EXPLANATORY MEMORANDUM TO

THE SCOTLAND ACT 1998 (VARIATION OF BORROWING POWER) ORDER 2015

2015 No. [XXXX]

1. 1.1 This Explanatory Memorandum has been prepared by the Scotland Office and is laid before Parliament by Command of Her Majesty.

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

2. Purpose of the instrument

Section 66(1A) of the Scotland Act 1998 provides that the Scottish Ministers may, with the approval of HM Treasury, borrow, by way of loan, sums required by them for the purpose of meeting capital expenditure. This Order amends section 66(1A) to provide that, in addition to being able to borrow by loan, the Scottish Ministers can also issue bonds (other than bonds transferrable by delivery).

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

None

4. Legislative Context

4.1 Section 32 of the Scotland Act 2012 (Borrowing by the Scottish Ministers) amends section 66 of the Scotland Act 1998 to insert (along with other amendments) subsection (1A). Section 66(1A) provides that the Scottish Ministers may, with the approval of HM Treasury, borrow by way of loan any sums required by them for the purpose of meeting capital expenditure.

4.2 Section 32 of the Scotland Act 2012 also amends section 66 of the Scotland Act 1998 to insert subsection (5), which provides that the Secretary of State may by order made with the consent of HM Treasury amend subsection (1A) so as to vary the means by which the Scottish Ministers may borrow money.

4.3 The Scotland Act 2012 (Commencement No. 4) Order 2014 was taken forward by HM Treasury to commence section 32 of the Scotland Act 2012, bringing section 32 into force prior to this Order being made.

4.4 This Order is made under section 66(5) of the Scotland Act 1998, as inserted by section 32 of the Scotland Act 2012.

5. Territorial Extent and Application

This instrument applies to all of the United Kingdom

6. European Convention on Human Rights

The Parliamentary Under Secretary of State for Scotland, the Rt Hon David Mundell MP, has made the following statement regarding Human Rights:

> *"In my view the provisions of the Scotland Act 1998 (Variation of Borrowing Power) Order 2014 are compatible with the Convention rights."*

7. Policy background

7.1 The Scotland Act 2012 received Royal Assent on 1st May 2012. Under that Act, from the financial year 2015/16, the Scottish Ministers will be able to borrow from the National Loans Fund (NLF) (part of the UK Government) for current borrowing to manage its new tax revenues. The Scottish Ministers will also be able to borrow from commercial banks (as well as the NLF) for capital investment, up to a statutory aggregate cap of £2.2 billion. Within the overall limit, HM Treasury has agreed that the Scottish Government can borrow up to an annual limit of 10% of the Scottish Government's capital budget.

7.2 Section 66(5) of the Scotland Act 1998 allows the Secretary of State for Scotland, with the consent of HM Treasury, to further vary the means by which the Scottish Ministers can borrow. This Order varies the means by which the Scottish Ministers can borrow for capital investment to include bond issuance, in line with the other borrowing powers in the Scotland Act 2012, to ensure that the new system of borrowing is flexible and sustainable.

8. Consultation outcome

8.1 From 22nd June 2012 until 14th September 2012, HM Treasury ran a public consultation entitled *The Scotland Act 2012: a consultation on bond issuance by the Scottish Government* (https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/81566/condoc_scotlandact2012_bond_issuance.PDF). This consultation sought views on the potential benefits and disadvantages of bond issuance by the Scottish Ministers for both Scotland and the rest of the UK.

8.2 This consultation received 19 responses, including those from the Scottish Government, a number of potential investors, market participants, representative bodies, academics and organisations associated with other devolved governments. HM Treasury published its summary of these responses, *The Scotland Act 2012: summary of responses to the consultation on Scottish Government bond issuance* on 13th May 2013 (https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/198225/summary_of_responses_to_consultation_on_scottish_bonds_issuance.pdf).

8.3 The UK Government announced on 19th February 2014 that it was granting the Scottish Government the power to issue its own bonds.

9. Guidance

This Order stands alone, guidance is not necessary.

10. Impact

10.1 This instrument has no impact of a regulatory nature on the private sector or civil society organisations and will not impose or reduce costs.

10.2 There is no impact on the public sector.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

The legislation does not apply to small business.

12. Monitoring & review

Since the purpose of this Order is to vary the means by which the Scottish Ministers may borrow money to include bond issuance, no monitoring or review of the effects of this Order is required by the UK Government. Any borrowing by the Scottish Ministers will be scrutinised in the normal way.

13. Contact

Emma Lopinska at the Scotland Office (Tel: 0131 244 9016 or email: emma.lopinska@scotlandoffice.gsi.gov.uk) can answer any queries regarding the instrument.