

**BERR**

Department for Business  
Enterprise & Regulatory Reform

**IMPLEMENTING THE SERVICES  
DIRECTIVE**

Government response to  
Consultation on  
implementing the EU  
Services Directive in the UK

JUNE 2008

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## **INTRODUCTION**

1. This document analyses responses to the public consultation on the Government's proposals to implement the EU Services Directive in the UK and sets out the Government's position as a result. The consultation opened on 5 November 2007 and ran for 14 weeks, closing on 11 February 2008. The aim of the consultation was to gather views amongst all interested parties on how the Directive might best be implemented in the UK.
2. The Services Directive was adopted in December 2006 and the Government is required to implement it by 27 December 2009. The Directive aims to develop the single market in the services sector by breaking down barriers to cross-border trade within the EU, making it easier for service providers to set up business or offer their services in other EU Member States. In particular, it requires Member States to:
  - Set up Points of Single Contact through which providers will be able to find the information and complete the formalities necessary to doing business in their State
  - Facilitate greater co-operation between regulatory and authorisation bodies across the EU thereby reducing burdens on business
  - Engender consumer confidence in cross-border service provision through access to information and the high quality of services
  - Abolish restrictive legislation and practices that hinder service providers from setting up in or providing services across national borders
3. More information is available on the Services Directive pages of the BERR website<sup>1</sup>.
4. This response document is structured to the same chapter format as the consultation document. Within each chapter, each question from the consultation is repeated and followed by a summary of responses received to that question and the Government's response in that area.
5. While the consultation has provided much useful input to help shape the direction of implementation, the task remains a complex and lengthy process and the Government will continue to work with stakeholders in implementing the Directive.

### **Indication of who responded**

6. The consultation document was sent to around 300 stakeholders and was available through the BERR Departmental website. A number of representative organisations included a link to the consultation document in their members' newsletters. Approximately 70 stakeholders attended a seminar at BERR offices to discuss the proposals immediately after the consultation was launched, and BERR officials have met many stakeholders separately.

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<sup>1</sup> <http://www.berr.gov.uk/europeandtrade/europe/services-directive/page9583.html>

7. A total of 56 responses were received. The table below shows a breakdown of which type of organisation responded.

0	Micro business (up to 9 staff)
0	Small business (10-49 staff)
0	Medium business (50-250 staff)
1	Large business (over 250 staff)
15	Business representative organisation/trade body
6	TU or staff association
1	Charity or social enterprise
8	Local Government
9	Central Government
1	Individual
15	Other

8. The 15 respondents listed as “other” include various professional bodies, regulatory authorities and accreditation bodies. A list of respondents who did not request their responses to be confidential can be found in Annex A.

### **Devolution**

9. Implementation of this Directive is primarily the responsibility of BERR and our consultation sought views on how the Directive can best be implemented throughout the UK. However, as the consultation document noted, responsibility for certain legislation within the scope of the Directive is devolved and the Government has therefore continued to liaise with the Scottish Executive, Welsh Assembly Government and Northern Ireland Executive in developing policy for implementation. The position as to which legislation operates across the whole of the UK, and which is set out at a devolved level, will vary on a case by case basis - thus, even where a particular matter is devolved in e.g. Scotland, it may not be so in Wales, or in Northern Ireland.
10. Particular issues that were consulted on were whether there should be separate Points of Single Contact to cover Scotland, Wales and Northern Ireland and separate national liaison points to cover Scotland, Wales and Northern Ireland in relation to the administrative cooperation element of the Directive. Respondents' views on these issues, and the Government's response, are set out in the appropriate sections of Chapters A and B. However we are working with the devolved administrations across the whole scope of implementation and will continue to do so in the future.

## **Key Issues**

11. On the whole, respondents appeared broadly content with the main thrust of the Government's proposals as set out in the consultation although clearly many viewpoints were expressed for each question. The key points to come out of the consultation relating to each of the four elements of implementation are set out at the beginning of each chapter, as a summary of responses to the Key Questions in the consultation document.

## **CHAPTER A: POINTS OF SINGLE CONTACT**

12. The Key Question for this chapter was:

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

13. Overall, correspondence was broadly supportive of the Government approach to the PSC as outlined in the consultation document. There was wide agreement that the UK Point of Single Contact should be:

- Free to access for those across the UK, EU and beyond
- A single PSC, covering all parts of the UK and service sectors within scope of the Directive
- Kept up to date in an effective manner and without duplicating the roles of competent authorities
- Able to signpost useful information on matters such as tax and employment law
- Inclusive of effective support services, with the majority of correspondents considering that if this meant more than basic information provision then a reasonable level of charge for the service would be acceptable.

14. It is noted in particular that the Devolved Administrations have confirmed that they are content with the proposal for a single PSC covering the whole of the UK, although details and financial implications will need to be worked through.

15. Two areas where we received many comments were on the hosting of the portal and the issue of liability:

- The majority of respondents believed some form of integration with the Business Link website was sensible and desirable, though there were one or two significant dissensions – see Q5.
- On the issue of liability it was also clear that whilst most accepted the value of consistency across Government websites, there was a desire for the Government to look seriously at ways of meeting business concerns should they find themselves in contravention of UK rules despite following the guidance and advice on our Point Of Single Contact.

16. As regards the latter point it is noted that the contact points established as part of the implementation of the Directive on Mutual Recognition of Professional Qualifications typically include disclaimers, whether they are run by Government or by the private sector. The nature and status of Government guidance and advice is to be considered further as part of the "Enterprise Review" being led by the Better Regulation Executive – see Q19.

## Responses to Individual Questions

### **Users**

#### **Q1 What facilities will the following users need in order to interact effectively with the PSC:**

- a) Service Providers?**
- b) Service Recipients?**
- c) Competent Authorities?**

17. Most responses agreed with the suggestion that service providers, as the intended main users of the PSC would require a PSC which was known to them and which they could trust. Providers should be able to access the PSC through links from relevant websites and using logical key words in search engines. It should be clear to users where rules apply to services in general and where specific provisions apply by sector e.g. in the regulated professions under the Mutual Recognition of Professional Qualifications Directive.
18. In terms of the website architecture of the PSC, respondents felt it would need to include a clear home page and decision tree in order to signpost the user to the correct information. To make the PSC user friendly there must be straight forward navigation through it. There should be more than one path including the basic search function, since different people and cultures may approach it in different ways. Ideally service providers should be able to monitor their applications online and find out who to contact for further help and how to do so.
19. In terms of information it was pointed out that users would need clear guidance on the roles of various competent authorities and also information on the different processes which apply to UK service providers setting up in the UK when compared to those processes in other EU states. An ideal PSC would also include estimates of time and cost of setting up in different service sectors in the UK.
20. Service recipients (i.e. those purchasing services including other businesses) would need to use the PSC to reach information on redress and other consumer issues. As the PSC was unlikely to host this information itself, it would need to steer enquirers quickly and efficiently to appropriate sites, with clear links to sites covering issues like “redress mechanisms” in a variety of service sectors.
21. Competent authorities responded that an ideal PSC for them would be one that was flexible and that did not duplicate their own websites. Some were in favour of putting safeguards in place to ensure that they were not overwhelmed by spurious applications through the PSC. Competent authorities also thought it would be beneficial for the PSC to have mechanisms to help them avoid the automatic granting of authorisations because a service provider approached the PSC and the time period expired without a formal response. Service standards for different sectors would need to be clear from the information on the PSC. Requests to the PSC must be passed swiftly to the relevant competent authority. Ideally,

data should be received in standard protocols and templates so that it can be integrated readily into competent authorities' back office systems. Competent authorities were also keen to receive early notification of any necessary changes in order to factor work on the set up of the PSC (e.g. electronic enablement of application procedures) into their existing business planning cycles.

### Government Response

22. *We are currently devising options to incorporate the needs of all three user types into the final design and costing of the PSC. For service providers, Group (a), BERR has already carried out some research (see Panlogic Report) which will inform the implementation. We have also undertaken some further work in this area targeting foreign businesses that have recently set up in the UK or considered doing so. This research will be published in due course.*
23. *Service Recipients, Group (b), may be consumers or they may be other businesses purchasing services. They will need to be able to access material through the PSC explaining the obligations applying to the service provider they select, the remedies available in the event of a dispute and material identifying bodies offering practical assistance. Information aimed at recipients who are private individuals is likely to be held on relevant consumer-focussed portals.*
24. *The Government cannot exempt competent authorities, Group (c) from the automatic authorisation part of the directive (Article 13.4), unless the authorisation scheme is consistent with the exemption criteria. The time limit for processing authorisation applications in relation to each service sector or service will need to be fixed and made public. However, the clock only starts ticking once all the necessary information has been received by the relevant competent authority. The Government will look to provide appropriate mechanisms to alert competent authorities to upcoming deadlines. The Directive allows for a one-off extension of the time limit in certain cases which should provide CAs with the necessary flexibility.*
25. *The PSC will look to deliver data in common standard formats to competent authorities but it will be up to the CAs themselves to integrate this into their processes. Local authorities are a substantial sub-set of the total UK competent authorities and may have particular issues in developing the necessary functionality to operate a system of remote licensing applications. BERR will be working with local authorities, their representative bodies and the Department "Communities and Local Government" to develop a practical and cost effective way to deliver what the Directive requires.*
26. *Where a service provider seeks to have professional qualifications recognised in order to access and pursue a regulated profession in the UK, the rules and formalities under Directive 2005/36 on the recognition of professional qualifications will need to be taken into account. This Directive and the Services Directive run in parallel, as a result of Articles 3(1), 15(2)(d), 17(6) and Recital 31. Where there is a conflict, Directive 2005/36*



*takes precedence. The Government agrees that by December 2009 it will need to be clear to competent authorities and service providers how the two Directives will interact in practice.*

## **Q2 Are there any other potential users of the PSC?**

27. Most respondents suggested other user groups, including:

- Trade associations
- Professional associations
- Consumer groups
- UK workers working for the service provider
- Chambers of commerce
- UK enforcement agencies – e.g. trading standards
- Local authorities
- Licensing boards in Scotland
- Academics
- Journalists

28. It was also suggested by the CBI and the Faculty of Advocates that the PSC would need to monitor usage both in terms of volume and sectors accessed in order to ensure that the PSC was delivering value for money and businesses were benefiting from the service.

### Government Response

29. *We are grateful to correspondents for their views and inputs in this area and will consider whether any specific needs follow from the use of the PSC by these groups. However, the Government has no plans to restrict access to the PSC to certain types of user. The Government agrees that usage of the PSC will need to be monitored and that this will be an important source of information when considering any future developments.*

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

30. Most respondents agreed that the design of the website would be crucial here. A clear home page with information accessible to those without knowledge of UK law should greet new users. The site must then be structured clearly and logically, in response to suitable user testing. Summary introduction pages should be given on types of regulation and regimes.

31. The PSC should be thoroughly tested and once operational be capable of responding to feedback and being adapted in response to it. It should be reviewed over time to ensure it is up to date and usable.

### Government Response

32. *The Government agrees that the PSC should be as user friendly and clearly laid out as possible. This was a conclusion reached by the User Research conducted for the Department in 2007 by Panlogic. That study set out the main areas the PSC needs to address in order to meet user requirements and the consultation exercise confirmed this. However, both the study and the responses to the consultation involved primarily a UK business representative audience. In order to ‘sense check’ these conclusions we conducted further user testing in Spring 2008 with foreign businesses that have either recently set up in the UK, are considering it, or considered doing so and decided against. We will also be building appropriate testing and monitoring regimes into the PSC development programme schedule.*

### **Point of Information / Point of Decision**

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

33. Generally correspondents thought the Government was pitching the Point of Single Contact in the right place with a “pro-active signposting” approach, which will enable service providers to complete authorisation applications and registrations remotely and electronically through the PSC and with the relevant competent authorities. All of those local authority and trade union representatives who responded agreed with this and only five respondents overall disagreed. Clearly the PSC needs to enable users to complete relevant licensing applications and authorisation requests, but a point of decision duplicating the authorising roles of competent authorities was not what most people wanted as duplication would be confusing for both competent authorities and applicants. Competent authorities themselves were particularly clear that they did not want to see their role usurped or confusion created as to who was responsible for granting permission to provide a service. Some correspondents felt that even if the PSC was not responsible for actually processing applications for licences it would be desirable for service providers to be able to check progress on the site. A few correspondents commented that financial constraints should not prevent the Government from delivering a system with the greatest user benefits. Noting the benefits of a “point of decision” approach identified in the Impact Assessment, the British Retail Consortium strongly supported this as a way forward in the longer term.

### Government Response

34. *The Government’s approach will be to try and achieve the best mix of cost and benefits in the available timeframe. It is the view of the Government that trying to build what would be a highly complex ‘point of decision’ in time for the implementation deadline at the end of 2009 would expose the project to considerable and unacceptable risks. We agree with those competent authorities who argued that such a development would unnecessarily duplicate their functions and in our view this would also go beyond the immediate requirements of the Directive. The Government*

*does however wish to put in place a PSC that can be enhanced over time, working with the appropriate stakeholders to ensure that developments deliver further benefits in proportion to their cost. The Government will investigate further how to include facilities that allow progress of applications with competent authorities to be monitored through the PSC.*

### **Delivering the PSC**

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

35. The vast majority of respondents supported the suggestion that we use the existing Business Link website as part of the PSC implementation. One or two organisations commented that the volume of content on the Business Link site made it challenging to negotiate if English was your second language, and some felt its performance and layout was not altogether satisfactory. It was also commented that the Business Link name may be relatively unknown outside the UK and that in Wales the service is called 'Flexible Support for Business'. The British Chamber of Commerce's response made clear that they felt that they were better placed than Business Link to manage the PSC and the necessary support to foreign businesses. Indeed they argued that as a result of their existing network they were already performing this advice service for a regular volume of businesses.

### **Government Response**

36. *The Government's general policy towards using Business Link as the main interface between it and business has been set out in two reports: Transformational Government - Enabled by Technology (Cabinet Office, November 2005) and Service Transformation (Sir David Varney and HM Treasury, December 2005). The resulting Service Transformation Agreement included a commitment to "rationalising the plethora of government websites by closing down the majority and moving their citizen and business content to the Government's two single access websites Directgov and Businesslink.gov.uk thereby giving customers access to the information and services they need with greater speed and ease." We will consider carefully the responses in this area in the light of this commitment and the overall aims of the Services Directive. We will consider, in particular, whether the inclusion of access to private sector business advisors would bring added value to potential PSC users and if so how and when to incorporate this. The Government does not rule out the possibility of the private sector being involved in the delivery of some support services within the PSC, but both the above policy and value for money considerations make Businesslink the most appropriate vehicle to deliver the PSC's information role.*

## **Scope of the PSC**

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

37. Almost all respondents, including all local authority, business and trade union respondents, agreed that the inclusion of this information would be beneficial to service providers. They also urged the Government to encourage other Member States to include this also. It was pointed out that there were some sectors where requirements that were nominally out of scope (such as financial credit rules) were relevant to the daily operation of service industries and the PSC would need to try and identify these.

38. Some respondents gave examples of information that are probably out of scope of the Directive but which should nonetheless be included in the PSC. These included:

- Employment law and rights
- Details of tax law and processes
- Professional associations in sectors not covered by the Directive
- The National Minimum Wage rate, and penalties for non-compliance
- Information relating to health and safety at work
- Minimum requirements regarding breaks, holidays etc
- Trade Union membership, recognition and the right to representation

39. It was also suggested that temporary work agencies should be signposted for potential employers coming to the UK so as to assist in the promotion of ethical employment by temporary service providers in the UK.

40. There was, however, some concern that including extra information would make the PSC cumbersome and harder to update. One organisation was particularly worried that additional information would leave the PSC cluttered and more difficult to navigate.

### Government Response

41. *Given the exclusion of areas from the Directive that are essential to setting up a business in the UK (for example tax law) it is most likely that the UK's PSC will re-use or link to this information, which is already available and updated regularly on government sites. In doing so we would want to make the user experience as positive as possible to avoid confusion. We expect that the PSC will include, at least, links to information on employment rights, minimum wages, professional/trade associations and the TUC.*

### **Q7 Which are the most important pieces of information necessary for service providers to do business in the UK, specifying up to five?**

42. Most respondents included in their 'top 5' the legal framework in the UK and the authorisations needed to operate in the UK; information on the "out of scope" provisions listed above in Q6 was also suggested. Hardly

any respondents felt the PSC was an appropriate place for social information such as that on family housing and education provision.

### Government Response

43. *A lot will be happening as regards the provision of data to citizens and business over the next three years, as part of the Transformational Government agenda. We will consider the responses in the light of these current and future developments and seek to include links from the PSC to key data for businesses and entrepreneurs as well as the regulatory requirements the PSC is obliged to cover.*

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

44. Few respondents gave anything more than general answers to this question but amongst suggestions were the professional sector more generally and the IT and construction sectors.

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

45. Very few definitive answers were received to this question, but the responses received were generally consistent with those given for Question 8 on inward bound service providers.

### Government Response to Q8 and Q9

46. *We are grateful to people for giving thought to this topic and there were no 'surprise' sectors uncovered. In the build up to the implementation date the Government will be looking to raise awareness of the challenges and opportunities the Directive presents to the UK service sector more widely.*

### **Language**

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

47. Most respondents felt the bulk of the web portal and information should be in English. There was general agreement that translating the PSC would be resource intensive, but also a recognition that English is less well known in certain EU countries. Some felt that the introduction pages, at least, should offer three or five of the main European languages to help orientate visitors. Dundee Council, the Glasgow Licensing Authority and the BRC suggested information in Polish, whilst the BCC suggested French and German. Nine respondents felt that the PSC should be in English only. The WLGA raised the issue of providing the PSC in Welsh where necessary to comply with the Welsh Language Act.

### Government Response

48. *The PSC will provide access to a considerable amount of content which is currently available only in English other than where there is a statutory obligation to cover another language such as Welsh. We expect to provide initial content in English, as, unless they are only addressing a specific ethnic market, businesses will need a certain mastery of English to operate and attract business. We will consider adding foreign language provision to the entry pages as this will help to market the site, though, given the challenges of the timetable, this might not be possible for the initial launch.*

### **Multi-channel Support**

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

49. Most people who covered this question answered 'yes' for both types of support. The Solicitors Regulation Authority recognised that it was difficult to scale the service without any clear idea as to how much demand there was likely to be and so suggested there could be a case for starting small. A few respondents felt we should hold back from potentially costly investment in helpdesk-type facilities until we had an idea of the potential levels of demand for such assistance.

### Government Response

50. *On balance the Government believes it would be beneficial to provide both email and telephone support for PSC users as soon as practicable and will be investigating the options for such a service.*

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

51. The consultation envisaged two categories of help request – those that have an operational problem with the site itself, and those needing technical advice on the application of the licence and registration schemes. This technical advice may need to include information on who to complain to as a result of dissatisfaction with a competent authority. The responses also suggested a third type - general queries about doing business in the UK and the information provided.

52. In addition, respondents to this question identified a further user group, that of UK businesses wishing to sell services elsewhere in the EU. While recognising that our PSC is not designed for this latter category of user, several respondents thought that UK service providers may find themselves using the PSC as a first port of call. These would need to be redirected either to appropriate export advisers or to the relevant country's Point of Single Contact.

### Government Response

53. *The Government is considering whether it would be appropriate for all enquiries to be channelled to the same initial assistance provider or*

*whether it should try and split the enquiries early by type. It is possible that some or all of the service could be outsourced and the Government will look carefully at the type of service to be provided and who might be the best placed to deliver it, including existing services such as SOLVIT.*

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

54. Most respondents (but not all) felt that a chargeable rate line would be acceptable for more technical queries. Eleven respondents felt that telephone support should be free, however business groups such as the BCC, CEPA/BPCA, RIBA and the BRC thought it would be acceptable to charge for telephone support. The IoD suggested charging only local rates, even where calls were international.

Government Response

*55. The Government is looking further at the options for delivering appropriate support to PSC users from both internal and external sources. Given the responses, the Government will continue to consider the possibility of charging for telephone support services, especially those of a more detailed nature. In doing so it will be necessary to consider a range of issues including the existing alternatives for business support and the value of such services for encouraging compliance and reducing the amount of enforcement required.*

**Charging**

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

56. Most respondents agreed that the basic PSC should be provided free of charge. As much of the information was already provided free via government and other national websites, it appeared illogical to charge for it on the PSC. Also, charging for the PSC would disproportionately disadvantage small and medium sized enterprises and add pressure on CAs as service providers could potentially seek to economise by going directly to them.

57. Some respondents noted that whether it was free or not the PSC may need to be capable of collecting fees and associating them with the particular individual licence applications.

58. It was suggested that the amount charged for using the PSC in each Member State as compared to the cost of operating it and the value for money it provides for businesses should be included in the peer review process.

### Government Response

59. *Whilst the UK could, legally, charge for using the PSC it is unlikely that the UK PSC will charge users for basic information on regulations and applications needed to operate in the UK. As noted in Q13 the Government will continue to consider the issue of charging for support services and, were a charging regime to be introduced for this, part of determining what this should be will include consideration of where the boundaries between information and advice on the PSC lie.*

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

60. Those respondents who thought the PSC should be free mainly added that specific details and complex advice should be provided at a cost. The Government should be careful only to include those services which are not already available free of charge. Only four respondents felt that these 'additional' services should also be free, either so as not to deter service providers or to avoid pushing service providers elsewhere for assistance – e.g. direct to the competent authorities.

### Government Response

61. *Some help is already available to would-be service providers on a chargeable basis. As noted above (Q 13 and 14) the basic PSC website service will be free to access (like the existing Businesslink.gov site) but the Government will retain the option of charging for more specialised support and assistance.*

### **Single/Multiple PSCs**

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

62. Almost all respondents felt that there should be one PSC for the UK as a whole, with relevant information included about the regulatory regimes and authorities in the devolved administrations. No respondent was completely opposed to one PSC for the UK; however the Glasgow Licensing Authority and the Farriers Registration Council raised concerns about the consequences of devolution. Of those respondents from the devolved administrations, The Law Society of Scotland, South Lanarkshire Council and Dundee City Council all agreed that one UK PSC would be sensible.

63. Care would be needed to ensure that the different legal jurisdictions that apply within the devolved administrations are properly identified to service providers.

### Government Response

64. *A single UK PSC is the most likely course to be taken. The Devolved Administrations have indicated that they are content with this approach*



*provided they are engaged in the process of developing the UK's PSC, which the Government would want also. The main reasoning behind this is that there is a lack of understanding amongst EU business about the UK's structure of government; and in developing the PSC there is a need to avoid duplication of national regulations or of common processes and procedures. This will therefore need careful handling to ensure the user receives the appropriate information for their intended location. Dialogue with the devolved administrations and other affected bodies will be necessary when putting a single PSC in place, including on issues such as where the burden of funding should fall, and the interfaces between the various authorities' powers and responsibilities.*

### **Management: Public or Private Sector**

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

65. Where this question was answered nearly everyone considered that the Government should provide the basic funding of the service, though one respondent felt it should be the responsibility of the European Commission, who should actually put together a single European portal. A number of respondents felt that public funding was important and were against any private sector financing of the PSC. No offers to fund the PSC privately were received in response to the consultation.

### Government Response

66. *The Government expects to bear the burden of developing the initial PSC – it is an obligation that falls on each Member State. A single European portal would not be practicable within the available timeframe but it would be sensible for the Commission to carry links to all the Member State PSCs for those businesses that consult the European Commission's home "europa" website. The Government believes the Commission is committed to the success of the Directive and note it is funding the development of an electronic system to facilitate administrative cooperation, known as the Internal Market Information system (IMI), that can be linked into the PSCs in Member States.*

### **Liability**

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

67. There was broad agreement from respondents to the proposal that contributors of information to the PSC be obliged to keep it up to date, particularly amongst business groups, though some respondents commented that it would be important to see how the details worked out in practice. There was concern from three (the ICAEW, Law Society of Scotland and the Glasgow Licensing Authority) that a legislative approach might prove unduly onerous and that perhaps the same result could be

reached using a series of memoranda of understanding with competent authorities. Respondents also felt it important that any data retained by the site was secure and only accessible to those that needed it in order to fulfil their legitimate role in line with data protection requirements.

### Government Response

68. *The Government believes that it will probably be necessary for compliance with the Directive to set out in legislation the obligations on information providers to the PSC to keep data up to date and accurate. It will consider over the coming months how best to do this and consult informally with those affected.*

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

69. Eight respondents answered 'yes' to this question and most respondents considered it important that service providers that had complied with the terms set out in the Point of Single Contact should not suffer legal penalties if that information proved to be inaccurate. The CBI suggested their own wording for inclusion on the PSC in order to reassure service providers. Others (notably the BCC, SITPRO, CEPA and the BRC) felt that the PSC needed its own approach – distinct from the overall Government policy.

### Government Response

70. *The situation is complicated because the PSC is likely to rely on information from a range of sources both public and private. We will do our utmost to ensure information is as accurate as possible. However, we also do not wish to exclude third party information that may be of benefit to new service providers, but over the content of which the Government has limited control.*

71. *In view of the responses, the Government will investigate further options (including alternatives suggested for disclaimer wording) for dealing with the situation where information obtained through the PSC proves to be inaccurate or incomplete. In doing so it will be important to bear in mind existing legal constraints as well as developments being considered as part of the Enterprise Review led by the Better Regulation Executive. Existing arrangements in relation to the Mutual Recognition of Professional Qualifications area will also need to be considered in this context.*

### **Brand**

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

72. All those who responded on this question felt that an EU branding would be beneficial for the PSC. Some referred to SOLVIT which is an EU wide brand for informally addressing Internal Market disputes. Respondents

suggested a similar approach for the PSC in order to give reassurance that people were in the right place and so that users would know what to look for when searching for the PSC of another Member State.

Government Response

*73. The UK will share these views with our European partners and the Commission to see if an agreement can be reached collectively to the benefit of all EU service providers.*

## **CHAPTER B: ADMINISTRATIVE COOPERATION**

74. The Key Question for this chapter was:

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

75. There was broad support for the approach currently proposed by the Government for implementing this aspect of the Directive. Perhaps the most important message was that clear guidance will be needed for Competent Authorities on the implications of the Directive for them.

76. Most respondents were positive about the IMI system, and were generally content that the national liaison point should be located in BERR.

77. In addition, a number of specific issues were raised relating to certain competent authorities (for example, difficulties in identifying an individual service provider).

78. In general, the Government will continue to:

- Liaise with individual authorities to resolve specific issues
- Work to evaluate the impact of the Mutual Assistance provisions on competent authorities
- Work closely with competent authorities to ensure that IMI is developed at a European level in ways which meet their needs.

79. The Government also very much recognises that clear guidance is needed on the duties and roles of competent authorities under the administrative cooperation aspects of the Directive. The government will ensure that this, and the necessary training on the IMI system, is provided in good time.

### Responses to Individual Questions

#### ***Competent Authorities***

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

80. Few competent authorities were in a position to answer this question with any degree of confidence. Those that did answer, however, had mixed views: the Bar Standards Board and Solicitors Regulation Authority, for example, did not expect a large increase in workload. However, there was concern from some (and especially among the trade union representatives who responded) at the possibility of the workload of competent authorities increasing significantly without any corresponding increase in resources to accommodate the inflow of service providers. For example, Dundee City Council was concerned that the increased need for cross-border communications, as well as the actual supervision of service providers,

would be burdensome. There was also concern raised by some respondents that the Health and Safety Executive may be particularly exposed to a large increase in workload.

### Government Response

81. *The Government's pilot discussions with local authorities have revealed no expectation of any great increase in workload, especially as mutual assistance already occurs to some degree cross-border and within the UK. Furthermore, given the already significant degree of liberalisation in the UK services market and the fact that the UK already attracts many incoming service providers, we do not anticipate a sudden surge in workload caused by a disproportionate increase in the number of incoming service providers applying to competent authorities at the moment when the Directive is implemented.*

82. *The Government believes that the mutual assistance provisions in the Services Directive will reduce the burden on UK competent authorities and assist them in ensuring adequate supervision of service providers from other Member States. Whilst there may be an obligation on UK competent authorities to respond to requests from other Member States, this is a mutual process and competent authorities in other Member States will likewise be obliged to assist UK competent authorities. Overall, the cooperation between competent authorities should be more effective and efficient because of the provisions in this Directive, including the new IMI system.*

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

83. In the light of responses, certain competent authorities who were omitted from the original list have now been added, for example the Farriers Registration Council, the Bar Standards Board, the Architects Registration Board and the Scottish Licensing boards.

84. Answers to this question also suggested other bodies that are not within the legal scope of the directive and thus not formally defined as 'competent authorities'. However, these bodies may also be involved in the implementation process, for example by being linked to the PSC. These included the National Minimum Wage Inspectorate, HMRC and the Gangmasters Licensing Authority.

### Government Response

85. *The Government will continue to refine the list of competent authorities in the light of further discussions with interested parties. An updated list is provided in Annex B at the end of this document, however this list should not be considered definitive or authoritative.*

## ***Supervision of Service Providers by the Home and Host Member State***

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

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

86. Few respondents were able to answer Q23 with certainty, perhaps because of the complexity of the Directive's provisions on this point. However, several professional bodies indicated that they are accustomed to working with a provision of the type in Article 30(2) (in other words, taking account of overseas activity by the providers they regulate) as provisions of this sort are often included in other Directives specifically relevant to them. On the other hand the Insolvency Service, the Environment Agency and others explicitly said that they have no powers to regulate outside the UK.
87. WLGA and others were concerned at the suggestion that they would need to extend their regulatory activity overseas. Some trade unions representatives also made the point that the UK would be at a disadvantage if we were to change our statutory regimes without other Member States doing the same.
88. One respondent (the Professional Contractors Group) was concerned to avoid unnecessary duplication of enforcement actions by different Member States and hence to avoid unnecessary burdens on business, and also suggested that there should be a legal obligation for service providers not to have to provide information more than once.
89. Certain competent authorities (for example Natural England) were concerned about the reliability, for the purposes of the UK legal system, of evidence and inspection results received from other Member States. They highlighted the possible risk of unsuccessful prosecutions in the UK if the overseas evidence was not appropriate.
90. This links to a concern, raised by LACORS and others, that some competent authorities might feel themselves obliged to take action (such as instituting criminal proceedings) which they would not otherwise have taken (or in areas where they would otherwise have used their discretion or taken a more risk-based approach) merely because an overseas competent authority had requested them to do so, on the basis of the actions of the UK service provider overseas.

### **Government Response**

*91. In the Government's view, it is clear that UK competent authorities are not required to conduct checks and investigations on UK service providers who are operating temporarily abroad. However, UK competent authorities will be able to ask authorities in other Member States to undertake such checks on their behalf (and in some cases the overseas authority may proactively bring matters to the attention of the UK authority). The reverse also holds: authorities in other Member States can ask UK competent*

*authorities to conduct checks and investigations for them. Such UK competent authorities will only be required to act to the extent permitted by their statutory powers.*

92. *In cases where information has been obtained abroad by an overseas authority on the UK's behalf, the basic position is clear: the UK authority should consider that information in the same way as it would the equivalent domestic information in deciding what, if any, action to take. The usual rules relating to the admissibility of evidence will apply.*
93. *The supervision of cross-border service providers is a key element of the Directive. Effective implementation across Europe will require Member States, so far as possible, to have a common interpretation of the relevant provisions. The Government will therefore continue to work closely with competent authorities, other Member States and the Commission to ensure a sensible regulatory regime in compliance with the Directive.*
94. *Once this work is complete, we will ensure that proper guidance is provided for competent authorities on their roles and responsibilities under the Directive, so that they can understand and deliver against their future obligations.*

### **Mutual Assistance**

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

95. *Again, few respondents were able to give concrete answers to this question., however some responses revealed that certain competent authorities have already assessed and altered their statutory regimes to comply with related provisions in the MRPQ Directive*

### **Government Response**

96. *The Government's work with individual competent authorities suggests that relatively few will need their statutory regimes to be amended in order to ensure that they can, for example, exercise their powers of inspection on behalf of authorities in other Member States, and disclose information where appropriate. Any disclosure will need to comply with data protection rules. We are keen to work further on a one-to-one basis with competent authorities to gain a fuller picture and would invite any competent authorities concerned about their statutory regimes to bring themselves to our attention. Contact details can be found on our website.*
97. *In some cases the changes already made under the MRPQ Directive will be sufficient and no further changes will be needed under the Services Directive.*

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

98. Most respondents were content with the method of implementation in the UK and there was broad support for the continued process of dialogue with competent authorities. Respondents recognised the need to address the impact of devolution (and, in particular, the issue of the geographical competence of certain competent authorities) and to work with the devolved administrations and relevant competent authorities on this. There was concern however from LACORS and others, about what might happen when no corresponding competent authority exists in another Member State – most obviously because the area in question is not regulated - and yet mutual assistance is required.
99. The Alert Mechanism, designed to assist competent authorities in communicating with one another to raise the alarm in a specific situation where health or safety are thought to be at risk, drew some concerns from respondents, for example if an alert turned out to be a false alarm.
100. There was also concern, from DCFS and LACORS, that the mutual assistance provisions (specifically IMI and the Alert mechanism) would allow other Member States to 'dump' their regulatory problems onto UK competent authorities.

#### Government Response

101. *The Government has been undertaking, and will continue, dialogue with competent authorities and the devolved administrations on this issue. We would encourage those with specific concerns to contact us.*
102. *The view of the Government is that, as the UK has one of the most liberal economies in Europe, it is likely that UK authorities will be able to find a corresponding authority to communicate with, since sectors or activities which are regulated in the UK will on the whole also be regulated in other Member States. In terms of requests coming into the UK, if no appropriate UK competent authority exists in a certain area, then the request could be directed to the National Liaison Point.*
103. *The Government would be concerned if any 'dumping' of problem cases occurred and is working to ensure other Member States implement the Directive fully and that all requests for mutual assistance are justified, as required by the Directive (Article 28(3)).*
104. *On the Alert Mechanism, the Directive requires the Commission to create a network for communicating these alerts and the rules for using this network. The Commission is currently engaged in discussion with Member States about this. The UK will ensure that concerns of this type are, where appropriate, brought to the attention of the Commission and other Member States. Generally speaking, the Government believes competent authorities are best placed to make informed assessments of health and safety risks and to take and control any necessary action.*



## ***Access Rights to Registers***

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

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

105. There were very few responses to this question. Whilst some (for example the Bar Standards Board) were able to list specific registers, most responses focused on the need for CRB checks and whether this constituted consulting a 'register'. A number of technical and logistical issues were also raised. For example, some registers cannot be accessed electronically, and information held as hard copies in regional/local offices would be more difficult to access. Local authorities noted the read across to the upcoming PAP (Primary Authority Principle) legislation, and in particular the list of businesses which LACORS holds to ensure the operation of that principle.

## **Government Response**

106. *The Government is now looking at this in more detail, especially the definition of a 'register'. It is unlikely that large changes will be needed to the access rights to UK registers.*

## ***National Liaison Points***

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

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

107. There was broad agreement that the NLP should be in BERR, with the CBI and IoD suggesting it should sit alongside the SOLVIT team. No alternatives were put forward.

108. Views were divided on whether to have separate 'points' for Scotland, Wales and Northern Ireland, including among responses from within the devolved administrations. Both the Glasgow Licensing Authority and Dundee City Council agreed on one NLP for the UK, whilst the Law Society of Scotland would prefer a NLP in Scotland. South Lanarkshire Council considered that enterprise was devolved in Scotland and that on that basis there should be separate points in Scotland. Two others suggested separate NLPs in the devolved administrations generally.

109. The Solicitors Regulation Authority responded that, in the legal profession, the relatively large number of regulators would mean that having more than one UK NLP would cause confusion. Also, in that profession, any of the UK's competent authorities could assist a service provider in working in the UK.

110. The British Pest Control Association and CEPA argued for the middle ground of a central point in BERR which could cascade queries to the DAs. In suggesting one NLP for the UK, the Glasgow Licensing Authority qualified that the NLP would need to be informed on Scottish issues.

### Government Response

111. *After consideration of these views, the Government proposes that there should be one NLP point in BERR. This is due to the desire to avoid the confusion of having too many NLPs and to avoid any chance of duplication. This is especially true of sectors with more than one competent authority, such as the legal profession, where adding four new NLPs to an already large number of CAs could create confusion and deter incoming service providers.*

112. *The central NLP will of course need to liaise in appropriate ways with the devolved administrations, who may choose to nominate deputy/sub liaison points.*

### **Internal Market Information System (IMI)**

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

113. Fifteen respondents, a clear majority, were in favour of option 3, i.e. that:

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

114. Against this, six respondents were keen for competent authorities to be obliged to use IMI as they felt this would increase the reliability of the system and the efficiency of queries being answered.

115. All of the local authority representatives except one chose option 3, as did most other potential competent authorities and professional bodies.

One local authority felt that IMI should be compulsory, but that in that case a strong national liaison point would be needed.

116. Respondents also took the opportunity to suggest practical requirements for the system, for example that CAs should be notified by email that an IMI 'message' had been sent to them.

#### Government Response

117. *The Government recognises the arguments that CAs should not be legally obliged to use any one particular administrative cooperation mechanism, but also agrees that there would be advantages in as many requests as possible being handled by IMI, to help develop familiarity and confidence in dealing with them. The Government believes that, if developed properly, the IMI system could lead to more efficient regulation and coordination between competent authorities. Additionally, we recognise that some competent authorities already have their own fully operational mutual assistance systems, and therefore should have the choice of whether to use IMI or not.*

118. *We will therefore continue to work at European level to ensure that the IMI system takes account of the practical needs of competent authorities, including helping them to locate their 'opposite number'. We will ensure (see below) that training is available; and will encourage CAs to make use of it. However, it is not proposed that the use of IMI will be made legally obligatory.*

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

119. Respondents stressed the importance of ensuring that registering for and using the IMI was as easy as possible for CAs, and that the role of the coordinator (who will, for example, process registrations) was therefore crucial.

#### Government Response

120. *IMI coordinators will be responsible for overseeing the IMI system in each Member State. The Government will ensure that the coordinator is effectively resourced and fully trained on the system. They will most likely, initially, be a single person within the relevant directorate at BERR.*

#### **Q33 Do you have any comments on the proposed approach to training for use of IMI?**

121. Most respondents were positive about the IMI system, especially for such things as overcoming the language barrier and providing a secure environment to transfer information.
122. However few commented directly on training aspects. Those that did suggested regular training, perhaps at the regional level. One respondent suggested that the training need would be continuous. Another (Glasgow

Licensing Authority) suggested area-specific training to commence before the implementation deadline.

Government Response

123. *The Government will ensure that there will be some form of training available once the details of the IMI system are settled, as well as pilot phases leading up to the launch during which CAs can 'practise' on the system. These pilot phases will ensure that training is provided before the implementation deadline.*

## **CHAPTER C: ENSURING THE QUALITY OF SERVICES**

124. The Key Question for this chapter was:

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

125. A large number of respondents to this question and the questions in this chapter gave broad support to the Government's overall approach to implementing the quality of services provisions, recognising the need to strike a balance between enhancing consumer confidence and avoiding imposing undue burdens on service providers. No respondent disagreed with the Government's overall approach to implementing these provisions, although there were questions raised regarding particular aspects. Indeed many respondents restricted their comments to specific issues: these are covered below.

126. The key messages to come out of the consultation included:

- Most of those who responded to the question thought that the UK branch of the European Consumer Centres Network was best placed to deliver the 'consumer portal'
- There was broad support for the suggested legislative approach to the information and redress obligations
- Most respondents with a view agreed that enforcement of the information and redress provisions should be light-touch and proportionate, although some favoured a firmer approach
- We should not have a set definition for 'in the shortest possible time' but should retain flexibility depending on different circumstances
- Most respondents answering the question agreed that professional liability insurance should not be a general mandatory requirement for providers of 'high-risk' services in the UK

### ***Article 21 – Assistance for Recipients***

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

127. Respondents to this question suggested a wide range of information that could be included on the consumer portal, including:

- The requirements specified in Article 21
- Information on redress, quality and price
- Sufficient contact information or direct links for relevant organisations
- Information on essential legal protections, rights and how to assert them, including minimum levels and an outline of consumer protection laws, including enforcement procedures

- Information on dispute resolution by courts including small claims procedures, ADR and arbitration procedures
- Status of incoming providers
- Advice on applicable standards, information on general and sector-specific safety & quality attributes, details on logos and approvals, codes of conduct, trust mark schemes
- The EU's general view on services
- List of trade associations
- Information affecting only certain services
- What consumers need to know before forming a contract
- Differences in invoices between Member States

128. Potential models suggested were Consumer Direct, the UK ECC, the planning portal and the Trusted Trader scheme. It was hoped that Member States will cooperate to secure an element of commonality across the EU. The Insolvency Service sounded a note of caution that obtaining the information from sources outside the UK may be difficult. A minimum should be to include a link to the 'Europe Open for Professions' website.

129. One respondent suggested a standard form to display all elements not specific to individual contracts e.g. general conditions and VAT number (although this is presumably more applicable to the obligations in Article 22).

### Government Response

130. *We will ensure that the 'consumer portal' has a certain amount of basic information available along the lines of the suggestions above. This could include:*

- *pre-contractual information and guidance on purchasing in specific sectors*
- *information on consumer protection and consumer rights*
- *redress mechanisms, both judicial and ADR*
- *contact details on where to obtain further information / assistance if necessary*

131. *We will encourage the European Commission and other Member States to share the necessary information with each other.*

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

132. Of those organisations that responded to this question (28), more considered that the UK branch of the European Consumer Centres Network (UKECC) would be best placed to fulfil the role of 'consumer portal' than any other option. These respondents included the UKECC itself and OFT, which has responsibility for Consumer Direct. Only two organisations responded with a definite preference for using Consumer Direct in some way, while others thought that either could take on the role,

or did not express a preference. Many respondents highlighted the need for extra resources if either UKECC or Consumer Direct were selected. There was general agreement that the portal should be delivered by an existing body, although the BRC advised not to overestimate the advantages of building on an existing service.

133. Reasons cited in favour of the ECC included:

- It already operates in the context of cross-border transactions within the EU
- It already provides 'second-tier' advice and a liaison/dispute mediation referral service through its EU counterparts in the ECC Network
- Using the ECC would avoid the creation of separate portals dealing with goods and services and thereby avoid potential consumer confusion

134. Reasons cited against Consumer Direct were:

- It deals with 'first-tier' advice provision, meaning it provides information for consumers to handle the issue themselves. It does not intervene on an individual's behalf nor does it handle complex consumer matters
- Its focus is consumers whereas the Directive requires the portal to address business service recipients as well
- It principally interacts with consumers by telephone, while the Directive requires much more of an electronic service
- It is currently taking on new responsibilities as a result of the Consumers, Estate Agents and Redress Act 2007

In its favour was its gaining recognition as the consumer website in the UK.

135. One respondent thought the PSC should deliver the portal, compared with four who said it should definitely not. The IoD thought that the PSC and Euro Info Centres should retain their business focus with a consumer organisation providing the role. Others agreed that the PSC should not lose focus of its principal role.

136. Many respondents considered it would be important to include a link between the consumer portal and the PSC (and the UKECC and Consumer Direct). While no one specifically said the Euro Info Centres (now the Enterprise Network) should take on the role, many respondents discussed these Centres. The BCC thought there should be further review in the light of the recent changes to the network.

137. The BRC also suggested that a single EU portal would have been ideal.

### Government Response

138. *Although this consultation has shown a preference for the UK ECC to deliver the consumer portal, there remain issues to explore before we can decide whether that is the option we will take. We will undertake further dialogue with the UK ECC and with the Trading Standards Institute who*

*run it to understand better how we could deliver the portal through the UK ECC, and also to identify barriers that would need to be overcome. We also need to consult with the European Commission, who provide joint funding. One issue in developing the Article 21 portal will be to determine how to cover service recipients that are businesses. For example, the UK ECC is not currently set up to deal with these. It is possible we will need a separate portal for business service recipients, or will need to identify a solution enabling one portal to cater for the needs of both consumers and businesses. We will make a statement on whether the UK ECC or some other body will provide the portal later on. In any case we will encourage Member States to adopt solutions that are capable of effective interaction.*

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

139. Some respondents highlighted the need for accurate translation and queried where that responsibility would lie. OFT thought there should be translation facilities and the BRC felt the portal should allow the use of other languages. OFT further thought that there should be a harmonised mechanism with performance indicators to ensure equality of assistance. CBI was concerned that mutual assistance should not impose additional obligations on business, but thought it should provide recipients with information on redress.
140. The BRC thought that the portal should provide for an online form, e-mail and phone support; and that the Commission should coordinate the provision of information. Dundee City Council felt that Competent Authorities should also be able to obtain information and refer requests through the portal.
141. The UK ECC felt that the ECC Network's existing mutual assistance mechanism and good working relationships between centres across the EU made it an ideal choice to house the portal. Similar points were made by OFT and BSI; and the WLGA thought that mutual assistance should be built on the ECC Network's existing mechanism.
142. The Insolvency Service expressed serious misgivings with the obligation to get information for consumers, thinking this may be time-consuming and costly, and that if other Member States didn't have information standards this may be a burden on UK authorities.
143. The Bar Standards Board drew attention to the Commission's view that the portal is not intended to supply a personalised service or advice. They felt that the portal could have a database of standard information from associations or groups of service providers.

**Government Response**

144. *We will need to explore options for delivering the 'mutual assistance' aspects of Article 21 further with relevant organisations before we can arrive at the most appropriate solution. To this end we will work with the body chosen to deliver the consumer portal and with others, including*



*other Member States, to ensure that service recipients can have confidence that legitimate requests for information will be processed promptly from day one.*

### **Case Study**

Some Trade Unions were concerned at the implications of the case study in relation to Article 21. They thought that UK rules should apply to services provided in the UK unless the contract specified otherwise and that the case study implied that the consumer would have access to redress mechanisms in the Member State where the provider was established, rather than to UK mechanisms. The TUC would be concerned if providers from other Member States could require recipients to seek redress only in their Member State of establishment.

### Government Response

*The case study was intended to be a broad-brush illustration of the sorts of information a consumer can expect to get through the consumer portal. It was not intended to cast doubt on the application of private international law. We can confirm that rules of private international law are unaffected by the Directive, and that the position as to which law governs a contract and which court has jurisdiction is unchanged.*

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

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

145. Answers to this question revealed a lot of information obligations already existent in legal or administrative requirements in the UK.
146. The BRC felt it would be important to provide advice on obligations in different circumstances e.g. those arising from the Unfair Commercial Practices Directive and to ensure consistent transposition of information requirements across Directives.
147. Both the Solicitors Regulation Authority and the Law Society of Scotland made reference to certain circumstances when professional rules for solicitors had allowance for instances when it was not possible to provide information in advance of work being supplied e.g. death-bed wills/immediate appearance in criminal court. They felt this exemption should be replicated in the transposition of the Services Directive through proportionate exceptions.

### Government Response

148. *As indicated in question 38 below, we are keen to implement the information obligations in a cross-cutting manner to cover all service providers within the Directive's scope. Notwithstanding this, we will*

*investigate all the information obligations suggested in the consultation that arise from legislation and make sure there are no conflicting items of legislation in this area following transposition.*

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

149. Of those respondents who expressed a view, all agreed with the legislative approach outlined in the consultation document. Some respondents thought that existing regulations require business to provide much information already or that businesses did so anyway.
150. The CBI and BRC thought that implementation of these requirements should be as unbureaucratic as possible with costs and burdens on business kept to an absolute minimum. There should be no need to add to information requirements in existing legislation and regulation transposing the obligations should be as flexible as possible. Costs incurred by business must be offset by reduced burdens in other areas. Furthermore, legislation requiring providers to give too much information could discourage them from setting up in other Member States. It would be important to assess in the peer review that there are no further requirements on UK service providers wishing to set up in other Member States. PCG thought we should aim to ensure that other Member States refrain from imposing unnecessary requirements on service providers. The BRC again felt there should be coherence with obligations arising from other Directives.
151. Some respondents queried whether the obligations applied to all businesses or just those operating cross-borders.
152. The Insolvency Service thought that there was a need for consistency across Member States so that service recipients could properly compare information from providers. Another query was whether the provider would have to supply the information in the language of the country where they were operating.
153. Referring to the example of one of the provisions within the Package Travel Directive, OFT thought it would be important to set out clearly what was acceptable under the redress obligations so some prescription would be needed; and that guidance must be flexible for the type of provision.
154. The Citizens Advice Bureau suggested that legislation should provide for a form to be used as part of approvals through the PSC, and as part of paperwork for consumers, that required all businesses to meet the obligations and to be registered. CAB thought that enforcers should be able to use the consumer portal to tell consumers information they need to pursue a claim.
155. The WLGA thought that the suggestions as to how the required information is made available to consumers could be simplified for clarity, suggesting similar wording to that used in the Distance Selling Regulations

2000. The BSI thought that international standards had a potential role to play. A query arose as to whether the obligations would need to be incorporated into professional standards.

### Government Response

156. *Subject to the points made in our response to question 37 above, we will implement the information and redress obligations in the way described in the consultation document. We will aim to do so in the least burdensome way on business; we believe in any case that these obligations should not be onerous. We do not intend to go beyond the requirements specified in the Directive.*

157. *The information and redress provisions will need to apply to all service providers within the scope of the Directive in the UK, not just in instances of cross-border provision. As this together with enforcement powers is likely to be a significant change for consumer protection legislation we will consider further the implications on business and consumers, and will ensure that any new requirements are publicised.*

158. *While Member States are permitted to have other obligations in this area in addition to those required by the Services Directive, we will, in the course of the peer review process, notify to the Commission any relevant obligations included in peer review reports that appear unjustifiable.*

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

159. Most respondents to this question thought that we should not aim for a set definition as different circumstances would call for a different time needed to respond. However some respondents thought there should be some definition, otherwise the question would be open to interpretation. Still others thought it should be left to the courts to decide.

160. One respondent thought we should define the limit as 14-28 days. BSI thought a general rule could be to acknowledge complaints in 24 hrs, while actual resolution would depend on complexity – but guidelines should be possible. SITPRO felt we could set a time limit following further consultation.

161. The TUC and GMB thought that the time limit should vary but that we could require a provider to explain why it was taking longer than certain thresholds. WLGA thought we could set a broad maximum, using language such as ‘in the shortest possible time and not later than x weeks’, referring to models like the Financial Services Ombudsman to set the maximum.

162. The Solicitors Regulation Authority agreed that we shouldn’t impose rigid timescales and thought the concept of ‘reasonableness’ was important in determining timescales. The Heating and Ventilating

Contractors Association suggested that the rule could read “within a reasonable time having regard to the individual’s reasonable complaint”.

163. Others thought there should be a definition in statute or guidance, but didn’t suggest what that should be. The Architects Registration Board thought it would be best set out in guidance.

164. Many other respondents thought we shouldn’t set a definition at all, or should avoid any attempt to ‘over-define’ it. CBI thought flexibility allowing for variations for different products and sectors was important. ICAEW agreed that it was important to allow for varying circumstances but also thought we should leave it to the Courts to decide.

165. Some respondents suggested we consider existing good practice e.g. OFT’s Approved Consumer Codes and the Public Contract Regulations 2006. Other models were the BCC’s Accreditation Standard and the BSB’s Code of Conduct.

166. Some respondents commented that the time to resolution of the complaint was more important than the time to respond.

167. On guidance, both TUC and CBI doubted its value given the very wide range of circumstances possible, while BRC were similarly reluctant to support it, particularly as in their view enforcers could sometimes act on the basis of the guidance not the law.

168. SITPRO thought we needed to set appropriate penalties. There was support for the notion that firms should not have to respond to vexatious complaints.

### Relevant Factors

169. Many factors affecting the time needed to respond to complaints were provided, including:

- The level of consumer detriment caused
- Size of service provider
- Distance between parties
- Communication facilities available or chosen
- Nature and complexity of specific case
- Distinction between requests for information and cases needing investigation
- Time periods in other legislation
- Time periods set in relevant ADR schemes
- Reasonableness
- If cause of complaint is historic or current
- If relevant people are contactable
- Whether information is needed from a third party
- Language issues

## Government Response

170. *We agree that it would be inappropriate to attempt to set one definition for what constitutes the 'shortest possible time' that would cover all eventualities. It will be important to allow for different circumstances that may have widely varying time constraints. However we may consider indicating an expectation of the concept of reasonableness. Service providers and recipients should be able to decide themselves what they think is reasonable in the circumstances, taking into account the nature of the business, the specific case, and the amount of inconvenience caused to the customer. We may also produce non-statutory guidance for business and enforcers with information on how to decide on what would be a reasonable time to respond in.*

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

171. Many organisations responded to this question. Most that did agreed with the light-touch approach set out in the consultation, although some Trade Unions and SITPRO favoured firmer enforcement.

172. Respondents commented positively on the potential use of the Enterprise Act Part 8 (no-one was explicitly against the use of the Enterprise Act), although more thought would need to be given to handling business to business transactions. CBI felt it was not appropriate to establish a separate regime for the Services Directive. OFT commented that it has to prioritise its resources to dealing with behaviour that poses the greatest threat to consumer welfare, so it could only handle those B2B cases with significant consumer detriment. WLGA considered that using the Enterprise Act would mean an extra burden on local authorities and that handling cross-border disputes would be more resource intensive. Citizens Advice suggested that the proposed Business Protection from Unfair Trading Regulations could be used to enforce B2B services.

173. Many respondents commented that advice should be the first step in enforcement and that there should be a distinction between unintentional and deliberate/repeated breaches. Following the provision of advice, the BRC thought that civil injunctive penalties should be sufficient, arguing that criminal or administrative penalties were not appropriate for infringements of Article 22, nor should there be recourse to individual redress for failure to supply information. As regards Article 27, the BRC thought there may be a case for broader penalties when a breach occurs after the provision of service. ICAEW commented that there should be penalties only where there is evidence of consumer detriment. Many respondents said that penalties should be proportionate. The Architects Registration Board thought it would be difficult to make some providers aware of the requirements.

174. Trade Union respondents argued that we should make clear that enforcement will be effective and efficient with sufficient penalties for non-compliance to ensure the safety of workers and consumers.

175. Some professional organisations considered professional rules, RIBA and the ARB stating that requirements for information provision were already contained in some rules or guidance and RIBA that others could be asked to do the same. The Bar Standards Board thought they would need to consider further whether it was necessary to incorporate rules into professional standards and hence involve a separate level of enforcement.
176. Some respondents felt the approach we take to enforcement would depend on what other Member States do.
177. There was agreement from those that commented on this aspect that businesses need not actively demonstrate compliance through regular notification.

### Government Response

178. *We consider that enforcement should be light-touch, proportionate and in line with the principles of the Regulators' Compliance Code; and will introduce appropriate legislation to allow for the enforcement of the obligations placed upon service providers by the Directive. It is likely that we will include the requirements under Articles 22 and 27 in Part 8 of the Enterprise Act. This will allow enforcers to act against providers who fail to meet their obligations under these Articles where these omissions harm the collective interests of consumers. We will need to give further consideration to how we enforce these obligations in relation to business-to-business transactions. While enforcers will have the authority to decide on a practical level how to enforce the legislation, we will aim to ensure enforcement is in line with the established principles of proportionality and risk. We agree that for most cases advice should be the first step in enforcement. We will work closely with OFT, local authorities and business groups to determine how best to take forward the enforcement of the relevant aspects of the Directive, including appropriate penalties.*

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

179. Scarcely any examples were identified. The Law Society of Scotland and Faculty of Advocates thought we should consider the place of caution for expenses in Scottish courts (one party's attachment of the other's assets may be released on condition that a guarantee (caution) is provided instead).
180. In England, courts may require a party to provide financial security for potential liabilities to another party and leave to appeal may sometimes be granted provided compliance with the order appealed against is financially secured. However the Bar Standards Board were not aware of anything in English law where the granting of the final order depends on a financial guarantee. The BSB do not consider legislation will be needed to give effect to Article 27(3), arguing that the provision would have direct effect which judges would be obliged to recognise.

181. Glasgow Licensing Authority thought a guarantee was unlikely to be required in licensing terms.

### Government Response

182. *We will investigate the instances mentioned to evaluate the impact of the Services Directive. If there are cases where existing provisions are not compliant with the terms of the Directive, we will work with the organisations concerned to rectify this.*

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

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

183. Several respondents replied to this question broadly agreeing with our approach, although there were a number of provisos.

184. SITPRO and the BRC argued that market pressures may be the best way to raise standards. The BRC thought that codes should not be used to restrict market access. The adoption of codes should be voluntary and the public enforcement of them should be restricted to legal requirements alone.

185. CBI commented that schemes should only be introduced if there is real evidence that both consumers and businesses will benefit and that compliance by business will be proportionate to the benefits. If codes are introduced, businesses should be consulted fully and voluntary schemes be given preference over mandatory ones. The TUC and GMB however thought the focus should be on the consumer, suggesting it would be wrong to make government support conditional on schemes benefiting providers as well. The TUC and GMB thought it would be beneficial to develop a coherent strategy to deliver the benefits offered to consumers by this part of the Directive.

186. Various suggestions were made as to how service providers could be encouraged to take action, such as developing standards at European level, and by working with sectoral/professional bodies to support existing schemes, whilst another viewpoint was that codes of conduct should be developed by firms themselves rather than imposed externally.

187. Respondents gave many examples of current initiatives at European, national and sectoral level, for example codes of conduct and complaints procedures relating to membership of professional organisations and industry-wide standards, particularly in relation to the construction and legal sectors. There are also schemes aimed at encouraging the voluntary adoption of codes, and OFT's approval of consumer codes meeting their quality criteria. The Local Authority Assured Trader Scheme Network (LAATSN) aims to share and develop best practice amongst trading standards schemes.

188. UKAS (the UK Accreditation Service) commented that it was involved in the development and accreditation of several quality schemes for services, working closely with BSI, and that UKAS accreditation was important to ensure that such schemes were properly implemented.

Government Response

189. *We are required to encourage the development of such schemes as are listed in Articles 26 and 37 and will do so where they are of benefit to consumers and not to the detriment of business.*

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

190. Of those that responded to this question, nobody thought that imposing an obligation on organisations responsible for labels and quality marks would be appropriate in isolation. All thought there should be a website, with opinion divided on whether there should be an obligation or not in tandem.

191. The BRC thought that organisations should be required to supply information and that it should be made available on the consumer portal and PSC. The CAB supported the idea of an obligation, suggesting that the Trade Marks Office could help identify relevant bodies.

192. The Bar Standards Board thought that a central website would be sensible particularly if professional labels were included, but that organisations in charge of such labels should be responsible for updating the information. WLGA agreed that a centralised website was a good idea, ideally as part of Consumer Direct. BSI thought that the website should be accessible through the PSC while the Architects Registration Board felt a further website could confuse consumers.

193. OFT agreed that a central website would have advantages, but worried that if the website just listed labels without quality checking them this could give some labels unjustified credibility (i.e. codes that merely require providers to sign up). There were potential liability issues if labels and information about them was misleading – but if the website had a disclaimer this could raise questions about why the information was provided at all.

194. Both BPCA and CEPA thought there was a need to refer to national industry associations in developing policy.

Government Response

195. *We will use a website to bring together information on labels and quality marks and will consider further the suitability of an obligation in legislation on those responsible for such labels and marks to submit information to this website and to ensure it is accurate and up to date. We*



*will build on an existing or planned website if possible and cost-effective. We will link to this information from the PSC.*

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

196. Not many replies were received to this question. A couple of respondents commented that information should be available from a label's owner, although other respondents said the availability of information depended on the industry. OFT commented that while information was generally supplied by label owners, how extensively depended on the audience and the label's purpose. Places to get information included Business Link, the Standards Information Service, the UK Intellectual Property Office, Consumer Direct, OFT and TrustMark websites. OFT added that some labels, such as their Consumer Codes Approval Scheme, require providers to publicise them to spread recognition. The Scheme also has independent assessment through code sponsors and consumer feedback.
197. Other respondents identified information available in the legal sector. BSI mentioned that there were existing standards setting out requirements and recommendations concerning labelling in a variety of sectors.
198. WLGA thought it was not easy for consumers to access information on labels or compare their value, so bringing information to a single point would be of great benefit.

Government Response

199. *See the response to question 43 above. We will endeavour to ensure that information on labels and quality marks is available through one web location.*

**Article 23 – Professional Liability Insurance**

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

200. This question raised many different and interesting viewpoints. Overall, a clear two-thirds of those responding to this question agreed that professional liability insurance (PLI) should not be a general mandatory requirement, giving reasons such as allowing market forces to apply, allowing providers to decide for themselves on any risk and how to cover it, arguing that there would be an impact on the cost of services, that there would be disproportionate burdens on providers, or it would be bad for competition. Those agreeing with the Government's position came from a wide variety of organisations, including professional bodies, business groups, trade associations, government agencies, local authorities and the Association of British Insurers.

201. One reason for disagreeing with the Government's approach was that low cost market entrants might reduce quality and increase consumer risk (BPCA/CEPA). The Glasgow Licensing Authority thought that it should be mandatory for licensable activities or when a Licensing Authority considers it necessary. Citizens Advice Bureau strongly disagreed with the Government, asserting that liability protection was part of most Government initiatives for self-regulation and should be introduced across all businesses. BDO Stoy Hayward LLP also disagreed.
202. Some respondents, such as the Architects Registration Board, thought more work was necessary before we come to a view. The Law Society of Scotland suggested we should assess legal services currently lacking obligatory safeguards to see whether higher protection levels were desirable. An alternative proposed was a bond scheme for business, although it was recognised that this would be costly. The Bar Standards Board suggested that if PLI was to be mandatory, we would have to define 'high-risk' and determine minimum cover, which would best be left to professional regulators. Some Unions sought clarification on which 'high-risk' areas don't presently require PLI<sup>2</sup>.
203. Some respondents thought that the issue of PLI could easily create a barrier to service provision, contrary to the aims of the Directive. HVCA commented that a barrier would arise if insurance providers wouldn't underwrite service provision by UK providers in other Member States that did require PLI, or only at large cost. ABI asserted that insurance providers would only provide cover where commercially viable, worrying that businesses may end up operating outside the law by not having insurance or only by paying large sums. RIBA suggested there may need to be a case-by-case approach across the EU to secure a more level playing field.
204. Another issue was that of recognising equivalence, with some respondents including ABI querying who would be responsible for judging whether insurance cover was equivalent and who would be obliged to accept this. The Glasgow Licensing Authority thought reliable information in English at short notice would be necessary to verify insurance is equivalent, pointing out that licensable events must have proper insurance.
205. One respondent (the Association for Consultancy and Engineering) suggested that the PSC could recommend to recipients that they enquire of providers if they have PLI.

### Government Response

206. *We believe on balance that professional liability insurance should not be a requirement in general for all providers of 'high-risk' services in the UK. To introduce such a general requirement where none currently exists*

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<sup>2</sup> There are few areas where insurance is obligatory in the United Kingdom. These include public liability insurance for riding schools and for owning dangerous dogs, employers' liability insurance and motor insurance. Professional liability insurance is required in the professional rules of certain regulatory bodies e.g. solicitors and accountants.

*could impose disproportionate burdens and have the effect of distorting competition. Professional liability insurance will still be a requirement for practitioners of some professions through professional rules, such as solicitors, accountants and architects. We recognise that where other Member States do introduce a requirement in general then service providers in the areas covered will need to take out professional liability insurance to operate in those States, to the extent that the provider is not already covered by equivalent insurance. We agree that in certain circumstances this situation could create a barrier and will work with the Commission and other Member States to identify which services will be affected. We will correspondingly request that pertinent information be included on the relevant Member States' PSCs. It will be for the relevant professional bodies to establish equivalence but we will discuss this further with them.*

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

207. A few organisations responded to this point, suggesting there would be no envisaged changes in their rules. This included ICAEW, ARB, the BSB Code of Conduct, accountancy professional rules (according to BDO), and the ACE code of business practice. The Faculty of Advocates and Law Society of Scotland suggested that they would need to make changes in relation to the information provision in Article 22(1)(k).

208. The Solicitors Regulation Authority commented that its PLI scheme permits insurance from insurers in a lawyer's home state and that collective comparison funds e.g. the Solicitors' Compensation Fund currently have an exemption from any ban on requirements that insurance must be from the state of establishment.

#### Government Response

209. *We will investigate further with professional bodies where professional rules requiring PLI exist and will work with those bodies to ensure the rules are compliant with the Directive's terms, for example in recognising equivalence.*

**Q47 Do you have any comments on the application of Article 22(1)(k)?**

210. There was some disagreement amongst respondents in the best way to approach Article 22(1)(k).

211. Both the Citizens Advice Bureau and SITPRO thought that the information was crucial for consumers to make an informed choice.

212. Some respondents would prefer no general disclosure requirement, such as ICAEW. Others were content that certain information could be released but not all information about an insurance provider. The Solicitors

Regulation Authority thought that general details would be acceptable, but information about the insurer's name or contact details was not. The Law Society of Scotland agreed there would be difficulty sharing contact details, commenting that it would be inappropriate for recipients to contact the insurer directly. If relevant, the solicitor could reveal that they were part of any master policy instead. BDO Stoy Hayward also agreed that some information such as the fact that cover existed or that it met minimum levels was acceptable, but details such as the actual amount insured was not. The Architects Registration Board said that PLI insurers don't normally permit the release of their contact details and doing so could leave the UK in a different position to other Member States.

213. There was a concern that release of too much information could in fact lead to litigation (ICAEW, BDO). BDO further suggested that releasing this information could be anti-competitive for firms outside the top flight, and that it would be more damaging for UK providers as cover is not capped here unlike in some Member States. However if there were to be a disclosure requirement, BDO thought it would be important also to disclose the amount covered through captive insurance companies.

214. On the matter of whether Article 22(1)(k) applies at all, GMB thought that where professional rules require PLI, then the information should be provided. HVCA on the other hand thought that if PLI were to be a non-mandatory requirement, then Article 22(1)(k) would be superfluous. Another comment made by GMB was that when 'high-risk' providers don't have PLI, then they should make this clear.

### Government Response

215. *We consider that the information obligation in Article 22(1)(k) must apply in all circumstances where PLI is an obligatory requirement. In the UK, this encompasses those professions where PLI is a requirement through professional rules such as accountants and solicitors. We consider that Article 22(1)(k) will also impact on UK providers required to take out PLI to operate in a given sector in another Member State. In those cases, providers should be able to ascertain from Member States' Points of Single Contact where PLI requirements apply and therefore when they need to supply the information to clients. We consider that where providers are required to give out information under Article 22(1)(k), they will only need to supply the minimum necessary, so that recipients can check that a policy does exist. This could mean the fact of the insurance and perhaps details such as a policy number, plus contact details of the insurer and territorial coverage as specified by the Directive.*

216. *Nonetheless we recognise the concerns expressed by some respondents to the consultation in this area and so will consult further with interested parties in considering this area further.*

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

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

217. While we did not receive responses on the second part of this question, a number of respondents gave us examples of where professional rules relating to commercial communications exist. These included professional rules and codes of conduct in the legal profession, which respondents suggested were compliant. Other areas mentioned included farriers, accountancy and guidance for insolvency services. Again, respondents thought rules were compliant; indeed nobody suggested that there were rules in any sector that would need to be abolished as a result of the Services Directive. OFT commented that most restrictions had already been lifted, other than in relation to publishing success rates in the legal profession (there were arguments this was not a good guide to quality and that it could deter lawyers from taking on cases considered less likely to succeed).

### Government Response

*218. We will develop a strategy for working with professional bodies to ensure they understand their obligations under the Services Directive and can determine whether changes need to be made to their professional rules as a result.*

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

219. Respondents advised that the Legal Services Act 2007 will have addressed relevant barriers to multi-disciplinary activities in that profession, and the Solicitors Regulation Authority commented that implementation of the Services Directive must be consistent with that Act. However ICAEW thought that while the Act appeared to have removed barriers there was a danger that its implementation wouldn't deliver what it promised: the Services Directive could be used to drive solutions to remaining problems. The Bar Standards Board advised that the Act would allow barristers to engage in multi-disciplinary activities; that it was consulting on this and considering whether current restrictions should be abolished.

220. Other rules prohibiting some forms of multi-disciplinary activities were identified by the Faculty of Advocates and Law Society of Scotland, which these organisations considered should be justifiable. Proposals were due in Spring 2008 in Scotland concerning lifting restrictions on which organisations can perform legal services. Additionally, the Bar Standards Board advised that a rule prohibiting multi-disciplinary activities between

lawyers and accountants had been found to be acceptable to the European Court of Justice.

221. In other professions, the TUC claimed that restrictions exist on the extent to which auditors can offer additional services; while Engineering Council UK believed there were no restrictions in the engineering sector. Regarding insolvency services, there were restrictions for recognised professional bodies in this area.
222. UKAS thought there should be further discussions on how accreditation, certification and other conformity assessment activities should be excluded from the requirements.

### Government Response

223. *We will work with professional bodies, providers of accreditation services and other affected bodies to make sure the rules identified are in fact compliant with the requirements in the Services Directive on multi-disciplinary activities.*

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

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

224. Of those that responded, all agreed with the suggested approach. The Insolvency Service thought that the obligation should be consistent in all Member States or UK service providers could be disadvantaged. ICAEW considered that the obligation should not encompass service providers who don't trade across borders. They also felt that penalties should be light-touch and limited to cases of severe consumer detriment. SITPRO drew attention to the need to have regard to the GATS commitments.
225. The Bar Standards Board commented that issues of geography and nationality were not a problem for barristers given the volume of electronic communications within the services sector.

### Government Response

226. *We will proceed with the legislative approach laid out in the consultation and will pursue an enforcement regime along the lines of that discussed in the response to question 40. As highlighted in the response to question 38, we understand that the obligations will have to apply to all service providers within the scope of the Directive, which includes cases where transactions are internal to the UK.*

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

227. Examples suggested were:

- Distance
- Differences in complexities of law and procedures
- Differences in market conditions between Member States
- How an order is placed and whether it is a new or repeat order
- Volume of the order
- Provision of ancillary services
- Proposed terms of payment

228. The Glasgow Licensing Authority commented that providers' fluency in English may have an effect. BSI thought more efforts should be made to promote the use of common terms and definitions – and that European Standards could play a role in this. The Architects Registration Board advised they charge the same for initial registration regardless of nationality.

### Government Response

229. *We will develop a list of potential objective criteria to aid service providers in understanding where they may impose different conditions of access to their services. This list will not have binding force but will be able to act as a reference for providers, recipients and enforcers. Service providers themselves will be able to determine when different conditions are justifiable and can defend their judgment as necessary.*

## **CHAPTER D: SCREENING THE UK'S RULES ON SERVICE PROVISION**

230. The Key Question for this chapter was:

**Key Question 4:** Can you think of any examples of legislation, administrative practices or licensing regimes either in the UK or in other Member States that should be amended in order to comply with the Directive?

231. The other questions asked in this chapter were, on the whole, fairly specific to particular areas. Perhaps for this reason, a number of respondents took the opportunity to provide general comments on the screening exercise rather than detailed responses to each question.

232. Among the general points made were:

- Respondents generally supported the Government's approach to the screening exercise, and agreed that it should be as thorough as possible.
- Several respondents emphasised that the exercise should be seen as a further driver for simplification of the UK regulatory landscape. But this was not a universal view, and more than one argued that it should not be seen as an opportunity for further, indiscriminate deregulation.
- One or two expressed surprise that, notwithstanding the efforts that the Government had apparently put in to the exercise, very few legislative changes had been identified.
- The point was also made that it would be even more important to ensure that other Member States conducted an effective screening process.
- There were very few concrete suggestions for specific barriers within the UK that should be screened and potentially removed. There were few suggestions made for barriers overseas.
- However, some general suggestions were made for more general areas which could be focused on, in particular activity at local authority level.

233. The Government's proposed way forward, in the light of responses, is summarised on pages 52-53.

### Responses to Individual Questions

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



234. Almost all who responded on this question felt that it was better to regulate for all types of service provider on an equal basis. Anything else could lead to confusion for consumers. The Bar Standards Board disagreed, referring to the two sectoral Directives that regulate legal service providers differently for temporary and established service provision.

### Government Response

235. *The Government is continuing to investigate this area, in particular in respect of professional activity which is governed by provisions derived from the EU, for example the Mutual Recognition of Professional Qualifications (MRPQ) Directive, or (as the Bar Standards Board pointed out in respect of legal services) other sector-specific Directives. In these cases the provisions of the existing EU Directive will generally “trump” the Services Directive, and this may mean that some element of differential treatment for that profession remains. As a general principle, however, the Government agrees with consultees that it would be desirable to avoid different types of regulation for different types of service provider wherever possible.*

236. *The Government believes that no generic provision of a horizontal nature, which would automatically disapply or amend existing primary or secondary legislation to ensure compliance with the Directive, is likely to be needed. The current screening exercise will have identified any changes to current primary and secondary legislation that may be required by the Directive. The Government also believes that it is reasonable to expect future legislators to bear in mind the need to comply with the Directive when making new law. If some degree of horizontal, across-the-board provision were found to be necessary for future legislation, this should not be at the expense of tailor-made provision in the legislation itself.*

237. *However, the Directive applies not just to legislation, but also to requirements which are contained within the administrative practices of competent authorities such as, for example, local authorities. As discussed elsewhere, the Government is working closely with local authorities to ensure that they are aware of their responsibilities under the Directive and can modify their procedures where this may be needed to ensure compliance with the Directive. However, it is likely that some form of measure at a generic level will be needed to ensure that competent authorities are put under a binding obligation to comply with the Directive where necessary.*

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

238. There was complete agreement to this proposition from those who responded. Several went on to stress the importance of the peer review process to proper implementation throughout Europe, and that few other EU countries have the same process of public consultation, and of working

with key stakeholders, as the UK. There was therefore support for the principle that all Member States should publish their findings.

#### Government Response

239. *The Government will publish the information from its screening report, and will continue to press for other Member States to do likewise (albeit it is not a formal requirement under the Directive).*

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

240. This question attracted helpful and detailed responses from representative bodies for the legal profession. In particular, the Solicitors Regulation Authority provided a detailed paper “mapping” the provisions of the Directive against the provisions of the Legal Services Act. They highlighted one area where they felt that amendment to that Act might be needed, in order to provide a judicial appeal in relation to the failure to determine an ABS (alternative business structure) licensing application within the fixed time, which operates as if the application had been refused. They felt this would be necessary in order to provide an alternative to the application being "deemed to have been granted" under Article 13(4) of the Directive, and argued that such an alternative by way of the appeal would be justified by an overriding reason relating to the public interest, because "deemed approval" could put the public at serious risk.

#### Government Response

241. *The Government is very grateful for the detailed responses provided. The Legal Services Act 2007 (LSA) is a recent piece of legislation, which amends and repeals much of the existing legal services legislation. The Ministry of Justice is currently screening the LSA in detail against the Directive, and considering how to implement the Act, for example in secondary legislation, in ways which are consistent with the Directive. This screening exercise will also cover any other legal services legislation. The MoJ has already held meetings with bodies such as the SRA and will continue to engage with them in order to assess and deal with the changes that the Directive will bring about, and the relationship with other existing sectoral Directives.*

242. *The MoJ recognises the concerns raised in respect of the deemed authorisation of legal services providers, and will seek further views from the SRA as to the potential impact and risk to consumers if no change is made. It is not yet clear whether a change to the LSA itself would represent the most proportionate and appropriate way of addressing the issue.*

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

243. Those who commented were unanimous in the view that there were strong public policy grounds for retaining the UK's current system of alcohol licensing. In fact, as was suggested in the consultation document, there are reasons to believe that this system may in any event be out of scope of the Directive on the basis that alcohol licensing is better analysed in legal terms as relating to the sale of goods rather than the provision of services.

244. A helpfully detailed response from the Glasgow Licensing Authority pointed out some potential difficulties with the operation of the Scottish licensing system, which might need to be looked at carefully if the sale of alcohol were to be considered a service activity. Similar issues were raised by the British Hospitality Association.

#### Government Response

245. *As mentioned above, the Government takes the view that the system is better analysed in terms of goods, but is nonetheless exploring the points raised with the relevant Government Departments.*

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

246. Few people responded to this question, but the Bar Standards Board queried whether it was right to suggest that insolvency practitioners fell within the scope of the MRPQ, as the consultation document had suggested. They also suggested that, if relaxations to the UK regime were to be introduced, it would be appropriate to add some form of aptitude test so that temporary providers from overseas would be obliged to demonstrate some expertise in the UK system.

#### Government Response

247. *The Government has reflected on the points raised, but continues to believe that the appropriate analysis is to see insolvency as covered by MRPQ. It follows that, under the terms of that Directive and irrespective of any effectively equivalent requirements of the Services Directive, amendment will be needed to the Insolvency Act to clarify that professionally qualified practitioners from other Member States may operate in Great Britain temporarily or occasionally without going through the GB authorisation process. There is no scope under the MRPQ for an aptitude test to be introduced for practitioners working on a temporary basis.*

248. *The changes proposed to the Insolvency Act will be needed as a result of the MRPQ Directive and it is therefore likely that they will be made independently and in advance of any changes required as a result of the Services Directive.*

- Q57 Do you agree that the proposed changes to hallmarking regulation meet our obligations under the Directive?**
- Q58 Do you have any other suggestions or comments relating to the proposed changes to hallmarking regulation, for example regarding enforcement and the safeguarding of UK consumers?**
- Q59 The Hallmarking Act currently prevents UK assay office marks being applied outside the UK. Do you believe, in principle, that UK assay offices should be able to apply their UK assay office marks outside the UK?**
- Q60 Are you aware of any legal or administrative obligations relating to hallmarking in other Member States' which limit access to their market?**

249. Only one confidential response was received which answered these questions in detail. A couple of respondents raised concerns about potential enforcement difficulties if a larger number of hallmarks were approved and recognised.

#### Government Response

250. *The Government is currently analysing proposals for changing the hallmarking regime. We intend to set out criteria for authorisation and the application procedure to make the process more transparent. Provisions to permit new assay offices to be represented on the British Hallmarking Council are being reviewed, as is the removal of voting rights of assay office representatives regarding the authorisation or closure of assay offices.*

251. *Administrative and legislative changes are being considered to recognise hallmarks affixed in the UK by temporary service providers from other Member States that are equivalent to hallmarks approved under the Hallmarking Act. The question of equivalence would be decided by the relevant hallmarking authorities in the UK, according to indicative criteria set out in an administrative provision. A list of approved hallmarks would then be maintained on a website for the benefit of retailers and enforcement authorities.*

252. *A proposal is under consideration to amend the Hallmarking Act to permit UK hallmarking service providers to apply UK assay office marks in other Member States, thus giving them access to other EU markets.*

**Q61 If you consider that there are any requirements within a particular byelaw which might directly or indirectly affect service provision, then please let us know.**

253. No specific examples were identified, although some respondents continued to believe that there might be requirements within byelaws which would need investigation.

## Government Response

254. *The Government has examined the “model” byelaws which central Departments produce as a guide to be adapted to local circumstance, and has generally found them to be of a sort unlikely to raise any issues under the Directive. However, the scope for local authorities to regulate or act in ways which might raise compliance issues is an important focus of the pilot activity described below. While initial views from sample local authorities tend to confirm the view that byelaws are not on the whole likely to cause any difficulties, we will encourage local authorities to look at their provisions on a case by case basis where there is any doubt.*

## **Overall Government Response to Screening Section**

255. *During the consultation period, BERR has continued its work with other Departments on the lines outlined in the consultation document. The screening exercise is now substantially complete in respect of primary legislation and licenses at national level. In general, the results confirm the original assessment that the UK has relatively little regulation in areas within the scope of the Services Directive, and that what regulation we have is generally compliant with the Directive.*

256. *Screening the entirety of UK legislation is a huge exercise involving a wide variety of Government Departments and public authorities. There are certain areas where the screening exercise is clearly not yet complete. It will in any event be difficult ever to guarantee that all possible regulatory and administrative requirements have been screened with absolute thoroughness, notwithstanding the very significant resources that the Government has been devoting to this exercise. It is re-assuring that respondents to the consultation have not been able to suggest many examples of requirements that need further investigation. This tends to provide some “bottom up” support to the Government’s “top down” view that relatively little needs changing.*

257. *There are however some areas, identified since the consultation document was published, where the screening exercise has shown it may be necessary to change current legislation and working methods. For example, DEFRA has agreed to examine the extent to which changes may be needed to ensure that criteria for granting authorisations or licences will be made public in advance; in some cases they are already publicly available via Defra's website. The Veterinary Surgeons Act 1966, and any secondary legislation made under it, will also be amended in order to comply with the Directive.*

258. *The Government also agrees with those respondents who suggested that further work is needed at the level of, in particular, local authorities. In recent months, pilot discussions have been held with some volunteer authorities to try and gain a deeper understanding of the ways in which they exercise discretion in, for example, licensing decisions, and the implications of the Directive, if any, for these discretionary actions. The Government plans to hold one or two more pilot meetings of this sort, before embarking on a more general communications exercise involving all*

*local authorities. In due course, the Government will also ensure that there is detailed guidance available so that all authorities can understand clearly what changes, if any, they may need to make to their practices, and the new legal obligations that they will be under.*

*259. Professional bodies may also in some circumstances impose requirements of a sort which need to be examined under the Directive. In some cases this activity is underway – for example, we are grateful for the consideration that has already been given by representative bodies in the legal service to the professional rules affecting that profession - but the Government believes that further work may be needed to identify and engage with other professional bodies across a variety of sectors. The Government therefore re-iterates the offer of advice and support made in the original consultation document to any such body who wishes to get in contact.*

*260. The website will continue to be used to provide updates on the screening exercise<sup>3</sup>. In particular, where further potential legislative changes are identified as a result of the screening exercise, it will be essential that all who wish to comment have an opportunity of providing their views to help inform the Government's ultimate decisions. Given that the issues identified are likely to be specific, piecemeal changes in particular areas, BERR does not propose to hold further formal public consultation exercises of the current sort, but information will always be made publicly available on the website, comments from any and all respondents will be welcomed, and the Government will make sure that the key interested parties (for example. the relevant professional organisations for the sector concerned, trade unions, and other representative bodies) are actively alerted and their views solicited.*

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<sup>3</sup> <http://www.berr.gov.uk/europeandtrade/europe/services-directive/implementation/implementationupdates/page43431.html>

## **FUTURE STEPS**

261. Implementing the Services Directive effectively to ensure its maximum benefits are achieved will require us to take action in a number of different areas. These action points are set out throughout this document, but in summary the Government will:

### **General**

- Continue to develop detailed policy on a number of issues, taking into account developments such as the forthcoming Enterprise Review
- Ensure that the legislative changes necessary to comply with the Directive are introduced and are in force, and that appropriate guidance as necessary is available to businesses, consumers, competent authorities, professional bodies and others by the implementation deadline of 28 December 2009. Further information about this process will be available in due course.

### **Points of Single Contact**

- Produce a technical/feasibility report by the summer
- Begin work on building the PSC in late autumn 2008 and complete the build by autumn 2009. This should allow sufficient time for final testing of the system before it is launched in late 2009
- Work with local authorities, their representative bodies, "Communities and Local Government" and other competent authorities to develop a practical and cost effective way to deliver the electronic functionality that is needed to comply with the Directive
- Launch a marketing campaign prior to launch so that potential users are made aware of the portal and what it can be used for
- Monitor usage of the PSC once it is operational in order to inform future developments

### **Administrative Co-operation**

- Continue to liaise with competent authorities in order to resolve particular issues, to influence the development of the IMI system so that as far as possible it meets their needs, and to evaluate the possible impact of the Directive on their workloads
- Continue to develop the list of competent authorities (the current list is at Annex B)
- Provide training on the IMI system for competent authorities in advance of it becoming operational
- Provide guidance for competent authorities on their obligations under the Directive in advance of the December 2009 implementation deadline

## **Ensuring the Quality of Services**

- Agree a suitable host for the 'consumer portal' and ensure it is operational by the implementation deadline
- Examine further how the host of the UK 'consumer portal' should communicate requests for information with portals in other Member States
- Ensure that the new obligations arising from the Directive on information and redress are implemented in the least burdensome way possible and determine how they can best be integrated with existing obligations
- Investigate further the role of the Enterprise Act in enforcing the relevant sections of the Directive
- Use a website to bring together information on labels and quality marks
- Encourage other Member States to make clear on their PSCs in which instances professional liability insurance is a requirement

## **Screening the UK's rules on Service Provision**

- Continue to work with local authorities and professional bodies in order to ensure that they are aware of their responsibilities under the Directive and can modify their procedures in order to comply with it
- Complete the final stages of the screening exercise and publish details of any proposed legislative changes on the BERR website

## **Implementation in Other Member States**

- Continue to work with other Member States and the European Commission to encourage consistent implementation of the Directive across the EU

## **Report to the European Commission**

- Fulfil our obligations to submit a report to the European Commission on certain aspects of implementation by the implementation deadline of 28 December 2009 and then take part in a six-month peer review process considering other Member States' implementation reports
- Voluntarily publish the information contained in our report to the European Commission and encourage other Member States to do likewise



**LIST OF INDIVIDUALS AND ORGANISATIONS THAT RESPONDED**

- Architects Registration Board
- Association for Consultancy and Engineering
- Association of British Insurers
- Bar Standards Board
- BDO Stoy Hayward
- British Chambers of Commerce
- British Hospitality Association
- British Pest Control Association
- British Retail Consortium
- British Standards Institute
- Business in Sport and Leisure
- Chartered Institute of Taxation
- Citizens Advice Bureau
- Companies House
- Confederation of British Industry
- Corgi
- Dean Backhouse
- Department for Children, Schools and Families
- Direct Selling Association
- Dundee City Council
- Engineering Council UK
- Environment Agency
- European Pest Management Industry Association
- Faculty of Advocates
- Falkirk Council
- Farriers Registration Council
- Glasgow Licensing Authority
- GMB
- Health and Safety Commission
- Heating and Ventilating Contractors Association
- Institute of Chartered Accountants in England and Wales
- Insolvency Service
- Institute of Directors
- LACORS
- Law Society of Scotland
- London Trading Standards Authorities (LoTSA)
- Market Research Society
- Natural England
- Northampton Borough Council
- Office of Fair Trading
- Professional Contractors Group
- Public and Commercial Services Union
- Royal Institute of British Architects
- Scottish Environment Protection Agency
- SITPRO
- Solicitors Regulation Authority
- South Lanarkshire Council
- Trades Union Congress
- Union of Construction, Allied Trades and Technicians (UCATT)
- Union of Shop, Distributive and Allied Workers (Usdaw)
- Unite the Union
- United Kingdom Accreditation Service
- UK European Consumer Centre
- Welsh Local Government Association

**UPDATED LIST OF COMPETENT AUTHORITIES**

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

1. Architects Registration Board
2. Animal Health
3. Animals (Scientific Procedures) Inspectorate
4. Association of Chartered Certified Accountants (ACCA)
5. Bar Standards Board
6. British Hallmarking Council
7. British Horseracing Authority
8. Cadw (Welsh Assembly Government's historic environment division)
9. Centre for Environment, Fisheries and Aquaculture Science (CEFAS)
10. Civil Aviation Authority
11. Charity Commission
12. Companies House
13. CORGI
14. Countryside Council for Wales
15. Department for Children, Schools & Families (DCSF)
16. Department for Environment, Food and Rural Affairs (DEFRA)
17. DETI (NI)
18. Drinking Water inspectorate
19. Employment Agency Standards Inspectorate
20. English Heritage
21. Environment & Heritage Service (NI)
22. Environment Agency
23. Farriers Registration Council
24. Football Licensing Authority
25. Health & Safety Executive
26. Her Majesty's Chief Inspector schools
27. Historic Scotland
28. Home Office
29. Information Commissioner's Office
30. Insolvency Practitioners Association
31. Insolvency Service
32. Institute of Chartered Accountants in England & Wales
33. Institute of Chartered Accountants in Ireland
34. Institute of Chartered Accountants of Scotland
35. Intellectual Property Office (after 2010)
36. Law Society of England and Wales
37. Law Society of Northern Ireland
38. Law Society of Scotland
39. Local Authorities – inc. Borough, County, District, Metropolitan and Unitary
40. Marine and Fisheries Agency
41. Maritime & Coastguard Agency
42. national care standards commission
43. National Weights & Measures Laboratory
44. Natural England
45. OFCOM
46. Office of Fair Trading (OFT)
47. Ofgem
48. Ofsted
49. Ofwat
50. Pesticides Safety Directorate
51. Postcomm
52. Royal College of Veterinary Surgeons
53. Scottish Licensing boards
54. Scottish Natural Heritage
55. Scottish Environment Protection Agency
56. Sea Fish Industry Authority
57. Solicitors Regulation Authority
58. UK Intellectual Property Office
59. Veterinary Medicines Directorate
60. VOSA
61. Worshipful Company of Farriers

