

TAX COLLECTION AND MANAGEMENT (WALES) ACT 2016

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 9 – Investigation of Criminal Offences

Section 185 – Powers to investigate criminal offences

212. The section amends the Police and Criminal Evidence Act 1984 (“PACE”) to provide the Welsh Ministers with the power to make regulations to apply certain provisions of PACE to the investigation of criminal offences conducted by the WRA. This would enable WRA to use specified PACE powers during the investigation of various criminal offences, such as the offences created in this Act, as well as those established by the Fraud Act 2006, or common law offences such as cheating the public revenue.
213. The powers provided by PACE include the standard tools of criminal investigations, such as search warrants, the power to arrest and detain a person in connection with an investigation; and orders requiring the production of certain information.
214. The section also allows the regulations applying the provisions to modify the exercise of the powers in certain respects.
215. Section 114 of PACE provides HM Treasury with a similar power to apply certain provisions of PACE to the criminal investigation of offences conducted by HMRC.
216. Subsection (2) provides the Welsh Ministers with a similar power to make regulations in relation to the provisions in Part 2 of the Criminal Justice and Police Act 2001 (“the CJPA”), which give investigators certain powers to seize and retain material found during the course of a search.
217. The powers in both subsections include power to permit persons conducting WRA investigations to use reasonable force in the exercise of these powers. Both PACE and CJPA are silent about the Police’s ability to use reasonable force as the Police have a general power to use reasonable force in the exercise of Police functions. That would not go without saying for persons conducting investigations for WRA. Hence the need to ensure the powers in these subsections can include that kind of provision.
218. Regulations may not be made under this section unless a draft has been first laid before and subsequently approved by a resolution of the National Assembly for Wales.

Section 186 – Proceeds of crime

219. The Proceeds of Crime Act 2002 (“POCA”) makes provision for the recovery of assets acquired through criminal conduct in certain circumstances. The ability to recover those assets is subject to a range of conditions being met, and ultimately, a criminal court making an order for the recovery of those assets.

220. The purpose this section is to amend section 453 of POCA so that the Welsh Ministers may make an order to specify that certain powers provided by POCA may be exercised by an “accredited financial investigator” appointed by WRA during the course of a criminal investigation. An “accredited financial investigator” is a financial investigator accredited by the National Crime Agency in accordance with section 3 of POCA. The powers contained in POCA include the power to apply to a criminal court for restraint orders, confiscation orders, or cash seizure orders.
221. An order made by the Welsh Ministers under this section will not be able to alter the existing POCA regime, and the associated safeguards provided by POCA will apply to WRA’s exercise of the powers without modification. Subsections (2) and (3) also provide that WRA will be required to pay compensation to a person in certain circumstances where an interim order was obtained (for example, a restraint or cash seizure order), but a confiscation or forfeiture order was not ordered by the court.
222. An order made by the Welsh Ministers under this section is subject to the negative procedure.

Section 187 – Regulation of investigatory powers

223. The Regulation of Investigatory Powers Act 2000 (“RIPA”) enables the use of certain investigatory powers by law enforcement agencies in a manner which complies with human rights. In particular, RIPA provides certain law enforcement agencies with powers to undertake directed surveillance (as defined by section 26(2) of RIPA), and covert human intelligence surveillance (as defined by section 28(2) of RIPA).
224. This section amends RIPA to enable the Welsh Ministers to make an order which prescribes the persons exercising WRA functions that are able to grant authorisations for directed surveillance or covert human intelligence under sections 28 and 29 of RIPA. Subsection (3) also amends RIPA so that WRA is a “relevant public authority” for the purposes of RIPA. Collectively, these amendments and the order made by the Welsh Ministers will enable specified staff of WRA to authorise and undertake directed surveillance and covert human intelligence surveillance, subject to the relevant conditions and procedural requirements set out in RIPA being met.
225. An order made by the Welsh Ministers under this section will not be able to alter the existing RIPA regime, and the associated safeguards will apply to WRA’s exercise of the powers without modification.
226. An order made by the Welsh Ministers under this section is subject to the negative procedure.