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STATUTORY INSTRUMENTS

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**2002 No. 1775**

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

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—

- (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 Financial Services 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 European Communities;

“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(1), as adjusted by the Protocol signed at Brussels on 17 March 1993(2);

“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) (3);

“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(4) 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;

“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(5);

“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(6), 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(7);

“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;

“Tribunal” means the Financial Services and Markets Tribunal referred to in section 132 of the 2000 Act;

(1) Cm 2073.

(2) Cm 2183.

(3) O.J. No. L178, 17.7.2000, p.1.

(4) Article 72A is inserted by the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (Electronic Commerce Directive) Order 2002 (S.I. 2002/[ ]).

(5) S.I. 2001/544, amended by S.I. 2001/3544, S.I. 2002/682 and S.I. 2002/1310.

(6) O.J. No. L19, 24.1.89, p.16.

(7) 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.

“UCITS Directive” means Directive [85/611/EEC](#) of the Council of the European Communities of 20 December 1985 on the co-ordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities<sup>(8)</sup>;

“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 Article 4 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 Article 48 of the treaty establishing the European Community) 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;
- (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.

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(8) O.J. No. L375, 31.12.85, p.3.