

**2004 No. 3378**

**FINANCIAL SERVICES AND MARKETS**

**ELECTRONIC COMMUNICATIONS**

**The Electronic Commerce Directive (Financial Services and Markets) (Amendment) Regulations 2004**

<i>Made</i> - - - -	<i>20th December 2004</i>
<i>Laid before Parliament</i>	<i>21st December 2004</i>
<i>Coming into force</i> - -	<i>11th January 2005</i>

The Treasury, being a government department designated for the purposes of section 2(2) of the European Communities Act 1972(a) in relation to information society services(b) and in relation to the distance marketing of consumer financial services(c), in exercise of the powers conferred by that section, hereby make the following Regulations:

**Citation and commencement**

1. These Regulations may be cited as the Electronic Commerce Directive (Financial Services and Markets) (Amendment) Regulations 2004, and come into force on 11th January 2005.

**Amendment of the Electronic Commerce Directive (Financial Services and Markets) Regulations 2002**

2.—(1) Regulation 3 (consumer contract requirements: modification of rule-making power) of the Electronic Commerce Directive (Financial Services and Markets) Regulations 2002(d) is amended as follows.

(2) After paragraph (4), insert—

“(4A) Notwithstanding paragraph (4)(a), rules made by the Authority under section 138 of the 2000 Act which impose consumer contract requirements do not apply to an incoming provider with respect to the carrying on by him of an incoming electronic commerce activity which consists of the provision of an information society service from an establishment in an EEA State other than the United Kingdom, if the provisions by which that State has transposed the Financial Services Distance Marketing Directive, or the

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(a) 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, or to enable the United Kingdom to enjoy any rights, 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 17th March 1993 (Cm 2183).

(b) S.I. 2001/3495.

(c) S.I. 2004/1283.

(d) S.I. 2002/1775, as amended by S.I. 2002/2015.

obligations in the domestic law of that State corresponding to those provided for in that Directive, as the case may be, apply to that activity.”.

(3) After paragraph (6), insert—

“(6A) “The Financial Services Distance Marketing Directive” means Directive 2002/65/EC of the European Parliament and the Council of 23 September 2002 concerning the distance marketing of consumer financial services and amending Council Directive 90/619/EEC and Directives 97/7/EC and 98/27/EC(a).”.

*Nick Ainger*

*Jim Murphy*

Two of the Lords Commissioners  
of Her Majesty’s Treasury

20th December 2004

### EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations amend the Electronic Commerce Directive (Financial Services and Markets) Regulations 2002 so that rules made by the Financial Services Authority under section 138 of the Financial Services and Markets Act 2000 imposing consumer contract requirements do not apply to an electronic commerce activity consisting of the provision of an information society service from another EEA State, where the law of that State regulates the activity in accordance with Directive 2002/65/EC on the distance marketing of consumer financial services.

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(a) O.J. L 271, 9.10.2002, p.16; the Directive applies to EEA States which are not Member States of the European Community by virtue of Decision No. 47/2003 of the EEA Joint Committee dated 16th May 2003 (O.J. L193, 31.7.2003, page 18).

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