
Status: Point in time view as at 24/03/2015.

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STATUTORY INSTRUMENTS

2002 No. 1775

**FINANCIAL SERVICES AND MARKETS
ELECTRONIC COMMUNICATIONS**

**The Electronic Commerce Directive (Financial
Services and Markets) Regulations 2002**

Made - - - - 12th July 2002

Laid before Parliament 12th July 2002

*Coming into force
in accordance with
regulation 1*

The Treasury, being a government department designated^{M1} for the purposes of section 2(2) of the European Communities Act 1972^{M2} in relation to information society services, in exercise of the powers conferred by that section, and the powers conferred by sections 349(1), 414 and 428(3) of the Financial Services and Markets Act 2000^{M3}, hereby make the following Regulations:

Marginal Citations

M1 [S.I. 2001/3495](#).

M2 [1972 c. 68](#). By virtue of the amendment of s. 1(2) made by s. 1 of the [European Economic Area Act 1993 \(c. 51\)](#) regulations may be made under s. 2(2) to implement obligations of the United Kingdom created by or arising under the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 (Cm 2073) and the Protocol adjusting the Agreement signed at Brussels on 17 March 1993 (Cm 2183).

M3 [2000 c. 8](#).

PART 1

GENERAL

Citation and commencement

1. These Regulations may be cited as the Electronic Commerce Directive (Financial Services and Markets) Regulations 2002, and come into force—

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- (a) for the purpose of enabling the Authority to make rules, on 18th July 2002;
- (b) otherwise, on 21st August 2002.

Interpretation

2.—(1) In these Regulations—

“the 2000 Act” means the Financial Services and Markets Act 2000;

“authorised incoming provider” means an incoming provider who is an authorised person within the meaning of the 2000 Act;

“the Authority” means the [^{F1}Financial Conduct Authority];

“commercial communication” means a communication, in any form, designed to promote, directly or indirectly, the goods, services or image of any person pursuing a commercial activity or exercising a regulated profession, other than a communication—

- (a) consisting only of information allowing direct access to the activity of that person, including a geographic address, domain name or electronic mail address; or
- (b) relating to the goods, services or image of that person provided that the communication has been prepared independently of the person making it (and for this purpose, a communication prepared without financial consideration is to be taken to have been prepared independently unless the contrary is shown);

“the Commission” means the Commission of the [^{F2}European Union];

“consumer” means any individual who is acting for purposes other than those of his trade, business or profession;

“country of origin” in relation to an incoming electronic commerce activity means the EEA State in which is situated the establishment from which the information society service in question is provided;

“criminal conduct” means conduct which constitutes an offence in any part of the United Kingdom, or would constitute an offence in any part of the United Kingdom if it occurred there;

“direction” means a direction made, or proposed to be made, by the Authority under regulation 6;

“EEA regulator” means an authority in an EEA State other than the United Kingdom which exercises any function of a kind mentioned in section 195(4) of the 2000 Act;

“EEA State” means a State which is a contracting party to the agreement on the European Economic Area signed at Oporto on 2 May 1992 ^{M4}, as adjusted by the Protocol signed at Brussels on 17 March 1993 ^{M5};

“electronic commerce directive” means Directive [2000/31/EC](#) of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce) ^{M6};

“financial instrument” includes an investment of a kind specified by any of articles 76 to 85 of the Regulated Activities Order;

“incoming electronic commerce activity” means an activity—

- (a) which consists of the provision of an information society service from an establishment in an EEA State other than the United Kingdom to a person or persons in the United Kingdom, and
- (b) which would, but for article 72A ^{M7} of the Regulated Activities Order (and irrespective of the effect of article 72 of that Order), be a regulated activity within the meaning of the 2000 Act;

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“incoming provider” means a person carrying on an incoming electronic commerce activity;
“information society service” means an information society service within the meaning of Article 2(a) of the electronic commerce directive;

“investment” means an investment of a kind specified by any provision of Part III of the Regulated Activities Order;

“Regulated Activities Order” means the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 ^{M8};

“regulated profession” means any profession within the meaning of—

- (a) Article 1(d) of Directive 89/48/EEC of the Council of the European Communities of 21 December 1988 on a general system for the recognition of higher-education diplomas awarded on completion of professional education and training of at least three years’ duration ^{M9}, or
- (b) Article 1(f) of Directive 92/51/EEC of the Council of the European Communities of 18 June 1992 on a second general system for the recognition of professional education and training to supplement Directive 89/48/EEC ^{M10};

“relevant EEA regulator”, in relation to a direction, means the EEA regulator in the country of origin of the incoming electronic commerce activity to which the direction does, or would if made, relate, and which is responsible in that country for the regulation of that activity;

“rule” means a rule made by the Authority under the 2000 Act;

^{F3}

“UCITS Directive” means [^{F4}Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009] on the co-ordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities ^{M11};

“UCITS Directive scheme” means an undertaking for collective investment in transferable securities which is subject to the UCITS Directive, and has been authorised in accordance with [^{F5}Article 5] of that Directive;

“unauthorised incoming provider” means an incoming provider who is not an authorised person within the meaning of the 2000 Act.

(2) A reference in these Regulations to a requirement imposed by the Authority under these Regulations is a reference to—

- (a) a requirement (including a requirement that a person no longer carry on an incoming electronic commerce activity) imposed by a direction; or
- (b) a requirement imposed by a rule applicable to incoming providers in accordance with regulation 3(4).

(3) For the purposes of these Regulations—

- (a) an establishment, in connection with an information society service, is the place at which the provider of the service (being a national of an EEA State or a company or firm as mentioned in [^{F6}Article 54 of the Treaty on the Functioning of the European Union]) effectively pursues an economic activity for an indefinite period;
- (b) the presence or use in a particular place of equipment or other technical means of providing an information society service does not, of itself, constitute that place as an establishment of the kind mentioned in sub-paragraph (a);
- (c) where it cannot be determined from which of a number of establishments a given information society service is provided, that service is to be regarded as provided from the establishment where the provider has the centre of his activities relating to the service;

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- (d) a communication by electronic mail is to be regarded as unsolicited, unless it is made in response to an express request from the recipient of the communication.

Textual Amendments

- F1** Words in reg. 2 substituted (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments and Transitional Provisions\) Order 2013 \(S.I. 2013/472\)](#), art. 1(1), **Sch. 2 para. 77(2)**
- F2** Words in Regulations substituted (22.4.2011) by [The Treaty of Lisbon \(Changes in Terminology\) Order 2011 \(S.I. 2011/1043\)](#), arts. **2-6**
- F3** Words in reg. 2(1) omitted (6.4.2010) by virtue of [The Transfer of Tribunal Functions Order 2010 \(S.I. 2010/22\)](#), art. 1(2)(f), **Sch. 3 para. 35**
- F4** Words in reg. 2(1) substituted (1.7.2011) by [The Undertakings for Collective Investment in Transferable Securities Regulations 2011 \(S.I. 2011/1613\)](#), reg. 1, **Sch. para. 3(2)(a)**
- F5** Words in reg. 2(1) substituted (1.7.2011) by [The Undertakings for Collective Investment in Transferable Securities Regulations 2011 \(S.I. 2011/1613\)](#), reg. 1, **Sch. para. 3(2)(b)**
- F6** Words in reg. 2(3)(a) substituted (1.8.2012) by [The Treaty of Lisbon \(Changes in Terminology or Numbering\) Order 2012 \(S.I. 2012/1809\)](#), art. 2(1), **Sch. Pt. 2 (with art. 2(2))**

Marginal Citations

- M4** Cm 2073.
- M5** Cm 2183.
- M6** O.J. No. L178, 17.7.2000, p.1.
- M7** Article 72A is inserted by the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (Electronic Commerce Directive) Order 2002 (S.I. 2002/[]).
- M8** [S.I. 2001/544](#), amended by [S.I. 2001/3544](#), [S.I. 2002/682](#) and [S.I. 2002/1310](#).
- M9** O.J. No. L19, 24.1.89, p.16.
- M10** O.J. No. L209, 24.7.92, p.25, as last amended by Directive 97/38/EEC of the Commission of the European Communities of 20 June 1997 amending Annex C to Council Directive 92/51/EEC on a second general system for the recognition of professional education and training to supplement Council Directive 89/48/EEC.
- M11** O.J. No. L375, 31.12.85, p.3.

PART 2

MODIFICATION OF FUNCTIONS OF THE [^{F7}FINANCIAL CONDUCT AUTHORITY]

Textual Amendments

- F7** Words in Pt. 2 heading substituted (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments and Transitional Provisions\) Order 2013 \(S.I. 2013/472\)](#), art. 1(1), **Sch. 2 para. 77(3)**

Consumer contract requirements: modification of rule-making power

3.—(1) The power to make rules conferred by [^{F8}section 137A] of the 2000 Act is to be taken to include a power to make rules applying to unauthorised incoming providers.

(2) In consequence of paragraph (1)—

- (a) any reference in sections [^{F9}137A(3) and (4), 137T, 138A and 138D] of the 2000 Act to an authorised person includes a reference to an unauthorised incoming provider;

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- (b) any reference in those sections to a regulated activity includes a reference to an incoming electronic commerce activity.

^{F10}(3)

(4) Rules made by [^{F11}the Authority under section 137A] of the 2000 Act do not apply to incoming providers with respect to the carrying on by them of incoming electronic commerce activities unless they—

- (a) impose consumer contract requirements;
- (b) apply with respect to communications that constitute an advertisement by the operator of a UCITS Directive scheme of units in that scheme; or
- (c) relate to the permissibility of unsolicited commercial communications by electronic mail.

[^{F12}(4A) Notwithstanding paragraph (4)(a), rules made by [^{F13}the Authority under section 137A] of the 2000 Act which impose consumer contract requirements do not apply to an incoming provider with respect to the carrying on by him of an incoming electronic commerce activity which consists of the provision of an information society service from an establishment in an EEA State other than the United Kingdom, if the provisions by which that State has transposed the Financial Services Distance Marketing Directive, or the obligations in the domestic law of that State corresponding to those provided for in that Directive, as the case may be, apply to that activity.]

(5) A consumer contract rule may provide that conduct engaged in by a person to whom the rule applies, and which is in conformity with a provision corresponding to the rule made by a body or authority in an EEA State other than the United Kingdom, is to be treated as conduct in conformity with the rule.

- (6) “Consumer contract requirement” means a requirement—
 - (a) that information of a kind referred to in regulation 4 be provided to a consumer before he enters into a contract for the provision of one or more information society services, or
 - (b) as to the manner in which such information is to be provided.

[^{F14}(6A) “The Financial Services Distance Marketing Directive” means Directive 2002/65/EC of the European Parliament and the Council of 23 September 2002 concerning the distance marketing of consumer financial services and amending Council Directive 90/619/EEC and Directives 97/7/EC and 98/27/EC.]

(7) “Consumer contract rule” means a rule made by [^{F15}the Authority under section 137A] of the 2000 Act which imposes a consumer contract requirement on incoming providers.

Textual Amendments

- F8** Words in reg. 3(1) substituted (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments and Transitional Provisions\) Order 2013 \(S.I. 2013/472\)](#), art. 1(1), **Sch. 2 para. 77(4)(a)**
- F9** Words in reg. 3(2)(a) substituted (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments and Transitional Provisions\) Order 2013 \(S.I. 2013/472\)](#), art. 1(1), **Sch. 2 para. 77(4)(b)**
- F10** Reg. 3(3) omitted (1.4.2013) by virtue of [The Financial Services Act 2012 \(Consequential Amendments and Transitional Provisions\) Order 2013 \(S.I. 2013/472\)](#), art. 1(1), **Sch. 2 para. 77(4)(c)**
- F11** Words in reg. 3(4) substituted (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments and Transitional Provisions\) Order 2013 \(S.I. 2013/472\)](#), art. 1(1), **Sch. 2 para. 77(4)(d)**
- F12** Reg. 3(4A) inserted (11.1.2005) by [The Electronic Commerce Directive \(Financial Services and Markets\) \(Amendment\) Regulations 2004 \(S.I. 2004/3378\)](#), regs. 1, **2(2)**
- F13** Words in reg. 3(4A) substituted (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments and Transitional Provisions\) Order 2013 \(S.I. 2013/472\)](#), art. 1(1), **Sch. 2 para. 77(4)(d)**
- F14** Reg. 3(6A) inserted (11.1.2005) by [The Electronic Commerce Directive \(Financial Services and Markets\) \(Amendment\) Regulations 2004 \(S.I. 2004/3378\)](#), regs. 1, **2(3)**

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F15 Words in reg. 3(7) substituted (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments and Transitional Provisions\) Order 2013 \(S.I. 2013/472\)](#), art. 1(1), **Sch. 2 para. 77(4)(d)**

Consumer contract requirements: information

4. The information which may be the subject of a consumer contract requirement is—
- (a) the identity and description of the main business of the other party to the proposed contract (“the supplier”), the geographic address at which the supplier is established, and any other geographic address relevant to the consumer’s relations with the supplier;
 - (b) if the supplier has a representative established in the consumer’s country of residence with whom the consumer is to have dealings, the identity and geographic address of the representative, and any other geographic address relevant to the consumer’s relations with the representative;
 - (c) if the consumer is to have dealings with any professional person in connection with the contract, the identity of that person, a statement of the capacity in which he is to act, and the geographic address relevant to the consumer’s relations with him;
 - (d) if the supplier is registered on any public register in connection with the carrying on of his business (or such of his business as is relevant to the contract), the name of that register, and any registration number or other means of identifying the relevant entry on the register;
 - (e) if the carrying on of the supplier’s business (or such of it as is relevant to the contract) is subject to a requirement that he be authorised by a person or body in order to carry it on, the name and geographic address of that person or body;
 - (f) a description of the main features of the service or services to which the contract relates;
 - (g) either—
 - (aa) the total price to be paid by the consumer under the contract, including all related fees, charges and expenses, and all taxes paid by or through the supplier (in so far as these are reflected in the total price); or
 - (bb) if the total price cannot be given, the basis for the calculation of the total price, in a form enabling the consumer to verify the total price when calculated by the supplier;
 - (h) where the service to be provided under the contract relates to one or more financial instruments—
 - (aa) if the instruments are subject to special risks relating to their specific features or operations to be executed in relation to them, notice of the existence of those risks,
 - (bb) if the price of the instruments is subject to fluctuation depending on market conditions outside the supplier’s control, notice of that fact, and
 - (cc) notice that movements in the price of the instruments in the past are not necessarily an indicator of future performance;
 - (i) notice of the possibility that taxes or other costs may exist which are not imposed or paid by or through the supplier;
 - (j) the arrangements for payment under, and the performance of, the contract;
 - (k) any specific additional cost imposed by the supplier on the consumer in relation to the consumer’s use of the means for concluding the contract or communicating with the supplier;
 - (l) the existence or absence of any legal right of the consumer to withdraw from the contract after it has been entered into, the conditions attached to the exercise of any such right, and the consequences for the consumer of not exercising it;

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- (m) where the contract relates to services to be performed on an indefinite or recurrent basis, the minimum duration of the contract;
- (n) any rights of the consumer or the supplier to terminate the contract in accordance with one of its express terms, any contractual penalties which may apply in that event, and the procedure to be followed by the consumer in that event (including the address to which any notification of withdrawal from the contract should be sent);
- (o) the state or states whose laws are taken by the supplier as a basis for the establishment of relations with the consumer before the contract is concluded;
- (p) any express term in the contract relating to the law governing it, or to the jurisdiction of courts;
- (q) the language or languages in which the supplier—
 - (aa) proposes to offer the terms of, and information concerning, the contract, and
 - (bb) undertakes (with the agreement of the consumer) to communicate with the consumer during the existence of the contract;
- (r) whether any mechanism other than redress through a court (including guarantee funds and compensation schemes and arrangements) is available to the consumer in relation to matters arising in connection with the contract, and if so, the procedure to be followed by the consumer in order to gain access to it;
- (s) any limitations, of which the supplier could reasonably be taken to be aware, of the period for which any information referred to in paragraphs (a) to (r) will be valid.

Application of certain rules

^{F16}5.

Textual Amendments

F16 Reg. 5 revoked (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments and Transitional Provisions\) Order 2013 \(S.I. 2013/472\)](#), art. 1(1), **Sch. 1**

PART 3

ARTICLE 3.4 OF THE ELECTRONIC COMMERCE DIRECTIVE

Direction by Authority

6.—(1) If the policy conditions and the procedural conditions are met, the Authority may direct that an incoming provider may no longer carry on a specified incoming electronic commerce activity, or may only carry it on subject to specified requirements.

- (2) A direction—
 - (a) must be in writing;
 - (b) has effect from—
 - (i) a specified date (which may be the date on which it is made); or
 - (ii) if no date is specified, the date on which the direction is no longer open to review;
 - (c) must include a statement to the effect that the person to whom it applies may refer the matter to the [^{F17}Upper Tribunal];

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(d) may have effect for a specified period, until the occurrence of a specified event, until specified conditions are met, or for an indefinite period.

(3) The requirements referred to in paragraph (1) may include the requirement that the person to whom the direction applies must comply with one or more rules (with such modifications (if any) as may be specified) with respect to the carrying on by him of an incoming electronic commerce activity.

(4) If a requirement of a kind mentioned [^{F18}in subsection (4) of section 55P] of the 2000 Act is specified in a direction, the requirement has the same effect in relation to the person to whom the direction applies as it would have if it had been imposed on that person by the Authority acting under [^{F19}section 55L] of that Act.

(5) Contravention of a specified requirement does not make a person guilty of an offence, or make any transaction void or unenforceable.

(6) Contravention of a specified requirement by an incoming provider is actionable at the suit of a person who suffers loss as a result of the contravention, subject to—

- (a) the defences and other incidents applying to actions for breach of statutory duty; and
- (b) the conditions mentioned in regulation 7(2) of the Financial Services and Markets Act 2000 (Rights of Action) Regulations 2001 ^{M12} (“the Rights of Action Regulations”).

(7) For the purposes of paragraph (6)(b), the reference in regulation 7(2)(b) of the Rights of Action Regulations to a Part XIII financial resources requirement is to be taken to include a reference to a specified requirement to have or maintain financial resources.

(8) For the purposes of this regulation, a direction is no longer open to review if any of the conditions in section 391(8) (a) to (d) of the 2000 Act are satisfied.

(9) In this regulation, “specified” in relation to a direction means specified in the direction.

Textual Amendments

F17 Words in reg. 6(2)(c) substituted (6.4.2010) by [The Transfer of Tribunal Functions Order 2010 \(S.I. 2010/22\)](#), art. 1(2)(f), **Sch. 3 para. 36**

F18 Words in reg. 6(4) substituted (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments and Transitional Provisions\) Order 2013 \(S.I. 2013/472\)](#), art. 1(1), **Sch. 2 para. 77(5)(a)**

F19 Words in reg. 6(4) substituted (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments and Transitional Provisions\) Order 2013 \(S.I. 2013/472\)](#), art. 1(1), **Sch. 2 para. 77(5)(b)**

Marginal Citations

M12 [S.I. 2001/2256](#).

Policy conditions

7. The policy conditions are that—

- (a) the Authority considers—
 - (i) the making of the direction to be necessary for—
 - (aa) the prevention, investigation, detection or prosecution of criminal conduct;
 - (bb) the protection of consumers; or
 - (cc) other reasons of public policy relevant to the [^{F20}Authority’s operational objectives (as specified by section 1B(3) of the 2000 Act)]; and

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- (ii) that the carrying on of the incoming electronic commerce activity by the person to whom the direction is to apply prejudices, or presents a serious and grave risk of prejudice to, any of the objectives referred to in sub-paragraph (i); and
- (b) the direction appears to the Authority to be a proportionate means of achieving, or addressing the prejudice or risk of prejudice to, any of those objectives.

Textual Amendments

F20 Words in [reg. 7\(a\)\(i\)\(cc\)](#) substituted (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments and Transitional Provisions\) Order 2013 \(S.I. 2013/472\)](#), art. 1(1), [Sch. 2 para. 77\(6\)](#)

Procedural conditions

- 8.** The procedural conditions are that—
- (a) the Authority has requested the relevant EEA regulator to take measures to remedy the situation giving rise to the request;
 - (b) the relevant EEA regulator—
 - (i) has not, within what appears to the Authority to be a reasonable time, taken such measures; or
 - (ii) has taken such measures, but the measures appear to the Authority to be inadequate in the circumstances;
 - (c) the Authority has notified the Commission and the relevant EEA regulator of its intention to make the direction; and
 - (d) the Authority has notified the person to whom the direction is to apply of its proposal to make the direction, and afforded that person the opportunity to make representations to the Authority in such manner, and within such period, as the Authority may determine.

Urgent cases

9.—(1) If the case appears to the Authority to be one of urgency, it may make a direction regardless of whether the procedural conditions are met.

(2) If the Authority makes a direction in reliance on paragraph (1), it must notify the Commission and the relevant EEA regulator as soon as possible that the direction has been made, and provide each of those bodies with a statement of its reasons for considering the case to be one of urgency.

Directions made under regulation 6

10.—(1) Subject to the following provisions of this regulation, the Authority may vary or revoke a direction by notice in writing to the person to whom the direction applies.

(2) The Authority may vary or revoke a direction under this regulation on its own initiative, or on the application of the person to whom the direction applies.

(3) If the Authority decides to refuse an application for the variation or revocation of a direction made under this regulation, it must notify the applicant in writing of its decision.

(4) The Authority must not vary a direction on its own initiative under this regulation unless it has afforded the person to whom the direction applies the opportunity to make representations to the Authority in such manner, and within such period, as the Authority may determine.

(5) Paragraph (4) does not apply if the case appears to the Authority to be one of urgency.

(6) A decision by the Authority to vary a direction has effect from—

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(a) a date referred to in the notice given under paragraph (1) (which must not be earlier than the date on which the decision was made); or

(b) if no such date is referred to, the date on which the decision was made.

(7) If the case is one to which regulation 11(b) or (c) applies, a notice under paragraph (1) or (3) must include a statement to the effect that the person to whom the direction applies may refer the matter to the [^{F21}Upper Tribunal].

(8) If the Authority makes a direction it may publish, in such manner as it considers appropriate, such information about the matter to which the direction relates as it considers appropriate in furtherance of any of the objectives referred to in regulation 7(a)(i).

(9) The Authority may not publish information under paragraph (8) if publication of it would, in the Authority's opinion, be unfair to the person to whom the direction applies or prejudicial to the interests of consumers.

Textual Amendments

F21 Words in [reg. 10\(7\)](#) substituted (6.4.2010) by [The Transfer of Tribunal Functions Order 2010 \(S.I. 2010/22\)](#), [art. 1\(2\)\(f\)](#), [Sch. 3 para. 37](#)

Referral to the [^{F22}Upper Tribunal]

11. If the Authority—

(a) makes a direction;

(b) varies a direction on its own initiative; or

(c) decides to refuse an application for the variation or revocation of a direction,

the person to whom the direction applies may refer the matter to the [^{F22}Upper Tribunal].

Textual Amendments

F22 Words in [reg. 11](#) substituted (6.4.2010) by [The Transfer of Tribunal Functions Order 2010 \(S.I. 2010/22\)](#), [art. 1\(2\)\(f\)](#), [Sch. 3 para. 38](#)

[^{F23}PART 3A

INCOMING PROVIDERS OF CREDIT-RELATED ACTIVITIES DIRECTING ALL OR MOST OF THEIR ACTIVITY TO THE UNITED KINGDOM

Textual Amendments

F23 Pt. 3A inserted (24.3.2015) by [The Electronic Commerce Directive \(Financial Services and Markets\) \(Amendment\) Order 2015 \(S.I. 2015/852\)](#), [arts. 1\(2\), 2\(2\)](#)

Scope of this Part

11A. The Authority may exercise its powers under this Part only in relation to an activity of a kind specified by any of the following provisions of the Regulated Activities Order—

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- (a) article 36A (credit broking);
- (b) article 36H (operating an electronic system in relation to lending);
- (c) article 39D (debt adjusting);
- (d) article 39E (debt-counselling);
- (e) article 39F (debt-collecting);
- (f) article 39G (debt administration);
- (g) article 60B (regulated credit agreements); and
- (h) article 60N (regulated consumer hire agreements).

Direction by Authority

11B.—(1) If the condition in paragraph (2) is met, the Authority may direct that an incoming provider may no longer carry on a specified incoming electronic commerce activity, or may only carry it on subject to specified requirements.

(2) The condition is that the Authority is satisfied that the incoming provider—

- (a) directs all or most of its activity to the United Kingdom; and
- (b) is exercising the freedom conferred by Article 56 of the Treaty on the Functioning of the European Union for the purpose of avoiding requirements imposed by or under the 2000 Act that would apply to the provider if it were established in the United Kingdom.

(3) A direction under this regulation may impose any requirement which the Authority could impose under section 55L(3) of the 2000 Act if—

- (a) the incoming provider had permission under Part 4A of the 2000 Act; and
- (b) the Authority was entitled to exercise its power under section 55L(3) of that Act.

(4) Paragraphs (2) to (8) of regulation 6 (direction by Authority), regulation 10 (directions made under regulation 6) and regulation 11 (referral to the Upper Tribunal) apply to a direction under paragraph (1) as if it were a direction under regulation 6(1), and as if—

- (a) in regulation 6(2)(d), after “until specified conditions are met, or” there were inserted “(unless the direction requires an incoming provider to no longer carry on a specified incoming electronic commerce activity)”;
- (b) in regulation 10(8), there were omitted “in furtherance of any of the objectives referred to in regulation 7(a)(i)”.

(5) Where a direction under paragraph (1) directs that an incoming provider may no longer carry on a specified incoming electronic commerce activity, the direction remains in force until the earliest of—

- (a) the date on which the Authority revokes the direction;
- (b) the expiry of the period of 3 months beginning on the day on which the Authority gives the direction, unless before the expiry of that period the Authority gives a warning notice to the provider under regulation 11C;
- (c) the date on which the Authority gives the provider a notice of discontinuance following a warning notice given to the provider under regulation 11C; and
- (d) the date on which the Authority gives the provider a final notice following a warning notice given to the provider under regulation 11C.

(6) In all other cases a direction under paragraph (1) remains in force until the earliest of—

- (a) the date on which the Authority revokes the direction;

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- (b) the date on which the Authority gives the provider a notice of discontinuance following a warning notice given to the provider under regulation 11C; and
 - (c) the date on which the Authority gives the provider a final notice following a warning notice given to the provider under regulation 11C.
- (7) In this regulation, “specified” in relation to a direction means specified in the direction.

Article 72A of the Regulated Activities Order

11C.—(1) If the condition in regulation 11B(2) is met, the Authority may make a determination that article 72A(1) of the Regulated Activities Order does not apply to an activity carried on by an incoming provider.

(2) If the Authority proposes to make a determination under paragraph (1), it must give the incoming provider a warning notice specifying the activity.

(3) If the Authority decides to make a determination under paragraph (1), it must give the incoming provider a decision notice specifying the activity.

(4) An incoming provider who is aggrieved by a determination made under this regulation may refer the matter to the Upper Tribunal.

(5) Part 26 (notices) of the 2000 Act applies in relation to notices given under this regulation, as if—

- (a) in section 390 (final notices), after paragraph (6), there were inserted—
 - “(6A) A final notice about a determination under regulation 11C of the Electronic Commerce Directive (Financial Services) Regulations 2002 must state—
 - (a) the activity to which it relates, and
 - (b) the date on which the determination comes into effect.”;
- (b) section 392 applied sections 393 (third party rights) and 394 (access to FCA or PRA material) to—
 - (i) a warning notice given in accordance with paragraph (2);
 - (ii) a decision notice given in accordance with paragraph (3);
- (c) sections 395 (the FCA’s and PRA’s procedures) and 396 (statements under section 395: consultation) were omitted.]

PART 4

ENFORCEMENT

Application of certain provisions of the 2000 Act

12.—^[F24](1) For the purposes of sections 204A to 209 and 384 of the 2000 Act, a requirement imposed by the Authority under Part 3 of these Regulations upon an authorised incoming provider is to be treated as imposed on that provider by or under that Act.

- (1A) For the purposes of sections 204A to 209 and 384 of the 2000 Act—
 - (a) a requirement imposed by a direction imposed by the Authority under regulation 11B is to be treated as a requirement imposed by or under that Act, and
 - (b) any reference in those sections to an authorised person includes a reference to an unauthorised incoming provider.]

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(2) For the purposes of [F²⁵sections 1L, 380,] 382 and 398 of F²⁶... the 2000 Act, a requirement imposed by the Authority under these Regulations upon an incoming provider is to be treated as imposed on him by or under that Act.

(3) Any reference in sections 165 to 168 and 176 of the 2000 Act to an authorised person includes a reference to an unauthorised incoming provider.

(4) Any reference in [F²⁷sections 133 and 133A] of the 2000 Act to that Act includes a reference to these Regulations.

(5) The reference in section 168(4)(c) of the 2000 Act to a rule made by the Authority includes a reference to a requirement imposed by the Authority under these Regulations.

Textual Amendments

- F24** Reg. 12(1)(1A) substituted for reg. 12(1) (24.3.2015) by [The Electronic Commerce Directive \(Financial Services and Markets\) \(Amendment\) Order 2015 \(S.I. 2015/852\)](#), arts. 1(2), **2(3)**
- F25** Words in reg. 12(2) substituted (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments and Transitional Provisions\) Order 2013 \(S.I. 2013/472\)](#), art. 1(1), **Sch. 2 para. 77(7)(a) (i)**
- F26** Words in reg. 12(2) omitted (1.4.2013) by virtue of [The Financial Services Act 2012 \(Consequential Amendments and Transitional Provisions\) Order 2013 \(S.I. 2013/472\)](#), art. 1(1), **Sch. 2 para. 77(7)(a) (ii)**
- F27** Words in reg. 12(4) substituted (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments and Transitional Provisions\) Order 2013 \(S.I. 2013/472\)](#), art. 1(1), **Sch. 2 para. 77(7)(b)**

PART 5

AMENDMENT OF THE FINANCIAL SERVICES AND MARKETS ACT 2000

Amendment of sections 417 and 418 of the 2000 Act

13.—(1) The Financial Services and Markets Act 2000 ^{M13} is amended as follows.

(2) In section 417—

(a) after the definition of “documents”, insert—

““electronic commerce directive” means Directive [2000/31/EC](#) of the European Parliament and the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce);”;

(b) after the definition of “industrial and provident society”, insert—

““information society service” means an information society service within the meaning of Article 2(a) of the electronic commerce directive;”;

(c) after subsection (3), insert—

“(4) For the purposes of this Act—

(a) an information society service is provided from an EEA State if it is provided from an establishment in that State;

(b) an establishment, in connection with an information society service, is the place at which the provider of the service (being a national of an EEA State or a company or firm as mentioned in Article 48 of the Treaty) effectively pursues an economic activity for an indefinite period;

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- (c) the presence or use in a particular place of equipment or other technical means of providing an information society service does not, of itself, constitute that place as an establishment of the kind mentioned in paragraph (b);
 - (d) where it cannot be determined from which of a number of establishments a given information society service is provided, that service is to be regarded as provided from the establishment where the provider has the centre of his activities relating to the service.”.
- (3) In section 418—
- (a) in subsection (1), for “four” substitute “ five ”;
 - (b) after subsection (5), insert—
 - “(5A) The fifth case is any other case where the activity—
 - (a) consists of the provision of an information society service to a person or persons in one or more EEA States; and
 - (b) is carried on from an establishment in the United Kingdom.”;
 - (c) in subsection (6), for “(5)” substitute “ (5A) ”.

Marginal Citations

M13 [2000 c. 8.](#)

PART 6

MISCELLANEOUS AND CONSEQUENTIAL PROVISIONS

Disclosure of information

14. In any enactment that requires or permits the disclosure of information to or by the Authority, a reference (however expressed) to powers or functions conferred on the Authority by or under the 2000 Act includes, for the purposes of such disclosure, a reference to the Authority’s functions under these Regulations.

Notices

15. The Financial Services and Markets Act 2000 (Service of Notices) Regulations 2001 ^{M14} apply for the purposes of these Regulations as if any reference in those Regulations to “the Act” included a reference to these Regulations.

Marginal Citations

M14 [S.I. 2001/1420.](#)

Amendment of the Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001

16. The Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001 ^{M15} are amended by inserting, after regulation 12A—

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“ Electronic commerce

12B. The Authority may disclose information to which this Part applies for the purpose of publishing that information in accordance with regulation 10(8) of the Electronic Commerce Directive (Financial Services and Markets) Regulations 2002.”

Marginal Citations

M15 [S.I. 2001/2188](#), amended by [S.I. 2001/3437](#) and [S.I. 2001/3624](#).

Functions of the Authority

17. For the purposes of the 2000 Act, a function conferred on the Authority by these Regulations is to be taken to be a function conferred on the Authority by or under that Act.

Rights of action

18. Regulation 3 of the Financial Services and Markets Act 2000 (Rights of Action) Regulations 2001 ^{M16} is amended by substituting, for “article 72 of the Regulated Activities Order (overseas persons)”, “article 72 (overseas persons) or 72A (information society services) of the Regulated Activities Order”.

Marginal Citations

M16 [S.I. 2001/2256](#).

[^{F28}Exclusion of general regulations

19.—(1) Regulation 4(1) of the general regulations does not affect any legal requirement imposed by or under the 2000 Act or these Regulations.

(2) Regulation 4(2) and (3) of the general regulations do not apply to the Authority or any enforcement authority in respect of its responsibility in relation to a requirement of the kind mentioned in paragraph (1).

(3) A rule that corresponds to a relevant regulation applies instead of that regulation.

(4) The reference in regulation 22(a) of the general regulations to regulation 6(1)(c) of those regulations is to be taken to include a reference to a provision in a rule that corresponds to regulation 6(1)(c) (and so applies in its stead by virtue of paragraph (3)).

(5) In this regulation—

“enforcement authority” has the same meaning as in the general regulations;

“general regulations” means the Electronic Commerce (EC Directive) Regulations 2002;

“relevant regulation” means regulation 6 to 9, 11 or 15 of the general regulations.]

Textual Amendments

F28 [Reg. 19](#) inserted (21.8.2002) by [The Electronic Commerce Directive \(Financial Services and Markets\) \(Amendment\) Regulations 2002 \(S.I. 2002/2015\)](#), regs. 1, 2

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Nick Ainger
Jim Fitzpatrick
Two of the Lords Commissioners of Her
Majesty's Treasury

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EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations give effect to the European Parliament and Council Directive of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce) (No. 2000/31/EC) (“the Directive”), in respect of matters within the scope of regulation by the Financial Services Authority under the Financial Services and Markets Act 2000 (c. 8) (“the 2000 Act”).

These Regulations should be read with the Financial Services and Markets Act (Regulated Activities) (Amendment) (No. 2) Order 2002 (S.I. 2002/1776) (“the RAO Amendment Order”) and the Financial Services and Markets Act (Financial Promotion) (Amendment) (Electronic Commerce Directive) Order 2002 (S.I. 2002/2157), which make amendments to secondary legislation under the 2000 Act in consequence of the Directive. The Regulations should also be read with forthcoming regulations to be made by the Secretary of State for Trade and Industry, which will give effect to the Directive in other areas.

Article 3 of the Directive provides, inter alia, for the regulation of information society services (defined in Article 2(a)) (“ISS”) on a “country of origin” basis. Member States are required to ensure that providers of ISS established on their territories comply with national legal requirements falling within the “coordinated field”, as defined in Article 2(h) of the Directive. They are also prohibited from restricting, for reasons falling within the co-ordinated field, the freedom to provide information society services from other Member States. Article 3.3 of the Directive excludes certain matters (listed in the Annex to the Directive) from the “country of origin” approach, including the advertising of their units by collective investment undertakings falling within Council Directive 85/611/EEC (“the UCITS Directive”), contractual obligations concerning consumer contracts, and the permissibility of unsolicited commercial communications by electronic mail. Article 3.4 of the Directive creates a derogation from the country of origin approach in relation to individual information society services, to be exercised on a case-by-case basis on public policy grounds, and subject to certain procedures.

The RAO Amendment Order excludes from the scope of “regulated activities” under section 22 of the 2000 Act activities constituting the provision of an information society service from an establishment in a state in the European Economic Area other than the United Kingdom (termed “incoming electronic commerce activities” in these Regulations). Consequently, it is not necessary for persons to be “authorised persons” within the meaning of the 2000 Act before they can carry on such activities in the United Kingdom. Such persons will, however, need to be authorised in respect of regulated activities carried on in the United Kingdom that do not constitute the provision of an ISS.

Part 2 of these Regulations gives effect to certain of the exclusions in Article 3.3 of the Directive, by modifying the functions of the Financial Services Authority (“the Authority”) in relation to both authorised and unauthorised persons carrying on incoming electronic commerce activities (“incoming providers”). Regulation 3 modifies the Authority’s powers under section 138 (rules for the purpose of protecting the interests of consumers) of the 2000 Act, so that rules made under them may apply to incoming providers who are not authorised under the Act (“unauthorised incoming providers”). The area of application of rules made under those sections (in respect of all incoming providers, whether authorised or not) is then restricted to certain matters listed in the Annex to the Directive—the imposition of the information requirements specified in regulation 4 (“consumer contract requirements”), communications that constitute an advertisement of its units by a collective investment undertaking authorised in accordance with the UCITS Directive, and the permissibility of unsolicited commercial communications by electronic mail. Regulation

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5 restricts the application of certain rules made by the Authority in connection with incoming providers.

Part 3 of the Regulations gives effect to the “case-by-case” derogation in Article 3.4 of the Directive. Regulation 6 permits the Authority, in cases where the policy and procedural conditions in Article 3.4 (set out in regulations 7 and 8) are met, to direct that particular incoming providers may no longer carry on a particular electronic commerce activity, or may only do so subject to specified requirements. Regulation 9 provides that the Authority may dispense with the need to satisfy the conditions in regulations 7 and 8 in urgent cases, and regulations 10 and 11 make procedural provisions in connection with directions, including the rights of parties to whom they apply to refer the matter to the Financial Services and Markets Tribunal.

Part 4 of the Regulations applies, with modifications, certain enforcement powers in the 2000 Act in respect of requirements imposed by the Authority under these Regulations.

Part 5 of the Regulations gives effect to Article 3.1 of the Directive in relation to matters falling within the 2000 Act, by amending section 418 of that Act so that the activity of providing ISS within the European Economic Area from an establishment in the United Kingdom is to be regarded as carried on in the United Kingdom, in all cases where it would not otherwise be so regarded.

Part 6 of the Regulations makes miscellaneous and consequential provisions with respect to the disclosure of information, the service of notices, the functions of the Authority and certain rights of action.

Status:

Point in time view as at 24/03/2015.

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