EXPLANATORY MEMORANDUM TO

THE SCOTLAND ACT 1998 (INCREASE OF BORROWING LIMITS) ORDER 2024

2024 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by the Office of the Secretary of State for Scotland and is laid before the House of Commons by Command of His Majesty.

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

2. Declaration

2.1 Alister Jack, Secretary of State for Scotland at the Office of the Secretary of State for Scotland confirms that this Explanatory Memorandum meets the required standard.

2.2 Rachel Irvine, Deputy Director for Constitutional Policy, at the Office of the Secretary of State for Scotland confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Freya Croxford at the Office of the Secretary of State for Scotland (telephone: 07845 878924 or email: freya.croxford@ukgovscotland.gov.uk) can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

4.1 This Order amends the Scotland Act 1998 to increase the resource borrowing limit set out in section 67(2) of that Act from £1.75 billion to £1,779.351 million, and the capital borrowing limit set out in section 67A(1) from £3 billion to £3,050.316 million.

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

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

5. Policy Context

5.1 In August 2023, the UK and Scottish Governments ('UKG' and 'SG') reached agreement on and published an updated Fiscal Framework agreement for the SG[1] (the '2023 Fiscal Framework agreement'). A Fiscal Framework agreement is an agreement made between the UKG and SG to determine how the SG are funded. This followed a period of review and negotiation between both governments, as required by the terms of the original 2016 Fiscal Framework, which specified that a review must take place after a 'Parliament's worth of experience'.

[1] https://www.gov.scot/publications/fiscal-framework-agreement-between-scottish-uk-governments/

5.2 Amongst other measures, the 2023 Fiscal Framework agreement commits to uprating the SG's resource and capital borrowing limits over time to reflect inflation. The UKG and SG agreed to uprate these limits each year in line with the Office for Budget Responsibility's ('OBR') GDP deflator forecast at the point of the Scottish Budget for the year in question. In practice, this is the GDP deflator forecast published by the OBR in the Autumn prior to the relevant financial year. This Order delivers on that agreement to make provision for an uprating in the 2024/2025 fiscal year.

5.3 Under the 2023 Fiscal Framework agreement, the borrowing limits that require uprating are both annual and cumulative. The annual limits are non-legislative and referenced only in the 2023 Fiscal Framework agreement. As such, no legislative change is required to deliver on that aspect of the 2023 Fiscal Framework agreement. The cumulative limits that are set out in the Scotland Act 1998 must be amended via an order, with the desired policy outcome being to increase the SG's statutory borrowing limits on an annual basis.

What was the previous policy, how is this different?

5.4 The cumulative limit for resource borrowing was previously capped at £1.75 billion. The cumulative limit for capital borrowing was previously capped at £3 billion. The new policy is to uprate these limits annually to take account of inflation. For the 2024/25 fiscal year, the resource borrowing limit will increase to £1,779.351 million and the capital borrowing limit will increase to £3,050.316 million.

6. Legislative and Legal Context

How has the law changed?

6.1 This order increases the cumulative limits for capital borrowing and resource borrowing, as set out in sections 67A(1) and 67(2) of the Scotland Act 1998 respectively. The resource borrowing limit will increase to £1,779.351 million and the capital borrowing limit will increase to £3,050.316 million.

Why was this approach taken to change the law?

6.2 Section 67(3) and section 67A(2) of the Scotland Act 1998 enables the borrowing limits set out in section 67(2) and section 67A(1) of that Act to be amended by way of order.

6.3 Given the policy under the 2023 Fiscal Framework agreement is to increase the borrowing limits set out in section 67(2) and section 67A(2) annually, the UKG considered whether primary legislation, either a Finance Bill or otherwise, should be used to implement the 2024/25 increase and create a revised legal framework for implementing an annual uprating. Primary legislation is the term used to describe main laws passed by the legislative bodies of the UK, namely the UK Parliament in this case.

6.4 A Finance Bill was considered an inappropriate legislative vehicle because the subject matter of a Finance Bill is generally limited to matters relating to taxation and public finance in a broad sense, as opposed to relating to borrowing or expenditure for a specific body, as in this case.

6.5 The UKG considers that an alternative primary legislative vehicle is not available to otherwise implement increases for the 2024/2025 fiscal year at this time.

7. Consultation

7.1 A public consultation was not carried out before the making of this order. There is no statutory duty to consult before changing the limits outlined in section 67(2) and section 67A(1) of the Scotland Act 1998. There is no other requirement to consult, on the basis this order is delivering on an existing agreement between the UKG and SG and relates to funding arrangements available for the SG.

8. Applicable Guidance

8.1 This instrument does not include applicable guidance.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument as the increases to the SG's borrowing limits do not involve additional costs or other substantial impacts to the public, therefore it is not necessary.

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 increases the SG's borrowing limits.

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 increases the SG's borrowing limits.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring this legislation is set out in the SG's Fiscal Framework which states that resources borrowing limits will be uprated annually and that the UK government will amend the Scotland Act 1998 accordingly to increase the aggregate borrowing limit as necessary. This approach to uprating will be kept under review.

10.2 The instrument does not include a statutory review clause.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 As this Order amends the Scotland Act 1998, this will amend a piece of primary legislation. The amendments made in this Order follow the processes specified in the Scotland Act 1998.

12. European Convention on Human Rights

12.1 The Secretary of State has made the following statement regarding Human Rights:

"In my view the provisions of The Scotland Act 1998 (Increase of Borrowing Limits) Order 2024 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 ("relevant European Union Acts").