



Llywodraeth Cymru  
Welsh Government

# **TAX COLLECTION AND MANAGEMENT (WALES) BILL**

**Explanatory Memorandum**  
incorporating the  
Regulatory Impact Assessment and  
Explanatory Notes

Revised February 2016

# **TAX COLLECTION AND MANAGEMENT (WALES) BILL**

## **Explanatory Memorandum to the Tax Collection and Management (Wales) Bill**

This Explanatory Memorandum has been prepared by the Office of the First Minister and Cabinet Office of the Welsh Government and is laid before the National Assembly for Wales.

It was originally prepared and laid in accordance with Standing Order 26.6 in July 2015, and a revised Memorandum is now laid in accordance with Standing Order 26.28.

### **Member's Declaration**

In my view the provisions of the Tax Collection and Management (Wales) Bill, introduced by me on the 13 July 2015 would be within the legislative competence of the National Assembly for Wales.

**Jane Hutt AM**

Minister for Finance and Government Business  
Assembly Member in charge of the Bill

22 February 2016

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# **PART 1 – EXPLANATORY MEMORANDUM**

## **Chapter 1: Description of the Tax Collection and Management (Wales) Bill**

1. The Tax Collection and Management (Wales) Bill (“the Bill”) is the first of three anticipated bills to establish devolved tax arrangements in Wales. This Bill will be followed by tax specific legislation establishing new Welsh taxes - Land Transaction Tax and Landfill Disposals Tax. The provisions in this Bill will ultimately need to be considered as part of this wider legislative package.
2. The purpose of this Bill is to put in place the legal framework necessary for the future collection and management of devolved taxes in Wales. In particular, the Bill provides for:
  - the establishment of the Welsh Revenue Authority (WRA) whose main function will be the collection and management of devolved taxes;
  - the conferral of appropriate powers and duties on WRA (and corresponding duties and rights on taxpayers and others) in relation to the submission of tax returns and the carrying out of enquiries and assessments so as to enable WRA to identify and collect the appropriate amount of devolved tax due from taxpayers;
  - comprehensive civil investigation and enforcement powers, including powers allowing WRA to require information and documents and to access and inspect premises and other property;
  - duties on taxpayers to pay penalties and interest in certain circumstances;
  - rights for taxpayers to request internal reviews of certain WRA decisions and to appeal to the First Tier Tribunal against such decisions; and
  - the conferral of criminal enforcement powers on WRA.

## Chapter 2: Legislative background

3. Section 107 of the Government of Wales Act 2006 (“GoWA 2006”) provides legislative competence for the National Assembly for Wales (“the Assembly”) to make laws for Wales to be known as Acts of the National Assembly for Wales.
4. Section 108 of GoWA 2006 provides that a provision of an Act of the Assembly is within the Assembly’s legislative competence if it relates to one or more of the subjects listed under the headings in Part 1 of Schedule 7 of that Act and does not fall within any of the exceptions specified in that Part of the Schedule (whether or not under that heading or any of those headings), and it neither applies otherwise than in relation to Wales nor confers, imposes, modifies or removes (or gives power to confer, impose, modify or remove) functions exercisable otherwise than in relation to Wales.
5. The relevant subjects listed the headings of Public Administration and Taxation are

### **14 Public Administration**

*Public Services Ombudsman for Wales. Auditor General for Wales, Audit, examination, regulation and inspection of auditable public authorities. Inquiries in respect of matters in relation to which the Welsh Ministers, the First Minister or the Counsel General exercise functions. Equal opportunities in relation to equal opportunity public authorities. Access to information held by open access public authorities.*

*The following are “auditable public authorities” and “equal opportunity public authorities”-*

- (a) the Assembly,*
- (b) the Assembly Commission,*
- (c) the Welsh Government,*
- (d) persons who exercise functions of a public nature and in respect of whom the Welsh Ministers exercise functions,*
- (e) persons who exercise functions of a public nature and at least half of the cost of whose functions in relation to Wales are funded (directly or indirectly) by the Welsh Ministers, and*
- (f) persons established by enactment and having power to issue a precept or levy.*

*The following are “open access public authorities”-*

- (a) the Assembly,*
- (b) the Assembly Commission,*
- (c) the Welsh Government, and*
- (d) authorities which are Welsh public authorities, within the meaning of the Freedom of Information Act 2000 (c. 36).*

## **16A Taxation**

### *Devolved taxes (as defined in section 116A(4))*

6. Section 116A(4) of GoWA 2006 provides that a tax specified in Part 4A is defined as a devolved tax. As Part 4A currently stands, the Assembly has the legislative competence to make provision in relation to a tax on transactions involving an interest in land (*section 116L*), and a tax on disposals to landfill (*section 116N*).
7. In addition to the above provisions, Part 4A provides the Assembly with the legislative competence to make provision for the appointment of staff of a body established for the collection and management of devolved taxes as civil servants.
8. The above-mentioned provisions in GOWA 2006 that relate to devolved taxes were inserted by the Wales Act 2014.

### **Chapter 3: Purpose and intended effect of the legislation**

9. The Welsh Ministers' primary policy objective in relation to this Bill is to provide a clear and strong governance framework in Wales that will support the efficient and effective collection and management of devolved Welsh taxes.
10. The Bill will establish a corporate body (the Welsh Revenue Authority (WRA)) that will have legal responsibility for the collection and management of devolved taxes in Wales and will provide the WRA with the relevant functions and powers to enable it to meet its responsibilities.

#### **Reason for the Bill and an explanation of its timing**

11. The UK Government published the Wales Bill in March 2014 and it received Royal Assent in December 2014. The Act provides the Assembly with the competence to legislate over devolved areas of taxation and provides a clear framework for the policy options with regard to replacement taxes. These areas are defined as being tax on transactions involving interests in land and tax on disposals to landfill.
12. This Bill is the first tax Bill being brought forward as a consequence of measures enacted in the Wales Act 2014 and makes provisions for a Welsh tax regime to enable the collection and management of devolved taxes, when these new taxes have been established.
13. The Bill does not make substantive provision about the content of particular devolved taxes as this will follow in subsequent legislation. However, the Welsh Ministers recognise that the operational priorities and processes of a tax collection and management regime can only be understood and developed where there is some clarity about the taxes that they are seeking to collect.
14. Two devolved taxes are proposed by the Welsh Ministers, Land Transaction Tax (LTT) and Landfill Disposals Tax (LDT). Consultations on proposals for these taxes have been undertaken, and summaries of the responses were published in September 2015. The consultations on the devolved taxes provide context for this Bill on tax collection and management. It is intended to bring forward legislation relating to these taxes in the next Assembly term so that they replace the existing Stamp Duty Land Tax (SDLT) and Landfill Tax (LFT) when they are disapplied in Wales by a Treasury Order in the UK Parliament - this is expected to take place from 1 April 2018.
15. The UK Government will make a reduction to the Welsh block grant allocation to reflect the fact that responsibility for SDLT and LFT will have been devolved. Assuming equal tax effort (ie no significant change in the level of tax borne in Wales), the yield from Welsh taxes in the first year will be offset by a reduction in the Welsh Government's block grant allocation equivalent to the level of revenue expected from SDLT and LFT.

Discussions concerning the methodology for adjusting the Welsh block grant to account for tax devolution are continuing.

16. By not developing successor taxes there would be a material reduction in the block grant available, which would in turn potentially damage public services. Furthermore, if the Welsh Ministers did not introduce tax raising legislation, the ability to borrow (as provided for in the Wales Act 2014) would also be lost. Therefore, from April 2018, Wales will need to have tax raising legislation in place and a fully-functioning regime for collecting and managing the devolved taxes.
17. The Bill is being brought forward now to enable it to be considered by the Assembly before the end of the current Assembly term, this would then provide almost two years for the implementation and establishment of the new tax regime.

## Policy background

18. The policy context to this Bill is set out in Chapter 1 of the White Paper – *Collection and Management of Devolved Taxes in Wales*<sup>ii</sup>, published in September 2014.
19. In developing our policy and to help us set standards for how a tax authority might be established and operate, the Welsh Ministers have drawn on the responses to the White Paper, a summary of which was published in February 2015<sup>iii</sup> (see Chapter 4 for more details). The experience of HMRC and Scotland as comparators has also been considered, together with wider international best practice.
20. The Scotland Act 2012 provided devolution of certain tax powers to Scotland from April 2015. The similarity in the Wales Bill and the Scotland Act in terms of the devolution of smaller taxes makes Scotland a useful comparator for a Welsh approach to tax devolution. Key differences include the devolved settlement in Scotland compared to Wales, and the possible next steps of devolution.
21. In Wales, HMRC's processes and procedures are commonly understood by taxpayers and their agents and Welsh taxpayers will continue to pay tax to HMRC for non-devolved taxes. Also, many individuals and businesses work across the England-Wales border. As such, HMRC is a useful comparator for the purposes of developing a Welsh approach to taxation, with particular reference to processes and procedures.
22. In developing the tax arrangements for Wales, the Finance Minister has confirmed that the following principles should be followed in the development of tax policy and legislation:
  - be fair to businesses and individuals who pay them;
  - be simple, with clear rules which seek to minimise compliance and administration costs;



- support growth and jobs that in turn help tackle poverty; and,
  - Provide stability and certainty for tax payers.
23. In preparing for the Bill, an analysis of the existing UK tax legislation and Scottish tax legislation has been undertaken. The Welsh Ministers have agreed that where there is no good policy reason (for example, on the grounds of a focus on Welsh needs or efficiency) to diverge from the UK tax administration, Welsh tax collection and management arrangements should replicate current UK operational processes and arrangements.

### **The Welsh Revenue Authority (Part 2)**

24. Alongside the development of devolved Welsh taxes, there is a requirement to legislate for the establishment of arrangements for the collection and management of those taxes.
25. In establishing the tax administrative arrangements for Wales, consideration has been given to the following:
- the holding and protecting of information about individual taxpayers' affairs;
  - a Taxpayers' Charter and arrangements for taxpayer's to appeal decisions;
  - the setting of criteria for penalties, and ultimately the ability to be able to take individuals and businesses to court for the non-payment of tax, based on those criteria and internal decisions;
  - the distinction from other parts of Welsh Government which administer payments and the collection of money from taxpayers; and,
  - the use of powers to require payment and information, and to enforce demands for payment.
26. The tax administration function is a specialist role. Tax collection and management is highly technical, both in understanding legislative tax structures, but also in operating procedures that are amenable to the efficient and effective collection of taxes, and working across different taxes to understand the potential for improving compliance and dealing with avoidance.
27. The collection and management of taxes should be undertaken by a body that is operationally separate from the Welsh Ministers – an approach that is consistent with international best practice<sup>iv</sup>.
28. The body holding these powers will have ultimate responsibility for their operation in the furtherance of its duties. The powers include those for information gathering and investigation, penalties and fines, civil and criminal enforcement, and, importantly, appeal rights and administrative justice. These are explored further below.

29. In addition to establishing the WRA, and in anticipation of the subsequent substantive tax rules, this Bill makes provision as appropriate for the mechanics of the operation of devolved taxes, such as:
- imposing duties on tax payers (e.g. to submit returns, keep information etc.);
  - conferring powers and imposing duties on WRA (e.g. to require information, assess liability to tax, impose penalties and to take enforcement action);
  - providing a mechanism for review and appeal of WRA decisions; and,
  - to provide for the creation of certain criminal offences and their investigation and prosecution.
30. The Welsh Ministers will have a role in overseeing and ensuring the longer-term sustainability, efficiency and effectiveness of tax revenue collection and management. Tax collection is a recognised function of Government (as it spends the resulting receipts on public services). The governance and accountability arrangements reflect that there should be operational independence from the Welsh Ministers, but not strategic or policy independence.

### **Constitution of the WRA**

31. The decision to establish a separate corporate entity to collect and manage devolved Welsh taxes reflects the international best practice in ensuring that the tax body can exercise its functions without political interference in taxpayers' affairs. The accountability arrangements reflect the need for a clear separation between the corporate body and the Welsh Ministers.
32. There are a number of public organisations in Wales with Board structures, including Natural Resources Wales, Arts Council Wales, and the Care Council for Wales. In these organisations, the legal powers are vested in the corporate body, and the Chief Executive Officer attends Board meetings to enable the Board to hold the executive to account. There are also organisations which are led by Commissioners (which, like HMRC, have the legal powers vested in the role rather than a corporate body), including the Children's Commissioner, the Welsh Language Commissioner and the Older Person's Commissioner in Wales. These are appointed by the First Minister (rather than by the Crown), to hold Ministers to account. They also do not have accompanying Board structures.
33. There is a long-standing practice in Wales of providing governance of public bodies by means of a Board with a combination of executive and non-executive members. In light of this, and in accordance with best practice, the WRA will be governed by a Board of Members, chaired by a non-executive Chair with both executive members and non-executive members on the Board.

34. The size of the WRA Board will be between 8 and 13 members. The exact size will be determined later to reflect the extent to which WRA will delegate its tax collection and management functions.
35. As stated above, it is clearly important that the WRA is operationally independent of the Welsh Ministers, but there is a need to retain sufficient oversight of the WRA so as to ensure that functions are being efficiently and effectively delegated and that the devolved tax collection and management system is as efficient as possible. The role of the Welsh Ministers is not around operational oversight, but to ensure the longer-term sustainability, efficiency and effectiveness of Welsh tax collection and management.
36. To this end, the Bill enables the Welsh Ministers to issue directions by means of subordinate legislation in relation to proposed or existing delegations between WRA and other organisations. This means that the Welsh Ministers will not be approving WRA delegation arrangements as a matter of course, but will hold a power to intervene to direct WRA as and when they consider necessary.

#### **Non-executive Board Members (Part 2, sections 3–5 and 7)**

37. The Chair and other non-executive members of the WRA Board will be appointed by the Welsh Ministers. It is anticipated that the appointment of the first Chair will be made in Autumn 2017 ahead of the WRA's anticipated operational 'go-live' date on or before April 2018.
38. The non-executive members will be public appointments made in accordance with the Code of Practice for Ministerial Appointments to Public Bodies (the Nolan principles), and will be for a period of office not more than 5 years and on terms as set by the Welsh Ministers. A person who is or has been a non-executive member may be re-appointed as a non-executive member once only. The Welsh Ministers may also remove a member where they consider that member to be unfit, unable or unwilling to carry out their functions.

#### **Executive Board Members and other WRA Employees (Part 2, sections 3, 6 and 9)**

39. The WRA will employ a Chief Executive Officer ("CEO"). The first CEO will be appointed by the Welsh Ministers and subsequent appointments will be made by the WRA Board. The Welsh Ministers will set the terms of the first CEO appointment and the terms of employment for subsequent appointments will be subject to the Welsh Ministers' approval. The CEO will serve on the WRA Board and will be the WRA's accounting officer.
40. As well as the CEO, either 1 or 2 other members of staff of WRA will be appointed by the CEO to the Board. One other member of staff will also be appointed to the Board as an elected executive member; appointed by the non-executive members in accordance with the outcome of a staff ballot conducted by the WRA.

41. Employees of the WRA will be civil servants, as provided for in the Wales Act 2014. WRA's decisions on pay, pensions and other terms and conditions will be approved by the Welsh Ministers.

### **Tax Collection and Management Functions (Part 2, sections 12–15)**

42. The WRA's general function is to collect and manage devolved taxes, it also has the following particular functions relating to devolved taxes:
- the provision of information, advice and assistance to the Welsh Ministers, for example about projected and actual devolved tax revenue figures;
  - the provision of information and assistance to taxpayers, their agents and other appropriate persons;
  - efficiently resolving complaints and disputes;
  - promoting tax compliance with the law and protecting against tax evasion and tax avoidance. Exercising its powers to carry out compliance and enforcement functions (e.g. imposing and collecting interest or penalties, taking criminal enforcement action, gathering information, and making enquiries into a taxpayer's affairs);
  - responsibility for the preparation, management and monitoring of a Charter of Standards and Values;
  - following directions issued by Welsh Ministers in accordance with the Bill;
  - operating an effective complaints and disputes process, including an internal review process and utilising the tribunals appeals process as appropriate.
43. Chapter 2 of *Collection and Management of Devolved Taxes in Wales* set out the Welsh Ministers' thinking around tax collection and management functions and how they could be delegated if required. The WRA will retain legal responsibility for the exercise of its functions and the discretion over whether to delegate, for how long and to what extent. The partner(s) to which functions can be delegated will be named through subordinate legislation. The Bill provides that information about external delegations made by WRA and any directions issued in relation to them are subject to publication unless to do so would prejudice the effective exercise of WRA's functions.
44. Any partner(s) to which WRA delegates functions will have the freedom to carry out functions, but must do so in strict accordance with their delegation agreement with the WRA. The actions of the WRA and any delegate must also adhere to the Welsh Minister's tax principles. The Bill will enable WRA to direct any organisation carrying out functions on its behalf as to how that function is to be exercised and to be able to revoke or vary the delegation or direction at any time. The WRA will retain legal responsibility for the collection and management of devolved taxes.

45. In the interests of fairness and transparency, the Bill requires WRA to publish information about any external delegations entered into and the directions issued in relation to them, unless to do so would be prejudicial to WRA's ability to carry out its functions. In practice, (but not a matter for the Bill), it is expected that the information to be published by WRA would include the agreement itself, the length of the delegation, the criteria for monitoring, the conditions under which the delegation can be revoked, the process for revocation and the costs.
46. The Bill empowers the Welsh Ministers to give general directions and it is anticipated that this will be done via an annual remit letter that will confirm the WRA's annual budget and set strategic policy goals, which will in turn help inform the contents of WRA's corporate plan.
47. The Welsh Ministers will publish any general directions issued.

### **Governance and Audit (Part 2, Sections 26-32)**

48. The devolved taxes collected by WRA will be paid into the Welsh Consolidated Fund to help support public services in Wales. It is important therefore that WRA is held to account (by the Welsh Ministers, the Assembly and the public), both in terms of its activities and its expenditure in carrying out its functions. The Bill requires WRA to:
  - publish a Charter of Standards and Values and lay a copy before the Assembly;
  - publish a corporate plan (subject to the approval of the Welsh Ministers) and lay a copy before the Assembly;
  - publish an annual report, providing a copy to the Welsh Ministers and laying a copy before the Assembly;
  - prepare annual accounts (audited and laid before the Assembly by the Auditor General for Wales (AGW)); and,
  - prepare an annual Tax Statement (audited and laid before the Assembly by the AGW).

### **Charter of Standards and Values (Part 2, Section 26)**

49. The Welsh Ministers consider it to be critical for the WRA to establish a positive culture of payment of taxes, to promote compliance and to deter avoidance. To that end, the WRA should seek to develop and maintain good relationships with taxpayers and their agents on an ongoing basis. To achieve this it needs to be clear in its expectations of taxpayers and also, what taxpayers can expect of it.
50. Taxpayers' Charters that set out the relationship between the taxpayer and the tax authority are widely used (for example by HMRC), and are considered to be good practice. In setting a positive cultural tone for the relationship between the taxpayer and WRA, the Bill requires WRA to

prepare a Charter and for that Charter to include standards of behaviour and values to which WRA is expected to adhere when dealing with taxpayers, their agents and others, in the exercise of their functions. The Charter will be developed in consultation with stakeholders and will be reviewed on a minimum of a 5-year cycle, again in consultation with stakeholders. The Bill also requires WRA to report on the effectiveness of its Taxpayers' Charter as part of its annual report.

51. There is also a reciprocal obligation on taxpayers, their agents and other persons when they are dealing with WRA. However, the Welsh Ministers wish to ensure that the expectations of taxpayers are not – and are not seen to be – more onerous or exacting than those upon WRA.

### **Tax returns, Enquiries and Assessments (Part 3)**

52. This part of the Bill sets out a number of duties on taxpayers in respect of, for example, keeping associated tax records. It also sets out the WRA arrangements for establishing a taxpayer's liability to devolved tax and provides for an enquiry, a determination or an assessment by the WRA.
53. The duties and powers in this part of the Bill are intended to make the tax system work effectively, however, they will be triggered by subsequent legislation and therefore they have no practical effect until tax specific legislation comes into force.

### **Avoidance and Evasion**

54. The Welsh Ministers have made it clear that tackling avoidance of devolved taxes will be a top priority and robust anti-avoidance arrangements will be established. The Welsh Ministers have confirmed that they wish to see more evidence of the scale, scope and nature of tax avoidance in relation to SDLT and LfT within Wales, to ensure that legislative and operational approaches to tackling tax avoidance are clear, robust, and proportionate. These issues were considered further in the context of consultations on LTT and LDT. The Welsh Ministers have announced that tax avoidance measures will be considered further in the context of the specific tax legislation.

### **Enforcement**

55. The Welsh tax regime is being designed to support taxpayer compliance and in the majority of cases such arrangements will work. There are occasions, however, when additional measures are necessary to encourage further compliance and therefore civil and criminal enforcement regimes are proposed.
56. It is anticipated that the majority of any necessary enforcement action will be via a civil penalty regime. In the case of criminal enforcement, powers will be reserved for the most serious, complex and high-value cases. The Welsh Ministers have confirmed that further consultation will be undertaken on potential criminal enforcement powers that might be vested in WRA.

## **Investigatory powers (Part 4)**

57. In the normal course of business it is anticipated that WRA will secure information or documents required to check a tax position in relation to a person through an informal agreement with the person concerned. However, there may be circumstances where an informal approach will not be possible or it does not result in the information or documents being provided. To enable the WRA to check a person's tax position where informal arrangements have not resulted in information or documents being provided, the Bill gives WRA powers to obtain information and documents held by taxpayers and other persons, as well as powers to inspect premises.

## **Penalties (Part 5)**

58. One of the consequences of this Bill establishing the Welsh devolved tax system is that the existing enforcement regime operated by HMRC will cease to apply in Wales in respect of devolved taxes. The Bill provides for WRA to be responsible for determining and operating a sufficiently robust enforcement regime in respect of the collection and management of devolved taxes, through the exercise of investigatory powers and use of appropriate criminal sanctions where non-compliance and evasion takes place. Where tax is not paid on time, or is incorrectly declared, HMRC uses civil penalty powers. It is clear that the WRA needs similar powers to levy an appropriate penalty regime to promote compliance and deter non-compliance. Not to provide for such powers would send the wrong message to those who may consider avoiding paying tax due and may materially reduce the level of revenues collected.
59. The Bill provides for the following penalty regime to be established:
- (a) penalties relating to failures to make tax returns or to pay devolved tax,
  - (b) penalties relating to inaccuracies,
  - (c) penalties relating to record-keeping and reimbursement arrangements,
  - and
  - (d) penalties relating to investigations.
60. The Bill also includes provision about:
- (e) the circumstances which liability to those penalties arises,
  - (f) the amounts of those penalties,
  - (g) the circumstances in which liability to those penalties may be suspended or the amounts of those penalties may be reduced,
  - (h) the assessment of those penalties, and
  - (i) the payment of those penalties.
61. The Bill provides that the levels and types of penalty imposed by WRA, and any linked interest charge, are consistent with those currently imposed by HMRC. This is consistent with the tax principles of fairness and providing stability and certainty to taxpayers. There is also provision in the Bill for mitigation of penalties in certain circumstances. This includes the power to

change penalty provisions where necessary. Any changes will be subject to proper consultation with stakeholders

62. The legislation on LTT and LDT will set out clear details of the tax specific circumstances in which various penalties will be used, the conditions for applying them and how they are calculated (including the application of interest). The WRA will consult on and publish clear guidance on the application of penalties and the process for applying them.

### **Criminal enforcement (Part 9)**

63. Criminal offences in relation to UK taxes include the following:
- cheating the public revenue – fraudulent conduct that deprives the tax authority of income through either positive false representations or concealment or omission to disclose liability or income (applies to offences committed in England and Wales only);
  - concealing etc. - concealment, destruction or disposal of a document following notification from the tax authority that the document is subject to an information notice; and,
  - fraud offences – these are not specific to the tax system and apply generally to any fraudulent criminal behaviour.
64. Only a small number of criminal offences for SDLT and LfT have been prosecuted in England and Wales in recent years. In the last 12 months, there have not been any criminal investigations in relation to either SDLT or LfT<sup>v</sup> in Wales. The lack of recent criminal investigations in Wales does not however negate the need to establish an arrangement here for criminal enforcement should the need arise. Successful enforcement could ultimately benefit citizens in Wales, where unpaid taxes are recovered for public service use. As such the Bill establishes arrangements that are consistent with existing UK arrangements, support compliance and act as a strong deterrent to anyone contemplating tax evasion.
65. Adopting a consistent approach to criminal investigation and enforcement helps provide clarity for taxpayers and the Bill confers powers on the Welsh Ministers so that they may, by regulations, direct that provisions of the Police and Criminal Evidence Act 1984 and the Criminal Justice and Police Act 2001 are to apply to WRA. To ensure clarity of the powers proposed a statutory instrument containing the draft regulations will be laid before the Assembly for approval by resolution before regulations are made.
66. In addition to powers to investigate, the Bill makes provision for powers in relation to the Proceeds of Crime Act 2002 and the Regulation of Investigatory Powers Act 2000.

### **Reviews and Appeals (Part 8)**



67. Wales does not have its own judicial system and having considered the available options, the Welsh Ministers consider the best way forwards with regards to simplicity, stability and certainty is to use the existing Ministry of Justice administered two-tier tax tribunal system as this will meet immediate needs. The intention is to underpin arrangement by a Memorandum of Understanding.
68. The aim will be to avoid disputes at all in so far as is possible, and this optimum situation will be worked towards with the implementation of this Bill. The WRA will seek to get things right first time, working collaboratively with taxpayers, communicating clearly and effectively and providing appropriate explanations of decisions.
69. In cases where a dispute does arise, the aim will be to resolve matters as informally and cost effectively as possible, whilst recognising that in some cases, particularly where there is a point of principle or legal uncertainty, that a more formal decision may be necessary and/or desirable in order to resolve matters.
70. When an issue initially arises between WRA and the taxpayer, the WRA will seek to informally resolve matters by explaining the reasons for the decision as fully and clearly as possible and seeking to listen and respond to any concerns of the taxpayer. If a WRA decision is defined as being appealable, the Bill provides that if someone can show that they are or will be affected by that decision, they will be entitled to exercise the review and appeal rights.
71. The Bill provides for a settlement process that may occur in lieu of an internal review. In essence, WRA and the taxpayer can conclude an agreement between themselves. A concluded agreement is treated as final in the same way as a tribunal determination (except there will be no further appeal rights attached to a settlement agreement). There is however, a 30 day 'cooling off' period provided for in the Bill, during which the taxpayer may withdraw from the agreement.
72. In common with the Revenue Scotland model of dispute resolution, the internal review is a stage in the process that is available between informal discussion with the WRA and an appeal to the tribunal. This stage is carried out by and within the WRA, similar to the settlement process above, but with a greater degree of formality and independence. The use of the internal reviews process is not compulsory but WRA will aim to encourage its use by developing a cost-effective, fair and respected system that is seen as an effective means of avoiding the external appeals process.
73. The Bill also sets out the basis on which a review can be requested and the format of how this can occur.
74. In cases where an internal review is not concluded to the satisfaction of the taxpayer or, where the taxpayer is not willing to engage in this process and wishes to proceed straight to an external appeal, the Bill provides the timescales and process for bringing an appeal.

75. The Bill sets out that where an appeal is allowed against a decision it will be to the First-tier Tribunal. The Tribunal to be used will be determined by Tribunal Procedural Rules. The Ministry of Justice has confirmed it is content for the existing tribunal structure to be accessed for the purpose of hearing devolved tax appeals.
76. Where a taxpayer receives notification of an appealable decision, the Bill seeks to allow the taxpayer 30 days to give notice of an appeal. This period runs from the date of notification of an appealable decision (if no request for an internal review is to be made); from notification of review conclusions (where a request for an internal review has been made); or from the date of withdrawal from any alternative dispute resolution mechanism that has been embarked upon (such as mediation), as appropriate.
77. In cases where a decision is appealable but a notice of appeal is not given within the relevant time limit, the Bill provides for WRA to agree to an appeal notice being submitted out of time or, in the absence of WRA consent, the Bill allows the taxpayer to seek permission from the Tribunal in certain circumstances. The decision of the Tribunal as to whether or not to grant permission to appeal is final, in order to prevent the possibility of a further appeal against this decision.
78. The general principle around appeals is that a right to appeal to the Tribunal should apply to any of the appealable decisions, provided the rules for making such an appeal are followed. However, the Bill makes clear the circumstances in which the taxpayer should not be allowed to appeal. These, which are consistent with relevant UK and Scottish provisions, are:
- where the taxpayer has already given notice of review in relation to the same matter and that review has not been concluded or treated as concluded;
  - where there is a concluded settlement agreement in place between the taxpayer and the tax authority; and,
  - where the dispute concerns a decision to amend a self-assessment while there is an enquiry in progress that has not been completed.
79. The course that an appeal will take when lodged with the Tribunal will be outside of the control of WRA and not a matter for this Bill. The rules governing that Tribunal will determine how a matter is categorised, how costs are determined, and whether further appeals can be lodged and how.

### **Interest (Part 6) and Final Provisions (Part 10)**

80. The Bill also provides for the payment of interest and for the rate of interest to be paid to be specified by the Welsh Ministers. The charging of interest is not a form of penalty or sanction, it is charged to compensate the WRA or taxpayer for the loss of use of money. The Bill provides for the payment on interest on sums payable to the WRA and on sums payable by the WRA.

81. The final provisions of the Bill includes details of how notices by the WRA may be issued; the requirements for giving notices and documents to the WRA; interpretation; and a table that lists expressions defined or otherwise explained in the Bill.

### **Who is affected by the Bill?**

82. This Bill may affect those who are associated with or have some connection to the collection and management of devolved taxes. This includes the direct taxpayer and their agents, who will need to be ready to operate a potentially different tax declaration system and potentially different payment system from April 2018. This is likely to be a small administrative change.
83. In addition to those agents acting for taxpayers, industry specialists will be affected as they also prepare for different methods of tax collection and management for the devolved taxes in Wales (as well as preparatory work for the specific taxes with which they are involved). Examples include taxation specialists, accountants, solicitors and waste management companies.
84. Potential impacts arising from changes in the operation of tax collection and management and methods of payment will be set out in the tax specific Bills following their individual consultation exercises and further policy development for the individual taxes. RIAs for these Bills will reflect those impacts.
85. There are also public bodies that will be affected because the Bill provides the WRA with powers similar in certain areas to those vested in HMRC. For example, the Public Services Ombudsman for Wales will have a role in examining the activities of the WRA in the event of a complaint and the Auditor General for Wales and the Wales Audit Office are responsible for auditing the WRA and giving an opinion on the submitted accounts.

### **Implementation and delivery**

86. The main elements of the legislation are on the face of the Bill. However, the Bill enables the Welsh Ministers to make subordinate legislation and these powers are summarised in Chapter 5 of this Explanatory Memorandum. It is the Government's intention to consult on the detail of the proposed subordinate legislation.
87. It is anticipated that Part 1, Part 10 and sections 37, 82, 117 and 171 of the Act will come into force on the day after the day on which it receives Royal Assent and the remaining provisions of the Act will come into force on such day as the Welsh Ministers may appoint by order made by statutory instrument.

### **Risk/hazards if the legislation is not made**

88. If the Bill is not approved by the Assembly or does not receive Royal Assent there will be no legislative mandate for an independent tax authority to be responsible for the collection and management of devolved taxes in Wales. While it is feasible for the proposed tax specific legislation to include detail around tax collection and management, the timing of that legislation does not allow for the establishment of a tax authority and the implementation issues that need to be addressed (for example, establishment of ICT systems to enable electronic submission of tax returns and payments, and secure, efficient management of taxpayer data).

### **Territorial extent**

89. The Bill applies in relation to Wales.

### **Timescale**

90. An implementation period of at least two years is considered to be appropriate for the establishment of the WRA and tax collection and management arrangements. By bringing forward this Bill in the current Assembly term rather than leaving it to the next Assembly term, the substantial amount of work involved in setting up the WRA and bringing it to operational readiness can be undertaken within a timescale that permits a thorough approach.
91. Subject to the approval of the Bill by the Assembly and subsequent Royal Assent, the anticipated implementation milestones are as follows:
- Decision made on the operating model for collection and management of LTT and LDT – June 2015
  - Royal Assent - anticipated April 2016
  - Appointment of WRA Implementation Director Summer 2016
  - Consultation on subordinate legislation - Winter 2016
  - Appointment of WRA Chair – Autumn 2017
  - Subordinate legislation – to be completed by Winter 2017
  - Appointment of non-executive Board members - Winter 2017
  - Consultation on draft tax guidance – Winter 2017/18
  - Consultation on Taxpayers' Charter – Winter 2017/18
  - Publication of Taxpayers' Charter and WRA Corporate Plan – Spring 2018
  - Anticipated WRA go-live date – on or before April 2018

## **Chapter 4: Consultation**

### **Consultation on proposals for a Tax Collection and Management (Wales) Bill**

92. The Welsh Ministers published the White Paper "Collection and management of devolved taxes in Wales" on 23 September 2014. The White Paper followed the introduction of the Wales Bill that proposed new financial powers to the Welsh Government including powers to introduce new taxes to replace the UK Stamp Duty Land Tax and the Landfill Tax in Wales from April 2018.
93. The development of a tax collection and management regime in Wales is closely linked with the development of proposals for two new replacement Welsh taxes – Tax on Disposals to Landfill (TDL) and Land Transaction Tax (LTT). Some collection and management arrangements are generic to both and some are specific to the individual taxes and indeed dependent on the arrangements of the tax itself.
94. The White Paper considered the options and opportunities for the policy and subsequent legislation on the collection and management of future Welsh taxes. Views were invited on the proposals as part of a 12-week consultation period, which ended on 15 December 2014. Responses to the consultation, together with a summary of responses were published on the Welsh Government's website on 9 February 2015. The responses to the consultation and the summary report together with the original White Paper can be found on the Welsh Government website.

### **Consultation responses**

95. In total the consultation received 40 responses from a range of stakeholders. The responses came from individuals and organisations, some representing different sectors, including umbrella organisations representing their associated affiliations and members.
96. Responses came from respondents in Wales, the Wales Branch of UK-wide organisations or UK-wide organisations with experience of operating existing tax arrangements in Wales. Many consultees did not answer all the questions, and a number included comments without indicating whether they agreed or not with the proposals.

**Table 1: number of responses by respondent category**

<b>Respondent category</b>	<b>Number</b>	<b>%</b>
Tax Accountants and professional tax bodies	8	20
Businesses	5	12.5
Charities	2	5
Individuals	17	42.5
Legal professional bodies	1	2.5
Public bodies in Wales	6	15
Political Parties	1	2.5
<b>Total</b>	<b>40</b>	<b>100%</b>

97. Of the key points that emerged from the consultation there was broad support for:
- establishing a Welsh Revenue Authority (WRA) that would be operationally independent of the Welsh Ministers;
  - the introduction of a Taxpayers' Charter;
  - the proposed core set of WRA duties;
  - the proposed obligations on taxpayers; and,
  - powers similar to those available to the UK tax authority being made available to the WRA.
98. Alongside the consultation a series of stakeholder events were held throughout Wales, including with the CBI and the Finance Minister's Tax Advisory Group and Tax Forum.
99. The Welsh Ministers also established an exhibition of historical tax documents to raise wider awareness, which featured alongside the White Paper consultation. The exhibition was supported by the National Library of Wales, Bangor University and the Glamorgan Archive who identified and made available historical documents, provided interpretation material and hosted the event. The exhibition generated wide public interest and engagement, with a minimum of 500 people visiting.
100. Since completion of the White Paper consultation, engagement has continued with feedback on the responses shared with the Finance Minister's Tax Advisory Group and Tax Forum. Key draft provisions of the

Bill were also shared including with regulators, affected Whitehall Departments and key stakeholders.

## Chapter 5: Power to make subordinate legislation

101. The Bill contains provisions to make subordinate legislation and issue determinations. Table A (subordinate legislation) and Table B (direction making powers) set out in relation to these:
- (i) the person upon whom, or the body upon which, the power is conferred;
  - (ii) the form in which the power is to be exercised;
  - (iii) the appropriateness of the delegated power;
  - (iv) the applied procedure; that is, whether it is “affirmative”, “negative”, or “no procedure”, together with reasons why it is considered appropriate.
102. The Welsh Government will consult on the content of the subordinate legislation where it is considered appropriate to do so. The precise nature of consultation will be decided when the proposals have been formalised.



## 5.1: subordinate legislation

<b>Table A: subordinate legislation</b>					
<b>Section</b>	<b>Power conferred on</b>	<b>Form</b>	<b>Appropriateness for delegated power</b>	<b>Procedure</b>	<b>Reason for procedure</b>
Part 2 s3(3)	Welsh Ministers	Regulation	The Welsh Ministers may by regulations amend section 3(1) - that provides for the Welsh Revenue Authority membership– so as to substitute a different number for the maximum or minimum number of members, provided that the number of non-executive members exceeds the number of executive members.	Negative	Prescribes the size of the WRA's body corporate, which may be updated from time to time.
Part 2 s4 (k)	Welsh Ministers	Regulation	Section 4 sets out the offices that disqualify a person from becoming a non-executive member of the Welsh Revenue Authority (WRA). 4(k) provides that Welsh Ministers may prescribe, through regulations, additional holders of an office, or members or members of staff of a body that may be disqualified.	Negative	Prescribes additional offices that disqualify a person from becoming a member of the WRA, which may be updated from time to time.
Part 2 s14(1)	Welsh Ministers	Regulation	The Welsh Ministers may by regulations, under section 14(1), enable the WRA to delegate any of its functions to any person.	Negative	Prescribes an operational matter, namely the persons who the WRA may delegate functions to.
Part 2 s18(2)	Welsh Ministers	Regulation	Section 18 (1) sets the conditions under which it is permissible to disclose taxpayer information.	Affirmative	Relates to the offence of the wrongful disclosure of protected taxpayer information and the limited circumstances in which such

<b>Table A: subordinate legislation</b>					
<b>Section</b>	<b>Power conferred on</b>	<b>Form</b>	<b>Appropriateness for delegated power</b>	<b>Procedure</b>	<b>Reason for procedure</b>
			Section 18(2) provides that Welsh Ministers may amend these conditions.		information is disclosable, which could have a significant impact on taxpayers' human rights.
Part 2 s27(7)(a)	Welsh Ministers	Regulation	Section 27 provides that the Welsh Revenue Authority must prepare a corporate plan. There will be a planning period for each corporate plan, and section 27(7)(a) gives the Welsh Ministers a regulation making power to specify the length of the first planning period.	Negative	Prescribes an administrative matter, namely the planning period for the WRA's first corporate plan.
Part 2 s27(8)	Welsh Ministers	Regulation	Section 27(7)(b) provides that when the Welsh Ministers have specified the first planning period (for the corporate plan), each subsequent period will be of three years. Section 27(8) provides that the Welsh Ministers may by order substitute for this three year period such other period as they consider appropriate.	Negative	Prescribes an administrative matter, namely that Welsh Ministers may amend the planning period for the WRA's corporate plan.
Part 3 s38(6)	Welsh Ministers	Regulation	Regulation making power to specify particular records or supporting documents for tax returns that do or do not fall within the duty to be kept and preserved.	Negative	Prescribes administrative matters relating to tax returns, which may be updated from time to time
Part 3 s39(b)	Welsh Ministers	Regulation	Section 38 sets out taxpayer duties to keep and preserve records.	Negative	Prescribes administrative matters relating to tax returns, which may be updated from time

**Table A: subordinate legislation**

Section	Power conferred on	Form	Appropriateness for delegated power	Procedure	Reason for procedure
			Section 39 provides that the duty under section 38 may be satisfied by preserving the information contained in the records in any form and by any means, subject to any conditions or exceptions prescribed by regulations made by the Welsh Ministers under section 39 (b)		to time
Part 3 s41(3)(b)	Welsh Ministers	Regulation	Regulation making power that allows a tax return to be amended during a 12-month period starting from the filing date, or another date prescribed by the Welsh Ministers. The filing date itself will be set out in the tax specific legislation.	Negative	Prescribes administrative matters relating to tax returns, which may be updated from time to time
Part 3 s52(7)(b)	Welsh Ministers	Regulation	Section 52 makes provision for the WRA to make a determination of tax chargeable if no tax return made. Subsection (6) provides that no WRA determination may be made more than 4 years after the relevant date. Subsection (7)(b) provides that the relevant date is either the relevant filing date, or such other date as the Welsh Ministers may by regulations prescribe.	Negative	Prescribes administrative matters relating to tax returns, which may be updated from time to time
Part 3 s66(1)	Welsh Ministers	Regulation	The Welsh Ministers may by	Negative	Prescribes administrative matters relating to

Table A: subordinate legislation					
Section	Power conferred on	Form	Appropriateness for delegated power	Procedure	Reason for procedure
			regulations make provision for reimbursement arrangements made by any person to be disregarded for the purposes of section 64.		when a claim to the WRA for relief for overpaid tax could lead to an unjust enrichment of the claimant, which may be updated from time to time.
Part 3 s69(3)	Welsh Ministers	Regulation	<p>Section 69 sets out the duty to keep and preserve records where a person wishes to make a claim for relief in the case of excessive assessment or overpaid tax.</p> <p>The regulation making power in s.69(3) provides Welsh Ministers with the power to specify particular records or supporting documents that must be kept and preserved to enable a person to make a correct and complete claim.</p>	Negative	Prescribes administrative matters relating to a claim for relief in case of excessive assessment or overpaid tax, which may be updated from time to time.
Part 3 s70 (b)	Welsh Ministers	Regulation	Section 70 provides that the duty under section 69 to preserve records may be satisfied by preserving the information contained in them in any form and by any means, subject to any conditions or exceptions prescribed by regulations made by the Welsh Ministers under section 70 (b).	Negative	Prescribes administrative matters relating to a claim for relief in case of excessive assessment or overpaid tax, which may be updated from time to time.
Part 4 s85(2)	Welsh Ministers	Regulation	Section 85 sets out what is meant in Part 4 by references to the 'carrying	Negative	Prescribes administrative matters relating to the investigatory powers of the WRA, which

**Table A: subordinate legislation**

Section	Power conferred on	Form	Appropriateness for delegated power	Procedure	Reason for procedure
			<p>on a business.’ Section 85(2) enables the Welsh Ministers to specify by regulation what activities are or are not to be treated as the carrying on of a business.</p>		<p>may be updated from time to time.</p>
Part 4 s96(2)	Welsh Ministers	Regulation	<p>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.</p> <p>Section 96 (1) 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).</p> <p>The regulation making power in subsection 96(2) enables the Welsh Ministers to make any conditions or exceptions in relation to producing copies of the documents.</p>	Negative	<p>Prescribes administrative matters relating to information notices, which may be updated from time to time.</p>

**Table A: subordinate legislation**

Section	Power conferred on	Form	Appropriateness for delegated power	Procedure	Reason for procedure
Part 4 s101(3)	Welsh Ministers	Regulation	Regulations to make provisions for the resolution by the Tribunal of any dispute as to whether any information or a document (requested in an information notice) is legally privileged.	Negative	Prescribes administrative matters relating to resolutions by the Tribunal in relation to information notices, which may be updated from time to time.
Part 5, s156	Welsh Ministers	Regulation	Power to make regulations about the amounts of penalties and the procedure for assessing them under Part 5.	Affirmative	Relates to the amount and assessment of penalties charged to taxpayers, which are intended to help ensure taxpayers comply with their obligation to pay a devolved tax. As this could lead to higher penalties/ a different approach to assessing penalties, the affirmative procedure is prescribed
Part 6 s163(1)	Welsh Ministers	Regulation	Regulations to enable the Welsh Minister to set the rate of interest that applies to late payment interest.	Negative	The negative procedure is prescribed because the regulations relate to the rates of late payment interest, which may need to be updated from time to time.
Part 6 s163(2)	Welsh Ministers	Regulation	Regulations to enable the Welsh Minister to set the rate of interest that applies to repayment interest.		The negative procedure is prescribed because the regulations relate to the rates of repayment interest, which may need to be updated from time to time.
Part 7 s167	Welsh Ministers	Regulation	The Welsh Ministers may by regulations provide that where a person pays a relevant sum to WRA using a method of payment prescribed by the regulations, the person must also pay a fee	Negative	Prescribes administrative matters relating to the method of payment of relevant sums to the WRA, which may be updated from time to time, (for example as payment technology advances).

**Table A: subordinate legislation**

Section	Power conferred on	Form	Appropriateness for delegated power	Procedure	Reason for procedure
			<p>prescribed by, or determined in accordance with, the regulations.</p> <p>Regulations under this section may make provision about the time and manner in which the fee must be paid.</p>		
Part 7 s169(6)	Welsh Ministers	Regulation	<p>Section 169(1) sets out that where a relevant sum of any one of the descriptions specified in section 164, (e.g. interest on a devolved tax) is payable by a person, and it does not exceed £2,000; it is recoverable summarily as a civil debt.</p> <p>The Welsh Ministers may by regulations increase the sum specified in subsection (1).</p>	Negative	The negative procedure is prescribed because the regulation making power relates to the amount of civil debt that can be summarily recovered as a civil debt, which may need to be amended from time, for example, as a result of inflation.
Part 8 s172(7)	Welsh Ministers	Regulation	<p>Section 172 sets out the decisions by the WRA that are appealable decisions and those that are not.</p> <p>The Welsh Ministers may by regulations add or remove a decision from subsections (2) or (3) or vary the description of a decision in those subsections. Regulations may also make provision in relation to</p>	Affirmative	The affirmative procedure is prescribed because the regulation making power confers significant powers on the Welsh Ministers to amend the legal provisions relating to what are to be classed as appealable decisions and the grounds on which an appeal or review can be made in relation to certain appealable decisions.

**Table A: subordinate legislation**

Section	Power conferred on	Form	Appropriateness for delegated power	Procedure	Reason for procedure
			subsection (5) amending this Part in order to make provision about the grounds on which a review may be requested, or an appeal made, in respect of an appealable decision, in the case of any decision to which the provision relates.		
Part 9 s185(1)	Welsh Ministers	Regulation	The Welsh Ministers may by regulations direct that any provision of the Police and Criminal Evidence Act 1984 (c.60) (application of Act to Revenue and Customs) which relates to investigations of offences conducted by police officers or to the detention of persons by the police is to apply to investigations conducted by WRA. They may also 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.	Affirmative	The affirmative procedure is prescribed because the regulation making power confers significant powers on the Welsh Ministers to confer investigation and detention powers on the WRA.
Part 9 s185(2)	Welsh Ministers	Regulation	The Welsh Ministers may by regulations direct that any provision of the Criminal Justice and Police Act 2001 (c.16) (application of Part 2 to officers of Revenue and Customs) is to apply to investigations conducted	Affirmative	The affirmative procedure is prescribed because the regulation making power confers significant powers on the Welsh Ministers to confer powers of seizure on the WRA.



**Table A: subordinate legislation**

Section	Power conferred on	Form	Appropriateness for delegated power	Procedure	Reason for procedure
			by WRA. They may also make provision permitting a person exercising a function conferred on the Welsh Revenue Authority by the regulations to use reasonable force in the exercise of such function.		
Part 9 s186(4)	Welsh Ministers	Order	The Welsh Ministers may by Order provide that a specified reference in the Proceeds of Crime Act 2002 (c.29) to an accredited financial investigator includes a reference to a person exercising a function of the Welsh Revenue Authority who falls within a specified description.	Negative	The negative procedure is prescribed because Regulations made by the Welsh Ministers under this power will provide minor technical detail to specify those staff of WRA able to exercise certain functions under the Proceeds of Crime Act 2002.
Part 9 s187(2)(b)	Welsh Ministers	Order	The Welsh Ministers may make an Order under the Regulation of Investigatory Powers Act 2000 to prescribe persons exercising WRA functions as persons designated for the purposes of sections 28 and 29 of that Act.	Negative	The negative procedure is prescribed because Regulations made by the Welsh Ministers under this power will provide minor technical detail to specify those staff of WRA able to exercise functions under the Regulation of Investigatory Powers Act 2000.
Part 10 s188(1)	Welsh Ministers	Regulation	This enables the Welsh Ministers to make supplementary, incidental and consequential provisions in order to give full effect to a provision of the Bill, if so required.	Negative.	This power would only be used for matters like making changes to other legislation needed as a consequence of the provisions of this Bill, or to deal with unforeseen details arising out of the implementation of the new system.

**Table A: subordinate legislation**

<b>Section</b>	<b>Power conferred on</b>	<b>Form</b>	<b>Appropriateness for delegated power</b>	<b>Procedure</b>	<b>Reason for procedure</b>
					<p>The use of these powers will be strictly tested by the courts.</p> <p>For these reasons, it is unnecessary to subject them to the affirmative procedure.</p>
Part 10 s194(2)	Welsh Ministers	Order	Suitable for delegated powers because this provision enables the Welsh Ministers to provide for commencement of the Bill	No procedure	These orders will be confined to commencement and are technical in nature.

**Table B: Direction making powers**

<b>Section</b>	<b>Power conferred on</b>	<b>Form</b>	<b>Appropriateness for delegated power</b>	<b>Procedure</b>	<b>Reason for procedure</b>
Part 2 s14	Welsh Ministers	Direction	The Welsh Ministers may give to WRA directions of a general nature.	No procedure	Directions will be in writing and not in the form of a statutory instrument and therefore no procedure is required.



## **PART 2 – REGULATORY IMPACT ASSESSMENT**

103. A Regulatory Impact Assessment has been completed in accordance with Standing Order 26.6(vi) for the Bill and it follows below. There are no specific provisions in the Bill which charge expenditure on the Welsh Consolidated Fund.

### **Chapter 6: Policy Options**

#### **Impact of establishing a tax collection and management regime on Welsh taxpayers and their agents**

##### **Option 1 - do nothing**

104. If the Welsh Ministers do not bring forward legislation on the powers and duties for devolved tax collection and management, the Welsh Government would not have the legal framework to enable it to collect the new devolved taxes.
105. The Welsh Ministers have rejected the do nothing option.

##### **Option 2 – establish a tax collection and management regime**

106. This option proposes raising the powers of tax collection and management in Wales, to replace both Stamp Duty Land Tax (SDLT) and Landfill Tax (LFT) in Wales and to enable the Welsh Ministers or their partners to collect tax receipts from the replacement taxes. In effect, this requires the introduction of primary legislation to establish a Land Transaction Tax (LTT, a replacement for SDLT), a Landfill Disposals Tax (LDT, a replacement for LFT), and the powers and duties associated with tax collection and management.
107. These are interlinked pieces of legislation: the tax collection and management legislation provides the powers and duties; the tax-specific bills will set out in large part how these powers and duties will be used to actually collect the taxes.
108. As such, the Bill is an enabling piece of legislation: it does not directly require spend. The decisions which will result in financial commitments will be set out in the tax-specific Bills (and their Regulatory Impact Assessments), the decision on an operating model, and, importantly, the decisions on operational policy (for example, the effort put into compliance).
109. The legal powers of tax collection and management must be vested in an organisation which will be able to utilise these powers. Officials considered the possibility that the legal powers of tax collection and management could be vested in the Welsh Ministers ('Option 2a'). However, this was rejected immediately on policy grounds, as confidentiality of taxpayer information

requires it to be managed clearly and separately from any possibility or perception of Ministerial intervention. This is consistent with international best practice. The policy grounds for operationally independent management of taxpayer information were considered to be strong enough for this option not to be taken any further.

- Option 2a – vest the powers of tax collection and management in the Welsh Ministers.
- This option was rejected as international best practice suggests that there should be a clear operational separation between Ministerial influence and the management of individual taxpayers' affairs.
- Option 2b – vest the powers of tax collection and management in a body operationally separate from the Welsh Ministers.
- This is the preferred option. The Welsh Ministers agreed to create the Welsh Revenue Authority (WRA) with appropriate powers for tax collection and management.

### **Size and scope of the WRA**

110. The Bill provides for the following key administrative functions:

- the WRA board and corporate functions (including audit and corporate IT infrastructure);
- collection and management operational activities; and,
- access to justice for taxpayers.

111. There are options around how each of these functions might operate, and how the WRA might work with partners to deliver these. These are set out below.

### **Collection and management operational activities**

112. Welsh Ministers have agreed that WRA powers should include the power to delegate any of its functions to other organisations (prescribed in regulations made by Welsh Ministers), to enable the most cost-effective solution to the collection and management of devolved Welsh taxes.

113. The WRA will explore the possibility of delegating some of its functions, but will only delegate (some or all) operational tax collection and management functions. It will retain legal responsibility for tax collection and management. The WRA will provide strategic and corporate oversight (including provision of performance information to the Assembly and the Welsh Ministers); it will support the Welsh Ministers in developing legislation and translating legislation into operational tax guidance; and it will be responsible for developing operational policy (e.g. compliance effort) in line with the Welsh Ministers' preferences.

114. The Minister for Finance and Government Business announced in June 2015 that the preferred way forward was for HMRC to provide facilities to submit online and manual LTT returns and payments, and undertake the transactional and routine compliance functions. The WRA would undertake complex compliance, anti-avoidance and enforcement work for LTT. The WRA would undertake the collection and management functions for LDT, with NRW undertaking compliance and enforcement work.
115. Welsh Ministers will require the WRA to develop strong and collaborative relationships with bodies to which it delegates functions, and a commitment to transparent ways of working. In particular, the WRA must publish information about the delegation arrangements and we would expect this to include agreed service standards. The WRA will ensure that devolved Welsh tax collection and management meets the Welsh language standards required by the Welsh Language Commissioner (in accordance with the Welsh Language (Wales) Measure 2011) , and the commitments under its Charter of standards and values.
116. It is anticipated that the next Welsh Government will wish to provide an update on the outcome of the discussions with HMRC and NRW soon after the Assembly elections in 2016.

*Impact of Tax-specific legislation*

117. Consultations were published in February 2015 on policy options for LTT and LDT, with the expectation that legislation will be introduced into the Assembly after the May 2016 elections. This legislation will include more detailed proposals for collection and management of these specific taxes. Welsh Ministers will make policy decisions about the degree of administrative support required to effectively collect and manage these taxes (including the degree of online service provision, the compliance and enforcement effort, the level of customer services and the need for Welsh capacity-building) in the context of these legislative provisions.
118. These policy decisions fundamentally drive the amount of administrative effort required, and thus the cost, to collect and manage these taxes. Equally, some action (for example, compliance and enforcement) may result in a financial reimbursement to the Welsh Revenue Authority (if the compliance activity results in more taxpayers paying the amount due), or have a wider cost-effectiveness impact (for example, if landfill tax enforcement prevents some illegal dumping and thus prevents environmental costs arising for Natural Resources Wales or local authorities). The separate Regulatory Impact Assessments for LTT and LDT will provide further information on the costs of collection and management in the context of possible policy decisions.
119. On the 4 November 2015, the Minister for Finance and Government Business wrote to the Finance Committee to provide the Assembly with an update on work to establish collection and management arrangements. This

Regulatory Impact Assessment was amended in February 2016, (after completion of Stage 2 of the Bill's passage through the Assembly) to reflect that update.

## **The Board**

120. The WRA will need a corporate presence to enable it to undertake these functions. The size and scale of this corporate presence will depend on the preferred partner(s) for collection and management: for example, the size of the Board and the number of days required of Board members.
121. There were early stage options around the corporate governance of the new organisation: specifically, whether to establish a familiar and tested (in Wales), governance structure (a Board with a non-executive Chair), or to replicate the HMRC structure of Executive Commissioners. The governance benefits of a Board chaired and made up with a majority of non-executive members was considered preferable.
122. It is anticipated that the provisions of the Bill providing for the constitution of WRA will be brought into force in autumn 2017 and that the Chair and other non-executive members will then be appointed.). The size of the WRA Board will be between 8 and 13 members. The Bill, as currently drafted, provides for a range of membership: not fewer than 5 and not more than 9 non-executive Board members including the Chair. To ensure that the WRA has the necessary skills on its Board it is expected that the appointments will be paid positions and that the Board will consist of 5 non-executive members from April 2018. In addition there will be 3-4 executive members, made up of the Chief Executive Officer ("CEO"), an elected staff member and 1-2 staff members appointed by the CEO.
123. In January 2016 it was announced that an Implementation Director would join the Welsh Treasury for a fixed-term starting in the Summer of 2016. The appointee will lead the preparations for the launch of the WRA in April 2018. The WRA Chief Executive will be appointed once the Board is in place. Both appointments will be to the Senior Civil Service.

## **Audit**

124. As a Welsh public body, the WRA will be audited by the Auditor General for Wales. It is noted that if HMRC is delegated any devolved tax functions, then any audit requirements associated with these are likely to be carried out by the National Audit Office as they are the existing auditors for HMRC.

## **Corporate IT infrastructure**

125. The WRA will, in any case, need to establish an IT infrastructure to support its day-to-day functions.



126. It is possible that the WRA will need some IT infrastructure to hold and manage taxpayer information, to support its compliance and enforcement function, and support operational policy development around tax avoidance. This will depend on possible partners for collection and management functions, and the IT that they currently use to manage taxpayer information.

### **Access to justice**

127. The Tax Collection and Management (Wales) Bill provides a route for taxpayers to access the justice system. There have hitherto been relatively few appeals concerning SDLT and LfT in Wales reaching the First Tier Tribunals.
128. The following options were considered in relation to the provision of a tribunal system:
- Option A: align with the existing Ministry of Justice (MoJ) tribunal system. The clear practical advantages of this option include the availability of existing tax expertise and tribunal infrastructure.
  - Option B: align with an existing Welsh tribunal. The advantages of this are the availability of an existing tribunal infrastructure and therefore not having the fixed costs of establishing a new structure. The challenges would include the need to recruit new tax expertise for an unknown number of appeals, and aligning the objectives of different tribunals.
  - Option C: establish a new Welsh tribunal system for devolved taxes. The disadvantages of this include the need to establish a new structure for an unknown number of appeals and recruit new tax expertise.
129. The Welsh Ministers have confirmed that, at least in the short term, their preferred option is to continue to use the existing MoJ tribunal system (Option A) as this appears to be the most cost-effective solution. The decision will however be returned to when the number and scale of any devolved tax appeals become clearer.
130. Civil proceedings are used more frequently than criminal proceedings in relation to LfT and SDLT and that prosecution is unusual. Until policy is established in relation to LTT and LDT and such taxes are operational it is not possible to be clear about the number and type of likely prosecutions in relation to the devolved taxes.
131. Arrangements to work with partners will be established as part of the implementation plan.

## **Chapter 7: Costs and benefits**

### **Option 1 – do nothing**

132. This is an enabling project to establish the tax collection and management regime. If the tax collection and management regime was not established, there would be no direct additional cost in the do nothing option.
133. A consequence of not putting in place a tax collection and management regime is that the ability to borrow in the Wales Act 2014 is linked to the ability raise revenue. If the Welsh Ministers do not replace the taxes being switched off or establish the means to collect and manage them in this primary legislation, the Welsh Government may not be able to borrow from the Secretary of State at intra-government rates and future capital and programme expenditure may need to be sourced through other financial arrangements.

### **Option 2 – establish a tax collection and management regime**

#### **Costs to Welsh Government and WRA**

134. All of the costs associated with this option fall to the Welsh Government.
135. The scope and scale of many of the WRA functions is dependent on Ministerial decisions made, largely, in the context of the developing policy and legislation on LTT and LDT (. As such, the staff and infrastructure requirement will vary, depending on these later Ministerial decisions (to be reflected in the Regulatory Impact Assessments for LTT and LDT).
136. The Minister for Finance and Government Business, in her letter of the 4 November, emphasised that the WRA will be expected to fulfil its wider corporate functions to a high standard. This includes the provision of performance and other information to Ministers and the Assembly across the range of its responsibilities. It is anticipated that it will be required to collect LDT and undertake full compliance work in relation to more complex LTT cases, and will need ICT provision to ensure that all its functions can be undertaken efficiently and effectively. Our current estimate is that the WRA would have between 25 and 32 staff.
137. There are likely to be other operational costs associated with the WRA, including costs relating to audit, and data sharing with Valuation Office Agency and Her Majesty's Land Registry.
138. The 4 November letter highlighted that further work is required to assess and quantify these costs. However a best initial estimate of costs for the set up and operation of collection and management arrangements for devolved taxes is provided at Table A. Set up costs are estimated to be £4.8m–£6.3m over the period 2016/17 to 2018/19. Operating costs are estimated to be £2.8m–£4m annually, beginning in 2018/19.

139. The information is presented as a range, rather than a specific figure, to reflect the degree of uncertainty remaining over some elements of these arrangements. This estimate will be further refined in discussions with HMRC and NRW in relation to service standards for LTT and LDT, and underpinning ICT issues in particular. It should also be noted that the next Government will introduce two further pieces of legislation on LTT and LDT and the policy decisions agreed in the passage of these bills may well have cost implications.
140. It should be noted that HMRC have charged the Scottish Government with the costs of 'switching off' the collection of SDLT and LfT in Scotland. We understand that the equivalent charge to the Scottish Government was £1m.
141. HMRC is expected to reimburse the Welsh Government with the costs of not collecting SDLT and LfT in Wales from April 2018: the equivalent amount to the Scottish Government is £275k per annum (according to Revenue Scotland figures).

#### **WRA expected costs**

142. The WRA will appoint an Implementation Director in Summer 2016, for whom there will be a cost. This individual will lead the operational establishment of the WRA, agree staffing structures, recruit and train staff, ensure that all operational preparations are undertaken and completed appropriately, and manage the final stages of implementation to April 2018. The expected salary and on-costs are expected to be £90,500 for 2016-17 (based on a start date of August) and £136,000 for 2017-18 onwards, based on the equivalent senior civil service grade.

**TABLE A**

<b>Estimated Set-up Cost for the period 2016/17-2018/19</b>		
<b>£k</b>	<b>Low</b>	<b>High</b>
<b>Welsh Government – Staff</b> <i>(Gross staff cost incl. salaries &amp; overhead)</i>	1,700	2,000
<b>Welsh Government – Non-Staff</b> <i>(Incl. ICT development, Board &amp; staff recruitment)</i>	550	1,200
<b>HM Revenue and Customs – Staff and Non-Staff</b> <i>(Incl. ICT development &amp; project implementation)</i>	2,500	2,970
<b>Natural Resources Wales – Staff and Non-Staff</b> <i>(Incl. ICT development &amp; project implementation)</i>	100	180
<b>Total</b>	<b>4,850</b>	<b>6,350</b>

<b>Estimated Annual Running Cost</b>		
<b>£k</b>	<b>Low</b>	<b>High</b>
<b>Welsh Revenue Authority – Staff</b> <i>(Gross staff cost incl. salaries &amp; overhead)</i>	1,400	1,800
<b>Welsh Revenue Authority – Non-Staff</b> <i>(Board, Audit, ICT, accommodation, etc)</i>	400	840
<b>HM Revenue and Customs – Staff and Non-Staff</b> <i>(LTT processing, ICT provision &amp; Welsh Taxes Team)</i>	840	1,000
<b>Natural Resources Wales – Staff and Non-Staff</b> <i>(LDT Compliance &amp; Enforcement Team)</i>	200	315
<b>Total</b>	<b>2,840</b>	<b>3,955</b>

**External Audit**

143. The Bill makes provision for the Auditor General for Wales (AGW) to examine, certify and report on the WRA’s annual accounts and Tax Statement and to lay a copy of the certified documents and the report on them before the Assembly.
144. Officials of the Welsh Government and Wales Audit Office (WAO) have discussed the audit provisions of the Bill and the likely audit fee to meet the costs of the work that arises. It is recognised that the level of the fee will be influenced by various factors including who collects and manages devolved taxes, the nature of the financial and other IT systems that the WRA will use and the governance and internal control environment that the WRA will put in place. Given that decisions concerning such matters have not at this stage been finalised, WAO officials have confirmed that it is not yet possible to plan with any degree of certainty for the work that the AGW will need to perform when forming his audit opinions on the annual accounts, or of the Tax Statement in respect of the devolved taxes that the WRA will be responsible for.

145. The WAO has drawn attention to the possibility of audit costs resulting from National Audit Office work, in the event that HMRC is selected as a partner to deliver devolved tax collection functions under delegation from the WRA. This is because the audit approach proposed would be to use the existing auditors of that department rather than introduce an additional auditor.
146. The WAO has said that it may be assumed, based on their fairly extensive previous experience of auditing other newly-created public bodies, that the external audit costs are likely to be higher for at least the first year of WRA operations before settling down to a lower 'steady state' position in future years once everything has bedded in. Initial "broad brush" estimates have been provided by WAO officials, together with confirmation that they will look again at costing the likely WRA audit work when further information on Welsh Government policy direction is available.
147. For the audit of the Tax Statement, year 1 and subsequently audit work is likely to be in the range of £20k to £70k annually, depending on the collection partner option that is finally selected by the Welsh Government. There would also be a fee chargeable for the audit of the annual accounts of the WRA. The WAO has confirmed that as these are statutory AGW audits, no VAT will be chargeable on fees.

### **Access to justice**

148. Further discussions with the MoJ and HM Courts and Tribunals Service on the service standard expected of tax tribunal services in Wales will need to accompany the passage of the legislation.
149. This legislation sets out the process for access to justice, including to the tribunals. However, it does not confirm a final and comprehensive set of appeal rights: these will be set out in the later legislation on LDT and LTT, and the Regulatory Impact Assessments for these bills will reflect whether there is any likely impact on the tribunal service. We have planned on the basis that continued access to the tax tribunal service will be cost neutral, but further discussions with MoJ and HM Courts and Tribunals Service will be undertaken to consider any wider impact of the legislation and requirements of implementation.

### **Costs to business**

150. Most Welsh taxpayers (of LTT and LDT) will continue to be UK taxpayers for other taxes. The possible need to communicate with different organisations on different taxes may create a small administrative burden for businesses. As such, the Welsh Ministers anticipate that there will be some initial cost of change to establish the new tax regime and for businesses, in the short-term, a minor cost of change of learning the new tax administration system in Wales. However, the Welsh Ministers have been clear that changes should be made to the existing UK system where they are more efficient,

more effective, or more focused on Welsh needs and priorities. As such, we expect that any changes will be beneficial over the longer-term.

151. The implementation of any administrative change will be particularly important for agents who currently support and advise on SDLT/LfT transactions in Wales, as they will need to familiarise themselves with a new system. This includes conveyancers, estate agents, landfill site operators, and waste carriers. The change to a new system in Wales will be particularly relevant for those businesses that operate across the England and Wales border, in that they will be required to operate two different tax collection and management systems (on SDLT/LTT in particular).
152. It is not possible to put a cost on these changes as different organisations have different staff structures and pay rates, but it is not anticipated to be a significant amount for businesses and it will reduce quickly as organisations and their staff become used to dealing with the separate Welsh and English taxes.
153. This issue will be covered in more detail in the Regulatory Impact Assessments for LDT and LTT. At present, because the devolved taxes will impact in different ways on business - which will be taken into account in the development of the tax-specific Bills - the costs are not quantifiable.

#### **Impact on other public sector bodies**

154. The implementation of the Tax Collection and Management (Wales) Bill will have an impact on a number of public sector bodies across England and Wales, which have hitherto only had to work with HMRC on SDLT and LfT collection and management. At present, any potential financial impact is not quantifiable and will be dependent on the conclusion of future discussions with the relevant public bodies, prior to the WRA being established in 2018.
155. These bodies include the Land Registry and Valuation Office Agency on LTT. Both of these organisations share tax return data with HMRC on SDLT, and the WRA will need to establish efficient and cost-effective service relationships with these organisations for LTT. There are also opportunities for better information-sharing on residential and non-residential transactions between WRA and local authorities, in the context of devolution of SDLT.
156. On LDT, Natural Resources Wales currently have a role permitting and inspecting landfill sites, and WRA will wish to develop a relationship with NRW to ensure the most effective enforcement and oversight of landfill site issues.
157. Similarly, local authorities are both users and, in some cases, owners and operators, of landfill sites. WRA will be legally responsible for collecting and managing LDT in Wales, and will develop a new relationship with local authorities around this.

158. The Bill adds the WRA to the list of public bodies in Wales contained in the Public Services Ombudsman (Wales) Act 2005 - this enables the Public Service Ombudsman for Wales (PSOW) to have jurisdiction over WRA. Further discussions with PSOW's office will be undertaken to consider any wider impact of the legislation and requirements of implementation. At present therefore, this cost is not quantifiable.
159. Finally, there will be an impact on the Ministry of Justice in terms of their current role in relation to HM Courts and supporting the tax tribunals across England and Wales. The Welsh Ministers do not expect this to be substantive (see paragraph 147).

## **Benefits**

### **Option 1 – do nothing**

160. The cost of establishing the WRA will be met by the Welsh Government. This creates an opportunity cost as the money spent on the WRA cannot be spent elsewhere.

### **Option 2 – establish a tax collection and management regime**

161. The UK Government will reduce the Welsh Government block grant by an amount equivalent to the prospective receipts from SDLT and LfT in Wales, from April 2018. Legislation to replace SDLT and LfT, and to collect and manage these taxes, will enable the Welsh Government to collect this tax revenue (£195m in 2013-14)
162. Beyond this, there are opportunities to collect and manage devolved taxes in a way that is more suited to the needs and priorities of people in Wales. These are not set by the legislation, but the legislation enables these decisions to be made (for example, level of compliance effort, customer services, efficiency and effectiveness of transactions).
163. The policy benefits of introducing LTT and LDT will be covered in the Regulatory Impact Assessments for these pieces of legislation.

## **Risks and contingency planning**

164. Legislation to raise the powers of devolved tax collection and management in Wales is the first step in establishing the WRA. As indicated previously in this Regulatory Impact Assessment, significant further work will need to be done to establish the corporate entity itself.
165. There are risks associated with this work, and the Welsh Government is taking a proactive approach to risk management and contingency planning in this area.
166. There will be a review of the WRA's delegation arrangements after 3-5 years of operation (2021-23), which will consider a range of partnership options.

The Welsh Government will also establish a working group with local government to ensure that expertise and knowledge of the collection and management of devolved Welsh taxes is shared.

### **Summary and preferred option**

167. The Welsh Ministers consider that Option 2 – establishing a tax collection and management regime - offers the best way to maintain the revenue base through the introduction of devolved taxes in Wales and to maintain a consistent tax collection and management function in Wales.



## **Chapter 8: Specific impact assessments**

168. A series of impact assessments on the draft Bill were completed as part of this RIA. Initial impact assessments were completed prior to the White Paper and these impact assessments were reviewed following the closure of the consultation and the drafting of the Bill.
169. Overall, the establishment of a corporate body that exercises tax collecting powers for LTT and LDT is not expected to have a major impact on most businesses or people. While there may possibly be some variations in the structure of the taxes themselves, the requirement to pay those taxes exists now and the requirement will still exist when the taxes are devolved to Wales.
170. Details of the impacts of LTT and LDT will be in the tax specific legislation – this Bill is only concerned with the power to collect and manage devolved taxes and establishing the legal means of doing so. There may be some changes to the taxes, but the Welsh Ministers have indicated that in the main, changes will be to improve on what exists currently.

### **Impact on small business**

171. The majority of businesses that will be directly involved with LTT are professional firms such as solicitors paying the tax on behalf of their clients. This would not be a change from the existing situation, but the operation of LTT may be slightly different from the existing SDLT and some businesses may feel that there is an increased administrative burden for their staff to deal with more than one means of paying a tax. By April 2018 when the devolved taxes become live, this will already be the case with different Scottish taxes, but there is less of an impact between Scotland/England due to less cross-border activity. LTT will also impact on businesses acquiring land or buildings, either for their own occupation, or as part of their commercial activities (for example property development or investment).
172. It is uncertain at the present time whether the operation of LDT will have a major impact on the landfill operators. The existing LfT is collected manually – if this continues under the WRA, there would be a minimal impact. If the decision were taken to digitise the collection of LDT, there would be an impact on landfill businesses as there would be a change of business process for them to integrate. However, landfill stakeholders have been consulted throughout the policy development process and have advised the WG that the rest of their business activities are managed digitally and a change to a digital reporting / collecting regime would be welcomed. This needs to be understood in the context of a reducing number of operators and a reducing tax revenue stream.

### **Impact on voluntary sector**

173. The Welsh Ministers do not expect that voluntary sector organisations will be impacted by this Bill. A potential impact may occur at a later date when LTT and LDT are designed and the tax specific legislation is introduced, but potential changes to the actual method of collection of LTT and LDT are not expected to create any additional burden on the voluntary sector.

### **Equality impact assessment**

174. There has been significant external stakeholder engagement throughout the policy development process. This includes stakeholder workshops, individual meetings, a Tax Forum led by officials (with a tactical/strategic focus) and a Tax Advisory Group led by the Minister (with a strategic focus). There has also been wide-ranging internal stakeholder engagement through the Project Board and officials in relevant policy areas.
175. An impact assessment has been carried out to evaluate if this legislation has any adverse effect on protected groups and to ensure that it does not contravene the Human Rights Act 1998.

### **Protected groups**

176. The location of the WRA has not yet been decided, so physical access to the organisation cannot yet be considered as there is no reference point from which to draw conclusions. This issue will be considered fully as part of preparation for the establishment and implementation of the WRA. .

#### *Age*

177. Younger people – As set out below, a Child’s Rights Impact Assessment was undertaken to inform the provisions of the Bill and found that there will be no direct impact on children as a result of the legislation. The impact on children and young people will continue to be considered as preparations are made for making the WRA operational.
178. People aged 18 and older – this age group is more likely to be affected by the tax specific legislation for LTT and LDT, but the establishment of the WRA itself is not considered to have a differential impact.

#### *Disability*

179. This protected group contains several categories. For those with a learning disability and/or mental health problems, the establishment of the WRA and the tax collection and management regime is not considered to have a differential impact. However, there may be minimal impacts for the following categories in terms of the operational delivery of the WRA. The issues identified below and others affecting this group will be considered as part of preparations for making the WRA operational.

- Visual impairment – the day to day operation of the WRA may have a minimal impact on people with a visual impairment. For example, if a “digital by default” approach is taken, this may have an impact on those who are visually impaired.
- Hearing impairment - the day to day operation of the WRA may also have a minimal impact on people with a hearing impairment. This impact comes if hearing impaired people want to contact the organisation by telephone.
- Physically disabled - the day to day operation may of the WRA may also have a minimal impact on people with a physical disability: there may be an impact on those who have a physical disability if they are not able to use standard computer equipment to submit tax returns and other documentation. This may be mitigated by the use of specialist hardware equipment such as a specially adapted keyboard and/or mouse, which a physically disabled person who wishes to access the internet generally may well have access to already.

#### *Gender*

180. The establishment of the WRA and the tax collection and management regime is not considered to have a differential impact due to gender.

#### *Transgender*

181. The establishment of the WRA and the tax collection and management regime is not considered to have a differential impact on those who are transgender.

#### *Marriage and civil partnership*

182. The establishment of the WRA and the tax collection and management regime is not considered to have a differential impact due to marriage or civil partnership.

#### *Pregnancy and maternity/paternity*

183. The establishment of the WRA and the tax collection and management regime is not considered to have a differential impact on those who are pregnant or during maternity or paternity.

#### *Race*

184. The race protected group covers ethnic minority people, national origin, asylum seekers and refugees, gypsies and travellers, migrants and others. The establishment of the WRA and the tax collection and management regime is not considered to have a differential impact on those in the race protected group.

#### *Religion and belief or non-belief*

185. For the different religious groups, those with beliefs and those with non-beliefs, the establishment of the WRA and the tax collection and management regime is not considered to have a differential impact on those in the religious protected group.

### *Sexual orientation*

186. This protected group includes gay men, lesbians and bi-sexual people. The establishment of the WRA and the tax collection and management regime is not considered to have a differential impact on those in this protected group.

### **Human rights**

187. The Human Rights Act (1998), which partially incorporates the European Convention on Human Rights (ECHR), has been considered in this equality impact assessment.
188. The Government of Wales Act 2006 states that a Bill will not be within the legislative competence of the Assembly if it is incompatible with the ECHR and could not become law (section 108(6) (c) GOWA 2006).
189. The areas in the ECHR relevant to tax consist of a number of Articles setting out basic principles of human rights. The principal Articles which are relevant for the purposes of this Bill are:
- Article 1 which guarantees the right to peaceful enjoyment of property
  - Article 6 which guarantees the right to a fair trial in the determination of civil obligations and affords further rights where a person is charged with a criminal offence.
  - Article 8 which requires respect for private and family life.
  - Article 14 which prohibits discrimination.
190. Article 1 is relevant because the Bill provides for the control of the use of property to secure the payments of taxes, other contributions or penalties in certain circumstances, although the framework has been devised with the principle of proportionality in mind and ensuring that there are adequate safeguards built into the system. Articles 6 and 8 are relevant to the WRA as it will have powers to investigate and prosecute, some of which may be delegated. The powers vested in the WRA will be proportionate to the devolved taxes and will be subject to scrutiny by the Public Ombudsman for Wales (who may, if required, call on the Independent Police Complaints Commission and Her Majesty's Inspectorate of Constabulary to undertake specialist investigations). The bill also establishes a comprehensive system of internal reviews and rights of appeal to the tribunal in respect of decisions made by WRA.
191. The WRA will be a Welsh public sector body and although Article 14 is referenced for completeness, the WRA will have a duty to maintain and

promote the high standards expected of every public sector organisation in Wales.

192. The compatibility of the Bill with the ECHR (including the Articles above) has been considered prior to the introduction of the legislation. That analysis has found that the bill does not contain provisions that are incompatible with the European Convention on Human Rights (ECHR).

### Privacy Impact Assessment

193. A Privacy Impact Assessment screening has been completed and the Information Rights Unit has confirmed that because these taxes are already collected (albeit on a UK basis) and the proposal is for that function to be devolved to Wales, there is not necessarily a change in the privacy expectations of individuals. There is currently a process for taxes to be paid which includes the processing of personal data, and there will be a similar process when it is devolved to Wales. Therefore, a full Privacy Impact Assessment is not required.

### Rights of the child impact assessment

194. A Child's Rights Impact Assessment was undertaken to inform the provisions of the Bill and found that there will be no direct impact on children as a result of the legislation. The impact on children and young people will continue to be considered as preparations are made for making the WRA operational.

### Rural proofing checklist

195. The Rural Proofing Checklist assesses whether the Bill causes a significant detrimental impact on the rural community.
196. The table below summarises the rural proofing checklist results:

	Policy Question	Yes	No	Comment
1.	Will your policy affect the availability of other public and private services in the rural area?		No	
2.	Could you deliver the policy you are proposing to implement through existing service outlets? E.g. schools, banks and GP surgeries	Yes		Some of the options under consideration include using existing public sector organisations.
3.	Will there be an extra cost to delivering your policy to rural areas?		No	
4.	Will the policy affect travel needs or the ease and cost of travel for rural communities?		No	
5.	Does the policy rely on		No	

	communicating information to clients?			
6.	Will the policy be delivered through the private sector or through a public-private partnership?		No	
7.	Does the policy rely on infrastructure for delivery that may put rural communities at a disadvantage? E.g. Broadband ICT, main roads and utilities	Yes		It is probable that a digital by default approach will be taken and this could have an impact in rural areas with poor Internet connection.
8.	Will the policy impact on rural businesses particularly the self employed and micro businesses and on the Third Sector including social enterprises and local voluntary organisations?		No	
9.	Will the policy have a particular impact on land based industries and therefore on rural economies and the environment?		No	
10.	Will the policy affect those on low wages or in part-time or seasonal employment?		No	
11.	Will the policy target disadvantaged people living in rural areas?		No	
12.	Will the policy rely on local organisations for delivery?		No	
13.	Does the policy depend on a new building or development site?		No	
14.	Will the policy impact on the quality and character of the natural and built rural landscape?		No	
15.	Will the policy impact on people wishing to reach and use the countryside as a place for recreation and enjoyment?		No	

### Impact on Welsh Language

197. A Welsh Language Impact Assessment was undertaken to inform the provisions of the Bill and found that there will be no direct impact on the Welsh Language as a result of the legislation. The WRA will be subject to the Welsh language standards required by the Welsh Language Commissioner (in accordance with the Welsh Language (Wales) Measure 2011). The impact on the Welsh Language will continue to be considered as preparations are made for making the WRA operational.

## Chapter 9: Competition Assessment

198. There are two stages to the Competition Assessment. The first is a quick filter that assesses whether there is a risk of a significant detrimental effect on competition.
199. The table below summarises the competition filter results.

The competition filter test	
Question	Answer yes or no
<b>Q1:</b> In the market(s) affected by the new regulation, does any firm have more than 10% market share?	No
<b>Q2:</b> In the market(s) affected by the new regulation, does any firm have more than 20% market share?	No
<b>Q3:</b> In the market(s) affected by the new regulation, do the largest three firms together have at least 50% market share?	No
<b>Q4:</b> Would the costs of the regulation affect some firms substantially more than others?	No
<b>Q5:</b> Is the regulation likely to affect the market structure, changing the number or size of businesses/organisation?	No
<b>Q6:</b> Would the regulation lead to higher set-up costs for new or potential suppliers that existing suppliers do not have to meet?	No
<b>Q7:</b> Would the regulation lead to higher ongoing costs for new or potential suppliers that existing suppliers do not have to meet?	No
<b>Q8:</b> Is the sector characterised by rapid technological change?	No
<b>Q9:</b> Would the regulation restrict the ability of suppliers to choose the price, quality, range or location of their products?	No

200. In view of the answers above, the second stage of the competition assessment is not required.

## Chapter 10: Post implementation review

201. It is anticipated that this legislation will be reviewed in 3-5 years time, when the question of who is best placed to collect and manage is reviewed.

These notes refer to the Tax Collection and Management (Wales) Bill which was amended following Stage 2 proceedings in the National Assembly for Wales on 28 January 2016 .

# **TAX COLLECTION AND MANAGEMENT (WALES) BILL**

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## **EXPLANATORY NOTES**

### **INTRODUCTION**

1. These Explanatory Notes relate to the Tax Collection and Management (Wales) Bill (“the Bill”) which was introduced into the National Assembly for Wales on 13 July 2015 and amended following Stage 2 proceedings on 28 January.
2. They have been prepared by the Office of the First Minister and Cabinet Office of the Welsh Government in order to assist the reader of the Bill .
3. The Explanatory Notes should be read in conjunction with the Bill but do not form part of the Bill. They are not meant to be a comprehensive description of the Bill. Where a section or part of a section is self-explanatory and does not seem to require any further explanation or comment, none is provided.
4. The National Assembly for Wales has the power to make this Bill by virtue of the provisions contained in Parts 4 and 4A of, and paragraphs 14 and 16A of Schedule 7 to, the Government of Wales Act 2006 (“GoWA 2006”). These provisions give the National Assembly for Wales the legislative competence to make provision in relation to devolved taxes (which are defined as taxes specified in Part 4A of GoWA 2006), the status of staff employed by a body responsible for the collection and management of devolved taxes, and in relation to the Public Services Ombudsman for Wales and Auditor General for Wales.



These notes refer to the Tax Collection and Management (Wales) Bill which was amended following Stage 2 proceedings in the National Assembly for Wales on 28 January 2016 .

## SUMMARY AND BACKGROUND

5. The context and background to this Bill was set out in Chapter 1 of the Welsh Government's *White Paper - Collection and management of devolved taxes in Wales*, published on 23 September 2014<sup>1</sup>.
6. In summary the Bill makes provision for a Welsh tax system to enable the collection and management of devolved Welsh taxes. It establishes the Welsh Revenue Authority as a non-ministerial department which it is anticipated will be responsible for collecting Wales' devolved taxes from April 2018<sup>2</sup>. It also sets out the relationship between the tax authority and taxpayers in Wales, including the relevant powers, rights and duties.
7. The Bill has 10 Parts comprising 195 sections and is arranged as follows:
  - Part 1 – Overview
  - Part 2 – The Welsh Revenue Authority
  - Part 3 – Tax Returns, Enquiries and Assessments
  - Part 4 – Investigatory Powers of WRA
  - Part 5 – Penalties
  - Part 6 – Interest
  - Part 7 – Payment and Enforcement
  - Part 8 – Reviews and Appeals
  - Part 9 – Investigation of Criminal Offences
  - Part 10 – Final Provisions

## COMMENTARY ON SECTIONS

### *Part 1 – Overview*

8. The overview of the Bill shows how the Parts of the Bill 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

9. 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.

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<sup>1</sup> White Paper Collection and management of devolved taxes in Wales WG22945

<sup>2</sup> The intention is to 'switch off' the UK-wide versions of the taxes insofar as they apply to Wales from April 2018. The UK Government will consult with Welsh Ministers before determining a final date for switching off the UK taxes in Wales.

These notes refer to the Tax Collection and Management (Wales) Bill which was amended following Stage 2 proceedings in the National Assembly for Wales on 28 January 2016 .

10. 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 continues to exceed 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.
11. 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.
12. 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.
13. 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.
14. 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 WRA. Provision is also made for the WRA to appoint staff, who will be civil servants.

#### Sections 10-11 - Procedure and validity

15. Section 10 requires the WRA to make rules to regulate its own procedure and that of its committees and section 11 establishes the validity of the WRA's proceedings or acts.

#### Sections 12-15 - Main functions, delegations and directions

16. 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.
17. Section 14 makes provision for the WRA to delegate any of its functions to one or

These notes refer to the Tax Collection and Management (Wales) Bill which was amended following Stage 2 proceedings in the National Assembly for Wales on 28 January 2016 .

more bodies that have been prescribed by the Welsh Ministers in regulations.

18. Provision is made for the 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.
19. 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.
20. Section 15 provides that the Welsh Ministers may give directions to the WRA of a general nature to 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 and protected taxpayer information

21. 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 who functions have been delegated, in relation to any function of the WRA.
22. Section 17 prohibits the disclosure of taxpayer information 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 disclosure are set out in section 18.
23. 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

24. Section 21 empowers the WRA to institute criminal proceedings in England and Wales and it will also have the right to bring civil proceedings. WRA will be able to appoint individuals to act on its behalf in magistrates' courts proceedings in England and Wales even when they are not an authorised person within the meaning of the Legal Services Act 2007.
25. 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.
26. 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

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otherwise.

#### Sections 23-25 – Money

27. 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.
28. Section 24 provides for WRA to pay a reward to a person for a service relating to any of its function. For example, to an informer for 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.
29. 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

30. The WRA must prepare, consult on, publish and lay before the National Assembly for Wales a Charter setting out the 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 and revise the Charter on a 5-year cycle 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

31. 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 and subsequent plans are to be submitted thereafter at three-yearly intervals.
32. 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.
33. 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 order revise the 3-year planning period as they consider appropriate.
34. 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 behaviours and values which it has stated in its charter and be made

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available 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

35. 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. .
36. 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.
37. 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.
38. Section 31 sets out the timescales of when the accounts and Tax Statement must be presented by WRA to the AGW for audit purposes.
39. 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 give a certified copy of the accounts and Tax Statement and its report to the National Assembly for Wales.
40. 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

41. 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 some of them 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. Responsibility may also include those owed to the National Assembly for Wales, the Welsh Ministers and the House of Commons or the Committee of Public Accounts. The National Assembly for Wales may (if requested to do so by the Parliamentary Committee) also take evidence from the accounting officer and subsequently report and transmit the evidence taken to the Parliamentary Committee.

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#### Section 34 – Welsh Public Records

42. The section amends the Government of Wales Act 2006 so that the records of the WRA are classed as Welsh public records.

#### Section 35 – Public Services Ombudsman

43. 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

44. 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

45. 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

46. 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.
47. Section 39 sets out how the duty on taxpayers to keep and preserve records can be satisfied, making it clear that preserving records electronically will be sufficient.

#### Sections 40-42 – Tax returns

48. 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 the person making a tax return the opportunity 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

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an enquiry (section 50(3)).

49. 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 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 from the WRA notice of correction.

#### Sections 43-45 – WRA Enquiries

50. 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). Section 44 sets out the scope and limitations of a WRA enquiry into a tax return.
51. 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 payable shown in the tax return is insufficient and that without amendment there is likely to be a loss of devolved tax. Where an enquiry is made into an amended return, it limits this to matters which are amended or affected by the amended return. The period in which an enquiry is in progress is defined for the purposes of this section and section 46. Any amount of devolved tax that is payable following the amendment is required to be done so within 30 days of the date of a notice of amendment being issued by the WRA.

#### Sections 46-51 – Referral to tribunal during an enquiry

52. Section 46 provides for the referral to the tribunal 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 provides for either party to withdraw a notice of referral made under the previous section. The referral has to be agreed to by both parties to prevent enquiries being frustrated or delayed by constant referrals by one party. The conclusions of an enquiry are appealable to the tribunal under Part 8.
53. Section 48 sets out the effect of a referral under section 46 on an enquiry. It provides that a closure notice or an application for a direction to issue a closure notice cannot be made while proceedings under section 46 are in progress and provides a definition of what “in progress” means in this context.
54. 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

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the determination into account when making any amendments to the tax return and limits the question determined by the tribunal from being reopened on appeal.

#### Sections 50-51 – Completion of enquiry

55. 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. Tax chargeable must be paid within 30 days from the notice being issued.
56. 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 for this kind of direction, including provision about notifying the parties of the tribunal's decision.

#### Sections 52-53 – WRA determinations of tax

57. 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 chargeable devolved tax. Payment must be made by the person within 30 days from the date the notice was 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.
58. Section 53 provides that where a person makes a self-assessment tax return after the WRA has made a determination the 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 self-assessment 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 self-assessment has been filed.

#### Sections 54-57 – WRA assessments

59. 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 be, or relief that has been given is or has become excessive.
60. 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.



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61. Sections 56 and 57 provides that references to “WRA Assessment” to mean assessments made under sections 54 or 55 and references to the taxpayer under sections 58 to 61 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.

#### Sections 57-61 – Conditions for making WRA assessments

62. Section 58 limits the circumstances in which a WRA assessment can be made to either situations which arise because of careless or deliberate behaviour by the taxpayer, a person acting on behalf of the taxpayer or a person who was a partner in a partnership with the taxpayer at the relevant time. Or 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 time the enquiry ended (or WRA’s right to conduct one expired) it was not 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 (in other words new information has come to light after it is possible to open an enquiry). 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.
63. Section 59 provides the time limits for the WRA assessments. The general time limit is four years after the relevant date. 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 under Part 8.
64. Section 60 defines how a loss of tax or situation is brought about carelessly or deliberately by or on behalf of a person.
65. Section 61 requires the WRA to issue a notice of an assessment to the taxpayer. The taxpayer is required to pay the amount payable within 30 days of the issue of the notice.

#### Sections 62-66 – Relief in case of excessive assessment or overpaid tax

66. 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.
67. 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

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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).

68. 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 it is however ultimately borne by those charged for depositing waste at the site.
69. 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 onto 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.
70. Section 66 provides for regulations to be made to cover situations where a taxpayer may be claiming relief which would normally be rejected on grounds of unjustified enrichment because other persons ultimately bore the cost of overpaid tax but the taxpayer arranges to reimburse those persons if the claim for overpaid tax is successful. The regulations will ensure that the reimbursement arrangements are in place and that they are appropriate to prevent the taxpayer from being unjustifiably enriched.

#### Section 67 – Cases in which WRA need not give effect to a claim

71. This section provides a list of situations (other than unjust enrichment) in which the WRA does not need to make a repayment or discharge an assessment or determination.

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

72. Section 68 requires a person wishing to make a claim for relief in circumstances of double assessment or for overpaid tax 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.
73. 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)

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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.

74. Section 72 allows the WRA to amend a claim to correct any obvious mistakes or omission. 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

75. 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.
76. Section 75 closure notice is issued by the WRA to complete an enquiry and it tells the claimant 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 – Timing and manner of making claims for overpayment or double assessment

77. This section provides that claims for relief from double assessment or overpayment of tax made under section 62 or 63 must be made within four 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

78. 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 if it had been correct.

#### Section 80 – Assessment of claimant in connection with claim

79. 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

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also provides that a claim for relief for overpayment is not finally determined until the amount to which it relates is final (e.g. following the result of a review or appeal).

#### Section 81 - Contract settlements

80. This section sets out the definition of persons involved in a contract settlement where the person paying the contract settlement is not the taxpayer.

### ***Part 4 - Investigatory Powers of WRA***

#### Section 82 - Overview

81. The section provides an overview of Part 4 of the bill.

#### Sections 83-85 - Interpretation

82. 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 bill 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)..
83. 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", as referred to throughout this Part of the bill. 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.
84. 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

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85. 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).
86. 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 bill.

#### Section 87 - Third party notices

87. 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.
88. 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 negatively affect 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 negatively affect tax assessment or collection.

#### Section 88 - Tribunal approval of taxpayer notices and third party notices

89. This section 88 provides the tests the tribunal must apply when it is asked by WRA to approve the issue of (i) a taxpayer notice (section 86); or (ii) a third party notice (section 87).
90. 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.
91. If the recipient has not been told that WRA will be applying for tribunal approval, subsection (2) applies. This requires the tribunal to be satisfied that (i) the requirements for the issue of the notice have been met; and (ii) that giving notice of the application might negatively affect tax assessment or collection.
92. If the recipient has been told that WRA will be applying for tribunal approval, 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

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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.

93. 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.
94. Subsection (4) enables WRA to disapply some of the above requirements where giving notice of the application to the taxpayer or third party might negatively affect tax assessment or collection. 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

95. 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.
96. 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

97. 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)).
98. 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,

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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.

99. 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.
100. 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).
101. 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 seriously prejudice tax assessment or collection.

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

102. 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.
103. 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

These notes refer to the Tax Collection and Management (Wales) Bill which was amended following Stage 2 proceedings in the National Assembly for Wales on 28 January 2016 .

104. 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.
105. 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.
106. 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 also cannot be used to ask for contact details of debtors from charities or person providing services to charities free of charge to the recipient of the service.

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

107. 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 95-96 – Complying with an information notice and producing copies of documents

108. 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 bill where that person fails to comply with an information notice.
109. 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).

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

110. 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.
111. 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



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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.

112. 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) 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

113. 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).
114. However, a taxpayer notice could be given where a notice of enquiry had been given and the enquiry was has not been 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).
115. 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

116. 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.
117. 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.
118. 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").
119. Subsection (3) provides that an information notice does not require a person

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appointed as an auditor under any piece of legislation to provide certain information or documents related to that function.

120. 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

121. 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.
122. 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.
123. 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.
124. 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

125. 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

126. 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

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exercising the additional powers in section 104.

127. 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 time agreed to be 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. 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.

128. 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 Land Transaction Tax).
129. 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).
130. The power does not give a right to WRA to physically force entry or to search.
131. 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

132. 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 and 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

133. 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

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inspection under section 103.

134. 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 reserves 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.
135. 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.
136. 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.
137. 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.
138. 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

139. 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

140. This section applies the restrictions contained in Chapter 4 of this Part of the bill so that WRA cannot inspect any document during the course of an inspection if WRA would have been restricted by Chapter 4 from requesting the same document using an information notice.

#### Section 111 - Interpretation

141. Section 111 provides an interpretation of the expressions used in this Part of the bill. 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

142. Section 112 provides a power to WRA to copy, make extracts and remove documents.

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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.

143. Section 113 applies to any provision of this bill 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.
144. 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.
145. 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 of concealing etc. documents following relating to WRA notification or information notice

146. 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.
147. 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.
148. 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

These notes refer to the Tax Collection and Management (Wales) Bill which was amended following Stage 2 proceedings in the National Assembly for Wales on 28 January 2016 .

149. 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*

### Section 117 - Overview

150. This section provides an overview of the structure of Part 5 of the Bill that relates to penalties.

### Sections 118-122 - Penalty for failure to make tax return

151. Section 118 provides that a person is liable to pay a penalty where they have failed to submit a tax return on or before the filing date (meaning given in section 40). Where a person's failure falls within more than one of sections 119 or 120 the person is liable to a penalty for each of those failures, but the aggregate of the amounts of these penalties must not exceed 100% of the liability to the devolved tax.
152. Section 118 provides that the penalty amount for a person who fails to make a tax return on or before the filing date is £100.
153. 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.
154. 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 liable devolved tax 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 liable devolved tax and £300.
155. 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 acting steps - giving WRA reasonable held 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 (where the person has no reason to believe that WRA is or is about to discover the information) and the quality (timing, nature and extent) of the information disclosed. By timing this refers to how promptly the disclosure was made; by nature this refers to the level of information provided and the degree of access to test the disclosure; by extent this means how complete the disclosure may be.

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#### Sections 122-123 – Penalty for failure to pay tax

156. 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.
157. 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

158. Section 124 sets out what penalties WRA should charge if a person is liable to a penalty under this Chapter and any other penalty. Where a person is liable to a penalty under this Chapter, it is to be reduced by the amount of any other penalty and applied and determined by the same tax liability.
159. 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 does 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.
160. 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 not apply.
161. 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 129-131 – Penalty for inaccuracy in taxpayer document

162. 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.

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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.

163. 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.
164. 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.
165. 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/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 merely carelessly would depend on the facts of the case.

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

166. 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



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section 134.

#### Sections 134-138 – Potential lost revenue

167. Section 134 gives meaning to potential lost revenue by reference to sections 135 to 138.
168. Section 135 provides the “normal rule” for the calculation of potential lost revenue as the additional amount due and payable (either to or from WRA) in respect of tax as a result of correcting an inaccuracy or under-assessment.
169. Where a person is liable to a penalty under section 129 is for more than one inaccuracy, section 138 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.
170. 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.
171. 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.
172. 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

173. 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

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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. By timing this refers to how promptly the disclosure was made; by nature this refers to the level of evidence provided and the degree of access to test the disclosure; by extent this means how complete the disclosure may be.

174. 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.
175. 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

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

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

177. 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 £3000 maximum) in each case.
178. Section 144 provides for a person not being liable to a penalty under section 145 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.
179. 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

180. 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;

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- 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).
181. 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 147 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.
182. 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.
183. 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.
184. 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.
185. 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.
186. 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.

These notes refer to the Tax Collection and Management (Wales) Bill which was amended following Stage 2 proceedings in the National Assembly for Wales on 28 January 2016 .

187. 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 £3000 maximum) in each case.
188. 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.
189. The decision to impose a penalty under section 150 or 151 is a decision of the tribunal. It is therefore not an "appealable decision" made by WRA so the provisions about reviews and appeals in Part 8 do not apply. But the decision will be open to review or appeal by the Upper Tribunal and appealable on a point of law to the Court of Appeal in accordance with the provisions of the Tribunals, Courts and Enforcement Act 2007.

#### Section 154 – Payment of penalties

190. 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.

#### Sections 155-156 – Supplementary

191. Section 155 provides that a person is not liable to pay any penalty outlined in the Bill if the person has already been convicted of an offence relating to the matter which triggered the penalty.
192. Section 156 provides for the Welsh Ministers to specify the amounts of penalties and the procedure for assessing penalties.

### ***Part 6 - Interest***

#### Sections 157-160 – Interest on sums payable to WRA

These notes refer to the Tax Collection and Management (Wales) Bill which was amended following Stage 2 proceedings in the National Assembly for Wales on 28 January 2016 .

193. 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.
194. 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.
195. 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.
196. 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 sums payable by WRA

197. Section 161 provides that interest is payable by WRA to the person 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.
198. Section 162 makes supplementary provision regarding repayment interest, including making clear that interest under section 163 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 interest

199. 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 will 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***

These notes refer to the Tax Collection and Management (Wales) Bill which was amended following Stage 2 proceedings in the National Assembly for Wales on 28 January 2016 .

#### Sections 164-168 – Payment and certification of debt

200. Section 164 makes it clear that this Part applies to payments of amounts of devolved tax, penalties and interest relating to either of those. Sections 165 and 166 give the meaning of relevant sum, provides the WRA with a power to demand a sum of devolved tax that is due and payable from a person and requires WRA to provide a receipt upon payment of devolved tax if requested to do so.
201. 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 (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.
202. Section 168 provides that a certificate from WRA stating that 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

203. 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.
204. 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 171-172 – Overview and appealable decisions

205. Section 171 sets out an overview of the provisions of this Part of the Bill relating to the review and appeal of certain decisions made by the WRA. This includes setting out details of which WRA decisions can be appealed. Also, the right to request WRA to undertake an internal review of an appealable decision and the duty of WRA to undertake such a review; and, the right to appeal to the tribunal against an appealable decision and the duty of the tribunal to determine such an appeal. Provision is also made for the WRA to conclude a settlement agreement with a person.
206. 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

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(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 (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

207. 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.
208. 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.
209. 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.
210. 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. 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 the WRA in reaching a decision and any person seeking to resolve disagreement about the decision.
211. 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.

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212. 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 178-180 – Appeals

213. 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.
214. 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).
215. 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

216. 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.
217. 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 – Settlement agreements

218. Section 184 gives the meaning of appealable decision and settlement agreement.
219. This section also sets out the rules by which reviews and appeals can be settled by agreement between the appellant and the WRA, including the time limit for the



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person to withdraw from such an agreement. 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**

220. The section provides for an amendment to be made to 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 bill, as well as those established by the Fraud Act 2006, or the common law offence of cheating the public revenue.
221. 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.
222. The section also allows the regulations applying the provisions to modify the exercise of the powers in certain respects.
223. 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.
224. 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.
225. 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.
226. 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.

These notes refer to the Tax Collection and Management (Wales) Bill which was amended following Stage 2 proceedings in the National Assembly for Wales on 28 January 2016 .

### Section 186 – Proceeds of crime

227. 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.
228. 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.
229. An order made by the Welsh Ministers under the above 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.
230. An order made by the Welsh Ministers under this section is subject to the negative procedure.

### Section 187 – Regulation of investigatory powers

231. 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).
232. The 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.
233. 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

These notes refer to the Tax Collection and Management (Wales) Bill which was amended following Stage 2 proceedings in the National Assembly for Wales on 28 January 2016 .

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

#### Sections 189 – Regulations

235. 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

236. This section applies where a provision of the Bill 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

237. This section applies where a provision of the Bill or any subsequent regulations made under it after enactment, requires or permits a person to give notice or other document 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 Bill. The section also sets out circumstances where it does not apply.

#### Section 192 – Interpretation

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

#### Section 193 – Index of defined expressions

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

#### Section 194 – Coming into force

240. 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

241. This section provides that the short title of the Bill, once passed, would be the Tax Collection and Management (Wales) Act 2016.

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## Endnotes

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<sup>i</sup> Land Transaction Tax consultation: <http://gov.wales/consultations/finance/land-transaction-tax/?status=open&lang=en>

Landfill Disposals Tax consultation: <http://gov.wales/consultations/finance/landfill-disposals-tax/?status=open&lang=en>

<sup>ii</sup> White Paper – Collection and Management of devolved taxes in Wales <http://gov.wales/consultations/finance/devolved-taxes/?status=closed&lang=en>

<sup>iii</sup> <http://wales.gov.uk/consultations/finance/devolved-taxes/?status=closed&lang=en>

<sup>iv</sup> Tax Administration 2013: Comparative Information on OECD and Other Advanced and Emerging Economies

<sup>v</sup>[http://www.publications.parliament.uk/pa/cm201314/cmhansrd/cm140224/text/140224w0001.htm#140224w0001.htm\\_wqn83](http://www.publications.parliament.uk/pa/cm201314/cmhansrd/cm140224/text/140224w0001.htm#140224w0001.htm_wqn83)