Changes to legislation: *There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Electronic Commerce Directive (Financial Services and Markets) (Amendment) Order 2015. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

STATUTORY INSTRUMENTS

2015 No. 852

FINANCIAL SERVICES AND MARKETS ELECTRONIC COMMUNICATIONS

The Electronic Commerce Directive (Financial Services and Markets) (Amendment) Order 2015

Made - - - - 23rd March 2015

Coming into force in accordance with article 1(2)

The Treasury are designated [F1] for the purposes of section 2(2) of the European Communities Act 1972 [F2] in relation to information society services.

In the opinion of the Treasury, one of the effects of the following Order is that an activity which is not a regulated activity (within the meaning of the Financial Services and Markets Act 2000) will become a regulated activity.

The Treasury, in exercise of the powers conferred by section 2(2) of the European Communities Act 1972 and section 22(1) and (5) of, and paragraph 25(1)(b) of Schedule 2 to, the Financial Services and Markets Act 2000 [F3], make the following Order.

In accordance with paragraph 2(2) of Schedule 2 to the European Communities Act 1972 and paragraph 26 of Schedule 2 [F4] to the Financial Services and Markets Act 2000, a draft of this Order has been laid before Parliament and approved by a resolution of each House of Parliament.

F1 S.I. 2001/3495.
F2 1972 c.68. Section 2(2) was amended by section 27 of the Legislative and Regulatory Reform Act 2006 (c. 51) and by section 3 of, and the Schedule to, the European Union (Amendment) Act 2008 (c. 7).
F3 2000 c. 8.
F4 Paragraph 26 of Schedule 2 was amended by section 8(3) of the Financial Services Act 2012 (c. 21).

Citation and commencement

1.—(1) This Order may be cited as the Electronic Commerce Directive (Financial Services and Markets) (Amendment) Order 2015.

(2) It comes into force on the day after the day on which it is made.

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

2.—(1) The Electronic Commerce Directive (Financial Services and Markets) Regulations 2002 [F5] are amended as follows.

(2) After regulation 11 (referral to the Upper Tribunal) [F6], insert—

"PART 3A

Incoming providers of credit-related activities directing all or most of their activity to the United Kingdom

Scope of this Part

11A. The Authority [F7] may exercise its powers under this Part only in relation to an activity of a kind specified by any of the following provisions of the Regulated Activities Order [F8]—

(a) article 36A (credit broking) [F9];

(b) article 36H (operating an electronic system in relation to lending);

(c) article 39D (debt adjusting);

(d) article 39E (debt-counselling);

(e) article 39F (debt-collecting);

(f) article 39G (debt administration);

(g) article 60B (regulated credit agreements); and

(h) article 60N (regulated consumer hire agreements).

Direction by Authority

11B.—(1) If the condition in paragraph (2) is 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) The condition is that the Authority is satisfied that the incoming provider—

(a) directs all or most of its activity to the United Kingdom; and

(b) is exercising the freedom conferred by Article 56 of the Treaty on the Functioning of the European Union for the purpose of avoiding requirements imposed by or under the 2000 Act [F10] that would apply to the provider if it were established in the United Kingdom.

(3) A direction under this regulation may impose any requirement which the Authority could impose under section 55L(3) [F11] of the 2000 Act if—

(a) the incoming provider had permission under Part 4A of the 2000 Act; and

(b) the Authority was entitled to exercise its power under section 55L(3) of that Act.

(4) Paragraphs (2) to (8) of regulation 6 (direction by Authority), regulation 10 (directions made under regulation 6) and regulation 11 (referral to the Upper Tribunal) apply to a direction under paragraph (1) as if it were a direction under regulation 6(1), and as if—

(a) in regulation 6(2)(d), after "until specified conditions are met, or" there were inserted " (unless the direction requires an incoming provider to no longer carry on a specified incoming electronic commerce activity) ";

(b) in regulation 10(8), there were omitted "in furtherance of any of the objectives referred to in regulation 7(a)(i)".

(5) Where a direction under paragraph (1) directs that an incoming provider may no longer carry on a specified incoming electronic commerce activity, the direction remains in force until the earliest of—

(a) the date on which the Authority revokes the direction;

(b) the expiry of the period of 3 months beginning on the day on which the Authority gives the direction, unless before the expiry of that period the Authority gives a warning notice to the provider under regulation 11C;

(c) the date on which the Authority gives the provider a notice of discontinuance following a warning notice given to the provider under regulation 11C; and

(d) the date on which the Authority gives the provider a final notice following a warning notice given to the provider under regulation 11C.

(6) In all other cases a direction under paragraph (1) remains in force until the earliest of—

(a) the date on which the Authority revokes the direction;

(b) the date on which the Authority gives the provider a notice of discontinuance following a warning notice given to the provider under regulation 11C; and

(c) the date on which the Authority gives the provider a final notice following a warning notice given to the provider under regulation 11C.

(7) In this regulation, "specified" in relation to a direction means specified in the direction.

Article 72A of the Regulated Activities Order

11C.—(1) If the condition in regulation 11B(2) is met, the Authority may make a determination that article 72A(1) of the Regulated Activities Order does not apply to an activity carried on by an incoming provider.

(2) If the Authority proposes to make a determination under paragraph (1), it must give the incoming provider a warning notice specifying the activity.

(3) If the Authority decides to make a determination under paragraph (1), it must give the incoming provider a decision notice specifying the activity.

(4) An incoming provider who is aggrieved by a determination made under this regulation may refer the matter to the Upper Tribunal.

(5) Part 26 (notices) of the 2000 Act applies in relation to notices given under this regulation, as if—

(a) in section 390 (final notices), after paragraph (6), there were inserted—

"(6A) A final notice about a determination under regulation 11C of the Electronic Commerce Directive (Financial Services) Regulations 2002 must state—

(a) the activity to which it relates, and

(b) the date on which the determination comes into effect.";

(b) section 392 applied sections 393 (third party rights) and 394 (access to FCA or PRA material) to—

(i) a warning notice given in accordance with paragraph (2);

(ii) a decision notice given in accordance with paragraph (3);

(c) sections 395 (the FCA's and PRA's procedures) and 396 (statements under section 395: consultation) were omitted.".