

2002 No. 1776

**FINANCIAL SERVICES AND MARKETS
ELECTRONIC COMMUNICATIONS**

**The Financial Services and Markets Act 2000 (Regulated
Activities) (Amendment) (No. 2) Order 2002**

Made - - - - - 12th July 2002

Laid before Parliament 12th July 2002

Coming into force - - 21st August 2002

The Treasury, in exercise of the powers conferred on them by sections 22(1) and (5) and 428(3) of the Financial Services and Markets Act 2000(), hereby make the following Order:

Citation and commencement

1. This Order may be cited as the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2002, and comes into force on 21 August 2002.

Amendment of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001

2. The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001() (“the Regulated Activities Order”) is amended by inserting, after article 72—

“Information society services

72A.—(1) There is excluded from this Part any activity consisting of the provision of an information society service from an EEA State other than the United Kingdom.

(2) The exclusion in paragraph (1) does not apply to the activity of effecting or carrying out a contract of insurance as principal, where—

- (a) the activity is carried on by an undertaking which has received official authorisation in accordance with Article 6 of the first life insurance directive or the first non-life insurance directive, and
- (b) the insurance falls within the scope of any of the insurance directives.”.

(a) 2000 c. 8.
(b) S.I. 2001/544, amended by S.I. 2001/3544 and S.I. 2002/682.

3.—(1) The Regulated Activities Order is also amended as follows.

(2) After article 9A, insert—

“Information society services

9AA. Article 5 is subject to the exclusion in article 72A (information society services).”.

(3) After article 12, insert—

“Information society services

12A. Article 10 is subject to the exclusion in article 72A (information society services), as qualified by paragraph (2) of that article.”.

(4) In article 20, for “and 72 (overseas persons)”, substitute “, 72 (overseas persons) and 72A (information society services)”.

(5) In article 24, for “and 72 (overseas persons)”, substitute “, 72 (overseas persons) and 72A (information society services)”.

(6) In article 36, for “and 72 (overseas persons)”, substitute “, 72 (overseas persons) and 72A (information society services)”.

(7) In article 39, for “and 69 (groups and joint enterprises)”, substitute “, 69 (groups and joint enterprises) and 72A (information society services)”.

(8) In article 44, for “and 71 (employee share schemes)”, substitute “, 71 (employee share schemes) and 72A (information society services)”.

(9) In article 50, for “and 69 (groups and joint enterprises)”, substitute “, 69 (groups and joint enterprises) and 72A (information society services)”.

(10) After article 51, insert—

“Exclusion

Information society services

51A. Article 51 is subject to the exclusion in article 72A (information society services).”.

(11) After article 52, insert—

“Exclusion

Information society services

52A. Article 52 is subject to the exclusion in article 72A (information society services).”.

(12) In article 55, for “and 72 (overseas persons)”, substitute “, 72 (overseas persons) and 72A (information society services).”.

(13) After article 58, insert—

“Exclusion

Information society services

58A. Articles 56 to 58 are subject to the exclusion in article 72A (information society services).”.

(14) For the cross-heading before article 60, substitute—

“Exclusions”.

(15) After article 60, insert—

“Information society services

60A. Article 59 is subject to the exclusion in article 72A (information society services).”.

(16) After article 63, insert—

“Information society services

63A. Article 61 is subject to the exclusion in article 72A (information society services).”.

(17) For article 65, and the cross-heading before it, substitute—

“Exclusions

Overseas persons etc

65. Article 64 is subject to the exclusions in articles 72 (overseas persons) and 72A (information society services).”.

12th July 2002

Nick Ainger
Jim Fitzpatrick
Two of the Lords Commissioners of Her Majesty’s Treasury

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544) (“the Regulated Activities Order”), to take account of 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 (No. 2000/31/EC) (“the Directive”).

This Order should be read with the Electronic Commerce Directive (Financial Services and Markets) Regulations 2002 (S.I. 2002/1775) and the Financial Services and Markets Act 2000 (Financial Promotion) (Amendment) (Electronic Commerce Directive) Order 2002 (S.I. 2002/2157), which make additional provisions in connection with the Directive. The Order 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.

Under Article 3.2 of the Directive, Member States are prohibited from restricting, for reasons falling within the “co-ordinated field” (as defined in Article 2(h) of the Directive), the freedom to provide “information society services” (as defined in Article 2(a)) from other Member States of the European Economic Area. Excluded from this prohibition by Article 3.3 of the Directive are, inter alia, services consisting of the effecting or carrying out of a contract of insurance as principal, where that activity falls within the scope of any of the insurance directives (as defined in section 425 of, and Schedule 3 to, the Financial Services and Markets Act 2000 (c. 8)).

Article 2 of this Order amends the Regulated Activities Order by inserting a new article 72A, which creates a general exclusion from the definition of “regulated activity” for activities consisting of the provision of information society services from places of establishment in other EEA States. Paragraph (2) of the new article limits the exclusion so that it does not extend to the effecting or carrying out of a contract of insurance as principal, where that activity is carried out by an undertaking which has received official authorisation in accordance with any of the insurance directives, and the insurance concerned falls within the scope of any of those directives.

Article 3 of this Order makes consequential amendments to other articles of the Regulated Activities Order.

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