

2007 No. 1182

CONSTITUTIONAL LAW

DEVOLUTION, WALES

**The Government of Wales Act 2006 (Local Government
(Contracts) Act 1997) (Modifications) Order 2007**

Made - - - - - *5th April 2007*

Laid before Parliament *16th April 2007*

Coming into force in accordance with Article 1(1)

The Secretary of State, in exercise of the powers conferred on him by section 68 of, and paragraph 4(7) of Schedule 2 to, the Government of Wales Act 2006 (a), makes the following Order:

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Government of Wales Act 2006 (Local Government (Contracts) Act 1997) (Modifications) Order 2007 and shall come into force immediately after the end of the initial period (b).

(2) In this Order, “the Act” means the Local Government (Contracts) Act 1997(c).

Application of the Act to contracts entered into by the Welsh Ministers, the First Minister for Wales and the Counsel General to the Welsh Assembly Government

2. The Act shall apply in relation to contracts entered into by the Welsh Ministers, the First Minister or the Counsel General with the following modifications—

- (a) subject to paragraph (b), as if references in the Act to a local authority were references to the Welsh Ministers, the First Minister or the Counsel General, and
- (b) as if the provisions of the Act set out in the left hand column of the Table in Schedule 1 to this Order were modified as set out in the right hand column.

Application of the Act to contracts entered into by the National Assembly for Wales Commission

3. The Act shall apply in relation to contracts entered into by the Assembly Commission with the following modifications—

- (a) subject to paragraph (b), as if references in the Act to a local authority were references to the Assembly Commission, and

(a) 2006 c.32.

(b) For the meaning of “the initial period” see section 161(5) of the Government of Wales Act 2006.

(c) 1997 c.65.

(b) as if the provisions of the Act set out in the left hand column in the Table in Schedule 2 to this Order were modified as set out in the right hand column.

5th April 2007

Nick Ainger
Parliamentary Under Secretary of State for Wales
Wales Office

SCHEDULE 1

Article 2

<i>Provision of the Act</i>	<i>Modification</i>
Section 1 (functions to include power to enter into contracts)	Omit subsections (3) and (5).
Section 2 (certified contracts to be <i>intra vires</i>)	In subsection (6) for “audit reviews” substitute “references on devolution issues”.
Section 3 (the certification requirements)	<p>In subsection (2), for paragraphs (d) to (g) substitute—</p> <p>“(d) stating that the Welsh Ministers, the First Minister or the Counsel General (as the case may be) had, or have or has, power to enter into the contract,</p> <p>(e) specifying each statutory provision conferring the power and, where that provision or one such provision is section 71 of the Government of Wales Act 2006, specifying each function which the contract is calculated to facilitate or to which it is conducive or incidental,</p> <p>(f) stating that a copy of the certificate has been or is to be given to—</p> <p>(i) each of the persons with whom the contract has been or is to be entered into,</p> <p>(ii) the principal accounting officer for the Welsh Ministers, and</p> <p>(iii) the Auditor General for Wales, and</p> <p>(g) confirming that the Welsh Ministers, the First Minister or the Counsel General (as the case may be) have or has complied with or are or is to comply with the requirement imposed by subsection (4) with respect to the issue of certificates under this section.”</p> <p>For subsection (3), substitute—</p> <p>“(3) The requirement specified in this subsection is that the certificate must be signed by the Welsh Ministers, the First Minister or the Counsel General (as the case may be).”</p>
Section 4 (certified contracts supplementary)	<p>In subsection (2), omit “by a local authority within section 1(3)(a) or (d)”.</p> <p>Omit subsection (5).</p>
Section 5 (special provision for judicial reviews and audit reviews)	<p>In subsections (1)(b) and (2)(b) for “an audit review” substitute “a reference under Schedule 9 to the Government of Wales Act 2006 (devolution issues)”.</p> <p>In subsection (3), for “an audit review” substitute “a reference under Schedule 9 to the Government of Wales Act 2006”.</p> <p>For subsection (4), substitute—</p> <p>“(4) In this section and sections 6 and 7, references—</p> <p>(a) to an application for judicial review include an appeal</p>

	<p>(or further appeal) against a determination or order made on such an application, and</p> <p>(b) to a reference under Schedule 9 to the Government of Wales Act 2006 include an appeal (or further appeal) against a determination or order made on such a reference.”</p>
Section 6 (relevant discharge terms)	<p>In subsection (1)(b) for “an audit review” substitute “a reference under Schedule 9 to the Government of Wales Act 2006 (devolution issues)”.</p> <p>In subsection (2)(c) for “an audit review” substitute “a reference under Schedule 9 to the Government of Wales Act 2006”.</p>
Section 7 (absence of relevant discharge terms)	<p>In subsection (1)(a), for “an audit review” substitute “a reference under Schedule 9 to the Government of Wales Act 2006 (devolution issues)”.</p> <p>In subsection (3), for “an audit review” substitute “a reference under Schedule 9 to the Government of Wales Act 2006”.</p>
Section 8 (audit reviews)	Omit the whole section.
Section 9 (contracting out of functions in connection with certified contracts)	<p>For subsection (1), substitute—</p> <p>“(1) An authorisation given by the Welsh Ministers, the First Minister or the Counsel General by virtue of an order under section 69 of the Deregulation and Contracting Out Act 1994 (authorisation of exercise by another person of functions for period not exceeding ten years) may specify that it is to be for a period exceeding ten years if it is given in connection with a certified contract.”</p> <p>For subsection (3)(a) and (b) substitute—</p> <p>“(a) it is given by the Welsh Ministers, the First Minister or the Counsel General,</p> <p>(b) the persons or person by whom the authorisation is given, and the authorised person, are parties to the contract, and”.</p>
Section 11 (Regulations)	Omit the whole section.

SCHEDULE 2

Article 3

<i>Provision of the Act</i>	<i>Modification</i>
Section 1 (functions to include power to enter into contracts)	Omit subsection (3).
Section 2 (certified contracts to be <i>intra vires</i>)	In subsection (6) omit “and audit reviews”.
Section 3 (the certification requirements)	<p>In subsection (2), for paragraphs (d) to (g) substitute—</p> <ul style="list-style-type: none"> “(d) stating that the Assembly Commission had or has power to enter into the contract, (e) specifying each statutory provision conferring the power and, where that provision or one such provision is paragraph 4(1) of Schedule 2 to the Government of Wales Act 2006, specifying each function for the purpose of which, or in connection with which, the contract appears to the Commission to be necessary or appropriate, (f) stating that a copy of the certificate has been or is to be given to— <ul style="list-style-type: none"> (i) each of the persons with whom the contract has been or is to be entered into, (ii) the principal accounting officer for the Assembly Commission, and (iii) the Auditor General for Wales, and (g) confirming that the Assembly Commission has complied with or is to comply with the requirement imposed by subsection (4) with respect to the issue of certificates under this section.” <p>For subsection (3), substitute—</p> <p>“(3) The requirement specified in this subsection is that the Assembly Commission must have secured that the certificate issued by it is signed by the Clerk of the Assembly.”</p>
Section 4 (certified contracts supplementary)	In subsection (2), omit “by a local authority within section 1(3)(a) or (d)”.
Section 5 (special provision for judicial reviews and audit reviews)	<p>In subsection (1) omit paragraph (b) and the word “or” before it.</p> <p>In subsection (2) omit paragraph (b) and the word “or” before it.</p> <p>In subsection (3), omit “or an audit review”.</p>
Section 6 (relevant discharge terms)	<p>In subsection (1) omit paragraph (b) and the word “or” before it.</p> <p>In subsection (2), in paragraph (c), omit “or an audit review”.</p>
Section 7 (absence of relevant discharge terms)	In subsections (1)(a) and (3) omit “or an audit review”.
Section 8 (audit reviews)	Omit the whole section.
Section 9 (contracting)	Omit the whole section.

out of functions in connection with certified contracts)	
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EXPLANATORY NOTE

(This note is not part of the Order)

The Order applies the Local Government (Contracts) Act 1997 (“the Act”), with modifications, to contracts entered into by the Welsh Ministers, the First Minister for Wales (“the First Minister”), the Counsel General to the Welsh Assembly Government (“the Counsel General”) and the National Assembly for Wales Commission (“the Assembly Commission”).

Section 68 of the Government of Wales Act 2006 (“GOWA 2006”) empowers the Secretary of State by Order to apply the Act in relation to contracts entered into by the Welsh Ministers, the First Minister and the Counsel General, subject to any appropriate modifications.

Paragraph 4(7) of Schedule 2 to GOWA 2006 empowers the Secretary of State to apply the Act in relation to contracts entered into by the Assembly Commission, subject to any appropriate modifications.

Article 2 of and Schedule 1 to this Order apply the Act to contracts entered into by the Welsh Ministers, the First Minister and the Counsel General with the following modifications.

References in the Act to a local authority are to be read as references to the Welsh Ministers, the First Minister or the Counsel General, as appropriate according to whichever of them is entering into the contract in question.

Section 1(3) of the Act is omitted as it specifies bodies which are local authorities for the purposes of the Act and is not needed for the purposes of the Order. Section 1(5) is omitted.

Section 2(6) of the Act is modified to replace a reference to audit reviews (within the meaning of section 8 of the Act) with a reference to references on devolution issues (under Schedule 9 to GOWA 2006.) Section 8 refers to audit regimes under legislation which is not relevant to the Welsh Ministers, the First Minister or the Counsel General.

Section 3(2) sets out the certification requirements which must be complied with within a specified period in order for a contract to be a certified contract and therefore intra vires for the purposes of the Act. It is modified to reflect the legal and audit framework within which the Welsh Ministers, the First Minister and the Counsel General operate under GOWA 2006. The certificate issued by the Welsh Ministers, First Minister or Counsel General in relation to the contract must state the statutory power under which they are entering into the contract and, where the power is that in section 71 of GOWA 2006 (supplementary power), must specify the function which the contract is calculated to facilitate, or to which it is conducive or incidental. In addition, the certificate must confirm that a copy of it has been, or is to be, given to the other contracting party or parties, to the principal accounting officer for the Welsh Ministers (under section 129(6) of GOWA 2006 this is the Permanent Secretary to the Welsh Assembly Government) and the Auditor General for Wales. Section 3(3) is modified so that the certificate must be signed by the Welsh Ministers, the First Minister or the Counsel General (as is appropriate according to whichever of them is entering into the contract in question). The certificate may be signed on their behalf by a deputy Welsh Minister or by a member of staff of the Welsh Assembly Government when assisting them or, as the case may be, acting under authority (see respectively sections 50(1) and 52(9) of GOWA 2006. In the case of a certificate by the Welsh Ministers it may be signed by any of those Ministers (section 57(3) of GOWA 2006).

Section 4(2) is modified to omit a reference to certain types of local authority. Section 4(5) is omitted.

Sections 5(1), (2) and (3) are modified to replace references to an audit review with references to a reference under Schedule 9 to GOWA 2006 (devolution issues). Section 5(4) is modified so that references in the modified sections 5, 6 and 7 to a reference under Schedule 9 to GOWA 2006 include an appeal against a determination or order made on such a Schedule 9 reference.

Sections 6(1) and (2) and 7 (1)(a) and (3) are modified to replace references to an audit review with references to a reference under Schedule 9 to GOWA 2006..

Section 8, which defines an audit review, is omitted because it refers to audit regimes under legislation which is not relevant to the Welsh Ministers, the First Minister or the Counsel General.

Section 9(1) is modified to reflect the fact that section 69 of the Deregulation and Contracting Out Act 1994 is the relevant provision in that Act under which the Welsh Ministers, the First Minister or the Counsel General could authorise another person to exercise one of their functions (provided that an Order under made section 69 permitted them to do so). The modified section 9(1) provides that the Welsh Ministers, the First Minister or the Counsel General may so authorise a person to exercise one of their functions for a period in excess of ten years if the authorisation is given in connection with a certified contract (but still subject to the maximum period of 40 years allowed for under section 9(2)). Section 9(3) is modified to make appropriate reference to the Welsh Ministers, the First Minister and the Counsel General.

Section 10 of the 1997 Act was repealed by the Courts Act 2003.

Section 11, which sets out the procedures applicable to regulations under the 1997 Act, is omitted because the regulation making powers under the Act have not been applied to contracts entered into by the Welsh Ministers etc.

Article 3 of and Schedule 2 to the Order apply the 1997 Act to contracts entered into by the Assembly Commission with the following modifications.

References in the Act to a local authority are to be read as references to the Assembly Commission.

Section 1(3) of the Act is omitted as it specifies bodies which are local authorities for the purposes of the Act and is not needed for the purposes of the Order. Section 1(5) will apply to contracts of the Assembly Commission. This will mean that the Welsh Ministers can make regulations under this power. This is by virtue of the entry for the Act in Schedule 1 to the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672) and paragraph 30 of Schedule 11 to GOWA 2006. The procedures applying to such regulations are provided for in section 11 (see below).

Section 2(6) of the Act is modified to omit a reference to an audit review within the meaning of section 8 of the Act. Section 8 refers to audit regimes under legislation which is not relevant to the Assembly Commission.

Section 3(2) sets out the certification requirements which must be complied with within a specified period in order for a contract to be a certified contract and therefore intra vires for the purposes of the Act. It is modified to reflect the legal and audit framework within which the Assembly Commission operates. The certificate issued by the Assembly Commission in relation to the contract must state the statutory power under which it is entering into the contract, and, where the power is that in paragraph 4(1) of Schedule 2 to the GOWA 2006 (powers), must specify the function, the discharge of which the contract is for the purposes of, or in connection with. In addition, the certificate must confirm that a copy of it has been, or is to be, given to the other contracting party or parties, to the principal accounting officer for the Assembly Commission (under section 138(1) of the Government of Wales Act 2006 this is the Clerk of the Assembly) and the Auditor General for Wales. Section 3(3) is modified so that the certificate must be signed by the Clerk of the Assembly. Section 25 of GOWA 2006 provides for the functions of the Presiding Officer to be exercised by the deputy Presiding Officer in certain circumstances or by other persons in accordance with the standing orders of that Assembly.

Section 4(2) is modified to omit a reference to certain types of local authority. Section 4(5) will apply to contracts of the Assembly Commission. This will mean that the Welsh Ministers can make regulations under this power. The procedures applying to such regulations are provided for in section 11 (see below).

Sections 5(1), (2) and (3), 6(1) and (2) and 7(1)(a) and (3) are modified to omit references to an audit review within the meaning of section 8 of the Act.

Section 8, which defines an audit review, is omitted because it refers to audit regimes under legislation which is not relevant to the Assembly Commission.

Section 9 is omitted because the Deregulation and Contracting Out Act 1994 is not relevant to the Assembly Commission.

Section 11 (regulations) will apply to the Welsh Ministers' powers to make regulations under sections 1(5) and 4(5). By virtue of Schedule 11 paragraph 33 of GOWA 2006, regulations under section 1(5) are subject to annulment by the Assembly constituted by GOWA 2006. Regulations under section 4(5) are subject to a draft of the regulations having been laid before and approved by resolution of that Assembly.

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