
Status: Point in time view as at 31/12/2020.

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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

F12.

F1 Regs. 2-18 omitted (31.12.2020) by virtue of [The Electronic Commerce and Solvency 2 \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/1361\)](#), regs. 1(2), **6(2)** (as amended by [S.I. 2019/1390](#), regs. 1(2), 6); 2020 c. 1, Sch. 5 para. 1(1)

PART 2

**MODIFICATION OF FUNCTIONS OF THE
[^{F2}FINANCIAL CONDUCT AUTHORITY]**

F2 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

F13.

F1 Regs. 2-18 omitted (31.12.2020) by virtue of [The Electronic Commerce and Solvency 2 \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/1361\)](#), regs. 1(2), **6(2)** (as amended by [S.I. 2019/1390](#), regs. 1(2), 6); 2020 c. 1, Sch. 5 para. 1(1)

Consumer contract requirements: information

F14.

F1 Regs. 2-18 omitted (31.12.2020) by virtue of [The Electronic Commerce and Solvency 2 \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/1361\)](#), regs. 1(2), **6(2)** (as amended by [S.I. 2019/1390](#), regs. 1(2), 6); 2020 c. 1, Sch. 5 para. 1(1)

Application of certain rules

F35.

F3 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**

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PART 3

ARTICLE 3.4 OF THE ELECTRONIC COMMERCE DIRECTIVE

Direction by Authority

^{F1}6.

F1 Regs. 2-18 omitted (31.12.2020) by virtue of [The Electronic Commerce and Solvency 2 \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/1361\)](#), regs. 1(2), **6(2)** (as amended by [S.I. 2019/1390](#), regs. 1(2), 6); 2020 c. 1, Sch. 5 para. 1(1)

Policy conditions

^{F1}7.

F1 Regs. 2-18 omitted (31.12.2020) by virtue of [The Electronic Commerce and Solvency 2 \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/1361\)](#), regs. 1(2), **6(2)** (as amended by [S.I. 2019/1390](#), regs. 1(2), 6); 2020 c. 1, Sch. 5 para. 1(1)

Procedural conditions

^{F1}8.

F1 Regs. 2-18 omitted (31.12.2020) by virtue of [The Electronic Commerce and Solvency 2 \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/1361\)](#), regs. 1(2), **6(2)** (as amended by [S.I. 2019/1390](#), regs. 1(2), 6); 2020 c. 1, Sch. 5 para. 1(1)

Urgent cases

^{F1}9.

F1 Regs. 2-18 omitted (31.12.2020) by virtue of [The Electronic Commerce and Solvency 2 \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/1361\)](#), regs. 1(2), **6(2)** (as amended by [S.I. 2019/1390](#), regs. 1(2), 6); 2020 c. 1, Sch. 5 para. 1(1)

Directions made under regulation 6

^{F1}10.

F1 Regs. 2-18 omitted (31.12.2020) by virtue of [The Electronic Commerce and Solvency 2 \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/1361\)](#), regs. 1(2), **6(2)** (as amended by [S.I. 2019/1390](#), regs. 1(2), 6); 2020 c. 1, Sch. 5 para. 1(1)

Referral to the [^{F4}Upper Tribunal]

^{F1}11.

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- F1** Regs. 2-18 omitted (31.12.2020) by virtue of The Electronic Commerce and Solvency 2 (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/1361), regs. 1(2), **6(2)** (as amended by S.I. 2019/1390, regs. 1(2), 6); 2020 c. 1, Sch. 5 para. 1(1)
- F4** 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**

[^{F5}PART 3A

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

- F5** 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

^{F1}**11A.**

- F1** Regs. 2-18 omitted (31.12.2020) by virtue of The Electronic Commerce and Solvency 2 (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/1361), regs. 1(2), **6(2)** (as amended by S.I. 2019/1390, regs. 1(2), 6); 2020 c. 1, Sch. 5 para. 1(1)

Direction by Authority

^{F1}**11B.**

- F1** Regs. 2-18 omitted (31.12.2020) by virtue of The Electronic Commerce and Solvency 2 (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/1361), regs. 1(2), **6(2)** (as amended by S.I. 2019/1390, regs. 1(2), 6); 2020 c. 1, Sch. 5 para. 1(1)

Article 72A of the Regulated Activities Order

^{F1}**11C.**

- F1** Regs. 2-18 omitted (31.12.2020) by virtue of The Electronic Commerce and Solvency 2 (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/1361), regs. 1(2), **6(2)** (as amended by S.I. 2019/1390, regs. 1(2), 6); 2020 c. 1, Sch. 5 para. 1(1)

PART 4 ENFORCEMENT

Application of certain provisions of the 2000 Act

^{F1}**12.**

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F1 Regs. 2-18 omitted (31.12.2020) by virtue of [The Electronic Commerce and Solvency 2 \(Amendment etc.\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/1361), regs. 1(2), **6(2)** (as amended by S.I. 2019/1390, regs. 1(2), 6); 2020 c. 1, Sch. 5 para. 1(1)

PART 5

AMENDMENT OF THE FINANCIAL SERVICES AND MARKETS ACT 2000

Amendment of sections 417 and 418 of the 2000 Act

F113.

F1 Regs. 2-18 omitted (31.12.2020) by virtue of [The Electronic Commerce and Solvency 2 \(Amendment etc.\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/1361), regs. 1(2), **6(2)** (as amended by S.I. 2019/1390, regs. 1(2), 6); 2020 c. 1, Sch. 5 para. 1(1)

PART 6

MISCELLANEOUS AND CONSEQUENTIAL PROVISIONS

Disclosure of information

F114.

F1 Regs. 2-18 omitted (31.12.2020) by virtue of [The Electronic Commerce and Solvency 2 \(Amendment etc.\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/1361), regs. 1(2), **6(2)** (as amended by S.I. 2019/1390, regs. 1(2), 6); 2020 c. 1, Sch. 5 para. 1(1)

Notices

F115.

F1 Regs. 2-18 omitted (31.12.2020) by virtue of [The Electronic Commerce and Solvency 2 \(Amendment etc.\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/1361), regs. 1(2), **6(2)** (as amended by S.I. 2019/1390, regs. 1(2), 6); 2020 c. 1, Sch. 5 para. 1(1)

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

F116.

F1 Regs. 2-18 omitted (31.12.2020) by virtue of [The Electronic Commerce and Solvency 2 \(Amendment etc.\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/1361), regs. 1(2), **6(2)** (as amended by S.I. 2019/1390, regs. 1(2), 6); 2020 c. 1, Sch. 5 para. 1(1)

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Functions of the Authority

^{F1}17.

F1 Regs. 2-18 omitted (31.12.2020) by virtue of [The Electronic Commerce and Solvency 2 \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/1361\)](#), regs. 1(2), **6(2)** (as amended by S.I. 2019/1390, regs. 1(2), 6); 2020 c. 1, Sch. 5 para. 1(1)

Rights of action

^{F1}18.

F1 Regs. 2-18 omitted (31.12.2020) by virtue of [The Electronic Commerce and Solvency 2 \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/1361\)](#), regs. 1(2), **6(2)** (as amended by S.I. 2019/1390, regs. 1(2), 6); 2020 c. 1, Sch. 5 para. 1(1)

[^{F6}Exclusion of general regulations

19.—^{F7}(1)

[^{F8}(2) Regulation 4(3) of the general regulations does not apply to the Authority or any enforcement authority in respect of its responsibility in relation to a requirement imposed by or under the 2000 Act or these Regulations.

(2A) Regulation 4(3) of the general regulations also does not apply to the Authority in respect of its responsibility in relation to a requirement imposed by or under regulations made by the Treasury under section 8 of the European Union (Withdrawal) Act 2018.]

(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—

[^{F9}“the Authority” means the Financial Conduct Authority;]

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

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

[^{F10}“rule” means a rule made by the Authority under the 2000 Act.]

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

F6 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

F7 Reg. 19(1) omitted (31.12.2020) by virtue of [The Electronic Commerce and Solvency 2 \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/1361\)](#), regs. 1(2), **6(3)(a)** (as amended by S.I. 2019/1390, regs. 1(2), 6); 2020 c. 1, Sch. 5 para. 1(1)

F8 Reg. 19(2)(2A) substituted for reg. 19(2) (31.12.2020) by [The Electronic Commerce and Solvency 2 \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/1361\)](#), regs. 1(2), **6(3)(b)** (as amended by S.I. 2019/1390, regs. 1(2), 6); 2020 c. 1, Sch. 5 para. 1(1)

F9 Words in reg. 19(5) inserted (31.12.2020) by [The Electronic Commerce and Solvency 2 \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/1361\)](#), regs. 1(2), **6(3)(c)(i)** (as amended by S.I. 2019/1390, regs. 1(2), 6); 2020 c. 1, Sch. 5 para. 1(1)

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F10 Words in reg. 19(5) inserted (31.12.2020) by The Electronic Commerce and Solvency 2 (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/1361), regs. 1(2), **6(3)(c)(ii)** (as amended by S.I. 2019/1390, regs. 1(2), 6); 2020 c. 1, Sch. 5 para. 1(1)

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.

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