

TAX COLLECTION AND MANAGEMENT (WALES) ACT 2016

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1 – Overview

6. The overview of the Act shows how the Parts of the Act are arranged and provides a brief description of what each Part does.

Part 2 - the Welsh Revenue Authority

Sections 2-9 – Establishment, status, membership, committees and staff of the Welsh Revenue Authority

7. **Section 2** establishes the Welsh Revenue Authority (WRA) as a corporate body with its own legal personality. The WRA will be a Crown body with the status of a non-ministerial department, as distinct from the status of a Welsh Government Sponsored Body.
8. **Sections 3-7** provide for the membership of the WRA, which will comprise non-executive and executive members and consist of between eight and thirteen members. Section 3(3) ensures that the number of non-executive members always exceeds the number of executive members. Section 4 sets out the disqualifying offices that would disqualify a person from being appointed as a non-executive member of the WRA.
9. **Sections 5 and 7** provide for the Welsh Ministers to appoint, re-appoint and remove non-executive members including a chairperson and deputy chairperson and to make regulations to amend the number of members. There are also provisions for the removal of the elected executive member.
10. **Section 6** provides for the appointment of an elected executive member. The elected executive member will be appointed by the non-executive members, following a ballot of WRA staff conducted by the WRA.
11. **Section 8** makes provision for the WRA to establish committees (which may establish sub-committees) for any purpose relating to its functions. The WRA may determine the committees' composition and also appoint people who are not members of the WRA and remunerate them for their services, with the approval of the Welsh Ministers.
12. **Section 9** provides for the appointment of a chief executive of the WRA who is responsible to the WRA for the efficient and effective running of the WRA. The Welsh Ministers will appoint the first chief executive and subsequent appointments will, with the approval of the Welsh Ministers, be made by the non-executive members of the WRA. Provision is also made for the WRA to appoint staff, who will be civil servants.

Sections 10-11 – Procedure and validity

13. **Section 10** requires the WRA to make rules to regulate its own procedure and that of its committees and these must provide that a meeting of WRA will not be quorate unless a majority of the members present are non-executive members of WRA. Section 11 establishes the validity of the WRA's proceedings or acts.

Sections 12-15 – Functions

14. **Section 12** sets out the WRA's functions, including its general function to collect and manage devolved taxes and particular functions relating to such taxes including: providing information and assistance to the Welsh Ministers and taxpayers and others; resolving complaints and disputes; and, promoting tax compliance and working to protect against tax evasion and tax avoidance. The WRA may undertake other actions which it considers necessary or expedient in connection with exercising its functions. Section 13 makes provision for the WRA to internally authorise the carrying out of its functions by WRA members, committees, sub-committees or WRA staff. Section 13(2) requires that at least one non-executive member is a member of any committee or sub-committee that is authorised to carry out WRA functions. Where WRA has authorised the carrying out of any of a function under section 13, the WRA's ability to exercise that function and responsibility for the exercise of the function is not affected.
15. **Section 14** makes provision for the WRA to delegate any of its functions to one or more bodies that have been prescribed by the Welsh Ministers in regulations.
16. A power is given to WRA to pay an organisation to which it has delegated a function and to give directions about how delegated functions are to be exercised. The WRA must publish information about any such delegations and directions given, unless it considers that to do so would prejudice the effective exercise of its functions.
17. Where a delegation is entered into the WRA will retain the ability to exercise any of the functions that it has delegated and it will retain overall responsibility for the collection and management of devolved taxes in Wales.
18. **Section 15** provides that the Welsh Ministers may give directions to the WRA of a general nature with which the WRA must, in the exercise of its functions, comply. This might for example be in relation to strategic policy priorities or in relation to the exercise of delegation power by WRA under section 14. Directions given by the Welsh Ministers must be published.

Sections 16-20 - Information

19. **Section 16** allows for information acquired by the WRA, or an organisation to which WRA functions have been delegated, to be used (subject to any international obligations of the UK that restricts or prohibits the use of information) within the WRA or by any organisation to whom functions have been delegated, in relation to any function of the WRA.
20. **Section 17** prohibits the disclosure of protected taxpayer information (as defined at section 17(3)) by a relevant official (as defined at section 17(2)) unless it is expressly permitted. Breach of this requirement is a criminal offence under section 20. The grounds for a permitted disclosure are set out in section 18.
21. **Section 19** requires that relevant officials who have access to protected taxpayer information must make a declaration acknowledging their obligation of confidentiality.

Sections 21-22 – Court proceedings and evidence

22. **Section 21** empowers the WRA to institute criminal and civil proceedings in England and Wales. WRA will be able to appoint individuals to act on its behalf in magistrates'

*These notes refer to the Tax Collection and Management (Wales)
Act 2016 (c.6) which received Royal Assent on 25 April 2016*

courts proceedings in England and Wales even when they are not an authorised person within the meaning of the Legal Services Act 2007.

23. **Section 22** provides an explanation of the evidential status of documents issued by or on behalf of the WRA and certain matters stated in such documents, which are to be used in legal proceedings, including that a certified copy of a document is admissible in legal proceedings to the same extent as the original document.
24. Where the WRA issues a certificate that a tax return or notification to WRA has not occurred when it should have, that certificate is evidence of the fact, unless proved otherwise.

Sections 23-25 – Money

25. **Section 23** requires the Welsh Ministers to pay the WRA for undertaking tax collection and management functions. The Welsh Ministers will set the amount, times and any conditions of payment that they consider to be appropriate.
26. **Section 24** provides for WRA to pay a reward to a person for a service relating to any of its functions. For example, to an informer who provides information which leads to the successful collection of undeclared tax in circumstances where a person has sought to evade or avoid paying devolved Welsh taxes.
27. **Section 25** requires the WRA to pay the money it has collected (including devolved taxes, penalties and interest on sums payable to WRA) into the Welsh Consolidated Fund, but after it has deducted any disbursements (for example, the repayment of credits and interest). Any rewards paid under section 24 are not disbursements for the purposes of this section.

Section 26 – Charter of standards and values

28. The WRA must prepare, consult on, publish and lay before the National Assembly for Wales a Charter. The Charter must set out the standards of service, standards of behaviour and values WRA's members and staff will be expected to adhere to when dealing with taxpayers and their agents, and the standards of behaviour and values the WRA expects from those it deals with. The WRA is also required to review the Charter on a 5-year cycle, revising it where appropriate and to publish the first Charter within 3-months of the section of the Act coming into force.

Section 27-28 – Corporate plan and annual report

29. **Section 27** requires the WRA to prepare a corporate plan for each planning period. A planning period is defined and the first plan is to be published no later than a date prescribed by Welsh Ministers by regulations. Subsequent plans are to be submitted to Welsh Ministers thereafter at three-yearly intervals.
30. The plan must describe WRA's main objectives, the outcomes by which these objectives may be measured and the activities it expects to undertake during the planning period. Plans must be submitted to the Welsh Ministers for approval and approved plans must be laid before the National Assembly for Wales and published.
31. The WRA may submit a revised corporate plan at any time during the planning period for the approval of the Welsh Ministers. The Welsh Ministers may by regulations revise the 3-year planning period.
32. **Section 28** requires the WRA to prepare and publish an annual report on what it has done to achieve its objectives during that financial year. The annual report must be sent to the Welsh Ministers and laid before the National Assembly for Wales. The report must in particular contain an assessment of the extent that the WRA has met the standards of service, standards of behaviours and values set out in its Charter and be made available

*These notes refer to the Tax Collection and Management (Wales)
Act 2016 (c.6) which received Royal Assent on 25 April 2016*

to the Auditor General for Wales (AGW) at a similar time as the WRA's Accounts and Tax Statement.

Sections 29-32 – Accounts and audit

33. **Section 29** requires the WRA to keep full and proper accounts and prepare them at the end of each financial year. The Accounts must be prepared in accordance with any directions given by the Welsh Ministers.
34. The Welsh Ministers may direct the WRA on the information to be contained in the accounts and how it is to be presented, the methods and principles used to prepare the accounts and any other additional supporting information that should accompany the accounts.
35. **Section 30** requires the WRA to prepare a Tax Statement of money received (either collected directly or by an organisation delegated to collect tax) for each financial year in accordance with directions given by the Welsh Ministers.
36. **Section 31** sets out the timescales of when the accounts and Tax Statement must be presented by WRA to the AGW for audit purposes.
37. When examining the accounts and Tax Statement the AGW must be satisfied that expenditure has been incurred lawfully, money received has been expended only for intended purposes, money collected has been collected lawfully; and, any deductions of disbursements has been made in accordance with section 25(2). Within four months of receiving the accounts and Tax Statement from the WRA, the AGW must lay a certified copy of the accounts and Tax Statement and its report before the National Assembly for Wales.
38. Provision is made for the AGW under section 32 to examine the economy, efficiency and effectiveness of the WRA in discharging its functions. If the AGW thinks such an examination is required, the AGW must first consult the National Assembly for Wales and take into account its views on whether an examination should be undertaken. If an examination is undertaken the AGW must publish a report of the results as soon as is reasonably practicable and lay a copy before the National Assembly for Wales.

Section 33 – Accounting officer

39. The Chief Executive of the WRA is also the WRA's accounting officer. The accounting officer responsibilities will be specified by the Welsh Ministers, but the section provides examples of what those responsibilities might be, including the signing of the WRA's accounts, ensuring the propriety and regularity of the WRA's finances, and the responsibility for the economy, efficiency and effectiveness of how WRA resources are used. Responsibilities as accounting officer may also be owed to the National Assembly for Wales, the Welsh Ministers or a committee of the National Assembly for Wales.

Section 34 – Welsh Public Records

40. The section amends GOWA 2006 so that the records of the WRA are classed as Welsh public records.

Section 35 – Public Services Ombudsman

41. The section adds the WRA to the list of public bodies in Wales contained in the Public Services Ombudsman (Wales) Act 2005 to enable the Public Service Ombudsman for Wales to have jurisdiction over WRA.

Section 36 – Auditor General for Wales

42. The section adds to the Public Audit (Wales) Act 2013 so as to provide that the AGW may charge the WRA a fee for an examination, certification or report on the WRA's Tax Statement.

Part 3 – Tax Returns, Enquiries and Assessments

Section 37 – Overview

43. This section provides an overview of the Part that relates to the assessment of devolved taxes, namely, taxpayers' duties, tax returns, WRA enquiries into tax returns, determinations and assessments of tax by the WRA and claims for tax relief and, repayments and the procedure for making them.

Sections 38-39 – Taxpayer duties to keep and preserve records

44. [Section 38](#) places a duty on a person who is required to make a devolved tax return, to keep and preserve records that are needed to complete that return. It sets out the types of records to be kept and the time period for which records need to be preserved whilst permitting the WRA to specify an earlier date. Provision is also made for the Welsh Ministers to make regulations to prescribe records and supporting documents that must be kept and preserved.
45. [Section 39](#) sets out how the duty on taxpayers to keep and preserve records can be satisfied, making it clear that they might be preserved in any form and by any means, although this is subject to any conditions or exceptions set out in regulations.

Sections 40-42 – Tax returns

46. [Section 40](#) gives the definition of “the filing date” as being the date by which a tax return for a devolved tax is due. Legislation about the particular devolved taxes will make provision about what that date is in particular circumstances. [Section 41](#) provides for a person who has made a tax return to be able to amend it and sets out how and when this can be done. A person making an amendment must do so within 12 months of the filing date or by any other date that Welsh Ministers have prescribed by regulations. An amendment cannot be made in the circumstances where a notice to amend a tax return has been issued by the WRA during an enquiry into the tax return ([section 45\(3\)](#)) or a closure notice has been issued following the completion of an enquiry ([section 50](#)).
47. [Section 42](#) permits the WRA to correct a tax return that has obvious errors or omissions by giving notice to the taxpayer. An obvious error might be something like an arithmetical mistake where the figures used for the calculation are nevertheless correct. A correction must be made by WRA within 9 months from the date the tax return was made. The taxpayer may reject the correction by amending the tax return or by giving notice rejecting the correction, provided it is done within 3 months of the WRA notice of correction.

Sections 43-45 – Notice and scope of enquiry and amendment of tax return during enquiry

48. [Section 43](#) provides for the WRA to enquire into a tax return, provided that notice of the intention to carry out an enquiry is given to the person who made the return. Only one enquiry may be made in relation to any particular tax return (except where the return is amended by the taxpayer, in which case another enquiry could take place into that amendment or matters affected by it). [Section 44](#) sets out the scope and limitations of a WRA enquiry into a tax return.
49. [Section 45](#) provides for the amendment of a tax return by the WRA during an enquiry where it is of the opinion that the amount of devolved tax stated as being payable in

the tax return is insufficient and that without immediate amendment there is likely to be a loss of devolved tax. Where an enquiry is made into an amended tax return, it limits the WRA's power to amend the tax return to matters which have been amended by the taxpayer or affected by the amendment. The period in which an enquiry into a tax return is in progress is defined for the purposes of sections 45 and 46. Any amount of devolved tax that is payable following the amendment must be paid within 30 days of the date of a notice of amendment being issued by the WRA.

Sections 46-49 – Referral to tribunal during enquiry

50. **Section 46** provides for the referral to the tribunal (as defined by section 192) for determination of any questions concerning the tax return during an enquiry. It requires notice of the referral be given jointly by the relevant person and the WRA. Tribunal rules will make provision about the procedure to be followed in a referral. Section 47 enables either party to withdraw a notice of referral made under the previous section.
51. **Section 48** sets out the effect of a referral under section 46 on an enquiry. It provides that a closure notice under section 50 or an application for a direction to issue a closure notice under section 51 cannot be made while proceedings under section 46 are in progress and provides a definition of what "in progress" means in this context.
52. **Section 49** provides that the determination of a question made by the tribunal under section 46 is binding on the parties and cannot be reopened if the result of the enquiry is appealed (unless it is a matter that the tribunal would allow to be reopened had it made a preliminary decision about it in a normal appeal). It requires the WRA to take the determination into account when reaching conclusions on the enquiry and making any amendments to the tax return.

Sections 50-51 – Completion of enquiry

53. **Section 50** provides for the completion of an enquiry. The WRA is required to issue a closure notice to the person who made the tax return on completion of an enquiry. A closure notice must state whether or not an amendment is required and must make any amendment necessary. Any tax payable as a result of an amendment made by the closure notice must be paid within 30 days of the notice being issued.
54. **Section 51** provides for the person who made the return to seek from the tribunal a direction that the WRA should issue a closure notice. The tribunal must give a direction unless it is satisfied the WRA has reasonable grounds for this not to happen. Tribunal rules will set out the procedure for an application of this kind.

Sections 52-53 – WRA determinations

55. **Section 52** provides for the WRA to determine the amount of devolved tax that is chargeable in circumstances where it believes a person is chargeable for devolved tax and that person has not filed a tax return by the required date. Notice of the determination must be given to the person believed to be liable for the devolved tax. Payment must be made by the person within 30 days of the notice being issued. A determination cannot be made more than four years after the date on which a tax return should have been filed with the WRA.
56. **Section 53** provides that where a person makes a self-assessed tax return after the WRA has made a determination the tax return will supersede the WRA's determination. The provision does not apply when a person makes a tax return more than four years after the power to make the determination was first exercisable by the WRA, or more than 12 months after the date on which the determination was issued, whichever is the later. In instances where proceedings have commenced for the recovery of tax following a WRA determination, and during those proceedings the WRA receives a tax return that supersedes its determination, the proceedings may continue as if they were for the recovery of so much of the self-assessed tax which remains due and not yet paid. This

is to ensure that WRA does not need to stop those proceedings and start again merely because a late tax return has been made.

Sections 54-61 – WRA assessments

57. **Section 54** allows the WRA to make an assessment of devolved tax chargeable where it is of the opinion there is a need to make good a loss of tax where an amount that should have been assessed has not been, an amount assessed is less than it should have been, or relief that has been given is or has become excessive.
58. **Section 55** provides for an assessment to be made by the WRA to recover an excessive repayment of tax, including any interest that may have been paid.
59. **Sections 56 and 57** provides that references to “WRA Assessment” are to mean assessments made under sections 54 or 55 and references to the taxpayer under sections 58 to 61 are to mean the person chargeable to the devolved tax and, in relation to an assessment to recover excessive repayment of tax, mean the person to whom the excessive repayment of tax was made.
60. **Section 58** limits the circumstances in which a WRA assessment can be made to two types of situation. Firstly, those situations which arise because of careless or deliberate behaviour by the taxpayer (defined at section 60), a person acting on behalf of the taxpayer or a person who was in a partnership (defined at section 192) with the taxpayer at the relevant time. Secondly, an assessment can be made in circumstances where the WRA is not entitled to conduct an enquiry into a tax return (generally because the time limit for doing so has expired) or WRA did conduct an enquiry and at the time the enquiry ended (or WRA’s right to conduct one expired) it would not have been reasonable to expect WRA to have known the information that they now consider might lead to a loss of tax or excessive repayment of tax within the enquiry window. Sub-section (4) prohibits the WRA making an assessment under these provisions if the situation was attributable to a mistake in the calculation of the tax liability that was in accordance with generally prevailing practice at the time the return was made.
61. **Section 59** provides the time limits for the WRA assessments. The general time limit is 4 years after the filing date or, if later, after the date the tax return was made. This time limit is extended to 6 years where the loss of tax is attributable to carelessness by the taxpayer or a related person, or 20 years where the loss of tax has been brought about deliberately by the taxpayer or a related person. A WRA assessment to recover excessive repayment of tax is not late if it is made within 12 months of that repayment (even in cases where it would otherwise have been outside the 4, 6 or 20 year time limit). If a taxpayer has died, a WRA assessment must be made on a taxpayer’s personal representatives within four years of death and only if the relevant date was no earlier than six years before the death. The section also makes it clear that any objection to a WRA assessment on the basis of the time limits has to be done by way of review or appeal against the assessment under Part 8.
62. **Section 61** requires the WRA to issue a notice of an assessment to the taxpayer. The taxpayer is required to pay the amount assessed within 30 days of the issue of the notice.

Sections 62-67 – Relief in case of excessive assessment or overpaid tax

63. **Section 62** provides that a taxpayer can make a claim to the WRA for relief if they believe they have been assessed more than once for the same matter.
64. **Section 63** provides that a taxpayer may make a claim to the WRA for repayment where they have paid tax that they believe was not chargeable. It also provides that, if an assessment or determination is made that a person is chargeable to an amount of tax and they believe the tax is not chargeable, they can make a claim for the tax liability to be discharged (i.e. they will not have to pay).

65. **Section 64** provides that the WRA may reject a claim for relief on the basis that paying it would unjustly enrich the person making the claim. The circumstances when this might happen could include where a person making payment of the devolved tax was not the person who ultimately bore the cost of the tax. For example, in the case of landfill tax the tax is paid by the landfill site operator, yet the cost is generally borne by those charged for depositing waste at the landfill site.
66. **Section 65** provides for circumstances where devolved tax is to be repaid or discharged where the payment was originally made by a person other than the taxpayer or that other person ultimately bore the cost of the tax payment (e.g. as a customer of the taxpayer who had the cost of the tax liability passed on to them as part of the cost of goods or services they paid the taxpayer for). Loss or damage related to mistaken assumptions about tax made by a taxpayer should be excluded from consideration of whether a taxpayer would be unjustly enriched except to the extent that the taxpayer is able to show that the taxpayer actually incurred a quantifiable amount of loss or damage for those mistaken assumptions which could be compensated for.
67. **Section 66** provides that for the purposes of WRA determining whether a repayment or discharge of an amount would unjustly enrich a claimant (this being the basis for rejecting a claim pursuant to section 64), regulations can be made that provide for reimbursement arrangements to be put in place. The arrangements that these regulations would put in place would be designed to prevent the taxpayer from being unjustly enriched and a claim for relief would not be allowed if those regulations were not complied with.
68. **Section 67** provides a list of situations (other than unjust enrichment) in which the WRA does not need to give effect to a claim for relief under section 63.

Sections 68-73 – Procedure for making claims, keeping and preserving records and amending and correcting claims

69. **Section 68** requires a person wishing to make a claim for relief in circumstances of double assessment (section 62) or for overpaid tax (section 63) to do so in the manner determined by the WRA. A claim must provide a declaration by the claimant that the details provided are correctly stated. The WRA may also require details of the amount of devolved tax to be discharged or repaid and supporting information to determine the correctness of the claim. A claim under section 63 may not be made by being included in a tax return.
70. **Section 69** requires a person making a claim to keep all necessary and relevant records to support the claim and to preserve records in accordance with the time periods specified. The Welsh Ministers may make regulations to determine which records and supporting documents need to be kept and preserved. Sub-section (5) defines supporting documents. Section 70 establishes how the duty placed on a taxpayer to preserve information may be satisfied. Section 71 provides for a person making a claim to amend it provided that it is done by notice and within the stated time period.
71. **Section 72** allows the WRA to amend a claim to correct any obvious mistakes or omissions. The WRA must tell the claimant in writing if it makes an amendment to correct a mistake in a claim and the claimant can reject the amendment by the WRA if they give notice to the WRA. Details of time limits are set out in the provisions. Section 73 requires the WRA to give effect to a claim as soon as practicable after it has been made.

Section 74 – 77 WRA enquiry into a claim

72. **Section 74** provides for the WRA to enquire into a claim or an amendment to a claim, provided that it does so within 12 months of the claim being made and that it informs the claimant of its intention to do so. A claim can only be the subject of one notice of enquiry.

73. A Section 75 closure notice is issued by the WRA to complete an enquiry and informs the claimant of the WRA's conclusions and amends the claim if required. Under section 76 a claimant can ask the tribunal to direct the WRA to give a closure notice within a specified time scale. In this situation, the tribunal must direct the WRA to issue the closure notice within a specific time unless it is satisfied by the WRA that there are reasonable grounds for not doing so. Section 77 requires the WRA to act on the conclusions of the closure notice within 30 days.

Section 78 – Time limit for making claims

74. This section provides that claims for relief from double assessment or overpayment of tax made under section 62 or 63 must be made within 4 years of the date the tax return was required and must be made separately from any tax return made to the WRA (if a return is yet to be made anything that could be included in a claim can be done in a tax return anyway).

Section 79 – The claimant: partnerships

75. This section provides that where an overpayment was made on behalf of a partnership, a claim for relief for overpayment can only be made by someone who is nominated to act on behalf of all partners who would have been liable for the tax had the assessment or determination been correct.

Section 80 – Assessment of claimant in connection with claim

76. This section provides that, where a claim for relief for overpaid tax is made, and the grounds for that claim are also grounds for the WRA to make an assessment on the claimant in respect of the tax, then the WRA can disregard certain restrictions on its ability to make an assessment. These include disregarding the expiry of a time limit. It also provides that a claim for relief for overpayment is not finally determined until the amount to which it relates is finally determined (e.g. following the result of a review or appeal).

Section 81 – Contract settlements

77. This section applies to section 63 (Claim for relief for overpaid tax etc.) in circumstances where an amount paid by way of devolved tax has been paid pursuant to a contract settlement and the person who paid WRA is not the person who was the taxpayer liable for that tax. Section 81 sets out the implications on a claim under section 63 of such an arrangement..

Part 4 – Investigatory Powers of WRA

Sections 83-85 – Interpretation

78. **Section 83** sets out the five different types of notices WRA may use to require a person to provide information or a document. Collectively, they are described in the Act as “information notices”. Subsection (2) provides a general rule that WRA may specify or describe the information or documents being sought, in other words an information notice might require a specific document (e.g. a particular contract document) or WRA might require documents of a particular kind or which contain a particular kind of information (e.g. any document containing information relating to a particular transaction).
79. WRA may only exercise its powers under sections 86, 87, 89 or 92 where the information or document requested is required for the purposes of checking a person's “tax position”. Section 84 sets out the definition of “tax position” for the purpose of references in this Part of the Act. A tax position can include a person's past, present and future liability to pay any devolved tax or associated penalties, interest and any other amounts that have been paid or are payable by or to the person relating to devolved tax

and also includes claims and notices in connection with the liability to pay any devolved tax. It follows therefore that one of these notices can be used in relation to an ongoing enquiry into a tax return or claim or to help WRA in making a WRA determination (see chapter 5 of Part 6) or a WRA assessment (see chapter 6 of that Part). Checking a person's potential future liability is likely to be a rare occurrence but it may be relevant, for example, in relation to certain types of land transaction which are staged over a long period and in relation to which a tax return might be made before all the liability to tax arises.

80. **Section 85** sets out the definition of “carrying on a business”, which includes a business whose activity generates income from land; carrying on a profession; a charity; and, the activities of a local authority or any other public authority. This is relevant when WRA exercises its powers under section 92 (power to require information to enable a person's identity to be ascertained), and section 93 (power to obtain contact details for debtors), which may only be exercised where the recipient of the notice has obtained the information in the course of “carrying on a business”.

Section 86 - Taxpayer notices

81. This section enables WRA to serve a notice on a person requiring the production of information or documents, provided the requirements in subsection (1) are met and the tribunal has approved the notice (see section 88).
82. The requirements in subsection (1) provide that WRA may only issue a notice if:
- (i) it requires the information or a document for the purpose of checking the person's tax position;
 - (ii) it is reasonable to require that person to provide the information or document requested; and
 - (iii) the notice does not require information or a document subject to any restrictions set out in Chapter 3 of this Part of the Act.

Section 87 – Third party notices

83. This section gives WRA the power to issue a notice on a person (the “third party”) requiring the production of information or documents where WRA knows the identity of another person (the “taxpayer”) and wants to check that taxpayer's tax position. WRA can only issue a notice under this section if the taxpayer has agreed, or the tribunal has approved the notice (see section 88), subject to certain requirements in subsection (1) being met.
84. WRA may also ask the tribunal to approve a notice under this section that does not name the taxpayer, if the tribunal accepts that having the taxpayer's name in the third party notice might seriously prejudice tax assessment or collection. Subsection (3) requires the WRA to give a copy of the third party notice to the taxpayer unless the tribunal decides that the WRA has reasonable grounds for believing that doing so might seriously prejudice tax assessment or collection.

Section 88 – Tribunal approval of taxpayer notices and third party notices

85. This section 88 provides the tests the tribunal must apply when it is asked by WRA to approve the issue of a taxpayer notice (section 86) or a third party notice (section 87).
86. The test the tribunal must apply when deciding whether to approve a taxpayer notice or third party notice will depend on whether the recipient has been told that WRA will be applying for approval.
87. If the recipient has not been told that WRA will be applying for tribunal approval, the test provided by subsection (2) applies. This requires the tribunal to be satisfied that

the requirements for the issue of the notice have been met; and that giving notice of the application might prejudice the assessment or collection of devolved tax.

88. If the recipient has been told that WRA will be applying for tribunal approval, the test provided by subsection (3) applies. As well as requiring the tribunal to be satisfied that the requirements for the issue of the respective notice have been met, the test also requires the tribunal to be satisfied that the recipient of the notice has been told about the information or documents required by WRA, and given an opportunity to make representations about that request to WRA. Where representations are made, WRA must provide the tribunal with details of those representations. In the case of a third party notice, the tribunal must be satisfied that the taxpayer who is the subject of the notice has been told by WRA why the information or documents are required.
89. When a recipient has been told that WRA is going to require the information or documents in a formal notice it becomes a criminal offence under section 115 to conceal, destroy or otherwise dispose of the information or documents.
90. Subsection (4) enables WRA to disapply some of the above requirements where giving notice of the application to the taxpayer or third party might prejudice the assessment or collection of devolved tax. The tribunal may make such modifications of the notice as it thinks appropriate (for example the tribunal might think it is reasonable for WRA to require some documents but not others and might restrict the scope of the information notice accordingly).

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

91. This section provides that, where the WRA wants to check the tax position of a person or class of persons whose identity it does not know, the WRA may give a notice to a person (an “unidentified third party notice”) requiring them to provide information or produce documents. This might occur where WRA has enough information to have grounds for believing a person is liable to tax (for example, WRA knows that a land transaction took place) but it does not yet know the identity of the person involved.
92. Notices issued under this section must have been approved by the tribunal beforehand, which can only do so if the conditions in subsection (1)(a) to (c) are met (which are the same as the basic requirements to be met for taxpayer notices and third party notices), and it is satisfied that the WRA is not able to obtain the information or documents from another source. The tribunal must also be satisfied that there are reasonable grounds to believe that the person or persons who are the subject of the notice have failed (or may fail) to comply with the law related to a devolved tax and this has led (or will lead) to serious prejudice to the assessment or collection of devolved tax (in the example given above, WRA might have grounds to believe that the person involved in the land transaction is not going to come forward and make a tax return). As with section 88, the tribunal may make such modifications of the notice as it thinks appropriate.

Sections 90-91 – Requiring information and documents in relation to a group of undertakings or to a partnership

93. **Section 90** provides arrangements for the issue of third party notices where the WRA wishes to check the tax position of either a parent undertaking or any of its subsidiary undertakings (for example either a parent company and any of its subsidiary companies; the detailed meaning of these terms being found in sections 1161-1162 of, and Schedule 7 to, the [Companies Act 2006 \(c.46\)](#)).
94. Where WRA issues a notice to any person for the purposes of checking the tax position of a parent undertaking or any one of the subsidiary undertakings, subsection (2) applies. In these circumstances, WRA may issue a notice if it has the agreement of the parent undertaking, or approval of the tribunal, i.e. the agreement of the parent is treated as also covering any subsidiary.

95. Where WRA issues a notice to the parent undertaking for the purposes of checking the tax position of a subsidiary undertaking, subsection (3) applies. In these circumstances, WRA must obtain the tribunal's approval before issuing the notice. In effect a third party notice issued to a parent in relation to a subsidiary is treated as if it is a taxpayer notice given that the parent controls the subsidiary.
96. The changes made by this section do not apply where WRA issues a notice to one subsidiary undertaking for the purposes of checking the tax position of a fellow subsidiary undertaking. In these cases, the notice must be issued in accordance with the procedure set out in section 87. But where WRA issues a notice to one subsidiary undertaking for the purposes of checking the tax position of the parent undertaking (and any other subsidiaries) that is a case to which subsection (2).
97. **Section 91** provides for arrangements for the issue of a third party notice to someone other than one of the partners where the WRA wishes to check the tax position of two or more persons in a business partnership. Notices issued under this section should: state its purpose; and, in normal circumstances include the name of the partnership to whom the notice applies and be copied to at least one of the partners. Where tribunal approval is being sought to issue a notice, the tribunal may disapply the requirement to name the taxpayer and issue a copy of the notice if it is satisfied that WRA has grounds to believe that complying with these requirements might negatively affect tax assessment or collection.

Section 92 – Power to obtain information to enable a person's identity to be ascertained

98. The WRA can, in certain circumstances, issue a notice (an identification notice) to someone requiring them to provide information about a person (either a single person or class of persons) in order to establish a taxpayer's identity. The notice can only be issued with the tribunal's approval. The WRA may apply for approval without giving notice. The tribunal may only approve the issue of a notice if it is satisfied that conditions 1 to 6 in subsections (4) to (9) are met. Under this section the WRA may request a taxpayer's name, last known address, and/or date of birth.
99. While these notices are similar to unidentified third party notices under section 89, the information that may be required is much more limited and WRA does not have to prove that there are grounds to believe that the unidentified person may have failed to comply with the law relating to devolved tax. In practice this procedure will be used where WRA knows that something has happened which attracts a tax liability (e.g. a land transaction) and wishes to contact the persons involved but does not know their identity. They may seek to use this power prior to the point where any failure to comply with the law occurs so that they are able to contact the taxpayer to give him or her the opportunity to get their tax affairs in order.

Sections 93 - Power to obtain contact details for debtors

100. The WRA may issue a notice (debtor contact notice) requiring a person to provide contact details (a person's address and any other contact information) for another person if it is satisfied that conditions 1 to 5 in subsections (2) to (6) are met.
101. This power would be used where WRA needs to contact a person who owes WRA money but who WRA have been unable to get hold of.
102. This procedure is not to be used to seek contact details from personal friends or relatives of a debtor. It can only be used if the contact details have been obtained by a person in the course of business (see above). But it cannot be used to ask for contact details of debtors from charities or persons providing services to charities free of charge to the recipient of the service.

Section 94 – Time limit for issuing a tribunal approved information notice

103. This section requires the WRA to issue an information notice which has been approved by the tribunal within 3 months of that approval, or a shorter period if specified by the tribunal.

Section 95 – Complying with an information notice and Section 96 - producing copies of documents

104. **Section 95** sets out that a person issued with an information notice must comply with it and provide the required information or documents within a time period, location (which cannot be a place solely used as a dwelling) and in the manner specified in the information notice. As a public body, WRA must act reasonably when specifying the time, location and manner of production. The duty to comply with the information notice is suspended where the recipient has requested a review of the notice or made an appeal against it. A person may be liable to a penalty under Chapter 5 of Part 5 of the Act where that person fails to comply with an information notice.
105. **Section 96** provides that where an information notice requires the person to produce a document, the person may comply by producing a copy of the original document (unless the notice specifically requests the original, or within 6 months of the copy being produced WRA subsequently requests it). This is subject to any conditions imposed by regulations made by the Welsh Ministers.

Sections 97-99 - Information notices: general restrictions and protection for journalistic material and personal records

106. **Section 97** provides some general restrictions on information notices, including that a person is required to produce a document only if it is in their possession or power. Furthermore, an information notice may not require a person to produce a document if the whole of it originates more than six years before the date of the notice, unless the notice is issued with the approval of the tribunal. An information notice issued to check the tax position of someone who has died cannot be given more than four years after the death.
107. Subsection (4) provides that an information notice may not require a person to provide information or a document (part or full) where it relates to an ongoing review or appeal in relation to any tax (whether or not the tax is a “devolved tax”). For example, if HMRC is conducting an enquiry into a person’s self-assessment income tax return, WRA cannot require information in relation to the same person’s devolved tax position if the information also relates to HMRC’s enquiry.
108. **Section 98** provides that WRA cannot require a person to provide material created, acquired or otherwise in someone’s possession for the purposes of journalism and section 99 provides protection for personal records, such as medical records. However, subsection (2) of section 99 makes clear that WRA may still require information or a document where it is possible to provide the information or document by omitting the personal record (e.g. by redacting or removing those parts of the document).

Section 100 - Taxpayer notices following a tax return

109. This section sets out restrictions on when taxpayer notices may be given. A taxpayer notice cannot be given in relation to a transaction or an accounting period (to check the tax position for those) where a person has made a tax return in relation to that transaction or accounting period. If WRA wishes to check the tax position in relation to the tax return it should open an enquiry into the return (see chapter 4 of Part 3).
110. However, a taxpayer notice could be given where a notice of enquiry had been given and the enquiry was not completed (in other words the notice is part of the conduct of the enquiry) or where the WRA suspected an issue with the assessed tax liability (including

any reliefs) for the transaction or accounting period (in other words the notice is part of the work WRA does in making a WRA determination or WRA assessment).

111. Subsection (6) means that these restrictions apply to all the partners in a partnership when at least one of them has made a tax return (but only in respect of their role as partners).

Sections 101-102 - Protection for privileged communications between legal advisers and clients and for tax advisers and auditors

112. **Section 101** provides that information notices do not require a person to provide or produce information or documents that are legally privileged. This refers to information or documents that benefit from the confidentiality that arises between a professional legal adviser and a client. The Welsh Ministers have a power to make provision by regulations for the tribunal to resolve disputes as to whether or not information or documents are privileged. Such regulations are subject to the negative procedure.
113. **Section 102(1)** provides that an information notice does not require a tax adviser to provide information or documents about tax advice given to a client.
114. Subsection (2) defines “relevant communication” and “tax adviser” for the purposes of this section. A person is a “tax adviser” where that person gives advice to another person about their “tax affairs” (whether or not that tax is a “devolved tax”).
115. Subsection (3) provides that an information notice does not require a person appointed as an auditor under any piece of legislation to provide certain information or documents related to that function.
116. However, these provisions are subject to subsections (4) to (7), which limits the scope of the protection in some circumstances. Subsection (4) provides that WRA may require a tax accountant to provide explanatory material which has been provided to a client in connection with information or documents provided to WRA. Subsection (5) provides that the protection does not apply to requests made under section 89 for information showing the identity or address of the unknown person.

Section 103 – Power to inspect business premises

117. **Section 103** provides that the WRA can enter a business premises and inspect the premises (including business assets and documents that are on the premises) to check a person’s tax position. Such an inspection can only be carried out with either the agreement of the occupier of the premises or with the approval of the tribunal.
118. Subsection (3) provides for the time of an inspection, which permits WRA to undertake an inspection at any time it has agreed with the occupier or at a reasonable time if the inspection has been approved by the tribunal. If WRA has not obtained the occupier’s agreement, it must give the occupier notice of the inspection 7 days before it is due to take place, unless the tribunal is satisfied that giving such notice would seriously prejudice tax collection or assessment.
119. If an inspection has been approved by the tribunal, the notice issued to the occupier must say so. This requirement is relevant because a person will only be liable to a penalty as described in Chapter 5 of Part 5 where the inspection has tribunal approval.
120. The WRA are not permitted to enter or inspect any part of premises that are used solely as a dwelling.

Section 104 – Carrying out inspections under section 103: further provision

121. This section provides further powers available to a WRA inspector when carrying out an inspection of business premises under section 103. These include: taking any other person(s) with them onto the premises (including a police officer where it is believed

that the inspection may be seriously obstructed); examining or investigating anything considered necessary in the circumstances of the inspection; directing that the premises (or any part of the premises) be left undisturbed for as long as is reasonably necessary for the purposes of any examination or investigation; the power to take samples of materials from the premises, including by experimental borings or other works or the installation and maintenance of monitoring or other apparatus on the premises.

Section 105 – Carrying out inspections under section 103: use of equipment and materials

122. This section provides WRA with supplementary powers it may exercise when undertaking an inspection under section 103 and may be most relevant when WRA is exercising the additional powers in section 104.
123. Subsection (1) provides WRA with the power to take equipment or materials required for the inspection on to the business premises. The power can only be exercised:
- (a) at a time agreed to by the occupier (agreement to the inspection itself does not necessarily include agreement to bringing equipment or materials, the occupier can refuse at that point and WRA would then have to seek the tribunal's approval to proceed, see section 108)
 - (b) if a notice was issued informing the occupier at least 7 days in advance of the inspection; or
 - (c) where it is deemed by the WRA that there are reasonable grounds for believing that giving advance notice that the power will be exercised would seriously prejudice the assessment or collection of tax, in which case notice must be provided at the time that the equipment or materials are taken onto the premises.
124. Subsections (4) to (6) set out the requirements of a notice. If the inspection, or use of equipment or materials, has been approved by the tribunal, the notice issued to the occupier must say so. This requirement is relevant because a person will only be liable to a penalty as described in Chapter 5 of Part 5 where the inspection has tribunal approval.

Section 106 – Power to inspect premises or property for valuation etc.

125. **Section 106** provides that the WRA may enter and inspect premises and any property on the premises for the purpose of valuing, measuring or determining the character of the premises if it is required for the purposes of checking a person's tax position. Unlike inspections under section 103, this power can be used in relation to dwellings (which will be relevant for example where taxes involve land transactions).
126. Such an inspection can only be carried out with either the agreement of the occupier (or a person who is in charge of the premises if the occupier cannot be identified), or the approval of the tribunal, (provided the occupier or person in charge has been given at least 7 days notice of the inspection).
127. The power does not give a right to WRA to physically force entry or to search.
128. Subsections (5) and (6) specify the requirements of a notice issued under subsections (2) (b) or (3)(b). Subsection (7) provides for any other person(s) to accompany the person carrying out the inspection where they consider it necessary to have assistance with undertaking valuation, measurement or determination.

Section 107 – Producing authorisation to carry out inspections

129. **Section 107** provides for an occupier of premises being inspected or other person who appears to the inspector to be in charge or in control of the premises to ask to see evidence of authority to carry out the inspection. Where this is not produced the inspection must be stopped until such time as the evidence is provided.

Section 108 – Approval of tribunal for inspection of premises

130. **Section 108** provides that WRA can ask the tribunal to approve an inspection under sections 103 or 106 or the exercise of powers under 104 or 105 in relation to an inspection under section 103.
131. The tribunal’s approval of an inspection under section 103 includes approval to exercise any of the powers in sections 104 and 106. But as referred to above, where an occupier agrees to an inspection under section 103, the occupier may reserve the right not to agree to the exercise of any of the powers in sections 104 or 105. In those cases WRA would need to seek tribunal approval for the exercise of the powers.
132. The application to the tribunal can be made without notice and in such circumstances the tribunal must satisfy itself that the sending of a notice of the application might have prejudiced the assessment or collection of devolved tax.
133. In approving an inspection under section 103 the tribunal must be satisfied the inspection of the business premises or powers to be exercised are required for the purposes of checking a person’s tax position.
134. In approving an inspection under section 106 the tribunal has to be satisfied that WRA gave both the person whose tax position is being checked and the occupier (if different and capable of being identified) a reasonable opportunity to make representations to the WRA and WRA must give a summary of any representations to the tribunal.
135. Subsection (7) requires the WRA to carry out an inspection no later than 3 months after the tribunal’s approval or within any shorter period as specified by the tribunal.

Section 109 – Power to mark assets and to record information

136. **Section 109** provides that while inspecting premises, business assets or documents (for valuation and/or for checking a tax position), assets can be marked to show that they have been inspected and relevant information can be obtained and recorded.

Section 110 – Restriction on inspection of documents

137. This section applies the restrictions contained in Chapters 2 and 3 of this Part of the Act so that WRA cannot inspect any document during the course of an inspection if WRA would have been restricted by Chapters 2 or 3 from requesting the same document using an information notice.

Section 111 - Interpretation

138. **Section 111** provides an interpretation of the expressions used in this Part of the Act. The definitions of “business assets”, “business documents” and “business premises” are tied to the definition of “carrying on a business” in section 85. “Premises” is defined broadly so as to ensure WRA is able to inspect any type of property that it might need to inspect under this Chapter.

Section 112-113 – Further investigatory powers

139. **Section 112** provides a power to WRA to copy, make extracts from and remove documents. The WRA may also retain the document for a reasonable period of time. This allows items to be removed for consideration or cross referencing against other documents. Where this happens, subsection (3) allows the person who produced the document to request a receipt for it and a copy of it without charging the person for the costs for doing so. The power to remove documents will normally be exercised with the taxpayer’s agreement as it does not amount to a right to seize documents. Subsection (5) provides that where a document that has been removed is lost or damaged, the WRA is liable to compensate the owner of the document for any expenses reasonably incurred in replacing or repairing the document.

140. **Section 113** applies to any provision of this Act that requires a person to produce documents or where the WRA is permitted to inspect, copy or remove documents. The section is primarily concerned with ensuring WRA is able to access information or documents stored in electronic form.
141. Subsection (3) allows the WRA at a reasonable time to obtain access to, inspect, and check the operation of any computer or other apparatus used in connection with a document that someone is required to produce or which may be inspected, copied or removed by the WRA. Subsection (5) allows the WRA to require the person in charge of the computer or other apparatus to provide help to fulfil the requirements of subsection (3). Subsection (6) makes it clear that references in subsections (3) to (5) to WRA getting access to a computer etc. or requiring assistance from a person are to be treated as references to an inspector carrying out an inspection on WRA's behalf under section 103.
142. Any person obstructing WRA or an inspector exercising the powers in subsections (3) and (5) is liable to a penalty under section 146.

Sections 114-115 – Offences relating to information notices

143. **Section 114** creates an offence relating to concealing, destroying or otherwise disposing of a document required by an information notice which has been approved by the tribunal. Subsection (2) confirms that a person may still commit an offence under this section where that person has appealed against the information notice or a requirement in it.
144. **Section 115** also creates an offence relating to concealing, destroying or otherwise disposing of a document where WRA has told a person that it intends to seek the tribunal's agreement, but has not yet done so.
145. The sections state the circumstances when an offence is not committed and also provide a defence where a person demonstrates that there was a reasonable excuse. A person who commits an offence under either of the sections is liable on summary conviction to a fine or on conviction on indictment to imprisonment for up to 2 years or to a fine (or both). In each case the court has discretion as to the amount of the fine.

Sections 116 – Tribunal approvals not to be reviewed by the tribunal or appealed

146. This section amends the Tribunals, Courts and Enforcement Act 2007 so that the tribunal's decision to approve an information notice or inspection cannot be reviewed, or appealed to the Upper Tribunal or Court of Appeal. "Review" in this context means a review by the tribunal itself of its own decision, as is normally provided for under that Act.

Part 5 - Penalties

Sections 118-121 – Penalty for failure to make tax return

147. **Section 118** provides that the penalty amount for a person who fails to make a tax return on or before the filing date (as defined by section 40) is £100.
148. **Section 119** provides that the penalty amount for a person who continues to fail to make a tax return after 6 months after the filing date is the greater of 5% of the devolved tax owed and £300.
149. **Section 120** provides for a further penalty where the failure to make a tax return continues for more than 12 months after the filing date. In these circumstances, the penalty is the greater of 5% of devolved tax owed and £300. If this failure is accompanied by a deliberate withholding of information which would enable or assist the WRA to assess the person's liability, subsection (2) provides for an increased penalty which is the greater of 100% of the devolved tax owed and £300.

150. **Section 121** provides the WRA with the power to reduce a penalty for failure to make a tax return where a person discloses information to the WRA which has been previously withheld by the failure to submit a tax return. Subsection (2) sets out three distinct elements, each of which may allow WRA to make a reduction: admission – telling WRA that information has been withheld; taking active steps – giving WRA reasonable help in assessing the amount of devolved tax unpaid as a result of the information being withheld; and access – allowing WRA access to the records to check the extent of any liability. Any reductions applied may reflect whether or not the disclosure was prompted or unprompted (i.e. whether or not the person has reason to believe that WRA is or is about to discover the information) and the quality (e.g. timing, nature and extent) of the information disclosed.

Sections 122-123 – Penalty for failure to pay tax

151. **Section 122** makes a person liable to a penalty where they fail to pay an amount of devolved tax on or before a certain date. Tax specific legislation will specify the date on which the amount must be paid, and the penalty applied.
152. **Section 123** provides for a person who has failed to pay tax by the due date to make a request to WRA to have the payment deferred. WRA can then decide whether or not to agree to the deferral of payment for a specified period as well as specifying any conditions of that deferral. If payment is deferred, any penalty the person might have incurred during the specified period for failing to pay tax is not applied. If the person breaks the agreement (either by failing to pay the tax due when the deferral period ends or failing to comply with any condition of that deferral), and WRA issue a notice to the person, the person becomes liable for any penalty to which the person would have been liable if the suspension had not been in place. If the deferral agreement is further varied the agreement applies until the end of the new agreement.

Section 124-128 – Penalties under Chapter 2: general

153. **Section 124** sets out how certain penalties should interact. Where a person is liable to one or more penalties under section 118 to 120, subsection (1) provides that the total amount of those penalties must not exceed the total amount of devolved tax. Subsection (2) provides that where a person is liable to a penalty under Chapter 2 and any other penalty arising in relation to a devolved tax liability (which is determined by the same devolved tax liability) the amount of the penalty under Chapter 2 is to be reduced by the amount of that other devolved tax penalty.
154. **Section 125** provides that the WRA may, in special circumstances, reduce a penalty that has been applied due to either a failure to make a tax return or a failure to pay tax on or before the due date. The penalty can be remitted, suspended, or reduced following a WRA agreement to compromise with the person liable to the penalty. The special circumstances under which the penalty may be reduced do not include the person's ability to pay or by the fact that a potential loss of revenue from one person is balanced by a potential over-payment by another.
155. **Section 126** provides that if a person satisfies WRA (or, on appeal, the tribunal), that there is reasonable excuse on the person's behalf for a failure to either make a return or make a payment, then the person is not liable to pay a penalty arising from that failure. The section also clarifies some circumstances in which a reasonable excuse does or does not apply.
156. Where a person is liable to a penalty resulting from this Chapter, Section 127 requires the WRA to assess the penalty and notify the person of the penalty and how it was assessed. The details of the assessment of the penalty by the WRA are also set out in the section. Section 128 requires the WRA to assess penalties within specified time limits.

Sections 129-132 – Penalties for inaccuracies in documents

157. **Section 129** provides that a person is liable to a penalty where they submit certain documents to WRA which contain an inaccuracy, subject to two conditions being met. The first condition is that the inaccuracy amounts or leads to either an understatement of the tax liability, a false or inflated statement of a loss or a false or inflated claim for relief or repayment of tax. The second condition is that in the WRA’s judgement the inaccuracy is either deliberate or careless on the part of the person submitting the document (who may be the taxpayer or someone else acting for the taxpayer or who is required to give a document to WRA, for example following an information notice issued under Part 4). A penalty is payable for each error. The documents caught by this penalty will be specified in tax specific legislation.
158. **Section 130** specifies the penalty amount for a deliberate and for a careless inaccuracy, which is calculated as a percentage of the “potential lost revenue” as defined in section 134.
159. **Section 131** empowers the WRA, to suspend all or part of a penalty to which a person is liable to under section 129 as a result of submitting a document to the WRA containing an error and which is due to carelessness. When exercising this power, WRA must issue a notice to the person liable to the penalty, which must specify what part of the penalty is being suspended, and set a period of suspension not exceeding two years and the conditions of suspension with which the person must comply. WRA may suspend all or part of a penalty only if compliance with a condition of suspension would help the person to avoid liability to further penalties incurred for careless inaccuracy. On the expiry of the period of suspension, the suspended penalty (all or part) is cancelled if WRA is satisfied that the conditions are met, otherwise the suspended period (all or part) becomes payable. A suspended penalty becomes payable where the person becomes liable for another devolved tax penalty during the period of a suspension.
160. **Section 132** provides that a person (A) is liable to a penalty where another person (B) submits a document to WRA containing an inaccuracy, and that inaccuracy is attributable to A either deliberately supplying B with false information or deliberately withholding information from them with the intention of creating an inaccuracy. Where this happens and there is either an understatement in the tax liability or a false or inflated claim for loss or repayment of tax, A is liable to pay a penalty which is 100% of the “potential lost revenue”. For example a taxpayer who deliberately gives an inaccurate document to his or her agent would be caught by this penalty when the agent then submits the inaccurate document to WRA on the taxpayer’s behalf. The agent may also be liable under section 129 and whether the agent acted deliberately or carelessly would depend on the facts of the case.

Section 133 – Penalty for failure to notify under-assessment or under-determination

161. This section provides that a penalty is payable by a person where an assessment issued by the WRA (as defined under section 56) understates the tax liability and the person has failed to take reasonable steps to inform the WRA of that fact within 30 days of receiving the under-assessment. The WRA must consider whether the person knew, or should have known, about the under-assessment and what steps it would have been reasonable to take to notify the WRA. References to a WRA assessment include a WRA determination (as defined under section 52). The penalty amount payable is 30% of the potential lost revenue. Potential lost revenue is defined in section 134.

Sections 134-138 – Potential lost revenue

162. Some penalties are determined as a percentage of the “potential lost revenue”, which is defined by sections 135 to 138.

163. **Section 135** provides the “normal rule” for the calculation of potential lost revenue as the additional amount payable (either to or from WRA) in respect of tax as a result of correcting an inaccuracy or under-assessment.
164. Where a person is liable to a penalty under section 129 for more than one inaccuracy, section 136 provides that if a calculation of potential lost revenue depends on the order in which inaccuracies are corrected then careless inaccuracies are to be corrected before deliberate inaccuracies. In calculating potential lost revenue, account is to be taken of any overstatement in a document given by the same person in the same tax period.
165. When calculating potential lost revenue in respect of a document given by or on behalf of a person, no account will be taken of a potential overpayment by another person except where specifically allowed for in any enactment. The section also provides the meaning of understatement and overstatement.
166. **Section 137** provides that where an inaccuracy has the result of a loss being recorded wholly for the purpose of reducing the amount of devolved tax payable then the normal rule for calculating potential lost revenue (provided by section 135) will apply. Subsection (2) provides that where an inaccuracy has the result of a loss being recorded partially for the purpose of reducing the amount of tax payable then potential lost revenue will be calculated: a) with reference to the part of the loss used to reduce the amount of tax payable; and b) 10% of the loss that has not been used to reduce the amount of tax payable. This applies where no loss would have been recorded apart from the inaccuracy and also to where a different loss would have been recorded because of the inaccuracy. Where the nature of the loss, or the person’s circumstances, means there is no reasonable prospect of the loss being used to reduce a tax liability of any person, there will be no penalty.
167. **Section 138** provides that where an inaccuracy results in an amount of tax being declared later than it should have been, the potential lost revenue is 5% of the delayed tax for each year of the delay. If the delay is less than one year then the potential lost revenue is a percentage equivalent to 5% per year for each separate period of delay. This section does not apply to cases where the inaccuracy gives rise to a loss wrongly recorded or quantified (see section 137).

Section 139-141 – Penalties under Chapter 3: general

168. **Section 139** provides for WRA to be able to reduce a penalty under this Chapter. This applies only where a person discloses information to WRA about an inaccuracy, a supply of false information, the withholding of information, or a failure to disclose an under-assessment which is relevant to a person’s liability to a devolved tax. Any reductions applied may reflect whether or not the disclosure was unprompted (where the person has no reason to believe that WRA is or is about to discover the information) and also the quality (timing, nature and extent) of the information disclosed.
169. **Section 140** provides that WRA may in special circumstances reduce a penalty that has been applied due to sections 129, 132 or 133. The penalty can be suspended, remitted entirely or reduced following WRA agreeing a compromise with the taxpayer in relation to the penalty proceedings. The special circumstances under which the penalty may be reduced cannot be related to the person’s ability to pay or by the fact that a potential loss of revenue from one person is balanced by a potential over-payment by another person.
170. **Section 141** provides that where a person becomes liable for a penalty due to sections 129, 132 or 133, WRA must assess the penalty, notify the person that a penalty has been incurred, and state in the notice the period or transaction against which the penalty is assessed. Subsection (3) and (4) sets out the time limits for the assessment of penalties under sections 129, 132 or 133.

Section 142 - Interpretation

171. This section defines various expressions used in this Chapter, including — “giving a document to WRA”, “making a tax return”, “a loss” and “action”.

Sections 143-145 – Penalty for failure to keep and preserve records in connection with tax returns and claims

172. **Section 143** provides for a penalty of a maximum of £3,000 for failure to keep and preserve records in compliance with section 38 or 69, with the exception that no penalty is incurred if other documentary evidence can show the same information. It will be for WRA to decide the level of penalty (up to the £3,000 maximum) in each case.
173. **Section 144** provides for a person not being liable to a penalty under section 143 if the person satisfies WRA (or, on appeal, the tribunal) that there is a reasonable excuse for the failure. The section defines some circumstances which would not be accepted as a reasonable excuse.
174. **Section 145** requires the WRA to assess the penalty and issue a notice to the liable person within a specified time period.

Sections 146-153 – Penalties relating to investigations

175. **Section 146** provides that a person is liable to a penalty of £300 where that person:
- (i). fails to comply with an information notice (as defined in section 83);
 - ((ii). deliberately obstructs the WRA in the course of an inspection approved by the tribunal;
 - ((iii). deliberately obstructs WRA in the course of exercising powers under section 113(3); or
 - (iv). fails to comply with a reasonable request for assistance under section 113(5).
176. Subsection (3) provides that failing to comply with an information notice includes concealing, destroying or disposing of a document even where this would be an offence under section 114 or 115. If a person was convicted under those sections section 155 prevents the person from incurring a penalty for the same act but the penalty is available as a sanction if no criminal conviction is pursued.
177. **Section 147** provides that a person is liable to a further daily penalty of up to £60 for each subsequent day the failure or obstruction continues after notice of that penalty has been issued by WRA. A person is not liable to a daily penalty where the person fails to respond to a notice issued by WRA under section 93 which requires the contact details for debtors. Subsection (2)(b) prevents a daily penalty from accruing while a review or appeal is taking place.
178. **Section 148** provides that a person is not liable to a penalty under section 146 or 147 if the WRA allows them further limited time to correct the failure and the person then does so. Section 149 also provides for a person not being liable to a penalty under section 146 or 147 if the person satisfies WRA (or, on appeal the tribunal) that there is reasonable excuse. The section defines some circumstances which would not be accepted as reasonable excuse.
179. Where a person has been liable to the daily default penalty under section 147 for more than 30 days and the failure or obstruction continues, section 150 provides for the WRA to make an application to the tribunal for an increase in the daily penalty. Before making an application, WRA must tell the person responsible for the failure or obstruction that an application may be made. On hearing the application, the tribunal may approve an increased amount up to a maximum of £1,000 for each applicable day and must have regard to factors including the likely cost of complying with the notice and the benefits

to the person or anyone else arising from the non-compliance. If the tribunal approves the request, the WRA must issue a notice to the person and state the day when the increased daily penalty would apply.

180. **Section 151** makes provision that, where certain criteria apply, a person can be made liable for an additional penalty whose amount is decided by the Upper Tribunal. The criteria are that: a person is liable to a penalty under section 146; the failure or obstruction continues; the WRA believes that the amount of tax the person has paid or is likely to pay is significantly less than it would have been if they had complied; the WRA makes an application to the Upper Tribunal for an additional penalty to be imposed; and the Upper Tribunal decides it is appropriate to do so.
181. In deciding the amount of the penalty, the Upper Tribunal must factor in the amount of tax which has not been, or is not likely to be, paid by the person. Any additional penalty imposed by a decision of the Upper Tribunal against this section is additional to the fixed and daily penalties already applied as a result of a continued failure or obstruction.
182. **Section 152** provides that in certain circumstances a person is liable to a penalty of up to £3,000 if, in the course of complying with an information notice, they submit a document which contains an inaccuracy. The circumstances are: if the error is due to careless or deliberate behaviour; if the person is aware of the inaccuracy at the time of submitting the document but fails to tell the WRA; or if the person discovers the error after submitting the document, but fails to take reasonable steps to inform the WRA. Where there is more than one inaccuracy in a document, a penalty is payable for each inaccuracy. It will be for WRA to decide the level of penalty (up to the £3,000 maximum) in each case.
183. Where a person becomes liable for a penalty under this Chapter, section 153 requires the WRA to assess the penalty and then notify the person of this. The assessment of a penalty under section 146 or 147 must be made within 12 months of the person becoming liable to the penalty, or, where there is a right to appeal against an information notice, 12 months from the end of the appeal period or conclusion of an appeal. Where a person becomes liable to a penalty under section 150, WRA must undertake an assessment of the penalty every 7 days until the end of the failure that gives rise to the penalty. The assessment of a penalty under section 151 must be made within 12 months of the Upper Tribunal's decision. An assessment of a penalty under section 152 must be made within 12 months on the date that the error first came to the attention of WRA and within six years of the date on which the person became liable to the penalty.

Section 154 – Payment of penalties

184. A penalty under Part 5 must be paid within 30 days of WRA issuing the penalty notice to the person, unless there is a review or appeal in which case section 182 applies, although only in relation to any disputed amount of penalty.

Sections 155-156 – Supplementary

185. **Section 155** provides that a person is not liable to pay any penalty outlined in the Act if the person has already been convicted of an offence relating to the matter which triggered the penalty.
186. **Section 156** gives the Welsh Ministers a regulation making power to specify the amounts of penalties and the procedure for assessing penalties under Part 5 of the Act.

Part 6 - Interest

Sections 157-160 – Interest on amounts payable to WRA

187. **Section 157** provides that interest is payable by a person on devolved tax and related penalties that are not paid before the late payment interest start date. Interest is incurred

from the late payment interest start date until the tax or penalty is paid. Subsection (3) states that in a normal case the late payment interest start date is the day after the day the amount of tax or penalty becomes payable.

188. [Section 158](#) provides that late payment interest is not payable on late payment interest. It also makes clear that when an amount of tax or penalty that is payable is set off against an amount to be repaid to the taxpayer by WRA, the date of that set-off is counted as the date of payment for the purposes of working out when interests stops accruing.
189. [Section 159](#) establishes the late payment interest start date where an amount of devolved tax becomes payable in circumstances where an assessment (including a self-assessment or WRA assessment or a determination) has been amended or corrected.
190. [Section 160](#) establishes the late payment interest start date in circumstances where a person dies before an amount of devolved tax or related penalty becomes payable and the executor or administrator is not able to pay the amount until probate or letters of administration or another equivalent document is resolved. Late payment interest will start from the later of the standard late payment interest start date, or 30 days after the grant of probate or letters of administration.

Sections 161-162 – Interest on amounts payable by WRA

191. [Section 161](#) provides that interest is payable by WRA on any repayment of devolved tax, repayment of any amount lodged with WRA in respect of anticipated tax payable, repayment of penalties or repayment of interest (on either tax or penalties). Where a repayment is made on or after the repayment interest start date, interest will be added to the amount to be repaid.
192. [Section 162](#) makes supplementary provision regarding repayment interest, including making clear that interest under section 161 is not payable when a court orders the repayment and the court may include interest in the order for repayment. It also makes clear that when an amount to be repaid to the taxpayer by WRA is set off against an amount of tax or penalty that is payable by the taxpayer, the date of that set-off is counted as the date of payment of the repayment for the purposes of working out when interests stops accruing.

Sections 163 – Rates of late payment interest and repayment interest

193. This section provides the Welsh Ministers with the power to specify the rates of late payment interest and repayment interest to be paid. Different rates may be set for different purposes. The Welsh Ministers may set out in regulations the circumstances where a rate of interest can be changed and from when a change to the rate of interest will apply.

Part 7 – Payment and Enforcement

Sections 164-168 – Payment and certification of debt

194. [Section 164](#) defines a “relevant amount” for the purposes of this Part as meaning payments of amounts of devolved tax or interest on it, penalties or interest on penalties relating to devolved tax. , Sections 165 and 166 then provide that any relevant amount that becomes payable is payable to WRA and requires WRA to provide a receipt upon payment of devolved tax if requested to do so.
195. [Section 167](#) provides the Welsh Ministers with a power to make regulations specifying that a fee is to be paid if an amount of tax, penalty or interest is paid by a particular method of payment that will be set out in the regulations (such as a credit card). The regulations will specify the amount of the fee in particular circumstances and may make provision about the time and manner in which the fee must be paid.

196. **Section 168** provides that a certificate from WRA stating that a sum owed to it has not been paid is evidence of the debt. Therefore in any court proceedings about the debt, if WRA can present such a certificate, the onus will be on the debtor to prove that the amount is not actually owed to WRA.

Sections 169-170 – Recovery

197. **Section 169** provides for unpaid tax or penalties below £2,000 to be recoverable in the magistrates' court as a civil debt. This is without prejudice to other recovery or enforcement mechanisms that may be at WRA's disposal (for example through the County Court or High Court). The Welsh Ministers may by regulations increase this amount.
198. If a person does not pay the WRA a sum that is due (tax, penalty or interest), section 170 provides for the WRA to recover the sum by taking and selling goods owned by the person using the procedure in Schedule 12 to the Tribunals, Courts and Enforcement Act 2007.

Part 8 - Reviews and Appeals

Sections 172 –Appealable decisions

199. **Section 172** gives a person to whom an appealable decision applies a right to ask WRA to review a decision and a right to make an appeal to the tribunal and sets out which decisions of WRA are to be classed as appealable decisions. Subsection (3) lists those decisions which are carved out of subsection (2) so as to make them non appealable (including, a decision to issue a notice of enquiry (but the conclusions of an enquiry are appealable) and a decision to issue a taxpayer notice, or include a particular requirement in such a notice (which must have the prior approval of the tribunal). Subsection (4) removes the right to request a review of a decision to issue an information notice where the tribunal has already approved it (this avoids WRA being able to change a decision of the tribunal). Subsection (5) limits the grounds on which a review or appeal can be based in relation to information notices so that the grounds of appeal are consistent with the grounds on which such a notice may be issued in the first place. The Welsh Ministers have a regulation making power at subsection (7) to add, vary or remove a decision from either of the lists of appealable or non-appealable decisions in subsections (2) and (3) or to make provision about the grounds on which an appeal or review of a decision may be based.

Sections 173-177 – Reviews

200. **Section 173** requires a request for a review to be made by giving notice to WRA. Such a request may not be sought where, in relation to the same decision, there is a WRA enquiry in progress, an appeal has been determined or is outstanding or the person has concluded a settlement agreement with the WRA.
201. **Section 174** sets out a 30-day time limit within which a person must give a notice of request and the day on which this period begins will differ, according to which of the circumstances provided for in this section apply. For example, in many cases, a person will be given 30 days from the issue of a notice informing them of a decision, in accordance with subsection (2)(b). The notice of request that is given to WRA must specify the grounds of the review.
202. **Section 175** allows for a notice of request to be made after the time stipulated at section 174 if the WRA agrees or if the tribunal gives permission. The tribunal rules will deal with the procedure for requests to the tribunal to permit a late review.
203. **Section 176(1)** places WRA under a duty to carry out a review of an appealable decision where a notice of request has been made that complies with the preceding review provisions at sections 173-175. Section 176(2) provides that the review may take such

form as appears appropriate to WRA in the circumstances but in deciding what is appropriate, subsection (3) requires WRA to have regard to steps taken before the review by WRA in reaching a decision and any person seeking to resolve disagreement about the decision.

204. When carrying out its review, WRA must take account of any representations made by the person requesting the review to WRA, provided that they are made at a stage that gives WRA a reasonable opportunity to consider them. The review may conclude that the WRA's decision is to be affirmed, varied or cancelled. Section 176(6) requires WRA to issue a notice of the conclusion of its review. This should be done within 45 days from the receipt of a person's notice of request unless a different time period is agreed between the parties. Subsection (7) provides that if WRA does not issue a notice of its conclusions within the time required by subsection (6), the review is deemed to have concluded that WRA's decision is upheld and WRA must issue a notice to that effect.
205. **Section 177** provides for the conclusion of the review to be treated as if it was a tribunal determination (save that there will be no further right of review or appeal). This will not however be the effect of the conclusions of a review if a tribunal determination is subsequently made in relation to the decision, or if the WRA and the person who requested the review enter into a settlement agreement in relation to that decision.

Sections 178-181 – Appeals

206. **Section 178(1)** provides that an appeal against an appealable decision of WRA must be made to the tribunal, as defined at section 173. An appeal cannot be made if, in relation to the same decision, a WRA enquiry is in progress, a review has been requested and has not yet been concluded or the person seeking an appeal has concluded a settlement agreement with the WRA.
207. **Section 179** sets out the time within which an appeal can be made, which is 30 days from a specified point in time, which differs depending on which of the circumstances set out in this section apply. For example, under subsection (3), where there has been a review of the decision by WRA, an appellant has 30 days beginning with the date on which the notice of conclusions (or deemed conclusions) is issued by WRA to the appellant in accordance with section 177(5).
208. **Section 180** provides for a late appeal to be made after the relevant period has elapsed if the tribunal gives permission. The tribunal rules will deal with the procedure for requests to the tribunal to permit a late appeal. Where an appeal is made, section 181 requires the tribunal to affirm, vary or cancel the WRA decision that is the subject of the appeal.

Section 182-183 – Consequences of reviews and appeals

209. **Section 182** sets out how the payment of penalties to which a person may be liable is treated during a review or an appeal. In essence, the effect of this provision is that the requirement to pay a penalty under section 154 will be suspended until 30 days after the conclusion of a review or final determination of an appeal. However, this suspension does not apply to any amount of penalty that is not in dispute.
210. The effect of section 183 is to suspend the requirement to comply with an information notice or a requirement in such a notice while a review or appeal of the relevant decision is taking place and to empower WRA or the tribunal to then specify a period for compliance if the outcome of a review or appeal is to affirm or vary a decision to issue an information notice or a requirement in it.

Section 184 – Settling disputes by agreement

211. **Section 184** provides for how matters can be settled by agreement between the person to whom an appealable decision applies and the WRA. Subsection (1) defines what is meant by a “settlement agreement”. Subsection (2) provides that the consequences of a settlement agreement are to be the same as if the tribunal had determined the outcome of an appeal (save to the extent specified at subsection (3)), unless the person notifies the WRA within 30 days that they wish to withdraw from the agreement. In order for a settlement agreement that was not concluded in writing to attract the consequences set out at subsection (2), subsection (5) provides that it needs to be confirmed in writing by the WRA to the person. It is possible for WRA and a person to whom an appealable decision applies to enter into a settlement agreement at any time save for when an appeal against the decision has been finally determined.

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.

Part 10 – Final Provisions

Section 188 – Power to make consequential etc. provision

227. This section empowers the Welsh Ministers to make regulations to provide for any incidental, consequential, or supplemental provision in relation the Act.

Sections 189 – Regulations

228. This section sets out the National Assembly for Wales procedure to which the various delegated powers will be subject. Subsection (2) specifies the regulations which are to be subject to the affirmative procedure, with all other regulations being subject to the negative procedure.

Section 190 – Issue of notices

229. This section applies where a provision of the Act or any subsequent regulations made under it after enactment, authorises or requires the WRA to issue a notice to a person. The section states how a notice may be issued and how a notice is to be treated as having been received in different circumstances. The section also provides a definition for a “proper address”.

Section 191 – Giving notices and other documents to WRA

230. This section applies where a provision of the Act or any subsequent regulations made under it requires or permits a person to give notice or other documents to the WRA. Any document must be in such form, contain such information and be given in a manner as may be specified by the WRA, but subject to any different provisions made under the Act. The section also sets out circumstances where it does not apply.

Section 192 - Interpretation

231. This section defines what is meant by finally determined in relation to an appeal or referral, and defines various general terms used in the Act.

Section 193 – Index of defined expressions

232. This section provides a Table that lists expressions defined or otherwise explained in the Act.

Section 194 - Coming into force

233. This section sets out those sections which will come into force on the day after Royal Assent and states that the other provisions come into force at a time specified in order(s) made by the Welsh Ministers.

Section 195 – Short title

234. This section provides that the short title of the Act is the Tax Collection and Management (Wales) Act 2016.