



The Provision of Services Regulations 2009

Purpose:	To draw barristers' attention to issues relating to the application of these Regulations to the legal services they provide.
Overview:	The Regulations – Suggestions to the profession (General) – Suggestions to the Profession (Insurance)
Scope of application:	All self-employed barristers
Issued by:	The Legal Services Committee
Originally issued:	2011
Last reviewed:	July 2017
Status and effect:	Please see the notice at end of this document. This is not “guidance” for the purposes of the BSB Handbook I6.4.

Summary

- The Provision of Services Regulations 2009 require self employed barristers to (1) inform, (2) make available, and (3) supply upon request specified information to their professional and lay clients prior to the formation of a contract with the client.
- The information which must be ‘made available’ is set out in regulations 7 and 8. Such information is largely routine (name, contact details etc.) but also includes the barristers VAT number, details relating to professional indemnity insurance and details relating to regulation by the BSB.
- The regulations are not dogmatic as to how such information is to be provided (regulation 8(2)) and it is a matter for individual barristers and chambers as to how they comply with the regulations. Examples of how to comply with the regulations include provision of information on chambers website and routine provision of information by clerks before instructions are accepted.
- Regulation 9 sets out what information must be provided to a client if requested.
- Regulation 10 requires that barristers inform clients that they are subject to a code of conduct and that a complaint can be made about them to the BSB.

1. The Provision of Services Regulations 2009¹ (“the Regulations”) came into force on 28 December 2009. They give effect, in English law, to the EU Services Directive² (“the Directive”).

2. Although the Directive was a milestone in the creation of a single European market for the provision of services, the market for legal services had already been liberalised by earlier European legislation (including Directives 77/249/EEC, 98/5/EC and 2005/36/EC). The Services Directive takes effect subject to this earlier legislation, and therefore had little impact on the way in which lawyers can provide their services generally within Europe.

3. However the Directive and the Regulations have imposed additional obligations and requirements on all service providers (including barristers), principally in terms of the information to be given or made available by service providers to the receivers of their services (which would include both referral and direct access work undertaken by barristers). The purpose of this note is to draw attention to the relevant terms of the Regulations, and to provide guidance as to the way in which the requirements may best be met. It is the responsibility of each barrister and their set of Chambers to decide how they wish to meet the requirements.

The Regulations

4. The two key aims of the Regulations are to ensure that clients (either individuals or businesses) have access to sufficient information to enable them to make an informed choice when selecting a barrister to provide a legal service and to an effective complaints process.

5. The requirement to provide information to clients can be divided into 3 categories:

- a) information which you must “make available” before you conclude a written agreement to provide your services, or if there is no written agreement to provide your services, before you provide your services;
- b) information which you must ‘supply’ upon request by a client; and
- c) information which you must ‘inform’ clients about dispute resolution.

6. The information made available or supplied to the client must be clear and unambiguous and in good time before the conclusion of the contract or, where there is no written contract, before the service is provided.

a) Information to be “made available”

7. This is set out in regulations 7 and 8 and must be provided to all recipients of your services:

¹ SI 2999/2009: available at http://www.legislation.gov.uk/ukxi/2009/2999/pdfs/ukxi_20092999_en.pdf; with an explanatory memorandum at

http://www.legislation.gov.uk/ukxi/2009/2999/pdfs/ukxiem_20092999_en.pdf

² 2006/123/EC; available at <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32006L0123&qid=1461672935741&from=EN>

- Name
- Legal status (for example, sole trader, partnership or company).
- Address of where you are established (i.e. your Chambers or practicing address).
- Contact details where you can be contacted quickly and directly, such as postal address, email, phone or fax.
- Contact details for making complaints and for information requests, including a postal, fax or email address, telephone number and your registered office (if different from your postal address).
- Where your activity is covered by an “authorisation scheme”³ in the UK, the particulars of the relevant competent authority.
- VAT number, if registered for VAT.
- If applicable, your trade registration scheme and your registration number.
- If applicable, UK or EEA authorisation scheme details and the relevant regulatory body, the "[Set up a business](https://www.gov.uk/set-up-a-business)".gov.uk website (the point of single contact in the UK) or the point of single contact in the other EEA state.
- Where the provider is carrying on a regulated profession, the professional body with which the provider is registered, their professional title and the EEA state that granted it.
- General terms and conditions, if any.
- Contract terms on governing law and jurisdiction applicable to your service contracts, if any
- If applicable, any after-sales guarantee which provides more protection than that required by law.
- If you are required to hold professional liability insurance, details about this, its geographical coverage and your insurer's contact details.
- If you are subject to a code of conduct, trade association or professional body that has non-judicial dispute resolution procedures, details of this and how to access information about it.

8. Regulation 8(2) requires you to make information available to a customer using any one of four methods:

- You provide the clients with such information on your own initiative.
- It is easily available to the client at the place where you provide the service, or where the contract for the service is concluded.
- It is easily available to the client electronically (for example, on your website).

³ See regulation 8(1)(e): It is not entirely clear what is meant by an “authorisation scheme” or how it relates to membership of a regulated profession. However, in the present context, the obligations imposed on service providers subject to an authorisation scheme do not appear different in substance from those imposed on members of a regulated profession.

- It appears in any information document you supply to the client in which you give a detailed description of the service.

b) Information which you must supply to a client upon request

9. Regulation 9 sets out the information to be supplied on the request of a client:

- If you do not have pre-determined prices, the method for calculating the price (or a sufficiently detailed estimate).
- In carrying out a regulated profession, reference to the professional rules applicable in the EEA state in which you are established and how to access these rules.
- If you carry on other activities which are directly linked to the service in question, details of this and the measures taken to avoid conflicts of interest.
- If you are subject to any codes of conduct, what these are and how to access such codes electronically, specifying the language available.

c) information which you must ‘inform’ clients about dispute resolution

10. Regulation 10 requires that if you are subject to a code of conduct or are a member of trade association or professional body which provides for a non-judicial dispute resolution procedure, you must:

- inform a recipient of the service of that fact, and
- mention it in any document providing a detailed description of the service specifying how detailed information about the procedure may be accessed.

11. Under regulation 12, you must respond to complaints from customers as "quickly as possible" and use your "best efforts" to find a satisfactory solution to these complaints. The Bar Standards Board requires self-employed barristers, chambers and BSB entities to comply with the complaints handling procedures set out in Section D1.1 of the Code of Conduct in the BSB Handbook⁴.

Suggestions to the profession - General

12. The first issue that self-employed barristers and their Chambers will need to address is how to that ensure that information which needs to be “made available” before a contract is concluded or service provided (i.e. in good time before the conclusion of the contract or, where there is no written contract, before the service is provided) can best be made available to clients.

13. It will be for each set of Chambers to decide how they wish to meet the requirements outlined in the Regulations. In particular, Chambers have a choice over the degree of detail they will wish to provide on their websites or whether such information is provided in good time before a Barrister’s services are provided.

⁴ <https://www.barstandardsboard.org.uk/regulatory-requirements/bsb-handbook/the-handbook-publication>

14. For some Chambers, it may conveniently be done through the Chambers website. It is however likely that, for most Chambers, rather more information will have to appear on the website than may be the case at present. Thus, in addition to details of the Chambers postal address, telephone number, and fax number, it will probably be convenient for websites to include the following:

- a. Each barrister's:
 - i) Professional title(s) (barrister, QC, avocat, Rechtsanwalt),
 - ii) VAT number (see further below), and
 - iii) Registered name on the BSB Register.
- b. Statements, either in relation to each barrister, or in relation to all members generally, of:
 - i) Their legal status (i.e. that they are sole practitioners)
 - ii) That they are barristers registered with the Bar Standards Board of England and Wales

(Those professing foreign qualifications will in addition have to identify their foreign professional titles, the State granting that title and the regulating body in that State.)
 - iii) The general terms and conditions on which services are provided (e.g. the Standard Contractual Terms for the Supply of Legal Services by Barristers to Authorised Persons 2012; or the COMBAR/CLLS terms, specifying Basis A, B, C or D, and any optional clauses; or whatever other standard terms the barrister is or members of Chambers are willing to accept as the basis for accepting instructions)
 - iv) Any choice of jurisdiction and/or choice of law that the barristers' contracts will create

(NB: the Standard Contractual Terms for the Supply of Legal Services by Barristers to Authorised Persons 2012 provides, by clause 19, for such contracts to be governed by the law of England and Wales and to be subject to the exclusive jurisdiction of the Court of England and Wales. Clause 21 of the COMBAR/CLLS terms make similar provision.)

- v) That the barristers have professional liability insurance provided by the Bar Mutual Indemnity Fund Limited; contact details for the Bar Mutual; and a statement of the territorial coverage of the Bar Mutual insurance cover held

(The website address of the Bar Mutual is <http://www.barmutual.co.uk/>. The postal address of the Bar Mutual Management Company is 90 Fenchurch Street, London EC3M 4ST. Territorial coverage is world-wide,

subject to the applicable terms of cover of the Bar Mutual, which may be accessed at <http://www.barmutual.co.uk/downloads/>)

(Those members of Chambers professing foreign qualifications and practising under their foreign professional titles will have to provide equivalent information about any insurance coverage they may be required to have under applicable laws or codes of conduct as foreign lawyers), and

- vi) That any complaint about a barrister should, in the first instance be, made to the barrister in question or to their Chambers (the Chambers website should specify how/to whom complaints should be made) – but that if a satisfactory solution to the complaint is not obtained from these sources, that the members are subject to a non-judicial dispute resolution procedure, which may be accessed through the Legal Ombudsman’s website at <http://www.legalombudsman.org.uk>⁵.

15. The provision of individual email addresses and VAT numbers are matters of sensitivity to some barristers.

- a. So far as concerns email addresses, the obligation to make available “*details by which the provider can be contacted rapidly and communicated with directly*” would plainly be met by giving details of each individual barrister’s email address. But this could attract unwanted “spam”; and there is no reason why a central Chambers’/ clerks’ email address should not be given on the website as an alternative, so long as there is in place an efficient system for forwarding emails received at that address to the barrister concerned (or a system by which the clerks make available to a client the barrister’s personal email address promptly after instructions are received).
- b. VAT numbers are specifically included within the information required to be made available to a recipient of services in good time before any contract is concluded or service provided. So, if an individual barrister’s VAT number is not to be made available on the Chambers website, the only realistic alternative is to have it provided spontaneously by each barrister or his clerk promptly after any instructions are received.

16. Although some information only needs to be supplied on request, Chambers may wish to consider having available on their websites some of this information, for example:

- a. Indicative hourly rates, and
- b. A statement that the members are, as barristers/ QCs, governed by the BSB Handbook; available in English on the Bar Standards Board’s website at <https://www.barstandardsboard.org.uk/regulatory-requirements/bsb-handbook/>.)

⁵ Cf Regulation 10.

(NB Those professing foreign qualifications will, on request, have to identify their foreign professional codes of conduct, and how/ where those codes may be accessed (e.g. the relevant website address(es)); and the languages in which they are available.)

17. It does not appear practical to include in advance on the website any information about *“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”*, since – in the unlikely event that a barrister does undertake other activities directly linked to his or her provision of legal services – any relevant information is likely to be case-specific.

18. Those Chambers and sole practitioners who do not have a website or who do not want to include all the information upfront on their website will need to consider how they are to meet the informational requirements of the Regulations. Plainly, it will be necessary to have available a written *“Information Sheet”* detailing the matters outlined above. Since it may be unpredictable or unclear in a particular case where a barrister’s service is provided or where the contract for that service is concluded, it may not be sufficient simply to have that Information Sheet available in Chambers, or at the sole practitioner’s practising address. The safest course will be to supply a copy of the Information Sheet spontaneously i.e. *“on the provider’s own initiative”* at first meeting or telephone contact with every professional and lay client (in accordance with Regulation 8(2)(a)); for which purpose a barrister will need to keep copies of the Information Sheet to hand at conferences before court or out of Chambers (as well as in Chambers).

Suggestions to the profession - Insurance

19. The requirement to provide information about insurance coverage raises particular sensitivities.

- a. Regulation 8(1)(n) requires that *“where the provider is subject to a requirement to hold any professional liability insurance or guarantee”* information about the insurance or guarantee must be made available *“and in particular (i) the contact details of the insurer or guarantor, and (ii) the territorial coverage of the insurance or guarantee”*.
- b. The view of the Ethics Committee is that this requires the provision of information only about such insurance as is professionally compulsory i.e. the minimum cover which barristers must have as members of the Bar Mutual Indemnity Fund (currently £500,000). There is no requirement to provide information about any additional insurance or additional level of cover that a barrister may have taken out (whether with the Bar Mutual or with other insurers); and indeed there is no requirement to specify the level of cover which is professionally required; though this will be apparent from the Terms of Cover which appear on the Bar Mutual Website.
- c. Those terms of cover provide that territorial coverage is world-wide; albeit that:

- i) the costs of defending a claim brought before a court or tribunal in the United States or Canada are (unlike the costs of defending other claims) included within the limit of indemnity; and
- ii) the award of punitive, exemplary or multiple damages by a court or tribunal in the United States or Canada is excluded from coverage.

The Ethics Committee considers that if there is any possibility that a member of Chambers might, by providing his or her services, become exposed to a claim which could be brought before a court or tribunal in the United States or Canada, recipients of those services should be made aware of the terms of cover by specific reference to the relevant page of the Bar Mutual's current or otherwise relevant terms of cover: <http://www.barmutual.co.uk/downloads/e>.

- d. Those members of Chambers professing foreign qualifications and practising under their foreign professional titles will have to provide equivalent information about any insurance cover they are required to have by virtue of their practice as foreign lawyers.

Important Notice

This document has been prepared by the Bar Council to assist barristers on matters of professional conduct and ethics. **It is not "guidance" for the purposes of the BSB Handbook I6.4, and neither the BSB nor a disciplinary tribunal nor the Legal Ombudsman is bound by any views or advice expressed in it.** It does not comprise – and cannot be relied on as giving – legal advice. It has been prepared in good faith, but neither the Bar Council nor any of the individuals responsible for or involved in its preparation accept any responsibility or liability for anything done in reliance on it. For fuller information as to the status and effect of this document, please refer to the professional practice and ethics section of the Bar Council's website [here](#).