

**EXPLANATORY MEMORANDUM TO THE
FINANCIAL SERVICES (DISTANCE MARKETING) REGULATIONS 2004**

2004 No. 2095

1. This explanatory memorandum has been prepared by HM Treasury and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 The Financial Services (Distance Marketing) Regulations 2004 transpose Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services ('the Directive').

2.2 The Directive sets common minimum standards for the information that must be given to a consumer prior to a distance contract for financial services being concluded. There are also provisions for rights of withdrawal ('cancellation rights') in many circumstances, and provisions to protect consumers in relation to misuse of payment cards in connection with distance contracts for financial services, unsolicited supplies of financial services and unsolicited communications about such services. The Directive will apply to "any service of a banking, credit, insurance, personal pension, investment or payment nature".

4. Legislative Background

4.1 The Government has decided that the Directive should be implemented using existing regulatory mechanisms where possible, so provisions implementing the Directive in relation to persons authorised under the Financial Services and Markets Act 2000 ('FSMA') have been incorporated by the Financial Services Authority ('FSA') into its Rules. These Regulations under section 2(2) of the European Communities Act 1972 ('EC Act') cover those financial services that fall within the Directive but which neither the FSA nor the Office of Fair Trading regulate within their existing regulatory structure ('gap services'). These Regulations also cover distance contracts for consumer credit. This avoids creating two essentially identical sets of regulations for 'gap services' and consumer credit.

4.2 The Regulations will come into force on 31 October 2004, subject to transitional provisions in regulation 29 for pre-contractual information relating to distance contracts for consumer credit made before 31 May 2005. These transitional provisions link to the changes being made by the DTI for (i) pre-contractual information for non-distance sales of consumer credit and (ii) the form and content of consumer credit agreements. The relevant SIs are:

- The Consumer Credit (Disclosure of Information) Regulations 2004 (S.I. 2004/1481)
- The Consumer Credit (Agreements) (Amendments) Regulations 2004 (S.I. 2004/1482)

4.3 Attached as Annex A is a transposition table detailing the UK's implementation of the Directive.

5. Extent

5.1 The Financial Services (Distance Marketing) Regulations 2004 apply to the whole of the United Kingdom.

6. European Convention on Human Rights

6.1 In the view of the Financial Secretary to the Treasury, Ruth Kelly, the provisions of these Regulations are compatible with the European Convention on Human Rights.

7. Policy background

7.1 The Directive was adopted by the European Parliament and Council on 23 September 2002.

7.2 General regulation of distance selling of goods and services in the UK is already well-established. The Consumer Protection (Distance Selling) Regulations 2000 (S.I. 2000/2334 – ‘the DSRs’) implement an earlier EC Directive (Directive 97/7/EC). Although the DSRs apply to almost all contracts for goods and services, financial services were excluded from its requirements. Directive 2002/65/EC sets out specific rules applicable to financial services. This Directive also complements the Electronic Commerce Directive 2000/31/EC (given effect in the United Kingdom by the Electronic Commerce Directive (Financial Services and Markets) Regulations 2002 and the Electronic Commerce (EC Directive) Regulations 2002 – S.I. 2002/1775 and S.I. 2002/2013) which covers the full spectrum of commercial activity. Many firms will already be familiar with disclosure requirements and rights of withdrawal under their regulatory arrangements such as the disclosure requirements under FSMA.

7.3 A consultation paper “Implementation of the Distance Marketing of Financial Services Directive” was published in July 2003. This included draft Regulations and an initial Regulatory Impact Assessment and was the subject of a 3 month formal period of consultation that concluded on 17 October 2003. The Treasury received 37 responses to the consultation from the financial services industry, its representatives, consumer organisations and enforcement authorities.

7.4 The Government is implementing the Directive on a country of origin basis. This is considered to be the correct interpretation of the Directive, and is in keeping with the Chancellor's strategy for completing the single market by mutual recognition of home State rules supported by harmonised core standards.

7.5 The Directive is required to be implemented by 9 October 2004 (Article 21 Directive). However, since consultation the Government has looked again at the timetable for implementing the Directive alongside other planned changes, in particular the introduction of FSA mortgage regulation, implementation of the Insurance Mediation Directive and reforms to the Consumer Credit Act 1974. The Government has decided that the interests of all parties are best served by setting the

commencement date for the Financial Services (Distance Marketing) Regulations 2004 as 31st October 2004, the same date as FSA regulation of mortgages commences, subject to transitional provisions in regulation 29 for the prior information requirements as they apply to distance contracts for consumer credit made before 31st May 2005.

8. Impact

8.1 A Regulatory Impact Assessment is attached as Annex B to the Government's Response to the consultation on the Directive.

9. Contact

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