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STATUTORY INSTRUMENTS

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**2002 No. 1775**

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

**PART 2**

**MODIFICATION OF FUNCTIONS OF THE  
FINANCIAL SERVICES AUTHORITY**

**Consumer contract requirements: modification of rule-making power**

**3.—**(1) The power to make rules conferred by section 138 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 138(4), (5) and (7) to (9), 148, 150 and 156 of the 2000 Act to an authorised person includes a reference to an unauthorised incoming provider;
- (b) any reference in those sections to a regulated activity includes a reference to an incoming electronic commerce activity.

(3) For the purpose of the exercise by the Authority of the power conferred by section 138 of the 2000 Act to make rules applying to incoming providers with respect to the carrying on by them of incoming electronic commerce activities, subsections (7) and (9) of that section have effect as if the reference to “person” where first occurring were a reference to an individual acting for purposes other than those of his trade, business or profession.

(4) Rules made by the Authority under section 138 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.

(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.

(7) “Consumer contract rule” means a rule made by the Authority under section 138 of the 2000 Act which imposes a consumer contract requirement on incoming providers.