EXPLANATORY MEMORANDUM TO

THE MERCHANT SHIPPING (GENERAL LIGHTHOUSE AUTHORITIES) (INCREASE OF BORROWING LIMIT) ORDER 2027

2027 No. xxxx

1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Department for Transport and is laid before the House of Commons by Command of His Majesty.

1.2 This memorandum contains information for the Select Committee on Statutory Instruments.

2. Declaration

2.1 Keir Mather MP, the Parliamentary Under-Secretary of State for Aviation, Maritime & Logistics, at the Department for Transport confirms that this Explanatory Memorandum meets the required standard.

2.2 Dave Whyte, Deputy Director for Maritime People & Safety, at the Department for Transport confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Christopher Angell at the Department for Transport can be contacted by email at the following address with any queries regarding the instrument: maritimesafety@dft.gov.uk. Alternatively, the Department can be contacted by telephone: 0300 330 3000.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 This instrument will increase, by £33 million, the maximum amount of borrowing that the General Lighthouse Authorities (GLAs) can access under the Merchant Shipping Act 1995 (the MSA 1995).

4.2 The increase will take the borrowing limit from the current £166 million to £199 million with effect from 31 January 2027.

4.3 This instrument is the third in a series of ten proposed instruments which would increase this limit to £430 million in line with the GLAs' forecast borrowing requirements.

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 England and Wales, Scotland and Northern Ireland.

4.5 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England and Wales, Scotland and Northern Ireland.

5. Policy Context

What is being done and why?

5.1 The GLAs are arms-length bodies of the Department for Transport. They have statutory duties, under the MSA 1995, to maintain marine aids to navigation (lighthouses, buoys, etc), respond to new dangers to navigation safety (such as wrecks) and inspect marine aids to navigation provided by other organisations such as ports and harbours.

5.2 The day-to-day operational costs of the GLAs are met through Light Dues, a hypothecated tax paid by the commercial shipping industry, such that they make no call on the UK Exchequer. Light Dues are paid into the General Lighthouse Fund (GLF), under section 211 of the MSA 1995, which is administered by the Secretary of State for Transport.

5.3 From time to time the GLAs need to make significant capital investments such as purchasing replacements for their fleet of vessels which are vital to the delivery of their statutory duties. Since the GLF does not contain sufficient capital reserves to meet these requirements in full, it is necessary for the GLAs to borrow any additional funding required.

5.4 The MSA 1995 recognised this necessity but placed a maximum limit on the amount of borrowing that the GLAs can access. The source of that borrowing was not specified so the limit is applicable to borrowing from both commercial and government sources. Section 216(2) of the MSA 1995 also provides for that limit to be increased by order but places a restriction on the size of any increase to "£33 million at a time", with the prior approval of HM Treasury.

5.5 The borrowing limit, originally set at £100 million, was introduced by the Merchant Shipping Act 1988 and replicated in the MSA 1995. This limit was, historically, sufficient to meet the borrowing requirements of the GLAs but it has not kept pace with inflation. In context, that figure is worth around £290 million today based on the Bank of England's inflation calculator which uses Consumer Price Index data from the Office of National Statistics from 1988 onwards.

5.6 A programme of vital vessel replacements will see the GLAs' forecast borrowing requirements escalate significantly over the forthcoming decade. Changes in accounting rules, under International Financial Reporting Standards, have also meant that previously excluded expenditure relating to leases is now also classified as borrowing, further increasing the pressure on the borrowing limit.

5.7 Mindful of the restrictions placed on the size of any increase by the MSA 1995, the Department for Transport is making this order now as part of a series which will, subject to future Parliamentary approval, incrementally increase the limit, to ensure that it keeps pace with forecast GLA borrowing requirements.

5.8 All GLA expenditure is subject to ministerial approval on an annual basis and larger capital projects, including their vessel replacement programme, are subject to the Department for Transport's additional investment and wider government spend control clearances before any additional borrowing is approved. All borrowing is paid back by the GLAs with interest. The relationship between the Secretary of State for

Transport and the GLAs is defined in a Framework Document[1] and a separate Annual Report and Accounts for the GLF[2] are laid before Parliament.

What was the previous policy, how is this different?

5.9 There has been no change in policy in relation to the borrowing requirements of the GLAs, but this instrument is necessary to continue raising the statutory borrowing limit to ensure they are able to borrow sufficient capital to provide the necessary equipment to continue to meet their statutory duties.

6. Legislative and Legal Context

How has the law changed?

6.1 Section 215 of the MSA 1995 enables the GLAs to borrow money to meet any expenses incurred, or to be incurred, in connection with the discharge of their statutory duties, subject to obtaining the necessary consents. Section 216(1) of the MSA 1995, as enacted, limited the amount of that borrowing to £100 million but section 216(2) enables the Secretary of State for Transport, following approval from HM Treasury, to increase that limit by order. Section 216 also places restrictions on the size and timing of any increase.

6.2 This instrument is the third in a series of ten proposed orders which uses the Secretary of State's powers, under section 216(2) of the MSA 1995, to increase the GLA's borrowing limit to £199 million, with the ultimate aim of raising the borrowing limit to £430 million.

6.3 The first order in the series was the Merchant Shipping (General Lighthouse Authorities) (Increase of Borrowing Limit) Order 2024 (S.I. 2024/1274) (the 2024 Order) which increased the borrowing limit in section 216(1) of the MSA 1995 from £100 million to £133 million on 31 December 2024.

6.4 The second order in the series was the Merchant Shipping (General Lighthouse Authorities) (Increase of Borrowing Limit) Order 2026 (S.I. 2026/258) which increased the borrowing limit in section 216(1) of the MSA 1995 from £133 million to £166 million on 31 March 2026.

6.5 This instrument further increases the limit, by the maximum £33 million permissible, from £166 million to £199 million with the increase taking effect on 31 January 2027.

Why was this approach taken to change the law?

6.6 Given the restrictions placed by the MSA 1995 on the method and timing of any increase in the GLAs' borrowing limit, this instrument is the only possible approach to make the necessary changes to incrementally increase the borrowing limit to £430 million. Without changing the primary legislation, this must be done in £33 million increments in accordance with the restrictions placed on increases in the MSA 1995.

7. Consultation

Summary of consultation outcome and methodology

7.1 Since this instrument does not impact on businesses, charities or the voluntary sector, no public consultation exercise has been undertaken.

---

[1] https://assets.publishing.service.gov.uk/media/5a82201fed915d74e3401dbc/general-lighthouse-authorities-framework.pdf

[2] https://www.gov.uk/government/collections/dft-annual-reports-and-accounts#general-lighthouse-fund

7.2 The Department for Transport has worked in partnership with the GLAs to forecast their future borrowing needs. This has informed the necessity and timing of the increase in this instrument.

7.3 In accordance with section 216(2) of the MSA 1995, the approval of HM Treasury to make this instrument has been sought and granted.

8. Applicable Guidance

8.1 This instrument's sole purpose is to increase the maximum borrowing limit of the GLAs. It is a purely administrative measure, its operation is automatic, and it does not impose any new regulatory or other burdens on business, charities or the voluntary sector. Additional guidance is, therefore, considered unnecessary.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 The Department for Transport considers this measure is outside of the scope of the Better Regulation Framework as the GLAs are arms-length bodies and do not come under the business activity part of the definition of a regulatory provision. A full Impact Assessment has, therefore, not been prepared for this instrument. A De Minimis Assessment was conducted alongside the first increase in the borrowing limit (made by the 2024 Order) which noted that no, or no significant impacts were foreseen as it does not impose new regulatory, or any other burdens, on business, charities or the voluntary sector. That assessment remains equally applicable to the increase in the borrowing limit made by this instrument and it has been published alongside this instrument on legislation.gov.uk.

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant, impact on business, charities or voluntary bodies because this instrument imposes no new regulatory or other burdens on these organisations.

9.3 The legislation does not impact small or micro businesses.

9.4 There is no, or no significant, impact on the public sector because this instrument does not impose any new burdens on public sector bodies.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring this legislation is for the government to keep it under review to ensure it remains fit for purpose and to make further amendments if forecast GLA borrowing requirements change.

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, Keir Mather MP has made the following statement:

"Having regard to sections 28 to 32 of the Small Business, Enterprise and Employment Act 2015 and the Statutory Review Guidance for Departments published under section 31(3) of that Act, I have decided that it would not be appropriate to make provision for review in this instrument because it does not make or amend a regulatory provision in relation to a qualifying activity. Accordingly, the statutory review provisions are not engaged in this instance."

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 The coming into force date for this instrument is the day after the day on which it is made. Since this instrument is subject to the draft affirmative resolution procedure and does not impose duties on people that are significantly more onerous than before or require them to adopt different patterns of behaviour, a longer period of time between the instrument being made and coming into force is not considered necessary.

12. European Convention on Human Rights

12.1 Keir Mather MP, the Parliamentary Under-Secretary of State for Aviation, Maritime & Logistics at the Department for Transport, has made the following statement regarding Human Rights:

"In my view the provisions of the Merchant Shipping (General Lighthouse Authorities) (Increase of Borrowing Limit) Order 2027 are compatible with the Convention rights."

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.