

---

STATUTORY INSTRUMENTS

---

**2002 No. 2157**

The Financial Services and Markets Act  
2000 (Financial Promotion) (Amendment)  
(Electronic Commerce Directive) Order 2002

PART 3

AMENDMENT OF THE FINANCIAL SERVICES AND  
MARKETS ACT 2000 (PROMOTION OF COLLECTIVE  
INVESTMENT SCHEMES) (EXEMPTIONS) ORDER 2001

7. The Financial Services and Markets Act 2000 (Promotion of Collective Investment Schemes) (Exemptions) Order 2001(1) is amended as set out in this Part.

**Interpretation provisions**

8.—(1) In article 3, at the end insert—

- “(f) “electronic commerce communication” means a communication, the making of which constitutes the provision of an information society service;
- (g) “incoming electronic commerce communication” means an electronic commerce communication made from an establishment in an EEA State other than the United Kingdom;
- (h) “outgoing electronic commerce communication” means an electronic commerce communication made from an establishment in the United Kingdom to a person in an EEA State other than the United Kingdom.”.

(2) After article 5, insert—

**“Interpretation: outgoing electronic commerce communications**

5A.—(1) For the purposes of the application of those articles to outgoing electronic commerce communications—

- (a) any reference in article 21(4)(d) or 23(1)(a) or (3)(d) to an authorised person includes a reference to a person who is entitled, under the law of an EEA State other than the United Kingdom, to carry on regulated activities in that State;
- (b) any reference in article 21 or 22 to an amount in pounds sterling includes a reference to an equivalent amount in another currency.

(2) For the purposes of the application of article 22 to outgoing electronic commerce communications, any reference in section 737 or 264(2) of the Companies Act 1985(2) (or the equivalent provision in the Companies (Northern Ireland) Order 1986(3)) to a company

---

(1) S.I.2001/1060, amended by S.I. 2001/2633 and S.I. 2002/1310.  
(2) 1985 c. 6.  
(3) S.I. 1986/1032 (N.I. 6).

includes a reference to a company registered under the law of an EEA State other than the United Kingdom.”.

### **Outgoing electronic commerce communications**

9. In article 8—

- (a) in paragraph (1), for “paragraph (2)” substitute “paragraphs (2) and (7)”;
- (b) after paragraph (6), insert—

“(7) Paragraph (1) does not apply to an outgoing electronic commerce communication.”.

### **Incoming electronic commerce communications**

10. After article 10, insert—

#### **“Incoming electronic commerce communications**

**10A.**—(1) The scheme promotion restriction does not apply to an incoming electronic commerce communication.

(2) Paragraph (1) does not apply to—

- (a) a communication which constitutes an advertisement by the operator of a UCITS Directive scheme of units in that scheme; or
- (b) an unsolicited communication made by electronic mail.

(3) In this article, “UCITS Directive scheme” means an undertaking for collective investment in transferable securities which is subject to 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>(4)</sup>, and has been authorised in accordance with Article 4 of that Directive.

(4) For the purposes of this article, 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.”.

---

(4) OJ L375/3, 31 December 1985.