

Finance Committee

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Borrowing powers of the Welsh Ministers under the Welsh Development Agency Act 1975, and the background to them

1. This note summarises the background and legal position with regard to the borrowing powers of the Welsh Ministers under the Welsh Development Agency Act 1975 ("the 1975 Act").
2. The Welsh Development Agency ("the Agency") was established under the 1975 Act. The Secretary of State and the Treasury had various functions under the 1975 Act. These included:
 - a function for the Secretary of State to give consent to borrowing by the Agency from persons other than the Secretary of State and the Agency's wholly owned subsidiaries;
 - a function for the Treasury to approve the same;
 - a function for the Secretary of State to set the limit on the aggregate outstanding amount of:
 - general external borrowing by the Agency and its subsidiaries;
 - sums issued by the Treasury fulfilling guarantees given by it¹ in respect of Agency borrowing;
 - sums paid to the Agency by the Secretary of State; and
 - loan guarantees given by the Agency.
3. The Government of Wales Act 1998 set up the National Assembly for Wales and provided for Orders in Council to transfer functions from Ministers of the Crown to the National Assembly for Wales.
4. In 1999 an Order in Council (the National Assembly for Wales (Transfer of Functions) Order 1999²) duly transferred most of the *Minister of the Crown* functions under the 1975 Act to the National Assembly for Wales. This transfer included the three functions mentioned in the three bullet points in paragraph 2 above, save that the function of approving borrowing which was not in sterling remained with the Treasury.
5. The Government of Wales Act 1998 also gave power to the National Assembly for Wales to (by order) abolish the Agency, transfer its functions to itself and to make any appropriate consequential, incidental, supplementary etc provisions (including amending or repealing enactments).
6. The Agency was duly abolished and its functions transferred to the National Assembly for Wales in April 2006, by the Welsh Development Agency (Transfer of Functions to the National Assembly for Wales and Abolition) Order 2005.³
7. This had the effect of uniting in one body (i.e. the National Assembly for Wales) the functions of the Agency and those Minister of the Crown functions under the 1975 Act which had been transferred to the National Assembly for Wales by the 1999 Order in Council.

¹ The Treasury has power to give guarantees under paragraph 6 of Schedule 3 to the 1975 Act.

² S.I. 1999/672.

³ S.I. 2005/3226.

8. Accordingly, by way of making consequential etc provision, S.I. 2005/ 3226 also removed from the 1975 Act the former Minister of the Crown functions, including those three mentioned in paragraph 2 above, because they were now otiose.
9. For example, the National Assembly for Wales had acquired in 1999 the Secretary of State's function of consenting to borrowing by the Agency; in 2006 it acquired the Agency's borrowing power. As it made no sense for the Assembly to have to consent to its own borrowing, the consent function was otiose.
10. Similarly, the National Assembly for Wales had acquired in 1999 the Secretary of State's function of setting a limit on the aggregate outstanding amount of general external borrowing by the Agency and other items. It made no sense for the Assembly to set a limit on its own borrowing and therefore that function was otiose.
11. The Government of Wales Act 2006 established the Welsh Government (of which the Welsh Ministers are the main legal part) as an executive, and reconstituted the National Assembly for Wales as a legislature and body to scrutinise the Welsh Government.
12. The Government of Wales Act 2006 also transferred to the Welsh Ministers most of the functions of the "old" National Assembly for Wales, including those functions which the National Assembly for Wales had acquired from the Agency in 2006. This included the borrowing powers.
13. Accordingly, as a result of the sequence of legislation described above, there is no legal limit on the amount the Welsh Ministers may borrow under the 1975 Act.
14. Equally, there is no legal requirement for the Welsh Ministers to obtain Minister of the Crown consent to the exercise of their borrowing powers under the 1975 Act, save that Treasury approval is required if the Welsh Ministers borrow other than in sterling (because that Treasury approval function was not transferred to the "old" Assembly in 1999, and therefore could not be said to be otiose when the ex-Minister of the Crown functions and the ex-Agency functions were united in the body of the National Assembly for Wales in 2006).

Summary of the borrowing powers of the Welsh Ministers under the Welsh Development Agency Act 1975

15. The legal power to borrow for the purposes of the Welsh Ministers' functions under the 1975 Act is in Schedule 3 to that Act, which is operative by virtue of section 18. Paragraph 3 provides that:

For the purpose of exercising their functions under the 1975 Act, the Welsh Ministers may borrow money from any person (including their wholly owned subsidiaries), but any borrowing in a currency other than sterling requires the approval of the Treasury.
16. The majority of the main functions of the Welsh Ministers under the 1975 Act are set out in section 1(3) and are:
 - (a) to promote Wales as a location for businesses⁴, or assist or concert its

⁴ "business" is defined as including any industrial, commercial or professional activities (whether or not with a view to profit) and the activities of any government department or any local or other public authority.

promotion as such a location;

- (b) to provide finance for persons carrying on or intending to carry on businesses;
- (c) to carry on businesses and to establish and carry on new businesses;⁵
- (d) otherwise to promote or assist the establishment, growth, modernisation or development of businesses, or a particular business or particular businesses;
- (da) to make land available for development;
- (f) to provide sites, premises, services and facilities for businesses;
- (g) to manage sites and premises for businesses;
- (h) to bring derelict land into use or improve its appearance;
- (i) to undertake the development and redevelopment of the environment;
- (j) to promote the private ownership of interests in businesses by the disposal of securities and other property held by the Welsh Ministers or any of their subsidiaries.

17. The Welsh Ministers' functions under the 1975 Act may be exercised for any of the purposes set out in section 1(2), which are:

- (a) to further the economic and social development of Wales or any part of Wales, and in that connection to provide, maintain or safeguard employment;
- (b) to promote efficiency in business and international competitiveness in Wales;
- (d) to further the improvement of the environment in Wales (having regard to existing amenity).

18. Therefore, the purposes for which the Welsh Ministers may exercise their functions under the 1975 Act are wide, encompassing both the economic and social development of Wales, and improving the environment in Wales.

19. Section 1.(6) gives the Welsh Ministers a power to do anything, whether in Wales or elsewhere, which is calculated to facilitate the discharge of their functions set out in section 1(3) above, or is incidental or conducive to their discharge.

20. Section 1(7) provides that the Welsh Ministers have power in connection with their functions under the 1975 Act:

- (a) to acquire, hold and dispose of securities;
- (b) to form bodies corporate;
- (c) to form partnerships with other persons;
- (d) to make loans;
- (e) to guarantee obligations (arising out of loans or otherwise) incurred by other persons;
- (f) to make grants;
- (g) to act as agent for other persons;

⁵ The Welsh Ministers can only exercise this function through subsidiaries.

- (h) to acquire and dispose of land, plant, machinery and equipment and other property (land may be acquired by agreement or compulsorily);
- (i) to manage land, and to develop land and carry out works on land, and to maintain works or assist in their maintenance;
- (k) to make land, plant, machinery and equipment and other property available for use by other persons;
- (l) to provide advisory or other services or facilities in relation to any of their functions, or assist in their provision; and
- (m) to promote or assist in the promotion of publicity relating to any of the functions of the Welsh Ministers under the 1975 Act.

21. Section 9 of the 1975 Act clarifies that the powers of the Welsh Ministers under section 1(3) to provide and manage sites and premises for businesses, to provide related facilities, and to make land available for development, includes the power to modernise, adapt or reconstruct buildings. The Welsh Ministers may also acquire and provide temporary sites for the business occupants of buildings which are being modernised etc under this power.
22. Section 9 also allows the Welsh Ministers to provide business premises rent free for such time as they consider appropriate, if they consider that there are circumstances which justify the giving of special assistance.
23. Section 10 gives the Welsh Ministers the power to undertake or assist in the provision of means of access or other services or facilities in or for an area, where this appears expedient to contribute to or support the development of businesses in that area.
24. The Welsh Ministers have a duty under section 1(14) of the Act to publish from time to time programmes for the performance of their functions under the 1975 Act. Such programmes can be implemented by the Welsh Ministers themselves, jointly with others or through others acting on the Welsh Ministers' behalf, for the improvement, development or redevelopment of the environment in Wales.
25. Section 15(2) allows the Welsh Ministers to make payments to any authority or person of such amount and in such manner as it may determine, for carrying out work which the Welsh Ministers consider will contribute to the purposes of such a programme.
26. Section 16 gives the Welsh Ministers powers in relation to derelict, neglected, or unsightly land where they are satisfied steps should be taken for bringing it into use or improving its appearance. They can acquire or carry out works on the land, or give a grant to the local authority for the area to do the same.
27. There is a duty on the Welsh Ministers to secure that none of their wholly owned subsidiaries formed under the 1975 Act borrow money otherwise than from them or another of their wholly owned subsidiaries, except with their (the Welsh Ministers) consent.⁶

⁶ Paragraph 5 of Schedule 3 to the 1975 Act.

28. In summary, legally, Welsh Ministers have extensive borrowing powers following the transfer of powers outlined in the Welsh Development Agency Act 1975. The purposes for which the Welsh Ministers may exercise their functions under the 1975 Act are wide, encompassing both the economic and social development of Wales, and improving the environment in Wales.