

2007 No. 726

CONSTITUTIONAL LAW

DEVOLUTION, WALES

**The Government of Wales Act 2006 (Transitional Provisions)
(Finance) Order 2007**

<i>Made</i> - - - -	<i>8th March 2007</i>
<i>Laid before Parliament</i>	<i>9th March 2007</i>
<i>Coming into force</i> - -	<i>1st April 2007</i>

The Secretary of State makes the following Order in exercise of powers conferred on him by section 162(2), (3) and (4) of the Government of Wales Act 2006(a).

Citation and commencement

1.—(1) This Order may be cited as the Government of Wales Act 2006 (Transitional Provisions) (Finance) Order 2007.

(2) This Order shall come into force on 1st April 2007.

Transitional provisions

2. Schedule 11 to the Government of Wales Act 2006 (transitional provisions) is modified as follows.

3. For paragraph 53 and the heading immediately preceding it substitute—

“Payments into the Welsh Consolidated Fund

53. No later than four weeks after a certified copy of the accounts of the Assembly constituted by the Government of Wales Act 1998 for the financial year ending with 31st March 2007 is, under section 97(5)(b) of that Act, laid before the Assembly constituted by this Act, the Welsh Ministers must pay into the Welsh Consolidated Fund a sum equal to the total amount of all monies standing to the credit of the Assembly constituted by the Government of Wales Act 1998 immediately before 1st April 2007.

53A. No later than four weeks after a certified copy of the accounts of the Public Services Ombudsman for Wales (“the Ombudsman”) for the financial year ending with 31st March 2007 is, under paragraph 17(2)(b) of Schedule 1 to the Public Services Ombudsman (Wales) Act 2005, laid before the Assembly, the Ombudsman must pay into the Welsh Consolidated Fund a sum equal to the total amount of all monies standing to the credit of the Ombudsman immediately before 1st April 2007.

(a) 2006 c.32.

53B.—(1) No later than four weeks after a certified copy of the accounts of the Auditor General for the financial year ending with 31st March 2007 is laid before the Assembly under paragraph 15(3)(b) of Schedule 8 (as it applies by virtue of paragraph 64C of this Schedule) the Auditor General must pay the required amount into the Welsh Consolidated Fund.

(2) “The required amount” means a sum equal to the total amount of all monies standing to the credit of the Auditor General immediately before 1st April 2007 except monies within both sub-paragraph (3) and sub-paragraph (4).

(3) Monies are within this sub-paragraph if they represent—

- (a) fees charged by the Auditor General by virtue of Part 1 of the Local Government Act 1999 (best value audits and inspections),
- (b) grants made to the Auditor General under section 33(3)(b) of that Act (grants in respect of expenditure under that Act),
- (c) fees charged by the Auditor General by virtue of Part 2 of the Public Audit (Wales) Act 2004 (local government audit), or
- (d) fees or other sums received by the Auditor General by virtue of section 96C of the Government of Wales Act 1998 (arrangements with relevant authorities).

(4) Monies are within this sub-paragraph if they are retained by the Auditor General for use in connection with the exercise of the functions conferred or imposed by, or the exercise of functions pursuant to—

- (a) Part 1 of the Local Government Act 1999,
- (b) Part 2 of the Public Audit (Wales) Act 2004, or
- (c) section 96C of the Government of Wales Act 1998.”.

4. For paragraph 62 (contingencies) substitute—

“Contingencies

62.—(1) Until the end of the initial period, section 128 has effect as if for the words after “this section” in subsections (4) and (5) there were substituted in each place “must not exceed £50 million.”.

(2) Until the beginning of the initial period, section 128(1) to (6) has effect as if the references to the Welsh Ministers were to two or more members of the executive committee within the meaning of the Government of Wales Act 1998.

(3) Where authorisation is given under section 128 before the beginning of the initial period, that section has effect as if for subsection (7) there were substituted—

“(7) Where two or more members of the executive committee within the meaning of the Government of Wales Act 1998 authorise the use of resources or the payment of amounts under this section, that committee must, as soon as possible, lay before the Assembly constituted by that Act a report setting out—

- (a) the resources authorised to be used or the amounts authorised to be paid,
- (b) the services or purposes for which the resources were authorised to be used, or the amounts were authorised to be paid, and
- (c) why it was considered necessary to authorise the use of the resources, or the payment of the amounts, under this section.”.

(4) During the initial period, section 128(1) to (6) has effect as if the references to the Welsh Ministers were to two or more members of the Assembly constituted by the Government of Wales Act 1998 (as it continues in existence by virtue of paragraph 22) not including the person who immediately before the beginning of the initial period held office as the presiding officer.

(5) Where authorisation is given under section 128 during the initial period, that section has effect as if for subsection (7) there were substituted—

“(7) Where two or more members of the Assembly constituted by the Government of Wales Act 1998 authorise the use of resources or the payment of amounts under this section, that Assembly (as it continues in existence by virtue of paragraph 22 of Schedule 11) must, as soon as possible, prepare a report for the Welsh Ministers setting out—

- (a) the resources authorised to be used or the amounts authorised to be paid,
- (b) the services or purposes for which the resources were authorised to be used, or the amounts were authorised to be paid, and
- (c) why it was considered necessary to authorise the use of the resources, or the payment of the amounts, under this section.

(8) The Welsh Ministers must lay the report before the Assembly constituted by this Act as soon as reasonably practicable after the end of the initial period.”.

5.—(1) In paragraph 63(2)—

- (a) for “reference” substitute “references”, and
- (b) after “subsection (1)” insert “and subsection (3)”.

(2) For paragraph 63(3) substitute—

“(3) That section has effect as if for the references in subsection (4) to the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission there were substituted a reference to the Assembly constituted by the Government of Wales Act 1998.”.

6. After paragraph 63 insert—

“Preparation of Assembly’s annual accounts for financial year ending 31st March 2007

63A. The function of the Assembly constituted by the Government of Wales Act 1998 under section 97 of that Act of preparing accounts of that Assembly for the financial year ending with 31st March 2007 shall transfer to the Welsh Ministers at the end of the initial period.

Preparation of whole of government accounts for year ending 31st March 2007

63B. The function of the Assembly constituted by the Government of Wales Act 1998 under section 101A of that Act of preparing whole of government accounts for the financial year ending with 31st March 2007 shall transfer to the Welsh Ministers at the end of the initial period.”.

7. After paragraph 64 (Auditor General) insert—

“Auditor General’s staff

64A. The members of staff employed by the Auditor General immediately before the commencement of the repeal of section 92 of the Government of Wales Act 1998 are to be taken after that time to have been appointed to that employment under paragraph 7 of Schedule 8.

Audit of Auditor General’s accounts

64B. The person appointed as the auditor of the accounts for the Auditor General under section 94(1) of the Government of Wales Act 1998 immediately before the commencement of the repeal of that section is to be taken after that time to have been appointed by the Assembly constituted by this Act under paragraph 14(1) of Schedule 8.

64C. Paragraph 15 of Schedule 8 (audit of accounts) applies to accounts prepared by the Auditor General under section 93(8) of the Government of Wales Act 1998 for the financial year ending with 31st March 2007 as it applies to accounts prepared under paragraph 13 of that Schedule.

Audit Committee reports

64D. The reference in section 143(1) (Audit Committee reports) to any accounts, statement of accounts or report laid before the Assembly includes any accounts, statement of accounts or report laid before the Assembly constituted by the Government of Wales Act 1998.

Examinations into use of resources by the 1998 Assembly

64E.—(1) Notwithstanding the repeal of section 100 of the Government of Wales Act 1998 (examination into Assembly's use of resources) the Auditor General may carry out, or continue to carry out, examinations into the economy, efficiency and effectiveness with which the Assembly constituted by that Act used its resources in discharging its functions.

(2) Section 135 of this Act applies to an examination carried out pursuant to subparagraph (1) as it applies to an examination of the kind mentioned in subsection (1) of that section.

Remuneration of the Auditor General

64F. Any sums required by the Assembly constituted by the Government of Wales Act 1998 for the making of payments under section 91(1), (2) or (4) of that Act (remuneration of the Auditor General for Wales) shall, to the extent that they relate to the financial year beginning with 1st April 2007, be charged on the Welsh Consolidated Fund.

Remuneration etc. of the Public Services Ombudsman for Wales

64G. Any sums required by the Assembly constituted by the Government of Wales Act 1998 for the making of payments under paragraph 9(1), (2) and (5) of Schedule 1 to the Public Services Ombudsman (Wales) Act 2005 (remuneration of Public Services Ombudsman for Wales) or paragraph 10 of that Schedule (expenses) shall, to the extent that they relate to the financial year beginning with 1st April 2007, be charged on the Welsh Consolidated Fund.”.

8th March 2007

Nick Ainger
Parliamentary Under Secretary of State for Wales
Wales Office

EXPLANATORY NOTE

(This note is not part of the Order)

This Order modifies the transitional provisions in Schedule 11 to the Government of Wales Act 2006 (“GOWA 2006”), which modify the application of the finance provisions in Part 5 of GOWA 2006.

Article 3 amends the transitional provision concerning payments into the Welsh Consolidated Fund, to be established under section 117 of GOWA 2006. It substitutes for the existing paragraph 53 of Schedule 11 a new paragraph 53 which requires the Welsh Ministers to pay into the Welsh Consolidated Fund a sum equal to the total of all monies standing to the credit of the Assembly constituted by the Government of Wales Act 1998 (“the 1998 Assembly”) immediately before 1st April 2007. This payment must be made no later than 4 weeks after the date on which a copy of the certified accounts of the 1998 Assembly for the financial year 2006/2007 is laid before the Assembly constituted by GOWA 2006 (“the 2006 Assembly”) under section 97(5)(b) of the Government of Wales Act 1998 (“GOWA 1998”). Section 97 of GOWA 1998 will continue in force, by virtue of section 161(6) of GOWA 2006, until it has been complied with for the financial year ending 31st March 2007.

Article 3 also inserts two new paragraphs into Schedule 11 immediately after paragraph 53. New paragraph 53A provides that the Public Services Ombudsman for Wales (“the Ombudsman”) must pay into the Welsh Consolidated Fund a sum equal to the total of all monies held by the Ombudsman immediately before the 1st April 2007. This payment must be made no later than 4 weeks after the date on which the certified accounts of the Ombudsman for the financial year ending with 31st March 2007 is laid before the 2006 Assembly under paragraph 17(2)(b) of Schedule 1 to the Public Services Ombudsman (Wales) Act 2005 c.10. New paragraph 53B(1) provides that the Auditor General for Wales (“the Auditor General”) must pay into the Welsh Consolidated Fund a sum equal to the total of all monies held by the Auditor General immediately before the 1st April 2007. This payment must be made no later than 4 weeks after the date on which a copy of the certified accounts of the Auditor General for the financial year ending with 31st March 2007 is laid before the 2006 Assembly under paragraph 15 of Schedule 8 to GOWA 2006. However paragraph 53B(2) excludes certain monies from that which the Auditor General must pay into the Welsh Consolidated Fund. Excluded from the requirement to pay into the Welsh Consolidated Fund is income which the Auditor General has earned through the exercise of functions related to local government in Wales and retained for the purposes of carrying out those functions and sums received by virtue of section 96C of GOWA 1998 and retained for the purposes of the Auditor General’s functions under that section. Similar provisions to those set out in paragraphs 53B(3) and (4) are made in paragraphs 9(3) and (4) of Schedule 8 to GOWA 2006.

Article 4 substitutes for paragraph 62 of Schedule 11 a new paragraph 62 concerning the application of section 128 of GOWA 2006. Section 128 enables the Welsh Ministers to authorise the use of resources or the payment of amounts which are necessary in the public interest and are urgent. This power comes into force on 1st April 2007 and for the period between 1st April and the end of the initial period section 128 shall have effect as amended by new paragraph 62. The initial period is defined in section 161(5) of GOWA 2006 as beginning with the day of the Assembly general election in May 2007 and ending with the day on which the first appointment of the First Minister is made under section 46 of GOWA 2006.

New paragraph 62 provides that until the end of the initial period section 128 may be used to authorise the use of up to £50 million in resources and payments out of the Welsh Consolidated Fund. The power to give such authorisation and the duty to report following such authorisation will depend on when the authorisation is given. Prior to the beginning of the initial period authorisation may be given by two or more members of the executive committee within the meaning of GOWA 1998 (“the executive committee”) and the executive committee must lay a report before the 1998 Assembly (*see* section 56 of GOWA 1998 as to that committee, which under the standing orders of the 1998 Assembly is known as the Assembly Cabinet). During the initial period authorisation may be given by two or more members of the Assembly constituted by GOWA 1998 (as it continues in existence by virtue of paragraph 22 of Schedule 11 to GOWA

2006) excluding the person who was the presiding officer immediately before the beginning of the initial period. The Assembly must then prepare a report in readiness for the Welsh Ministers who must, as soon as reasonably practicable after the end of the initial period, lay the report before the 2006 Assembly.

Article 5 amends paragraph 63 of Schedule 11, which modifies the application of section 129 of GOWA 2006 (approvals to draw) prior to the end of the initial period. Section 129 makes provision for the drawing of money out of the Welsh Consolidated Fund. It enables the Welsh Ministers to make a request for the grant of an approval to draw and requires requests to be approved by the Auditor General. Article 5 of this Order further modifies the application of section 129(1) and (3) of GOWA 2006 by making amendments to paragraph 63. It provides that in section 129(3) as well as in section 129(1) references to the Welsh Ministers shall, before the beginning of the initial period, be to a member of the executive committee and during the initial period be to a member of the Assembly constituted by GOWA 1998 (as it continues in existence by virtue of paragraph 22 of schedule 11 to GOWA 2006) excluding the person who was the presiding officer immediately before the beginning of the initial period. Where an approval to draw is granted by the Auditor General in response to a request made prior to the end of the initial period the Paymaster General must make the funds available to the 1998 Assembly.

Article 6 inserts into Schedule 11, immediately after paragraph 63, two new paragraphs. New paragraph 63A modifies the application, in relation to the accounts of the 1998 Assembly for 2006-07, of section 97 of GOWA 1998. Section 97, places a duty on the 1998 Assembly to prepare accounts and to submit these accounts to the Auditor General no later than 30th November of the following financial year. Subsection (5)(a) requires the Auditor General to examine and certify the accounts and subsection (5)(b) requires the Auditor General to lay a copy of the certified accounts before the Assembly. The purpose of new paragraph 63A is to ensure that from the end of the initial period the duty to prepare and submit the accounts for 2006-07 transfers to the Welsh Ministers. New paragraph 63B makes similar modifications in relation section 101A of GOWA 1998 (whole of Government of Wales accounts) which like section 97 is saved from repeal until it has been complied with.

Article 7 inserts into Schedule 11 a number of new provisions concerning the staff of the Auditor General, the audit of the Auditor General's accounts, the remit of the Audit Committee of the 2006 Assembly, the power of the Auditor General to carry out value for money examinations into the use of resources by the 1998 Assembly and the remuneration of the Auditor General and the Ombudsman out of the Welsh Consolidated Fund.

Paragraph 64A provides clarification as to the position of staff employed by the Auditor General. It makes it clear that staff employed by the Auditor General immediately before the repeal of section 92 of GOWA 1998 are to be taken after that time as having been appointed by the Auditor General to their employment under paragraph 7 of Schedule 8 to GOWA 2006.

Paragraph 64B provides clarification as to the position of the auditor of the accounts of the Auditor General. It similarly makes it clear that any auditor appointed under section 94(1) of GOWA 1998 immediately before the repeal of that section shall thereafter be taken to have been appointed by the 2006 Assembly under paragraph 14(1) of Schedule 8 to GOWA 2006.

Paragraph 64C applies paragraph 15 of Schedule 8 to GOWA 2006 to accounts for the financial year ending with the 31st March 2007 prepared by the Auditor General under section 93(8) of GOWA 1998. Consequently, accounts prepared under section 93(8) of GOWA 1998 must be submitted by the Auditor General to the auditor appointed to audit the accounts of the Auditor General no later than 31st August 2007.

Paragraph 64D amends section 143(1) of GOWA 2006 to enable the Audit Committee of the 2006 Assembly to consider and lay before that Assembly a report on, any accounts, statement of accounts or report laid before the 1998 Assembly.

Paragraph 64E enables the Auditor General to carry out, or continue to carry out, value for money examinations into the activities of the 1998 Assembly, notwithstanding the repeal of section 100 of GOWA 1998.

Paragraphs 64F and 64G provide that sums required by the 1998 Assembly for the making of remuneration payments to the Auditor General or the Ombudsman and for meeting the expenses of the Ombudsman shall, to the extent that they relate to the financial year beginning with 1st April 2007, be a charge on the Welsh Consolidated Fund.

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