

# WALES ACT 2014

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS (AND SCHEDULES)

#### Part 2: Finance

##### *Section 20: Borrowing by the Welsh Ministers*

174. This section amends sections 121 and 122 of GOWA 2006, and inserts a new section 122A, to revise the circumstances under which the Welsh Ministers may borrow and to set out the main controls and limits on such borrowing.
175. The section enables the Welsh Ministers to borrow – subject to HM Treasury’s controls and limits – for the following purposes:
- a) to manage in-year volatility of receipts, where actual income for a month differs from the forecast receipts for that month;
  - b) to provide a working balance to the Welsh Consolidated Fund (WCF) in order to manage cash-flow;
  - c) to deal with differences between the full year forecast and outturn receipts for devolved taxes; and
  - d) to fund capital expenditure.
176. *Subsection (1)* introduces the amendments to GOWA 2006.
177. *Subsection (2)* introduces the amendments to the existing borrowing provisions in section 121 of GOWA 2006.
178. *Subsection (3)* replaces subsection (1) in section 121. The new subsection (1):
- re-enacts section 121(1)(a) and (b) of GOWA 2006, which enable Welsh Ministers to borrow temporarily from the Secretary of State to provide a working balance to the WCF and to manage in-year volatility of receipts; and
  - extends the Welsh Ministers’ existing borrowing powers to include borrowing from the Secretary of State across years to fund deviations between full year forecast and outturn receipts of the devolved taxes.
179. *Subsection (3)* also adds two new subsections into section 121((1A) and (1B)):
- Subsection (1A) enables the Welsh Ministers to borrow to fund capital expenditure, subject to HM Treasury’s approval. The borrowing must be in the form of a loan either from the National Loan Fund (through the Secretary of State) or from another lender, such as a commercial bank. The new subsection requires the Welsh Ministers to borrow by way of loan, and they are not permitted to issue Welsh gilts or bonds.
  - Subsection (1B) defines capital expenditure. The definition of capital expenditure is drawn from the rules (provided by HM Treasury to the Welsh Government)

*These notes refer to the Wales Act 2014 (c.29)  
which received Royal Assent on 17 December 2014*

governing the preparation of the Welsh Ministers' accounts under section 131 of GOWA 2006.

180. *Subsection (4)* is a consequential amendment to take account of the fact that not all borrowing need be from the Secretary of State.
181. *Subsection (5)* allows the Secretary of State, by order and with the consent of HM Treasury, to change the sources of borrowing available to Welsh Ministers as set out in the new section 121(1A). Orders under this section are subject to the approval of the House of Commons through the affirmative procedure.
182. *Subsection (6)* introduces the amendments to the existing borrowing provisions in section 122 of GOWA 2006.
183. *Subsection (7)* specifies that the £500 million limit applied to the aggregate outstanding of principal sums borrowed under the existing section 121 now applies to the extended borrowing powers listed in new section 121(1) (that is, it does not include borrowing for capital expenditure under the new subsection (1A)).
184. *Subsections (8) to (9)* amend section 122(3) of GOWA 2006 and allow the Secretary of State, by order and with the consent of HM Treasury, to revise the £500m limit on the Welsh Ministers' current borrowing either upwards or downwards, although never below the initial £500 million. These provisions enable the Secretary of State to increase the amount from time to time, for example to keep pace with inflation or to meet exceptional circumstances. Orders under this section are subject to the approval of the House of Commons through the affirmative procedure.
185. *Subsection (10)* inserts a new section 122A into GOWA 2006 which includes further provisions on capital borrowing.
186. Section 122A(1) provides that the aggregate outstanding of principal sums borrowed under section 121(1A) – borrowing to fund capital expenditure – must not exceed £500 million. This provision, together with that in section 121, means that the total aggregate outstanding of principal (both current and capital) cannot exceed £1 billion.
187. Section 122A(2) and (3) allow the Secretary of State, by order and with the consent of HM Treasury, to revise the £500 million limit either upwards or downwards, but never below the initial £500 million. Orders are subject to the approval of the House of Commons through the affirmative procedure, as set out in new section 122A(4).
188. Section 122A(5), (6) and (7) contain further rules on Welsh Ministers' borrowing to fund capital spending. In particular:
  - *Subsection (5)* provides that lenders are not bound to make enquiries into the power to borrow (such as checking whether the Welsh Government has breached its borrowing limits or is acting without HM Treasury approval). In the absence of such a provision, lenders could fear that doubtful vires could render loans unenforceable and could see the Welsh Government as a risky borrower.
  - *Subsection (6)* states that Welsh Ministers are prohibited from mortgaging or charging any property as security for money which they have borrowed (but this does not affect the rule in section 121(3) of GOWA 2006 that borrowing is to be charged on the WCF).
  - *Subsection (7)* provides that any security given in breach of *subsection (6)* is unenforceable.