EXPLANATORY MEMORANDUM TO

THE GOVERNMENT OF WALES ACT 2006 (VARIATION OF BORROWING POWER) ORDER 2018

2018 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by the Office of the Secretary of State for Wales (the Wales Office) and is laid before the House of Commons by Command of Her Majesty.

1.2 This memorandum contains information for the Select Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 Section 121(1A) of the Government of Wales Act 2006 provides that Welsh Ministers may, with the approval of HM Treasury, borrow, by way of loan, amounts required by them for the purpose of meeting capital expenditure. This Order amends section 121(1A) to provide that, in addition to being able to borrow by loan, the Welsh Ministers can also issue bonds (other than bonds transferrable by delivery).

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 This entire instrument applies to England and Wales only and is a financial instrument for the purposes of Standing Order No. 83T of the Standing Orders of the House of Commons relating to Public Business.

3.3 In the view of the Department, for the purposes of House of Commons Standing Order No. 83P of the Standing Orders of the House of Commons relating to Public Business, the subject-matter of this instrument would not be within the devolved legislative competence of any of the Northern Ireland Assembly as a transferred matter, the Scottish Parliament or the National Assembly for Wales if equivalent provision in relation to the relevant territory were included in an Act of the relevant devolved legislature.

4. Extent and Territorial Application

4.1 The extent of this instrument is England and Wales.

4.2 The territorial application of this instrument is England and Wales.

5. European Convention on Human Rights

5.1 The Secretary of State for Wales, Alun Cairns MP, has made the following statement regarding Human Rights:

"In my view the provisions of the Government of Wales Act 2006 (Variation of Borrowing Power) Order 2018 are compatible with the Convention rights."

6. Legislative Context

6.1 Section 20 of the Wales Act 2014 (Borrowing by Welsh Ministers) amends section 121 of the Government of Wales Act 2006 to insert (along with other amendments) subsection (1A). Section 121(1A) provides that Welsh Ministers may, with the approval of HM Treasury, borrow by way of loan any amounts required by them for the purpose of meeting capital expenditure.

6.2 Section 20 of the Wales Act 2014 also amends section 121 of the Government of Wales Act 2006 to insert subsection (4), 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 Welsh Ministers may borrow money.

6.3 This Order is made under section 121(4) of the Government of Wales Act 2006, as inserted by section 20 of the Wales Act 2014.

7. Policy background

What is being done and why?

7.1 The Government of Wales Act 2006, as amended by the Wales Act 2014, enables Welsh Ministers to borrow from the National Loans Fund (NLF) (part of the UK Government) to manage current expenditure as set out in section 121(1)(a) to (c). The Welsh Ministers are also able to borrow from commercial banks (as well as the NLF) for capital expenditure, up to a statutory aggregate cap of £1 billion. HM Treasury has agreed that the Welsh Government can borrow annually up to 15% of this overall borrowing limit.

7.2 Section 121(4) of the Government of Wales Act 2006 allows the Secretary of State for Wales, with the consent of HM Treasury, to vary the means by which the Welsh Ministers can borrow money.

7.3 In the Command Paper *Powers for a Purpose: Towards a Lasting Devolution settlement for Wales* (Cm 9020[1]) the Government committed to extend the borrowing powers for the Welsh Government to issue bonds to borrow for capital expenditure.

7.4 In line with this commitment, this Order extends the means by which the Welsh Ministers can borrow for capital investment to include bond issuance to ensure the system of borrowing is flexible and sustainable. It does not alter the statutory aggregate cap for Welsh Ministers' borrowing or the annual borrowing limit within this cap.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

[1] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/408587/47683_CM9020_ENGLISH.pdf

9. Consolidation

9.1 This Order amends section 121(1A) of the Government of Wales Act 2006; consolidation is therefore unnecessary.

10. Consultation outcome

10.1 The Commission on Devolution in Wales, known as the Silk Commission, reviewed the case for the devolution of fiscal powers to the National Assembly for Wales. Its report *Empowerment and Responsibility: Financial Powers to Strengthen Wales*[2] published in November 2012 recommended, as part of its wider recommendations on extending the borrowing powers of Welsh Ministers, that the Welsh Government should be able to issue its own bonds.

10.2 The Command Paper *Wales Bill: Financial Empowerment and Accountability* (Cm 8838[3]) published alongside the introduction of the Wales Bill in 2014, which implemented the majority of the Silk Commission's recommendations, noted the Government was willing to consider further whether bond issuance might be appropriate alongside the package of powers initially being devolved by the Bill.

11. Guidance

11.1 No formal guidance has been, or will be, issued in relation to this Order.

12. Impact

12.1 There is no impact on business, charities or voluntary bodies.

12.2 There is no impact on the public sector.

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

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 Since the purpose of this Order is to vary the means by which the Welsh 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 Welsh Ministers will be scrutinised in the normal way.

14.2 Section 23 of the Wales Act 2014 requires the Secretary of State and Welsh Ministers to report annually on the implementation and operation of Part 2 (finance) of the Wales Act 2014. The UK Government's third implementation report was published on 14 December 2017. Both Governments will continue to report annually, with final reports being made on or as soon as practicable after the first anniversary of the day on which the last provisions of Part 2 are implemented.

[2] http://webarchive.nationalarchives.gov.uk/20140605075525/http://commissionondevolutioninwales.independent.gov.uk/files/2013/01/English-WEB-main-report1.pdf

[3] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/294470/Wales_Bill_Command_Paper_-_English.pdf

15. Contact

15.1 David Harries at the Office of the Secretary of State for Wales Telephone: 02920 92 4203 or email: David.Harries@walesoffice.gov.uk can be contacted with any queries regarding the instrument.

15.2 Geth Williams at the Office of the Secretary of State for Wales can confirm that this Explanatory Memorandum meets the required standard.

15.3 Alun Cairns MP, Secretary of State for Wales at the Office of the Secretary of State for Wales can confirm that this Explanatory Memorandum meets the required standard.