

**EXPLANATORY MEMORANDUM TO
THE FINANCIAL SERVICES AND MARKETS ACT 2000 (EXEMPTION)
AMENDMENT ORDER 2009**

2009 No. 118

1. This explanatory memorandum has been prepared by Her Majesty's Treasury ("the Treasury") and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Purpose of the instrument**

2.1 The Financial Services and Markets Act 2000 (Exemption) Amendment Order 2009 ("the Order") amends the Financial Services and Markets Act 2000 (Exemption) Order 2001 (S.I. 2001/1201) ("the principal order").

2.2 The principal order exempts certain persons from the general prohibition set out in section 19 of the Financial Services and Markets Act 2000 ("the FSMA"). The general prohibition provides that no person may carry on a regulated activity¹ within the UK unless he is (a) an authorised person or (b) an exempt person.

2.3 Part 1 of the Schedule to the principal order sets out those persons who are exempt in respect of any regulated activity, other than the regulated activity specified in article 10 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544) ("the RAO") (effecting and carrying out contracts of insurance).

2.4 The Order amends the list of persons in Part 1 of the Schedule to the principal order to include the Bank of England Asset Purchase Facility Fund Limited ("the Company").

2.5 The Company will perform the regulated activity of dealing in investments as principal as described in article 14 of the RAO and may undertake other regulated activities.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 It was not possible in the case of this Order to comply with the 21-day rule according to which relevant instruments are laid before Parliament for at least 21 days prior to coming into force. The Order was made on 29th January 2009 and will come into force on 2nd February 2009.

3.2 As a response to the intensification of the global economic downturn the Treasury announced on 19th January 2009 that the Bank of England ("the Bank") will set up an asset purchase programme implemented through a specially created fund as a further

¹ As specified under section 22 of, and paragraph 25 of Schedule 2 to, the Financial Services and Markets Act 2000.

step to increase the availability of corporate credit. The Bank has been authorised by the Treasury to purchase high quality private sector assets, including paper issued under the Credit Guarantee Scheme, corporate bonds, commercial paper, syndicated loans and a range of asset backed securities created in viable securitisation structures. The Treasury will authorise initial purchases of up to £50 billion, financed by the issue of Treasury bills and Debt Management Office cash management operations. In view of the urgent need to increase the availability of corporate credit in the UK financial markets the Treasury announced that the programme will come into effect from 2nd February 2009.

3.3 The Bank will operate the programme through the Company, a wholly owned subsidiary of the Bank. The Company will carry on the regulated activity of dealing in investments in principal as described in article 14 of the RAO and since it will acquire securities with a view to selling them it does not benefit from the exclusion in article 15 of the RAO.

3.4 It has become apparent therefore as the operational arrangements for the asset purchase programme developed that in order to operate the asset purchase programme it is necessary to exempt the Company from the requirement under section 19 of the FSMA for authorisation in respect of the carrying on of any regulated activity (other than insurance business). In order that the Company can be operational on 2nd February it has not been possible to comply with the 21 day rule.

4. Legislative Context

4.1 The Order is made under sections 38 and 428(3) of the FSMA. Section 38(1) provides that the Treasury may, by order, provide for specified persons or persons falling within a specified class, to be exempt from the general prohibition in section 19 of the FSMA (see paragraph 2.2. above). Subsection (3) provides that the order may provide for an exemption to have effect in respect of one or more regulated activities.

4.2 Section 429(3) and (5) of the FSMA provide that the first order made under section 38, or an order containing provisions restricting or removing an exemption provided in an earlier order, may not be made unless a draft of the order has been laid before Parliament and approved by a resolution of each House of Parliament. Section 429(8) provides that in all other circumstances, the order shall be subject to annulment in pursuance of a resolution of either House of Parliament.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- *What is being done and why*

7.1 Paragraphs 3.1-3.4 above provide the policy background to the Asset Purchase Scheme announced by the Chancellor of the Exchequer on 19th January 2009. In addition to the first phase of operations, in which the objective of the facility is to increase the availability of corporate credit, the facility also provides a framework for the Monetary Policy Committee of the Bank of England to use asset purchases for monetary policy purposes should the Monetary Policy Committee conclude that this would be useful for meeting the inflation target.

7.2 The Bank is establishing the Company with separate legal identity in order to provide a clear transparent mechanism for monitoring the operations conducted under the facility. The Company will be instructed to undertake transactions in line with the decisions of the Governors of the Bank of England, with the Bank conducting the necessary operations on the Bank's behalf. The Bank should provide Treasury officials with the information necessary for them to monitor the operation and financial performance of the facility each month.

7.3 The Bank is itself exempt from the requirement for authorisation in respect of any regulated activity other than insurance business under section 19 of the FSMA and it is appropriate in view of the relationship and common objectives of the Bank and the Company to extend the same degree of exemption to the Company.

- *Consolidation*

7.2 It is not considered appropriate to consolidate the amendments to the principal order at this time.

8. Consultation outcome

8.1 There is no statutory requirement for Her Majesty's Treasury to consult before the making of an order under section 38 of the FSMA. However, the Bank and the FSA were consulted in the period preceding the making of the Order. Bearing in mind the urgent need for the Company to commence its functions, it was not possible to consult more widely and the Order will have no impact on third parties.

9. Guidance

9.1 It is not considered necessary to produce guidance on the Order as it does not create new obligations. The Order amends the list of persons in Part 1 of the Schedule to the principal order.

10. Impact

10.1 The impact on business, charities or voluntary bodies is zero.

10.2 The impact on the public sector is zero.

10.3 An Impact Assessment is attached to this memorandum.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 Her Majesty's Treasury will review the principal order periodically to assess whether it is appropriate to omit, by secondary legislation, the Company from the list of persons in Part 1 of the Schedule to the principal order, for example, in the event that the Company ceases to perform regulated activities.

13. Contact

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Summary: Intervention & Options

Department /Agency: HMT	Title: The Financial Services and Markets Act 2000 (Exemption) Amendment Order 2009	
Stage: Implementation	Version: 1	Date: 28 January 2009
Related Publications:		

Available to view or download at:

<http://www.hm-treasury.gov.uk>

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What is the problem under consideration? Why is government intervention necessary?

As a response to the intensification of the global economic downturn the Treasury announced on 19th January 2009 that the Bank of England will set up an asset purchase programme implemented through a specially created fund as a further step to increase the availability of corporate credit. The Bank of England has been authorised by the Treasury to purchase high quality private sector assets, including paper issued under the Credit Guarantee Scheme, corporate bonds, commercial paper, syndicated loans and a range of asset backed securities created in viable securitisation structures. The Treasury will authorise initial purchases of up to £50 billion, financed by the issue of Treasury bills and Debt Management Office cash management operations. In view of the urgent need to increase the availability of corporate credit in the UK financial markets the Treasury announced that the programme will come into effect from 2nd February 2009.

The Bank of England will operate the programme through Bank of England Asset Purchase Facility Fund Limited ("the Company"), a wholly owned subsidiary of the Bank. The Company will carry on the regulated activity of dealing in investments in principal as described in article 14 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 ("the RAO") and since it will acquire securities with a view to selling them it does not benefit from the exclusion in article 15 of the RAO.

Section 19 of the Financial Services and Markets Act 2000 ("the FSMA") sets out that a person may not carry on a regulated activity unless he is authorised by the Financial Services Authority ("the FSA") or is an exempt person. The power for the Treasury to make the exemption order is under section 38 of the FSMA.

In order to urgently operate the asset purchase programme it is necessary to exempt the Company from the requirement to have obtained FSA authorisation before the carrying on of any regulated activity.

What are the policy objectives and the intended effects?

The policy objective is that the Company should benefit from the same exemptions as the Bank. The Bank benefits from the exemption from the requirement to have FSA authorisation in respect of the carrying on of any regulated activity other than insurance business. The intended effect of the order is that the Company will not need to be authorised by the FSA to undertake such regulated activities.

What policy options have been considered? Please justify any preferred option.

It has been considered whether the asset purchase programme could be administered directly by the Bank of England, which already benefits from an exemption under section 38 of the FSMA in respect of any regulated activity other than insurance business. However, it is considered appropriate to establish the Company with separate legal identity in order to provide a clear transparent mechanism for monitoring the operations conducted under the programme.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

It is not expected that the exemption of the Company will carry actual costs. The Government will review the costs and benefits of this action in due course.

Ministerial Sign-off For Impact Assessments:

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) the benefits justify the costs.

Signed by the responsible Minister:

PAUL MYNERS CBE Date: 28/01/09