EXPLANATORY MEMORANDUM TO

THE FINANCIAL SERVICES AND MARKETS ACT 2000 (EXEMPTION) (AMENDMENT) ORDER 2012

2012 No.763

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

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) ("FSMA"). Article 2 of the Order provides that BIS (Postal Services Act 2011) Company Limited is exempt in relation to the regulated activities listed in article 5(1) of the Exemption Order.

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

3.1 None.

4. Legislative context

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 pension scheme and advising on investments.

4.3 Article 2 of the Order adds BIS (Postal Services Act 2011) Company Limited to the list of persons in Part III of the Schedule.

5. Territorial Extent and Application

5.1 This instrument applies 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 The Postal Services Act 2011 allows for the transfer of liabilities and assets of the Royal Mail Pension Plan ("RMPP") in order to relieve Royal Mail of its pension deficit. Under powers in that Act the Government is making an order to transfer accrued pension rights from the RMPP to a new Government pension scheme, the Royal Mail Statutory Pension Scheme, and to make corresponding amendments to the RMPP.

7.2 In connection with the establishment of a new statutory pension scheme, section 21(1) of the Postal Services Act 2011 enables the Secretary of State (as a matter of machinery of Government this means the Secretary of State for Business, Innovation and Skills (BIS)) by order to transfer the assets of RMPP to a fund established for the purpose of holding the assets pending their disposal. A transfer of assets order has been prepared for that purpose.

7.3 BIS (Postal Services Act 2011) Company Limited has been set up to receive the RMPP assets transferring to Government. It is incorporated under the Companies Acts as a private limited company and is wholly owned by BIS. The sole remit of the company will be the holding and management of the assets transferred from the RMPP pending their disposal under an agreed strategy, which includes the payment of proceeds from asset sales into the Consolidated Fund.

7.4 Exemption from FSMA regulation will permit BIS (Postal Services Act 2011) Company Limited to carry out its objects, which require it to exercise regulated activities under FSMA in relation to the conduct of investment business, without being authorised under FSMA and regulated by the Financial Services Agency. Given that BIS (Postal Services Act 2011) Company Limited is wholly owned by BIS and has entirely public sector functions relating to the RMPP, it is considered that authorisation is unnecessary, that the costs of regulation would be disproportionate and that exemption is appropriate.

7.5 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 Directive.

8. Consultation outcome

8.1 BIS and the Financial Services Agency were consulted about this instrument. Both were content. No other external consultation was carried out.

9. Guidance

9.1 No guidance is needed or required.

10. Impact

10.1 No Impact Assessment has been prepared as no impact is foreseen on the costs of business or on the voluntary sector; the impact on the public sector will be negligible.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring and review

12.1 No monitoring or review is needed for this instrument. As the sole remit of the company will be the holding and management of the assets transferred from the RMPP pending their disposal, the company is expected to have a limited lifespan.

13. Contact

13.1 James Perry at HM Treasury: Tel 020 7270 5736 or e-mail: james.perry@hmtreasury.gsi.gov.uk can answer any queries regarding the Order.