



# Tax Collection and Management (Wales) Act 2016

2016 anaw 6

## PART 4

### INVESTIGATORY POWERS OF WRA

#### CHAPTER 1

#### INTRODUCTORY

##### *Overview*

#### **82 Overview of Part**

This Part is arranged as follows—

- (a) Chapter 2 sets out WRA's investigatory powers in relation to information and documents,
- (b) Chapter 3 sets out restrictions on the powers in Chapter 2,
- (c) Chapter 4 sets out WRA's investigatory powers in relation to premises and other property,
- (d) Chapter 5 sets out further investigatory powers,
- (e) Chapter 6 sets out offences in relation to information notices, and
- (f) Chapter 7 is about reviews and appeals against certain tribunal approvals of information notices and inspections.

##### *Interpretation*

#### **83 Information notices**

- (1) In this Act, “information notice” means—

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- (a) a taxpayer notice under section 86,
  - (b) a third party notice under section 87,
  - (c) an unidentified third party notice under section 89,
  - (d) an identification notice under section 92, or
  - (e) a debtor contact notice under section 93.
- (2) An information notice may either specify or describe the information or documents to be provided or produced.
- (3) If an information notice is issued with the approval of the tribunal, the notice must state that fact.

#### **84 Meaning of “tax position”**

- (1) In this Part, “tax position”, in relation to a person, means the person’s position as regards any devolved tax, including the person’s position as regards—
- (a) past, present and future liability to pay any devolved tax,
  - (b) penalties, interest (including interest on penalties) and other amounts that have been paid, or are or may be payable, by or to the person in connection with any devolved tax, and
  - (c) claims or notices that have been or may be made or given in connection with the person’s liability to pay any devolved tax,
- and references to a person’s position as regards a particular devolved tax (however expressed) are to be interpreted accordingly.
- (2) References in this Part to the tax position of a person include references to the tax position of—
- (a) an individual who has died, and
  - (b) a body corporate or unincorporated association that has ceased to exist.
- (3) References in this Part to a person’s tax position refer to the person’s tax position at any time or in relation to any period, unless otherwise stated.
- (4) References to checking a person’s tax position include references to carrying out an investigation or making an enquiry of any kind.

#### **85 Meaning of “carrying on a business”**

- (1) In this Part, references to carrying on a business include—
- (a) carrying on any activity for the purposes of generating income from land (wherever situated),
  - (b) carrying on a profession,
  - (c) the activities of a charity, and
  - (d) the activities of a local authority or any other public authority.
- (2) The Welsh Ministers may by regulations provide that for the purposes of this Part—
- (a) the carrying on of a specified activity, or
  - (b) the carrying on of any activity, or a specified activity, by a specified person, is or is not to be treated as the carrying on of a business.
- (3) In this Act, “charity” has the meaning given by Part 1 of Schedule 6 to the [Finance Act 2010 \(c. 13\)](#).

## CHAPTER 2

### POWERS TO REQUIRE INFORMATION AND DOCUMENTS

#### **86 Taxpayer notices**

- (1) WRA may issue a notice (a “taxpayer notice”) requiring a person (“the taxpayer”) to provide information or produce a document if—
  - (a) WRA requires the information or document for the purpose of checking the taxpayer’s tax position,
  - (b) it is reasonable to require the taxpayer to provide the information or produce the document, and
  - (c) nothing in sections 97 to 102 prevents WRA from requiring the taxpayer to provide the information or produce the document.
- (2) But WRA may not issue a taxpayer notice without the approval of the tribunal.

#### **87 Third party notices**

- (1) WRA may issue a notice (a “third party notice”) requiring a person to provide information or produce a document if—
  - (a) WRA requires the information or document for the purpose of checking the tax position of another person (“the taxpayer”) whose identity is known to WRA,
  - (b) it is reasonable to require the person to provide the information or produce the document, and
  - (c) nothing in sections 97 to 102 prevents WRA from requiring the person to provide the information or produce the document.
- (2) But WRA may not issue a third party notice without—
  - (a) the agreement of the taxpayer, or
  - (b) the approval of the tribunal.
- (3) The taxpayer to whom a third party notice relates must—
  - (a) be named in the notice, and
  - (b) be issued with a copy of the notice by WRA.
- (4) But when it approves a third party notice, the tribunal may disapply one or both of the requirements of subsection (3) if it is satisfied that WRA has grounds for believing that naming the taxpayer or, as the case may be, issuing the taxpayer with a copy of the notice might seriously prejudice the assessment or collection of devolved tax.

#### **88 Tribunal approval of taxpayer notices and third party notices**

- (1) WRA may apply to the tribunal for approval to issue a taxpayer notice or a third party notice to a person (“the recipient”) without notice of the application being sent to the recipient.
- (2) Where notice of the application for approval is not sent to the recipient, the tribunal may approve the issuing of the taxpayer notice or third party notice only if it is satisfied—
  - (a) that—

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- (i) in the case of a taxpayer notice, the requirements of section 86(1), or
  - (ii) in the case of a third party notice, the requirements of section 87(1),
- have been met, and
- (b) that sending notice of the application for approval to the recipient might have prejudiced the assessment or collection of devolved tax.
- (3) Where the recipient has been notified of the application for approval, the tribunal may approve the issuing of the taxpayer notice or third party notice only if—
- (a) it is satisfied that—
    - (i) in the case of a taxpayer notice, the requirements of section 86(1), or
    - (ii) in the case of a third party notice, the requirements of section 87(1),
 have been met,
  - (b) the recipient has been told that the information or documents referred to in the taxpayer notice or third party notice are required and has been given a reasonable opportunity to make representations to WRA,
  - (c) the tribunal has been provided with a summary of any representations made, and
  - (d) in the case of a third party notice, the taxpayer has been provided with a summary of the reasons why WRA requires the information or documents.
- (4) But the tribunal may disapply the requirements of paragraph (b) or (d) of subsection (3) to the extent that it is satisfied that taking the action specified in the paragraph might prejudice the assessment or collection of devolved tax.
- (5) In approving the issuing of a taxpayer notice or third party notice, the tribunal may make such modifications to the notice as it thinks appropriate.

**89 Power to require information and documents about persons whose identity is not known**

- (1) WRA may issue a notice (an “unidentified third party notice”) requiring a person (“the recipient”) to provide information or produce a document if—
- (a) WRA requires the information or document for the purpose of checking the tax position of—
    - (i) a person whose identity is not known to WRA, or
    - (ii) a class of persons whose individual identities are not known to WRA,
  - (b) it is reasonable to require the recipient to provide the information or produce the document,
  - (c) nothing in sections 97 to 102 prevents WRA from requiring the recipient to provide the information or produce the document, and
  - (d) the tribunal has approved the issuing of the notice.
- (2) An application for approval may be made without notice.
- (3) The tribunal may approve the issuing of the unidentified third party notice only if it is satisfied that—
- (a) the requirements of subsection (1)(a) to (c) have been met,
  - (b) the information or document to which the notice relates is not readily available to WRA from another source,

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- (c) there are grounds for believing that the person or any of the class of persons to whom the notice relates may have failed or may fail to comply with any provision of the law relating to a devolved tax, and
  - (d) any such failure is likely to have led or to lead to serious prejudice to the assessment or collection of devolved tax.
- (4) In approving the issuing of an unidentified third party notice, the tribunal may make such modifications to the notice as it thinks appropriate.

## **90 Requiring information and documents in relation to a group of undertakings**

- (1) This section applies where an undertaking is a parent undertaking in relation to another undertaking (a “subsidiary undertaking”).
- (2) Where a third party notice is issued to any person for the purpose of checking the tax position of a parent undertaking and any of its subsidiary undertakings—
- (a) the references in sections 87(2)(a), (3) and (4) and 88(3)(d) to the taxpayer have effect as if they were references to the parent undertaking, and
  - (b) section 87(3) is to be treated as also requiring the notice to state its purpose.
- (3) Where a third party notice is issued to a parent undertaking for the purpose of checking the tax position of more than one subsidiary undertaking—
- (a) the notice must state its purpose,
  - (b) sections 87(2)(a) and (3) and 88(3)(d) do not apply, and
  - (c) section 100 (taxpayer notices following a tax return) applies as if the third party notice were a taxpayer notice issued to each subsidiary undertaking (or, if the third party notice names the subsidiary undertakings to which it relates, to each of those undertakings).
- (4) In this section, “parent undertaking”, “subsidiary undertaking” and “undertaking” have the meanings given in section 1162 of, and Schedule 7 to, the [Companies Act 2006 \(c. 46\)](#).

## **91 Requiring information and documents in relation to a partnership**

- (1) This section applies where a business is carried on by two or more persons in partnership.
- (2) Where a third party notice is issued to someone other than one of the partners for the purpose of checking the tax position of more than one of the partners (in their capacity as such)—
- (a) section 87(3) is to be treated as requiring WRA to—
    - (i) state that purpose,
    - (ii) name the taxpayer by giving a name by which the partnership is known or under which it is registered for any purpose, and
    - (iii) issue a copy of the notice to at least one of the partners,
  - (b) section 87(4) is to be treated as permitting the tribunal to disapply any or all of the requirements mentioned in paragraph (a) of this subsection, and
  - (c) the references to the taxpayer in sections 87(2)(a) and 88(3)(d) have effect as if they were references to at least one of the partners.

## **92 Power to obtain information to enable a person’s identity to be ascertained**

- (1) WRA may issue a notice (an “identification notice”) requiring a person to provide relevant information about another person (“the taxpayer”) only if the tribunal has approved the issuing of the notice.
- (2) An application for approval may be made without notice.
- (3) The tribunal may approve the issuing of the identification notice only if it is satisfied that conditions 1 to 6 are met.
- (4) Condition 1 is that WRA requires the information for the purpose of checking the tax position of the taxpayer.
- (5) Condition 2 is that it is reasonable to require the person to provide the relevant information.
- (6) Condition 3 is that WRA—
  - (a) does not know the taxpayer’s identity, but
  - (b) holds information from which the taxpayer’s identity can be ascertained.
- (7) Condition 4 is that WRA has grounds for believing—
  - (a) that the person will be able to ascertain the identity of the taxpayer from the information held by WRA, and
  - (b) that the person obtained relevant information about the taxpayer in the course of carrying on a business.
- (8) Condition 5 is that the taxpayer’s identity cannot readily be ascertained by other means from the information held by WRA.
- (9) Condition 6 is that nothing in sections 97 to 102 prevents WRA from requiring the person to provide the relevant information.
- (10) In this section, “relevant information” means all or any of the following—
  - (a) name,
  - (b) last known address, and
  - (c) date of birth (in the case of an individual).
- (11) This section also applies for the purpose of checking the tax position of a class of persons (and references to the taxpayer are to be read accordingly).

## **93 Power to obtain contact details for debtors**

- (1) WRA may issue a notice (a “debtor contact notice”) requiring a person (“the third party”) to provide contact details for another person (“the debtor”) only if conditions 1 to 5 are met.
- (2) Condition 1 is that an amount by way of—
  - (a) devolved tax,
  - (b) interest on devolved tax,
  - (c) a penalty relating to devolved tax, or
  - (d) interest on a penalty relating to devolved tax,
 is payable by the debtor to WRA under an enactment or contract settlement.

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- (3) Condition 2 is that WRA requires contact details for the debtor for the purpose of collecting that amount.
- (4) Condition 3 is that it is reasonable to require the third party to provide the details.
- (5) Condition 4 is that—
  - (a) the third party is a body corporate or unincorporated association, or
  - (b) WRA has grounds for believing that the third party obtained the details in the course of carrying on a business.
- (6) Condition 5 is that nothing in sections 97 to 102 prevents WRA from requiring the third party to provide the details.
- (7) But WRA may not issue a debtor contact notice if—
  - (a) the third party is a charity and obtained the details in the course of providing services free of charge, or
  - (b) the third party is not a charity but obtained the details in the course of providing services on behalf of a charity that are free of charge to the recipient of the service.
- (8) In this section, “contact details”, in relation to a person, means the person’s address and any other information about how the person may be contacted.

#### **94 Time limit for issuing a tribunal approved information notice**

Where the tribunal has approved the issuing of an information notice WRA must issue the notice—

- (a) no later than 3 months after the day on which the tribunal’s approval was given, or
- (b) within such shorter period as the tribunal may specify when giving the approval.

#### **95 Complying with an information notice**

- (1) A person to whom an information notice is issued must comply with the notice—
  - (a) within the period specified in the notice, and
  - (b) in such manner as is specified or described in the notice.
- (2) But if the person has requested a review of, or made an appeal against, the notice or a requirement in it, subsection (1)(a) ceases to apply to the notice or the requirement.
- (3) Where an information notice requires a person to produce a document, it must be produced—
  - (a) at a place agreed to by that person and WRA, or
  - (b) at a place which WRA may specify.
- (4) WRA must not specify for the purpose of subsection (3)(b) a place that is used solely as a dwelling.
- (5) The production of a document in compliance with an information notice is not to be regarded as breaking any lien claimed on the document.

## **96 Producing copies of documents**

- (1) Unless an information notice requires a person to produce an original document, the person may comply with the notice by producing a copy of the document.
- (2) Subsection (1) is subject to any conditions or exceptions specified in regulations made by the Welsh Ministers.
- (3) Where a person complies with a notice by producing a copy of the document, WRA may subsequently require that person to produce the original document—
  - (a) within such period, and
  - (b) in such manner,
 as WRA may specify.
- (4) But a person is not required to produce the original document if a request is made by WRA more than 6 months after the day on which the copy of the document was produced.

## **CHAPTER 3**

### **RESTRICTIONS ON POWERS IN CHAPTER 2**

## **97 Information notices: general restrictions**

- (1) An information notice requires a person to produce a document only if it is in the person's possession or power.
- (2) An information notice may not require a person to produce a document if the whole of the document originates more than 6 years before the day on which the notice is issued, unless the notice is issued with the approval of the tribunal.
- (3) An information notice issued for the purpose of checking the tax position of a person who has died may not be issued more than 4 years after the person's death.
- (4) An information notice may not require a person to provide information or produce a document (or any part of a document) that relates to the conduct of a pending review or appeal relating to any tax (whether or not a devolved tax).

## **98 Protection for journalistic material**

- (1) An information notice may not require a person to provide or produce journalistic material.
- (2) "Journalistic material" means information or a document which is—
  - (a) in the possession of someone who created or acquired it for the purposes of journalism, or
  - (b) in the possession of someone who received it from another person who intended the recipient to use it for the purposes of journalism.

## **99 Protection for personal records**

- (1) An information notice may not require a person to provide or produce personal records or information contained in personal records.



- (2) But an information notice may require a person—
  - (a) to produce a document (or a copy of a document) that is a personal record, omitting the information which (either alone or with other information) makes the document a personal record;
  - (b) to provide information contained in a document which is a personal record, other than the information which (either alone or with other information) makes the document a personal record.
- (3) “Personal records” means documentary and other records concerning an individual (“P”) (whether living or dead) who can be identified from those records and relating to—
  - (a) P’s physical or mental health,
  - (b) spiritual counselling or assistance given or to be given to P, or
  - (c) counselling or assistance given or to be given to P in relation to P’s personal welfare by a person who—
    - (i) by reason of an office or occupation has responsibilities for P’s personal welfare, or
    - (ii) by reason of an order of a court has responsibilities for P’s supervision.

#### **100 Taxpayer notices following a tax return**

- (1) Where a person has made a tax return for a tax period, a taxpayer notice may not be issued for the purpose of checking that person’s tax position for that period.
- (2) Where a person has made a tax return in relation to a transaction, a taxpayer notice may not be issued for the purpose of checking a person’s tax position in relation to that transaction.
- (3) Subsections (1) and (2) do not apply where (or to the extent that) either condition 1 or 2 is met.
- (4) Condition 1 is that a notice of enquiry has been issued in respect of—
  - (a) the tax return, or
  - (b) a claim (or an amendment of a claim) made by the person in relation to the tax period or the transaction to which the return relates,and the enquiry has not been completed.
- (5) Condition 2 is that, as regards the person, WRA has reason to suspect that—
  - (a) an amount that ought to have been assessed to a devolved tax for the tax period or in relation to the transaction may not have been assessed,
  - (b) an assessment to a devolved tax for the tax period or in relation to the transaction may be or have become insufficient, or
  - (c) relief from a devolved tax given or claimed for the tax period or in relation to the transaction may be or have become excessive.
- (6) Where any partner in a partnership has made a tax return, this section has effect as if that return had been made by each of the partners.
- (7) References in this section to a person who has made a tax return refer only to that person in the capacity in which the return was made.

### **101 Protection for privileged communications between legal advisers and clients**

- (1) An information notice may not require a person—
  - (a) to provide privileged information, or
  - (b) to produce any part of a document that is privileged.
- (2) Information or a document is privileged if a claim for legal professional privilege could be maintained in respect of it in legal proceedings.
- (3) The Welsh Ministers may by regulations make provision for the resolution by the tribunal of any dispute as to whether any information or document is privileged.
- (4) The regulations may, in particular, make provision for the custody of a document while its status is being determined.

### **102 Protection for tax advisers and auditors**

- (1) An information notice may not require a tax adviser—
  - (a) to provide information about a relevant communication, or
  - (b) to produce any part of a document which is the tax adviser’s property and consists of a relevant communication.
- (2) In subsection (1)—
 

“relevant communication” (*“gohebiaeth berthnasol”*) means a communication between—

  - (a) a tax adviser and a person in relation to whose tax affairs the tax adviser has been appointed, or
  - (b) the tax adviser of a person and any other tax adviser of that person, the purpose of which is the giving or obtaining of advice about the person’s tax affairs;

“tax adviser” (*“cynghorwr treth”*) means a person appointed to give advice about the tax affairs of another person (whether appointed directly by that person or by another tax adviser of that person).
- (3) An information notice may not require a person who has been appointed as an auditor for the purpose of an enactment—
  - (a) to provide information held in connection with the performance of the person’s functions under that enactment, or
  - (b) to produce a document which is that person’s property and which was created by that person or on that person’s behalf for or in connection with the performance of those functions.
- (4) Subsections (1) and (3) do not have effect in relation to—
  - (a) information explaining any information or document which the person to whom the notice is issued has, as tax accountant, assisted any client in preparing for, or delivering to, WRA, or
  - (b) a document which contains such information.
- (5) In the case of an unidentified third party notice, subsections (1) and (3) do not have effect in relation to—
  - (a) information giving the identity or address of a person to whom the notice relates or of a person who has acted on behalf of such a person, or
  - (b) a document which contains such information.

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- (6) Subsections (1) and (3) have effect despite subsections (4) and (5) if the information in question has already been provided, or a document containing the information has already been produced, to WRA.
- (7) Where subsection (1) or (3) does not have effect in relation to a document by virtue of subsection (4) or (5), an information notice that requires the document to be produced has effect as if it requires that part or those parts of the document containing the information mentioned in subsection (4) or (5) to be produced.
- (8) In subsection (3), “enactment” also includes an enactment (whenever enacted or made) which is, or is contained in—
  - (a) an Act of the Scottish Parliament,
  - (b) Northern Ireland legislation (within the meaning of the [Interpretation Act 1978 \(c. 30\)](#)),
  - (c) a Scottish instrument (within the meaning of the [Interpretation and Legislative Reform \(Scotland\) Act 2010 \(asp 10\)](#)), or
  - (d) a statutory instrument (within the meaning of the [Interpretation Act \(Northern Ireland\) 1954 \(c. 33\)](#)).

## CHAPTER 4

### INSPECTIONS OF PREMISES AND OTHER PROPERTY

#### 103 Power to inspect business premises

- (1) If WRA has grounds for believing that the inspection of a person’s business premises is required for the purpose of checking the person’s tax position, WRA may enter the premises and inspect—
  - (a) the premises;
  - (b) business assets that are on the premises;
  - (c) business documents that are on the premises (but see section 110).
- (2) But WRA may carry out such an inspection only with—
  - (a) the agreement of the occupier of the premises, or
  - (b) the approval of the tribunal.
- (3) An inspection may be carried out—
  - (a) at a time agreed to by the occupier of the premises, or
  - (b) if the inspection has been approved by the tribunal—
    - (i) at a reasonable time specified in a notice issued to the occupier at least 7 days before that time, or
    - (ii) at any reasonable time if the tribunal, when approving the inspection, is satisfied that WRA has grounds for believing that notifying the occupier would seriously prejudice the assessment or collection of devolved tax.
- (4) If WRA seeks to carry out an inspection without—
  - (a) the agreement of the occupier, or
  - (b) issuing a notice under subsection (3)(b)(i),WRA must provide a notice at the time the inspection is to begin.

- (5) A notice provided under subsection (4) must—
  - (a) if the occupier of the premises is present, be provided to the occupier;
  - (b) if the occupier is not present but there is a person present who appears to WRA to be in charge of the premises, be provided to that person;
  - (c) in any other case, be left in a prominent place on the premises.
- (6) A notice issued under subsection (3)(b)(i), or provided under subsection (4), must state—
  - (a) that the inspection has been approved by the tribunal, and
  - (b) the possible consequences of obstructing a person exercising WRA's functions.
- (7) The powers under this section do not include power to enter or inspect any part of the premises that is used solely as a dwelling.

#### **104 Carrying out inspections under section 103: further provision**

- (1) When carrying out an inspection under section 103, WRA has the following powers.
- (2) On entering the business premises, WRA may—
  - (a) if it has grounds for believing that the carrying out of the inspection may be seriously obstructed, be accompanied by a constable, and
  - (b) be accompanied by a person authorised by WRA.
- (3) WRA may make such examination or investigation as it considers to be necessary in the circumstances.
- (4) WRA may direct that the premises or any part of them, or anything in them, be left undisturbed (either generally or in particular respects) for so long as is necessary for the purposes of any such examination or investigation.
- (5) WRA, or a person accompanying WRA, may take samples of material from the premises.
- (6) The power to take samples includes power—
  - (a) to carry out experimental borings or other works on the premises, and
  - (b) to install, keep or maintain monitoring and other apparatus on the premises.
- (7) Any sample taken under subsection (5) is to be disposed of in such manner as WRA may determine.

#### **105 Carrying out inspections under section 103: use of equipment and materials**

- (1) WRA, or a person accompanying WRA, may take any equipment or materials required for the purpose of an inspection under section 103 onto the business premises being inspected.
- (2) WRA, or a person accompanying WRA, may take equipment or materials onto the premises—
  - (a) at a time agreed to by the occupier of the premises, or
  - (b) at any reasonable time, if either—
    - (i) a notice was issued under section 103(3)(b)(i) and the notice specified that the equipment or materials were to be taken onto the premises, or

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- (ii) WRA has grounds for believing that issuing such a notice would seriously prejudice the assessment or collection of devolved tax.
- (3) If equipment or materials are taken onto premises without—
  - (a) the agreement of the occupier, or
  - (b) a notice having been issued in accordance with subsection (2)(b)(i),WRA must provide a notice at the time the equipment or materials are to be taken onto the premises.
- (4) The notice must—
  - (a) if the occupier of the premises is present, be provided to the occupier;
  - (b) if the occupier is not present but there is a person present who appears to WRA to be in charge of the premises, be provided to that person;
  - (c) in any other case, be left in a prominent place on the premises.
- (5) The notice must state the possible consequences of obstructing a person exercising WRA's functions.
- (6) If the inspection, or the use of equipment or materials, has been approved by the tribunal, the notice must state that fact.

#### **106 Power to inspect premises or property for valuation etc.**

- (1) WRA may enter premises and inspect the premises and any property on the premises for the purpose of valuing, measuring or determining the character of the premises or property if—
  - (a) the valuation, measurement or determination is required for the purposes of checking any person's tax position, and
  - (b) either condition 1 or 2 is met.
- (2) Condition 1 is that—
  - (a) the inspection is carried out at a time agreed to by a relevant person, and
  - (b) a notice of the agreed time of the inspection has been issued to the relevant person.
- (3) Condition 2 is that—
  - (a) the inspection has been approved by the tribunal, and
  - (b) a notice of the time of the inspection has been issued to a relevant person specified by the tribunal at least 7 days before that time.
- (4) In this section, "relevant person" means—
  - (a) the occupier of the premises, or
  - (b) if the occupier cannot be identified or the premises are vacant, a person who controls the premises.
- (5) A notice under subsection (2)(b) or (3)(b) must state possible consequences of obstructing a person exercising WRA's functions.
- (6) A notice under subsection (3)(b) must also state that the inspection has been approved by the tribunal.
- (7) If WRA considers it necessary to assist with the inspection, WRA may be accompanied by a person authorised by WRA.

### **107 Producing authorisation to carry out inspections**

If a person carrying out an inspection under section 103 or 106 is unable to produce evidence of authority to carry out the inspection when asked to do so by—

- (a) the occupier of the premises, or
  - (b) any other person who appears to be in charge of, or to control, the premises,
- the inspection must stop and may not be continued until such evidence is produced.

### **108 Approval of tribunal for inspection of premises**

- (1) WRA may ask the tribunal to approve—
  - (a) an inspection under section 103 or 106, or
  - (b) the exercise of powers under section 104 or 105 in relation to an inspection under section 103 which has been agreed to by the occupier of the premises.
- (2) The tribunal’s approval of an inspection under section 103 includes approval of the exercise of the powers under section 104 or 105 subject to any conditions imposed by the tribunal in approving the inspection.
- (3) An application for approval may be made under subsection (1) without notice of the application being sent to—
  - (a) the person whose tax position is the subject of the proposed inspection, or
  - (b) the occupier of the premises.
- (4) The tribunal may approve an inspection under section 103 only if—
  - (a) it is satisfied that WRA has grounds for believing that the inspection of the business premises is required for the purpose of checking a person’s tax position, and
  - (b) if the application for approval was made without notice, it is satisfied that sending notice of the application might have prejudiced the assessment or collection of devolved tax.
- (5) The tribunal may approve an inspection under section 106 only if it is satisfied that the inspection is required for the purposes of checking any person’s tax position and—
  - (a) if the application for approval was made without notice, it is satisfied that sending notice of the application might have prejudiced the assessment or collection of devolved tax, or
  - (b) in any other case—
    - (i) the person whose tax position is the subject of the proposed inspection has been given a reasonable opportunity to make representations to WRA about the inspection,
    - (ii) the occupier of the premises has been given a reasonable opportunity to make such representations, and
    - (iii) the tribunal has been provided with a summary of any representations made.
- (6) Subsection (5)(b)(ii) does not apply if the tribunal is satisfied that the occupier of the premises cannot be identified.
- (7) Where the tribunal has approved an inspection under subsection (1)(a) or the exercise of a power under subsection (1)(b), WRA must carry out the inspection or exercise the power—

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- (a) no later than 3 months after the day on which the tribunal’s approval was given, or
- (b) within such shorter period as the tribunal may specify when giving the approval.

#### **109 Power to mark assets and to record information**

The powers under sections 103 to 106 include—

- (a) power to mark business assets, and anything containing business assets, for the purpose of indicating that they have been inspected, and
- (b) power to obtain and record information (whether electronically or otherwise) relating to the premises, property, assets and documents that have been inspected.

#### **110 Restriction on inspection of documents**

WRA may not inspect a document under this Chapter if (or to the extent that), by virtue of Chapters 2 and 3, an information notice issued at the time of the inspection to the occupier of the premises could not require the occupier to produce the document.

#### **111 Interpretation of Chapter 4**

In this Chapter—

“business assets” (“*asedau busnes*”) means assets that WRA has reason to believe are owned, leased or used in connection with the carrying on of a business by any person, but does not include documents;

“business documents” (“*dogfennau busnes*”) means documents (or copies of documents) that relate to the carrying on of a business by any person;

“business premises” (“*mangre busnes*”), in relation to a person, means premises (or any part of premises) that WRA has reason to believe are (or is) used in connection with the carrying on of a business by or on behalf of the person;

“premises” (“*mangre*”) includes any building or structure, any land and any means of transport.

### **CHAPTER 5**

#### **FURTHER INVESTIGATORY POWERS**

#### **112 Power to copy and remove documents**

- (1) Where a document is inspected by WRA or is produced by a person, WRA may take copies of the document or make extracts from it.
- (2) Where a document is inspected by WRA or is produced by a person, WRA may—
  - (a) remove the document at a reasonable time, and
  - (b) retain the document for a reasonable period,if it appears to WRA to be necessary to do so.
- (3) Where WRA removes a document, WRA must supply free of charge—

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- (a) a receipt for the document, and
  - (b) a copy of the document,
- if requested to do so by the person who was in possession or power of the document when it was produced or inspected.
- (4) The removal of a document under subsection (2)(a) is not to be regarded as breaking any lien claimed on the document.
  - (5) Where a document removed under subsection (2)(a) is lost or damaged before it is returned, WRA is liable to compensate the owner of the document for any expenses reasonably incurred in replacing or repairing the document.
  - (6) In this section, references to a document include a copy of the document.

### **113 Further provision about records**

- (1) This section applies to any provision of this Act that—
  - (a) requires a person to produce a document,
  - (b) permits WRA—
    - (i) to inspect a document,
    - (ii) to make or take copies of or extracts from a document, or
    - (iii) to remove a document,
  - (c) makes provision about penalties or offences in connection with the production or inspection of documents, including in connection with the failure to produce or permit the inspection of documents, or
  - (d) makes any other provision in connection with the requirement mentioned in paragraph (a) or the powers mentioned in paragraph (b).
- (2) A provision to which this section applies has effect as if—
  - (a) any reference in the provision to a document were a reference to anything in which information of any description is recorded, and
  - (b) any reference in the provision to a copy of a document were a reference to anything onto which information recorded in the document has been copied, by whatever means and whether directly or indirectly.
- (3) WRA may, at any reasonable time, obtain access to, inspect and check the operation of any computer and any associated apparatus or material which is or has been used in connection with a relevant document.
- (4) In subsection (3), “relevant document” means a document—
  - (a) that a person has been, or may be, required to produce by or under a provision of this Act, or
  - (b) that WRA may—
    - (i) inspect,
    - (ii) make or take copies of or extracts from, or
    - (iii) remove.
- (5) WRA may require any assistance that it reasonably requires for the purposes of subsection (3) from—
  - (a) the person by whom or on whose behalf the computer is or has been used, or
  - (b) any person having charge of, or otherwise concerned with the operation of, the computer, apparatus or material.



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- (6) If a person exercising the power under subsection (3) is unable to produce evidence of authority to do so when asked to provide such evidence by—
- (a) the person by whom or on whose behalf the computer is or has been used, or
  - (b) any person having charge of, or otherwise concerned with the operation of, the computer, apparatus or material,
- the person exercising the power must stop and may not continue until such evidence is produced.

## CHAPTER 6

### OFFENCES RELATING TO INFORMATION NOTICES

#### **114 Offence of concealing etc. documents following information notice**

- (1) A person commits an offence if—
- (a) WRA issues an information notice to the person—
    - (i) which requires the person to produce a document, and
    - (ii) which has been approved by the tribunal, and
  - (b) the person conceals, destroys or otherwise disposes of (or arranges for the concealment, destruction or disposal of) that document.
- (2) A person may commit an offence under subsection (1) despite the fact that the person has appealed against the information notice or against a requirement in it.
- (3) A person does not commit an offence under subsection (1) if the person acts after the original document has been produced in accordance with the information notice, unless WRA has notified the person that the document must continue to be available for inspection (and has not withdrawn the notification).
- (4) A person does not commit an offence under subsection (1) where a copy of a document has been produced in accordance with section 96(1), if the person acts after the end of the period of 6 months beginning with the day on which the copy was produced unless, before the end of that period, WRA has made a request for the original document under section 96(3).
- (5) It is a defence for a person charged with an offence under subsection (1) to show that the person had a reasonable excuse for concealing, destroying or otherwise disposing of (or for arranging for the concealment, destruction or disposal of) the document.
- (6) A person who commits an offence under subsection (1) is liable—
- (a) on summary conviction, to a fine;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine (or both).

#### **115 Offence of concealing etc. documents following notification**

- (1) A person commits an offence if the person conceals, destroys or otherwise disposes of (or arranges for the concealment, destruction or disposal of) a document after WRA has told the person that—
- (a) a document is to be, or is likely to be, the subject of an information notice addressed to that person (see section 88(3)(b)), and

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- (b) WRA intends to seek the approval of the tribunal for the issuing of the information notice (see section 87(2)(b)) or is required to seek such approval (see sections 86, 89(1)(d) and 92(1)).
- (2) A person does not commit an offence under subsection (1) if the person conceals, destroys or otherwise disposes of the document after—
  - (a) the end of the period of 6 months beginning with the day on which WRA told the person (or last told the person), or
  - (b) an information notice has been issued requiring the person to produce the document.
- (3) It is a defence for a person charged with an offence under subsection (1) to show that the person had a reasonable excuse for concealing, destroying or otherwise disposing of (or for arranging for the concealment, destruction or disposal of) the document.
- (4) A person who commits an offence under subsection (1) is liable—
  - (a) on summary conviction, to a fine;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine (or both).

## CHAPTER 7

### TRIBUNAL APPROVALS

#### 116 No review or appeal of tribunal approvals

- (1) In section 11(5) of the [Tribunals, Courts and Enforcement Act 2007 \(c. 15\)](#) (decisions excluded from right to appeal to Upper Tribunal), after paragraph (c) insert—
  - “(ca) any decision of the First-tier Tribunal under section 88, 89(3) or 92(3) of the [Tax Collection and Management \(Wales\) Act 2016 \(anaw 6\)](#) (approval for Welsh Revenue Authority to issue certain information notices),
  - (cb) any decision of the First-tier Tribunal under section 108 of that Act (approval for Welsh Revenue Authority to inspect premises),”.
- (2) In section 13(8) of that Act (decisions excluded from right to appeal to Court of Appeal etc.), after paragraph (b) insert—
  - “(ba) any decision of the Upper Tribunal under section 88, 89(3) or 92(3) of the [Tax Collection and Management \(Wales\) Act 2016 \(anaw 6\)](#) (approval for Welsh Revenue Authority to issue certain information notices),
  - (bb) any decision of the Upper Tribunal under section 108 of that Act (approval for Welsh Revenue Authority to inspect premises),”.