EXPLANATORY MEMORANDUM TO

THE MERCHANT SHIPPING (GENERAL LIGHTHOUSE AUTHORITIES) (INCREASE OF BORROWING LIMIT) ORDER 2024

2024 No. 1274

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 Mike Kane MP, the Parliamentary Under Secretary of State for maritime matters 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 Telephone: 0300 330 3000 or email: maritimesafety@dft.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 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 limit from the current £100 million to £133 million with effect from 31 December 2024 in line with the GLAs' forecast borrowing requirements.

Where does the legislation extend to, and apply?

4.3 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.

4.4 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England, 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 costs of the GLAs are met through a hypothecated tax known as Light Dues which are 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, it is necessary for the GLAs to borrow the required funding.

5.4 The MSA 1995 recognised this necessity but placed a limit, currently £100 million, on the amount of borrowing that the GLAs can access. The source of that borrowing was not specified so the limit is equally applicable to borrowing from both commercial and government sources. It also provides, in section 216(2), for that limit to be increased by order but restricted the size of any increase to "*£33 million at a time*" (see paragraph 11), with the approval of HM Treasury.

5.5 The £100 million limit, which was originally introduced by the Merchant Shipping Act 1988 with no subsequent amendment, has been sufficient to meet the borrowing needs of the GLAs to date but the limit has not kept pace with inflation (that figure is worth £270 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 approval, incrementally increase the limit, to ensure that it keeps pace with forecast GLA borrowing requirements.

5.8 The GLAs' 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. The relationship between the Secretary of State for Transport and the GLAs is defined in a Framework Document[1] and an Annual Report and Accounts for the GLF[2] is 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 begin the process of raising the statutory

[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

borrowing limit to ensure they are able to access sufficient capital to provide the necessary equipment to continue to meet their vital 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 defray any expenses incurred, or to be incurred, in connection with the discharge of their statutory duties. Section 216 limits the amount of that borrowing to £100 million but 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 of any increase.

6.2 This instrument is the first exercise of the Secretary of State's powers, under section 216(2) of the MSA 1995, to increase the GLA's borrowing limit. It increases the limit, by the maximum £33 million permissible, with the increase taking effect on 31 December 2024.

Why was this approach taken to change the law?

6.3 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 available mechanism to deliver the necessary changes.

7. Consultation

Summary of consultation outcome and methodology

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

7.2 The Department for Transport has worked in partnership with the GLAs to forecast their future borrowing needs. This has informed the 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 A full Impact Assessment has not been prepared for this instrument because no, or no significant, impact is foreseen. Its purpose is purely administrative, its operation is automatic and it does not impose new regulatory, or any other, burdens on business, charities or the voluntary sector.

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. Mike Kane MP, the Parliamentary Under Secretary of State for maritime matters, 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 Mike Kane MP, the Parliamentary Under Secretary of State for maritime matters, 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 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.