
STATUTORY INSTRUMENTS

2002 No. 1775

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

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 Tribunal;

(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 in subsection (3) of section 48 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 section 45 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(1) (“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.