EXPLANATORY MEMORANDUM TO

THE FISCAL RESPONSIBILITY ORDER 2010

2010 No. [Draft]

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

2. Purpose of the instrument

2.1 The purpose of the instrument is to impose on the Treasury a further duty in relation to the reduction of public sector net borrowing.

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

3.1 Treasury take the view that the power in section 2(1) of the Act must be exercised so that any duty contained in an Order made under that power is consistent with the duties in section 1 of the Act.

3.2 The duty on the Treasury under section 1(2) of the Act is to ensure that for the financial year ending in 2014, public sector net borrowing ("PSNB") expressed as a percentage of gross domestic product ("GDP") is no more than half of what it was for the financial year ending in 2010.

3.3 As at the date of the laying of the draft Order the financial year ending in 2010 has not ended. It is therefore not possible, at the date of laying the Order (and even perhaps at the date of the making of the Order) to be certain that the duty in the Order will be consistent with the duty in section 1(2).

3.4 Furthermore, data on the public finances, such as data on PSNB, can sometimes remain provisional for a considerable period after the end of a financial year.

3.5 In order to deal with this uncertainty regarding the data for the financial year ending in 2010, the Treasury have drafted the Order so that the duty is conditional: the duty applies if and only if, on the basis of the figures reported by the Treasury at 2010 Pre-Budget Report,[1] half of PSNB expressed as a percentage of GDP for the financial year ending 2010 is more than 5.5%.

3.6 As far as the current data are concerned, the Treasury's estimate for PSNB as a percentage of GDP for the financial year ending in 2010 is 11.8% as at the date of Budget 2010. Accordingly, on the basis of this data the duty in the draft Order is not only consistent with the duty in section 1(2), but also stronger than that duty. By imposing a duty which sets out a specific percentage and by making the application of that duty subject to the condition

[1] The Treasury is required by section 3(3) of the Act, at 2010 Pre-Budget Report, to report on progress towards complying with the duty in section 1(2) of the Act and at that time will therefore report on the PSNB and GDP figures for the financial year ending in 2010.

set out in article 2(2), greater certainty is created, making the overall duty on the Treasury in relation to the reduction of PSNB a stronger one.

3.7 During the passage of the Bill through Parliament, the Government indicated that the power in section 2(1) would be used to impose a duty on the Treasury to ensure that for the financial year ending in 2014, PSNB expressed as a percentage of GDP is 5.5% or less.[2] The Treasury therefore do not consider that this could be viewed as an unusual use of the power in section 2(1).

3.8 In order to expedite the Parliamentary procedure for approval of the draft Order, the Treasury waives the opportunity to respond to questions from the Committee.

4. Legislative Context

4.1 Section 1 of the Act imposes three duties on the Treasury, to ensure that:

4.1.1 for each of the financial years ending in 2011 to 2016, PSNB as a proportion of GDP is less than it was for the preceding financial year;
4.1.2 by the financial year ending in 2014, PSNB as a percentage of GDP is at least halved from its level for the financial year ending in 2010; and
4.1.3 public sector net debt ("PSND") as a percentage of GDP as at the end of financial year 2016 is less than in the previous financial year.

4.2 Under section 3 of the Act the Treasury must report on progress towards and compliance with the section 1 duties at the time of laying before Parliament relevant Economic and Fiscal Strategy Reports and Pre-Budget Reports.

4.3 Section 2(1) of the Act provides that the Treasury may impose, by Order, further duties on the Treasury for the purposes of securing sound public finances and consistent with the key principles (specified in section 155(2) of the Finance Act 1998) for any or all of the financial years ending 2011 to 2016.

4.4 This is the first use of the power under section 2(1) and it imposes an obligation on the Treasury to ensure that PSNB expressed as a percentage of GDP for the financial year ending in 2014 is 5.5% or less.).

5. Territorial Extent and Application

5.1 This instrument extends to the whole of the United Kingdom.

6. European Convention on Human Rights

6.1 The instrument does not amend primary legislation. As such, no statement is required.

[2] Mr Alistair Darling HC Hansard 5/1/2010, col 70, Mr Ian Pearson HC Hansard 20/1/2010, col 395, and Lord Myners HL Hansard 10/2/2010, col 736.

7. Policy background

7.1 At the 2009 Pre-Budget Report the Government announced it intended to use this power after Royal Assent of the Act to put in place a further deficit reduction duty, consistent with the Government's fiscal forecast at the 2009 Pre-Budget Report.

7.2 Based on the forecasts set out in the 2009 Pre-Budget Report and at Budget in 2010, the Order contains a more ambitious deficit reduction duty than the duty to halve the deficit which is set out in section 1 of the Act.

8. Consultation outcome

8.1 No consultation has been undertaken.

9. Guidance

9.1 No guidance is being issued.

10. Impact

10.1 An impact assessment has not been prepared for this instrument because the impact assessment which accompanied the Act provides sufficient analysis of the costs and benefits of the legislation.

11. Regulating small business

The instrument does not apply to small businesses.

12. Monitoring & review

12.1 The Order contains provisions for progress reports.

13. Contact

Peter McDonald at HM Treasury, e-mail: peter.mcdonald@hmtreasury.gsi.gov.uk) tel: 020 7270 4605, can answer any questions regarding the instrument.