
STATUTORY INSTRUMENTS

2002 No. 1775

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

PART 3

ARTICLE 3.4 OF THE ELECTRONIC COMMERCE DIRECTIVE

Direction by Authority

6.—(1) If the policy conditions and the procedural conditions are met, the Authority may direct that an incoming provider may no longer carry on a specified incoming electronic commerce activity, or may only carry it on subject to specified requirements.

(2) A direction—

(a) must be in writing;

(b) has effect from—

(i) a specified date (which may be the date on which it is made); or

(ii) if no date is specified, the date on which the direction is no longer open to review;

(c) must include a statement to the effect that the person to whom it applies may refer the matter to the Tribunal;

(d) may have effect for a specified period, until the occurrence of a specified event, until specified conditions are met, or for an indefinite period.

(3) The requirements referred to in paragraph (1) may include the requirement that the person to whom the direction applies must comply with one or more rules (with such modifications (if any) as may be specified) with respect to the carrying on by him of an incoming electronic commerce activity.

(4) If a requirement of a kind mentioned in subsection (3) of section 48 of the 2000 Act is specified in a direction, the requirement has the same effect in relation to the person to whom the direction applies as it would have if it had been imposed on that person by the Authority acting under section 45 of that Act.

(5) Contravention of a specified requirement does not make a person guilty of an offence, or make any transaction void or unenforceable.

(6) Contravention of a specified requirement by an incoming provider is actionable at the suit of a person who suffers loss as a result of the contravention, subject to—

(a) the defences and other incidents applying to actions for breach of statutory duty; and

(b) the conditions mentioned in regulation 7(2) of the Financial Services and Markets Act 2000 (Rights of Action) Regulations 2001(1) (“the Rights of Action Regulations”).

(7) For the purposes of paragraph (6)(b), the reference in regulation 7(2)(b) of the Rights of Action Regulations to a Part XIII financial resources requirement is to be taken to include a reference to a specified requirement to have or maintain financial resources.

(8) For the purposes of this regulation, a direction is no longer open to review if any of the conditions in section 391(8) (a) to (d) of the 2000 Act are satisfied.

(9) In this regulation, “specified” in relation to a direction means specified in the direction.

Policy conditions

7. The policy conditions are that—

(a) the Authority considers—

(i) the making of the direction to be necessary for—

(aa) the prevention, investigation, detection or prosecution of criminal conduct;

(bb) the protection of consumers; or

(cc) other reasons of public policy relevant to the regulatory objectives set out in Part I of the 2000 Act; and

(ii) that the carrying on of the incoming electronic commerce activity by the person to whom the direction is to apply prejudices, or presents a serious and grave risk of prejudice to, any of the objectives referred to in sub-paragraph (i); and

(b) the direction appears to the Authority to be a proportionate means of achieving, or addressing the prejudice or risk of prejudice to, any of those objectives.

Procedural conditions

8. The procedural conditions are that—

(a) the Authority has requested the relevant EEA regulator to take measures to remedy the situation giving rise to the request;

(b) the relevant EEA regulator—

(i) has not, within what appears to the Authority to be a reasonable time, taken such measures; or

(ii) has taken such measures, but the measures appear to the Authority to be inadequate in the circumstances;

(c) the Authority has notified the Commission and the relevant EEA regulator of its intention to make the direction; and

(d) the Authority has notified the person to whom the direction is to apply of its proposal to make the direction, and afforded that person the opportunity to make representations to the Authority in such manner, and within such period, as the Authority may determine.

Urgent cases

9.—(1) If the case appears to the Authority to be one of urgency, it may make a direction regardless of whether the procedural conditions are met.

(2) If the Authority makes a direction in reliance on paragraph (1), it must notify the Commission and the relevant EEA regulator as soon as possible that the direction has been made, and provide each of those bodies with a statement of its reasons for considering the case to be one of urgency.

Directions made under regulation 6

10.—(1) Subject to the following provisions of this regulation, the Authority may vary or revoke a direction by notice in writing to the person to whom the direction applies.

(2) The Authority may vary or revoke a direction under this regulation on its own initiative, or on the application of the person to whom the direction applies.

(3) If the Authority decides to refuse an application for the variation or revocation of a direction made under this regulation, it must notify the applicant in writing of its decision.

(4) The Authority must not vary a direction on its own initiative under this regulation unless it has afforded the person to whom the direction applies the opportunity to make representations to the Authority in such manner, and within such period, as the Authority may determine.

(5) Paragraph (4) does not apply if the case appears to the Authority to be one of urgency.

(6) A decision by the Authority to vary a direction has effect from—

(a) a date referred to in the notice given under paragraph (1) (which must not be earlier than the date on which the decision was made); or

(b) if no such date is referred to, the date on which the decision was made.

(7) If the case is one to which regulation 11(b) or (c) applies, a notice under paragraph (1) or (3) must include a statement to the effect that the person to whom the direction applies may refer the matter to the Tribunal.

(8) If the Authority makes a direction it may publish, in such manner as it considers appropriate, such information about the matter to which the direction relates as it considers appropriate in furtherance of any of the objectives referred to in regulation 7(a)(i).

(9) The Authority may not publish information under paragraph (8) if publication of it would, in the Authority's opinion, be unfair to the person to whom the direction applies or prejudicial to the interests of consumers.

Referral to the Tribunal

11. If the Authority—

(a) makes a direction;

(b) varies a direction on its own initiative; or

(c) decides to refuse an application for the variation or revocation of a direction,

the person to whom the direction applies may refer the matter to the Tribunal.