

**EXPLANATORY MEMORANDUM TO**  
**THE FINANCIAL SERVICES AND MARKETS ACT 2000 (EXEMPTION)**  
**(AMENDMENT) ORDER 2020**

**2020 No. 322**

**1. Introduction**

- 1.1 This explanatory memorandum has been prepared by Her Majesty’s Treasury (“the Treasury”) and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

**2. Purpose of the instrument**

- 2.1 This Order amends the list of persons in Part 1 of the Schedule to the Financial Services and Markets Act 2000 (Exemption) Order 2001 (S.I. 2001/1201) (“the Principal Order”) to include Covid Corporate Financing Facility Limited (“the Company”).
- 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 Act”), which provides that no person may carry on a regulated activity<sup>1</sup> within the United Kingdom unless that person is either authorised or exempt.
- 2.3 The purpose of the Order is to exempt the Company from the general prohibition in respect of any regulated activities specified in the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544) (“the RAO”), other than the regulated activity specified in article 10 of the RAO (effecting and carrying out contracts of insurance).

**3. Matters of special interest to Parliament**

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

- 3.1 It was not possible in the case of the 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 20 March 2020 and will come into force on 23 March 2020.
- 3.2 As a response to the economic shock caused by the Covid-19 pandemic, on 18 March 2020 the Chancellor announced the establishment of the Covid Corporate Financing Facility (“the CCFF”) to provide funding to large corporate businesses by purchasing commercial paper of up to one-year maturity. In view of the urgent need to provide support to businesses, the Chancellor indicated that the CCFF would be fully operational in the week commencing 23 March 2020.
- 3.3 The Bank of England (“the Bank”) will operate the CCFF through the Company, a wholly owned subsidiary of the Bank. The Company will carry on the regulated activity of dealing in investments as principal as described in article 14 of the RAO.

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<sup>1</sup> As specified in section 22 of, and paragraph 25 of Schedule 2 to, the Act.

- 3.4 In order to operate the CCFF, it is therefore necessary to exempt the Company from the requirement under section 19 of the Act for authorisation in respect of the carrying on of any regulated activity (other than insurance business). The requirement for the CCFF to be operational in the week commencing 23 March 2020 has meant that it has not been possible to comply with the 21-day rule.

*Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)*

- 3.5 As the instrument is subject to negative resolution procedure, there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

#### **4. Extent and Territorial Application**

- 4.1 The territorial extent of this instrument is the United Kingdom.  
4.2 The territorial application of this instrument is the United Kingdom.

#### **5. European Convention on Human Rights**

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

#### **6. Legislative Context**

- 6.1 Section 19 of the Act prohibits persons from carrying on any regulated activity within the United Kingdom, unless they are either authorised or exempt. Under the RAO, when an activity of a specified kind is carried on by way of business in relation to an investment of a specified kind, it is a regulated activity for the purposes of the Act.
- 6.2 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 RAO (effecting and carrying out contracts of insurance). The Order amends Part 1 of the Schedule to include the Company.
- 6.3 The Order is made under section 38 of the Act. 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 Act. Subsection (3) provides that the order may provide for an exemption to have effect in respect of one or more regulated activities.
- 6.4 Section 429(3) and (5) of the Act 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.

#### **7. Policy background**

*What is being done and why?*

- 7.1 The Covid-19 pandemic is a severe public health emergency which has caused a major shock to global economies and financial markets and has had a particularly detrimental impact on liquidity.

- 7.2 The Treasury and the Bank consider that Covid-19 will have a significant short-term impact on the United Kingdom's economy. To prevent a long-term loss in productive capacity, it will be important to ensure that this temporary shock does not result in otherwise viable firms closing. Some large corporate businesses will be at risk and are likely to require additional liquidity support over and above what they could otherwise secure from traditional borrowing routes, including banks.
- 7.3 Large corporate businesses usually issue short-term debt like commercial paper to raise cash and finance working capital. However, credit conditions across bank funding, corporate bond and corporate paper markets have been showing signs of material stress since the intensification of the Covid-19 pandemic.
- 7.4 The purpose of the CCFF is to mitigate the economic effects of the Covid-19 pandemic on the participating companies and the wider economy. The CCFF will provide funding to businesses by purchasing commercial paper of up to one-year maturity, issued by firms making a material contribution to the United Kingdom's economy. It will help businesses across a wide range of sectors to bridge across the economic disruption that is likely to be associated with Covid-19, supporting them in paying salaries, rents and suppliers, even while experiencing severe disruption to cashflows.
- 7.5 The CCFF will seek to offer financing on terms comparable to those prevailing in markets in the period before the Covid-19 economic shock and will be open to large businesses that can demonstrate that they were in sound financial health prior to the shock. Eligibility for the CCFF will be based on firms' credit ratings prior to the Covid-19 shock. Businesses do not need to have previously issued commercial paper in order to participate.
- 8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union**
- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act
- 9. Consolidation**
- 9.1 This instrument does not consolidate any legislation.
- 10. Consultation outcome**
- 10.1 There is no statutory requirement for the Treasury to consult before the making of an order under section 38 of the Act. However, the Bank was consulted in the period preceding the making of the Order.
- 11. Guidance**
- 11.1 The Treasury does not propose to issue guidance on the content of the Order.
- 12. Impact**
- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 An Impact Assessment has not been prepared for this instrument because no, or no significant, impact on business, charities or voluntary bodies is foreseen.

**13. Regulating small business**

13.1 The Order does not apply to activities that are undertaken by small businesses.

**14. Monitoring & review**

14.1 The 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, for example, in the event that the Company ceases to perform regulated activities.

**15. Contact**

15.1 Andrew Heron at the Treasury (telephone: 020 7270 6222 or email: [andrew.heron@hmtreasury.gov.uk](mailto:andrew.heron@hmtreasury.gov.uk)) can be contacted with any queries regarding the instrument.

15.2 Josef Pitt-Rashid, Deputy Director for Companies and Economic Security at the Treasury, can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Rt Hon Rishi Sunak MP, Chancellor of the Exchequer, can confirm that this Explanatory Memorandum meets the required standard.