



Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE Welsh Government report on the consultation for Welsh Revenue Authority (“WRA”) to have access to criminal powers

DATE 21 February 2018

BY Mark Drakeford, Cabinet Secretary for Finance

On 10 July a consultation was launched seeking views on the Welsh Government's proposals for WRA to access criminal powers. The consultation, which closed on October 2, outlined my proposal for the WRA to have powers in place to deter and investigate devolved tax crime. Seventeen responses were received, including contributions from key partners like the National Crime Agency and Natural Resources Wales. Overall, there was support for the Welsh Government's position on the main issues identified in the consultation.

No government should legislate to provide a public authority with criminal powers unless it is necessary. The consultation proposed that WRA should have access to some of the powers currently exercised by HMRC when investigating tax crime in Wales. These established powers are accompanied by a clearly defined set of safeguards to ensure that these powers are used proportionately and appropriately. Having considered the responses received, I have concluded WRA should have access to some of the powers currently available to HMRC under the Police and Criminal Evidence Act 1984 and the Criminal Justice and Police Act 2001. In particular, WRA should be able 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 crime.

Respondents were split over our proposal not to provide WRA with powers to arrest and detention as part of a criminal investigation, and expressed concern that the absence of these powers might prevent WRA from interviewing suspects. Given these views, and the small number of devolved tax offences expected to be investigated each year, I do not believe it is currently proportionate for WRA to have access to those powers. However, it is important to note that the absence of these powers will not prevent WRA from interviewing suspects, and WRA will need to comply with the relevant Code of Practice and wider legal obligations when conducting such an interview.

Based on these responses, a draft of the Welsh Revenue Authority (Powers to Investigate Criminal Offences) Regulations 2018 has been laid before the Assembly for approval during plenary on the 20 March 2018.

Our consultation also sought views on WRA being able to exercise powers under the Proceeds of Crime Act 2002 (“POCA”). Respondents were also supportive of our suggested approach to enable WRA to appoint an accredited financial investigator to exercise POCA powers to:

- i. apply for a restraint order and exercise related search and seizure powers;
- ii. recover cash through summary civil proceedings and exercise related search and seizure powers; and
- iii. make various applications (for example, making an application for an account monitoring order) under Part 8 POCA during a confiscation, money laundering or detained cash investigation.

Although not initially proposed in the consultation, a number of respondents to the consultation, in particular the National Crime Agency, (NCA) has recommended that WRA should have recourse to use certain powers to investigate money laundering. These powers will allow an accredited financial investigator to trace criminal assets where WRA has reasonable suspicion to believe devolved tax and money laundering offences have occurred.

Shaped by these responses, today the Proceeds of Crime Act 2002 (References to Welsh Revenue Authority Financial Investigators) Order 2018 have been laid, which will give WRA access - through an accredited financial investigator - to a number of powers in the Proceeds of Crime Act 2002.

Finally, respondents to the consultation also supported the proposal that the WRA should be able to authorise directed surveillance in accordance with the Regulation of Investigatory Powers Act 2000 (“RIPA”). The consultation also sought views on whether WRA should be able to authorise the use of covert human intelligence sources (“CHIS”) under RIPA. The responses received were supportive of this and subsequent discussions with key stakeholders have all stressed the importance of being able to authorise CHIS under RIPA.

The purpose of the RIPA framework is to protect the rights of individuals from unlawful intrusion into their personal or business affairs by law enforcement agencies and I believe it is important WRA are part of that framework. This means CHIS can only be used when authorised by an appropriately senior officer, suitably trained. Furthermore, any public authority authorised under RIPA is subject to independent oversight and scrutiny by the Investigatory Powers Commissioner’s Office, (IPOC).

In terms of the use of CHIS by WRA, it is conceivable that a CHIS type relationship could arise, not because WRA has proactively sought that or induced an individual to be a CHIS, but rather because WRA reacts to unrequested communication from individuals in certain circumstances. Without the ability to authorise a CHIS under RIPA, WRA’s enforcement capability would be hampered, because WRA staff could not lawfully ask for further information in such a situation.

WRA have confirmed that they would intend to authorise the use of CHIS in this reactive way, as a means of responding to and regulating communication from individuals, rather

than in a proactive or intrusive way. WRA propose to prepare an operational policy on how it would operate shortly, drawing on the advice of the IPOC and other law enforcement agencies.

The Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) (Amendment) (Wales) Order 2018, laid before the Assembly today, therefore maintains consistency with HMRC and provides that WRA will be able to authorise both directed surveillance and CHIS under RIPA.

This statement is being issued during recess in order to keep members informed. Should members wish me to make a further statement or to answer questions on this when the Assembly returns I would be happy to do so.