EXPLANATORY MEMORANDUM TO

THE FINANCIAL ASSISTANCE FOR INDUSTRY (INCREASE OF LIMIT) (No.3) ORDER 2009

2009 No.

1. This explanatory memorandum has been prepared by the Department of Business, Enterprise and Regulatory Reform and is laid before the House of Commons by Command of Her Majesty.

2. Purpose of the instrument

2.1 This Order increases the limit of the aggregate assistance that may be provided under section 8 of the Industrial Development Act 1982, as amended by the Industrial Development (Financial Assistance) Act 2003, by £600 million to £6,100 million

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

3.1 None.

4. Legislative Context

4.1 Section 8 of the Industrial Development Act 1982 provides the principal power of the Secretary of State to give financial assistance to industry outside areas which have been granted Assisted Area status. Assistance may be given provided that:

a) it will benefit the UK economy or any part or area of the UK;
b) it is in the national interest; and
c) assistance cannot appropriately be provided in any other way.

4.2 The purposes for which assistance may be granted are set out in section 7(2) of the Act. They include:

a) the promotion of the modernisation or efficiency of an industry;
b) creating, expanding or sustaining productive capacity in an industry;
c) promoting the reconstruction, reorganisation or conversion of an industry;
d) encouraging the growth of an industry; and
e) arrangements for ensuring an orderly contraction of an industry.

4.3 Financial assistance may take the form of investment, loans, grants or guarantees. Examples of uses of section 8 are support to small businesses through measures such as the Small Firms Loan Guarantee scheme and the Grant for Business Investment scheme.

4.4 There is a financial ceiling on the exercise of the section 8 power. Section 8(4) provides that the aggregate of—

a) the sums paid by the Secretary of State under this section or section 8 of the Industry Act 1972 (c.63), other than sums paid in respect of foreign currency guarantees, and

b) the liabilities of the Secretary of State under any guarantees given by him under either of those sections (exclusive of any liability in respect of interest on a principal sum so guaranteed and of any liability under a foreign currency guarantee),

less repayments in respect of loans or guarantees (other than foreign currency guarantees) under either section shall not exceed the limit specified in section 8(5).

4.5 Section 8(5) which was amended by section 1 of the Industrial Development (Financial Assistance) Act 2003 provides that the limit shall be £3,700 million but the Secretary of State may, on not more than four occasions, by Order made with the consent of the Treasury increase or further increase that limit by a sum not exceeding £600 million. The other provisions of section 8 were not altered.

4.6 This Order increases the limit of the aggregate assistance provided under section 8 of the Industrial Development Act 1982 by £600 million to £6,100 million. This is the fourth occasion that this limit has been increased under section 8(5) of the Industrial Development Act 1982 as amended by the Industrial Development (Financial Assistance) Act 2003; the first was in May 2008 when the limit was also increased by £600m (SI 2008/No 1272) and the second was in March 2009 when the limit was also raised by a further £600m (SI 2009/No 712) and the third will occur alongside this Order and it will also raise the limit by a further £600m.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

The Minister of State for Employment Relations and Postal Affairs has made the following statement regarding Human Rights:

In my view the provisions of the Financial Assistance For Industry (Increase Of Limit) Order 2009 are compatible with the Convention rights.

7. Policy background

- ***What is being done and why***

7.1 Recent spending commitments and likely future commitments require that the aggregate assistance permitted under section 8(5) of the Industrial Development Act 1982 be increased in order for the Department, should the need arise, to provide further financial assistance in accordance with its powers under the Act.

- ***Consolidation***

7.2 This Order does not amend another Order.

8. Consultation outcome

8.1 It was not appropriate or necessary to undertake consultation prior to laying this Order.

9. Guidance

9.1 As the Order has no direct impact on stakeholders and is not complex, the Department does not intend to provide guidance or other form of publicity in relation to the Order.

10. Impact

10.1 A Regulatory Impact Assessment has not been produced for this Order as it has no impact on the cost of business.

10.2 The Order has no direct impact on the public sector.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 This Order will require no monitoring apart from tracking expenditure defrayed against the amended total.

13. Contact

Avril Adams at the Department for Business, Enterprise and Regulatory Reform (telephone: 020 7215 6509 or email Avril.Adams@berr.gsi.gov.uk) can answer any queries regarding the instrument.