EXPLANATORY MEMORANDUM TO

THE FINANCIAL SERVICES AND MARKETS ACT 2000 (EXEMPTION) (AMENDMENT) ORDER 2005

2005 No. 592

1. This explanatory memorandum has been prepared by HM Treasury and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 This instrument amends the Financial Services and Markets Act 2000 (Exemption) Order 2001 (S.I. 2001/1201) ("the principal Order"). The principal Order 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) ("The Act"). This Order:

- extends the exemption in paragraph 48(2) of the Schedule to the principal Order to cover Communities Scotland, a Scottish Executive agency;

- extends the exemption in Part III of the Schedule to cover the Board of the Pension Protection Fund, a non-departmental public body; and

- extends the exemption in paragraph 49 of the Schedule to the principal Order to reflect the implementation of new arrangements for a single market for the wholesale trade in electricity and the consequent increase in the extent of this exemption to Great Britain. These new arrangements will be known as the British Electricity Trading and Transmission Arrangements ("BETTA") and they come into force on 1 April 2005.

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

3.1 None

4. Legislative Background

4.1 Section 19 of the Act contains the general prohibition against a person carrying on a regulated activity in the UK unless he is an authorised person or an exempt person. Section 38 of the Act provides that the Treasury may exempt specified persons or persons falling within a specified class from the general prohibition. The principal Order was made in accordance with the power under s38. The relevant amending instruments are SI 2001/3623 and SI 2003/1675. The former Order inserted paragraph 49 of the Schedule to the principal Order. The latter Order substituted paragraph 48 of the Schedule to the principal Order.

4.2 This instrument makes further amendments to:

- paragraph 48 of the Schedule as substituted;
- to Part III of the Schedule; and
- paragraph 49 as inserted.

5. Extent

5.1 Article 2 of this instrument applies to all of the United Kingdom. Article 3 applies to Great Britain.

6. European Convention on Human Rights

6.1 Not applicable.

7. Policy background

Communities Scotland

7.1 Prior to 1 November 2001 the body 'Scottish Homes' existed to help provide good housing and contribute to the regeneration of local communities to tackle Scotland's housing problems. Scottish Homes is specified in the principal Order, which exempts the body from the general prohibition in respect of certain regulated activities.

7.2 Section 84 of the Housing (Scotland) Act 2001 transferred the functions of 'Scottish Homes' to the Scottish Ministers, and on 1 November 2001 most of Scottish Homes' functions transferred to 'Communities Scotland', a newly created Scottish Executive Agency. Scottish Homes continues to exist as a residuary body to deal with a number of functions and activities, which did not transfer to Communities Scotland.

7.3 No amendment to the FSMA 2000 (Exemption) Order 2001 was included in the list of consequential amendments set out in the Housing (Scotland) Act 2001. The Exemption Order needs to be updated to exempt the activities of Communities Scotland.

The Pension Protection Fund

7.4 The Board of the Pension Protection Fund is established by section 107 of the Pensions Act 2004 and will protect members of defined benefit schemes by paying compensation if their employer becomes insolvent and the pension scheme is underfunded. The Fund will be financed through a levy on eligible pension schemes, the level of which will be set annually by the Board. It will begin operating on 6 April 2005.

7.5 As set out in Article 108 of the Pensions Act 2004, the Board of the Pension Protection Fund will consist of a Chairman, the Chief Executive of the Board and at

least 5 other persons. The Board must hold, manage and apply the Pension Protection Fund and the Fraud Compensation Fund. Some of the duties of the Board of the Pension Protection fund relate to investment of the funds under its control**.**

BETTA

7.6 The exemption that is afforded to those engaged in the wholesale trade in electricity was reviewed as part of the Two Year Review of the Act.

7.7 The policy objectives that inform the Act are the creation of an efficient, effective and transparent framework for financial services regulation in the UK, which promotes market confidence and protects consumers.

7.8 The current exemption in paragraph 49 of the principal Order achieves these policy objectives since without it those who engage in electricity balancing and settlement activities as part of the wholesale trade in electricity may be subject to dual regulation by the Office of Gas and Electricity Markets ("OFGEM") and by the Financial Services Authority ("FSA"). This might have adverse implications for costs and for balancing the electricity grid.

7.9 The amendments to paragraph 49 of the Schedule to the principal Order fulfil the policy objectives that inform the Act by providing continued certainty for those engaging in electricity balancing and settlement activities that they are not subject to certain areas of financial regulation when the existing arrangements for the wholesale trade in electricity are superseded by BETTA. This should allow the electricity trading arrangements to continue to operate smoothly.

7.10 The amendments to paragraph 49 were publicly consulted on in February 2004. The consultation exercise revealed that there was some uncertainty on how much the current exemption in paragraph 49 was relied upon, but that responses were in favour of maintaining the current status in order to promote market confidence and certainty.

8. Impact

8.1 A Regulatory Impact Assessment (RIA) has not been prepared in relation to Article 2 of this instrument as it has no impact on the cost of business. A RIA in relation to Article 3 of this instrument is available on the HM Treasury website. http://www.hm-treasury.gov.uk./media/510/35/fin_ser_mark_act_gov_resp_nov04.pdf

9. Contact

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9.2 Marcello Casale (Tel: 020 7270 5173 or email Marcello.casale@hm-treasury.x.gsi.gov.uk) can answer any queries regarding Article 3 of this instrument.

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