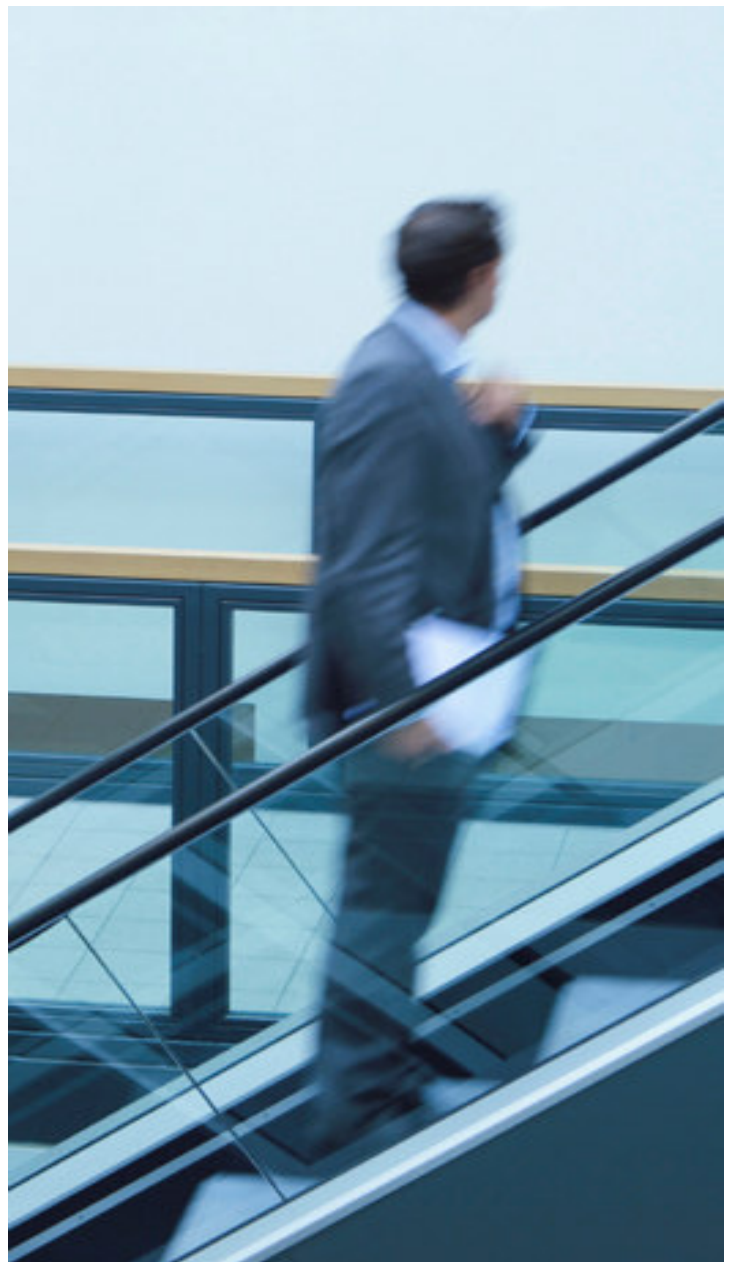


## Briefing Note

Corporate & Commercial

Provision of Services  
Regulations 2009



The Provision of Services Regulations 2009 (Regulations) came into force on 28 December 2009 and created new obligations for service providers. They apply to almost every business that provides services in the UK.

The Regulations stem from the EU Services Directive (Directive), which require States to:

- Make it easier for service providers based in an European Economic Area (EEA) state to provide services to another EEA state.
- Establish a point of single contact in each EEA state enabling service providers to access relevant information and apply for permission to provide services in that state.
- Set up a consumer website enabling consumers to find out what their rights are if they purchase services from another EEA state.
- Require service providers to make certain minimum information available to customers (whether that customer is a business or a consumer).
- Require service providers to handle customer complaints promptly.
- Prohibit service providers from discriminating in the provision of services to customers on the basis of their place of residence or nationality, unless such different treatment can be objectively justified.

## Implications for businesses

Whilst most of the requirements of the Directive fall on the member states themselves, there are a number of obligations which apply directly to service providers in relation to making certain information available to customers, complaints handling and abiding by the principles of non-discrimination.

Although the POS Regulations will require a substantial amount of information to be made available to customers, businesses have a significant amount of discretion in deciding how to make the information available to customers.

## Scope of the POS Regulations

### Meaning of service provider

The Regulations apply to all service providers offering or providing relevant business to business and/or business to consumer services in the UK.

If you provide services in the UK, then irrespective of what country you are based or established, you must comply with the obligations set out in the Regulations. For example, even if you are based in Australia or the United States, if you provide or offer to provide service in the UK, you must comply with these obligations.

### Meaning of customer

A customer is any individual who is a national of an EEA state or otherwise enjoys EU rights (broadly, a resident in an EEA state), or an organisation established in an EEA state, and who uses or wishes to use a relevant service.

## Meaning of Services

Services mean any economic activity which is normally provided for remuneration and which is not an excluded service. Remuneration is to be interpreted broadly so as to include money or payment in kind, but not wages or salaries.

The POS Regulations apply to services that are business to businesses, services that are business to consumer, and services that are both. A service may be commercial, industrial, a professional service or a craft.

## Who is excluded from the Regulations?

The following categories of services are excluded from the scope of the Regulations:

- Financial services
- Electronic and communications services and networks
- Transport services
- Services of temporary work agencies
- Healthcare services
- Audiovisual services
- Gambling service
- Activities connected with the exercise of official authority
- Social services
- Private security services
- Services provided by notaries and bailiffs
- Services relating to taxation
- Non-economic services of general interest

## Obligations

### Information Provision Requirements

Every qualifying service provider must make the following information available to customers:

- Contact details that to enable customer to complain or make a request for information about the service. This will include: its name, geographic address, legal status and contact details.
- Contact details for rapid and direct communication. If you can be contacted by electronic means, then you must provide relevant details such as an e-mail address or number for text messages.
- If you are registered in a trade or other similar public register, the name of the register and your registration number (or equivalent means of identification on such register).
- Details of the trade registration it holds or is required to hold.
- Its VAT identification number.
- Details of any regulating body, if it is a regulated profession.
- The terms and conditions applicable to the provision of its services, including those relating to jurisdiction, after sales guarantees, prices that are pre-determined by it, main feature of the services and professional guarantees or insurance
- Details of any applicable non-judicial dispute resolution procedure which it is subject to as a member of a trade or professional body
- Details of professional liability insurance or guarantee, in particular contact details for the insurer/guarantor and territorial coverage of the insurer/guarantor.

The information must be made "available" to a customer in one of the four available methods:

- You provide the customers with such information on your own initiative.
- It is easily available to the customer at the place where you provide the service.
- It is easily available to the customer electronically.
- It appears in any information document you supply to the customer in which you give a detailed description of the service such as terms and conditions documents.

In addition, the following information must be provided to customers if requested:

- Information on prices that are not pre-determined, or the method used to determine the price or a sufficiently detailed estimate.
- If you are carrying out a regulated profession, any professional rules applicable to the services and where a customer should access them.
- Details of any code of conduct to which the service provider is subject, along with the website address where they can be viewed.

The Regulations also require you to provide certain information to a competent authority in relation to any application for authorisation and after the authorisation has been granted.

#### Document with detailed description of services

If you have any information document with a detailed description of your services which you supply to customers, you must provide certain information in it.

No guidance is given on what constitutes an information document, and it is not clear how detailed the description must be to trigger these requirements.

The information you must include on such an information document are:

- Information about other activities you do which are directly linked to the service in question, and on the measures taken to avoid conflicts of interest.
- In addition, if you are subject to a code of conduct, or are a member of a trade association or professional body, which provides for recourse to a non-judicial dispute resolution procedure. You must specify how to access detailed information about that procedure.
- An information document with a detailed description of the services also constitutes one of the four methods that you can choose to make relevant information available (see How to make information available). If you choose to make information available using another of the alternative three methods, but you also have an information document with a detailed description of your services which you provide to your customers, the two requirements above must be included if relevant.

#### When service providers must supply the information

- The information to be made available, or provided if asked, should be considered as pre-contractual, or pre-service commencement, information, to allow the customer time to consider it.
- You must make the information available, or provide it if asked, in good time before the conclusion of the contract.
- If there is no written contract, you must make the information available, or supply it if asked, in good time before the service is provided, unless the information is requested after the provision of the services.

## Complaints handling obligation

Complaints from customers must be handled promptly.

You must respond to complaints from customers as "quickly as possible". Because the nature of complaints varies, there is no definition or time limit set out in the POS Regulations, but according to the guidance, factors to consider include:

- The means and ease by which the customer can be contacted.
- The nature and complexity of a specific case.
- The availability of the customer.
- Any language issues.
- Whether information is needed from a third party.

In addition, you must use your "best efforts" to find a satisfactory solution to these complaints. What constitutes "best efforts" is not defined, although the guidance suggests that if you have already responded and done your best to resolve a complaint made repeatedly, you do not need to take further action.

## Enforcement

Similar to other consumer legislation, the OFT and Local Authority Trading Standards will take action against breaches which harm the collective interests of consumers. For example, by applying for an enforcement order to stop the breach, failure to comply with which could lead to fines and imprisonment.

However, it is not clear what sanctions would be imposed (or by whom) for business to business transactions. As such, in business to business transactions, a customer which is a business must seek redress for a breach of the POS Regulations on its own initiative.

## Practical Implications

- If your services are not excluded, you will have to comply with the obligations in relation to providing specified information, handling complaints and abiding by the principles of non-discrimination.
- The Regulations apply to relevant service providers regardless of their size and constitution.
- If you already offer your services on-line, it might be that the Regulations won't require much in the way of modification to your existing business practices. However, if you don't already offer your services on-line, then some adjustments and new practices may be necessary.
- The requirements in respect of complaints handling appear to be based on good business practice, so the review of your business practices may be more for comfort than modification.
- Neither the published guidance nor the Regulations themselves make it entirely clear what impact service providers can expect in relation to non-compliance, or exactly what format the information they are required to provide should take.
- Ensure that your staff are aware of the Regulations and, where necessary, receive training so that inadvertent breaches do not occur.

**This note does not constitute legal advice but is intended as general guidance only**

If you would like further information on this or any other related matter please e-mail us at [corporate@druces.com](mailto:corporate@druces.com) or telephone us on 020 7638 9271 and ask for Toby Stroh, Richard Monkcom or Christopher Axford