form, or as a certified copy or as a certified translation, except in the cases provided for in specific legislation giving effect to Community measures or where such a requirement is justified by an overriding reason relating to the public interest, including public order and security. A competent authority may, however, require non-certified translations of documents in the official languages of the State.

(4) (a) An original document, a certified copy of a document or a certified translation of a document is required for the following legislation:

- the Building Control Act, 2007 (No. 21 of 2007) and the Building Control Act (Commencement) Order, 2008 (S.I. No. 50 of 2008)
- the European Communities (Lawyer's Establishment) (Amendment) Regulations, 2008 (S.I. No. 96 of 2008)
- the European Communities (Freedom to Provide Services) (Lawyers) (Amendment) Regulations, 2008 (S.I. No. 97 of 2008)
- the Recognition of Professional Qualifications (Directive 2005/36/EC) Regulations 2008 (S.I. No. 139 of 2008)
- the Recognition of professional Qualifications (Health and Social Care) (Directive 2005/36/EC) Regulations 2008 (S.I. No. 166 of 2008)
- the European Communities (Veterinary Practice Act 2005) (Qualifications in Veterinary Medicine) Regulations 2007 (S.I. No. 745 of 2007)
- Regulations 53(6), 54, 63 and 64 of the European Communities (Award of Public Authorities' Contracts) Regulations 2006 (S.I. No. 329 of 2006)
- the European Communities (Lawyers' Establishment) Regulations 2003 (S.I. No. 732 of 2003), the European Communities (Lawyers' Establishment) (Amendment) Regulations 2004 (S.I. No. 752/2004) and the European Communities (Lawyers' Establishment) (Amendment) Regulations 2008 (S.I. No. 96 of 2008)
- the European Communities (Companies) Regulations, 1973 (S.I. 163 of 1973)
- the European Communities (Branch Disclosures) Regulations, 1993 (S.I. 395 of 1993).

(b) The Minister may, by means of Regulations made under the European Communities Act, 1972 (No. 27 of 1972) amend, in consultation with the Minister of the Government responsible for the legislation concerned, the list of legislation set out in paragraph 4(a) of this Regulation.

Explanatory Note

Regulation 6 is the first of four Regulations that are concerned with administrative simplification, which is covered by Chapter II of the Directive. One of the purposes of the Regulations is to simplify the rules faced by service providers and the procedures that they have to go through to operate a business.

Regulation 6(1) imposes a general obligation on the State to ensure the rules and procedures about services covered by the Regulations are sufficiently simple. The obligations on Ireland to ensure that the rules and procedures for services are not too complicated will continue after the Regulations come into force. The relevant Departments may wish to take account of what is happening in other EU Member States. The European Commission may also become involved in the process by facilitating, for example, an exchange of best practice ideas between Member States.

Administrative simplification covers requirements such as the submission of documents to, and filing a declaration with, a competent authority. Under Regulation 6, Departments and the relevant competent authorities will have to assess whether their procedures and rules are necessary, if they are clear enough, if they create difficulties for service providers, and whether they can be replaced by a simpler alternative or abolished.

Under Article 5(2) of the Directive, which is not being transposed, the Commission may introduce harmonized application forms at Community level. The forms would be the equivalent of certificates, attestations, and other documents required of a provider. The Commission has not yet brought forward or proposed any measures under this provision.

Regulation 6(2) transposes part of Article 5(3) of the Directive. Under this provision, a competent authority must accept documents from another Member State that serve an equivalent purpose to the documents issued by a competent authority here.

Regulation 6(3) transposes the remainder of Article 5(3) of the Directive. Under this provision a competent authority may not require an original document or a certified copy or a certified translation from another Member State unless there are good reasons for doing so relating to the public interest or it is required under Community law. A competent authority may, however, require a non-certified translation of documents.

Regulation 6(4)(a) sets out the national legislation under which an original document, etc. is required. Regulation 6(4)(b) states that the list may be amended by the Minister in consultation with the Minister responsible for the legislation concerned.

Points of single contact

7. (1) The State shall ensure that it is possible for a provider, including a provider in the State, to complete the following procedures and formalities through a National Point of Single Contact (NPSC) or through a point of single contact for a particular service:

- (a) all procedures and formalities that the provider must comply with to access his or her service activities, in particular, all declarations, notifications or applications necessary to obtain an authorization from the necessary competent authority or authorities, including applications for inclusion in a register, a roll or a database, or for registration with a professional body or association,
- (b) any application or applications for an authorization needed to exercise his or her service activities.

(2) The establishment of an NPSC or points of single contact shall be without prejudice to and shall not affect the allocation of functions and powers of a competent authority.

(3) An NPSC shall be operated by or on behalf of the Minister for Enterprise, Trade and Employment. By agreement with interested parties, in particular, competent authorities, the Minister may designate a body to undertake the functions of a point of single contact in respect of a particular sector or sectors. The Minister may, at any time, revoke such designation and return the relevant functions to the NPSC.

(4) The fees, if any, charged by the NPSC shall be determined by the Minister and published. The Minister shall have the right to revise the fees every five years. Any changes to the fees shall also be published. Fees charged by a point of single contact shall be subject to the prior approval of the Minister and shall also be published.

Explanatory Note

Regulation 7 transposes Article 6 of the Directive, a key provision. Ireland must create one or more points of single contact so that service providers can complete all the procedures relating to establishment or the temporary provision of a service by a provider who is not established in Ireland through one facility without having to contact the relevant competent authority directly.

Regulation 7(1) transposes Article 6(1)(a) and (b) of the Directive. It requires the setting up of a National Point of Single Contact (NPSC) (and/or of individual points of single contact for particular services).

Regulation 7(2) states that the points of single contact have a coordinating role and will not interfere with the role of a competent authority in determining the outcome of an application for establishment or the right to undertake a temporary service.

Regulation 7(3) establishes an NPSC. This will be based, initially, in the Internal Market Unit of the Department of Enterprise Trade and Employment. The NPSC will be a one-stop-shop for service providers (both from Ireland and from other Member States) who wish to establish or to provide temporary services here. It may not be the only one-stop-shop, however. It will not, for example, cover situations where a member of the regulated professions is seeking to have his qualifications approved under the Directive on Professional Qualifications. This Department is in discussions with the Department of Education and Science about how to co-ordinate the responsibilities of both Departments under both Directives.

The NPSC will not be a one-stop-shop for providers seeking financial assistance or guidance on business planning.

Regulation 7(3) allows the Minister for Enterprise, Trade and Employment to transfer the functions of the NPSC in respect of a service sector to another body (e.g. a competent authority). The Minister will also have the power to terminate the operations of a point of single contact and return its functions to the NPSC.

Regulation 7(4) covers charges by the NPSC or a point of single contact. There will be no charge, initially, to use the NPSC. There will be consultation with interested parties before any charges are introduced. Points of single contact will not be able to charge for their services without the prior agreement of the Minister. Any fees charged by the NPSC or the points of single contact will be published on the website of the Department of Enterprise, Trade and Employment or the website of the point of single contact, as appropriate.

Procedures by electronic means

8. (1) The State and a competent authority shall ensure that all procedures and formalities relating to access to a service activity and to the exercise thereof may be easily completed, at a distance and by electronic means, through the NPSC or through a point of single contact, where appropriate.

(2) Paragraph 1 shall not apply to the inspection of premises at which the service is provided or of equipment used by the provider or to the physical examination of the capability or of the personal integrity of the provider or of his responsible staff.

Explanatory Note

Regulation 8 transposes Article 8 of the Directive. Regulation 8(1) is intended to ensure that service providers can communicate by electronic means, through the NPSC (or a point of single contact) with the relevant competent authorities with whom they must interact to become established in this country or to provide services on a temporary basis here.

Regulation 8(2) provides that the requirement that everything be done electronically does not apply to the inspection of premises at which a service is provided, the inspection of the equipment used by the provider and the examination of the capability or the personal integrity of the service provider or his/her employees.

Under Article 8(3) of the Directive, which is not being transposed, the Commission is required to bring forward detailed rules to give effect to paragraph 1 of Article 8. The detailed rules have been agreed between the Commission and the Member States but the formal Community instrument has not yet been adopted. It is expected to be adopted shortly and will be published on the website of the Department of Enterprise, Trade and Employment.

Right to information

9. (1) The State shall ensure that the following information is easily accessible to providers and recipients through the NPSC or points of single contact, as appropriate:

- (a) requirements applicable to providers established in the State, in particular those requirements concerning the procedures and formalities to be completed in order to access and to exercise service activities;
- (b) the contact details of a competent authority enabling the latter to be contacted directly, including the details of those authorities responsible for matters concerning the exercise of service activities;
- (c) the means of, and conditions for, accessing public registers and databases on providers and services;
- (d) the means of redress which are generally available in the event of a dispute between a competent authority and the provider or the recipient, or between a provider and a recipient or between providers;
- (e) the contact details of the associations or organizations, other than the competent authorities, from which providers or recipients may obtain practical assistance.

(2) A competent authority shall ensure that it is possible for providers and recipients to receive, at their request, assistance in the form of information on the way in which the requirements referred to in paragraph (1)(a) of this Regulation are generally interpreted and applied. Where appropriate, such advice shall include a simple step-by-step guide. The information shall be provided in plain and intelligible language.

(3) The obligation on a competent authority to assist providers and recipients does not require the authority to provide legal advice in individual cases but concerns only general information on the way in which requirements are usually interpreted or applied.

(4) The State, and a competent authority, shall ensure that the information and assistance referred to in Paragraphs 1, 2 and 3 of this Regulation are provided in a clear and unambiguous manner, that they are easily accessible at a distance and by electronic means and that they are kept up to date.

(5) It shall be a requirement that the NPSC or the relevant point of single contact, as appropriate, or a competent authority respond as quickly as possible to any request for information or assistance as referred to in paragraphs (1), (2), (3) and (4) of this Regulation and, in cases where the request is faulty or unfounded, inform the applicant accordingly without delay.

(6) The State, in consultation with the Commission, shall use its best endeavours, in its capacity as the operator of the NPSC (and will use its best endeavours with the individual points of single contact, if established), to encourage

the making available of information provided for in this Regulation in other Community languages. This paragraph does not, however, interfere with the State's legal position on the use of languages.

Explanatory Note

Regulation 9, which transposes Article 7 of the Directive, lists information that Member States must make available through the NPSC (and other points of single contact if established) and / or competent authorities.

Regulation 9(1) specifies the information that should be easily accessible to service providers and recipients of services through the NPSC and other points of single contact. The Department of Enterprise, Trade and Employment will work with competent authorities when the NPSC is being constructed to ensure that they have a clear understanding of the requirements of this Regulation.

Regulation 9(2) obliges competent authorities to provide additional information, when requested to do so by service providers and recipients, about the way the information referred to in Regulation 9(1)(a) is interpreted and applied. The information should be provided in plain language.

Regulation 9(3) states that competent authorities do not have to provide legal advice.

Regulation 9(4) states that the information referred to in Regulation 9(1), (2) and (3) must be clear and unambiguous. The information should be available electronically (e.g. on a website) and must be kept up-to-date.

Regulation 9(5) obliges the NPSC and other points of single contact and the competent authorities to respond as quickly as possible to requests for information or where the request is faulty or unfounded to inform the applicant without delay.

Regulation 9(6) transposes Article 7(5) of the Directive. The extent to which information is made available in other languages will depend on the demand for the information and the resources available to meet such a demand.

Authorization schemes

10. (1) The State shall not make access to a service activity or the exercise thereof subject to an authorization scheme unless the following conditions are satisfied:

- (a) the authorization scheme does not discriminate against the provider in question,
- (b) the need for an authorization scheme is justified by an overriding reason relating to the public interest,
- (c) the objective pursued cannot be attained by means of a less restrictive measure, in particular because an *a posteriori* inspection would take place too late to be genuinely effective.

(2) This Regulation and Regulations 11, 12, 13 and 14 do not apply to those aspects of authorization schemes that are governed directly or indirectly by legislation giving effect to other Community measures.

Explanatory Note

Regulation 10 transposes Article 9 of the Directive. Articles 9-13 constitute Section 1 of Chapter III of the Directive. Chapter III deals with the right of service providers (whether from Ireland or another Member State) to become established in this country. Section 1 of Chapter III deals with authorizations, including authorization schemes (Article 9), conditions for the granting of an authorization (Article 10), the duration of an authorization (Article 11), selection from among several candidates (Article 12) and authorization procedures (Article 13).

Regulation 10(1) states that persons wishing to establish as a service provider should not be subject to any rules or requirements without good reason. Where there are rules they (a) must not discriminate against providers (e.g. on grounds of nationality), (b) must be justified by an overriding reason relating to the public interest (defined in Regulation 5) and (c) cannot be made less restrictive. The philosophy behind the Directive – no rules unless they can be justified on particular grounds – and the criteria that must be applied when deciding whether rules may be created or retained is reflected throughout the Directive and the Regulations.

Article 9(2) of the Directive is not being transposed. It refers to the reports that Departments are required to send to the European Commission before the end of 2009 identifying the various authorization schemes that are in force in this country and that are considered by Departments to be compatible with the Regulations. The reports are part of the screening process referred to in the introduction to this document.

Regulation 10(2) excludes from certain provisions of the Regulations the authorization schemes that are covered by legislation transposing other Community rules. It would not make sense to create a dual system of regulation. EU rules that indirectly cover services include rules that may not themselves create authorization schemes but make explicit reference to Ireland's right to create such schemes in the transposing legislation. Certain aspects of the rules governing the regulated professions may also be excluded by virtue of Regulation 4.

Conditions for the granting of an authorization

11. (1) It shall be a requirement that all authorization schemes be based on criteria that preclude competent authorities from exercising their power of assessment in an arbitrary manner. The criteria shall be as follows:

- (a) Non-discriminatory;
- (b) Justified by an overriding reason relating to the public interest;
- (c) Proportionate to that public interest objective;
- (d) Clear and unambiguous;

- (e) Objective;
- (f) Made public in advance;
- (g) Transparent and accessible.

(2) It shall be a requirement that the conditions for granting authorization for a new establishment shall not duplicate requirements and controls that are equivalent or essentially comparable as regards their purpose, to which the provider is already subject in the State or in another Member State. The provider and the liaison point referred to in Regulation 29(2) shall assist a competent authority by providing any necessary information regarding those requirements.

(3) It shall be a requirement that the authorization shall enable the provider to have access to the service activity, or to exercise that activity, throughout the State, including by means of setting up agencies, subsidiaries, branches or offices, except where an authorization for each individual establishment or a limitation of the authorization to a certain part of the State is justified by an overriding reason relating to the public interest.

(4) It shall be a requirement that a competent authority grant an authorization as soon as it is established, in the light of an appropriate examination, that the conditions for authorization have been met.

(5) It shall be a requirement that, except in the case of the granting of an authorization, any decision from a competent authority, including refusal or withdrawal of an authorization, shall be fully reasoned and shall be open to challenge before the courts or other instances of appeal.

(6) Nothing in this Regulation interferes with the right of a competent authority to grant or refuse to grant an authorization in accordance with its procedures.

Explanatory Note

Regulation 11 transposes Article 10 of the Directive. It sets out the criteria that Ireland must comply with when devising authorization schemes.

Regulation 11(1) lists the criteria. As well as reiterating the philosophy behind the Regulations, they include ensuring that authorization schemes are clear, objective and made public in advance. The criteria apply to authorization schemes governing access to and the exercise of service activities at all levels. It may be necessary for a competent authority to state on its website that the granting of an authorization may involve additional competent authorities.

Under Regulation 11(2), the conditions for granting an authorization cannot duplicate requirements that the provider has already been subject to in this country or in another Member State. This means that a competent authority has to take into account equivalent or essentially comparable requirements with which the service provider has already complied. Regulation 11(2) also provides a means by which a competent authority can be assisted by a liaison point.

Regulation 11(3) specifies that an authorization cannot be geographically limited unless there are good public interest reasons for the restrictions.

Regulation 11(4) requires competent authorities to issue an authorization as soon as it has been established that the necessary conditions have been met. This provision should be read in conjunction with the provisions of Regulation 14.

Regulation 11(5) states that a refusal to grant an authorization may be challenged.

Regulation 11(6) confirms that the grant or refusal of an authorization is a matter for the competent authority. See also Regulation 7(2) about the functions and duties of competent authorities.

Duration of an authorization

12. (1) It shall be a requirement that an authorization granted to a provider shall not be for a limited period, except where:

- (a) the authorization is being automatically renewed or is subject only to the continued fulfillment of requirements,
- (b) the number of available authorizations is limited by an overriding reason relating to the public interest,

or

- (c) a limited authorization period can be justified by an overriding reason relating to the public interest.

(2) Paragraph 1 of this Regulation shall not concern the maximum period before the end of which the provider must actually commence his activity after receiving authorization.

(3) It shall be a requirement that a provider shall inform the NPSC or point of single contact, as appropriate, of the following changes to their circumstances:

- (a) the creation of subsidiaries whose activities fall within the scope of the authorization scheme,
- (b) changes in the provider's situation that result in the conditions for authorization no longer being met.

(4) Failure to comply with paragraph (3) of this Regulation shall be an offence.

(5) An offence under this Regulation may be prosecuted by a competent authority.

(6) This Regulation shall be without prejudice to the right of a competent authority to revoke an authorization, when the conditions for the authorization are no longer being met.

Explanatory Note

Regulation 12, which transposes Article 11 of the Directive, rules out in most cases the granting of a licence for a finite period. It does, however, provide for exceptions to that rule as set out in the Regulation.

Regulation 12(1) specifies that authorizations cannot be granted for a finite period except in the circumstances set out in that provision.

Regulation 12(2) does not affect any rules that require a service provider to “use or lose” an authorization by a certain date.

Regulation 12(3) imposes an obligation on service providers to inform the NPSC (or a point of single contact) about changes of circumstance that would impact on the authorization they have received. Failure to comply with this provision will be an offence under Regulation 12(4) and may be prosecuted under Regulation 12(5).

Regulation 12(6) makes it clear that a competent authority may revoke an authorization when the conditions for that authorization are no longer being met.

Selection from among several candidates

13. (1) Where the number of authorizations available for a given activity is limited because of the scarcity of available natural resources or technical capacity, it shall be lawful for the State or a competent authority to apply a selection procedure to potential candidates, which provides full guarantees of impartiality and transparency, including, in particular, adequate publicity about the launch, conduct and completion of the procedure.

(2) In the circumstances referred to in paragraph 1 of this Regulation, it shall be lawful for the State or a competent authority to grant an authorization for an appropriate limited period. Such an authorization need not be open to automatic renewal nor confer any other advantage on a provider whose authorization has just expired or on any person having any particular links with the provider.

(3) Subject to paragraph 1 of this Regulation and to Regulations 10 and 11, the State or a competent authority may, in accordance with law, take into account, in establishing the rules for the selection procedure, considerations of public health, social policy objectives, the health and safety of employees or self-employed persons, the protection of the environment, the preservation of cultural heritage and other overriding reasons relating to the public interest.

Explanatory Note

Regulation 13 transposes Article 12 of the Directive. It provides for circumstances where the number of available authorizations is limited for one reason or another and where, therefore, there must be a selection procedure.

Regulation 13(1) provides that where the number of authorizations is limited a selection procedure that complies with certain conditions is lawful.

Regulation 13(2) specifies that the authorization granted need not be for an unlimited period. However, the period for which the authorization is granted should be appropriate, e.g. it should be sufficiently long as to enable the service provider to recoup the cost of his investment and to generate a fair return on the investment made.

Regulation 13(3) allows the State or a competent authority to take other factors into consideration when determining the rules of the selection procedure. However, the State/competent authority must also take account of Regulation 13(1) and Regulations 10 and 11 when determining the selection procedure. Regulation 10 sets out the philosophy that underpins the Regulations. Regulation 11 adds additional criteria that must be included in the conditions for the granting of an authorization, including objectivity, transparency and publicly known criteria. Regulation 13 must, therefore, operate within the general framework for authorizations laid down in the Directive.

Authorization procedures

14. (1) It shall be a requirement that authorization procedures and formalities be clear, made public in advance and be such as to provide the applicants with a guarantee that their application will be dealt with objectively and impartially.

(2) It shall be a requirement that authorization procedures and formalities not be dissuasive and shall not unduly complicate or delay the provision of a service. It shall also be a requirement that they be easily accessible and that any charges that the applicants may incur from their application shall be reasonable and proportionate to the cost of the authorization procedures in question and shall not exceed the cost of the procedures.

(3) It shall be a requirement that authorization procedures and formalities shall provide applicants with a guarantee that their application will be processed as quickly as possible and, in any event, within a reasonable period which is fixed and made public in advance. Any changes to the period (whether extending or curtailing it) shall also be made public in advance of any application being considered under it. The period shall commence when all the necessary documentation has been submitted. When justified by the complexity of the issue, a competent authority may extend the time period once, for a limited time. The extension and its duration shall be duly motivated and shall be notified to the applicant before the original period has expired.

(4) It shall be a requirement that a competent authority shall, if necessary, amend its authorization scheme to specify the period in which applications will be processed and to provide a guarantee that all applications will be processed within that period, in accordance with the provisions of paragraph (3) of this Regulation. This period must be made public in advance of any application being considered under it.

(5) Failing a response within the time period set or extended in accordance with paragraph 3 of this Regulation, an application for an authorization shall be deemed to have been granted. The provisions of this paragraph shall not apply, however, in circumstances justified by overriding reasons relating to the public interest, including the legitimate interest of third parties.

(6) It shall be a requirement that all applications to a competent authority shall be acknowledged as quickly as possible. The acknowledgement shall specify the following:

- (a) the period referred to in paragraph 3 of this Regulation,
- (b) the available means of redress,
- (c) where applicable, a statement that in the absence of a response within the period specified, the authorization shall be deemed to have been granted.

(7) It shall be a requirement that in the case of an incomplete application, the applicant shall be informed as quickly as possible of the need to supply any additional documentation, as well as of any possible effects on the period referred to in paragraph 3 of this Regulation.

(8) It shall be a requirement that where a request is rejected because it fails to comply with the required procedures or formalities, the applicant shall be informed of the rejection as quickly as possible.

Explanatory Note

Regulation 14 transposes Article 13 of the Directive. This Regulation contains some very important provisions, including circumstances where an authorization is automatically granted but it also includes important safeguards for competent authorities. It contains straightforward provisions that most competent authorities are already following to some extent. It is a better regulation provision.

Regulation 14(1) specifies that authorization procedures must be made clear and publicly known and must provide applicants with a guarantee that their application will be dealt with fairly.

Regulation 14(2) states that authorization procedures should not put service providers off, by being overly complex or by taking too long, and that any charges should be reasonable and proportionate. This reflects the purpose behind the Services Directive, which is to facilitate service providers who wish to avail of the Single Market.

Regulation 14(3) is one of the most important provisions in the Regulations. It requires competent authorities to provide service providers with a guarantee that their applications will be processed within a fixed period of time. The period of time, which does not have to be the same for every service, will run from the time all the documentation has been received by the competent authority. In addition, where justified, the period of time for processing applications may be extended once.

Regulation 14(4) obliges competent authorities to amend their authorization schemes, if necessary, to specify the period during which the application will be processed, in accordance with Regulation 14(3).

Regulation 14(5) is a provision that should be noted by competent authorities, in particular. It says that where a competent authority does not process an application within the time period set or extended in accordance with Regulation 14(4) the application will be automatically granted. As this is a powerful provision it comes with safeguards for the public interest. Those safeguards stipulate that the principle of tacit approval will not apply in circumstances where it would not be in the public interest for it to do so.

The Department of Enterprise, Trade and Employment believes that Regulations 14(4) and 14(5) represent a good balance between promoting the Single Market (and good regulation) on the one hand and protecting the public interest on the other.

Regulation 14(6) obliges competent authorities to acknowledge applications as quickly as possible and to provide the applicant with other information, including information about the tacit authorization principle.

Regulation 14(7) requires competent authorities to take certain action where an application is incomplete, including informing the applicant as quickly as possible of the need to supply additional documentation.

Regulation 14(8) requires competent authorities to notify an applicant, as quickly as possible, where a request for authorization has been rejected.

The Department of Enterprise, Trade and Employment would welcome the views of stakeholders, especially competent authorities, about the appropriate period that should be specified in relation to a “reasonable period” in Regulation 14(3) and in relation to “as quickly as possible” in Regulation 14(6), (7) and (8).

Prohibited requirements

15. Access to, or the exercise of, a service activity shall not be made subject to any of the following:

- (a) discriminatory requirements based directly or indirectly on nationality or, in the case of companies, the location of the registered office, including in particular:
 - (i) nationality requirements for the provider, his staff, persons holding the share capital or members of the provider's management or supervisory bodies;
 - (ii) a requirement that the provider, his staff, persons holding the share capital or members of the provider's management or supervisory bodies be resident within the State;

- (b) a prohibition on having an establishment in more than one Member State or on being entered in the registers or enrolled with professional bodies or associations of more than one Member State;
- (c) restrictions on the freedom of a provider to choose between a principal or a secondary establishment, in particular an obligation on the provider to have his or her principal establishment in the State, or restrictions on the freedom to choose between establishment in the form of an agency, branch or subsidiary;
- (d) conditions of reciprocity with the Member State in which the provider already has an establishment, except in the case of conditions of reciprocity provided for in law concerning energy;
- (e) the case-by-case application of an economic test making the granting of authorization subject to proof of the existence of an economic need or market demand, an assessment of the potential or current economic effects of the activity or an assessment of the appropriateness of the activity in relation to the economic planning objectives set by the competent authority; this prohibition shall not concern planning requirements that do not pursue economic aims but serve overriding reasons relating to the public interest;
- (f) the direct or indirect involvement of competing operators, including within consultative bodies, in the granting of authorizations or in the adoption of other decisions of the competent authorities, with the exception of professional bodies and associations or other organizations acting as the competent authority; this prohibition shall not concern the consultation of organizations, such as chambers of commerce or social partners, on matters other than individual applications for authorization, or a consultation of the public at large;
- (g) an obligation to provide or participate in a financial guarantee or to take out insurance from a provider or body established in the State. This shall not affect the right of the State or a competent authority to require insurance or financial guarantees as such, nor shall it affect requirements relating to the participation in a collective compensation fund, for instance for members of professional bodies or organizations;
- (h) an obligation to have been pre-registered, for a given period, in the registers held in the State or to have previously exercised the activity for a given period in the State.

Explanatory Note

Regulation 15 transposes Article 14 of the Directive, which lists requirements that the State or a competent authority is prohibited from including in its legislation or other rules, respectively. The intention behind this Regulation is to ensure that certain kinds of barriers are not put in the way of persons who wish to undertake a service activity in this country. Many of the prohibited requirements are based on decisions of the ECJ.

The European Commission's Handbook on the Implementation of the Services Directive gives details of the judgments in the footnotes to pages 38-43. To the extent that any of the prohibited requirements are included in legislation or other rules, the screening process is intended to identify them and they will have to be removed before 28 December 2009.

Regulation 15(a) specifies certain prohibitions based directly or indirectly on nationality or location-related requirements. The direct requirements are self-explanatory but the indirect requirements include those based on residence in the case of individuals or place of principal establishment in the case of business entities. Differences of treatment based on other criteria may also amount to indirect discrimination on grounds of nationality if these criteria are, in practice, only capable of being met by Irish citizens or businesses. Such criteria might include rules relating to the law under which a company has been incorporated or the fact that a majority of the shares of a company have to be directly or indirectly in public or State ownership.

Regulation 15(b) prohibits a requirement that, were it in force, would mean that service providers already established in another Member State would not be able to establish in Ireland.

Regulation 15(c) prohibits the State from denying a service provider a choice as to the type of establishment he wishes to have here (e.g. a principal or secondary establishment or a specific type of secondary arrangement such as a branch or subsidiary).

Regulation 15(d) outlaws rules that would make access to an activity in Ireland by a service provider from another Member State subject to his or her Member State treating an Irish service provider in the same way. Except where energy laws provide for this, reciprocity is generally not compatible with the idea of a Single Market, which is based on the principle of equal treatment of all businesses in the EU. The ECJ has in many cases found reciprocity rules to be contrary to the EU Treaties.

Regulation 15(e) prevents the State from refusing to grant an authorization on the basis of an economic test (e.g. that there are enough businesses of that kind in a town or city and that further competition is not necessary). It does not, however, prevent Ireland from refusing an authorization on grounds related to the public interest, e.g. the protection of the environment, including the urban environment.

Regulation 15(f) requires Ireland to abolish any requirements that allow competitors of a service provider to be involved in the taking of individual decisions for authorizations. Business organisations etc. may continue to be consulted on matters other than individual applications for authorizations. In addition, Regulation 15(f) does not prevent professional bodies and similar organizations from deciding on individual applications if the bodies are acting as competent authorities as is sometimes the case with the representative bodies of the regulated professions.

Regulation 15(g) prohibits the State from requiring operators to take out insurance here or to provide a financial guarantee issued by an operator in Ireland. Such requirements could lead to an unnecessary duplication of insurance cover by a service provider and would also favour financial institutions here.

Regulation 15(h) prohibits Ireland from making rules requiring a service provider to have been operating here before being allowed to establish. If there were these type of rules that would be a deterrent to new entrants to the market, which would defeat the purpose of the Regulations. It also prevents the State from requiring a service provider to pre-register for a certain period before being allowed to operate his business.

Requirements to be evaluated

16. (1) There shall be an obligation on the State or a competent authority to ensure that, where access to or the exercise of a service activity is subject to any of the requirements listed in paragraph 2 of this Regulation, the requirements are compatible with the conditions laid down in paragraph 3 of this Regulation. Laws, regulations or administrative provisions shall be amended, where necessary, to make them compatible with the conditions of paragraph 3 of this Regulation.

(2) There shall be an obligation on the State or a competent authority to examine whether the legal system makes access to a service activity or the exercise of it subject to compliance with any of the following non-discriminatory requirements:

- (a) quantitative or territorial restrictions, in particular in the form of limits fixed according to population or of a minimum geographical distance between providers;
- (b) an obligation on a provider to take a specific legal form;
- (c) requirements that relate to the shareholding of a company;
- (d) requirements, other than those concerning matters covered by the legislation set out in the first six indents of Regulation 6(4)(a) and other legislation giving effect to Community instruments, which reserve access to the service activity in question to particular providers by virtue of the specific nature of the activity;
- (e) a ban on having more than one establishment in the State;
- (f) requirements fixing a minimum number of employees;
- (g) fixed minimum and/or maximum tariffs with which the provider must comply;
- (h) an obligation on the provider to supply other specific services jointly with his service.

(3) There shall be an obligation on the State or a competent authority to verify that the requirements referred to in paragraph 2 of this Regulation satisfy the following conditions:

- (a) non-discrimination: requirements under national law or other national rules (including the rules of professional organizations that regulate providers such as the regulated professions) must be neither directly nor indirectly discriminatory according to nationality nor, with regard to companies, according to the location of the registered office;
- (b) necessity: requirements must be justified by an overriding reason relating to the public interest;
- (c) proportionality: requirements must be suitable for securing the attainment of the objective pursued; they must not go beyond what is necessary to attain that objective and it must not be possible to replace those requirements with other, less restrictive measures that attain the same result.

(4) Paragraphs 1, 2 and 3 of this Regulation shall apply to legislation in the field of services of general economic interest only insofar as the application of those paragraphs does not obstruct the performance, in law or in fact, of the particular task assigned to them.

(5) The State or a competent authority is prohibited from introducing new requirements of a kind listed in paragraph 2 of this Regulation, unless the requirement satisfies the conditions laid down in paragraph 3 of this Regulation.

(6) The State shall notify the Commission of any new laws, regulations or administrative provisions that include requirements referred to in paragraph 5 of this Regulation together with the reasons for those requirements. The notification to the Commission shall not prevent the State from adopting the provisions in question.

Explanatory Note

Regulation 16 transposes Article 15 of the Directive, which deals with provisions that Ireland may include in legislation or rules, provided they meet certain criteria.

Regulation 16(1) obliges Ireland to ensure that any authorization schemes that are subject to Regulation 16(2) meet the conditions of Regulation 16(3). Any authorization schemes that include requirements listed in Regulation 16(2) must be amended or abolished to bring them into line with Regulation 16(3).

Regulation 16(2) lists the requirements that the State may include in its authorization schemes provided they meet the criteria set out in Regulation 16(3). These requirements are:

- A restriction on the number of service providers because of limited population numbers or because there are existing service providers in the area;
- An obligation on a provider to take on a certain legal form (e.g. barristers, solicitors, accountants);
- Requirements dealing with the shareholding of a company (e.g. an obligation to hold a minimum amount of capital);

- Requirements other than those set out in the first six indents of Regulation 6(4)(a) of these Regulations as well as other legislation transposing EU measures, which reserve access to a service to particular providers by virtue of the nature of the activity;
- A ban on having more than one establishment here. Regulation 15(b) prohibits Ireland from preventing a service provider who is established in another Member State from establishing here but Regulation 16(2) leaves open the possibility that the State can restrict a service provider to having one establishment in the State;
- A minimum number of employees (such a requirement could cause problems for SMEs);
- Minimum and/or maximum prices that service providers must charge (such a requirement would prevent service providers from competing);
- An obligation on a service provider to supply other services jointly with his service (e.g., a requirement on a petrol retailer to sell food or beverages also).

Regulation 16(3) lists the standard requirements (first listed in Regulation 10(1)) that underpin the Regulations, i.e. no discrimination, necessity and proportionality. Thus, any authorization schemes that Ireland intends to retain or introduce in the future in the areas listed in Regulation 16(2) must comply with the three criteria set out in Regulation 16(3).

Regulation 16(4) states that the Regulations apply to services of general economic interest (public utilities) only insofar as the application of Regulation 16(1), (2) and (3) do not prevent the services concerned from carrying out their functions.

Regulation 16(5) prevents the State from introducing new rules for services covered by the Regulations of the kind listed in Regulation 16(2) unless the rules meet the criteria listed in Regulation 16(3).

Regulation 16(6) requires the State to notify the European Commission of any new legislation of the kind referred to in Regulation 16(5) setting out the reason for the legislation. Such notification does not prevent Ireland from introducing the new requirements. This provision transposes part of Article 15(7), not all of which needs to be transposed (see below).

Regulation 16(5) and (6) are examples of the provisions in the Regulations that will have an ongoing impact on the State's capacity to make rules. They are intended to ensure that new rules are not introduced that would conflict with the principles and the provisions of the Regulations in the future.

Article 15(5) of the Directive is not being transposed, as this provision must be met by Ireland before the Regulations came into force. Along with similar requirements in Articles 9, 16 and 25, Departments must submit reports to the European Commission following the screening process. The reports in this instance must specify:

- (a) The requirements in authorization schemes that we intend to maintain and the reason we believe the requirements comply with Regulation 16(3), and
- (b) The requirements that will be abolished or made less stringent by 28 December 2009.

The part of the first sub-paragraph of Article 15(7) of the Directive that is not being transposed requires the European Commission to notify the other Member States of any new requirements brought to its attention by Ireland, and vice versa.

The second sub-paragraph of Article 15(7) of the Directive, which is not being transposed either, states that the European Commission must examine any new rules, referred to in Regulation 16(5), for compatibility with Community law within three months. The Commission can request a Member State not to adopt a planned set of rules or to abolish them. The third sub-paragraph of Article 15(7), which is likewise not being transposed, states that notifying the European Commission, under another Directive, about new rules that Ireland is proposing to make, meets the notification obligation [Regulation 16(6)].

Freedom to provide services

17 (1) The State shall respect the right of providers who are established in a Member State to provide services where the provider is not established here and shall ensure free access to and free exercise of a service activity within the State.

(2) The State or a competent authority shall not make access to or exercise of a service activity subject to compliance with any requirements that do not respect the following principles:

- (a) non-discrimination: the requirement may be neither directly nor indirectly discriminatory with regard to nationality or, in the case of legal persons, with regard to the Member State in which they are established;
- (b) necessity: the requirement must be justified for reasons of public policy, public security, public health or the protection of the environment;
- (c) proportionality: the requirement must be necessary for attaining the objective pursued, and must not go beyond what is necessary to attain that objective.

(3) The State or a competent authority may not restrict the freedom to provide services in the case of a provider established in another Member State, who wishes to provide services in the State but is not established here, by imposing any of the following requirements:

- (a) an obligation on the provider to have an establishment in the State;
- (b) an obligation on the provider to obtain an authorization from a competent authority in the State, including entry in a register or registration with a professional body or association in the State, except where provided for in these Regulations or other legislation;

- (c) a ban on the provider setting up a certain form or type of infrastructure in the State, including an office or chambers, which the provider needs in order to supply the services in question;
- (d) the application of specific contractual arrangements between the provider and the recipient that prevent or restrict service provision by the self-employed;
- (e) an obligation on the provider to possess an identity document issued by a competent authority specific to the exercise of a service activity;
- (f) requirements, except for those necessary for health and safety at work, that affect the use of equipment and material that are an integral part of the service provided;
- (g) restrictions on the freedom to provide the services referred to in Regulation 20.

(4) The State may impose requirements on a provider from another Member State who is not established in the State in relation to the provision of a service activity where they are justified for reasons of public policy, public security, public health or the protection of the environment and where the requirements are in accordance with paragraph 2 of this Regulation. The State may also apply, in accordance with law, its rules on employment conditions, including those laid down in collective agreements.

Explanatory Note

Regulation 17 transposes Article 16 of the Directive. Articles 16-21 make up Chapter IV of the Directive, which deals with the freedom to provide services. Regulation 17 gives a service provider in another Member State the right to provide services in Ireland without unjustified restrictions. It is one of the most important provisions in the Regulations and applies to all services coming within their scope other than the services listed in Regulation 18.

The freedom to provide services is separate to the freedom of establishment. Establishment involves the pursuit of an economic activity from a fixed location for an indefinite period. Freedom to provide services, by contrast, involves the temporary provision of a service by a provider from another Member State who is not established in Ireland and does not have a permanent place of business here. The right of establishment and the right to provide services are enshrined in the EU Treaties (Articles 43 and 49 of the EC Treaty) and in the case law of the ECJ.

Regulation 17(1) requires Ireland to respect the right of a service provider to provide services here where the provider is from another Member State and is not established here, i.e. the provider is providing a service here on a temporary basis.

Regulation 17(2) says that where Ireland imposes requirements on a service provider from another Member State providing a temporary service here the requirements must respect the principles of non-discrimination, necessity and proportionality.

Under Regulation 17(3) Ireland cannot oblige service providers established in other Member States who wish to provide temporary services here to meet certain requirements. These requirements are:

- To have an office in the State;
- To be entered in a register or to obtain an authorisation from a competent authority in Ireland before doing business here;
- Not to have an office or other type of facility in Ireland that the provider thinks is necessary in order to carry out his business;
- To become, in effect, an employee of the service recipient;
- To possess an identity document issued by its competent authorities;
- To meet requirements, apart from appropriate health and safety rules, regarding the use of equipment and materials necessary to carry out his business.

In addition, Ireland cannot prevent a recipient from receiving a particular service from a service provider established in another Member State (see also Regulation 20).

Regulation 17(4) allows Ireland to impose requirements on a service provider from another Member State where such requirements are justified under certain criteria, including public policy and public security. In addition, under this provision Ireland can continue applying its legislation on employment rights.

Article 16(4) of the Directive is not being transposed. It requires the European Commission to submit a report to the Competitiveness Council and the European Parliament on the application of Article 16 in which the Commission must set out its views about the need or otherwise for additional harmonization of the rules covering services.

Additional derogations from the freedom to provide services

18. The provisions of Regulation 17 shall not apply to the following:

- (a) Services of general economic interest that are provided from another Member State, including the following:
 - (i) In the postal sector, services covered by the Postal and Telecommunications Services Act 1983 (No. 24 of 1983);
 - (ii) In the electricity sector, services covered by European Communities (Internal Market in Electricity) Regulations 2000 (S.I. No. 445 of 2000) and the European Communities (Internal Market in Electricity) Regulations 2005 (S.I. No. 60 of 2005);
 - (iii) In the gas sector, services covered by the European Communities (Internal Market in Natural Gas) (BGE) Regulations 2005 (S.I. No. 760 of 2005), the Energy (Miscellaneous Provisions) Act 2006 (Commencement of Section 19) Order 2007 (S.I. No. 292 of 2007), sections 17 and 18 of the Energy (Miscellaneous Provisions) Act 2006 (No. 40 of 2006), the European Communities (Internal Market in Natural Gas) (BGE) Regulations 2005 (S.I. No. 760 of 2005),

the Energy (Miscellaneous Provisions) Act 2006 (Commencement of Section 19) Order 2007 (S.I. No. 292 of 2007) and sections 17 and 18 of the Energy (Miscellaneous Provisions) Act 2006 (No. 40 of 2006);

(iv) Water distribution and supply services and waste water services;

(v) The treatment of waste;

- (b) Matters covered by the Protection of Employees (Part-Time Work) Act, 2001 (No. 45 of 2001);
- (c) Matters covered by the Data Protection Act 1988 (No. 25 of 1988) and the Data Protection (Amendment) Act 2003 (No. 6 of 2003);
- (d) Matters covered by the European Communities (Freedom to Provide Services) (Lawyers) Regulations 1979 (S.I. No. 58 of 1979), the European Communities (Freedom to Provide Services) (Lawyers) Regulations 2004 (S.I. No. 753 of 2004) and the European Communities (Freedom to Provide Services) (Lawyers) (Amendment) Regulations 2008 (S.I. No. 97 of 2008);
- (e) The activity of judicial recovery of debts;
- (f) Part 4 of the Recognition of Professional Qualifications (Directive 2005/36/EC) Regulations, 2008 (S.I. No. 139 of 2008) as well as requirements in other legislation that reserve an activity to a particular profession;
- (g) Matters covered by Council Regulation (EC) No. 1408/71 on the application of social security schemes to employed persons and their families moving within the European Union³;
- (h) As regards administrative formalities concerning the free movement of persons and their residence, matters covered by the European Communities (Free Movement of Persons) (Amendment) Regulations 2008 (S.I. No. 310 of 2008) insofar as those Regulations lay down the administrative formalities with which beneficiaries must comply;
- (i) As regards third country nationals who move to the State from another Member State in the context of the provision of a service, the right of the State to require them to have a visa or a residence permit or to require them to report to a competent authority on or after their entry;
- (j) As regards the shipment of waste, matters covered by Council Regulation (EEC) No 259/93 of 1 February 1993 on the supervision

³ OJ L 28, 30.1.1997 [consolidated version]

and control of shipments of waste within, into and out of the European Community⁴;

- (k) Copyright, neighbouring rights and rights covered by the European Communities (Protection of Topographies of Semiconductor Products) Regulations 1988 (S.I. No. 101 of 1998) as amended by the European Communities (Protection of Topographies of Semiconductor Products) (Amendment) Regulations 1999 (S.I. No. 113 of 1999) and the Copyright and Related Rights Act 2000 (No. 28 of 2000);
- (l) Acts requiring, by law, the involvement of a notary;
- (m) Matters covered by Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audit of annual accounts and consolidated accounts⁵;
- (n) The registration of vehicles leased in another Member State; and
- (o) Provisions regarding contractual and non-contractual obligations, including the form of contracts, determined pursuant to the rules of private international law.

Explanatory Note

Regulation 18 transposes Article 17 of the Directive, which lists a large number of derogations (exclusions) from the principle of the freedom to provide services. The derogations in Regulation 18 are more comprehensive than those in Regulation 17 in that they apply to areas of activity whereas the derogations in Regulation 17 are more narrowly defined. Regulation 18 excludes certain services from the rights conferred on providers by Regulation 17. It means that the services listed in Regulation 18, supplied to recipients here by service providers from another Member State, can be made subject to Irish requirements.

The list of exclusions from the freedom to supply services principle is extensive. The following are the areas excluded:

- Services of general economic interest i.e. postal services, electricity services gas services – all covered by specific legislation. It also excludes water distribution/supply services, waste water services and the treatment of waste;
- Matters covered by legislation on the posting of workers. This exclusion covers a large number of rules, including maximum work periods and minimum rest periods, minimum paid annual holidays, minimum rates of pay, the conditions of hiring out of workers, health, safety and hygiene at work, the terms and conditions of employment of pregnant women or women who have recently given birth and of children and young people, and provisions on equality of treatment between men and women;
- Matters covered by legislation on data protection, which lays down specific rules for the cross-border transfer of data;

⁴ OJ L 30, 6.2.1993

⁵ OJ L 157, 9.6.2006

- Cross-border services provided by lawyers (Regulation 18(d)). This means in particular that representing a client before a court in Ireland must be done under Irish rules;
- The recovery of debts that involves recourse to judicial proceedings. This derogation does not cover debt recovery that is carried out by service providers outside the context of judicial procedures;
- Matters covering the free movement of services in the legislation on the recognition of professional qualifications. Regulation 17 will apply, in the case of the temporary provision of services by the regulated professions, to matters such as commercial communications, multidisciplinary partnerships, etc. but not to professional qualifications. It also excludes from Regulation 17 requirements reserving an activity to members of a particular profession. For example, if the provision of legal advice in Ireland is the preserve of lawyers, then legal advice may not be provided here by a service provider established in another Member State, who is not a lawyer, even if he may provide legal advice in his own Member State;
- Matters covered by the rules on the coordination of national social security systems, which determine what national social security system covers persons from another Member State temporarily working here either as a self-employed person or as an employee;
- Matters concerning the requirements Ireland may impose on nationals of other Member States and certain third-country nationals under the legislation referred to in Regulation 18(h).
- Matters relating to visa or residence requirements for third country nationals;
- Matters relating to the shipment of waste. The relevant EU Regulation (253/93) contains certain rules that provide for obligations to be met by the country of destination or of transit. This derogation ensures that Regulation 253/93 will not be affected by Regulation 17;
- Intellectual property rights per se (e.g. the existence of the right, scope and exceptions, duration, etc.). The derogation does not concern services linked to the management of such rights, such as those provided by collecting societies or patent agents;
- Requirements relating to the involvement of a notary in particular undertakings, for example, property transactions, the establishment of company statutes or their registration;
- Matters concerning the specific rules on statutory audits laid down in Directive 2006/43/EC. It means that Regulation 17 does not affect the rules that apply to auditors from another Member State. The Regulations transposing Directive 2006/43/EC are expected to be made by the Tánaiste shortly;
- Matters relating to the registration of a vehicle leased in another Member State. This derogation allows Ireland to retain the right to require that vehicles that circulate here be registered here. It applies to long-term leases but not to short-term car rental activities;
- Matters regarding contractual and non-contractual obligations under private international law. This means that the question of which States' national civil law to be applied regarding non-contractual or contractual obligations will be determined by the rules of private international law and not by Regulation 17.

Case-by-case derogations

19. (1) By way of derogation from Regulation 17(1), and in exceptional circumstances only, the State or a competent authority may, in respect of a provider established in another Member State, take measures relating to the safety of services.

(2) The measures provided for in paragraph 1 of this Regulation may be taken only if the mutual assistance procedure laid down in Regulation 36 is complied with and the following conditions are fulfilled:

- (a) the provisions in accordance with which the measure is taken have not been subject to Community harmonization in the field of the safety of services;
- (b) the measures provide for a higher level of protection of the recipient than would be the case in a measure taken by the Member State of establishment in accordance with its national provisions;
- (c) the Member State of establishment has not taken any measures or has taken measures which are insufficient as compared with those referred to in Regulation 36(2);
- (d) the measures are proportionate.

(3) Paragraphs 1 and 2 of this Regulation are without prejudice to the provisions in legislation giving effect to Community instruments, which guarantee the freedom to provide services or which allow derogations therefrom.

Explanatory Note

Regulation 19 allows for additional derogations from the rules on the freedom to provide services, in exceptional circumstances. It allows Ireland to apply requirements covering the safety of services. We can only avail of this Regulation in a specific situation relating to a specific service provided by a particular service provider. It cannot be used in a general way to derogate from Regulation 17(1). If we are availing of this regulation, we must first request assistance from the Member State where the service provider is established (Regulation 36(2)) and must also comply with the steps set out in Regulation 36 generally.

Regulation 19(1) states that the case-by-case derogation can only be availed of in exceptional circumstances.

Regulation 19(2) sets out the conditions that must be met before a case-by-case derogation to be taken. It can only be used where the measures adopted are not covered by a harmonized EU law on the safety of services. Secondly, the derogation must be more effective than the measures taken or that could be taken by the Member State where the service provider is established. Thirdly, the derogation can only be availed of if the Member State of establishment has not taken sufficient measures. Finally, the measures taken must be proportionate. (The same conditions apply of course in the case of another Member State proposing to take action against a service provider established in Ireland providing a service to that Member State.)

Regulation 19(3) states that Regulation 19 does not affect other legislation in which the freedom to provide services is guaranteed, or derogations from are allowed, such as the legislation transposing the Electronic Commerce Directive and the Professional Qualifications Directive.

Prohibited restrictions

20. The State or a competent authority may not impose on a recipient requirements that restrict the use of a service supplied by a provider established in another Member State, in particular the following requirements:

- (a) An obligation to obtain an authorization from or to make a declaration to a competent authority in the State;
- (b) Discriminatory limits on the grant of financial assistance by reason of the fact that the provider is established in another Member State or by reason of the location of the place at which the service is provided.

Explanatory Note

Regulation 20 transposes Article 19 of the Directive. The Services Directive is not just concerned with the rights of service providers. It recognizes that in order to establish a genuine single market in services it is just as important that recipients have the right to receive services. The freedom to receive services, as stated in ECJ case law, forms an integral part of the freedoms enshrined in Article 49 of the Treaties.

Regulations 20, 21 and 22 of these Regulations strengthen the rights of recipients of services, in particular consumers.

Regulation 20 prohibits restrictions on the use of a service provider established in another Member State.

Regulation 20(a) prohibits Ireland from requiring a recipient of a service to obtain a licence/permission to use a service. If, however, there is a general requirement in Irish law that requires all recipients to have such an authorization we can retain it.

Regulation 20(b) states that where financial assistance is available, Ireland cannot discriminate against a recipient of a service just because the service is provided from another Member State. It should be noted, however, that schemes not linked to the use of a specific service, such as grants provided to students for their living, do not fall under Regulation 20.

Non-discrimination

21 (1) It shall be a requirement that a recipient is not made subject to discriminatory requirements based on his nationality or place of residence.

(2) It shall be a requirement that the general conditions of access to a service, which are made available to the public at large by the provider, do not contain discriminatory provisions relating to the nationality or place of residence of the recipient, but without precluding the possibility of providing for differences in the conditions of access where those differences are directly justified by objective criteria.

Explanatory Note

Regulation 21, which transposes Article 20 of the Directive, obliges Ireland to ensure that a recipient is not made subject to any form of discrimination based on his/her nationality or place of residence. The issue of discrimination causes difficulties because of a possible conflict of rights. On the one hand, a service provider may decide not to provide a service to a particular market while, on the other, a recipient should not be subject to any refusal by a provider to supply him on the grounds of nationality or place of residence. The European Commission is undertaking a study into aspects of discrimination against recipients by providers with the aim of assisting Member States with the transposition of Article 20 of the Directive. The study should be ready in September.

Regulation 21(1) requires the State to ensure that recipients are not made subject to discriminatory requirements based on their nationality or their place of residence (e.g. an obligation to supply specific documents to be able to use a service). It should be noted, however, that not every difference of treatment constitutes discrimination. ECJ case law has clarified that discrimination takes place where different rules are applied to comparable situations or where the same rules are applied to different situations. However, even though differences of treatment based on residence in general constitute discrimination, in exceptional circumstances such differences might not amount to discrimination if they reflect relevant and objective differences in the situation of recipients (e.g. residents of a given area who avail of a service financed by local taxation might pay less for a service than residents from outside that area).

Regulation 21(2) requires Ireland to ensure that the general conditions of access to a service that are made available to the public at large by a service provider do not discriminate against recipients on the grounds of nationality or place of residence. Any such requirements must be abolished. This provision, however, allows service providers to apply different conditions of access where those differences are justified by objective criteria. These might include additional costs because of the distance involved or the technical characteristics of the service.

Assistance for recipients

22. (1) It shall be a requirement that recipients can obtain, in the State, the following information:

- (a) general information on the requirements applicable in other Member States relating to access to, and exercise of, service activities, in particular those relating to consumer protection;

- (b) general information on the means of redress available in the case of a dispute between a provider and a recipient;
- (c) the contact details of associations or organizations, including the European Consumer Centres Network, from which providers or recipients may obtain practical assistance.

(2) Where appropriate, advice from a competent authority to a recipient shall include a simple step-by-step guide. Information and assistance shall be provided in a clear and unambiguous manner, should be easily accessible at a distance, including by electronic means, and should be kept up to date.

(3) (a) The [] and the [] shall have responsibility for the task referred to in paragraph 1 of this Regulation for business recipients and consumers, respectively.

(b) The task conferred on the bodies listed in sub-paragraph (a) of this paragraph shall be effective from the date of the coming into force of these Regulations for a period of three years.

(c) The period referred to in sub-paragraph (b) of this paragraph may be extended by the Minister for a further three years or for a longer period or for an indefinite period.

(d) The Minister may, under this provision, terminate the assignment to either or both of the bodies listed in sub-paragraph (a) of this paragraph, of the task referred to in paragraph 1 of the Regulation and may confer it on one or more alternative bodies.

(4) The Minister shall communicate to the Commission the names and contact details of the bodies listed in sub-paragraph (a) of paragraph 3 of this Regulation or subsequently designated under sub-paragraph (d) of paragraph 3 of this Regulation. Where the names and contact details of the bodies change, the Minister shall communicate the new names and contact details to the Commission.

(5) It shall be a requirement that, in fulfillment of the provisions of paragraphs 1 and 2 of this Regulation, the body approached by the recipient shall, if necessary, request the appropriate body in the Member State concerned to provide the information requested as soon as possible and, on receipt, shall forward the information to the recipient. It shall be a requirement of the bodies listed in Paragraph 3(a) or (d) of this Regulation that they assist and co-operate with the equivalent bodies in the other Member States.

(6) The State, including the bodies listed in paragraphs 3(a) and (d) of this Regulation, shall work with the Commission and the other Member States, to put in place practical arrangements necessary for the implementation of paragraph 1 of this Regulation.

Explanatory Note

Regulation 22, which transposes Article 21 of the Directive, is intended to enhance the confidence of recipients by helping them make choices and comparisons when engaging in cross-border transactions. This Regulation reflects the cross-border dimension of the Services Directive and the need for co-operation between Member States if it is to succeed in its objectives. It allows Irish recipients to find out from designated Irish bodies general information relating to other Member States. The information includes details about the legal requirements of other Member States, consumer protection rules and redress procedures. Regulation 22 complements Regulation 9, which requires the State to make information about its own legislation available to recipients (and providers) through the NPSC.

Regulation 22(1) obliges Ireland to help recipients get general information about the rules on services in other Member States. The information includes details about the means of redress available in the event of a dispute (in Ireland as well as other Member States) and contact details of bodies from which providers and recipients may obtain practical help. In that regard, although the title of Article 21 is “assistance for recipients”, service providers can avail of its provisions also. The Department of Enterprise, Trade and Employment envisages that the designated bodies under this Regulation will not be required to have all the information to hand by December 2009 but will build up information over time. It is impossible to predict the number and nature of the likely requests for information. It will be for the designated bodies to decide whether to provide this information on their websites or keep it otherwise available to provide on request.

Regulation 22(2) obliges competent authorities to provide appropriate information to recipients in a simple easy-to-read manner. The information must be available electronically and kept up to date. The information referred to in this provision relates to paragraph (1)(a), (b) and (c) of Regulation 22. As with paragraph (1), the Department of Enterprise, Trade and Employment envisages that the process of building up the appropriate information will take time. It will be for the designated bodies to decide whether to provide this information on their websites or keep it otherwise available to provide on request.

Regulation 22(3) will designate specific bodies to assist business recipients and non-business recipients (consumers) under this Regulation. The Department of Enterprise, Trade and Employment is currently in discussions with prospective bodies about this matter. Regulation 22(3) also sets out the mechanism whereby the Minister for Enterprise, Trade and Employment can extend a designation, can terminate a designation and can designate other bodies to carry out the functions provided for in Regulation 22(1).

Regulation 22(4) requires the Minister for Enterprise, Trade and Employment to notify the Commission of the names and contact details of the bodies designated to carry out the specified functions under this Regulation. Under Article 21(2), the European Commission is required to notify the contact details of the Irish designated bodies to the other Member States and vice versa. The Department of Enterprise, Trade and Employment will publish the contact details of the designated bodies of all the Member States on its website and will update the contact details, as and when necessary. The Department expects that the designated Irish bodies will also publish the details on their websites.

Regulation 22(5) sets out the mechanism by which the designated Irish bodies will assist a recipient who is seeking help and requires them to assist and co-operate with their counterparts in other Member States.

Regulation 22(6) requires Ireland to work with the European Commission and other Member States regarding the arrangements necessary for the implementation of Regulation 22(1).

Article 21(4) of the Directive, which is not being transposed, requires the Commission to adopt measures specifying the technical mechanisms for the exchange of information between the designated bodies in the Member States and, in particular, the interoperability of information systems, taking into account common standards. The Commission has not yet brought forward its proposals.

Information on providers and their services

23 (1) It shall be a requirement that providers make the following information available to the recipient:

- (a) the name of the provider, his legal status and form, the geographic address at which he is established and details enabling him to be contacted rapidly and communicated with directly and, as the case may be, by electronic means;
- (b) where the provider is registered in a trade or other similar public register, the name of the register and the provider's registration number, or equivalent means of identification in the register;
- (c) where the activity is subject to an authorization scheme, the particulars of the relevant competent authority or the relevant single point of contact or the NPSC;
- (d) where the provider exercises an activity which is subject to VAT, the identification number referred to in section 9 of the Value-Added Tax Act 1972 (No. 22 of 1972);
- (e) in the case of the regulated professions, any professional body or similar institution with which the provider is registered, the professional title and the Member State in which the title has been granted;

- (f) the general conditions and clauses, if any, used by the provider;
- (g) the existence of contractual clauses, if any, used by the provider concerning the law applicable to the contract and/or the competent courts;
- (h) the existence of an after-sales guarantee, if any, not imposed by law;
- (i) the price of the service, where a price is pre-determined by the provider for a given type of service;
- (j) the main features of the service, if not already apparent from the context;
- (k) the insurance or guarantees, if any, referred to in Regulation 24(1), and in particular the contact details of the insurer or guarantor and the territorial coverage.

(2) It shall be a requirement that the information referred to in Paragraph 1 of this Regulation -

- (a) is supplied by the provider on his own initiative;
- (b) is easily accessible to the recipient at the place where the service is provided or the contract is concluded;
- (c) can be easily accessed by the recipient electronically by means of an address supplied by the provider;
- (d) appears in any information documents supplied to the recipient by the provider, which sets out a detailed description of the service he provides.

(3) It shall be a requirement that, at the recipient's request, a provider supplies the following additional information:

- (a) where the price is not pre-determined by the provider for a given type of service, the price of the service or, if an exact price cannot be given, the method of calculating the price so that it can be checked by the recipient, or a sufficiently detailed estimate;
- (b) as regards the regulated professions, a reference to the professional rules applicable in the Member State of establishment and how to access them;
- (c) information on the multidisciplinary activities and partnerships which are directly linked to the service in question and on the measures taken to avoid conflicts of interest. That information shall be included in any information document in which a provider gives a detailed description of his services;

- (d) any codes of conduct to which the provider is subject and the address at which these codes may be consulted by electronic means, specifying the language version available;
- (e) where a provider is subject to a code of conduct, or member of a trade association or professional body which provides for recourse to a non-judicial means of dispute settlement, information in this respect. The provider shall specify how to access detailed information on the characteristics of, and conditions for, the use of non-judicial means of dispute settlement.

(4) It shall be a requirement that the information which a provider must supply in accordance with Regulations 23 and 28 is made available or communicated in a clear and unambiguous manner, and in good time before the conclusion of the contract or, where there is no written contract, before the service is provided.

(5) Failure to comply with paragraphs (1) to (4) of this Regulation shall be an offence.

(6) An offence under this Regulation may be prosecuted by a competent authority.

(7) The information requirements laid down in Regulations 23 and 28 are in addition to requirements already provided for in law and do not prevent the State from imposing additional information requirements on providers established in the State.

Explanatory Note

Regulation 23, which transposes Article 22 of the Directive, strengthens the right of recipients to obtain information about providers and their services. Some of the information listed in this Regulation must be made available to recipients and some need only be provided at the request of the recipient.

The Services Directive is generally seen as a mechanism for freeing up the Single Market for service providers. However, it also contains a substantial number of consumer protection provisions, including Articles 22-27 (inclusive), which make up Chapter V of the Directive and deal with the quality of services.

Regulation 23(1) specifies eleven (11) information items that must be made available to recipients. Many of the items on the list are complementary to the requirements in other legislation and cover fairly standard information that a service provider would be in a position to provide without difficulty. Not all of the provisions will apply to every provider.

Regulation 23(2) leaves it to the service provider to decide how he intends to provide the information. The information must be easily accessible by the recipient electronically and must appear in documents supplied by the provider giving a detailed description of the service he provides. The Department of Enterprise, Trade and Employment believes that the information could be published on the website of a service provider but this will not be the only option.

Regulation 23(3) lists the additional information that a service provider must supply when requested to do so by the recipient:

- the price of the service,
- the rules that apply to a member of the regulated professions,
- the involvement of the service provider in multidisciplinary activities and partnerships (this information, if requested, must be included in the information document giving a detailed description of the provider's activities),
- any codes of conduct to which the service provider is subject and, where a provider is subject to a code of conduct that offers a non-judicial means of dispute settlement, information about the code, etc.

Regulation 23(4) stipulates that the information must be made available clearly and in good time before a contract is signed or, if there is no written contract, before the service is provided.

Regulations 23(5) and 23(6) provide that failure to comply with Regulations 23(1) to (4) shall be an offence and may be prosecuted by a competent authority.

Regulation 23(7) stipulates that the requirements in Regulations 23 and 28 are additional to the requirements already provided for in law and do not prevent Ireland from imposing further information requirements on service providers here.

Under Article 22(6) of the Directive, which is not being transposed, the Commission may specify the content of the information provided for in Regulation 23(1) and (3) depending on the nature of the activities and may specify the practical means of implementing Regulation 23(2). The Commission has not yet brought forward its proposals in this area.

Professional liability insurance and guarantees

24. (1) The State may ensure that providers whose services present 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, subscribe to professional liability insurance appropriate to the nature and extent of the risk, or provide a guarantee or similar arrangement which is equivalent or essentially comparable as regards its purpose.

(2) (a) When a provider chooses to become established in the State, the State may not require professional liability insurance or a guarantee where the provider is already covered by a guarantee that is equivalent, or essentially comparable as regards its purpose and the cover it provides in terms of the insured risk to the insured sum or a ceiling for the guarantee and possible exclusions from the cover, in another Member State in which the provider is already established. Where equivalence is only partial, the State may require a supplementary guarantee to cover those aspects not already covered.

(b) In circumstances where the State requires a provider established in the State to subscribe to professional liability insurance or to provide another guarantee, the State shall accept as sufficient evidence attestations of such insurance cover issued by credit institutions and insurers established in any other Member State.

(3) Paragraphs 1 and 2 of this Regulation shall not affect professional insurance or guarantee arrangements provided for in law.

(4) For the purpose of this Regulation

'direct and particular risk' means a risk arising directly from the provision of the service,

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

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

'professional liability insurance' means 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.

Explanatory Note

Regulation 24 transposes Article 23 of the Directive, the second of the six articles that deal with the quality of services. Under this Regulation, Ireland may require service providers to take out insurance.

Under Regulation 24(1), the State may require service providers to take out insurance where the services they provide represent a risk to health or safety or to the recipient's financial security or to provide a guarantee that has a similar effect.

Under Regulation 24(2), if a service provider is established in another Member State and has equivalent insurance cover there Ireland cannot compel him to take out insurance if he becomes established here. We may, however, require additional insurance where the insurance taken out in the other Member State only partially meets the requirements of the service. This may necessitate an assessment by the appropriate authorities here, who must accept evidence of cover issued by an insurance company in another Member State.

Regulation 24(3) states that paragraphs (1) and (2) of this Regulation do not affect insurance arrangements provided for in other legislation.

Regulation 24(4) defines certain terms used in this Regulation.

Article 23(4) of the Directive, which is not being transposed, states that the European Commission may establish a list of services that exhibit the characteristics referred to in Article 23(1) [Regulation 24(1)] and take measures to strengthen the article. The Commission has not yet brought forward any proposals in this area.

Commercial communications by the regulated professions

25. (1) (a) The State hereby removes all total prohibitions on commercial communications by the regulated professions.

(b) The provision in sub-paragraph (a) of this paragraph extends to any competent authority, including professional organizations, that prohibit a member of the regulated professions from engaging in commercial communications.

(2) Notwithstanding the provisions of paragraph (1) of this Regulation, it shall be a requirement that commercial communications by the regulated professions comply with professional rules, in conformity with law, which relate, in particular, to the independence, dignity and integrity of the profession, as well as to professional secrecy, in a manner consistent with the specific nature of each profession.

(3) It shall be a requirement that professional rules on commercial communications be non-discriminatory, justified by an overriding reason relating to the public interest and proportionate.

Explanatory Note

Regulation 25, which transposes Article 24 of the Directive, deals with commercial communications by the regulated professions. Commercial communications covers any form of communication aimed at promoting a service or a service provider. It covers advertising and other forms of commercial communication, such as business cards.

Regulation 25(1) abolishes any total or blanket ban on commercial communications by a member of the regulated professions in law or under the rules of the profession. It is not thought that there are any such bans in Ireland (the screening process is not yet complete but has not yet identified any such bans) but Regulation 25(1) overrides any that may exist.

Regulation 25(2) stipulates that if a regulated profession engages in commercial communications it must do so in a way that guards the independence and integrity of the profession and respects its professional secrecy rules.

Regulation 25(3) stipulates that any rules on commercial communications must comply with the three standard criteria that feature throughout the Regulations, i.e. non-discrimination, justified in the public interest and proportionality.

Multidisciplinary activities

26. (1) It shall be a requirement that providers are not made subject to requirements that oblige them to exercise a given specific activity exclusively or that restrict the exercise jointly or in partnership of different activities.

(2) Notwithstanding the provisions of paragraph (1) of this Regulation, the following providers may be made subject to such requirements:

- (a) the regulated professions, in so far as is justified in order to guarantee compliance with the rules governing professional ethics and conduct, which vary according to the specific nature of each profession, and is necessary in order to ensure their independence and impartiality;
 - (b) providers of certification, accreditation, technical monitoring, test or trial services, in so far as is justified in order to ensure their independence and impartiality.
- (3) Where multidisciplinary activities between providers referred to in points (a) and (b) of paragraph 2 of this Regulation are authorized, the following requirements shall apply:
- (a) conflicts of interest and incompatibilities between certain activities are prevented;
 - (b) the independence and impartiality required for certain activities is secured;
 - (c) the rules governing professional ethics and conduct for different activities are compatible with one another, especially as regards matters of professional secrecy.

Explanatory Note

Regulation 26 transposes Article 25 of the Directive. It says that there cannot be requirements restricting the exercise of different activities jointly or in partnership except in particular cases. It also includes provisions to ensure, in the case of multidisciplinary activities, that conflicts of interest are prevented and that the independence and impartiality required for certain services are not put at risk.

Regulation 26(1) requires Ireland to ensure that service providers may not be prevented from engaging in multidisciplinary activities.

Regulation 26(2) qualifies Regulation 26(1) by listing the kinds of services that may be made subject to restrictions insofar as multidisciplinary activities are concerned.

Regulation 26(3) provides that, where multidisciplinary activities are allowed, certain conditions must be met.

Article 25(3) of the Directive, which is not being transposed, deals with the reports to be sent to the European Commission before 28 December 2009, following the screening process. The reports must state what service providers are subject to restrictions on multidisciplinary activities, provide details of the restrictions, and specify the reasons for them.

Policy on quality of services

27 (1) The State shall, in cooperation with the Commission, take accompanying measures to encourage providers to take action on a voluntary basis in

order to ensure the quality of service provision, in particular through the use of one of the following methods:

- (a) certification or assessment of their activities by independent or accredited bodies;
- (b) drawing up their own quality charter or participation in quality charters or labels drawn up by professional bodies at Community level.

(2) (a) It shall be a requirement on a professional body or other association, whose members use a common label or a quality mark, to make information about the significance of the label or quality mark, and the criteria applying to its use, easily available to providers and recipients.

(b) Failure to comply with paragraph 2 of this Regulation shall be an offence.

(c) An offence under this paragraph may be prosecuted by a competent authority.

(3) The State shall, in cooperation with the Commission, take accompanying measures to encourage professional bodies, as well as chambers of commerce and craft associations and consumer associations, to cooperate at Community level in order to promote the quality of service provision, especially by making it easier to assess the competence of a provider.

(4) The State shall, in cooperation with the Commission, take accompanying measures to encourage the development of independent assessments, notably by consumer associations, in relation to the quality and defects of service provision, and, in particular, the development at Community level of comparative trials or testing and the communication of the results.

(5) The State, in cooperation with the Commission, shall encourage the development of voluntary European standards with the aim of facilitating compatibility between services supplied by providers in different Member States, information to the recipient and the quality of service provision.

Explanatory Note

Regulation 27, which transposes Article 26 of the Directive, creates a framework for voluntary measures to improve the quality of services. Ireland is required, in cooperation with the European Commission, to encourage service providers to participate in actions to help improve the quality of services. Regulation 27(2), however, is a mandatory provision.

Regulation 27(1) specifies the methods that service providers should be encouraged to use to ensure the quality of the services they provide.

Regulation 27(2)(a) requires professional associations and similar bodies whose members use a common label or a quality mark to make information about them and the criteria for using them available (typically on a website).

Regulation 27(2)(b) and (c) make failure to comply with Regulation 27(2)(a) an offence, which may be prosecuted by a competent authority.

Regulation 27(3) encourages professional bodies, craft associations and consumer associations to co-operate with their counterparts at EU level to promote quality service provision.

Regulation 27(4) encourages the development of independent assessments by consumer associations and others about the quality of defects of service provision.

Regulation 27(5) encourages the development of voluntary European standards to facilitate compatibility between services supplied by providers in different Member States.

The Department of Enterprise, Trade and Employment would welcome the views of stakeholders on how to improve the quality of services in line with this Regulation.

Settlement of disputes

28 (1) It shall be a requirement that providers supply contact details, in particular a postal address, fax number or e-mail address and telephone number to which all recipients, including those resident in another Member State, can send a complaint or a request for information about the service provided. It shall also be a requirement for providers to supply their legal address if it is not their usual address for correspondence.

(2) It shall be a requirement that providers respond to the complaints referred to in paragraph (1) of this Regulation in the shortest possible time and to make their best efforts to find a satisfactory solution.

(3) It shall be a requirement that providers demonstrate compliance with the obligations laid down in these Regulations as to the provision of information and demonstrate that the information is accurate.

(4) Where a financial guarantee is required for compliance with a judicial decision, the State shall recognize equivalent guarantees lodged with a credit institution or insurer established in another Member State in accordance with Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions⁶, and First Council Directive 73/239/EEC of 24 July 1973 on the co-ordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of direct insurance other than life assurance⁷ and Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002 concerning life assurance⁸.

(5) It shall be a requirement that providers, who are subject to a code of conduct, or are members of a trade association or professional body that provides for recourse to a non-judicial means of dispute settlement, inform the recipient thereof and mention that fact in any document that presents their services in detail, specifying

⁶ OJ L 177, 30.6.2006

⁷ OJ L 228, 16.8.1973 as last amended by Directive 2005/68/EC of the European Parliament and of the Council (OJ L 323, 9.12.2005)

⁸ OJ L 235, 19.12.2002 as last amended by Directive 2005/68/EC

how to access detailed information on the characteristics of, and conditions for, the use of such a mechanism.

(6) Failure to comply with paragraphs 1, 2, 3 and 5 of this Regulation shall be an offence.

(7) An offence under this Regulation may be prosecuted by a competent authority.

Explanatory Note

Regulation 28, which transposes Article 27 of the Directive, concerns the handling of disputes. Service providers must supply contact details to which recipients can send a complaint or a request for information. They must also respond to complaints in the shortest possible time, try to find a satisfactory solution and inform recipients of any recourse to a non-judicial means of dispute settlement. (See also Regulations 23(4) and (7).)

Regulation 28(1) requires service providers to supply certain contact details where recipients can lodge a complaint or a request for information about the service they have received. They must also supply their legal address if it is not their usual address for correspondence.

Regulation 28(2) obliges providers to respond to complaints quickly. This Department would welcome the views of stakeholders on what the maximum period should be.

Regulation 28(3) requires providers to demonstrate that they have complied with the provisions of Regulation 28(1), (2) (3) and (5) of these Regulations.

Regulation 28(4) states that if a financial guarantee is required to enforce a judicial decision, the State is required to recognize an equivalent guarantee lodged with the financial institution of another Member State. This provision is intended to address potential problems related to compliance with judicial decisions. The Regulations specify that such credit institutions and insurers must be authorized in a Member State under the relevant legislation. In Ireland, the relevant legislation is as follows:

- the European Communities (Licensing and Supervision of Credit Institutions) Regulations, 1992 (S.I. No. 395 of 1992),
- the European Communities (Consolidated Supervision of Credit Institutions) Regulations, 1992 (S.I. No. 396 of 1992),
- the European Communities (Capital Adequacy of Credit Institutions) Regulations, 2006 (S.I. No. 661 of 2006),
- the European Community (Non-Life Insurance) Regulations (S.I. No. 115 of 1976),
- the European Community (Non-Life Insurance) Framework Regulations (S.I. No. 359 of 1994),
- the European Community (Life Assurance) Regulations 1984 (S.I. No. 57 of 1984),
- the European Community (Life Assurance) Framework Regulations 1994 (S.I. No. 360 of 1994),
- the European Community (Life Assurance) Framework (No. 2) Regulations 2004 (S.I. No. 729 of 2004).

The ECJ has ruled that a law requiring a guarantee to be established with a credit institution on its territory is in breach of Article 49 of the Treaty

Regulation 28(5) obliges providers, who are subject to a code of conduct or members of a trade association or a professional body that provides for a non-judicial means of dispute settlement, to inform the recipient accordingly and to provide that information in any document about the services they provide. The document must specify how the recipient can find out how to use the settlement procedure.

Regulation 28(6) and (7) makes failure to comply with Regulation 28(1), (2), (3) and (5) an offence, which may be prosecuted by a competent authority.

Mutual assistance - general obligations on the State

29. (1) (a) The State shall assist, and shall put in place measures for effective cooperation with, other Member States, in order to ensure the supervision of providers and the services they provide in accordance with the provisions of Regulations 29 to 36 of these Regulations.

(b) The State and a competent authority shall use the Internal Market Information System for the exchange of information by electronic means for the purposes of complying with the relevant provisions of Regulations 29 to 36.

(2) For the purposes of Regulations 29 to 36, the Minister shall designate a liaison point, the contact details of which shall be communicated to the other Member States and the Commission at the coming into force of these Regulations and updated as necessary.

(3) Information requests to other Member States and requests to other Member States to carry out any checks, inspections and investigations under Regulations 29 to 36, by a competent authority or the liaison point, shall be duly motivated, in particular by specifying the reason for the request. Likewise, a competent authority or the liaison point shall only respond to information requests from other Member States and requests from other Member States to carry out any checks, inspections and investigations under Regulations 29 to 36 when it is satisfied that the requests are duly motivated. Information provided by another Member State to a competent authority or the liaison point shall be used only in respect of the matter for which it was requested.

(4) (a) In the event of a competent authority or the liaison point receiving a request for assistance from a competent authority in another Member State about a provider established in the State, it shall be a requirement on the provider to provide the competent authority with all the information necessary to enable the activities of the provider to be supervised, in compliance with law.

(b) Failure by a provider to comply with this Regulation shall be an offence and may be prosecuted by a competent authority.

(5) In the event of difficulty in meeting a request from another Member State for information or in carrying out checks, inspections or investigations, it shall be a requirement for a competent authority or the liaison point to rapidly inform the requesting Member State and to work with the latter to find a solution as quickly as possible.

(6) It shall be a requirement that a competent authority shall supply the information requested by another Member State or the Commission by electronic means and within the shortest possible period of time.

(7) (a) It shall be a requirement that a person or body with responsibility for a register to ensure that the register in which a provider's details have been entered, and which may be consulted by a competent authority in the State, to ensure that the register may also be consulted, and on the same conditions, by the equivalent competent authority of another Member State.

(b) It shall be a requirement that a person or body with responsibility for a register coming within the aegis of paragraph (a) of this Regulation shall supply the necessary details to the liaison point, which shall communicate them to the Commission.

(8) It shall be the responsibility of a competent authority or the liaison point, as appropriate, to inform the Commission about cases where other Member States have not fulfilled their obligation of mutual assistance.

Explanatory Note

Regulation 29 transposes Article 28 of the Directive, which along with Articles 29 to 36, constitute Chapter VI of the Directive, which covers administrative co-operation between Member States. Administrative co-operation provides for the rapid exchange of information between Member States. It also gives recipients the confidence that they can turn to their own authorities for help if they have a grievance with a service provider from another Member State.

The administrative co-operation provisions of the Services Directive are legally binding on the Member States. They gave rise to a new Commission initiative – the Internal Market Information system (IMI) – which links competent authorities in national administrations that are involved in regulating free movement rules in the Single Market.

Regulation 29(1)(a) requires Ireland to put in place legally binding measures on administrative co-operation with other Member States. Regulation 29(1)(b) requires Ireland to use the IMI system as the vehicle for administrative cooperation. The requirement on Member States to use IMI is set out in a Commission Decision on administrative co-operation. The Decision has been agreed by the Member States and is expected to be formally adopted by the European Commission shortly, following the completion of certain formalities at EU level.

Regulation 29(2) requires Ireland to designate a liaison point for the purposes of the administration of Regulations 29-37 and to pass the contact details to the European Commission and the other Member States. The liaison point will be located in the Internal Market Unit of this Department. Regulation 29(2) transposes Article 28(2) of the Directive, with the exception of its final sentence. This states that the Commission will publish and regularly update the list of liaison points.

Regulation 29(3) obliges the State only to activate the mutual administrative co-operation provisions of the Regulations when there are good reasons for doing so. Any request to another Member State must specify the reason for the request. Ireland will respond to requests from other Member States on the same basis. Ireland must ensure that any information provided by other Member States is used only for the purpose for which it was requested.

Regulation 29(4)(a) requires a service provider to give a competent authority the necessary information so that its activities can be supervised. A competent authority may not engage in a level of supervision that is not provided for by law. Regulation 29(4)(b) makes it an offence for a provider to fail to comply with a request under Regulation 29(4)(a). The offence may be prosecuted by the competent authority responsible for the activities of the service provider in question.

Regulation 29(5) requires a competent authority to inform its counterpart in another Member State where it is experiencing difficulties in complying with a request for information. Competent authorities must work with their counterparts in other Member States to try to find a solution as quickly as possible. This provision takes account of situations where the information requested is not easily available. Where the relevant competent authorities cannot resolve the matter the liaison points should become involved and should provide what assistance they can.

Regulation 29(6) requires a competent authority to supply the information requested by another Member State or the European Commission by electronic means and within the shortest possible period of time. This Department would welcome the views of stakeholders, especially competent authorities, about the appropriate period that might be specified in relation to “the shortest possible period of time”.

Regulation 29(7)(a) requires Ireland to ensure that registers that contain details of service providers and that may be consulted by a competent authority here may also be consulted, under the same conditions, by the equivalent competent authority in the another Member State. Regulation 29(7)(b) obliges any person or body with responsibility for such a register to communicate the details to the liaison point, which, in turn, must forward them to the European Commission.

Regulation 29(8) obliges a competent authority or the liaison point to inform the Commission where issues have arisen with other Member States that have not been dealt with by the Member State concerned. Regulation 29(8) transposes part of Article 28(8) of the Directive. The remainder of the Article, which is not being transposed, requires the European Commission, where necessary, to take appropriate steps to ensure that the Member States concerned comply with their obligation of mutual assistance. The Commission is also required under Article 28(8) to periodically inform the Member States about the functioning of the mutual assistance provisions.

Mutual assistance - general obligations on the State in respect of providers established in the State

30. (1) It shall be a requirement that a competent authority shall provide information about a provider, when requested to do so by another Member State and, in particular, to confirm that a provider is established in the State and, to its knowledge, is not exercising his activities in an unlawful manner. In the absence of a competent authority, the liaison point shall so advise the other Member State.

(2) It shall be an obligation on a competent authority to undertake the checks, inspections and investigations requested by the equivalent competent authority in another Member State and to inform the latter of the results and, as the case may be, of the measures taken. In so doing, the relevant competent authority shall act to the extent permitted by the powers vested in them by law. It is a matter for the relevant competent authority to decide on the most appropriate measures to be taken in each individual case in order to meet a request made by another Member State.

(3) It shall be an obligation on a competent authority or the liaison point, upon gaining actual knowledge of any conduct or specific act by a provider established in the State, which provides services in another Member State that to their knowledge, could cause serious damage to the health or safety of persons or to the environment, to inform all other Member States and the Commission within the shortest possible period of time.

Explanatory Note

Regulation 30 transposes Article 29 of the Directive, which sets out the obligations that Ireland has to comply with in relation to service providers established here.

Regulation 30(1) requires competent authorities to provide information about providers established here when requested to do so by another Member State. In particular, the relevant competent authority or the liaison point must confirm that, to the best of its/their knowledge the service provider is operating within the law. The liaison point will let the other Member State know if there is no equivalent competent authority in Ireland.

Regulation 30(2) requires competent authorities to undertake an investigation, etc when requested by a competent authority in another Member State, and to let it know the outcome. It will be a matter for the relevant competent authority here to decide what action it should take in order to comply with a request but any action it takes must be in accordance with law.

Regulation 30(3) requires a competent authority or the liaison point, which finds out that a service provider established here and providing services to another Member State is doing something that could damage the health or safety of persons or the environment, to notify the Commission and the other Member States as soon as possible. The intention behind this provision, as with the provisions in Regulations 29 to 37 generally, is to build up trust between Member States and therefore between recipients and providers in the effectiveness of cross border supervision of service providers. This Department would particularly welcome the views of stakeholders, especially competent authorities, about the appropriate period that might be specified in relation to “the shortest possible period of time”.

Supervision by the State in the event of the temporary movement of a provider, established in Ireland, to another Member State

31. (1) It shall be a requirement on the State and a competent authority to ensure the necessary supervision in accordance with law of providers established in the State where the provider is providing services on a temporary basis to another Member State.

(2) The State and a competent authority shall not refrain from taking supervisory or enforcement measures on the grounds that the service has been provided or caused damage in another Member State.

(3) The obligation laid down in paragraph 1 of this Regulation shall not entail a duty on the part of the State or a competent authority to carry out factual checks and controls in the territory of the Member State where the service is provided. A competent authority shall request that the checks and controls be carried out by the authorities of the Member State where the provider is temporarily operating, in accordance with Article 31 of the Directive.

Explanatory Note

Regulation 31 transposes Article 30 of the Directive, which imposes obligations on Ireland in relation to service providers who are established here but providing services on a temporary basis in another Member State.

Regulation 31(1) requires Ireland to work with other Member States to ensure that service providers who are established here but are operating in another Member State are properly supervised.

Regulation 31(2) means that Ireland cannot refuse to take action against a service provider established here solely because the service was provided or caused damage in another Member State.

Regulation 31(3) makes clear that Irish competent authorities will not have to travel to another Member State to meet the requirements of Regulation 31(1). Instead, the authorities here must request the authorities in another Member State to carry out the necessary supervision of the service provider in question.

Supervision by the State of a service provider from another Member State who provides a service here but who is not established here

32. (1) It shall be the responsibility of a competent authority to supervise the activity in the State of a provider, in respect of requirements imposed pursuant to Regulations 17 and 18 of these Regulations. A competent authority shall:

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

(2) With respect to requirements other than those referred to in paragraph 1 of this Regulation, where a provider moves temporarily to the State to provide a service but is not established here, a competent authority shall participate in the supervision of the provider in accordance with paragraphs 3 and 4 of this Regulation.

(3) At the request of the Member State of establishment, a competent authority shall carry out any checks, inspections and investigations necessary for ensuring the effective supervision of the provider by the Member State of establishment. In so doing, a competent authority shall act to the extent permitted by law. It shall be the responsibility of a competent authority to decide on the most appropriate measures to be taken in each individual case in order to meet the request by the Member State of establishment.

(4) On its own initiative, a competent authority may conduct checks, inspections and investigations on the spot, provided that those checks, inspections or investigations are not discriminatory, are not motivated by the fact that the provider is established in another Member State and are proportionate.

Explanatory Note

Regulation 32 transposes Article 31 of the Directive, which covers situations where a competent authority in Ireland supervises a provider who is not established here but is providing services here. Regulation 32 applies in situations where Ireland exercises its right to impose requirements on the provider under Regulations 17 and 18. Regulation 32 also requires Ireland to participate in the supervision of the provider in accordance with certain procedures. This Regulation, like the others in the administrative co-operation part of the Regulations, ensures that the authorities in the Member States co-operate to supervise service providers availing of the Single Market.

Regulation 32(1) covers situations where Ireland considers it necessary to impose obligations on a provider, who is not established here, under Regulations 17 and 18. Under this provision, the relevant competent authority is required to supervise the service provider by taking the necessary steps to ensure that he complies with Regulations 17 and 18 and to carry out the checks that are a necessary part of the supervision process.

Regulation 32(2) deals with situations other than where Ireland imposes requirements on the provider under Regulations 17 and 18. This provision requires and authorizes the relevant competent authority here to share the supervision duties with the competent authority in the Member State where the provider is established.

Regulation 32(3) spells out in more detail what is provided for in Regulation 32(2) in circumstances where a competent authority here is asked for assistance by the competent authority in the Member State where the provider is established. This provision also makes it the responsibility of the relevant competent authority here to decide on the appropriate measures it should take (which of course must comply with the law here) to meet a request from a competent authority in another Member State.

Regulation 32(4) authorizes the relevant competent authority here to conduct certain checks on its own initiative provided the spot checks are not discriminatory, are not motivated by the fact that the provider is established in another Member State and are proportionate.

Alert mechanism

33. Where a competent authority or the liaison point becomes aware of serious specific acts or circumstances relating to a service activity that could cause serious damage to the health or safety of persons or to the environment in the State or in the territory of another Member State, the competent authority or the liaison point shall inform the Member State of establishment, the other Member States concerned and the Commission within the shortest possible period of time.

Explanatory Note

Regulation 33, which transposes Article 32 of the Directive requires the relevant competent authority or the liaison point to notify the European Commission and the other Member States where they become aware of information relating to a service activity that could affect the health or safety of persons or the environment in this country or in another Member State. As with the other provisions on administrative co-operation, Regulation 33 is designed to enhance trust and confidence in the Single Market and to provide a clear mechanism for doing so. By alerting the Commission and the other Member States about a particular concern, the necessary action can be taken quickly.

Article 32(2) of the Directive, which is not being transposed, requires the European Commission to promote and take part in a network of Member States' authorities in order to implement Article 32(1) of the Directive [Regulation 33]. Article 32(3) of the Directive, which is likewise not being transposed, requires the Commission to adopt and regularly update rules concerning the management of the network referred to in Article 32(2).

Information on the good repute of providers

34 (1) (a) It shall be an obligation on a competent authority, at the request of a competent authority in another Member State, to supply information, in conformity with law, on disciplinary or administrative actions or criminal sanctions and decisions concerning insolvency or bankruptcy involving fraud taken by a competent authority in respect of a provider that are directly relevant to the provider's competence or professional reliability. A competent authority shall also inform the provider that it has supplied the information to the relevant competent authority in another Member State. In the absence of a competent authority, the liaison point shall so advise the other Member State.

(b) A competent authority shall only respond to a request made under paragraph 1(a) of this Regulation where it is satisfied that the request is duly substantiated, in particular as regards the reasons for the request.

(2) (a) It shall be an obligation on a competent authority only to communicate the sanctions and actions referred to in paragraph 1 of this Regulation if a final decision has been taken. With regard to other enforceable decisions referred to in paragraph 1 of this Regulation, a competent authority or a liaison point shall specify whether a particular decision is final or whether an appeal has been lodged in respect of it, in which case a competent authority should provide an indication of the date when the decision on appeal is expected.

(b) It shall be an obligation on a competent authority to specify the provisions of national law pursuant to which the provider was found guilty or penalized.

(3) It shall be an obligation on a competent authority, when complying with paragraphs 1 and 2 of this Regulation, to comply with the Data Protection Act 1988 (No. 25 of 1988) and the Data Protection (Amendment) Act 2003 (No. 6 of 2003) in relation to persons found guilty or penalized, including by professional bodies. Any information in question, which is public, shall be made accessible to recipients, including by electronic means, by a competent authority or a liaison point.

Explanatory Note

Regulation 34, which transposes Article 33 of the Directive, obliges a competent authority to provide information about service providers who have been the subject of sanctions, including criminal sanctions, to a competent authority in another Member State, on request. The purpose of this provision is to improve trust in the Single Market to ensure that service providers and recipients will be willing to avail of it.

Regulation 34(1)(a) requires a competent authority to give certain information in relation to a service provider, to a competent authority in another Member State on request. The information can include details about disciplinary actions taken, including criminal sanctions, and decisions concerning insolvency or bankruptcy involving fraud, which are relevant to the provider's competence/professional reliability. The service provider has to be informed that such information has been provided to a competent authority in the other Member State. The issues surrounding this provision are being examined with the Attorney General's Office and the Courts Service. In the absence of a competent authority, the liaison point will let the other Member State know.

Regulation 34(1)(b) imposes an obligation on the competent authority only to respond to a request for information where it is satisfied that the request is properly made.

Under Regulation 34(2)(a), information about sanctions and actions can only be provided to a competent authority in another Member State when a final decision has been taken. In relation to other enforceable decisions the information provided to a competent authority in another Member State must state whether a decision is final or whether an appeal has been lodged. The Department of Enterprise, Trade and Employment is in discussions with the Attorney General's Office about the precise implications of this provision and how it should be transposed.

Regulation 34(2)(b) requires the relevant competent authority to specify the law under which a service provider was found guilty or penalized.

Regulation 34(3) requires a competent authority or a liaison point to comply with data protection law when providing information to a competent authority in another Member State under this Regulation.

Accompanying measures

35 The State shall, with the assistance of the Commission, take accompanying measures to facilitate the exchange of officials in charge of the implementation of mutual assistance under Regulations 29 to 36 of these Regulations and the training of such officials, including language and computer training.

Explanatory Note

Regulation 35 transposes Article 34(2) of the Directive, which is about facilitating an exchange of officials between Member States to improve the operation of the administrative co-operation provisions of the Regulations. Article 34(1) of the Directive is not being transposed. This requires the European Commission, along with the Member States, to establish an electronic system for the exchange of information between Member States. The Department of Enterprise, Trade and Employment will participate in the system. Article 34(3) of the Directive, is also not being transposed. This obliges the Commission to assess the need to establish a multi-annual programme in order to organize relevant exchanges of officials and training.

Mutual assistance in the event of case-by-case derogations

36 (1) Where the State intends to take a measure pursuant to Regulation 19 of these Regulations, the procedure laid down in paragraphs 2 to 5 of this Regulation shall apply without prejudice to court proceedings, including preliminary proceedings and acts carried out in the framework of a criminal investigation.

(2) Where the State or a competent authority intends to take a measure pursuant to Regulation 19 of these Regulations, a competent authority or the liaison point shall ask the Member State of establishment, through the IMI system, to take measures with regard to the provider, supplying all relevant information on the service in question and the circumstances of the case.

(3) Following receipt of a response from the Member State of establishment to a request made under paragraph (2) of this Regulation, a competent authority, the liaison point or other appropriate authority shall notify the Commission and the Member State of establishment of the State's intention to take measures, stating the following:

- (a) the reasons why it believes the measures taken or envisaged by the Member State of establishment are inadequate;
- (b) the reasons why it believes the measures it intends to take fulfill the conditions laid down in Regulation 19.

(4) No measures shall be taken by the State until fifteen working days have elapsed after the date of notification provided for in paragraph (3) of this Regulation.

(5) In a case of urgency, the State may derogate from paragraphs 3 and 4 of this Regulation. In such cases, the measures shall be notified within two working

days to the Commission and the Member State of establishment, stating the reasons the State believes the matter to be urgent.

(6) On receipt of a request from another Member State in respect of a provider established in the State, a competent authority shall ascertain, within the shortest possible period of time, whether the provider is operating lawfully and verify the facts underlying the request. The competent authority shall inform the requesting Member State within the shortest possible period of time of the measures taken or envisaged or, as the case may be, the reasons why it has not taken any measures. In the absence of a competent authority, the liaison point shall so advise the other Member State.

Explanatory Note

Regulation 36 transposes Article 35 of the Directive. It sets down the procedures to be taken by Ireland in the event of case-by-case derogations by Ireland or other Member States.

Regulation 36(1) means that certain procedures must be used where Regulation 36 is being activated by Ireland. It does not interfere with action being taken elsewhere, including legal action or a criminal investigation.

Regulation 36(2) requires the Irish authorities to ask the authorities in the Member State of establishment to take action.

Regulation 36(3) requires the relevant authorities here to notify the European Commission and the Member State of establishment of its intention to act and the reasons it believes that the measures to be taken are in accordance with Regulation 19.

Regulation 36(4) puts a stay on the right of the authorities here to take any measure for 15 days, while the matter is being considered by the European Commission.

Regulation 36(5) allows the relevant authorities here to take action, notwithstanding the procedure set out in paragraphs (2), (3) and (4) of this Regulation, where the situation is urgent. The relevant authorities must inform the European Commission and the relevant Member State of the action it has taken and the reason behind it.

Regulation 36(6) covers situations where the provider is established in this country and a competent authority from another Member State is intending to take action. In that situation the relevant competent authority here must establish as quickly as possible whether the provider is operating within the law. The relevant authority must also notify the competent authority in the other Member State of any action it has taken with regard to the provider or if it has not taken action why it has not done so. The liaison point will let the other Member State know if there is no relevant competent authority here.

Article 35(5) of the Directive is not being transposed. This requires the European Commission to examine, as soon as possible, the compatibility with Community law of the measures notified under Regulation 36(3). Article 35(5) also states that where the Commission concludes that the measure is incompatible with Community law, it shall ask the Member State concerned to refrain from taking the proposed measure or to put an end to the measure in question as a matter of urgency.

Explanatory note on Article 36 - Implementing measures

Article 36 of the Directive is not being transposed. This obliges the European Commission to adopt measures designed to amend non-essential elements of Chapter VI of the Directive by specifying the time-limits provided for in Articles 28 [Regulation 29] and 35 [Regulation 36]. The Commission is also required to make practical arrangements for the exchange of information by electronic means between Member States, and in particular the interoperability provisions for information systems.

Codes of conduct at Community level

37 (1) The State shall use its best endeavours, in cooperation with the Commission, to encourage the drawing up at Community level, particularly by professional bodies, organizations and associations, of codes of conduct aimed at facilitating the provision of services or the establishment of a provider in another Member State, in conformity with Community law.

(2) The State and a competent authority shall ensure that the codes of conduct referred to in paragraph 1 of this Regulation are accessible at a distance, by electronic means, by persons or bodies in the State that are a party to them.

Explanatory Note

Regulation 37 transposes Article 37 of the Directive. Under this provision, Ireland is required to encourage professional bodies and other similar bodies to draw up codes of conduct at EU level and to ensure that any codes drawn up are available on the bodies' website.

Explanatory note on Article 38 – Additional harmonization

Article 38 of the Directive, which is not being transposed, requires the European Commission to assess by 28 December 2010 the possibility of presenting proposals to harmonize the following areas at EU level:

- (a) access to the activity of judicial recovery of debts; and
- (b) private security services and transport of cash and valuables.

Explanatory note on Article 39 – Mutual evaluation

Article 39 of the Directive, which is not being transposed, requires Ireland (and other Member States) to submit reports to the European Commission by 28 December 2009 under Article 9(2) [Regulation 10(2)], Article 15(5) [Regulation 16(5)], Article 25(3) [Regulation 26(3)] and Article 39(5) (relating to Article 16 [Regulation 17]) of the Directive. The information to be provided to the Commission under Articles 9, 15 and 25 is described above.

In relation to Article 16, Ireland is required, under Article 39, to send a report to the European Commission by 28 December 2009 about national measures, if any, that we have already adopted that could clash with Regulation 17, and which we propose to retain stating why we believe the measures are compatible with that article. We will also be required to inform the Commission about future changes to our rules in relation to the temporary provision of services and the reasons for them. The Commission will be required to forward details of the changes to our rules to the other Member States. Likewise, the details of the changes made by other Member States to their rules must be communicated to Ireland. The Commission will prepare an annual analysis of the new rules made by the Member States.

Following consideration of the reports, the European Commission will be required to submit a report to the European Parliament and to the Competitiveness Council by the end of 2010 accompanied by proposals for additional measures where the Commission considers such measures to be appropriate.

Explanatory note on Article 40 – Committee procedure

Article 40 of the Directive, which is not being transposed, provides for a committee to assist the European Commission in the administration of the Directive.

Explanatory note on Article 41 – Review clause

Article 41 of the Directive, which is not being transposed, provides for a review of the Directive by the European Commission, by 28 December 2011, and every three years after that.

Explanatory note on Article 42 – Amendment of Directive 98/27/EC

Article 42 of the Directive has the effect of adding the Services Directive to the list of Directives that come within the scope of Directive 98/27/EC on injunctions for the protection of consumers' interests. Directive 98/27/EC establishes a common procedure to allow certain bodies in one country (in Ireland it is the National Consumer Agency) to seek an injunction in another. Its purpose is to control traders that undertake activities in one Member State that harm the collective interests of consumers in another. Under the Injunctions Directive, collective actions to protect consumers can be brought in the Member State where the offending business is located and where a solution is most likely to be effective. The European Communities (Protection of Consumers' Collective Interests) Regulations 2001 (S.I. No. 449 of 2001) transposed Directive 98/27/EC in Ireland. The Department of Enterprise, Trade and Employment is currently considering whether to give effect to Article 42 of the Services Directive in these Regulations or by an amendment to S.I. No. 449 of 2001.

Protection of personal data

38. The application of these Regulations shall respect the rules on the protection of personal data as provided for in the Data Protection Act 1988 (No. 25 of 1988) and the Data Protection (Amendment) Act 2003 (No. 6 of 2003).

Explanatory Note

Regulation 38 transposes Article 43 of the Directive and stipulates that the Regulations giving effect to the Directive must comply with the Data Protection Act 1988 (No. 25 of 1988) and Data Protection (Amendment) Act 2003 (No. 6 of 2003).

Explanatory Note on Articles 44-46

Article 44 (transposition), Article 45 (entry into force) and Article 46 (Directive addressed to the Member States), which are not being transposed, are standard provisions in Directives and do not require to be transposed (the transposing Regulations are the required response to Article 44).

Liability

39. Nothing in these Regulations creates any liability for, or imposes any liability on, the Minister, the Department of Enterprise, Trade and Employment or its officials for anything done or omitted in the performance or purported performance or exercise of any of their functions or powers under the Regulations.

Explanatory Note

The purpose of this Regulation is to exempt the Minister, his Department and officials from any liability arising out of the role and functions of the NPSC or points of single contact, if created, or arising out of the administration of Regulations 29 to 36 of the Regulations or any other provision.

Authorized officers

40. (1) In this Regulation “relevant provisions” means Regulations 40, 41, 42, 43 and 44.

(2) A competent authority, in exercise of their respective roles, may appoint one or more persons to be an authorised officer or authorised officers for the purpose of this Regulation.

(3) For the purpose of ensuring compliance with the relevant provisions and, in particular, for the purpose of investigating any contravention of a relevant provision he or she suspects has occurred or is occurring, an authorised officer may exercise the powers specified in paragraph (4) if he or she considers it to be reasonably necessary to do so for such a purpose.

(4) The powers mentioned in paragraph (3) are -

(a) at all reasonable times, to enter, if necessary by force, and search premises in which the authorised officer has reasonable grounds for believing that any records, materials or other documents are being kept, being records, materials or documents which relate to an activity the subject of a relevant provision,

(b) to require -

(i) the owner of such premises, any person employed at the premises or any person in charge thereof, or

(ii) whether such premises have been entered or not, the person who carries on the activity the subject of a relevant provision,

to give the authorised officer such information in the person's power or control as the officer may reasonably require and to produce to him or her any records (in whatever form kept) or books or documents (including labels and fiches) as the officer may reasonably require,

(c) at such premises or, in the case of a requirement under subparagraph (b)(ii), within a reasonable time after the requirement is complied with, to inspect and take copies of, or extracts from any books, records or other documents (including, in the case of information in non-legible form, a copy of or extract from such information in permanent legible form), found by or produced to the authorised officer,

(d) to require any person, by or on whose behalf data equipment is or has been used on such premises in relation to the carrying on of the activity the subject of a relevant provision or any person having charge of, or otherwise concerned with the operation of, the data equipment or any associated apparatus or material, to afford the authorised officer all reasonable assistance in relation to its use thereto.

(5) An authorised officer shall be furnished with a warrant of his or her appointment as an authorised officer and, when exercising any power conferred on an authorised officer by these Regulations shall, if requested by any person affected, produce the warrant or a copy of it to that person.

(6) A person who -

(a) obstructs or interferes with an authorised officer in the exercise of his or her powers under this Regulation or,

(b) without reasonable excuse, does not comply with a requirement of an authorised officer under this Regulation or,

- (c) in purported compliance with such a requirement, gives information to an authorised officer that the person knows to be false or misleading in a material respect,

shall be guilty of an offence.

(7) An authorised officer shall not, other than with the consent of the occupier, enter, in exercise of his or her powers under this Regulation, a private dwelling unless such entry is authorised by a warrant granted by the District Court under Regulation 40.

(8) An authorised officer, where he or she considers it necessary, may require a member of the Garda Síochána to assist him or her when exercising any powers conferred on an authorised officer by this Regulation which involve the breaking open of any premises or any other action in which the use of force may be necessary and is lawful.

Issue of warrants by District Court.

41. If a judge of the District Court is satisfied on the sworn information of an authorised officer that there are reasonable grounds for believing that records, materials or other documents are being kept on any premises, being records, materials or other documents which relate to an activity the subject of a relevant provision (within the meaning of Regulation 40) and which an authorised officer reasonably considers it necessary to inspect for the purpose mentioned in Regulation 40(3), the judge may issue a warrant authorising an authorised officer, accompanied, if appropriate, by other authorised officers or by a member or members of the Garda Síochána, at any time or times within 1 month from the date of issue of the warrant, on production of the warrant if so requested, to enter that premises, if need be by reasonable force, and exercise all or any of the powers conferred on an authorised officer by Regulation 40.

Interference with books, records or documents.

42. (1) If any person interferes with any equipment, books, records or other documents, whether electronic or paper based, so as to affect, and with the intention of affecting, the outcome of any action taken under Regulations 40 or 41 or a prosecution for an offence under these Regulations, he shall be guilty of an offence.

(2) For the purposes of paragraph (1), a person shall be presumed to have intended the natural and probable consequences of his or her conduct; but this presumption may be rebutted.

Offences by bodies corporate.

43. Where an offence under these Regulations has been committed by a body corporate and is proved to have been committed with the consent or connivance of or to be attributable to any neglect on the part of a person being a director, manager, secretary or other officer of the body corporate, or a person who was purporting to act in any such capacity, that person as well as the body corporate shall be guilty of an offence and be liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

Penalties.

44. A person guilty of an offence under these Regulations shall be liable on summary conviction to a fine not exceeding €3,000 or imprisonment for a term not exceeding 3 months or both.

Explanatory Notes for Regulations 40, 41, 42, 43 and 44

Regulations 40, 41, 42, 43 and 44 are standard provisions in Regulations of this kind.

Internal Market Unit
Department of Enterprise, Trade and Employment
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