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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.

**Consumer contract requirements: information**

4. The information which may be the subject of a consumer contract requirement is—
- (a) the identity and description of the main business of the other party to the proposed contract (“the supplier”), the geographic address at which the supplier is established, and any other geographic address relevant to the consumer’s relations with the supplier;
  - (b) if the supplier has a representative established in the consumer’s country of residence with whom the consumer is to have dealings, the identity and geographic address of the representative, and any other geographic address relevant to the consumer’s relations with the representative;
  - (c) if the consumer is to have dealings with any professional person in connection with the contract, the identity of that person, a statement of the capacity in which he is to act, and the geographic address relevant to the consumer’s relations with him;
  - (d) if the supplier is registered on any public register in connection with the carrying on of his business (or such of his business as is relevant to the contract), the name of that register, and any registration number or other means of identifying the relevant entry on the register;
  - (e) if the carrying on of the supplier’s business (or such of it as is relevant to the contract) is subject to a requirement that he be authorised by a person or body in order to carry it on, the name and geographic address of that person or body;
  - (f) a description of the main features of the service or services to which the contract relates;
  - (g) either—
    - (aa) the total price to be paid by the consumer under the contract, including all related fees, charges and expenses, and all taxes paid by or through the supplier (in so far as these are reflected in the total price); or
    - (bb) if the total price cannot be given, the basis for the calculation of the total price, in a form enabling the consumer to verify the total price when calculated by the supplier;
  - (h) where the service to be provided under the contract relates to one or more financial instruments—
    - (aa) if the instruments are subject to special risks relating to their specific features or operations to be executed in relation to them, notice of the existence of those risks,
    - (bb) if the price of the instruments is subject to fluctuation depending on market conditions outside the supplier’s control, notice of that fact, and
    - (cc) notice that movements in the price of the instruments in the past are not necessarily an indicator of future performance;
  - (i) notice of the possibility that taxes or other costs may exist which are not imposed or paid by or through the supplier;
  - (j) the arrangements for payment under, and the performance of, the contract;
  - (k) any specific additional cost imposed by the supplier on the consumer in relation to the consumer’s use of the means for concluding the contract or communicating with the supplier;
  - (l) the existence or absence of any legal right of the consumer to withdraw from the contract after it has been entered into, the conditions attached to the exercise of any such right, and the consequences for the consumer of not exercising it;
  - (m) where the contract relates to services to be performed on an indefinite or recurrent basis, the minimum duration of the contract;

- (n) any rights of the consumer or the supplier to terminate the contract in accordance with one of its express terms, any contractual penalties which may apply in that event, and the procedure to be followed by the consumer in that event (including the address to which any notification of withdrawal from the contract should be sent);
- (o) the state or states whose laws are taken by the supplier as a basis for the establishment of relations with the consumer before the contract is concluded;
- (p) any express term in the contract relating to the law governing it, or to the jurisdiction of courts;
- (q) the language or languages in which the supplier—
  - (aa) proposes to offer the terms of, and information concerning, the contract, and
  - (bb) undertakes (with the agreement of the consumer) to communicate with the consumer during the existence of the contract;
- (r) whether any mechanism other than redress through a court (including guarantee funds and compensation schemes and arrangements) is available to the consumer in relation to matters arising in connection with the contract, and if so, the procedure to be followed by the consumer in order to gain access to it;
- (s) any limitations, of which the supplier could reasonably be taken to be aware, of the period for which any information referred to in paragraphs (a) to (r) will be valid.

#### **Application of certain rules**

5. Rules made by the Authority under section 140 or 141 of the 2000 Act do not apply to incoming providers to the extent that they specify an activity which is an incoming electronic commerce activity.