

---

STATUTORY INSTRUMENTS

---

**2002 No. 2157**

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

PART 2

AMENDMENT OF THE FINANCIAL SERVICES AND  
MARKETS ACT 2000 (FINANCIAL PROMOTION) ORDER 2001

2. The Financial Services and Markets Act 2000 (Financial Promotion) Order 2001 is amended as set out in this Part.

**Interpretation provisions**

3.—(1) In article 6, 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 8, insert—

**“Interpretation: outgoing electronic commerce communications**

8A.—(1) For the purposes of the application of those articles to outgoing electronic commerce communications—

- (a) any reference in article 48(4)(e), 50(1)(a) or (3)(c) or 52(3)(c) 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 68, 72 or 73(2)(b) to Part II of the Public Offers of Securities Regulations 1995(1) includes a reference to provisions corresponding to that Part in the law of an EEA State other than the United Kingdom;
- (c) any reference in article 48 or 49 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 49 to outgoing electronic commerce communications, any reference in section 737 or 264(2) of the 1985 Act (or the equivalent

provision in the 1986 Order) to a body corporate or company includes a reference to a body corporate or company registered under the law of an EEA State other than the United Kingdom.

(3) For the purposes of the application of articles 63 to 66 to outgoing electronic commerce communications, any reference in article 3 to Part II of the Public Offers of Securities Regulations 1995 includes a reference to provisions corresponding to that Part in the law of an EEA State other than the United Kingdom.

(4) For the purposes of the application of article 3 in respect of outgoing electronic commerce communications—

- (a) any reference in section 163(2)(b) of the 1985 Act (or the equivalent provision in the 1986 Order) to a company includes a reference to a company registered under the law of an EEA State other than the United Kingdom;
- (b) any reference in that section to an investment exchange includes a reference to an investment exchange which is recognised as an investment exchange under the law of an EEA State other than the United Kingdom.”.

#### **Outgoing electronic commerce communications**

4. In article 12—

- (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.”.

#### **Mere conduits, caching and hosting**

5.—(1) In article 18—

- (a) in paragraph (1), at the beginning insert “Subject to paragraph (4),”;
- (b) at the end, insert—
  - “(4) This article does not apply to an electronic commerce communication.”.

(2) After article 18, insert—

#### **“Electronic commerce communications: mere conduits, caching and hosting**

**18A.** The financial promotion restriction does not apply to an electronic commerce communication in circumstances where—

- (a) the making of the communication constitutes the provision of an information society service of a kind falling within paragraph 1 of Article 12, 13 or 14 of the electronic commerce directive (“mere conduit”, “caching” and “hosting”); and
- (b) the conditions mentioned in the paragraph in question, to the extent that they are applicable at the time of, or prior to, the making of the communication, are or have been met at that time.”.

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

6. After article 20A, insert—

**“Incoming electronic commerce communications**

**20B.**—(1) The financial 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;
- (b) a communication consisting of an invitation or inducement to enter into a contract of insurance, where—
  - (i) the communication is made 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
  - (ii) the insurance falls within the scope of any of the insurance directives; or
- (c) 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>(2)</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.”.

---

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