These notes refer to the Infrastructure (Financial Assistance) Bill as brought from the House of Commons on 16th October 2012 [HL Bill 43]

INFRASTRUCTURE

(FINANCIAL ASSISTANCE) BILL

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes relate to the Infrastructure (Financial Assistance) Bill as brought from the House of Commons on 16th October 2012. They have been prepared by HM Treasury in order to assist the reader of the Bill and help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.

2. The Notes need to be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a clause or part of a clause does not seem to require any explanation or comment, none is given.

SUMMARY AND BACKGROUND TO BILL

3. In July 2012, the Government announced the UK Guarantees scheme to accelerate and bring forward investment in major UK infrastructure projects in response to difficult market conditions. A key problem identified by the UK Government is that persons currently involved in providing infrastructure may find it difficult to obtain private finance. Difficulties in obtaining private finance arise not because of the commercial or economic viability of the individual infrastructure projects but because the capital and banking markets are currently constrained and providers of finance and insurance are taking significantly longer to approve lending to these projects. The Government has agreed in principle to make financial support available to infrastructure projects and this Bill authorises expenditure incurred by the Treasury (or a Secretary of State with the consent of the Treasury) in connection with such support.

TERRITORIAL EXTENT AND APPLICATION

4. Clause 4 sets out the territorial extent of the Bill.

5. The Bill extends to England and Wales, Scotland and Northern Ireland. The Bill does not apply to any devolved matters and therefore does not require any Legislative Consent Motions.

FAST TRACK LEGISLATION

6. The Government intends to ask Parliament to expedite the parliamentary progress of this Bill. In their report on Fast-track Legislation: Constitutional Implications and Safeguards,[1] the House of Lords Select Committee on the Constitution recommended[2] that the Minister responsible for the Bill should make an oral statement to the House of Lords outlining the case for fast-tracking when the Bill is introduced to the House. The details contained in the oral statement should also be set out in a written memorandum included in the Explanatory Notes.

Why is fast-tracking necessary?

7. The financial assistance is designed to assist infrastructure projects that may find it difficult to obtain private finance because of the constraints currently operating on the capital and banking markets. The Government understand that there are currently commercially and economically viable infrastructure projects that are stalled because they cannot secure private finance. The timing of the UK's proposed financial assistance is currently unclear, but the evidence indicates that there are projects that might be waiting only for finance before they can proceed to the construction phase. Accordingly, it is necessary to fast-track the Bill so that the Government can provide financial assistance to projects, which are ready to proceed to construction, as quickly as possible and in order to provide confidence to the markets that the Government will be in a position to do so.

What is the justification for fast-tracking each element of the Bill?

8. The Bill is a short Bill, with few substantive provisions other than to provide for expenditure incurred by the Treasury or Secretary of State in giving or in connection with giving financial assistance to persons in respect of the provision of infrastructure. The other provisions are the imposition of a cap on the maximum amount of financial assistance that may be provided pursuant to the Bill, an order-making power to increase the limit on the maximum amount that financial assistance that may be provided, and an obligation to report to the House of Commons about the financial assistance. These provisions are closely linked to the financial authorisation provision, and need to be read together.

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[1] House of Lords, Select Committee on the Constitution, 15th report of Session 2008-09, Fast track Legislation: Constitutional Implications and Safeguards', HL Paper 116-I. Available at http://www.publications.parliament.uk/pa/ld200809/ldselect/ldconst/116/116.pdf.
[2] ibid, paragraph 186.

What efforts have been made to ensure the amount of time made available for parliamentary scrutiny has been maximised?

9. In the House of Commons the Bill was published on the day it was introduced and arrangements were made for amendments to be accepted in advance of second reading in the House of Commons.

To what extent have interested parties and outside groups been given an opportunity to influence the policy proposal?

10. Given the importance of the package in terms of assisting stalled infrastructure and the need to provide wider economic stimulation, there has been limited opportunity to give interested parties and outside groups an opportunity to influence.

Does the Bill include a sunset clause (as well as any appropriate renewal procedure)? If not, why do the Government judge that their inclusion is not appropriate?

11. At present there are no arrangements for bringing the authorisation to an end. Indeed, it may become clear that providing this financial assistance offers a more efficient way to support the development of some infrastructure in the medium and long term particularly in light of possible permanent changes in the structure of the markets that previously provided private finance to infrastructure projects. In this case the Government would consider continuing the financial assistance to support future infrastructure developments.

Are mechanisms for effective post legislative scrutiny and review in place? If not, why do the Government judge that their inclusion is not appropriate?

12. The Bill provides for regular reports to be made to the House of Commons on arrangements for providing financial assistance entered in to and expenditure incurred pursuant to the Bill, the amount of actual or outstanding contingent liabilities of both the Treasury and the Secretary of State, the sums received, during the reporting period, by the Treasury or the Secretary of State, and the amount of Government's expenditure and liabilities under the financial assistance given in reliance on the Bill.

13. Where money is paid out of the Consolidated Fund, the Treasury is under a duty to present a report to Parliament detailing the payments.

14. In common with all legislation, the Treasury will comply with the agreed process for post-legislative scrutiny.

Has an assessment been made as to whether existing legislation is sufficient to deal with any or all the issues in question?

15. The Treasury considers that existing legislation does not provide authority for the expenditure required for the financial assistance envisaged. Statutory authority for such expenditure is required in accordance with the Concordat of 1932 between the Government and the Public Accounts Committee.[3]

Have the relevant Parliamentary committees been given to opportunity to scrutinise the legislation?

16. Given the importance of the proposals to provide financial assistance to infrastructure projects and to stimulate the economy, the Bill has been prepared at great speed, and therefore Parliamentary committees have not been given an opportunity to scrutinise the legislation. However, the Treasury will be willing to meet with the Treasury Select Committee, or any other committee, although this will be determined by the committees' own agendas.

COMMENTARY

17. Clause 1 provides that there may be paid out of money provided by Parliament expenditure incurred by the Treasury or, with the Treasury's consent, the Secretary of State in giving, or in connection with giving, guarantees and other suitable forms of financial assistance to any person in respect of the provision of UK infrastructure. Clause 1 also provides a non-exhaustive list of matters that fall within the definition of "infrastructure". Clause 1 further provides that where expenditure is required under the terms of an agreement for financial assistance and the Treasury is satisfied that arrangements cannot reasonably be made for the expenditure to be paid out of money provided by Parliament, for example because of timing imperatives imposed by the terms of the agreement, then the Treasury may make a payment out of the Consolidated Fund. Where the Treasury makes a payment out of the Consolidated Fund it must lay a report before Parliament specifying the amount that has been paid out of the Consolidated Fund. Clause 1 makes it clear that the authorisation under this Bill does not apply in relation to financial assistance given under a statutory power. It also makes clear, through the introduction of the concept of "infrastructure expenditure", that the limit on the maximum amount of expenditure that may be incurred under Clause 2, and the reporting requirements in Clause 3, do not apply in relation to expenditure incurred in reliance on authorisation other than that conferred by the Bill – for example, where it is appropriate to rely on the sole authority of supply legislation (which might be the case where departmental expenditure on financial assistance was no more that £1.5 million a year, or was expected to last for no more than two years).

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[3] See Annex 2.1 of Managing Public Money, http://www.hm-treasury.gov.uk/psr_mpm_index.htm

18. Clause 2 provides that the maximum amount of expenditure and actual or contingent liabilities incurred in giving, or in connection with giving, infrastructure assistance , less any sums received by the Treasury or the Secretary of State in connection with infrastructure assistance, must not at any time exceed £50,000 million. The Treasury has an order-making power under subsection (4) to increase the maximum amount of expenditure that the Treasury and Secretary of State may incur in giving, or in connection with giving, infrastructure assistance. There are no limits on the number of occasions when the maximum amount that may be incurred in giving, or in connection with giving, infrastructure assistance may be increased or on the amount by which the maximum amount may be increased on each occasion. Expenditure incurred by the Treasury or the Secretary of State in reliance on any authorisation other than that conferred by Clause 1 does not count in the calculation of this maximum amount.

19. Clause 3 provides that the Treasury is under a duty to report to the House of Commons at twelve monthly intervals, starting on 31st March 2013. The details required to be included in the reports are listed in subsection (3). Subsection (4) provides that the report must also include arrangements entered into before Royal Assent. The effect of subsection (5) is that a report is not required for a reporting period if there is nothing to report at the end of that period.

FINANCIAL EFFECTS

20. The Bill authorises the Treasury and the Secretary of State to incur expenditure and liabilities up to £50,000 million in relation to giving, or in connection with giving, financial assistance to infrastructure projects. Depending on the nature of the financial assistance granted, the effect on the fiscal position may be to increase the UK's level of net debt; the UK will receive fee income, expenses and interest, where appropriate, relative to the level of financial assistance provided to each project.

PUBLIC SECTOR MANPOWER

21. The provisions contained within the Bill have no substantial effect on public service manpower.

IMPACT ASSESSMENT

22. Because the Bill does not have any effect on any other parties other than the Treasury or the Secretary of State an impact assessment was not required.

EUROPEAN CONVENTION ON HUMAN RIGHTS

23. The Bill will not have human rights implications. It is proposed that on introduction, Lord Newby will make a statement of compatibility under section 19(1)(a) of the Human Rights Act.

COMMENCEMENT DATE

24. The Bill will commence on the date of Royal Assent.

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