

GOVERNMENT OF WALES ACT 2006

EXPLANATORY NOTES

DETAILED COMMENTARY ON SECTIONS IN PART 5

Expenditure

Sections 124, 125, 126, 127, 128, 129 and 130

461. *Sections 124-130* deal with the processes which must be complied with for expenditure out of the WCF to be regular. The normal process is that sums will only be paid out of the WCF on the authority of a Budget resolution passed by the Assembly (section 124(1) (b) and section 125). There are three sets of exceptions to this norm.
462. The first is that, in a small number of cases, sums will have been “charged on” the Fund by legislation (for an example in this Act, see section 20(5)). Sums so charged are paid out of the Fund automatically, without the need to be approved in a Budget resolution (although the AGW still has to approve the issue of the sum, having been satisfied that it is indeed charged on the WCF (section 129 and the final words of section 124(1)).
463. The second set of exceptions is where the payment out is deemed to have been authorised by a Budget resolution of the Assembly, by virtue of sections 127 or 128 (for more on which, see below).
464. The third exception to the norm applies to sums which were paid into the WCF by mistake – see sections 124(5) and 130.
465. Payments out of the WCF which have been authorised (or deemed authorised) by a Budget resolution of the Assembly, still cannot be made except to meet expenditure of a “relevant person”, or expenditure payable out of the WCF by virtue of legislation (section 124(2)). A “relevant person” for these purposes is defined, in subsection (3), as any of:
- a) the Welsh Ministers, the First Minister or the Counsel General;
 - b) the Assembly Commission;
 - c) the AGW, or
 - d) the Public Services Ombudsman for Wales
466. *Sections 125* and *126* set out the process of Budget resolutions. For each financial year, the First Minister or another Welsh Minister must move a Budget motion in the Assembly (section 125(1) and (2)). Normally, the Budget resolution for each financial year will be made by the Assembly in the previous financial year (see section 127(1)). The Budget motion must seek the Assembly’s approval for:
- a) how much, in terms of resources, can be used on the services and purposes specified in the motion in the financial year to which it relates;

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- b) how much, in terms of accruing resources, any of the relevant persons (for which see above) can retain (rather than paying those resources into the WCF) for use on the services and purposes specified in the motion; and
 - c) how much money can be paid out of the WCF in the relevant financial year for use on those services and purposes.
467. The “use of resources”, in accepted accounting terminology, means their expenditure, consumption or reduction in value (section 125(4)). Accruing resources means income, including income from the disposal of capital assets (the latter being known as “non-operating income”).
468. There are thus two aspects to a Budget motion. First, it seeks authorisation for the maximum amount of resources which a relevant person can plan to use on services and purposes approved in the motion. At that point, the income constituting accruing resources may not have materialised in the form of a cash receipt.
469. Secondly, the motion seeks authorisation for the maximum amount of cash that can be issued out of the WCF to be spent on the services and purposes referred to.
470. The Act provides that, as a minimum, there must be one Budget motion per year, known as the “annual Budget motion” (section 125(1)). As stated above, this will normally be moved and passed before the beginning of the financial year to which it relates (section 127(1)). Supplementary Budget motions may also be moved in relation to a financial year (section 126). These may be moved before the beginning of the financial year to which they relate, in the financial year to which they relate, or in a subsequent financial year. They may vary the amounts of resources to be made available for the services and purposes specified in the annual Budget resolution or they may specify new services and purposes, and allocate resources to those. They can also vary the amounts of resources which any of the relevant persons (see above) can retain, or authorise new retentions, rather than paying these into the WCF. And finally, as with annual Budget motions, supplementary Budget motions can seek authority for the AGW to approve the issue of additional sums of cash out of the WCF, or they can vary the amounts of cash which the Assembly has already authorised to be issued out of the WCF.
471. Like annual Budget motions, supplementary Budget motions may be moved only by the First Minister or another Welsh Minister.
472. As referred to above, two of the exceptions to the norm that a Budget resolution of the Assembly is required before sums can be paid out of the WCF are contained in sections 127 and 128. Section 127 deals with the situation where no Budget resolution has been adopted by the Assembly by the beginning of the relevant financial year. In the absence of such a resolution, section 127 provides that resources may be used on services and purposes, and money issued out of the WCF accordingly, up to a specified level. This level is determined as a fixed percentage of the preceding financial year’s provision for each such service or purpose. Likewise, any of the relevant persons (for which see above) can retain resources (rather than paying them into the WCF), up to the same percentage of the amount of resources that they were authorised to retain in the preceding financial year. The percentage in question is 75% up to the end of July in a financial year. Furthermore, if a Budget resolution for the financial year has still not been passed by the end of July, then resources can be used, amounts retained, and cash issued out of the WCF, up to a further 20% of the previous year’s authorised amounts; that is, up to 95% overall.
473. [Section 128](#) (Contingencies) is aimed at emergency situations in which:
- a) the Welsh Ministers consider expenditure to be necessary in the public interest;
 - b) that expenditure is not authorised under an existing Budget resolution; and

- c) it is not reasonably practicable, for reasons of urgency, for a Budget motion to be put down so as to authorise it.
474. In that situation, section 128 allows resources to be used and cash to be paid out of the WCF, up to a ceiling of 0.5% of the total amount authorised for use by, or 0.5% of the total amount of cash authorised to be issued to, the relevant person, or pursuant to a relevant enactment, for the financial year in question. On current figures, this ceiling would equate to approximately £50 million (in the case of the resource authorisation for the First Minister, Welsh Ministers and Counsel General). Where the Welsh Ministers use this power, they must, as soon as possible, lay a report before the Assembly, setting out the amount of resources and cash involved, and explaining why they considered the action they took to be necessary (subsection (7)).
475. Once payments out of the WCF have been authorised (whether by Budget resolution, by legislative provision “charging” them on the WCF, or under sections 127, 128 or 130), they still cannot be made unless the AGW has granted an approval to draw (section 129). Before doing so, the AGW will need to be satisfied that the conditions laid down in section 124 or section 130 have been met (sections 129(2) and 124(5)). Once an approval to draw has been granted, the Paymaster General, who holds the WCF, must make the funds available to the person entitled to them (section 129(4)).
476. The section makes provision for daily information on payments out of the WCF to be available to the AGW and the principal accounting officer for the Welsh Ministers (subsection (5)).
477. Subsections (6) – (8) make provision concerning the principal accounting officer for the Welsh Ministers. By subsection (6), this is to be the Permanent Secretary to the Welsh Assembly Government – i.e. the most senior civil servant serving the Welsh Assembly Government (see subsection (8)). If there is a temporary vacancy in the post of Permanent Secretary, or the Permanent Secretary is incapable of acting as principal accounting officer to the Welsh Ministers – e.g. because of illness – HM Treasury can appoint a temporary replacement.

Section 131: Welsh Ministers’ Accounts

478. Subsection (1) imposes an obligation on the Welsh Ministers to prepare accounts for each financial year in accordance with directions given to them by HM Treasury. By virtue of subsection (2), these accounts are to cover the financial affairs and transactions of the Counsel General. By virtue of subsection (3), the Treasury may direct the Welsh Ministers to include accounts of financial affairs and transactions of other persons.
479. The Treasury’s power to direct the form of the Welsh Minister’s accounts is based on provisions in the Government of Wales Act 1998. The Treasury does not have an equivalent power under the Scotland Act 1998, because the Scottish Parliament has primary legislative powers which it can use to dictate the form and content of the accounts of the Scottish Ministers. The power to direct the form of the Welsh Ministers’ accounts will remain vested in the Treasury unless and until the Assembly gains the legislative competence to provide otherwise.
480. The Welsh Ministers must submit their accounts to the AGW, who must report on them to the Assembly (subsections (5) and (6), which also lay down the time-scales within which these actions must be performed). In examining the accounts, the AGW must be satisfied that the Welsh Ministers’ and the Counsel General’s expenditure, recorded in the accounts, was incurred in accordance with the law and with the particular authority which governs it (for instance, in accordance with the provisions of a Budget resolution of the Assembly, in so far as it relates to the Welsh Ministers and the Counsel General). The AGW must also be satisfied that monies received by the Welsh Ministers or the Counsel General for a particular purpose or purposes have been used only on that purpose or purposes.

481. Subsection (8) enables duplication of effort to be avoided, by giving the Treasury a power, by direction, to relieve the Welsh Ministers of a statutory obligation to prepare accounts dealing with any matters which the Welsh Ministers would have to include in accounts which the Treasury have directed them to prepare under this section.

Section 132: Account Relating to Welsh Consolidated Fund

482. As well as accounts of their own transactions, the Welsh Ministers must prepare an account of all receipts into and payments out of the Welsh Consolidated Fund in any financial year (subsection (1)). The account must be prepared in accordance with directions given to the Welsh Ministers by the Treasury (subsection (2)). The account must be submitted to the AGW, who must report on it to the Assembly (subsections (4) and (5), which also lay down the time-scale within which these actions must be performed). In examining the account, the AGW must be satisfied that any payments out of the Welsh Consolidated Fund, referred to in the account, complied with the conditions laid down in sections 124 or 130, and that any monies received by the Welsh Ministers were paid into the Welsh Consolidated Fund, unless they did not have to be by law (subsection (6)).

Section 133: Accounting Officers for Welsh Ministers

483. This section deals with the functions of the principal accounting officer for the Welsh Ministers, as designated by section 129(6). These functions will also relate to the finances of the Counsel General.
484. Essentially, principal accounting officers are responsible for the propriety and regularity of the finances of the body in which they hold that office, and for ensuring that that body uses its resources with economy, efficiency and effectiveness.
485. The principal accounting officer may designate other members of the staff of the Welsh Assembly Government as additional accounting officers, to assist in the principal accounting officer's role.

Section 134: Accounts of Subsidiaries of Welsh Ministers

486. This section ensures that the AGW, when examining any accounts of the Welsh Ministers, has a right of access to documents and information relating to the accounts of any subsidiary of the Welsh Ministers. The AGW also has the right to any assistance or explanation, which the AGW reasonably thinks is necessary in that connection, from any person holding or accountable for any such document (subsection (1)).
487. In this context, a "subsidiary of the Welsh Ministers" means (subsection (4)):
- a) a body corporate (such as a limited company) or other undertaking in relation to which, if the Welsh Ministers were an undertaking for the purposes of section 259(1) of the [Companies Act 1985 \(c.6\)](#), the Welsh Ministers would be a parent undertaking for the purposes of section 258 of that Act;
 - b) a trust of which the Welsh Ministers are settlors; or
 - c) a charitable institution of which the Welsh Ministers are founders, but which is neither a body corporate nor a trust.
488. Subsection (2) gives the Treasury a power to direct a subsidiary of the Welsh Ministers to include additional information in its accounts. Such a direction would override any prohibition on the inclusion of that information in accounts of that type (subsection (3)). There are, for instance, legislative rules, which might be relevant here, on the contents of company and charity accounts.

Section 135: Examinations into Welsh Ministers' Use of Resources

489. This section gives the AGW power to carry out examinations into the economy, efficiency and effectiveness with which the Welsh Ministers and the Counsel General have used their resources in discharging their functions. These are commonly known as “value for money”, or “VFM” examinations. In doing so, the AGW is not entitled to question the merits of the policy objectives being pursued by the Welsh Ministers or the Counsel General (subsection (2)).
490. Before carrying out any such examinations, the AGW must take into account the views of the Audit Committee of the Assembly as to what examinations the AGW should carry out under this provision (subsection (3)). The AGW may, but does not have to, lay a report of the results of any such examination before the Assembly (subsection (4)). The AGW does, however, have to do so where the AGW considers that it is in the public interest so to do (Schedule 8, paragraph 19).

Section 136: Examinations by Comptroller and Auditor General

491. In addition to the AGW's scrutiny of accounts of payments into and out of the Welsh Consolidated Fund, the Comptroller and Auditor General may carry out examinations into such payments, and report the results to the House of Commons (subsections (1) and (2)). This is because the Welsh Consolidated Fund will be largely made up of monies voted by Parliament to the Secretary of State for Wales, and, in Parliament, the House of Commons controls the supply of finance to the executive.
492. If the Comptroller and Auditor General makes a report to the House of Commons under subsection (2) it must be laid before the Assembly at the same time (subsection (3)).
493. Subsections (4) and (5) deal with the Comptroller and Auditor General's rights of access to documents, and to assistance, information or explanations, for the purpose of carrying out examinations under this section. These rights extend, not only to the Welsh Ministers, the Counsel General and the Assembly Commission, but to the AGW and to any other person audited by the AGW, other than a Welsh NHS body within the meaning given in section 60 of the [Public Audit \(Wales\) Act 2004 \(c.23\)](#). The reason for the exclusion of these Welsh NHS bodies is because the Comptroller and Auditor General is not the statutory auditor of the equivalent bodies in England.
494. Subsection (6) seeks to avoid unnecessary duplication of effort, by providing that, before carrying out an examination under this section, the Comptroller and Auditor General must consult the AGW and take into account any relevant work done or being done by the AGW.

Section 137: Assembly Commission's accounts

495. This section obliges the Assembly Commission to prepare accounts for each financial year. As in the case of the Welsh Ministers, the accounts are to be in a form directed by HM Treasury, which can direct the Assembly Commission to include accounts of financial affairs and transactions of other persons (subsections (1) and (2)).
496. The Assembly Commission must submit the accounts to the AGW, who must report on them to the Assembly (subsections (4) and (5), which also lay down the time-scale within which these actions must be taken). In examining the accounts, the AGW must be satisfied that the Assembly Commission's expenditure, recorded in the accounts, was incurred in accordance with the law and with the particular authority which governs it (for instance, in accordance with the provisions of a Budget resolution of the Assembly, in so far as it relates to the Assembly Commission). The AGW must also be satisfied that monies received by the Assembly Commission for a particular purpose or purposes have been used only on that purpose or purposes.

Section 138: Accounting officers for Assembly Commission

497. This section designates the Clerk of the Assembly (see section 26) as the principal accounting officer for the Assembly Commission (subsection (1)). Accounting officers are essentially responsible for the propriety and regularity of the finances within their remit, and for ensuring that the body of which they are the principal accounting officer uses its resources with economy, efficiency and effectiveness.
498. If there is a temporary vacancy in the office of Clerk, or if the Clerk is incapable as acting as principal accounting officer for the Assembly Commission – e.g. because of illness – HM Treasury can appoint a temporary replacement (subsection (2)).
499. The principal accounting officer may designate other members of the staff of the Assembly as additional accounting officers, to assist in the principal accounting officer’s role.

Section 139: Accounts of subsidiaries of Assembly Commission

500. This section ensures that the AGW, when examining any accounts of the Assembly Commission, has a right of access to documents and information relating to the accounts of any subsidiary it may have. It also gives the AGW a right to any assistance or explanation which the AGW reasonably thinks is necessary from any person holding or accountable for such a document (subsection (1)).
501. In this context, a “subsidiary of the Assembly Commission” means (subsection (4)):
- a) a body corporate (such as a company) or other undertaking (as defined in section 259(1) of the [Companies Act 1985 \(c.6\)](#), in relation to which the Assembly Commission is a parent undertaking for the purpose of section 258 of that Act;
 - b) a trust of which the Assembly Commission is settlor; or
 - c) a charitable institution of which the Assembly Commission is founder, but which is neither a body corporate nor a trust (subsection (4)).
502. Subsection (2) gives the Treasury a power to direct a subsidiary of the Assembly Commission to include additional information in its accounts. Such a direction would override any prohibition on the inclusion, in accounts of that type, of that information (subsection (3)). Legislative rules on company or charity accounts may be relevant here.

Section 140: Examinations into Assembly Commission’s use of resources

503. This section gives the AGW power to carry out examinations into the economy, efficiency and effectiveness with which the Assembly Commission has used its resources in discharging its functions. These are commonly known as “value for money”, or “VFM” examinations. In doing so, the AGW is not entitled to question the merits of the policy objectives being pursued by the Assembly Commission (for example, a policy concerning recruitment or employment of staff) (subsection (2)).
504. Before carrying out any such examinations, the AGW must take into account the views of the Audit Committee of the Assembly as to what examinations the AGW should carry out under this provision (subsection (3)). The AGW may, but does not have to, lay a report of the results of any such examination before the Assembly (subsection (4)). The AGW does, however, have to do so where the AGW considers that it is in the public interest so to do (Schedule 8, paragraph 19).

Section 141: Whole of government accounts: Welsh Ministers, and Section 142: Functions of Auditor General

505. [Section 141](#) makes provision for the preparation, by the Welsh Ministers, of “Whole of Government accounts” in relation to Wales. This concept was introduced by the [Government Resources & Accounts Act 2000 \(c.20\)](#). It is a set of accounts for a group of

bodies, each of which appears to HM Treasury to exercise functions of a public nature or to be entirely or substantially funded from public money (section 9(1), Government Resources & Accounts Act 2000). It can also include information about activities of other persons or bodies, which appear to the Treasury to be activities of a public nature (section 9(2), Government Resources & Accounts Act 2000). Such accounts can, therefore, be used to give a total picture of the financial transactions of the public sector, or a part of the public sector.

506. Under section 10(8) of the Government Resources & Accounts Act 2000, as amended by the Act, the Treasury can make arrangements with the Welsh Ministers to gather information from bodies designated by the Treasury for the purpose of preparing Whole of Government accounts in relation to Wales. Where such an arrangement exists, the Welsh Ministers must prepare a set of accounts for those bodies (subsection (2)). The accounts may include information about activities which are not activities of bodies designated by the Treasury, but which appear to the Welsh Ministers to be activities of a public nature (subsection (3)). Before designating a body, or giving any direction to it, the Treasury must consult the Welsh Ministers where it thinks appropriate. This will normally be where the body has activities relating wholly, or in significant parts, to Wales.
507. The section makes provision as to the form of the accounts (subsections (2), (4) and (6)).
508. The Welsh Ministers must send accounts under this section to the AGW by 30th November in the following financial year, or such other date as they may prescribe by Order after consulting HM Treasury and the AGW. The reason for this power to change the date is that the system of Whole of Government accounts is still relatively new and aspects of it are still being piloted by the Treasury.
509. The AGW must examine accounts sent to the AGW under section 141 with a view to being satisfied that they present a true and fair view (section 142(1)). The AGW must then report on the accounts to the Assembly (subsection (2)). This must be done within four months of the accounts being submitted to the AGW (subsection (2)). The auditors of the bodies included in the Whole of Government accounts must give the AGW such information and explanations as the AGW may reasonably require to carry out functions under section 142 (subsection (3)).

Section 143 : Audit Committee Reports

510. The Audit Committee of the Assembly can consider, and report to the Assembly on, any accounts, statement of accounts or report laid before the Assembly by the AGW or the AGW's own auditor (subsection (1)).
511. Thus, in addition to the scrutiny of accounts by the AGW, and the AGW's power to examine and report on the value for money achieved by the Welsh Ministers or the Assembly Commission, the Audit Committee may provide a further level of scrutiny, based on the findings of the AGW. This power of the Audit Committee also extends to other reports and accounts, and reports of examinations, which the AGW will lay before the Assembly. These include examinations into the economy, efficiency and effectiveness with which a body or office specified in Schedule 17 to the Government of Wales Act 1998 has used its resources in discharging its functions, or reports on the accounts of Welsh NHS bodies, as defined in section 60 of the [Public Audit \(Wales\) Act 2004 \(c.23\)](#).
512. In addition to these powers of the Audit Committee, the Committee can take evidence, if requested to do so, on behalf of the House of Commons Committee of Public Accounts, and report its findings to that Committee. The Committee of Public Accounts can take evidence from devolved Welsh public bodies, and would usually do so on the basis of a report from the Comptroller and Auditor General (see section 136). The persons from whom the Audit Committee can take evidence under this power are:

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- a) the principal accounting officer for the Welsh Ministers;
- b) the principal accounting officer for the Assembly Commission, and
- c) any additional accounting officer designated by either of them.

Section 144: Publication of Accounts and Audit Reports etc

513. This section imposes an obligation on the Assembly to publish the documents referred to in subsection (2) as soon after they are laid before the Assembly as is reasonably practicable.
514. The documents in question are:
 - a) any accounts, statement of accounts or reports laid before the Assembly by the AGW;
 - b) any accounts or reports laid before the Assembly by the AGW's own auditor;
 - c) any report laid before the Assembly by the Audit Committee under section 143(1), i.e. a report by the Audit Committee on any accounts, statement of accounts or report laid before the Assembly by the AGW or the AGW's own auditor; and
 - d) the annual estimate prepared by the AGW of the income and expenses of the AGW's office for the following financial year, submitted to the Audit Committee under paragraph 12(1) of Schedule 8 to the Act , as amended by the Audit Committee if applicable.

Section 145: Auditor General

515. This section provides for the continuation of the office of Auditor General for Wales or Archwilydd Cyffredinol Cymru. The office was first established by section 90 of the [Government of Wales Act 1998 \(c.38\)](#).
516. [Schedule 8](#) makes other provision concerning the office of AGW.

Part 6: Miscellaneous and Supplementary

Overview of Part 6

517. [Part 6](#) of the Act deals with Miscellaneous and Supplementary matters; only some of these are referred to here.
518. The provisions (ss.116-118) in the 1998 Act relating to Welsh public records are carried forward into this Act , with amendments. These take account of the changes being implemented by this Act , together with other changes in public administration in Wales (so for example the records of the newly-created Welsh Centre for Health are included as Welsh public records).
519. In the same way, the existing provisions in Schedule 8 of the 1998 Act on legal proceedings on "Devolution issues" are carried forward into the new Act as Schedule 9, but the provisions are updated to take account of the creation of the Supreme Court by the Constitutional Reform Act 2005.
520. [Sections 150](#), [151](#) and [153](#) deal with issues potentially arising as a result of use by the Assembly of its Measure-making or Act-making powers. Section 150 (which is based on s.104 of the Scotland Act 1998) authorises the Secretary of State to make orders amending legislation or any other instrument or document consequential upon an Assembly Measure or Act or another piece of subordinate legislation relating to Wales. The purpose of this is to enable the Secretary of State to ensure that the statute book for England and Wales maintains general consistency and coherence, and that questions as to the meaning of legislation (other than that made by the Assembly) are

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not inadvertently raised as a result of any Measure adopted by the Assembly. Section 151 is similarly a “tidying-up” power, enabling Her Majesty in Council to make orders to deal with any consequences of possible *ultra vires* action by the Assembly in exercise of its legislative functions. Section 153 carries forward, with amendments, the existing provision (s. 110) of the 1998 Act, enabling courts or tribunals, in circumstances where they have concluded that either the Assembly or the Welsh Ministers have gone beyond their legislative powers, to make orders limiting or removing the retrospective effect of any such conclusion.

521. Finally, sections 154 and 156 provide guidance to the courts on the interpretation of Assembly legislation. By section 156, and following s.122 of the 1998 Act, the English and Welsh texts of legislation are to be treated as of equal standing. Section 154 authorises a court to “read down” Assembly legislation, so far as that is possible, in order to be able to conclude that a provision in issue is *intra vires*.