



Provision of Services Regulations –

The information requirements for accountancy firms

HELPSHEET

This helpsheet has been produced in conjunction with the ICAS Quality Assurance Department (Quality Review and Audit Monitoring)



Practitioner Service

This helpsheet provides guidance on the requirements of the European Union (EU) Services Directive, as enacted in the UK under the Provision of Services Regulations, and specifically the information disclosure requirements that members in practice will require to meet from 28 December 2009.

What is the Services Directive?

The EU Services Directive aims to make it easier for service providers, particularly small and medium sized enterprises, to offer their services to customers in other EU countries, whether establishing elsewhere in the EU or providing services remotely from the UK. EU Member states are required to implement the Directive by 28 December 2009. The Services Directive is enacted into UK law via the “Provision of Services Regulations” (the Regulations) (www.opsi.gov.uk/si/si2009/draft/pdf/ukdsi_9780111486276_en.pdf) (Statutory Instrument 2009/2999).

What is the purpose of this helpsheet?

The main purpose of this helpsheet is to provide guidance to members in practice on the information requirements, arising from the Regulations, that all accountancy firms will require to comply with.

The Regulations also have a number of other implications and the Institute has been working with the Department for Business Innovation & Skills (BIS) in order to provide a single point of contact for the reserved authorisations of audit and insolvency, and to ensure cooperation with other member states.

Who is a service provider?

The term “service” is widely defined as being “a self employed economic activity (normally provided for remuneration)”. The Regulations therefore apply to all businesses operating in a services sector, with important exclusions. The Regulations work on the principle of ‘if you’re not specifically excluded, you’re in’.

All services generally supplied by accounting firms fall within this definition and therefore the Regulations apply to all accountancy firms. Whilst there are some financial services exemptions, DPB (Designated Professional Body) firms still require to comply with the information provisions, given that the restricted investment business is incidental to an accountancy service.

Firms authorised with the FSA should refer to guidance provided by the FSA.

What are the information requirements?

The aim of these requirements is to ensure that current and prospective clients have access to a minimum amount of information and to a complaints procedure, so they can make more informed decisions when considering whether to use a particular provider.

Many firms will already provide much of the information required and will only need to provide a few further disclosures to comply. The most significant changes apply to audit registered firms and insolvency practitioners and to the disclosures regarding professional indemnity insurance.

The information requirements are listed in the table below.

Where does the information need to be disclosed?

Regulation 11 is not prescriptive and just requires that disclosures are “clear and unambiguous”.

Information is made available to the (prospective) client if it is:

- supplied on the provider’s own initiative;
- easily accessible at the place where the service is provided or the contract for the service is concluded;
- easily accessible electronically by means of an address supplied by the provider; or
- appears in any information document supplied to the recipient by the provider in which the provider gives a detailed description of the service.

This means that firms have some flexibility as to how they choose to deliver this information. They can, for example, choose a combination of options such as:

- their letterhead; and/or
- their website; and/or
- their engagement letter; and/or
- standard contract terms and conditions; and/or
- notices displayed at each of the firm’s offices; and/or
- other marketing material.

In practical terms, firms will not need to reprint letterheads before 28 December 2009 and can meet the requirements via disclosure elsewhere.

It makes sense, however, to reflect the new requirements in letterheads when you next need to re-order.

When does the information need to be disclosed?

The information requirements are effective from 28 December 2009 and apply to new clients. However, as much of this information is also required to be disclosed to existing clients as part of other legislative or professional requirements, it is probably easier to amend standard documentation than try to apply the changes only to new clients.

The disclosures also must be made “in good time before the conclusion of the contract or, where there is no written contract before the service is provided (unless the information is requested as specified in regulation 9 after the provision of the service)”. This is to ensure that the prospective client has the required information in sufficient time to make an informed choice.

Regulations 7, 8 and 10 require to be disclosed in all cases, whilst Regulation 9 information only requires to be

disclosed on request from the prospective/actual client (see table below).

Additional matters

Most ICAS firms operate under the ICAS Group Consumer Credit Licence. If, however, you have your own consumer credit licence the public register information requirements will require disclosure of your licence number as it appears on the Office of Fair Trading’s Consumer Credit Register www2.crw.gov.uk/pr/Default.aspx and a disclosure that complaints can be made to the Financial Ombudsman Service at www.financial-ombudsman.org.uk.

If you provide other services that require different licences from those mentioned above, please ensure that the disclosure requirements reflect those additional licences.

| INFORMATION REQUIREMENTS THAT MUST BE DISCLOSED (Regulations 7,8 & 10) | COMMENTARY |
|--|--|
| <p>Contact & Other details:</p> <ul style="list-style-type: none"> • Firm’s name, • Firm’s legal status and form, • A postal address, • Fax number or e-mail address, • Telephone number, • Official address (if required by law to disclose) e.g. registered office, • VAT number. | <p>Many firms are already likely to have most of this information on existing letterheads, engagement letters or websites.</p> <p>Legal status/form means explaining, for example, whether the firm is a partnership, limited company, LLP. For sole practitioners, the fact that there is one practitioner’s name on the letterhead should suffice.</p> |
| <ul style="list-style-type: none"> • The general terms and conditions, if any, used by the provider, • The existence of contractual terms, if any, used by the provider concerning the competent courts or the law applicable to the contract. | <p>These only require to be disclosed if the firm has terms. Many firms already set these out in their engagement letters.</p> |
| <ul style="list-style-type: none"> • The existence of any after-sales guarantee not imposed by law. | <p>It is unlikely that firms provide this.</p> |
| <ul style="list-style-type: none"> • The price of the service, where a price is pre-determined by the provider for a given type of service. | <p>Where the fee is determined by hours spent, this does not apply. Any predetermined or fixed fee will need disclosure (e.g. via engagement letter).</p> |
| <ul style="list-style-type: none"> • The main features of the service, if not already apparent from the context. | <p>The “Chartered Accountant”, “Registered Auditor” and “Licensed Insolvency Practitioner” descriptions should suffice, or if you already set out the services in an engagement letter.</p> |

| INFORMATION REQUIREMENTS THAT MUST BE DISCLOSED (Regulations 7,8 & 10) continued | COMMENTARY |
|---|---|
| <ul style="list-style-type: none"> • Where the provider is subject to a requirement to hold any professional liability insurance or guarantee, information about the insurance or guarantee and in particular: <ul style="list-style-type: none"> ○ the contact details of the insurer or guarantor, and ○ the territorial coverage of the insurance or guarantee. | <p>Members in public practice are required to hold professional indemnity insurance (PII) and therefore all firms will require to add this disclosure.</p> <p>The suggested wording is: “in accordance with the disclosure requirements of the Services Regulations 2009, our professional indemnity insurer is [name of insurer], of [contact address]. The territorial coverage is worldwide (excluding professional business carried out from an office in the United States of America or Canada)* and excludes any action for a claim brought in any court in the United States of America or Canada”</p> <p>The Institute’s minimum policy wording includes an exclusion to the USA and Canada, but if you have extended your policy coverage, you can delete the wording in brackets () above.</p> <p>If the firm has a layered policy then only the insurer of the first layer and/or the “lead” insurer needs disclosure. If this is not clear, please discuss with your broker.</p> |
| <ul style="list-style-type: none"> • The provider of a service who is subject to a code of conduct, or is a member of a trade association or professional body, which provides for recourse to a non-judicial dispute resolution procedure must: <ul style="list-style-type: none"> ○ inform a recipient of the service of that fact, and ○ mention it in any information document in which the provider gives a detailed description of the service, specifying how to access detailed information about that procedure. | <p>This requires firms to disclose the firm’s complaint process i.e. the principal in the firm to whom complaints should be addressed and the client’s right to refer the matter to ICAS if not satisfied. Many firms include this already in their engagement letters.</p> |

| INFORMATION REQUIREMENTS THAT MUST BE DISCLOSED (Regulations 7,8 & 10) | COMMENTARY |
|---|--|
| Additionally for audit registered firms: | |
| <ul style="list-style-type: none"> • The professional title and the member state in which the regulated professional title has been given. • If the activity is subject to an authorisation scheme, particulars of the competent authority. • Details of the public register: <ul style="list-style-type: none"> ○ the name of the register, and ○ the provider’s registration number, or ○ equivalent means of identification in that register. | <ul style="list-style-type: none"> • The suggested disclosure is: “registered to carry on audit work in the UK by The Institute of Chartered Accountants of Scotland” * • There is no professional title so the firm can refer to itself as “Registered Auditors” or “Statutory Auditors” • The suggested disclosure is “details about our audit registration can be viewed at www.auditregister.org.uk under reference number (<i>add firm number – four numbers long</i>)” <p>Both are new requirements reflected in the guidance to Audit Regulation 2.01 and explained in Audit News 46.</p> <p>*References to Ireland and the Irish register require to be added if the firm is authorised to conduct audit work in Ireland.</p> |
| Additionally for insolvency practitioners: | |
| <ul style="list-style-type: none"> • The professional title and the member state in which the regulated professional title has been given. • If the activity is subject to an authorisation scheme, particulars of the competent authority. • Details of the public register: <ul style="list-style-type: none"> ○ the name of the register, and ○ the provider’s registration number, or ○ equivalent means of identification in that register. | <ul style="list-style-type: none"> • The suggested disclosure is “licensed to act as an insolvency practitioner in the UK by The Institute of Chartered Accountants of Scotland” • Strictly, the Insolvency Service register is not mandatory, so details do not need to be provided. However if firms wish to refer to it, the reference would be www.insolvency-service.co.uk/newipsearch.htm |

| INFORMATION TO BE PROVIDED IF REQUESTED (Regulation 9) | EXPLANATION |
|---|---|
| <ul style="list-style-type: none"> Where the price is not pre-determined by the provider for a given type of service: <ul style="list-style-type: none"> the price of the service, or if an exact price cannot be given, the method for calculating the price so that it can be checked by the recipient, or a sufficiently detailed estimate. | <p>Many firms already disclose the fee basis in their engagement letters (already contained in ICAS Code of Ethics 240)</p> |
| <ul style="list-style-type: none"> Where the provider is carrying on a regulated profession, a reference to the professional rules applicable in the EEA state in which the provider is established and how to access them. | <p>Audit registered firms: reference can be made to the following, currently found at the following sites:</p> <ul style="list-style-type: none"> For the Audit Regulations: www.icas.org.uk/site/cms/contentviewarticle.asp?article=5440 For the APB International Standards on Auditing (UK and Ireland), Practice Notes, Bulletins and the APB Ethical Standards: www.frc.org.uk/apb/publications/ For the Companies Act 2006: www.opsi.gov.uk/ACTS/acts2006/pdf/ukpga_20060046_en.pdf <p>Insolvency Practitioners:</p> <ul style="list-style-type: none"> For Insolvency Practitioner Byelaws, Statements of Insolvency Practice (SIPS) www.icas.org.uk/site/cms/contentCategoryView.asp?category=4325 |
| <ul style="list-style-type: none"> Information on other activities undertaken by the provider which are directly linked to the service in question and on the measures taken to avoid conflicts of interest. | <ul style="list-style-type: none"> The firm will require to identify any potential conflicts and should refer to the ICAS Code of Ethics, and particularly section 220 www.icas.org.uk/site/cms/contentviewarticle.asp?article=4830 For Audit registered firms: the firm will require to identify any potential conflicts and should refer to APB Ethical Standard 5 www.frc.org.uk/apb/publications/ For Insolvency Practitioners: the firm will require to identify any potential conflicts and should refer to the ICAS Code of Ethics Part D. www.icas.org.uk/site/cms/contentCategoryView.asp?category=4325 |
| <ul style="list-style-type: none"> Any codes of conduct to which the provider is subject and the address at which these codes may be consulted by electronic means, specifying the language available. | <ul style="list-style-type: none"> For all members: the ICAS Code of Ethics www.icas.org.uk/site/cms/contentviewarticle.asp?article=4830 For all audit registered firms: the APB Ethical Standards www.frc.org.uk/apb/publications/ For Insolvency Practitioners: the ICAS Code of Ethics Part D: Insolvency Practitioners www.icas.org.uk/site/cms/contentCategoryView.asp?category=4325 |

For more information regarding Quality Assurance, i.e. Audit Monitoring or Quality Review, contact Lynne Bannan on 0131 347 0284 or email lbannan@icas.org.uk.

For more information regarding the CA Practitioner Service, contact Lesley Amos on 0131 347 0253 or email caps@icas.org.uk.

Disclaimer

This helpsheet is designed to assist members with an important issue of general application and is not intended to be a definitive statement covering all aspects of this area. No responsibility for any person acting or refraining to act as a result of any material in this helpsheet can be accepted by ICAS.