

**EXPLANATORY MEMORANDUM TO**  
**THE FINANCIAL SERVICES AND MARKETS ACT 2000 (EXEMPTION)**  
**(AMENDMENT) ORDER 2022**

**2022 No. 100**

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

**2. Purpose of the instrument**

- 2.1 This Order amends the Financial Services and Markets Act 2000 (Exemption) Order 2001 (S.I. 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).

*Norges Bank:*

- 2.2 Article 2 of the Order adds Norges Bank, the Norwegian central bank, to Part IV of the Schedule to the Exemption Order and, in combination with Article 5(2) of the Exemption Order, exempts Norges Bank from requiring authorisation in respect of activities specified by articles 14, 21, 25, 37, 40, 53 and 64 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (“the RAO”).

**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 the negative resolution procedure and does not amend primary legislation, no statement is required.

**6. Legislative Context**

- 6.1 Section 19 of the Financial Services and Markets Act 2000 (“FSMA”) provides that no person may carry on a regulated activity in the United Kingdom, or purport to do so, unless they are: (a) an authorised person; or (b) an exempt person. This is known in the Act as “The General Prohibition”. Section 22 of FSMA provides that an activity is a regulated 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 RAO.

- 6.2 The Exemption Order provides, subject to any limitation and condition expressed, for persons listed in Part IV of the Schedule to be exempt from the general prohibition in respect of any regulated activity of the kind referred to in relation to them.
- 6.3 As a European Economic Area (EEA) central bank, Norges Bank, benefitted from a total exemption from the authorisation requirements within FSMA that was applied as a part of the UKs membership of the European Union. The total exemption ceased to apply to EEA central banks at the end of the implementation period as a result of the FSMA 2000 (Amendment) (EU Exit) Order 2019. Since the end of the implementation period, Norges Bank has benefitted from a temporary continuation of the total exemption through a direction made under the temporary transitional powers by the FCA, which comes to an end in March 2022. Under s.38 of FSMA, HM Treasury intends to amend the Exemption Order to exempt Norges Bank in relation to the following activities: dealing in investments as principal, dealing in investments as agent, arranging deals in investments, managing investments, arranging, safeguarding and administering investments, and advising on investments (as specified in the Articles listed in 2.2 of the Order). Furthermore, so far as relevant to any such activity, Norges Bank shall also be exempt from being required to obtain authorisation in respect of regulated activities of the kind specified in Article 64 (Agreeing to carry on specified kinds of activity) of the Regulated Activities Order, pursuant to Article 5(2) of the Exemption Order.

## **7. Policy background**

### *What is being done and why?*

- 7.1 This instrument will amend the list of exempt persons under section 38 of FSMA contained in the Exemption Order to add Norges Bank. This will allow Norges Bank to continue to conduct specific regulated activities (by reference to the Regulated Activities Order) in the UK without needing to be authorised under Part 4A of FSMA. Consequently, Norges Bank may continue their UK operations without contravening section 19 of FSMA. This is being done so that Norges Bank will be able to continue to operate within the UK market with regulatory certainty. Norges Bank runs Norway’s sovereign wealth fund. Norges Bank could apply for authorisation (through Part 4A of FSMA), however, HMT does not consider Norges Bank appropriate for a Part 4A authorisation given its unique governance structure that involves the oversight of Norwegian Government and the Governor of the Central Bank, as well as its limited role in UK markets as an end investor using its own funds (rather than collecting and using the funds of customers). Norges Bank also asserts that its activities, business model and risk profile have not changed over the last few years. HM Treasury have not had concerns about its activities when they were being carried out under the EEA central bank exemption. Taking into account the unique nature of how Norges Bank operates, its compliance with Norwegian and EEA law, and its previous exemption, HM Treasury considers it appropriate for Norges Bank to continue to operate under a section 38 (FSMA) exemption.

## ***Explanations***

### *What did any law do before the changes to be made by this instrument?*

- 7.2 The previous exemption applicable to all EEA central banks was withdrawn when the UK left the European Union pursuant to the Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019. These same Regulations also gave the financial service regulators a Temporary Transition Power. This Temporary Transition Power allowed a directive to be issued through which relevant EEA firms may continue activities that they were previously undertaking. As enabled by the TTP, Norges Bank has benefited from this exemption which will expire at the end of March 2022. The Financial Conduct Authority issued a Direction which came into effect on 31 December 2020 delaying the effect of the withdrawal of the exemption until 31 March 2022.

### *Why is it being changed?*

- 7.3 When the Temporary Transition Regime ends, without intervention Norges Bank will no longer be able to continue its activities in the United Kingdom without authorisation. Taking into account the unique nature of how Norges Bank operates, its compliance with Norwegian and EEA law and its previous exemption, HM Treasury considers it appropriate for Norges Bank to continue to operate on its current basis by issuing an exemption under section 38 of FSMA. This Order will allow Norges Bank to maintain its current UK position by carrying out the same activities that they are currently undertaking, with regulatory certainty and without a need for authorisation. This decision has been made taking into account advice from the financial services regulators in addition to other government departments where appropriate (the FCDO).

### *What will it now do?*

- 7.4 Following a decision-making process conducted by HM Treasury resulting in advice to Ministers, this Order will allow Norges Bank to continue to conduct activities in the UK without authorisation under FSMA. These activities will be limited to only those specified in Article 2 of the Order.

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

- 8.1 This instrument is not being made under the European Union (Withdrawal) Act but relates to the withdrawal of the United Kingdom from the European Union because this instrument replaces an exemption which was applicable to all EEA central banks and was withdrawn when the UK left the European Union.

## **9. Consolidation**

- 9.1 This Order amends the Financial Services and Markets Act 2000 (Exemption) Order 2001.

## **10. Consultation outcome**

- 10.1 No consultation on this Order was undertaken, as it only affects the operation of Norges Bank in the United Kingdom. It utilises powers already available to HM Treasury, and does not create any changes to the operation of the regulatory framework for any other person than Norges Bank.

## **11. Guidance**

11.1 As this Order only affects Norges Bank no guidance is required.

## **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 A de minimis Impact Assessment has been prepared for this instrument and confirms that there will be minimal impact to the UK market by maintaining Norges Bank as an exempt person. The impact assessment highlights that the most likely impact will be familiarity costs which will be internal to Norges Bank, which are not envisaged to be substantial.

## **13. Regulating small business**

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

## **14. Monitoring & review**

14.1 The approach to monitoring of this legislation is through the regular dialogue that will be maintained between Norges Bank and HM Treasury. This Order may be withdrawn if at HM Treasury's discretion.

14.2 A statutory review clause has not been included due to the minimal expected impact on UK business.

## **15. Contact**

15.1 Thomas Barnes at HM Treasury, [Thomas.barnes@hmtreasury.gov.uk](mailto:Thomas.barnes@hmtreasury.gov.uk), can be contacted with any queries regarding the instrument.

15.2 John O'Regan, Deputy Director for International Policy and Partnerships, at HM Treasury can confirm that this Explanatory Memorandum meets the required standard.

15.3 John Glen MP, Economic Secretary to the Treasury can confirm that this Explanatory Memorandum meets the required standard.