

**EXPLANATORY MEMORANDUM TO**  
**THE GOVERNMENT OF WALES ACT 2006 (TRANSITIONAL**  
**PROVISIONS) (FINANCE) ORDER 2007**

**2007 No. 726**

1. This explanatory memorandum has been prepared by The Wales Office and is laid before Parliament by Command of Her Majesty.

2. **Description**

This Order modifies the transitional provisions set out in Schedule 11 to the Government of Wales Act 2006 (“GOWA 2006”) in respect of the application of the finance provisions in Part 5 (sections 117 to 145) of GOWA 2006. The transitional provisions deal with the period of transition between the financial arrangements under the Government of Wales Act 1998 (“GOWA 1998”) and the financial arrangements under GOWA 2006.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

None

4. **Legislative Background**

- 4.1 This Order, amongst others, is required to make provision for the transition between the arrangements for a National Assembly for Wales under the Government of Wales Act 1998 (“the GOWA 1998 Assembly”), and the new arrangements under GOWA 2006.

- 4.2 At present, the GOWA 1998 Assembly is a corporate body, and there is no legal separation of the executive and legislature within that body. Under GOWA 2006, there will be a separate legislature (the National Assembly for Wales, “the 2006 Assembly”) and executive (the Welsh Assembly Government, including the Welsh Ministers), together with the National Assembly for Wales Commission that will provide property, staff and services to the 2006 Assembly. The 2006 Assembly is an unincorporated association, while the Assembly Commission is a body corporate. The executive functions that are currently vested in the GOWA 1998 Assembly will generally be transferred to and vested in the Welsh Ministers, while the 2006 Assembly will have new legislative powers to pass Assembly Measures.

- 4.3 Part 5 of GOWA 2006 (ss. 117 to 145) makes provision as to how the 2006 Assembly, the Assembly Commission and the Welsh Ministers deal with finance. In particular, it establishes the Welsh Consolidated Fund (“the WCF”), into which the Secretary of State will pay money provided by Parliament, and out of which the 2006 Assembly will be able to authorise expenditure.

- 4.4 Schedule 11 of GOWA 2006 modifies the finance provisions in Part 5 of GOWA 2006 so as to ensure the effective transition of financial controls and powers in the period running up to and following the establishment of the 2006 Assembly. There are a number of references in Schedule 11 to GOWA 2006 and in this Order to the initial period. 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 47 of GOWA 2006.
- 4.5 This Order makes further modifications to the transitional provisions set out in Schedule 11 concerning the application of the finance provisions of Part 5 of GOWA 2006.

## **5. Territorial Extent and Application**

This Order is of UK extent but generally applies only to Wales. as it relates to the finances of the GOWA 1998 Assembly, the 2006 Assembly, the Welsh Assembly Government , the Auditor General for Wales (“the Auditor General” ) and the Public Services Ombudsman for Wales (“the Ombudsman”).

## **6. European Convention on Human Rights**

The Secretary of State for Wales has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

In my view the provisions of the Government of Wales Act 2006 (Transitional Provisions)(Finance) Order 2007 are compatible with the Convention rights.

## **7. Policy background**

- 7.1 GOWA 2006 received Royal Assent on 25 July 2006. The purpose of GOWA 2006 is to make provision about the government of Wales.
- 7.2 GOWA 2006 effects the formal separation between the executive and legislative arms of the GOWA 1998 Assembly; it establishes the Welsh Assembly Government (made up of the First Minister, Welsh Ministers and their deputies and the Counsel General) as an entity separate from, but accountable to, the 2006 Assembly. Most of the statutory functions which are currently functions of the GOWA 1998 Assembly will become functions of the Welsh Ministers. In addition, Part 5 of GOWA 2006 makes new provision for dealing with finance in the 2006 Assembly, Assembly Commission and Welsh Assembly Government.
- 7.3 The dissolution of the GOWA 1998 Assembly and the creation of the 2006 Assembly will take place following the election in May 2007. However, some of the key financial provisions in Part 5 of GOWA 2006, especially the establishment of the WCF will come into effect on 1 April. Schedule

11 makes transitional provision, applying the provisions in Part 5 with appropriate modifications in the transitional period.

- 7.4 This Order makes further transitional provision in relation to the finance provisions, by amending the relevant transitional provisions in Part 5. Briefly, the transitional provisions in this Order can be described as follows:

Article 3: amends the transitional provision concerning payments into the WCF by the Welsh Ministers, the Ombudsman and Auditor General. The WCF is established by section 117 of GOWA 2006, and is the fund into which the Secretary of State for Wales will pay monies from Parliament, and out of which the 2006 Assembly will authorise payments to be made. The article substitutes for the existing paragraph 53 of Schedule 11 a new paragraph 53 requiring the Welsh Ministers to pay into the WCF all monies standing to the credit of the GOWA 1998 Assembly immediately before the 1<sup>st</sup> April once the accounts of that Assembly for the financial year ending with 31<sup>st</sup> March 2007 have been audited. New paragraphs 53A and 53B are also inserted into Schedule 11 to make similar transitional provision in respect of monies standing to the credit of the Auditor General and the Ombudsman. However in relation to the Auditor General certain receipts are excluded from the obligation to pay into the WCF.

Article 4: substitutes for paragraph 62 of Schedule 11 a new paragraph 62 concerning application of section 128 of GOWA 2006. Section 128 enables the Welsh Ministers to authorise emergency expenditure out of the WCF. 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 WCF. 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 the GOWA 1998 (“the executive committee”) and the executive committee must lay a report before the GOWA 1998 Assembly (*See* section 56 of GOWA 1998 as to that committee, which under the standing orders of the GOWA 1998 Assembly is known as the Assembly Cabinet). During the initial period authorisation may be given by two or more members of the GOWA 1998 Assembly (as it continues in existence by virtue of paragraph 22 of Schedule 11 to GOWA 2006) excluding the presiding officer. That Assembly must then prepare a report in readiness for the Welsh Ministers to lay before the 2006 Assembly as soon as reasonably practicable after the end of the initial period.

Article 5: amends paragraph 63 of Schedule 11, which modifies the application of section 129 of GOWA 2006 prior to the end of the initial period. Section 129 makes provision for the drawing of money out of the WCF. 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 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 GOWA 1998 Assembly (as it continues in existence by virtue of paragraph 22 of schedule 11 to GOWA 2006) excluding the presiding officer. 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 GOWA 1998 Assembly.

Article 6: inserts new provision in Schedule 11. New paragraph 63A amends the application of section 97 of GOWA 1998 to the accounts of the GOWA 1998 Assembly for 2006-07. 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 with 31<sup>st</sup> march 2007. The purpose of Article 6 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 amendments in relation to section 101A of GOWA 1998, which will also be saved from repeal until it has been complied with.

Article 7: inserts into Schedule 11 a number of new paragraphs concerning 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 GOWA 1998 Assembly, and the remuneration of the Auditor General and the Ombudsman out of the WCF.

New paragraph 64A makes 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.

New paragraph 64B similarly makes 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.

New paragraph 64C applies paragraph 15 of Schedule 8 to GOWA 2006 to accounts for the financial year ending with the 31<sup>st</sup> 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 31<sup>st</sup> August 2007.

New 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 GOWA 1998 Assembly.

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

New paragraphs 64F and 64G provide that sums required by the GOWA 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.

### *Consultation*

7.5 This Order makes provision to deal with the transition between the arrangements for the GOWA 1998 Assembly under GOWA 1998 and the new arrangements under GOWA 2006. It does not contain new policy on which public consultation is required, therefore there has been no public consultation.

7.6 Interested parties who are affected by the Order, for example the Auditor General for Wales and the Public Services Ombudsman for Wales, have been consulted and are content.

## **8. Impact**

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

## **9. Contact**

Susan Olley at the Wales Office Tel: 02920898568 or email: [susan.olley@walesoffice.gsi.gov.uk](mailto:susan.olley@walesoffice.gsi.gov.uk) can answer any queries regarding the instrument.