EXPLANATORY MEMORANDUM TO

THE FINANCIAL SERVICES AND MARKETS ACT 2000 (EXEMPTION) (AMENDMENT) ORDER 2025

2025 No. 250

1. Introduction

1.1 This explanatory memorandum has been prepared by His Majesty's Treasury ("the Treasury") and is laid before Parliament by Command of His Majesty.

2. Declaration

2.1 Lord Livermore, Financial Secretary to the Treasury confirms that this Explanatory Memorandum meets the required standard.

2.2 Neeraj Patel, Deputy Director for National Wealth Fund at the Treasury confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Henry Potts at the Treasury, Telephone: 07825 424478 or email: Henry.Potts@hmtreasury.gov.uk, can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 This Order amends the Financial Services and Markets Act 2000 (Exemption) Order 2001 (S.I. 2001/1201) ("the Exemption Order").

4.2 The Exemption Order exempts certain 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 in the United Kingdom unless they are authorised or exempt.

4.3 The purpose of this Order is to broaden the scope of the exemption granted to National Wealth Fund Limited ("the Company") under the Exemption Order, exempting it from the general prohibition in respect of all regulated activities, including those specified by article 10 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544) ("the RAO").

Where does the legislation extend to, and apply?

4.4 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is the whole of the United Kingdom.

4.5 The territorial application of this instrument (that is, where the instrument produces a practical effect) is the whole of the United Kingdom.

5. Policy Context

What is being done and why?

5.1 The Company's sole shareholder is the Treasury. It began operating on 17 June 2021 under the name UK Infrastructure Bank Limited ("UKIB"), later renamed as National Wealth Fund, to operate with the aim of helping tackle climate change, and supporting regional and local economic growth. The Company delivers on Government aims by, among other things, providing financing support to private sector and local authority projects across the UK.

5.2 As part of UKIB's establishment, the Treasury considered it appropriate, given its public policy functions and mandate, for UKIB to be exempt from the general prohibition under the Act in respect of all regulated activities except those specified by article 10 of the RAO (effecting and carrying out contracts of insurance). This would allow UKIB to carry on those regulated activities, if necessary, without needing to be authorised.

5.3 In September 2023, UKIB published a strategy update, "Private sector investments".[1] In the update, UKIB noted that it hoped, in time, to be able to offer performance guarantees, such as construction bonds, to provide protection against the performance of construction companies on infrastructure projects. This activity would be consistent with UKIB's business plans, enabling it to support supply chain companies and bridge market capacity gaps being predicted in sectors such as offshore wind.

5.4 A performance guarantee is a financial instrument provided by a bank or insurance company as a safeguard for project owners, offering compensation if the contractor fails to deliver as agreed and typically will have a total value of 10-20% of the contract value. Performance guarantees are commonly used in construction, infrastructure, and large-scale engineering projects. By securing a performance guarantee, project owners mitigate risks associated with non-performance, helping to ensure project completion within specified timelines and standards.

5.5 In October 2024, the Chancellor announced that UKIB would become National Wealth Fund, with a broader mandate, more capital and the ability to offer an expanded suite of financial products, including performance guarantees. The Government confirmed in an accompanying policy paper, "National Wealth Fund: Mobilising Private Investment"[2], that the Company would have the ability to offer performance guarantees.

5.6 Accordingly, this Order broadens the Company's existing exemption under the Exemption Order to exempt it from all regulated activities including the regulated activities specified by article 10 of the RAO. This will ensure that the Company is able to carry out and effect (i.e. enter into) performance guarantees, such as construction bonds and advance payment bonds, and similar products, as an exempt person under the Act. This is consistent with the Company's public policy functions and mandate, and the Government's stated intentions.

What was the previous policy, how is this different?

5.7 The Company can currently carry on all regulated activities except effecting and carrying out contracts of insurance. The definition of a 'contract of insurance' in

[1] UK Infrastructure Bank Strategy Update: Private sector investments: https://static-files.nationalwealthfund.org.uk/s3fs-public/download/UKIB-Strategy-Update-Private-Sector-Investments.pdf
[2] National Wealth Fund: Mobilising Private Investment: https://www.gov.uk/government/publications/national-wealth-fund-mobilising-private-investment

article 3 of the RAO includes performance bonds and similar contracts of guarantee. Performance guarantees may be treated as contracts of insurance as a matter of law, which in turn means that the Company may be prevented from offering performance guarantees as a product. This is despite market demand for the product and the expectation that an entity, such as the Company, that supports construction based projects would be able to provide such a product. This Order therefore removes the potential legislative impediment to the Company being able to offer performance guarantees by allowing it to carry on all regulated activities as an exempt person. The Treasury considers that this change would be appropriate as it will better enable the Company to catalyse investment into clean energy and growth industries.

6. Legislative and Legal Context

How has the law changed?

6.1 Section 19 of the Act provides that no person may carry on a regulated activity in the United Kingdom unless they are authorised or exempt. This is known as the general prohibition. Under section 22 of the Act, a regulated activity is an activity of a kind specified in the RAO which relates to an investment of a kind specified by the RAO and which is carried on by way of business.

6.2 Article 3 of the Exemption Order exempts each of the persons listed in Part I of the Schedule to that Order from the general prohibition in respect of any regulated activity other than the regulated activities specified by article 10 of the RAO (effecting and carrying out contracts of insurance). The Company was added under its former name, UKIB, to the list of persons in Part I of the Schedule.

6.3 This Order amends the Exemption Order by inserting a new article 3A, which provides an exemption from the general prohibition in respect of any regulated activity specified by the RAO and a new Part 1A of the Schedule, which lists persons exempt under article 3A. This Order further broadens the scope of the Company's existing exemption by removing it from Part I of the Schedule and adding it to Part 1A of the Schedule.

6.4 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)(a) provides that the order may provide for an exemption to have effect in respect of all regulated activities.

6.5 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. This Order would not be the first one made under section 38 of the Act, nor would it restrict or remove an existing exemption. Instead, it expands the scope of the existing exemption for the Company. Accordingly, pursuant to section 429(8) which provides that, in all other circumstances, the order shall be subject to annulment in pursuance of a resolution of either House of Parliament, this Order will be made under a negative resolution procedure.

Why was this approach taken to change the law?

6.6 The Treasury considers that this is the only possible approach to make the necessary changes to allow the Company to offer performance guarantees or similar products

without breaching the general prohibition under section 19 of the Act. Further details are provided in paragraph 5.7.

7. Consultation

Summary of consultation outcome and methodology

7.1 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, the Prudential Regulation Authority, who are responsible for regulation and supervision of banks, building societies, credit unions, insurers and major investment firms in the UK, and the Financial Conduct Authority, who are responsible for regulating the conduct of financial firms in the UK to ensure markets work well for individuals, businesses and the economy, were consulted before making this Order. Although concerned with the risk of setting a precedent with the Company being the first person to be exempt from the general prohibition in respect of all regulated activities, they acknowledge that the risk of this is low.

8. Applicable Guidance

8.1 The Treasury does not intend to issue guidance on the content of this Order.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been produced for this instrument because no, or no significant, impact on business or the voluntary sector is foreseen.

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant, impact on business, charities or voluntary bodies.

9.3 The legislation does not impact small or micro businesses.

9.4 There is no, or no significant, impact on the public sector.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 We do not plan to do any other monitoring and review because there is no impact on business.

10.2 The instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, the Financial Secretary to the Treasury (Lord Livermore) has made the following statement:

"It is not proportionate to include a review clause in this instrument because the SI does not impact on business."

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

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

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").