EXPLANATORY MEMORANDUM TO

THE SCOTLAND ACT 1998 (INCREASE OF BORROWING LIMITS) ORDER 2025

2025 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by 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 Select Committee on Statutory Instruments.

2. Declaration

2.1 Ian Murray, 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 Louise Nicholls, Deputy Director for Constitutional Policy, at the Office of Secretary of State for Scotland confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Cat Carrigan at the Office of the Secretary of the State for Scotland (telephone: 07731348478 or email: Cat.Carrigan1@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

What does the legislation do?

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 £1,779.351 million to £1,834.303 million, and the capital borrowing limit set out in section 67A(1) from £3,050.316 million to £3,144.519 million. This Order also revokes the Scotland Act 1998 (Increase of Borrowing Limits) Order 2024, which has been superseded by this Order.

Where does the legislation extend to, and apply?

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

What is being done and why?

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

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

'2023 Fiscal Framework agreement'). A Fiscal Framework is an agreement made between the UKG and SG to determine how the SG is 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'.

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 draft 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 2025-26 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 £1,779.351 million for the 2024-25 fiscal year. The cumulative limit for capital borrowing was previously capped at £3,050.316 million for the 2024-25 fiscal year. This is the second year of implementation of the policy to uprate limits annually to take account of inflation. For the 2025-26 fiscal year, the resource borrowing limit will increase to £1,834.303 million and the capital borrowing limit will increase to £3,144.519 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 £1,834.303 million and the capital borrowing limit will increase to £3,144.519 million. This Order also revokes the Scotland Act 1998 (Increase of Borrowing Limits) Order 2024, which has been superseded by this Order.

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 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. Given the existing and appropriate powers to deliver this policy through secondary legislation and given those powers were used to effect the policy in 2024, the decision was to use the same powers this year. The UKG considers that an alternative primary legislative vehicle is not available to otherwise implement increases for the 2025-26 fiscal year at this time.

7. Consultation

Summary of consultation outcome and methodology

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 2023 Fiscal Framework which states that resource and capital borrowing limits will be uprated annually and that the UKG 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 2025 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").