

**EXPLANATORY MEMORANDUM TO**  
**THE FINANCIAL SERVICES AND MARKETS ACT 2000 (EXEMPTION)**  
**(AMENDMENT) ORDER 2021**

**2021 No. 1127**

**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.

**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 UK Infrastructure Bank Limited (“the Company”).

2.2 The Principal Order exempts specified 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 within the United Kingdom unless that person is either authorised or exempt.

2.3 The purpose of this 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 None.

**4. Extent and Territorial Application**

4.1 The territorial extent of this instrument is the whole of the United Kingdom.

4.2 The territorial application of this instrument is the whole of 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 specifies 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 This 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 In the Budget of March 2021, the Chancellor announced that a UK Infrastructure Bank would be established in order to provide financing support to private sector and local authority infrastructure projects across the UK. The Company is part of the Government's broader infrastructure strategy.
- 7.2 The UK Infrastructure Bank began operating on 17 June 2021 and has two core objectives, namely (i) to help tackle climate change, and (ii) to support regional and local economic growth.
- 7.3 Depending on the specific activities the Company undertakes, it would need to be either (a) authorised under the Act, (b) specifically exempted from the general prohibition under the Act, or (c) structured in such a way that it does not carry on activities for which it needs to be authorised or exempt (i.e. to fall within relevant applicable exclusions in respect of all of its activities).
- 7.4 Whilst the Company is currently structured in such a way that it is not carrying on regulated activities, the Treasury considers that it would be appropriate, given the Company's public policy functions and mandate, for the Company to be exempt from the general prohibition set out in section 19 of the Act and therefore have the ability to carry on certain regulated activities without authorisation.
- 7.5 This Order exempts the Company such that it does not need to be authorised to carry on regulated activities, other than the regulated activity specified in article 10 of the RAO (effecting and carrying out contracts of insurance).
- 7.6 Financial regulation aims to maintain financial stability, the integrity of financial markets, and the protection of consumers and competition, as well as to ensure that financial institutions treat their customers fairly.
- 7.7 As the Company is an institution that will not carry on activity with retail consumers but will support the delivery of key government policies and policy-driven interventions, the Treasury considers that it is appropriate for the Company to be exempt from the general prohibition under the Act and the requirement to be authorised. The Treasury, as sole shareholder of the Company, expects the Company to act in a way that is consistent both with relevant financial regulatory requirements

and industry best-practice, and that the Company will also devise governance arrangements and systems and controls that will help ensure that it acts in such a way.

- 7.8 The Government has committed to reviewing the Company's progress and financial performance by Spring 2024. As part of this review, the Treasury will consider whether the Company should remain exempt, or whether it should, going forward, be authorised to conduct regulated activities by the Financial Conduct Authority. The Treasury will also consider the benefits and burdens of continuing with the governance arrangements and systems and controls that the Company has devised as an exempt person versus those that it would need as an authorised firm.

## **8. European Union Withdrawal and Future Relationship**

- 8.1 This instrument does not relate to withdrawal from the European Union.

## **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 Company was consulted before making this Order.

## **11. Guidance**

- 11.1 The Treasury does not intend to issue guidance on the content of this 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 within three years to assess whether it is appropriate to maintain the exemption. Thereafter, such reviews will take place periodically.

## **15. Contact**

- 15.1 Hani Azar at the Treasury (email: hani.azar@hmtreasury.gov.uk) can be contacted with any queries regarding the instrument.  
15.2 William Davis, Deputy Director for the Infrastructure Bank Unit at the Treasury, can confirm that this Explanatory Memorandum meets the required standard.  
15.3 The Economic Secretary to the Treasury, John Glen, can confirm that this Explanatory Memorandum meets the required standard.