

**ELECTRONIC COMMERCE DIRECTIVE INSTRUMENT 2002**

**Powers exercised**

A The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions:

- (1) section 138 of the Financial Services and Markets Act 2000 ("the Act") as supplemented by regulation 3 of the Electronic Commerce Directive (Financial Services and Markets Act) Regulations 2002 (S.I. 2002/1775);
- (2) sections 149 (Evidential provisions) and 157 (Guidance); and
- (3) the rule-making powers listed in Schedule 4 to the General Provisions (GEN).

B The rule-making powers identified above are specified for the purpose of section 153(2) of the Act (Rule-making instruments).

**Commencement**

C This instrument comes into force on 21 August 2002.

**E-Commerce Directive sourcebook**

D The Financial Services Authority makes the rules and gives the guidance in Annex A to this instrument (E-Commerce Directive sourcebook).

**Amendments to the FSA Handbook**

E The modules of the FSA's Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2) below:

(1)	(2)
COB	Annex B
AUTH	Annex C
ENF	Annex D
EMPS	Annex E
FREN	Annex F
OMPS	Annex G
SERV	Annex H
Glossary	Annex I
GEN	Annex J

## **Remaking of the General provisions and Glossary**

F GEN 2 (Interpreting the Handbook), other than GEN 2.1.8 R, and the Glossary are made under the power at paragraph A(1) above (in addition to the powers under which they are already made).

### **Citation**

G This instrument may be cited as the Electronic Commerce Directive Instrument 2002.

H Annex A to this instrument may be cited as the E-Commerce Directive sourcebook (or ECO).

By order of the Board  
18 July 2002

Amended by Addendum  
19 October 2004

## Annex A

### E-Commerce Directive sourcebook (ECO)

#### ECO TP1                      Transitional Provisions

1 Table

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
1.0	Every <i>rule</i> (including <i>evidential provision</i> ) in <i>ECO</i>	R	Until 20 November 2002, an <i>electronic commerce activity service provider</i> will not contravene any provision in <i>ECO</i> to the extent that it has taken reasonable steps to comply with that provision.	21 August 2002 until 20 November 2002	21 August 2002
2.0	Every <i>rule</i> (including <i>evidential provision</i> ) in <i>ECO</i>	R	Where a <i>rule</i> in <i>ECO</i> refers to another <i>rule</i> in the <i>Handbook</i> , it means that <i>rule</i> subject to any applicable transitional provisions.	With effect from 21 August 2002	21 August 2002
3.0	Every <i>rule</i> (including <i>evidential provision</i> ) in <i>ECO</i>	G	As an example of the effect of 2.0 R, references in <i>ECO</i> 1.2.9E to provisions of <i>COB</i> 6 have the benefit of applicable transitional relief under the <i>COB</i> transitional rules.	With effect from 21 August 2002	21 August 2002

## CHAPTER 1: INCOMING ECA PROVIDERS

### 1.1 Application and purpose

#### Application

- 1.1.1 R This chapter applies to an *incoming ECA provider*, with respect to:
- (1) the carrying on of an *electronic commerce activity*;
  - (2) from an *establishment* in an *EEA State* other than the *United Kingdom*; and
  - (3) with or for a *UK ECA recipient*.

#### Purpose

- 1.1.2 G *ECO* as a whole operates against the background of a key element of the *E-Commerce Directive*, namely the freedom of *ECA providers* from one *EEA State* to carry on an *electronic commerce activity* freely into another *EEA State*. An *incoming ECA provider* has to comply with the applicable laws in the *country of origin* from which the service is provided, and not the laws in the place where the *consumer* is located, subject to derogations from that principle. The applicable *UK* rules under those derogations are set out, or referred to, in this chapter.
- 1.1.3 G This freedom is conferred on *incoming ECA providers* by the *ECD Regulations*, and is carried forward by this chapter and other provisions of the *FSA's Handbook* to which this chapter refers. However, this freedom is qualified by certain other rules in this chapter. These rules are based either on the 'consumer contract derogation' or on the 'insurance derogation', which give *Host States* continuing responsibility for consumer protection in certain areas. Both derogations are set out in the Annex to the directive.
- 1.1.4 G This chapter applies only in relation to *electronic commerce activities* provided to a *UK ECA recipient*. *ECO* 1.2 (Provision of essential information to consumers) applies in relation to *electronic commerce activities* supplied to a *UK ECA recipient* who is a *consumer*. *ECO* 1.3 (Provision of insurance services) applies in relation to relevant services provided to a *UK ECA recipient*, whether or not the recipient is a *consumer*.
- 1.1.5 G The *E-Commerce Directive* also allows the *EEA State* where the recipient is based to restrict the freedom to provide an *electronic commerce activity* from another *EEA State* on a case by case basis, where certain conditions are met. This 'derogation' is implemented in the *United Kingdom* through provisions of the *ECD Regulations*. *ENF* 19 outlines the derogation power and the *FSA's* policy on its use in relation to *incoming ECA providers*.

## Application of other parts of the Handbook

- 1.1.6 R Except for the provisions set out in *ECO 1.1.10 R*, the *Handbook* does not apply to an *incoming ECA provider* with respect to the carrying on of *incoming electronic services activities*.
- 1.1.7 G Notwithstanding the provisions of the *E-Commerce Directive*, an *incoming ECA provider's Home State* (when different from its *country of origin*) will continue to have certain responsibilities, such as prudential supervision of that provider and its *branches* and ensuring that it has the appropriate compensation scheme as required by Community law. As such, an *incoming ECA provider*, that is an *authorised person*, is subject to the relevant parts of the *Handbook*. This means that an *incoming ECA provider* that is an *EEA branch* of a *UK firm* is subject to, for example, *IPRU* and *COMP* continues to be relevant to its activities.
- 1.1.8 G The *FSA* has a range of investigation and enforcement powers available to it where an *incoming ECA provider* appears to be in breach of *rules* to which it is subject under *ECO 1*. These include powers to seek *injunctions* (see *ENF 6*), to apply to a court for restitution (see *ENF 9*) and, in the case of *authorised persons*, to order restitution (see *ENF 9*) and take disciplinary action (see *ENF 11 to 13*).
- 1.1.9 G The *market abuse regime* and *misleading statements and practices offences* are not affected by the *E-Commerce Directive*. The *FSA's* enforcement powers in this regard are described in *ENF 14* and *ENF 15*. The *FSA's Code of Market Conduct (MAR 1)* contains *guidance* on whether or not *behaviour* amounts to *market abuse*.

### 1.1.10 R Table Handbook provisions applicable to, or relevant for, incoming ECA providers

This Table belongs to *ECO 1.1.7 R*

Provision	Description
<i>ECO 1</i>	E-Commerce Directive sourcebook
<i>MAR 1</i>	The Code of Market Conduct
<i>DEC</i> (if the <i>incoming ECA provider</i> is <i>authorised</i> )	Decision making by the FSA
<i>AUTH 1.2.6 G</i> , <i>AUTH 2.4.3 G</i> , <i>AUTH 2.4.7 G</i> , <i>AUTH 2.8.2 G - 2.8.15 G</i> , <i>AUTH 2.9.1 G</i> , <i>AUTH 2.9.18 G</i> , <i>AUTH 5.1.1 G - 5.1.2 G</i> , <i>AUTH 5.6.5 G</i> , <i>AUTH 5 Ann 3G</i>	Authorisation guidance
<i>ENF</i>	Enforcement guidance

<i>SERV</i> 1.2.2 G	Service companies guidance
<i>OMPS</i> 1.2.2 G	Oil market participants guidance
<i>EMPS</i> 1.2.3 G	Energy market participants guidance
<i>FREN</i> 1.2.2 G	Small friendly societies guidance
<i>GEN</i> 2	Interpreting the Handbook
<i>COAF</i>	Complaints against the FSA
<i>SUP</i> 8	Waivers and modification of rules
<i>SUP</i> 9	Individual guidance
<i>SUP</i> 14 (if the <i>incoming ECA provider</i> is <i>authorised</i> )	EEA firms change of details
Any reference in <i>SUP</i> 8 to a <i>firm</i> should be taken to include a reference to an <i>unauthorised incoming ECA provider</i> .	

## 1.2 Provision of essential information to consumers

### Requirement to provide essential information

- 1.2.1 R Before entering into a contract with a *UK ECA recipient* who is a *consumer*, an *incoming ECA provider* must supply the recipient with *essential information* in English relevant to the contract.
- 1.2.2 G *ECO* 1.2.1 R requires an *incoming ECA provider* to provide a *consumer* with *essential information*, as envisaged by the *E-Commerce Directive*. *ECO* 1.2.6 E and *ECO* 1.2.7 E suggest that an *incoming ECA provider* should meet this requirement in one of two ways:
- (1) *ECO* 1.2.6 E gives an *incoming ECA provider* the option of complying with relevant *UK Host State* requirements relating to the provision of *essential information*; or
  - (2) alternatively, *ECO* 1.2.7 E allows an *incoming ECA provider* to comply with requirements imposed by its *country of origin* which correspond to those of the *United Kingdom*.

### Exceptions: insurance

- 1.2.3 R *ECO* 1.2.1 R does not apply to an *insurer* with respect to *insurance business*, where the activity:

- (1) is carried on by an *insurer* which has received official authorisation in accordance with article 6 of the *First Life Directive* or the *First Non-Life Directive*; and
- (2) falls within the scope of the *Insurance Directives*;

but the *insurer* must instead comply with *ECO* 1.3.1 R.

**Exceptions: deposits, general insurance contracts, pure protection contracts and re-insurance**

1.2.4 R (1) *ECO* 1.2.1 R does not apply to an *incoming ECA provider* with respect to an *electronic commerce activity* relating to:

- (a) a *deposit* (other than a *cash deposit ISA*); or
- (b) (if *ECO* 1.2.3 R does not apply) a *general insurance contract, pure protection contract* or reinsurance contract;

but, instead, the *incoming service provider* must comply with (2).

(2) Before entering into a contract with a *UK ECA recipient* who is a *consumer*, an *incoming ECA provider* must indicate to the recipient whether the contract falls within the jurisdiction of:

- (a) any dispute resolution scheme operating in the *EEA*; and
- (b) in the case of services within (1)(b), any compensation scheme operating in the *EEA*;

and, if either or both of (a) and (b) apply, must identify each such scheme.

1.2.5 G *ECO* 1.2.4 R (2)(b) does not require a deposit taking *incoming ECA provider* to mention a deposit guarantee scheme, but its *Home State* will require it to do so in accordance with the *Deposit Guarantee Directive*.

**Provision of essential information to consumers: UK requirements**

1.2.6 E (1) In order to comply with *ECO* 1.2.1 R, before entering into a contract with a *UK ECA recipient* who is a *consumer*, an *incoming ECA provider* should comply with the following UK requirements:

- (a) in every case where *COB* 6.2 (Provision of key features) or *COB* 6.4 (Product disclosure: special situations) would require the provision of *key features*, provide the information identified in the *rules* listed in at *ECO* 1.2.9 E;

- (b) when it *communicates* a *specific non-real time financial promotion*, *ECO 1.2.10 E* and *ECO 1.2.11 E* (Essential information: specific non-real time financial promotions);
  - (c) when it *communicates* a *direct offer financial promotion*, provide the information identified in the *rules* listed in *ECO 1.2.12 E*; and
  - (d) where relevant, *ECO 1.2.13 E* and *ECO 1.2.14 E* (Essential information: direct offer financial promotion of higher risk products).
- (2) The requirements in (1)(a) and (c) only apply to the extent that they would apply to a *firm* carrying on business from an *establishment* in the *United Kingdom* with or for the *UK ECA recipient*.
  - (3) The requirements in (1)(b) apply subject to the exemptions in *COB 3.2.5* (exemptions).

**Provision of essential information to consumers: country of origin requirements**

1.2.7 E If an *incoming ECA provider* engages in conduct which is in conformity with provisions:

- (1) corresponding to the *UK* requirements set out in *ECO 1.2.6 E* (1); and
- (2) made by a body or authority in an *EEA State* other than the *United Kingdom*;

that conduct is to be treated as conduct in conformity with those *UK* requirements.

**Effect of compliance with ECO 1.2.6 E (UK requirements) or ECO 1.2.7 E (country of origin requirements)**

- 1.2.8 E (1) Compliance with *ECO 1.2.6 E* (1), directly or through engaging in conduct as set out in *ECO 1.2.7 E*, may be relied on as tending to establish compliance with *ECO 1.2.1 R*.
- (2) Contravention of *ECO 1.2.6 E* (1) (including failure to engage in conduct as set out in *ECO 1.2.7 E*) may be relied on as tending to establish contravention of *ECO 1.2.1 R*.

## Provision of essential information: key features

### 1.2.9 E Table Provision of essential information to consumers: key features

This table belongs to *ECO* 1.2.6 E (1)(a)

COB rule	Description
<i>COB</i> 6.5.15 R	Projections: an example
<i>COB</i> 6.5.19 R (1)	Projections: an example
<i>COB</i> 6.5.19 R (3)	Projections: an example
<i>COB</i> 6.5.40 R (1)(a) and (c)	Further information for life policies, schemes, insurance or equity ISAs, PEPs or stakeholder pension schemes
<i>COB</i> 6.5.40 R (3)	Further information for life policies, schemes, insurance or equity ISAs, PEPs or stakeholder pension schemes
<i>COB</i> 6.5.40 R (4) (a) - (g), (i) - (p)	Further information for life policies, schemes, insurance or equity ISAs, PEPs or stakeholder pension schemes
<i>COB</i> 6.5.40 R (5) (a) - (b), (d) - (g)	Further information for life policies, schemes, insurance or equity ISAs, PEPs or stakeholder pension schemes
<i>COB</i> 6.5.40 R (6)	Further information for life policies, schemes, insurance or equity ISAs, PEPs or stakeholder pension schemes
<i>COB</i> 6.5.42 R (3) - (10), (12) - (14)	Information requirements for cash deposit ISAs, friendly society tax-exempt policies, traded life policies and broker funds
<i>COB</i> 6.5.43 R	Friendly society tax exempt policies
<i>COB</i> 6.5.44 R	Traded life policies

## Provision of essential information to consumers: specific non-real time financial promotions

1.2.10 E An *incoming ECA provider* should ensure, when it *communicates a specific non-real time financial promotion* to a *UK ECA recipient* who is a *consumer*, that the *financial promotion* includes:

- (1) a description of:
  - (a) the main features of the product or service;
  - (b) the total price to be paid by the *consumer* under the contract, including all related *fees, charges* and expenses or, if this cannot be given, the basis for the calculation of the price;
  - (c) any risks associated with the specific features of the contract; and
- (2) the name and address or contact point of the *person* with whom the *consumer* would enter into a contract.

1.2.11 E An *incoming ECA provider* should ensure, when it *communicates* a *specific non-real time financial promotion* to a *UK ECA recipient* who is a *consumer*, that any *essential information* provided to the *consumer* about the past performance of *specified investments* or of a *firm* includes, where relevant to the contract, a statement to the effect that past performance should not be seen as an indication of future performance.

**Provision of essential information to consumers: direct offer financial promotions**

**1.2.12 E Table Provision of essential information to consumers in direct offer financial promotions**

This Table belongs to *ECO* 1.2.6 E (1)(c)

<b>COB rule</b>	<b>Description</b>
<i>COB</i> 3.9.7 R (5)	Direct offer financial promotions: particular information required
<i>COB</i> 3.9.12 R (1)	Execution-only dealing services
<i>COB</i> 3.9.15 R (1)	Investments which can fluctuate in value
<i>COB</i> 3.9.18 R	Life policies
<i>COB</i> 3.9.21 R (1) (a)	Cancellation rights
<i>COB</i> 3.9.21 R (1) (c)	Cancellation rights
<i>COB</i> 3.9.23 R	Charges for regulated collective investment schemes

**Provision of essential information to consumers: direct offer financial promotion of higher risk products**

1.2.13 E (1) An *incoming ECA provider* should ensure, when it communicates a *direct offer financial promotion* relating to:

- (a) an *unregulated collective investment scheme*; or
- (b) a *derivative*; or
- (c) a *warrant*; or
- (d) a *broker fund*;

that the *UK ECA recipient*, if a *consumer*, is provided with the *essential information* set out in the table in ECO 1.2.14 E (1), in the case of an *unregulated collective investment scheme*, (2) in the case of a *derivative*, (3) in the case of a *warrant* and (4) in the case of a *broker fund*.

(2) An *incoming ECA provider* should ensure that the *essential information* required by (1) is included in the *direct offer financial promotion* in a manner that will bring it to the attention of the *consumer*.

**1.2.14 E Table Provision of essential information to consumers: direct offer financial promotion of higher risk products**

This table belongs to *ECO* 1.2.13 E

<b>Product</b>	<b>Essential information required</b>
(1) <i>Unregulated collective investment schemes</i>	<p>Information about risks associated with the specific features of the contract, in particular that:</p> <ul style="list-style-type: none"> <li>(i) the product is not regulated and may have a complex structure;</li> <li>(ii) it may not be possible for the <i>consumer</i> to redeem his <i>units</i> or <i>shares</i> within a reasonable time after purchase;</li> <li>(iii) the <i>redemption price</i> may not directly reflect the value of the underlying assets; and</li> <li>(iv) consequently, the risks associated with this product are such that it may be difficult for the <i>consumer</i> to assess the benefits and drawbacks of the product.</li> </ul>
(2) <i>Derivatives (including spread bets)</i>	<p>Information about risks associated with the specific features of the contract, in particular that:</p> <ul style="list-style-type: none"> <li>(i) the value of the <i>investment</i> may change significantly at short notice;</li> <li>(ii) it may expose the <i>consumer</i> to the risk of a loss greater than the amount originally invested (if this is the case);</li> <li>(iii) it may expose the <i>consumer</i> to the risk of losing the entire amount invested (if this is the case); and</li> <li>(iv) consequently, the risks associated with this instrument are such that it may be difficult for the <i>consumer</i> to assess the benefits and drawbacks of the product.</li> </ul>
(3) <i>Warrants</i>	<p>Information about risks associated with the specific features of the contract, in particular that:</p> <ul style="list-style-type: none"> <li>(i) the value of the <i>investment</i> may change</li> </ul>

	<p>significantly at short notice;</p> <p>(ii) it may expose the <i>consumer</i> to the risk of losing the entire amount invested (if this is the case); and</p> <p>(iii) consequently, the risks associated with this product are such that it may be difficult for the <i>consumer</i> to assess the benefits and drawbacks of the <i>investment</i>.</p>
(4) <b>Broker funds</b>	<p>Information about risks associated with the specific features of the contract, in particular that:</p> <p>(i) <i>broker funds</i> are potentially complex and risky products;</p> <p>(ii) in particular, the <i>charges</i> may be complex and give rise to conflicts of interest; and</p> <p>(iii) consequently, the risks associated with this product are such that it may be difficult for the <i>consumer</i> to assess the benefits and drawbacks of the product.</p>

### 1.3 Provision of insurance services

1.3.1 R *ECO* 1.2.1 R (Requirement to provide essential information) does not apply to an *insurer* with respect to *insurance business* where the activity:

- (1) is carried out by an *insurer* which has received official authorisation in accordance with article 6 of the *First Life Directive* or the *First Non-Life Directive*; and
- (2) falls within the scope of the *Insurance Directives*;

but instead such an *insurer* must comply with the provisions of *COB* set out in Table in *ECO* 1.3.3 R when it deals with a *UK ECA recipient*.

1.3.2 G The ‘insurance derogation’ set out in the Annex to the *E-Commerce Directive* allows the *United Kingdom*, as a *Host State*, to continue to apply its own local rules to an insurer, where the latter is providing an *electronic commerce activity* to a *UK ECA recipient*, in circumstances where these *Host State* rules fall within the scope of any of the *Insurance Directives*. Against this background, the *FSA* believes it is appropriate that certain of the requirements of *COB* 3 (Financial promotion) and *COB* 6 (Product disclosure and the customer’s right to

cancel or withdraw) should continue to apply to the provision of these services.

### 1.3.3 R **Table Provision of insurance services**

This table belongs to *ECO* 1.3.1 R

<b>The following provisions (of COB):</b>	<b>Description</b>
<i>COB</i> 3 (entire chapter)	Financial promotion
<i>COB</i> 6.1	Packaged product and ISA disclosure
<i>COB</i> 6.2	Provision of key features
<i>COB</i> 6.4	Product disclosure: special situations
<i>COB</i> 6.5 (except <i>COB</i> 6.5.40 R(1)(b), <i>COB</i> 6.5.47 R, <i>COB</i> 6.5.48 G and <i>COB</i> 6.5.49 R)	Content of key features
<i>COB</i> 6.6	Projections

1.3.4 G The *COB rules* set out in *ECO* 1.3.3 do not include *COB rules* that implement mandatory provisions from the *Insurance Directives*, such as those provisions in Annex II to the *Third Life Directive*, as these fall outside the scope of the insurance derogation in the *E-Commerce Directive* and must be implemented by an *incoming ECA provider's country of origin*.

1.3.5R Any information provided by an *incoming ECA provider* that is an *insurer* to a *UK ECA recipient* must be provided in English.

## CHAPTER 2 OUTGOING ECA PROVIDERS

### 2.1 Application and purpose

#### Application

2.1.1 R *ECO 2 applies to an outgoing ECA provider.*

#### Purpose

- 2.1.2 G
- (1) The main purpose of this chapter is to implement the provisions of the *E-Commerce Directive* as these apply to *firms* regulated by the *FSA*.
  - (2) The purpose of *ECO 2.2* (Modification of the content and territorial scope of *COB*) is to ensure that an *outgoing ECA provider*, in complying with *COB*, is able to disregard any provision of *COB* which is included in the 'consumer contract derogation' or 'insurance derogation' (set out in the Annex to the *E-Commerce Directive*), when dealing with an *EEA ECA recipient* who is a *consumer*.
  - (3) *ECO 2.2* also extends the territorial scope of *COB 3* (Financial promotion) to communications made by an *outgoing ECA provider* to an *EEA ECA recipient*, whether or not the recipient is a *consumer*.
  - (4) *ECO 2.3* (Minimum information requirements) imposes the information requirements of the *E-Commerce Directive* on *firms* when they carry on an *electronic commerce activity* with an *EEA ECA recipient* from a *UK establishment*, whether or not the recipient is a *consumer*. These requirements are in addition to the requirements otherwise applicable to *firms* when they carry on a *regulated activity*.

### 2.2 Modification of the content and territorial scope of *COB*

#### Lifting of rules included in the derogations

2.2.1 R In relation to an *electronic commerce activity* carried on from an *establishment* in the *United Kingdom* with or for an *EEA ECA recipient* who is a *consumer*, an *outgoing ECA provider* is not required to comply with any of the provisions mentioned in *ECO 1.2.6 E 1(a)* and *1(c)* (essential information) or, if it is an *insurer* carrying on *insurance business* falling within the scope of the *Insurance Directives*, *ECO 1.3.3 R*.

2.2.2 G The provisions mentioned in *ECO 1.2.6 E 1(a)* and *1(c)* and *ECO 1.3.3 R* are those that the *United Kingdom*, as a *Host State*, applies to *incoming ECA providers* under the 'consumer contract derogation' and 'insurance derogation' respectively. A corollary of this approach is that these provisions are disappplied to an *outgoing ECA provider* when it

provides *electronic commerce activities* to an *EEA ECA recipient* who is a *consumer*. The provisions at *ECO 1.2.6 E (1)(b)* and *(1)(d)* do not apply to an *outgoing ECA provider* in any event.

### **Financial promotion**

- 2.2.3 R (1) An *outgoing ECA provider* must comply with *COB 3* (Financial promotion) as if every *EEA ECA recipient* were a *UK ECA recipient*.
- (2) Accordingly, (1) overrides *COB 3.3* (Application: where?).
- (3) But (1) is subject to *ECO 2.2.1 R*, which disapplies certain rules applicable to *incoming ECA providers* when dealing with *consumers*.
- 2.2.4 G The effect of *ECO 2.2.3 R* is to apply the whole of *COB 3*, where relevant, to communications made by an *outgoing ECA provider* to an *EEA ECA recipient*, except those provisions of *COB 3* identified in *ECO 2.2.1 R*. (See *ECO 2.2.2 G* for an explanation of this approach.)

### **2.3 Minimum information requirements**

- 2.3.1 R When providing *electronic commerce activities* to an *EEA ECA recipient*, an *outgoing ECA provider* must comply with the requirements set out in *ECO 3 Ann 1 R (1)*, *(2)* and, if it is a *professional firm* (or a *person* that is regulated by the equivalent of a *designated professional body* in an *EEA State* other than the *United Kingdom*), *(3)*.
- 2.3.2 G *ECO 3 Ann 1 R* implements provisions contained in the *E-Commerce Directive*, as follows:
- (1) *ECO 3 Ann 1 R (1)* implements articles 5 (except paragraph 1(f)), 6 and 10 of the directive; these provisions require certain information to be provided by an *outgoing ECA provider* before any contract is entered into;
  - (2) *ECO 3 Ann 1 R (2)* implements article 11 of the directive, which relates to matters arising after the contract has been entered into; and
  - (3) *ECO 3 Ann 1 R (3)* implements article 5.1(f) of the directive; these requirements apply where the *outgoing ECA provider* is a *professional firm* (or a *person* that is regulated by the equivalent of a *designated professional body* in an *EEA State* other than the *United Kingdom*); this Annex will therefore mainly be relevant to *firms* which are solicitors, accountants, or actuaries.

## CHAPTER 3 DOMESTIC (AND NON-EEA) ECA PROVIDERS

### 3.1 Application and purpose

#### Application

3.1.1 R This chapter applies to a *domestic ECA provider*.

#### Purpose

3.1.2 G The main purpose of this chapter is to implement the provisions of the *E-Commerce Directive* as these affect *firms* regulated by the *FSA*. In particular, this chapter imposes the information requirements of the *E-Commerce Directive* on *firms* when they carry on an *electronic commerce activity* with an *ECA recipient* who is in the *United Kingdom* or located outside the *EEA*. These requirements are in addition to the requirements otherwise applicable to *firms* when they carry on a *regulated activity*.

3.1.3 G Accordingly, *ECO 3.2.1 R* requires a *domestic ECA provider* to supply minimum information to an *ECA recipient* regardless of the recipient's location.

### 3.2 Minimum information requirements

3.2.1 R In relation to an *electronic commerce activity* carried on from an *establishment* in the *United Kingdom* with or for a *UK ECA recipient*, or an *ECA recipient* in a non-*EEA State*, a *domestic ECA provider* must comply with the requirements set out in *ECO 3 Ann 1 R* (1), (2) and, if it is a *professional firm* (or a *person* that is regulated by the equivalent of a *designated professional body* in an *EEA State* other than the *United Kingdom*), (3).

3.2.2 G *ECO Ann 1 R* implements provisions contained in the *E-Commerce Directive* as follows:

- (1) *ECO 3 Ann 1 R* (1) implements articles 5 (except paragraph 1(f)), 6 and 10 of the directive; these provisions require certain information to be provided by a *domestic ECA provider* before any contract is entered into;
- (2) *ECO 3 Ann 1 R* (2) implements article 11 of the directive, which relate to matters arising after the contract has been entered into; and
- (3) *ECO 3 Ann 1 R* (3) implements article 5.1(f) of the directive; these requirements apply where a *domestic ECA provider* is a *professional firm* (or a *person* that is regulated by the equivalent of a *designated professional body* in an *EEA State* other than the *United Kingdom*); this annex is therefore mainly relevant to *firms* which are solicitors, accountants, and actuaries.

3.2.3 G In contrast to an *outgoing ECA provider* (see *ECO 2.2.1 R*), a *domestic ECA provider* is not relieved of the obligation to comply with the *COB* requirements specified in *ECO 1.2.6 E*, or, in the case of an *insurer*, *ECO*

1.3.3 E. A *domestic ECA provider* must therefore comply with *COB* in full, as well as the provisions set out in *ECO 3.2.1 R*.

## ECO 3 ANNEX 1 R

### E-COMMERCE DIRECTIVE: MINIMUM INFORMATION REQUIREMENTS

#### 1 Information about the ECA provider and its products or services

- (1) An *outgoing* or *domestic ECA provider* must make the following information easily, directly and permanently available to any *ECA recipient*, in relation to any *electronic commerce activity* which it provides:
  - (a) the name of the *provider*;
  - (b) the address in the *United Kingdom* at which it is established;
  - (c) the provider's e-mail address (if it has one);
  - (d) a statement that the provider is authorised or regulated by the Financial Services Authority;
  - (e) a statement that the provider is entered in the *FSA's* Register and its FSA Register number;
  - (f) if the service is subject to Value Added Tax, the relevant identification number.
- (2) If an *outgoing* or *domestic ECA provider* refers to the price (including any *charges*) of its services or products, it must do so clearly and unambiguously and, where relevant, indicate whether the price is inclusive of tax and delivery costs.
- (3) An *outgoing* or *domestic ECA provider* must ensure that commercial communications which are part of or constitute an *electronic commerce activity* comply with the following requirements:
  - (a) the commercial communication must be clearly identifiable as such;
  - (b) the *person* on whose behalf the commercial communication is made must be clearly identifiable;
  - (c) promotional offers, competitions or games must be clearly identifiable as such and any qualifying conditions must be set out clearly and unambiguously.
- (4) An *outgoing* or *domestic ECA provider* must ensure that any unsolicited commercial communication sent by it by electronic mail is clearly and unambiguously identifiable as such as soon as it is received.

#### Information about the technical steps required to place an order

- (5) An *outgoing* or *domestic ECA provider* must make the following information clearly, comprehensibly and unambiguously available to an *ECA recipient*, before the recipient places an order:
  - (a) the technical steps the recipient should follow in order to conclude the contract;

- (b) an indication of whether the provider will keep a record of the contract and whether it will be accessible to the *ECA recipient*;
  - (c) the technical means of identifying and correcting input errors before the *ECA recipient* submits the order; and
  - (d) the language or languages in which the contract may be concluded.
- (6) An *outgoing* or *domestic ECA provider* must mention any relevant code of conduct to which it subscribes and provide information on how to access the code electronically.
  - (7) An *outgoing* or *domestic ECA provider* must ensure that the terms and conditions of the contract are made available in a way that allows an *ECA recipient* to store and reproduce them.
  - (8) Where the recipient of the service is not a *consumer*, an *outgoing* or *domestic ECA provider* may agree with him that some or all of paragraphs (5), (6) and (7) do not apply.
  - (9) Paragraphs (5) and (6) do not apply to contracts concluded exclusively by exchange of electronic mail or by equivalent individual communications.

## **2 Requirements relating to the receipt of orders**

- (1) When an *ECA recipient* places an order by electronic means, an *outgoing* or *domestic ECA provider* must ensure that receipt of the order is acknowledged without delay.
- (2) For the purposes of (1) the order and the acknowledgment of receipt are deemed to be received when the parties to whom they are addressed are able to access them
- (3) An *outgoing* or *domestic ECA provider* must ensure that it makes available to an *ECA recipient*, appropriate, effective and accessible technical means allowing him to identify and correct technical errors before placing an order.
- (4) Where the recipient of the service is not a *consumer*, an *outgoing* or *domestic ECA provider* may agree with him that some or all of paragraphs (1), (2) and (3) do not apply.
- (5) Paragraphs (1) and (3) do not apply to contracts concluded exclusively by exchange of electronic mail or by equivalent individual communications.

## **3 Requirements for professional firms and EEA equivalent firms**

- (1) If an *outgoing* or *domestic ECA provider* is a *professional firm*, or a person that is regulated by the equivalent of a *designated professional body* in an *EEA State* other than the *United Kingdom*, it must make the following information easily, directly and permanently available to any *ECA recipient*:
  - (a) the name of the professional body (including *designated professional body*) or similar institution with which the provider is registered;
  - (b) the provider's professional title and the *EEA State* where it was granted;
  - (c) details of the professional rules to which the provider is subject in the *EEA State* where it has its establishment.

## Annex B

### Changes to the Conduct of Business sourcebook

New text is shown underlined and striking through indicates deleted text. Where an entire new section is inserted, the place where the text is to be inserted is indicated, but the text is not underlined.

COB 1.2.1 R (2) for a *UCITS qualifier* and a *service company*, only COB 1.9 (Application to electronic commerce activity providers) and COB 3 (Financial promotion), and any provision of *COB* incorporated into COB 1.9 or COB 3 by reference, applies;

COB 1.4.1R The territorial scope of the application of *COB* to *firms* is set out in *COB* 1.4.3 R except:

(1) that its application to *electronic commerce activity providers*, is modified by *ECO*, as explained in *COB* 1.9; and

(2) for the application of *COB* 3 (Financial promotion), which is set out in *COB* 3.3 (Application: Where?).

Insert the following new section COB 1.9:

#### **COB 1.9 Application to electronic commerce activity providers**

##### **Application and purpose**

- COB 1.9.1 G
- (1) *COB* 1.9.1 G and *COB* 1.9.2 G apply to a *firm* which is an *electronic commerce activity provider*, that is, any *firm* which carries on an *electronic commerce activity*.
  - (2) Paragraph (1) means that *firms* need to be aware of this section whenever they are providing a service which:
    - (a) is normally provided for remuneration;
    - (b) is provided at a distance;
    - (c) is so provided by means of electronic equipment for the processing (including digital compression) and storage of data; and
    - (d) is so provided at the individual request of a recipient of the service.
  - (3) The purpose of this section is to indicate, for the benefit of such *firms*, the extent to which and the general manner in which the normal provisions of *COB* are modified by *ECO*.

## Modification of COB for ECA providers

COB 1.9.2 G

The modifications made to *COB* in respect of *electronic commerce activity providers* are of three kinds:

- (1) *ECO 1.1.6 R* modifies *COB* so that a *firm* providing an *electronic commerce activity* from an *establishment* elsewhere in the *EEA* to a recipient who is in the *United Kingdom* (an *incoming ECA provider*) is not required to comply with any provision of *COB*, except to the extent required by *ECO 1*. These exceptions relate to the ‘consumer contract derogation’ (see *ECO 1.2*) and to the ‘insurance derogation’ (see *ECO 1.3*);
- (2) *ECO 2*:
  - (a) modifies *COB* so that, for a *firm* providing an *electronic commerce activity* from an *establishment* in the *United Kingdom* to a recipient who is elsewhere in the *EEA* (an *outgoing ECA provider*), *COB 3* has an extended application to cover the whole of the *EEA*;
  - (b) obliges such a *firm*, in providing an *electronic commerce activity* within the *EEA*, to comply with the minimum information and other requirements in the *E-Commerce Directive*; and
  - (c) relieves such a *firm* of the obligations covered by the derogations in *ECO 1*.

Otherwise *COB* applies in the usual way to such a *firm*.

- (3) *ECO 3* applies to a *firm* providing an *electronic commerce activity* from an *establishment* in the *United Kingdom* to a recipient who is in the *United Kingdom* or in a non-*EEA State* (a *domestic ECA provider*). Such a *firm* has to comply with *COB* in the usual way and so the requirements in *ECO 3* are in addition to *COB*. *ECO 3* sets out the minimum information and other requirements in the *E-Commerce Directive*.

COB 3.3.2 G

- (3) In the context of the provision of an *electronic commerce activity* to an *EEA ECA recipient*, the scope of *COB 3* is extended by *ECO 2.2.6 R*. This means that *COB 3* will apply for communications by an *outgoing ECA provider* to an *EEA ECA recipient*, subject to the lifting of rules in the derogations to the *E-Commerce Directive* as set out in *ECO 2*.

COB 5.3.19 R(2)

if the *firm* is not acting as an *outgoing ECA provider*, and the *customer* is habitually resident in another *EEA State* at the time of acknowledging consent to the proposal form to which the *personal recommendation* relates.

COB 5.3.19 R(3) if the *customer* is habitually resident outside the *EEA* and the *customer* is not present in the *United Kingdom* (or *EEA* in the case of a *firm* acting as an *outgoing ECA provider*) at the time of acknowledging consent to the proposal form to which the *personal recommendation* relates.

COB 5.4.6 E (4) For a *firm* acting as an *outgoing ECA provider*, the exemption contained in COB 5.4.6 E (2) applies only if the *private customer* is ordinarily resident outside the *EEA* and if the *outgoing ECA provider* has taken reasonable steps to ensure that the *private customer* does not want to receive the notice.

COB 5.7.9 R COB 5.7.5 R does not apply if:

(1) the *firm* is acting as an *investment manager*; or

(2) the *firm* is not acting as an *outgoing ECA provider* and the transaction is effected for a *private customer* who is habitually resident overseas; or

(3) the *firm* is not acting as an *outgoing ECA provider* and the *packaged product* is a *life policy* and the *private customer* is not present in the *United Kingdom* at the time the application is made; or

(4) the *firm* is acting as an *outgoing ECA provider* and the transaction is effected for a *private customer* who is *habitually resident* outside the *EEA*; or

(5) the *firm* is acting as an *outgoing ECA provider*, the *packaged product* is a *life policy* and the *private customer* is not present in the *EEA* at the time the application is made.

COB 6.2.21 R (1) There is no requirement for *key features* to be provided for a new *life policy* or a variation to an existing *policy* if, at the time that the *private customer* signs the application, he is *habitually resident*:

~~(1)~~(a) in an *EEA State* other than the *United Kingdom*; or

~~(2)~~(b) outside the *EEA* and he is not present in the *United Kingdom*.

(2) Paragraph (1)(a) does not apply to a *firm* acting as an *outgoing ECA provider*.

6.7.15 R Cancellable investment agreements - life  
This table belongs to COB 6.7.7 R (1)

Column 1	Column 2
	8. The customer, <u>other than an EEA ECA recipient</u> , at the time he signs the application, is <i>habitually resident</i> : (a) in an <i>EEA State</i> other than the <i>United Kingdom</i> (see note 4 COB 6.7.16R); or

6.7.16 R            4. For a *customer*, other than an EEA ECA recipient, habitually resident in an *EEA State* other than the *United Kingdom*, *firms* are reminded that they may need to apply cancellation in accordance with the requirements in that *EEA State*.

6.8.3 R            A *firm* must ensure that, before entering into a *pure protection contract* with a *customer*, it provides the *customer* with the information specified in COB 6.8.5, unless, at the time of application, the *customer*, other than an EEA ECA recipient, is *habitually resident*:

6.8.6 R            COB 6.8.7 R and COB 6.8.8 R apply to a *long-term insurer* if the policyholder is in the *United Kingdom* or is an EEA ECA recipient at the time of signing the application for the *pure protection contract* or *life policy*.

6.8.12 R           Before entering into a *general insurance contract* with a *customer*, covering a risk situated in the *United Kingdom*, or an EEA ECA recipient, a *firm* must, subject to COB 6.8.13 R provide the *customer* with:

COB 9.1.53 R        (1) A *firm* need not obtain the written agreement of a *private customer*, or give notice to a *market counterparty* or an *intermediate customer*, as required by COB 9.1.51 R if:

~~(1)~~(a) the *client* is ordinarily resident outside the *United Kingdom*;

~~(2)~~(b) the *firm* has taken reasonable steps to determine that the *client* does not wish to execute that agreement; and

~~(3)~~(c) the *firm* makes and retains a record of those steps and their results.

(2) For a *firm* acting as an outgoing ECA provider, the exemption in (1) applies only if the *client* is ordinarily resident outside the EEA.

COB 9.1.61 R        (1) A *firm* may, with the *client's* prior written agreement, retain statements required to be sent to a *client* who is ordinarily resident outside the *United Kingdom*.

(2) For a firm acting as an *outgoing ECA provider*, the exemption in (1) applies only if the *client* is ordinarily resident outside the *EEA*.

COB 10.7.5 R

(1) An operator of an *unregulated collective investment scheme* need not provide a *periodic statement*:

~~(1)~~(a)(i) to a *participant* in the *scheme* who is a *private customer* ordinarily resident outside the *United Kingdom*; or

(ii) to a *participant* in the *scheme* who is an *intermediate customer*;

if the *participant* has so requested or the *operator* has taken reasonable steps to establish that the *participant* does not wish to receive it; or

~~(2)~~(b) if it would duplicate a statement to be provided by someone else.

(2) For a firm acting as an *outgoing ECA provider*, the exemption in (1)(a)(i) applies only to a *participant* in the *scheme* who is a *private customer* ordinarily resident outside the *EEA*.

COB 10.7.7 E (3)

(a) A periodic statement should contain:

~~(a)~~(i)(A) the information set out in *COB 10.7.9E*; and

~~(ii)~~(B) where the portfolio of the *scheme* includes uncovered open positions in *contingent liability investments*, the additional information in *COB 10.7.10E*; or

~~(b)~~(ii) such information as a *participant* who is a *private customer* ordinarily resident outside the *United Kingdom*, or an *intermediate customer*, has on his own initiative agreed with the *operator* as adequate.

(b) For a firm acting as an *outgoing ECA provider*, (3)(a)(ii) should be read as though the words '*United Kingdom*' were replaced by '*EEA*'.

## Annex C

### Changes to the Authorisation manual

New text is shown underlined and striking through indicates deleted text.

- AUTH 1.2.6 G (1) Electronic commerce activities, other than insurance business falling within the scope of the Insurance Directives, carried on by an incoming ECA provider are excluded from being regulated activities. The provider does not require authorisation if it does not carry on any other regulated activities in the United Kingdom (see AUTH 2.9.18G).
- (2) An outgoing ECA provider providing electronic commerce activities that are regulated activities from an establishment in the United Kingdom is regarded as carrying on such activities in the United Kingdom regardless of whether they are provided to an EEA ECA recipient or a UK ECA recipient (see AUTH 2.4.3 G (5)). The provider should be authorised before it starts providing the services.
- (3) ECO sets out rules and guidance that apply to both incoming and outgoing ECA providers.
- AUTH 2.4.3 G Section 418 of the Act (Carrying on regulated activities in the United Kingdom) takes this one step further. It extends the meaning that 'in the United Kingdom' would ordinarily have by setting out ~~four~~ five additional cases. The Act states that, in these ~~four~~ five cases, a person who is carrying on a regulated activity but who would not otherwise be regarded as carrying on the activity in the United Kingdom is, for the purposes of the Act, to be regarded as carrying on the activity in the United Kingdom.
- (5) The fifth case, inserted by the ECD Regulations is, in effect, where an electronic commerce activity is carried on, from an establishment in the United Kingdom, in another EEA State. The ECO includes rules and guidance that apply to ECA providers based in the United Kingdom.
- AUTH 2.4.7 G Electronic commerce activities, other than insurance business falling within the scope of the Insurance Directives, provided by an incoming ECA provider will not be regulated activities (see AUTH 2.9.18 G (2)).
- AUTH 2.8.2 G ~~No~~ Only one exclusions applies to the regulated activity of accepting deposits. A deposit taker providing its services as an electronic commerce activity from another EEA State into the United Kingdom (see AUTH 2.9.18 G) does not carry on a regulated activity. ~~But, In~~ In addition to the situations that are excluded from being 'deposits' (see AUTH 2.6.2 G to AUTH 2.6.4 G), several persons are exempt persons in

relation to the *regulated activity of accepting deposits* (see AUTH 2.10.8 G(2)).

- AUTH 2.8.3 G (1)...
- (3) *Electronic commerce activities provided by an incoming ECA provider where those activities are outside the scope of the Insurance Directives* (see AUTH 2.9.18 G).
- AUTH 2.8.4 G (1)...
- (6) *A person* will not be treated as carrying on the activity of *dealing in investments as principal* if, in specified circumstances (outlined in AUTH 2.9), he enters as principal into a transaction:
- (f) as an *overseas person*;
- (g) as an *incoming ECA provider* (see AUTH 2.9.18 G).
- AUTH 2.8.5 G (3) In addition, exclusions apply in specified circumstances (outlined in AUTH 2.9) where a person enters as agent into a transaction:
- (a)...
- (f) as an *overseas person*;
- (g) as an *incoming ECA provider* (see AUTH 2.9.18 G).
- AUTH 2.8.6 G (11) The following exclusions from both article 25(1) and (2) (outlined in AUTH 2.9) apply in specified circumstances where a *person* makes arrangements:
- (a)...
- (g) as an *overseas person*;
- (h) as an *incoming ECA provider* (see AUTH 2.9.18 G).
- AUTH 2.8.7 G (1)...
- (3) ... in a *joint enterprise*;
- (4) as an *incoming ECA provider* (see AUTH 2.9.18 G).
- AUTH 2.8.8 G (4) The following exclusions (outlined in AUTH 2.9) apply in specified circumstances where a *person* safeguards and administers assets (or arranges for another to do so):
- (e) ... *employee share scheme*;
- (f) as an *incoming ECA provider* (see AUTH 2.9.18 G).
- AUTH 2.8.9 G (1)...
- (2) on behalf of a *group member*;
- (3) as an *incoming ECA provider* (see AUTH 2.9.18 G).

Establishing etc collective investment schemes

AUTH 2.8.10 G ~~There are no~~ is only one exclusions from the range of activities specified as being regulated in relation to collective *investment schemes*. This exclusion relates to *incoming ECA providers* (see AUTH 2.9.18 G). In other cases, ~~the key issue here~~ is whether or not what is being done relates to something that is a *collective investment scheme*. Exclusions exist in relation to that issue (see AUTH 2.6.18 G).

AUTH 2.8.11 G Establishing etc stakeholder pension schemes  
~~There are no~~ only exclusion from the range of activities specified as being regulated in relation to *stakeholder pension schemes* relates to *incoming ECA providers* (see AUTH 2.9.18 G).

AUTH 2.8.12 G (1)...

(6) as an overseas person;

(7) as an *incoming ECA provider* (see AUTH 2.9.18 G).

AUTH 2.8.13 G Lloyd's activities  
~~There are no exclusions from~~ *Electronic commerce activities* provided by an *incoming ECA provider* are excluded from the regulated activities that relate expressly to business carried on at Lloyd's (see AUTH 2.9.18 G). Otherwise the only exclusions that apply concern the *regulated activity of arranging deals* in its application to business carried on at Lloyd's.

AUTH 2.8.14 G (1)...

(3) ...1 January 2002;

(4) it is provided as an *electronic commerce activity* by an *incoming ECA provider* (see AUTH 2.9.18 G).

AUTH 2.8.15 G Agreeing  
A person who agrees to carry on certain other *regulated activities* (which is itself a *regulated activity* – see AUTH 2.7.21 G) does not require *authorisation* where the person concerned is an *overseas person* and the agreement is reached as a result of a legitimate approach (see AUTH 2.9.12 G). For this exclusion to apply, the agreement must be one to arrange deals, *manage investments, safeguard and administer investments or send dematerialised instructions*. The provision of *electronic commerce activities* by an *incoming ECA provider* is also excluded from the regulated activity of *agreeing to carry on certain other regulated activities* (see AUTH 2.7.21 G). But this is not the case where the agreement relates to the *regulated activity of effecting or carrying out contracts of insurance* falling under the *Insurance Directives* (see AUTH 2.8.3 G). This is still a *regulated activity* when provided as an *electronic commerce activity*.

AUTH 2.9 Regulated activities: Additional exclusions for activities relating to securities and contractually based investments applicable into certain circumstances

AUTH 2.9.1 G The various exclusions outlined below deal with a range of different circumstances.

- (1) Each set of circumstances described in AUTH 2.9.3 G to AUTH 2.9.17 G has some application to several *regulated activities* relating to *securities* or *contractually based investments*. They have no effect in relation to the separate *regulated activities* of *accepting deposits, effecting or carrying out contracts of insurance, advising on syndicate participation at Lloyd's, managing the underwriting capacity of a Lloyd's syndicate as a managing agent at Lloyd's, entering as provider into a funeral plan contract* or any regulated activities relating to regulated mortgage contracts. Within each set of circumstances, *the Regulated Activities Order* (see Chapter XVII of Part II of the Order) makes separate provision for each *regulated activity* affected. This is necessary because each exclusion has to be tailored to reflect the different nature of the regulated activity involved and the different language required (for example, some activities directly involve entering into transactions while others relate to the provision of services).
- (2) The exclusion described in AUTH 2.9.18 G relates to electronic commerce activities provided by an incoming ECA provider. This exclusion applies to all regulated activities except effecting or carrying out contracts of insurance.

Incoming ECA providers

- AUTH 2.9.18 G
- (1) In accordance with article 3(2) of the E-Commerce Directive, all requirements on persons providing electronic commerce activities into the United Kingdom from the EEA are lifted, where these fall within the co-ordinated field and would restrict the freedom of such a firm to provide services. The coordinated field includes any requirement of a general or specific nature concerning the taking up or pursuit of electronic commerce activities. Authorisation requirements fall within the coordinated field. The services affected are generally those provided electronically, for example through the Internet or solicited e-mail.
  - (2) The Regulated Activities Order was amended by the Financial Services and Markets Act 2000 (Regulated Activities)(Amendment)(Electronic Commerce Directive) Order 2002 (SI 2002/[number to be added later]). This Order creates a general exclusion from regulated activities (except for the regulated activities of effecting or carrying out contracts of insurance). Where activities consist of electronic commerce activities, an incoming ECA provider will not require authorisation

for such activities in the United Kingdom. This does not extend to the regulated activity of effecting or carrying out contracts of insurance falling under the Insurance Directives (see AUTH 2.8.3 G). However, services provided off-line in the United Kingdom (that is, other than as an electronic commerce activity) by such a firm which amount to regulated activities still require authorisation. ECO provides guidance and sets out rules that are relevant to both incoming and outgoing ECA providers. Incoming ECA providers have also to comply with any authorisation requirements in the country of origin of the services.

(3) Incoming ECA providers should note that notification requirements under the Single Market Directives still apply (see AUTH 5).

AUTH 5.1.1 G (1)...

(3) The provisions implementing the Single Market Directives are within the coordinated field (see AUTH 2.9.18 G(1)). So, where an incoming ECA provider intends to provide electronic commerce activity that consist of activities that fall within one of the Single Market Directives, the passporting requirements on exercising an EEA right in this chapter will apply.

AUTH 5.1.2 G (1)...

(2) ... Schedule 3 to the Act;

(3) a Treaty firm that wishes to provide electronic commerce activities into the United Kingdom.

AUTH 5.6.5 G AUTH 5 Ann 3G does not apply to incoming ECA providers. Such persons should refer to ECO for information on how the Handbook applies to them.

AUTH 5 Annex 3G Table

1. The table below summarises the application of the Handbook to an incoming EEA firm. Where the table indicates that a particular module of the Handbook may apply, its application in relation to any particular activity is dependent on the detailed application provisions in that module. The table does not apply to incoming ECA providers. These should refer to ECO 1 for guidance on how the Handbook applies to them.

## Annex D

### Changes to the Enforcement manual

New text is shown underlined and striking through indicates deleted text. When an entire new section is inserted the location of the new section is identified, but the text is not underlined.

- ENF 1.4.18 G      ENF 19 (Directions against incoming ECA providers) describes the FSA's policy on its power to make a direction against an *incoming ECA provider*.
- ENF 1.5.1 G (1)      Since most of the FSA's enforcement powers are derived from the Act, the manual contains a large number of references to the *Act*.
- ENF 1 Annex 1G 1 Table      This table gives the main location in the Enforcement manual where *guidance* appears on the powers referred to in the *Act*, in secondary legislation made under the Act, and in other legislation listed below.
- ENF 1 Annex 1G      Amend by adding the following further power:
- Directions against incoming ECA provider**
- Power to make a direction against an *incoming ECA provider* - ECD Regulations - ENF 19
- ENF 2.2.1 G (3)(a)      to gather information from *firms* and *unauthorised incoming ECA providers* and to conduct investigations of *firms*, *approved persons*, individuals involved in *firms*, ~~and appointed representatives, and small e-money issuers~~ and *unauthorised incoming ECA providers*, including issuing preliminary findings letters;
- ENF 2.3.13 G      Under the ECD Regulations, the FSA may exercise the powers in sections 165 and 166 of the Act in relation to an *incoming ECA provider*, whether the provider is a *firm* or not. The FSA's policy on how it will use this power (and other information gathering investigation powers) in support of its enforcement function is set out in ENF 2.5 (The FSA's policy on exercising its powers: firms, approved persons, and others). In addition, under these regulations, the FSA may exercise the power under section 167 in relation to an *unauthorised incoming ECA provider* (the Act enables the FSA to appoint an investigator under section 167 to investigate any part of the business of an *incoming ECA provider* which is a *firm*).
- ENF 2.3.14 G (4)      As a result of regulation 12 of the ECD Regulations, the FSA may also appoint investigators under section 168(4)(c) and (5) where it appears to the FSA that there are circumstances suggesting that an *incoming ECA*

provider, whether a firm or not, may have breached a requirement imposed by the FSA under those regulations.

- ENF 2.3.15 G (1) *ENF 2.5 deals with the use of this power and other powers in relation to firms, approved persons, individuals employed by firms, ~~and~~ appointed representatives, ~~and~~ small e-money issuers and unauthorised incoming ECA providers;*
- ENF 2.5.1 G They also set out the FSA's policy on using its powers to carry out investigations into the affairs of *firms, approved persons, individuals involved in firms, appointed representatives, ~~and~~ small e-money issuers and unauthorised incoming ECA providers.*
- ENF 2.5.2 G Section 165 of the Act (FSA's power to require information) gives the FSA powers to require the provision of information and *documents* from *firms*. Under the ECD Regulations, the FSA may exercise the power under section 165 (and section 166) in relation to an incoming ECA provider, whether the provider is a firm or not.
- ENF 2.5.4 G If the information available to the FSA raises a regulatory concern about a *firm*, an *approved person's* conduct or fitness and propriety, ~~or~~ a *small e-money issuer* or an *unauthorised incoming ECA provider*, the FSA may need to make further enquiries by using its powers to require reports by *skilled persons* or to appoint investigators. The nature of the FSA's enquiries will depend on the nature and seriousness of its concerns and on the attitude of the *firm*, ~~or~~ *small e-money issuer* or *unauthorised ECA provider* concerned.
- ENF 2.5.8 G (1) In some circumstances, the provision of a report by a *skilled person* under section 166 may not be appropriate, or may be insufficient (because of the limited nature of the power) to address the seriousness of the FSA's concerns. This will include cases where an effective and thorough investigation by the FSA is likely to call for the exercise of the powers to require the *firm*, ~~or~~ *connected persons*, ~~or~~ *small e-money issuer*, or *unauthorised incoming ECA provider* to answer questions and/or produce *documents*. In those cases, the FSA will appoint an investigator under section 167 or 168 of the Act; if appropriate the FSA may also require the *firm*, ~~or~~ *small e-money issuer* or *unauthorised incoming ECA provider* to provide a *skilled person's* report under section 166. In other, cases the FSA may appoint an investigator, under section 167 or 168, as a result of information in a report under section 166.
- ENF 2.5.9 G Where the FSA has general concerns about a *firm*, ~~or~~ an *appointed representative* or an *unauthorised incoming ECA provider*, but the circumstances do not at that stage suggest any specific breach or contravention, it will rely on its power under section 167 of the Act and, if it appears that there are good reasons for doing so, the FSA will appoint investigators to investigate the business of a *firm*, ~~or~~ an *appointed representative* or an *unauthorised incoming ECA provider*.

ENF 2.5.11 G In some cases, where the *FSA* has appointed investigators into a *firm* or an *unauthorised incoming ECA provider* under section 167 of the *Act*, it may decide that it is appropriate to extend the appointment to cover matters under section 168 of the *Act* as well, if circumstances suggest that one of the specific contraventions, breaches or offences listed in *ENF 2.13.14 G* may have occurred.

Insert the following new chapter *ENF 19*:

## **Directions against incoming ECA provider**

### **19.1 Application and purpose**

#### Application

19.1.1 G This chapter applies to *incoming ECA providers*.

#### Purpose

19.1.2 G This chapter outlines:

- (1) the *FSA*'s power under the *ECD Regulations* to direct that an *incoming ECA provider*, whether a *firm* or not, may no longer carry on a specified *incoming electronic commerce activity*, or may only carry it on subject to specified requirements;
- (2) the *FSA*'s policy on the exercise of that power.

### **19.2 Introduction**

19.2.1 G A key element of the *E-Commerce Directive* is the freedom of *electronic commerce activity providers* from one *EEA State* to provide *information society services* freely into another *EEA State*. Consistent with this principle, and subject to certain *rules* in *ECO 1*, the *Handbook* enables an *incoming ECA provider* to provide services in that capacity to *UK ECA recipients* without the need to comply with *FSA* requirements which fall within the Directive's coordinated field.

19.2.2 G However, the Directive contains a 'derogation' which allows an *EEA State* where the recipient is based to restrict the freedom to provide an *electronic commerce activity* from another *EEA State* where certain conditions are met. The derogation is implemented in the *United Kingdom* through provisions of the *ECD Regulations*. This chapter outlines the relevant provisions of the *ECD Regulations* and the *FSA*'s policy on the use of the power to make directions against *incoming ECA providers*.

### **19.3 The FSA's power to make an electronic commerce activity direction**

19.3.1 G Under regulation 6 of the *ECD Regulations*, provided certain policy and procedural conditions are met (see *ENF 19.3.2G* to *ENF 19.3.3G*), the *FSA* may direct that an *incoming ECA provider* may no longer carry on a specified *incoming electronic commerce activity*, or may only carry it on subject to specified requirements. The requirements may include a requirement that the provider must comply with one or more *rules* (with such modifications, if any, as may be specified) with respect to the carrying on of the activity. If an assets requirement of a kind mentioned in section 48(3) of the *Act* is specified in a direction, the requirement has the same effect in relation to the provider to whom the direction applies as if it had been imposed on that provider by the *FSA* acting under section 45 of the *Act*.

Grounds for exercising the power

19.3.2 G The policy conditions for the making of an *electronic commerce activity direction* are that:

- (1) the *FSA* considers:
  - (a) the making of the direction to be necessary for:
    - (i) the prevention, investigation, detection or prosecution of criminal conduct; or
    - (ii) the protection of *consumers*; or
    - (iii) other reasons of public policy relevant to the *regulatory objectives*; and
  - (b) 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 (a); and
- (2) the direction appears to the *FSA* to be a proportionate means of achieving, or addressing the prejudice or risk of prejudice to, any of those objectives.

19.3.3 G The procedural conditions are that:

- (1) the *FSA* has requested the relevant EEA regulator to take measures to remedy the situation giving rise to the request;
- (2) the relevant EEA regulator:
  - (a) has not, within what appears to the *FSA* to be a reasonable time, taken such measures; or

- (b) has taken such measures, but the measures appear to the *FSA* to be inadequate in the circumstances;
- (3) the *FSA* has notified the *Commission* and the relevant EEA regulator of its intention to make the direction; and
- (4) the *FSA* has notified the *person* to whom the direction is to apply of its proposal to make the direction, and given the *person* the opportunity to make representations to the *FSA* in such manner, and within such period, as the *FSA* may determine.

19.3.4 G However, where the case appears to it to be one of urgency, the *FSA* may make a direction regardless of whether the procedural conditions in *ENF* 19.3.3 G are met provided it:

- (1) notifies the *Commission* and the relevant EEA regulator as soon as possible of the direction; and
- (2) gives each of these bodies a statement of its reasons for the urgency.

#### Procedures

19.3.5 G Regulation 6(2) of the *ECD Regulations* states that an *electronic commerce activity direction* must be in writing.

19.3.6 G The *FSA* may vary or revoke a direction on its own initiative, or on the application of the *incoming ECA provider* to whom the direction applies. Under regulation 10(4) of the *ECD Regulations*, the *FSA* must not vary a direction on its own initiative unless it has given the provider concerned the opportunity to make representations to the *FSA* in such manner, and within such period, as the *FSA* may determine. However, this requirement does not apply where the case appears to the *FSA* to be one of urgency.

#### Right to refer to the Tribunal

19.3.7 G Where the *FSA* makes a direction, varies a direction on its own initiative, or refuses to vary or revoke a direction on the application of the *incoming ECA provider*, the *incoming ECA provider* to whom the direction applies may refer the matter to the *Tribunal*.

### 19.4 The *FSA*'s policy on the making of electronic commerce activity directions

19.4.1 G The *FSA* will exercise the power to make an *electronic commerce activity direction* on a case-by-case basis. When deciding whether to make a direction, the *FSA* will undertake an assessment of whether the circumstances of the particular case meet the policy conditions set out in *ENF* 19.3.2G.

19.4.2 G The *FSA* envisages that its approach to the use of the direction power will be as follows. On obtaining information concerning possible *financial crime* facilitated through or involving an *incoming ECA provider*, or detriment to *United Kingdom markets* or *UK ECA recipients* caused by the activities of an *incoming ECA provider*, the *FSA* would contact the relevant EEA regulator of the *incoming ECA provider*. The *FSA* would expect the relevant EEA regulator to consider the matter, investigate it where appropriate and keep the *FSA* informed about what action, if any, was being taken. The *FSA* may not need to be involved further if the action by the relevant EEA regulator addresses the *FSA's* concerns.

19.4.3 G However, there are likely to be circumstances in which the *FSA* will need to use the *electronic commerce activity direction* power. Examples could include where it was necessary to stop the behaviour complained of, or to make the continued provision of services by the *incoming ECA provider* conditional upon compliance with specified requirements. Overall, the *FSA* may use the direction power:

(1) where:

- (a) the behaviour complained of was causing, or had the potential to cause, major detriment to *consumers* in the *United Kingdom*; or
- (b) the *incoming ECA provider's* activities have been used, or have the potential to be used, to facilitate serious *financial crime* or to launder the proceeds of a crime; or
- (c) the making of the direction is considered to be necessary for other reasons of public policy relevant to the *regulatory objectives*; and

(2) either:

- (a) the relevant EEA regulator is unable to take action, or has not within a reasonable time taken action which appears to the *FSA* to be adequate; or
- (b) the relevant EEA regulator and the *FSA* agree that, having regard to the circumstances of the particular case, action against the wrong-doing would be taken more effectively by the *FSA*.

19.4.4 G The question of whether the *FSA* decided to prevent or prohibit the *incoming electronic commerce activity*, or to make it subject to certain requirements (for example, compliance with specified *rules*), will depend on the overall circumstance of the case. A relevant

consideration will be whether the *FSA* is satisfied that its concerns over the *incoming electronic commerce activity* can be adequately addressed through the imposition of a requirement, rather than a complete prohibition on the activity. Set out below (in (1) to (5)) is a list of factors the *FSA* may consider. The list is not exhaustive.

- (1) The extent of any loss, or risk of loss, or other adverse effect on *UK ECA recipients*:

The more serious the loss or potential loss or other adverse effect on them, the more likely it is that the *FSA*'s exercise of its powers to prohibit the activity altogether will be appropriate, to protect the interests of *UK ECA recipients*.

- (2) The extent to which *customer* assets appear to be at risk.

- (3) The risk that the *incoming ECA provider's* activities may be used or have been used to facilitate *financial crime* or to launder the proceeds of a crime:

Information available to the *FSA*, including information supplied by other law enforcement agencies, may suggest that the *incoming ECA provider* is being used for, or is itself involved in, *financial crime*. Where this appears to be the case, a direction that the *incoming electronic commerce activity* should cease may be appropriate.

- (4) The risk that the *incoming ECA provider's* activities present to the *financial system* and to confidence in the *financial system*.

- (5) The impact that a complete prohibition on the activity would have on *UK ECA recipients*.

19.4.5 G The *FSA* may consider that a case is urgent, in particular, where:

- (1) the information available to it indicates serious concerns about the *incoming electronic commerce activity* that need to be addressed immediately; and
- (2) circumstances indicate that it is appropriate to use the direction power immediately to prohibit the *incoming electronic commerce activity*, or to make the carrying on of the activity subject to specified requirements.

19.4.6 G The *FSA* will consider the full circumstances of the case when deciding whether exercising the direction power without first taking the procedural steps set out in *ENF* 19.3.3G is an appropriate response to such concerns. The factors the *FSA* may consider include those listed in *ENF* 19.4.4G (1) to (4). There may be other relevant factors.

## 19.5 The FSA's powers where an incoming ECA provider fails to comply with a direction

19.5.1 G An *incoming ECA provider* may have the status of an *authorised person*, for example, because that it passports into the *United Kingdom* in respect of other activities which are *regulated activities*. The enforcement powers available to the *FSA* where an *incoming ECA provider* who is an *authorised person* breaches an *electronic commerce activity direction* include powers to seek *injunctions* (see *ENF 6*), to require or apply to court for restitution (see *ENF 9*), and to impose public censures and financial penalties (see *ENF 11 to 13*).

19.5.2 G The enforcement powers available to the *FSA* where an *unauthorised incoming ECA provider* breaches an *electronic commerce activity direction* include powers to seek *injunctions* (see *ENF 6*) and to apply to court for restitution (see *ENF 9*).

19.5.3 G The *FSA* may use the information gathering and investigation powers under sections 165 to 167 and section 168(4) and (5) of the *Act* where it considers an *incoming ECA provider* may have contravened an *electronic commerce activity direction*. These powers are discussed in *ENF 2*.

## 19.6 Decision making

19.6.1 G The *FSA's* decision to make, revoke or vary an *electronic commerce activity direction* will generally be taken by the *RDC* Chairman. However, this is subject to two exceptions.

- (1) In an urgent case and if the Chairman is not available, the decision will be taken by an *RDC* Deputy Chairman and where possible, but subject to the need to act swiftly, one other *RDC* member.
- (2) If a provider who has been notified of the *FSA's* intention to make a direction or to vary a direction on its own initiative makes representations within the period and in the manner required by the *FSA*, then those representations will be considered by the *RDC*, rather than by the *RDC* Chairman alone. Having taking into account the provider's representations, the *RDC* will then decide whether to make the direction, or to vary the existing direction.

19.6.2 G Where a provider must be given the opportunity to make representations to the *FSA* in relation to a proposed direction or variation of a direction (see *ENF 19.3.3G* and *ENF 19.3.6G*), the *RDC* Chairman will determine in each case the manner and the period within which those representations should be made.

## 19.7 Publicity

19.7.1 G Regulation 10(8) of the *ECD Regulations* provides that if the *FSA* 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 *ENF* 19.3.2(1)(a). However, under regulation 10(9), the *FSA* may not publish information relating to a direction if publication would, in the *FSA's* opinion, be unfair to the provider to whom the direction applies or prejudicial to the interests of *consumers*.

19.7.2 G When deciding what information, if any, to publish and the appropriate manner of publication, the *FSA* will consider the full circumstances of each case. The *FSA* anticipates that it will generally be appropriate to publish relevant details of a direction, in order to protect and inform *consumers*. However, in accordance with the regulation 10(9) prohibition, it will not publish information if it considers that publication would be unfair to the provider or prejudicial to the interests of *consumers*.

## Annex E

### Amendments to the Special Guide for Energy Market Participants (EMPS)

New text is shown underlined.

EMPS 1.2.3G Amend the following rows of the table in *EMPS 1.2.3G*:

	Part of Handbook	Applicability to energy market participants
<b>Specialist sourcebooks</b>	Collective Investment Schemes sourcebook ( <i>CIS</i> )	CIS will ordinarily apply to an <i>energy market participant</i> <del>firm</del> that carries on <i>regulated activities</i> in relation to an <i>energy collective investment scheme</i> .
	<u>E-Commerce Directive sourcebook (<i>ECO</i>)</u>	<u>This applies to an <i>energy market participant</i> which is an <i>electronic commerce activity provider</i>.</u>
	Professional firms sourcebook ( <i>PROF</i> )	None of the other specialist sourcebooks applies.
	Lloyd's sourcebook ( <i>LLD</i> )	
	Recognised Investment Exchange and Recognised Clearing House sourcebook ( <i>REC</i> )	

## Annex F

### Amendments to the Special Guide for Small Friendly Societies (FREN)

New text is shown underlined and striking through indicates deleted text.

FREN 1.2.2G Amend the following rows of the table in *FREN 1.2.2G*:

	Part of Handbook	Applicability to small friendly societies
<b>Business standards</b>	Conduct of Business sourcebook ( <i>COB</i> )	...  Only the following parts of <i>COB</i> apply in relation to <i>general insurance business</i> and <i>pure protection contracts</i> : <i>COB 1.1</i> to <i>1.4</i> , <i>COB 1.8</i> , <u><i>COB 1.9</i></u> , ...
	<u>E-Commerce Directive sourcebook (<i>ECO</i>)</u>	<u>This applies to a small friendly society which is an <i>electronic commerce activity provider</i>.</u>
<b>Specialist sourcebooks</b>	Collective Investment Schemes sourcebook ( <i>CIS</i> )	<del>The</del> None of the other specialist sourcebooks <del>do not</del> apply.
	Professional firms sourcebook ( <i>PROF</i> )	
	Lloyd's sourcebook ( <i>LLD</i> )	
	Recognised Investment Exchange and Recognised Clearing House sourcebook ( <i>REC</i> )	

## Annex G

### Amendments to the Special Guide for Oil Market Participants (OMPS)

New text is shown underlined.

OMPS 1.2.2G Amend the following rows of the table in *OMPS 1.2.2G*:

	Part of Handbook	Applicability to oil market participants
<b>Specialist sourcebooks</b>	Collective Investment Schemes sourcebook ( <i>CIS</i> )	CIS will ordinarily apply to an <i>oil market participant</i> that carries on <i>regulated activities</i> in relation to an <i>oil collective investment scheme</i> .
	<u>E-Commerce Directive sourcebook (<i>ECO</i>)</u>	<u>This applies to an <i>oil market participant</i> which is an <i>electronic commerce activity provider</i>.</u>
	Professional firms sourcebook ( <i>PROF</i> )	None of the other specialist sourcebooks applies.
	Lloyd's sourcebook ( <i>LLD</i> )	
	Recognised Investment Exchange and Recognised Clearing House sourcebook ( <i>REC</i> )	

## Annex H

### Amendments to the Special Guide for Service Companies (SERV)

New text is shown underlined and striking through indicates deleted text.

SERV 1.2.2G Amend the following rows of the table in *SERV* 1.2.2G:

	Part of Handbook	Applicability to service companies
<b>Business standards</b>	Conduct of Business sourcebook ( <i>COB</i> )	<u><i>COB</i> 1.9 (Application to electronic commerce activity providers) and <i>COB</i> 3 (Financial promotion rules)</u> , and any provision of <i>COB</i> incorporated by reference in <u><i>COB</i> 1.9 or <i>COB</i> 3</u> , <del>applies apply</del> . The rest of <i>COB</i> does not apply: see <i>COB</i> 1.2.1R(2).  ...
<b>Specialist sourcebooks</b>	<u>E-Commerce Directive sourcebook (<i>ECO</i>)</u>	<u>This applies to a <i>service company</i> which is an <i>electronic commerce activity provider</i>.</u>
	Collective Investment Schemes sourcebook ( <i>CIS</i> )	None of the <u>other</u> specialist sourcebooks applies.
	Professional firms sourcebook ( <i>PROF</i> )	
	Lloyd's sourcebook ( <i>LLD</i> )	
	Recognised Investment Exchange and Recognised Clearing House sourcebook ( <i>REC</i> )	
<b>Special guides</b>	Special guide for service companies ( <i>SERV</i> )	This applies.
	Special guide for energy market participants ( <i>EMPS</i> )	This does not apply because an <i>energy market participant</i> is defined to exclude a <i>service company</i> .
	<u>Special guide for small friendly societies (<i>FREN</i>)</u>	<u>This does not apply.</u>
	Special guide for energy market participants ( <i>OMPS</i> )	This does not apply because an <i>oil market participant</i> is defined to exclude a <i>service company</i> .

## Annex I

### Amendments to the Glossary

Insert the following new definitions in the appropriate alphabetical position:

New definition title	New definition text
<i>country of origin</i>	in relation to an <i>electronic commerce activity</i> , the <i>EEA State</i> in which the <i>establishment</i> from which the service in question is provided is situated.
<i>domestic ECA provider</i>	a <i>firm</i> which provides an <i>electronic commerce activity</i> , from an <i>establishment</i> which it has in the <i>United Kingdom</i> , with or for a <i>UK ECA recipient</i> or an <i>ECA recipient</i> in a non- <i>EEA State</i> .
<i>ECA recipient</i>	a <i>person</i> who is a user of an <i>electronic commerce activity</i> .
<i>ECD Regulations</i>	the Electronic Commerce Directive (Financial Services and Markets) Regulations 2002 (SI 2002/1775).
<i>ECO</i>	the E-Commerce Directive sourcebook.
<i>E-Commerce Directive</i>	the Council Directive of 8 June 2000 on legal aspects of <i>information society services</i> , in particular electronic commerce, in the Internal Market (No 2000/31/EC).
<i>EEA ECA recipient</i>	an <i>ECA recipient</i> who is present in an <i>EEA State</i> other than the <i>United Kingdom</i> .
<i>electronic commerce activity</i>	an activity which: <ul style="list-style-type: none"> <li>(a) consists of the provision of an <i>information society service</i> from an <i>establishment</i> in an <i>EEA State</i>; and</li> <li>(b) is, or but for article 72A (Information society services) of the <i>Regulated Activities Order</i> (Information society services) (and irrespective of the effect of article 72 of that Order (Overseas persons)) would be, a <i>regulated activity</i>.</li> </ul>
<i>electronic commerce activity direction</i>	a direction made, or proposed to be made, by the <i>FSA</i> under regulation 6 of the <i>ECD Regulations</i> .
<i>electronic commerce activity provider</i>	a <i>person</i> who carries on an <i>electronic commerce activity</i> .
<i>essential information</i>	information which:

	<p>(a) relates to the essential elements of the contract, including any rights that would thereby be conferred on the <i>consumer</i>;</p> <p>(b) is likely to have a determining influence on the <i>consumer's</i> decision whether or not to enter into the contract; and</p> <p>(c) is of a kind referred to in regulation 4 of the <i>ECD Regulations</i>.</p>
<i>establishment</i>	<p>(in relation to an <i>information society service</i>) (in accordance with section 417(4) of the <i>Act</i> (Definitions)) the place at which the provider of the service effectively pursues an economic activity for an indefinite period;</p> <p>in this definition:</p> <p>(a) the presence or use in a particular place of equipment or other technical means of providing an <i>information society service</i> does not, of itself, constitute that place as an establishment; and</p> <p>(b) where it is unclear from which of a number of establishments a particular <i>information society service</i> is provided, that service is to be regarded as provided from the establishment where the provider has the centre of his activities relating to the service.</p>
<i>incoming ECA provider</i>	<p>a <i>person</i>, other than an <i>exempt person</i> or a <i>person</i> who has been given a waiver in accordance with article 8 (1) of the <i>E-Money Directive</i>, who:</p> <p>(a) provides an <i>electronic commerce activity</i>, from an <i>establishment</i> in an <i>EEA State</i> other than the <i>United Kingdom</i>, with or for a <i>UK ECA recipient</i>; and</p> <p>(b) is a national of an <i>EEA State</i> or a company or firm mentioned in article 48 of the <i>Treaty</i>.</p>
<i>incoming electronic commerce activity</i>	<p>(in accordance with regulation 2(1) of the <i>ECD Regulations</i>) an activity:</p> <p>(a) which consists of the provision of an <i>information society service</i> from an <i>establishment</i> in an <i>EEA State</i> other than the <i>United Kingdom</i> to a <i>person</i> or <i>persons</i> in the <i>United Kingdom</i>; and</p>

	(b) which would, but for article 72A of the <i>Regulated Activities Order</i> (Information society services) (and irrespective of the effect of article 72 of that Order (Overseas persons)), be a <i>regulated activity</i> .
<i>information society service</i>	<p>an activity which falls within the scope of article 2(a) of the <i>E-Commerce Directive</i>, that is to say, generally speaking, and subject to the exclusions from the scope of article 3 of that Directive in the Annex to it, a service that:</p> <p>(a) is normally provided for remuneration;</p> <p>(b) is provided at a distance;</p> <p>(c) is so provided by means of electronic equipment for the processing (including digital compression) and storage of data; -and</p> <p>(d) is so provided at the individual request of a recipient of the service.</p>
<i>outgoing ECA provider</i>	<p>a <i>firm</i> which:</p> <p>(a) provides an <i>electronic commerce activity</i>, from an <i>establishment</i> in the <i>United Kingdom</i>, with or for an <i>EEA ECA recipient</i>; and</p> <p>(b) is a national of an <i>EEA State</i> or a firm or company mentioned in article 48 of the <i>Treaty</i>.</p>
<i>UK ECA recipient</i>	an <i>ECA recipient</i> who is present in the <i>United Kingdom</i> .

Amend the following definition as shown (new text is underlined):

<i>consumer</i>	(4) (in <i>ECO</i> and <i>ENF 19</i> ) an individual who is acting <u>for purposes other than those of his trade, business or profession.</u>
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**Annex J**  
**Amendments to the General provisions.**

New text is shown underlined.

Schedule 4    The following powers and related provisions in or under the *Act* have been exercised by the *FSA* to make the *rules* in *GEN*.

...

The following articles of the *Regulated Activities Order*:

...

article 9H(1) (Rules prohibiting the issue of electronic money at a discount)

regulation 3 of the Electronic Commerce Directive (Financial Services and Markets) Regulations 2002 (S.I 2002/1775).

## ADDENDUM

### ELECTRONIC COMMERCE DIRECTIVE INSTRUMENT 2002

In this Addendum, underlining indicates new text.

Annex B of this instrument is amended as follows:

...

COB 10.7.5 R (1) *An operator of an unregulated collective investment scheme need not provide a periodic statement:*

(a) (i) ...

(ii) to a *participant in the scheme who is an intermediate customer or a market counterparty*;

...