

**EXPLANATORY MEMORANDUM TO  
THE FINANCIAL SERVICES AND MARKETS ACT 2000 (EXEMPTION)  
(AMENDMENT) ORDER 2008**

**2008 No. 682**

**1. Introduction**

1.1 This explanatory memorandum has been prepared by Her Majesty's Treasury and is laid before Parliament by Command of Her Majesty.

**2. Description**

2.1 This Order amends the Financial Services and Markets Act 2000 (Exemption) Order 2001 (SI 2001/1201) (“the Exemption Order”), which provides for certain persons to be exempt from the general prohibition imposed by section 19 of the Financial Services and Markets Act 2000 (c.8) (“FSMA”). Article 2 of the Order provides that Capital for Enterprise Limited is exempt in relation to the regulated activities listed in article 5(1) of the Exemption Order in so far as in carrying on any regulated activity it provides services only to the Crown.

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

3.1 None.

**4. Legislative background**

4.1 Section 19 of FSMA provides that no person may carry on a regulated activity in the United Kingdom, or purport to do so, unless he is: (a) an authorised person; or (b) an exempt person. This is known in FSMA as the general prohibition. Section 22 of FSMA provides that an activity is a regulated activity if it is an activity of a specified kind (a) which relates to a specified investment (or, in relation to certain activities, to property of any kind); and (b) which is carried on by way of business. For these purposes “specified” means specified in the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (SI 2001/3538) (“the RAO”).

4.2 The Exemption Order provides, subject to any limitation expressed, for persons listed in Part III of the Schedule to be exempt from FSMA regulation in respect of any regulated activity mentioned in article 5(1) of the Exemption Order. These activities are dealing in investments as a principal or agent, arranging deals in investments, operating a multilateral trading facility, managing investments, assisting in the administration and performance of a contract of insurance, safeguarding and administering investments, sending dematerialised instructions, establishing a collective investment scheme or stakeholder pension scheme and advising on investments.

4.3 Article 2 of the Order adds Capital for Enterprise Limited to the list of persons in Part III of the Schedule in so far as in carrying on any regulated activity it provides services only to the Crown.

## **5. Territorial Extent and Application**

5.1 These Regulations apply to all of the United Kingdom.

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

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

## **7. Policy Background**

7.1 In 2003 the Chancellor and the Secretary of State for Trade and Industry stated that the Enterprise Capital Fund programme “would most effectively be delivered through a company set up specifically for that purpose”. Capital for Enterprise Limited (“CfEL”) has been set up as an Executive Non-Departmental Public Body principally to deliver this programme. It is incorporated under the Companies Acts as a private limited company and is wholly owned by the Department for Business, Enterprise and Regulatory Reform (BERR).

7.2 In addition to delivery of the Enterprise Capital Fund programme, CfEL will be responsible for managing the Small Firms Loan Guarantee Scheme and a portfolio of legacy funds. CfEL will also advise the Crown on the impact of these programmes and the development of the markets in which they are operating.

7.3 Exemption from FSMA regulation will permit CfEL to provide its services to the Crown without the need for compliance with FSMA and FSA regulation. Given that CfEL is wholly owned by BERR and whilst it will only provide services to the Crown, it is considered that the costs of regulation would be disproportionate and thus that exemption is appropriate.

7.4 CfEL has been consulted about the proposed exemption and is content with it. The Treasury are satisfied that granting the exemption is consistent with the United Kingdom’s Community obligations, in particular under the Markets in Financial Instruments.

## **8. Impact**

8.1 No Regulatory Impact Assessment has been prepared as no impact on the private or voluntary sectors is foreseen; impact on the public sector will be negligible and will not be new.

## **9. Contact**

9.1 Sarah Kirby at HM Treasury: Tel 020 7270 5173 or e-mail: [sarah.kirby@hm-treasury.x.gsi.gov.uk](mailto:sarah.kirby@hm-treasury.x.gsi.gov.uk) can answer any queries regarding the Order.