

Number: WG31966



Llywodraeth Cymru  
Welsh Government

Welsh Government

## Consultation Document

# Welsh Revenue Authority access to criminal powers to tackle devolved tax crime

Date of issue: 10 July 2017

Action required: Responses by 02 October 2017

Mae'r ddogfen yma hefyd ar gael yn Gymraeg.

This document is also available in Welsh.

**Overview** From April 2018 the Welsh Revenue Authority (WRA) will be responsible for collecting and managing devolved Welsh taxes. The consultation requests views on proportionate criminal investigatory powers for the WRA to tackle and deter devolved tax crime.

**How to respond** The consultation period begins on 10 July 2017 and ends on 2 October 2017. Please ensure your response reaches us before the required closing date.

To respond to this consultation please either; complete the questionnaire at the bottom of the document then email or post to address provided; or complete using the online response form.

**Further information and related documents** **Large print, Braille and alternative language versions of this document are available on request.**

Insert any references to the internet, documents or information which might be useful to consultees e.g. consultation web address, detailed appendix to consultation

**Contact details** For further information:  
The Welsh Treasury,  
Tax Policy, Engagement and Strategy,  
Welsh Government  
Cathays Park  
Pillar H08  
East Core  
Cardiff  
CF10 3NQ  
[FinancialReformMailbox@Wales.GSI.Gov.UK](mailto:FinancialReformMailbox@Wales.GSI.Gov.UK)

## **Data protection**

How the views and information you give us will be used

Any response you send us will be seen in full by Welsh Government staff dealing with the issues which this consultation is about. It may also be seen by other Welsh Government staff to help them plan future consultations.

The Welsh Government intends to publish a summary of the responses to this document. We may also publish responses in full. Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with the response. This helps to show that the consultation was carried out properly. If you do not want your name or address published, please tell us this in writing when you send your response. We will then blank them out.

Names or addresses we blank out might still get published later, though we do not think this would happen very often. The Freedom of Information Act 2000 and the Environmental Information Regulations 2004 allow the public to ask to see information held by many public bodies, including the Welsh Government. This includes information which has not been published. However, the law also allows us to withhold information in some circumstances. If anyone asks to see information we have withheld, we will have to decide whether to release it or not. If someone has asked for their name and address not to be published, that is an important fact we would take into account. However, there might sometimes be important reasons why we would have to reveal someone's name and address, even though they have asked for them not to be published. We would get in touch with the person and ask their views before we finally decided to reveal the information.

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## 1 Ministerial Foreword

1.1 From April 2018, it will become the responsibility of the Welsh Revenue Authority (WRA) to collect and manage landfill disposals tax and land transaction tax, replacing UK landfill tax and stamp duty land tax, which are currently collected by HMRC. The Tax Collection and Management (Wales) Act 2016 provides the framework in which the WRA can collect these taxes.



1.2 The effective collection of taxes is vital to fund the public services that we all rely on. To protect these valuable services it is important we have a tax system that is fair - making it easy for citizens to pay the right amount of tax at the right time, whilst tackling and deterring those who seek to evade paying tax.

1.3 In this consultation I outline my proposals to ensure that the WRA has proportionate criminal investigation powers in place to tackle and deter devolved tax crime. No government should legislate to provide a public authority with criminal powers unless it is necessary. HMRC currently use criminal powers in Wales to tackle and deter tax crime in relation to the equivalent taxes, (landfill tax and stamp duty land tax) and have a clearly defined set of safeguards to ensure that these powers are used proportionately and appropriately. I believe the WRA should be no different in this regard.

1.4 The proposals in the consultation nevertheless recognise that the WRA will not have the range of tax responsibilities discharged by HMRC. The consultation therefore carefully calibrates the proposed powers for the WRA and suggests a narrower set than those available to HMRC. For example, powers of arrest and detention are not proposed for the WRA as they are not seen to be necessary or proportionate. However, powers to gain entry to premises and seize information relating to tax crime are. The consultation asks for views on the impact of the WRA being provided with the specific criminal powers proposed.

1.5 The devolution of taxes brings with it new duties, one of which is to protect the interests of law abiding citizens by tackling those who would seek to evade their responsibilities. I look forward to your contributions on this important issue.

*Mark Drakeford*

## 2 Introduction

- 2.1 The Wales Act 2014 provided the National Assembly for Wales with the competence to legislate for taxes on transactions involving interests in land and on disposals to landfill.
- 2.2 From April 2018, landfill disposals tax (LDT) and land transaction tax (LTT) will replace UK landfill tax (LFT) and stamp duty land tax (SDLT) respectively. The UK taxes are currently collected and managed by HMRC. From April 2018, the collection and management of LDT and LTT will be the responsibility of the Welsh Revenue Authority (WRA). Other UK taxes could be devolved to Wales in the future or new, Wales only, taxes could be created.
- 2.3 The Office for Budget Responsibility (OBR) forecasts the WRA will collect £288m from LDT and LTT in 2018-19. Receipts from these two devolved taxes are forecast to rise to £365m/year by 2021-22.

**Table 1: Welsh devolved tax revenue forecast (£ million)**

	2015- 16	2016- 17	2017- 18	2018- 19	2019- 20	2020- 21	2021- 22
SDLT	152	203	243	263	282	311	343
Landfill Tax	34	33	28	25	23	22	22
<b>SDLT &amp; Landfill Tax</b>	<b>186</b>	<b>236</b>	<b>271</b>	<b>288</b>	<b>305</b>	<b>333</b>	<b>365</b>

*Source: OBR (March 2017) Devolved taxes forecast published alongside UK March 2017 Budget*

- 2.4 The revenue raised from these taxes will be used to fund Welsh public services for the benefit of all citizens in Wales. Failure to collect tax that should be paid could impact on the provision of public services and would be unfair to those who voluntarily comply.
- 2.5 The Tax Collection and Management (Wales) Act 2016 (TCMA) makes provision for a Welsh tax system to enable the collection and management of devolved Welsh taxes.
- 2.6 TCMA sets out a Welsh tax regime to support and enable taxpayer compliance. In the majority of cases we expect taxpayers to pay the right tax at the right time. There will be occasions, however, when additional

measures will be necessary to ensure compliance. TCMA provides the WRA with a comprehensive range of civil investigation and enforcement powers. These include civil powers to: require taxpayers and certain third parties to provide specified information and documents; inspect premises to check a person's tax position; and impose penalties for non-cooperation with a tax investigation.

2.7 It is anticipated that these powers will be sufficient to tackle the majority of cases where there is non-compliance. Where a taxpayer fails to comply with a tax obligation – including where they do not cooperate with a request for information, documents, or any inspection – the WRA also has the power to issue financial penalties.

2.8 However, based on the experiences of HMRC and other Welsh public bodies, there are likely to be some cases where taxpayers deliberately do not comply with their obligations and the range of civil powers will be insufficient to ensure compliance. HMRC currently operates SDLT and LfT in Wales and has access to a wide range of criminal powers to tackle tax crime connected with these and other taxes. HMRC has used its powers in a number of LfT and SDLT cases, and in recent years HMRC has dedicated more resource to tackling tax crime<sup>1</sup>.

2.9 We consider there is a strong case that certain criminal powers will be needed to tackle devolved tax offences.

2.10 This consultation document invites views on:

- the need to tackle devolved tax offences through the use of criminal powers, and the organisations which may be involved in criminal investigation and prosecution;
- the practical implications of making use of different elements of UK criminal powers legislation; and
- ensuring appropriate safeguards and governance on the potential use of these powers.

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<sup>1</sup> Recent examples of HMRC using criminal powers to investigate tax evasion in England include:

- 2015 – A probe into a £78m landfill tax fraud in North East England. A range of criminal investigatory powers were used including the Police and Criminal Evidence Act 1984; Criminal Justice and Police Act 2001 and the Regulation of Investigatory Powers Act 2000 .
- 2014 – A solicitor was found guilty of £1m tax fraud relating to stamp duty land tax. The Proceeds of Crime Act 2002 was used to reclaim some of the stolen tax.

### **3 Criminal powers to investigate devolved tax offences**

#### **Background**

- 3.1 It is anticipated the majority of any non-compliance will be addressed through the civil investigation and penalty regimes described above. The Welsh Government will respond to the views of consultees on what would be an appropriate range of powers to investigate criminal offences related to devolved taxes.
- 3.2 The Police and Criminal Evidence Act 1984, the Criminal Justice and Police Act 2001 and the Proceeds of Crime Act 2002 powers can only be used when a criminal offence is suspected or has taken place. The Regulation of Investigatory Powers Act 2000 enables evidence gathered through surveillance or covert human intelligence to be used in both criminal and civil investigations.
- 3.3 In the context of the two devolved taxes, criminal behaviour is likely to range from fraudulent conduct (which may constitute an offence under the Fraud Act 2006), to evading the payment of the correct amount of tax due (which may constitute an offence of cheating the public revenue). However, there are other offences which may be committed in relation to devolved taxes, such as wrongfully disclosing protected taxpayer information<sup>2</sup>. In this document, we will refer to these collectively as “devolved tax offences”.
- 3.4 The Criminal Finances Act 2017 also introduces a new corporate offence of facilitating tax evasion, which may be investigated by the WRA in relation to LDT and LTT.
- 3.5 Subject to any applicable legislation, evidence gathered using criminal powers as part of a criminal investigation may subsequently be used for civil actions.

#### **Fraud offences**

- 3.6 Section 1 of the Fraud Act 2006 provides a general offence of fraud which can be committed through three forms of conduct, namely:
  - Fraud by false representation (section 2);
  - Fraud by failing to disclose information (section 3);

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<sup>2</sup> Section 20 Tax Collection and Management (Wales) Act 2016

- Fraud by abuse of position (section 4).

3.7 In all three variations of the offence, the focus is on prohibited conduct and ulterior intent.

### **Cheating the public revenue**

3.8 In addition to the statutory fraud offence established by the 2006 Act, there is an offence under common law known as “cheating the public revenue”. A person commits this offence when they engage in fraudulent conduct – whether by making false representation, or by concealing or omitting to disclose liability or income – which deprives the Crown or the public of money to which it is entitled<sup>3</sup>.

3.9 This could include deliberately under-declaring the consideration given in a property transaction on a SDLT, or in the future a LTT, tax return. In a LDT context, this could involve a landfill site operator agreeing to a customer avoiding the weighbridge, thereby disposing of waste without tax being charged.

### **Landfill disposals tax**

3.10 The Landfill Disposals Tax (Wales) Bill was introduced into the National Assembly for Wales in November 2016. The Bill creates LDT, and sets out how it will apply to disposals of waste in Wales from April 2018 – the date after which LfT will no longer apply in Wales. Like LfT, LDT will be a tax on the disposal of waste by way of landfill and will be charged by weight. It will be payable by landfill site operators, who pass on these costs to waste operators. It will also be charged on unauthorised disposals – waste disposed otherwise than at authorised landfill sites.

### **Tax evasion on authorised landfill sites**

3.11 Evidence<sup>4</sup> suggests that LfT is susceptible to tax evasion – in part due to the high rate of tax and the notable difference between the current lower rate (£2.65) and the current higher rate (£84.40). If LDT retains the same rates, it is reasonable to assume the same incentive to evade tax will exist. On authorised landfill sites this could take the form of misclassification of waste or undeclared waste. An example of this could

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<sup>3</sup> *R v Bradbury* (1956) 2 Q.B. 262; and *R v Hudson* (1956) 2 W.L.R. 914

<sup>4</sup> Environmental Services Association Education Trust, Waste Crime: Tackling Britain’s Dirty Secret

include a permitted site legally taking in waste but misclassifying higher rate waste as lower rate waste. This could result in excess of £81 of tax being evaded for every tonne disposed.

3.12 In 2016 HMRC published *Measuring Tax Gaps 2016 edition* [[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/561312/HMRC-measuring-tax-gaps-2016.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/561312/HMRC-measuring-tax-gaps-2016.pdf)]. The report estimates the amount of tax that should be collected and compares this to what is actually collected. The report estimates (for 2014-15) a tax gap of 12% for LfT (across the UK), equivalent to approximately £150m (the equivalent estimate in Wales is approximately £3m).

3.13 A report published by the Environmental Services Association Education Trust, *Waste Crime: Tackling Britain's Dirty Secret*, references an example of where such a tax evasion occurred in relation to landfill tax:

“Manager Malcolm Smart and weighbridge operator Victor Millin took kick-backs to misclassify waste and deliberately under weigh lorries tipping at Sand Farm Landfill, in Calne, Wiltshire. After a three-and-a-half-year investigation into the fraud, including covert surveillance, it was found that between April 2007 and October 2010, the two men cost site owners Viridor some £700,000. The Exchequer lost about £200,000 in landfill tax and VAT. Mr Smart was estimated to have made some £350,000. Using the Proceeds of Crime Act, Mr Smart was ordered to pay £211,000 or face three years in jail.”

3.14 The report estimates that the evaded LfT on authorised landfill sites amounts to £157m in the UK a year, similar to HMRC's estimate of the total tax gap for LfT.

3.15 There are some high profile cases currently being progressed through the courts in which it is alleged that tax evasion linked to LfT has taken place. In pursuing these cases HMRC has used criminal powers to collect the relevant evidence.

### **Unauthorised disposals**

3.16 LDT in Wales will differ from LfT in that it will also be chargeable on waste disposed of otherwise than at authorised landfill sites. Presently, under LfT, the disposal of waste can only be taxed where the disposal takes place at a landfill site, which has the correct environmental permit – there are currently 25 such sites in Wales.

3.17 There are an estimated 60 illegal waste sites operating in Wales<sup>5</sup>. These often appear to be legitimate sites but do not have the relevant authorisations. The Landfill Disposals Tax (Wales) Bill provides for the collection of tax from these sites. However there may be a need to use criminal investigation powers to pursue cases involving such sites tax is being evaded.

### **Land transaction tax**

3.18 The Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017 received Royal Assent on 24 May 2017.

3.19 The nature of land transactions does not lend itself to tax evasion as readily as the disposal of waste. The majority of transactions are made through an agent (generally a solicitor or conveyancing agent) representing the buyer. In most cases where there is a change in ownership of the land to be registered with the Land Registry, a certificate from the WRA confirming a LTT return has been made is necessary.

3.20 However, although limited, there have been cases of falsifying a return, by adjusting the value of the property to evade paying the correct level of tax. Other cases have involved legal representatives taking the payment of tax and not forwarding it to HMRC (perhaps by fraudulently claiming a relief or understating the consideration given for their client's purchase), thereby defrauding the purchaser of the tax paid (as that person still remains liable to pay the tax).

### **Conclusion**

3.21 There is a real possibility of criminal offences in relation to Welsh devolved taxes in the future. Enabling the WRA to investigate devolved tax offences, as HMRC does for LfT and SDLT, with a consistent set of criminal investigation powers will help to ensure Wales is not seen as a soft target for those who may be seeking to evade taxes. Annex A summarises these powers that HMRC currently has, which this consultation asks are relative to WRA. Public knowledge that there are the appropriate criminal powers will act as a deterrent for those contemplating evading tax.

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<sup>5</sup> Figures sourced from Natural Resources Wales

**Question 1**

**Do you agree that criminal powers should be made available to help tackle devolved tax crime?**

**Please provide reasons for your answer and share any comments you wish to make.**

## Investigating offences

- 3.22 Several public bodies in Wales, including local authorities, the NHS, Natural Resources Wales, and the Care and Social Services Inspectorate Wales (CSSIW), currently use criminal powers to conduct investigations in relation to their respective functions.
- 3.23 As previously set out, HMRC currently lead on investigation of criminal offences within the tax system (including those taxes to be devolved to Wales), in terms of prioritisation, access to information and deciding whether a civil or criminal action will be in the best interests of protecting the revenue. A similar principle applies with environment bodies that have their own powers to investigate in the areas in which they regulate.
- 3.24 Revenue Scotland, the body responsible for the collection and management of Scottish landfill tax and land and buildings transaction tax, has civil powers only, thus requiring the Scottish police to lead on all elements of criminal investigation in relation to the Scottish devolved taxes.
- 3.25 It would be possible for the police in Wales to lead on all elements of investigation of devolved tax offences. However, this would be an additional responsibility for police in Wales and any police action would be dependent on their consideration of a range of other priorities. The Home Office are responsible for policing across England and Wales, (though the Welsh Government partially funds the police and, along with Welsh local authorities, have a strong and close relationship with the Welsh police).
- 3.26 The Welsh Government's preferred option is that the WRA investigate tax crime themselves. We would expect WRA to undertake this work within the current estimated cost of operating the devolved taxes. It would also be expected that the WRA would be consistent in terms of safeguards (see section five). This option is preferred as the Welsh Ministers will have a direct strategic relationship with the WRA through the annual remit letter and budget to ensure that the approach to investigation of devolved tax criminal offences is proportionate and effective.
- 3.27 As tax rules diverge across the UK following the devolution of tax powers to Wales and Scotland, it is imperative that tax crime is tackled consistently and in the best interests of compliant taxpayers and businesses, so no part of the UK is a safe haven for those who evade tax. It will be important that any organisation responsible for

investigating devolved tax offences works closely with HMRC and Revenue Scotland to share information and ensure effective enforcement.

**Question 2**

**Do you agree that the Welsh Revenue Authority should be responsible for investigating devolved tax offences?**

**Please provide reasons for your answer and share any comments you wish to make.**

**Prosecuting devolved tax offences**

3.28 HMRC's criminal investigations are undertaken with a view to prosecution by the Crown Prosecution Service (CPS). TCMA provides that the WRA may institute criminal and civil proceedings in England and Wales (section 21). If the WRA is made responsible for investigating devolved tax offences, the WRA will need to make a decision in due course about who will prosecute devolved tax offences uncovered by an investigation: CPS or WRA. Natural Resources Wales, for example, have an internal team that can manage prosecutions on their behalf (in relation to environmental crimes).

**Question 3**

**Do you think the Crown Prosecution Service should prosecute devolved tax offences to be consistent with HMRC? Or should this be done by the Welsh Revenue Authority?**

**Please provide reasons for your answer and share any comments you wish to make.**

## **4 The criminal powers in detail**

4.1 If the Welsh Ministers decide that the WRA should be responsible for investigating devolved tax offences, part 9 of Tax Collection and Management (Wales) Act 2016 (TCMA) gives Welsh Ministers subordinate legislation making powers in relation to:

- The Police and Criminal Evidence Act 1984, (PACE): section 185(1) of TCMA provides for an amendment to be made to 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.
- The Criminal Justice and Police Act 2001, (CJPA): section 185(2) of TCMA provides the Welsh Ministers with the power to make regulations in relation to the provisions in Part 2 of the CJPA, which give investigators certain powers to seize and retain material found during the course of a search.
- The Proceeds of Crime Act 2002, (POCA): section 186 of TCMA amends 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.
- The Regulation of Investigatory Powers Act 2000, (RIPA): section 187 of TCMA 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.

### **The Police and Criminal Evidence Act 1984**

4.2 The Police and Criminal Evidence Act sets out a wide range of investigatory powers that specified law enforcement agencies are able to use when investigating criminal offences. These are subject to significant legislative safeguards (further details are available in section five). These powers include:

- Part 1: powers to stop and search – this part deals with the ability to stop and search persons and/or vehicles to collate evidence when a crime is suspected;
- Part 2: powers of entry, search and seizure – this part deals with the ability to gain entry into a premises and seize and retain property found on the premises that may be used as evidence;
- Part 3: arrest – this part sets out the requirements for a lawful arrest;
- Part 4: detention – this part sets out the requirements for detaining an individual following an arrest;
- Part 5: questioning and treatment of persons by police – this part sets out how the police should conduct their interviews.

### **The Criminal Justice and Police Act 2001 (CJPA)**

- 4.3 The Criminal Justice and Police Act was established to, among other things, increase the powers the police have to combat crime and disorder. It did so by making provision about the police's powers of search and seizure, including extending powers contained in Police and Criminal Evidence Act.
- 4.4 In particular, sections 50 and 51 of Part 2 of the Criminal Justice and Police Act broaden the scope of seizure powers, including those described above in Police and Criminal Evidence Act. This extension enables an officer carrying out an inspection of premises or stopping and searching an individual to, for example, seize an object which the officer reasonably believes contains something which they have the power to seize even though they would not otherwise have the power to seize the whole object. For example, if a ledger contained several pages of relevant evidence but otherwise contained information which was irrelevant to any suspected crime, the provisions of the Criminal Justice and Police Act would enable an officer to seize the whole ledger if it is not reasonably practicable to identify the relevant pages in the ledger.
- 4.5 The Criminal Justice and Police Act also contains administrative provisions, safeguards and interpretative provisions which apply to these extended powers of seizure. For example, section 52 imposes a requirement on an officer who relies on the powers of seizure provided by sections 50 or 51 to provide the relevant person with a written notice setting down various details, including what has been seized, the grounds of seizure and what recourse the person may take to

challenge seizure. Section 59 gives any person with an interest in property seized using these powers the right to apply to the court for it to be returned.

## **Conclusion**

- 4.6 The range of powers contained in the Police and Criminal Evidence Act and the Criminal Justice and Police Act are broad and primarily provide the powers the police need to undertake their duties. Given the nature of devolved taxes, we do not expect the WRA to require access to all the powers set out in these Acts. However, there are some powers the WRA may need in order to be able to investigate devolved tax offences in the same way as HMRC is able to at present. These are set out in the tables below.

<b>Police and Criminal Evidence Act and the Criminal Justice and Police Act – powers to investigate criminal offences</b>	
<b>Power</b>	<b>Purpose and proposed use</b>
Stop and Search	<p>Section 1 of the Police and Criminal Evidence Act provides officers with the power to stop and search vehicles and individuals to search for stolen or ‘prohibited’ articles (such as offensive weapons). Sections 2 to 7 contain detailed provision, including safeguards, which would apply alongside any powers.</p> <p>The Customs and Excise Management Act 1979 provides HMRC with stop and search powers in respect of the collection of certain excise duties. These might be used where the HMRC officer suspects that a vessel contains goods in respect of which there is unpaid duty. <b><u>However, at present, HMRC does not have access to stop and search powers in relation to landfill tax or stamp duty land tax.</u></b></p>
<p><b>Question 4</b></p> <p><b>It is proposed that the WRA should not be provided with <u>stop and search powers</u> under the Police and Criminal Evidence Act to conduct a criminal investigation in relation to investigation of devolved tax offences.</b></p> <p><b>What are the benefits or disbenefits of the WRA <u>not</u> having these powers? Please provide examples.</b></p>	
<b>Power</b>	<b>Purpose and proposed use</b>
Entry, search and seizure	<p>Section 8 of the Police and Criminal Evidence Act provides a power for a justice of the peace (magistrate) to authorise entry and search of premises, on receipt of an application from an officer. This includes permitting entry and search without giving notice. Provision could be made to enable the WRA to make such an application, and enter and search premises after obtaining authorisation. Sections 9 to 16 contain detailed provision, including safeguards and special provision to access items subject to legal privilege, excluded or special procedure material, which would apply alongside any powers.</p>

**Police and Criminal Evidence Act and the Criminal Justice and Police Act – powers to investigate criminal offences**

**Power**

**Purpose and proposed use**

Under section 117 of the Police and Criminal Evidence Act police officers are permitted to use reasonable force in the exercise of any power under the Police and Criminal Evidence Act if necessary, including any entry, search or seizure power. New section 114ZA of the Police and Criminal Evidence Act provides that Welsh Ministers may make regulations which “make provision permitting a person exercising a function conferred on WRA by the regulations to use reasonable force in the exercise of such a function”. If WRA officers are accorded the Police and Criminal Evidence Act powers, they would need to be given a corresponding right to use reasonable force where necessary.

Section 19 of the Police and Criminal Evidence Act enables an officer who is lawfully on any premises (including when exercising an entry and search power) to seize any item where they reasonably believe that it is evidence in relation to an offence, and it is necessary to seize it to prevent it from being concealed, lost, destroyed etc. Sections 20 to 22 make more detailed provision about seizure, including ensuring that computerised information can be seized.

Powers to enter and search premises without notice may be useful to investigate suspected criminal offences where it is necessary to enter premises to seize evidence. HMRC officers currently have these powers, which enable them to seize any material that the officer reasonably believes to be evidence in relation to an offence, where it is necessary to prevent it from being lost or destroyed. The power extends to information held in an electronic format (such as emails or letters).

**Question 5**

**It is proposed that WRA officers be given the power to apply to a justice of the peace for a warrant to enter, search and seize items from a premises or search a person found on those premises when investigating devolved tax offences. This**

<b>Police and Criminal Evidence Act and the Criminal Justice and Police Act – powers to investigate criminal offences</b>	
<b>Power</b>	<b>Purpose and proposed use</b>
<p><b>will include the power to use reasonable force if necessary in the exercise of that function.</b></p> <p><b>What are the benefits or disbenefits of providing WRA with these powers? Please provide examples.</b></p>	
<b>Power</b>	<b>Purpose and proposed use</b>
<p>Powers permitting arrest and detention</p>	<p>Section 24 of the Police and Criminal Evidence Act sets out the circumstances in which a police officer may arrest a person without a warrant, and the grounds for making an arrest. Part 3 also contains detailed provision governing (amongst other things) the process which immediately follows an arrest, including safeguards. Part 4 makes detailed provision about the detention of an arrested person. Part 5 makes detailed provision about the questioning and treatment of persons by the police.</p> <p>Given the small number of devolved tax offences expected to be dealt with each year and the even smaller number where arrests may be required, the Welsh Government does not presently believe that it will be proportionate for WRA officers to be trained and otherwise equipped to arrest, detain or question individuals. If arrests are required it is expected the WRA and/or delegated bodies will work with the police.</p> <p>Section 18 permits an officer to enter and search premises for evidence after a person has been arrested for a criminal offence. Given that we do not propose to confer powers of arrest onto WRA officers, we would not propose to confer the related entry and search powers in section 17 or 18 of the Police and Criminal Evidence Act either. HMRC does have access to arrest and detention powers.</p>

<b>Police and Criminal Evidence Act and the Criminal Justice and Police Act – powers to investigate criminal offences</b>	
<b>Power</b>	<b>Purpose and proposed use</b>
<p><b>Question 6</b></p> <p><b>It is proposed that the WRA is not provided with powers to arrest detain, or question individuals as part of a criminal investigation.</b></p> <p><b>What are the benefits or disbenefits of not providing WRA with these powers? Please provide examples.</b></p>	
<b>Power</b>	<b>Purpose and proposed use</b>
Codes of Practice	Sections 66 and 67 of the Police and Criminal Evidence Act make provision for the Secretary of State to produce codes of practice which govern the exercise by police officers of powers of search, seizure, arrest, detention etc. Section 67 extends the application of these codes of practice to any person responsible for investigating offences or charging offenders. If WRA investigates devolved tax crime, the Codes of Practice will be applied.
<p><b>Question 7</b></p> <p><b>Should the WRA develop any additional safeguards/ guidance to exercise these powers? Please provide examples.</b></p>	
<b>Power</b>	<b>Purpose and proposed use</b>
Criminal Justice and Police Act	Sections 50 and 51 of the Criminal Justice and Police Act broaden the scope of seizure powers, including those described above in the Police and Criminal Evidence Act. This extension enables an officer who is carrying out an inspection of premises or a person to, for example, seize an object which the officer reasonably believes contains something which they have the power to seize even though they would not otherwise have the power to seize the whole object.

<b>Police and Criminal Evidence Act and the Criminal Justice and Police Act – powers to investigate criminal offences</b>	
<b>Power</b>	<b>Purpose and proposed use</b>
	<p>We believe the additional powers provided by the Criminal Justice and Police Act will be useful addition to extend the powers under the Police and Criminal Evidence Act (if these powers are taken).</p> <p>These additional powers would be useful if, during a search of premises, officers suspected that there may be incriminating evidence in a file or folder or laptop. In the absence of this power, the officer may not have the power to seize the file, folder or laptop on the basis that the officer will not know whether there is any incriminating evidence until it has been analysed. This Act enables the investigating officer to seize that item to consider and review the item to determine if there is evidence on the item.</p> <p>Part 2 of the Criminal Justice and Police Act also contains administrative provisions, safeguards and interpretative provisions which apply to these extended powers of seizure. If these additional powers are conferred on WRA officers, we would also apply the related provisions in Part 2, including the safeguards. HMRC currently has these powers, and is required to abide by the safeguards as outlined in the legislation.</p>
<p><b>Question 8</b></p> <p><b>It is proposed that the WRA be given the extended powers given under the Criminal Justice and Police Act to enhance the powers already provided to it by the Police and Criminal Evidence Act (if these powers are taken).</b></p> <p><b>What are the benefits or disbenefits of providing WRA with these powers? Please provide examples.</b></p>	

<b>Police and Criminal Evidence Act and the Criminal Justice and Police Act – powers to investigate criminal offences</b>	
<b>Power</b>	<b>Purpose and proposed use</b>
<b>Question 9</b>	
<b>Should there be any additional powers from PACE/ CJPA conferred on the WRA? Plf so, please provide examples.</b>	

## The Proceeds of Crime Act 2002 (“POCA”)

4.7 The Proceeds of Crime Act 2002 makes provision for the recovery of assets acquired through criminal conduct. The Act seeks to ensure criminals do not profit from their criminal behaviour which will help to deter individuals from engaging in criminal activity. Furthermore the confiscation of assets reduces the funds available for criminals to fund further criminal enterprises. The use of the various powers in POCA enable HMRC (among other law enforcement agencies) to effectively carry out the following investigations:

- Confiscation investigations;
- Detained cash investigations;
- Money laundering investigations.

4.8 A confiscation investigation is an investigation into whether a person has benefited from criminal conduct and the extent or whereabouts of his benefit.

4.9 A detained cash investigation is an investigation into the source of cash detained or a part of such cash, or an investigation into whether cash detained, or a part of such cash, is intended to be used in unlawful conduct.

4.10 A money laundering investigation is an investigation into whether a person has committed a money laundering offence.

4.11 POCA provides that HMRC can - when carrying out the three types of investigations set out above - apply to the courts for a variety of orders under Part 8 of POCA (including production orders and search and seizure warrants) to assist the investigation.

4.12 POCA also empowers the Crown Court to:

- Make a confiscation order in relation to a person who has benefited from criminal conduct, requiring payment from that person of any ‘benefit’ (for example financial income) they have obtained (see part 2, and section 6 POCA in particular);
- Make a restraint order in relation to a person, which has the effect of freezing property that may be liable to confiscation following a trial and the making of a confiscation order (see sections 40 to 47 POCA).

4.13 A number of important safeguards apply to these powers. These include: various rights of appeal and to make representations (in certain cases); time limits for detention of property; exclusion of certain personal property from what can be seized and detained; provision for codes of practice to be followed in the exercise of specified POCA powers.

### **Listing the WRA as accredited financial investigators**

4.14 The POCA powers described above may only be exercised by those named in the Act, and “accredited financial investigators” exercising functions on behalf of any law enforcement agency listed in subordinate legislation.

4.15 Section 186 of the Tax Collection and Management (Wales) Act 2016 amends section 453 of POCA so Welsh Ministers will have the power to provide, by secondary legislation, that a specified reference in POCA to an accredited financial investigator includes a reference to a person exercising a function of the WRA who falls within a specified description.

4.16 In this way, WRA may be given the ability to exercise some of the powers contained in POCA, as described above by using “accredited financial investigators”. An “accredited financial investigator” (AFI) is a financial investigator accredited by the National Crime Agency in accordance with section 3 of POCA. HMRC does not access POCA powers through the use of accredited financial investigators – its officers are directly conferred powers by the Act.

### **Applicability to the WRA**

4.17 POCA powers are currently used in Wales by HMRC. Furthermore, the agencies listed as able to access these powers through AFIs include local authorities and Natural Resources Wales.

4.18 We consider WRA should also be given the ability to exercise the majority of the POCA powers currently exercised by HMRC by using AFIs. See annex A for an illustration of some of the powers a WRA AFI may use, including restraint orders, production orders, search and seizure warrants, customer information orders and account monitoring orders, (the latter two cannot be made in relation to a detained cash investigation). The use of such powers would ensure that WRA are able tackle tax evasion in Wales effectively, and in a way which is consistent with the current position for HMRC. These powers could ensure that criminals are stripped of any financial benefit obtained from (tax) fraud or cheating the public revenue.

4.19 It is not proposed that an AFI working for the WRA should have the ability to exercise POCA powers in relation to money laundering investigations at this stage. HMRC has specific money laundering functions, (see s.23(1)(d) of the Money Laundering Regulations 2007) which WRA does not presently have.

### **Conclusion**

4.20 The powers contained in the Proceeds of Crime Act primarily enable the recovery of assets acquired through criminal conduct and enable HMRC to effectively carry out their investigations. The WRA may need some of these powers to be able to carry out the majority of these functions through the use of an AFI which the amendments by TCMA to POCA now enable. These are set out in the tables below.

<b>The Proceeds of Crime Act 2002 – preventing criminals from obtaining a benefit from their criminal conduct</b>	
<b>Power</b>	<b>Purpose and proposed use</b>
Designate a member of WRA staff as an (AFI)	<p>The Tax Collection and Management (Wales) Act 2016 makes amendments to POCA. These amendments enable the Welsh Ministers to designate a member of WRA staff as an accredited financial investigator so that they have the ability to exercise various powers under the Proceeds of Crime Act 2002 (subject to the relevant provisions of the Act) in the course of a confiscation or detained cash investigation.</p> <p>Confiscation investigations are undertaken to ascertain whether a person has benefited from their criminal conduct; or the extent or whereabouts of that benefit.</p> <p>Detained cash investigations are an investigation into the source of cash detained or an investigation into whether cash detained is intended by any person to be used in unlawful conduct.</p> <p>AFIs may also apply for restraint orders and exercise associated powers. This is an order of the Crown Court that prohibits a person from dealing with any “realisable property” held by that person. The order may apply to all property held by that person, or specify certain property. The order will make allowances for living expenses etc. The purpose of the order is to prevent a person suspected of gaining financially as a result of committing offences from disposing of those assets prior to a conviction. The order may be sought at any time after the commencement of a criminal investigation. If a person breaches the order, they will be in contempt of court and could be sent to prison.</p>
<b>Question 10</b>	
<b>It is proposed that WRA staff are named as an AFI for the purposes of exercising various powers in POCA in the course of a confiscation or detained cash investigation. It is also proposed that a WRA AFI may also apply for restraint orders and</b>	

<b>The Proceeds of Crime Act 2002 – preventing criminals from obtaining a benefit from their criminal conduct</b>	
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<b>Power</b>	<b>Purpose and proposed use</b>
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**exercise associated powers.**

**What are the benefits and disbenefits of the above? Please provide examples.**

## **Regulation of Investigatory Powers Act 2000 (RIPA)**

4.21 RIPA creates a regulatory framework around the use of surveillance (and related) activities by public authorities. This framework imposes strict rules, checks and balances to ensure these activities strike an appropriate balance between the legitimate purposes they pursue – for example, tax collection– and the public’s right to privacy. The Tax Collection and Management (Wales) Act 2016 enables Welsh Ministers to, by secondary legislation, prescribe individuals as persons designated for the purposes of sections 28 and 29 of RIPA who may authorise the use of directed surveillance and covert human intelligence sources.

4.22 Directed surveillance means, broadly, surveillance which is covert but not intrusive – for example, does not involve gaining access to a private dwelling or vehicle – and is undertaken for the purposes of a specific investigation or a specific operation, in such a manner as is likely to result in the obtaining of private information about a person. Surveillance is covert if, and only if, it is carried out in a manner that is calculated to ensure that persons who are subject to the surveillance are unaware that it is or may be taking place. Directed surveillance may capture many fact finding activities which are undertaken without the relevant person’s knowledge.

4.23 A covert human intelligence source means a person who:

- a) Establishes or maintains a personal or other relationship with a person for the covert purpose of facilitating the doing of anything falling within paragraph (b) or (c);
- b) They covertly use such a relationship to obtain information or to provide access to any information to another person;
- c) They covertly disclose information obtained by the use of such a relationship, or as a consequence of the existence of such a relationship.

4.24 RIPA powers can be used to collate evidence for both criminal and civil cases, whereas all the other criminal powers can only be used when it is suspected that a crime has been committed. This means that, should the power to make these authorisations be conferred, the WRA would be able to use surveillance and covert human intelligence source powers for the purpose of assessing or collecting devolved tax.

4.25 For example, HMRC has confirmed RIPA powers are an important evidence gathering tool in the cases they are currently taking forward in relation to landfill tax. We believe the use of directed surveillance (for

example CCTV) will be particularly important for the WRA when investigating landfill disposal tax liabilities which arise as a result of disposals of waste otherwise than at an authorised landfill site, where a key concern will be identifying the persons responsible.

## **Conclusion**

4.26 Under the Regulation of Investigatory Powers Act, WRA may need some directed surveillance and covert human intelligence sources for the purpose of assessing or collecting devolved taxes. HMRC already uses such powers for the collecting of evidence in landfill tax and WRA may need to be able to do the same when conducting investigations to assist in identifying individuals. The table below outlines the specific details of this.

**The Regulation of Investigatory Powers Act 2000 – investigating criminal offences and civil tax liabilities**

<b>Power</b>	<b>Purpose and proposed use</b>
Directed surveillance	<p>Surveillance is defined as directed surveillance where it is covert but not intrusive – for example it does not involve gaining access to a private dwelling or vehicle – and is undertaken for the purposes of a specific investigation or a specific operation, and is likely to result in the obtaining of private information about a person</p> <p>Surveillance is covert if, and only if, it is carried out in a manner that is calculated to ensure that persons who are subject to the surveillance are unaware that it is or may be taking place.</p> <p>Directed surveillance may assist in investigating liabilities to LDT. As well as using CCTV, this could include officers monitoring and recording the nature of waste being disposed of at a landfill site, to determine the amount and nature of the waste being deposited.</p> <p>It should be noted that authorisations cannot be granted unless specific criteria are satisfied, for example, the person granting the authorisation believes that: the authorisation is necessary on specific grounds (for example for the purpose of assessing or collecting tax) and the authorised activity is proportionate to what is sought to be achieved by it (for example, balancing the seriousness of the intrusions into privacy against the importance of obtaining the information, and whether the information can be obtained by other means).</p> <p>The level of authorisation within the WRA will be determined in any final Order.</p>

**Question 11**

**It is proposed the WRA should be given powers to undertake directed surveillance for the prevention and detection of crime or the purpose of assessing or collecting tax.**

<b>The Regulation of Investigatory Powers Act 2000 – investigating criminal offences and civil tax liabilities</b>	
<b>Power</b>	<b>Purpose and proposed use</b>
<b>What are the benefits or disbenefits of providing the WRA with these powers? Please provide examples.</b>	
Covert human intelligence sources	<p>A covert human intelligence source, (CHIS) is where a person establishes or maintains a personal or other relationship with another person for the covert purpose of facilitating the doing of anything falling within the following paragraphs:</p> <p>(a) They covertly use such a relationship to obtain information or to provide access to any information to another person;</p> <p>(b) They covertly disclose information obtained by the use of such a relationship, or as a consequence of the existence of such a relationship.</p> <p>Such surveillance is covert if, and only if, it is carried out in a manner that is calculated to ensure that persons who are subject to the surveillance are unaware that it is or may be taking place.</p> <p>In exceptional circumstances, the WRA may need to ask an individual who is forthcoming with information in relation to unlawful practice to gain further information on behalf of the WRA, in order to develop an understanding of the person/ organisation. This would be considered covert surveillance.</p>
<b>Question 12</b>	
<b>Do you think the WRA should be given powers to use covert human intelligence sources for the prevention and detection of crime or the purpose of assessing or collecting tax?</b>	
<b>What are the benefits or disbenefits of providing the WRA with these powers? Please provide examples.</b>	

## **5 Safeguards and Governance**

- 5.1 To protect the public and avoid the misuse of these powers, the four pieces of legislation require there to be clear policies and procedures in place to safeguard against their abuse. These policies and procedure currently apply to the Welsh Government and other public bodies where they are able to use criminal powers.
- 5.2 These statutory safeguards would apply to the WRA and/or any delegated bodies the WRA use for the application of these powers. Any internal procedures will be a matter for the WRA.

### **Ensuring WRA staff responsible for criminal investigations are investigating devolved tax offences appropriately**

- 5.3 The powers contained in the Police and Criminal Evidence Act 1984 can only be used if certain conditions are met. It will be for the investigator to demonstrate to senior officers and in some cases, a magistrate or judge, that those conditions have been met. If the senior officer, or magistrate/judge, does not think that those conditions are met, the powers cannot be used. Staff will only be able to exercise these powers once they have been trained and authorised to do so.
- 5.4 The Police and Criminal Evidence Act 1984 already provides for a number of statutory safeguards to ensure that those powers are used in an appropriate and proportionate way. For example, the use of the majority of the powers in the Act is subject to external oversight and approval – if the WRA is given the power to search premises, it will only be able to do so after it has successfully obtained a warrant from a magistrate. In turn, the magistrate will only issue a warrant if satisfied that the conditions set out in the Police and Criminal Evidence Act are satisfied. Certain material, such as items protected by legal privilege and medical records, will retain the additional layer of protection afforded by the Police and Criminal Evidence Act and the Criminal Justice and Police Act, and therefore can only be seized during a search if approved by a judge.
- 5.5 The Police and Criminal Evidence Act also requires the Home Secretary to publish Codes of Practice about the use of powers during a criminal investigation. Section 67 of the Act requires any person conducting a criminal investigation to comply with these Codes of Practice, which will include the WRA when it investigates devolved tax offences. The Codes of Practice are a vital part of the legislative framework governing the way in which a criminal investigation is undertaken.

- 5.6 In addition to the above statutory safeguards, it will be necessary for the WRA to develop a package of internal safeguards to ensure that powers are only used where they are necessary. These arrangements will be for the WRA to determine as an operational matter, which will be informed by this consultation. As a minimum, it is expected that the WRA will have to put in place arrangements to ensure only those staff that have completed the appropriate training are able to use the powers.
- 5.7 The use of these powers will often lead to criminal proceedings against individuals responsible for devolved tax crime. It is well established that a criminal prosecution can only be brought on the basis of sufficient, clear and admissible evidence and any flaw in the way in which the evidence has been obtained will undermine any subsequent prosecution. If a person being prosecuted in relation to a devolved tax offence believes that the evidence being used has been obtained in an unfair or unlawful manner, the Police and Criminal Evidence Act provides that person with the opportunity to make an application to the court to exclude that evidence from the criminal proceedings.

#### **Monitoring the use of Regulation of Investigatory Powers Act powers by public bodies**

- 5.8 The Office of Surveillance Commissioners (OSC) is responsible for keeping under review the exercise and performance of the powers conferred by Part II of the Regulation of Investigatory Powers Act 2000.
- 5.9 The OSC is judge led and although its budget is funded by the Home Office it operates entirely independently from government. The OSC aims to provide effective oversight over the conduct of covert activities by public authorities.
- 5.10 The Surveillance Commissioner considers reports prepared by its surveillance inspectors following inspections of public authorities and writes to the chief officers of those organisations about the findings made by the inspections and any resultant recommendations. The Chief Surveillance Commissioner also writes an annual report the Prime Minister on the matters for which they are responsible.

#### **Ensuring staff are using the Regulation of Investigatory Powers Act 2000 appropriately**

- 5.11 Designated individuals within the WRA who possess the appropriate experience and training will be able to authorise the use of directed

surveillance and a covert human intelligence source in accordance with the provisions set out in the Regulation of Investigatory Powers Act 2000. It should be noted that authorisations cannot be granted unless specific criteria are satisfied, for example, where the person granting the authorisation believes:

- the authorisation is necessary on specific grounds (for example for the purpose of assessing or collecting tax);
- the authorised activity is proportionate to what is sought to be achieved by it (for example balancing the seriousness of the intrusions into privacy against the importance of obtaining the information, and whether the information can be obtained by other means).

5.12 There are a number of relevant codes of practice available for reference which include further information on the scope of powers, and their necessity and proportionality. The WRA will be required to comply with these during its exercise of these powers.

5.13 As stated, the scrutiny of any Regulation of Investigatory Powers Act authorisations granted will be carried out by the independent OSC.

5.14 A person who is the subject of a covert surveillance activity will have the right to challenge any evidence used against them during a criminal prosecution if that person believes that the evidence has been obtained unfairly or unlawfully. This provides a further safeguard which ensures that these powers are used correctly and proportionately.

### **Safeguards against the misuse of Proceeds of Crime Act 2002 powers**

5.15 The Proceeds of Crime Act 2002 contains a significant number of statutory safeguards against any misuse of the powers. The powers contained in the Proceeds of Crime Act 2002 can only be exercised where the qualifying conditions set out in legislation have been met – for example, assets may only be confiscated if the owner of those assets has been convicted of a relevant offence and a Crown Court judge is satisfied that that it is appropriate to do so, having concluded (among other things) that the defendant has engaged in a criminal lifestyle or has benefitted from criminal conduct.

5.16 The power to apply for an order under the Proceeds of Crime Act 2002 may only be exercised by the WRA if it appoints a financial investigator,

accredited to exercise these powers by the National Crime Agency. This ensures the person exercising these powers has undertaken the same training as all other law enforcement agencies across England and Wales.

### **Complaints about WRA and/or officers from delegated bodies**

5.17 The Public Ombudsman for Wales provides independent scrutiny of complaints against public bodies in Wales, which will also apply to the WRA. In the First Instance members of the public can make complaints directly to the WRA. Our approach will bring this into line with other existing Welsh complaints process. In relation to HMRC, similarly a complaint has to be made to HMRC in the first instance. The Parliamentary and Health Service Ombudsman provides independent scrutiny of complaints against UK government departments and public organisations. However, the Parliamentary and Health Service Ombudsman can only investigate if the complaint received has been signed by any sitting Member of Parliament.

#### **Question 13**

**In addition to the existing safeguards included in the legislation for the Police and Criminal Evidence Act/ Regulation of Investigatory Powers Act /Proceeds Of Crime Act/ Criminal Justice and Police Act, what further internal safeguards should the WRA consider to ensure that criminal investigation powers are conducted appropriately?**

## **6 Annex A**

This annex provides an illustration of some of the powers that might be accessed by the WRA, based on the proposals set out above. The decision to make subordinate legislation to provide WRA with criminal enforcement powers will be made by Welsh Ministers in due course, with consideration of wider Welsh Government policy and responses to the consultation exercise. Any subordinate legislation would be laid before the National Assembly for Wales. The WRA would then be able to make a decision about how it utilises any of the criminal enforcement powers provided to it.

Act	Commentary	Provision proposed for WRA use	Relevant sections proposed to be used by the WRA
<b>Police and Criminal Evidence Act 1984</b>	<p>Section 8 of the Police and Criminal Evidence Act provides (subject to the applicable conditions set out in PACE) a power for a justice of the peace (magistrate) to authorise entry and search of premises, on receipt of an application from an officer.</p>	<p><a href="#">Entry, Search and Seizure</a></p>	<ul style="list-style-type: none"> <li>• Part 2 Powers of Entry, Search and Seizure: <i>Search Warrants</i>; <a href="#">8</a>, <a href="#">9</a>, <a href="#">10</a>, <a href="#">11</a>, <a href="#">12</a>, <a href="#">13</a>, <a href="#">14</a>, <a href="#">15</a>, <a href="#">16</a></li> <li>• <i>Seizure</i>: <a href="#">19</a>, <a href="#">20</a>, <a href="#">21</a>, <a href="#">22</a></li> <li>• Part 11 Miscellaneous and Supplementary: <a href="#">117</a></li> </ul>
	<p>Sections 9 to 16 contain detailed provision, including safeguards and special provision to access items subject to legal privilege, excluded or special procedure material, which would apply alongside any powers. Section 19 of the Police and Criminal Evidence Act enables an officer who is lawfully on any premises (including when exercising an entry and search power) to seize any item where they reasonably believe that it is evidence in relation to an offence, and it is necessary to seize it to prevent it from being concealed, lost, destroyed etc. Sections 20 to 22 make more detailed provision about seizure, including ensuring that computerised information can be seized, and enabling the retention of items for the purposes of a criminal investigation.</p>		
	<p>Under section 117 of the Police and Criminal Evidence</p>		

	Act police officers are permitted to use <u>reasonable force</u> in the exercise of any power under the Police and Criminal Evidence Act if necessary, including any entry, search or seizure		
<b>Police and Criminal Evidence Act 1984</b>	Sections 66 and 67 of the Police and Criminal Evidence Act make provision for the Secretary of State to produce <u>codes of practice</u> in connection with the exercise of statutory powers by persons responsible for investigating offences. If WRA investigates devolved tax crime, the Codes of Practice will be applied automatically.	<a href="#">Codes of Practice</a>	<ul style="list-style-type: none"> <li>Part 6 Codes of Practice – General: <a href="#">66</a>, <a href="#">67</a></li> </ul>
<b>Criminal Justice and Police Act 2001</b>	Sections 50 and 51 of the Criminal Justice and Police Act broaden the scope of seizure powers in PACE by allowing for the seizure of property found on premises where it is not reasonably practicable to complete a process of examination, searching or separation at the scene.	<a href="#">Powers of Seizure</a>	<ul style="list-style-type: none"> <li>Part 2 Powers of Seizure: <i>Additional Powers of Seizure</i>: <a href="#">50</a>, <a href="#">51</a></li> <li><i>Application to the appropriate judicial authority</i>: <a href="#">59</a></li> </ul>
<b>Proceeds of Crime Act 2002</b>	POCA provides (subject to the applicable statutory conditions set out in the Act) various powers to “Accredited Financial Investigators” (AFIs) in connection with confiscation investigations and detained cash investigations. It is proposed that the WRA will use AFIs to conduct cash detention and confiscation investigations. AFIs may in particular apply for a <u>restraint order</u> . To have access to these POCA powers, AFIs working for the WRA must be designated by Order,	Restraint orders  Restraint orders: power to retain seized property	<ul style="list-style-type: none"> <li><a href="#">Section 41A</a></li> <li><a href="#">Section 42</a></li> </ul>

in WRA's case an Order made by Welsh Ministers.

Restraint orders:  
Power to seize  
property

- [Section 47C](#)

*(NB: this section was added to the Act by section 55 Policing and Crime Act 2009 and so the link for that Act is provided)*

Restraint orders:  
Search powers

- [Sections 47D to 47F](#)

*(NB: this section was added to the Act by section 55 Policing and Crime Act 2009 and so the link for that Act is provided)*

It is proposed that a WRA AFI, when carrying out confiscation investigations and detained cash investigations should have the power to apply to the courts for a variety of orders under Part 8 of POCA (for example production orders or a search and seizure warrant) to assist the investigation.

Production orders

- [Section 345](#)

- [Section 352](#)

Search and seizure  
warrants

- [Section 363](#)

Customer information  
orders (cannot be  
made in relation to a

detained cash investigation)

- [Section 370](#)

Account monitoring orders (cannot be made in relation to a detained cash investigation)

POCA also enables an AFI (subject to relevant approval under section 290) who is lawfully on premises, to search the premises for cash where it is believed that the cash is from or is for an unlawful purpose and it's over the minimum amount (currently £1,000). There are further powers in POCA which allow an AFI to seize and detain any cash found during the search.

Search

- [Section 289](#)
- [Section 294](#)
- [Section 295](#)

Seizure of cash

Detention of seized cash

**Regulation of**

The Tax Collection and Management (Wales) Act 2016 enables Welsh Ministers to make an order which

Directed Surveillance

- [Section 28](#)

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**Investigatory Powers Act 2000** prescribes the persons exercising WRA functions who are able to grant authorisation for directed surveillance and use covert human intelligence sources under the powers in the Regulation of Investigatory Powers Act 2000. Surveillance is defined as directed surveillance where it is covert but not intrusive – for example it does not involve gaining access to a private dwelling or vehicle – and is undertaken for the purposes of a specific investigation or a specific operation, and is likely to result in the obtaining of private information about a person

**Regulation of Investigatory Powers Act 2000** A covert human intelligence source, (CHIS) is where a person establishes or maintains a personal or other relationship with another person for the covert purpose of facilitating the doing of anything falling within the following paragraphs:

- (a) They covertly use such a relationship to obtain information or to provide access to any information to another person;
- (b) They covertly disclose information obtained by the use of such a relationship, or as a consequence of the existence of such a relationship.

Covert Human Intelligence Sources

- [Section 29](#)

## Consultation Response Form

Your name:

Organisation (if applicable):

email / telephone number:

Your address:

### **Criminal powers to investigate devolved tax offences**

**Question 1:** Do you agree that criminal powers should be made available to help tackle devolved tax crime?

Please provide reasons for your answer and share any comments you wish to make.

**Question 2:** Do you agree that the Welsh Revenue Authority should be responsible for investigating devolved tax offences?

Please provide reasons for your answer and share any comments you wish to make.

**Question 3:** Do you think the Crown Prosecution Service should prosecute devolved tax offences to be consistent with HMRC? Or should this be done by the Welsh Revenue Authority?

Please provide reasons for your answer and share any comments you wish to make.

## **The criminal powers in detail**

**Question 4:** It is proposed that the WRA should not be provided with stop and search powers under the Police and Criminal Evidence Act to conduct a criminal investigation in relation to investigation of devolved tax offences.

What are the benefits or disbenefits of the WRA not having these powers?

Please provide examples.

**Question 5:** It is proposed that WRA officers be given the power to apply to a justice of the peace for a warrant to enter, search and seize items from premises or search a person found on those premises when investigating devolved tax offences. This will include the power to use reasonable force if necessary in the exercise of that function.

What are the benefits or disbenefits of providing WRA with these powers? Please provide examples.

**Question 6:** It is proposed that the WRA is not provided with powers to arrest detain, or question individuals as part of a criminal investigation.

What are the benefits or disbenefits of not providing WRA with these powers?

Please provide examples.

**Question 7:** Should the WRA develop any additional safeguards/ guidance to exercise these powers? Please provide examples.

**Question 8:** It is proposed that the WRA be given the extended powers given under the Criminal Justice and Police Act to enhance the powers already provided to it by the Police and Criminal Evidence Act (if these powers are taken).

What are the benefits or disbenefits of providing WRA with these powers?

Please provide examples.

**Question 9:** Should there be any additional powers from PACE/ CJPA conferred on the WRA? If so, please provide examples.

**Question 10:** It is proposed that WRA staff are named as an AFI for the purposes of exercising various powers in POCA in the course of a confiscation or detained cash investigation. It is also proposed that a WRA AFI may also apply for restraint orders and exercise associated powers.

What are the benefits and disbenefits of the above?

Please provide examples.

**Question 11:** It is proposed the WRA should be given powers to undertake directed surveillance for the prevention and detection of crime or the purpose of assessing or collecting tax.

What are the benefits or disbenefits of providing the WRA with these powers?

Please provide examples.

**Question 12:** It is proposed the WRA should be given powers to use covert human intelligence sources for the prevention and detection of crime or the purpose of assessing or collecting tax.

What are the benefits or disbenefits of providing the WRA with these powers?

Please provide examples.

## **Safeguards and Governance**

**Question 13:** In addition to the existing safeguards included in the legislation for the Police and Criminal Evidence Act/ Regulation of Investigatory Powers Act /Proceeds Of Crime Act/ Criminal Justice and Police Act, what further internal safeguards should the WRA consider to ensure that criminal investigation powers are conducted appropriately?