

Draft Regulations laid before the National Assembly for Wales under section 114ZA(4) of the Police and Criminal Evidence Act 1984 and section 67A(4) of the Criminal Justice and Police Act 2001, for approval by resolution of the National Assembly for Wales.

DRAFT WELSH STATUTORY
INSTRUMENTS

2018 No. (W.)

TAXES, WALES

**The Welsh Revenue Authority
(Powers to Investigate Criminal
Offences) Regulations 2018**

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations provide for various provisions of the Police and Criminal Evidence Act 1984 (“the 1984 Act”) and the Criminal Justice and Police Act 2001 (“the 2001 Act”) to be applied to the investigation of offences conducted by the Welsh Revenue Authority (“WRA”).

Regulation 3(1) introduces the Schedule to these Regulations which specifies the provisions of the 1984 Act which are to be applied to investigations conducted by WRA, subject to certain modifications. The applicable provisions of the 1984 Act contained in the Schedule consist of—

- (a) a power to apply for and obtain a warrant from a justice of the peace to authorise the entry and search of premises (section 8 of the 1984 Act);
- (b) a power to obtain access to “excluded material” or “special procedure material” (defined in Part 2 of the 1984 Act), subject to obtaining a warrant from a judge in accordance with the procedure in Schedule 1 to the 1984 Act (section 9 of the 1984 Act);
- (c) various safeguards in relation to an application for a warrant and the execution of searches (sections 15 and 16 of the 1984 Act);
- (d) a power to seize relevant items found during the course of a search (section 19 of the 1984 Act);

- (e) the extension of the seizure powers to require information contained in an electronic format to be produced during the course of a search (section 20 of the 1984 Act);
- (f) a power which enables WRA to copy information which has been seized during the course of a search, and accompanying rights for the owners of property seized during the course of a search (section 21 of the 1984 Act);
- (g) a power to retain anything seized during the course of a search (section 22 of the 1984 Act);
- (h) a requirement for WRA to notify in writing a person interviewed in relation to an offence when a decision is taken to conclude the investigation (section 60B of the 1984 Act); and
- (i) a requirement for WRA to have regard to the codes of practice issued under section 66 of the 1984 Act when conducting a relevant investigation.

Regulation 3(2) provides that the provisions contained in Part 2 of the 2001 Act (which, among other things, provide for additional powers of seizure) also apply when WRA conducts a relevant investigation.

Regulation 3(3) makes general provision in relation to the application of the provisions of the 1984 Act and the 2001 Act. The effect of this paragraph is to provide for the general substitution of “constable”, “police officer” and “the police” with “WRA” in applying the provisions of the 1984 Act and the 2001 Act.

Regulation 3(4) provides that the provisions of the 1984 Act which are not specified in the Schedule are to apply so far as they relate to the provisions specified in the Schedule. For example, the definition of “excluded material” in section 11 of the 1984 Act is to apply to define “excluded material” in relation to a search conducted by WRA in reliance of a warrant issued under paragraph 12 of Schedule 1 to the 1984 Act.

Regulation 4 provides that a person exercising a function conferred on WRA by these Regulations may use reasonable force, if necessary, in the exercise of that function.

Regulation 5 provides that WRA may search a person found on a premises which is the subject of a search by WRA in reliance of a warrant issued under section 8 of, or paragraph 12 of Schedule 1 to, the 1984 Act, provided that WRA has reasonable cause to believe that the person is in possession of material

which is likely to be of substantial value to the investigation.

Regulation 6 modifies section 16(3A) and (3B) of the 1984 Act to the extent that a person may not enter or search a premises not specified in an all premises warrant, or enter or search a premises on a second or subsequent occasion unless that person has been authorised in writing by a person of at least civil service Grade 7 (or equivalent).

Regulation 7 modifies section 77(3) of the 1984 Act, which makes provision in relation to the treatment of confessions made by a person with a learning disability. The modification made by regulation 7 ensures that an “independent person” cannot be a person exercising a function conferred by these Regulations on WRA.

Regulation 8 provides that the functions conferred on WRA by these Regulations may only be exercised by a person who has been authorised in writing by WRA to conduct relevant investigations.

The Welsh Ministers’ Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a Regulatory Impact Assessment has been prepared as to the likely costs and benefits of complying with these Regulations. A copy can be obtained from the Welsh Government, Cathays Park, Cardiff CF10 3NQ.

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DRAFT WELSH STATUTORY
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2018 No. (W.)

TAXES, WALES

**The Welsh Revenue Authority
(Powers to Investigate Criminal
Offences) Regulations 2018**

Made

Coming into force

1 April 2018

The Welsh Ministers make the following Regulations in exercise of the powers conferred on them by section 114ZA(1) and (2) of the Police and Criminal Evidence Act 1984⁽¹⁾ and section 67A(1) and (2) of the Criminal Justice and Police Act 2001⁽²⁾.

In accordance with section 114ZA(4) of the Police and Criminal Evidence Act 1984 and section 67A(4) of the Criminal Justice and Police Act 2001, a draft of these Regulations was laid before and approved by a resolution of the National Assembly for Wales.

Title and commencement

1.—(1) The title of these Regulations is the Welsh Revenue Authority (Powers to Investigate Criminal Offences) Regulations 2018.

(2) These Regulations come into force on 1 April 2018.

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- (1) 1984 c. 60. Section 114ZA was inserted by section 185(1) of the Tax Collection and Management (Wales) Act 2016 (anaw 6).
- (2) 2001 c. 16. Section 67A was inserted by section 185(2) of the Tax Collection and Management (Wales) Act 2016.

Interpretation

2. In these Regulations—

“the 1984 Act” (“*Deddf 1984*”) means the Police and Criminal Evidence Act 1984;

“the 2001 Act” (“*Deddf 2001*”) means the Criminal Justice and Police Act 2001;

“relevant investigation” (“*ymchwiliad perthnasol*”) means a criminal investigation which relates to a matter in relation to which WRA has functions;

“WRA” (“*ACC*”) means the Welsh Revenue Authority.

Application of the 1984 Act and the 2001 Act

3.—(1) Subject to paragraph (3) and regulations 4 to 8, the provisions of the 1984 Act contained in the Schedule to these Regulations (“the applicable PACE functions”) apply to relevant investigations conducted by WRA.

(2) Subject to paragraph (3) and regulations 4 to 8, where WRA exercises any of the applicable PACE functions, the provisions contained in Part 2 of the 2001 Act apply to relevant investigations conducted by WRA.

(3) Subject to regulation 6, the provisions of the 1984 Act and the 2001 Act applied by these Regulations have effect as if references to “constable”, “police officer” and “the police” (however expressed) are substituted with references to “WRA”, and those provisions are to be construed accordingly.

(4) The other provisions of the 1984 Act, in so far as they relate to the applicable PACE functions, apply to relevant investigations conducted by WRA.

Use of reasonable force

4. A person exercising a function conferred on WRA by these Regulations may use reasonable force, if necessary, in the exercise of that function.

Search of persons

5. WRA may search a person where—

- (a) the person is found on premises which are being searched by WRA in reliance on a warrant issued under section 8 of, or paragraph 12 of Schedule 1 to, the 1984 Act; and
- (b) WRA has reasonable cause to believe that person to be in possession of material which is likely to be of substantial value (whether by

itself or together with other material) to a relevant investigation.

Modification of section 16 of the 1984 Act (execution of warrants)

6. Section 16 of the 1984 Act⁽¹⁾ (execution of warrants) is modified as follows—

(a) for subsection (3A) substitute—

“(3A) If the warrant is an all premises warrant, no premises which are not specified in it may be entered or searched by a person exercising WRA functions unless that person has been authorised in writing by another person exercising WRA functions of at least Grade 7 (or equivalent).”;

(b) for subsection (3B) substitute—

“(3B) No premises may be entered or searched by a person exercising WRA functions for the second or any subsequent time under a warrant which authorises multiple entries unless that person has been authorised in writing by another person exercising WRA functions of at least Grade 7 (or equivalent).”

Modification of section 77(3) of the 1984 Act (definition of “independent person”)

7. Section 77(3) of the 1984 Act⁽²⁾ (definition of “independent person”) is modified to the extent that the definition of “independent person” includes a person exercising a function conferred on WRA by these Regulations.

Authorisation

8. The functions conferred on WRA by these Regulations are only exercisable by persons with written authorisation from WRA to conduct relevant investigations.

Cabinet Secretary for Finance, one of the Welsh Ministers

Date

(1) Section 16(3A) and (3B) were inserted by sections 113(9)(a) and 114(8)(b) of the Serious Organised Crime and Police Act 2005 (c. 15).

(2) Section 77 was amended by paragraph 48 of Part 4 of Schedule 36 to the Criminal Justice Act 2003 (c. 44). There is another amendment to this section but it is not relevant to these Regulations.

Applicable provisions of the 1984 Act

- (a) section 8 (power of justice of the peace to authorise entry and search of premises)(1);
- (b) section 9 (special provisions as to access)(2) and Schedule 1 (special procedure)(3);
- (c) section 15 (search warrants – safeguards)(4);
- (d) section 16 (execution of warrants) subject to the modifications in regulation 6;
- (e) section 19 (general power of seizure etc.)(5);
- (f) section 20 (extension of powers of seizure to computerised information)(6);
- (g) section 21 (access and copying)(7);
- (h) section 22(1) to (4) and (7) (retention)(8);
- (i) section 60B (notification of decision not to prosecute person interviewed)(9);
- (j) section 66 (codes of practice)(10);
- (k) section 67 (codes of practice – supplementary)(11);
- (l) section 77 (treatment of confessions by persons with a learning disability) subject to the modification in regulation 7.

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- (1) Section 8 was amended by sections 113(3), (4) and 114(2) of, and paragraph 43(3) of Part 3 of Schedule 7 to, the Serious Organised Crime and Police Act 2005 and section 86 of the Finance Act 2007 (c. 11). There are other amendments but none is relevant to these Regulations.
 - (2) Section 9 was amended by the Courts Act 2003 (c. 39). There is another amendment to this section but it is not relevant to these Regulations.
 - (3) Schedule 1 was amended by paragraph 14 of Part 2 of Schedule 2 to, the 2001 Act; paragraph 6 of Schedule 4 to the Courts Act 2003; section 113(10) to (14) of, and paragraph 43(13) of Part 3 of Schedule 7 to, the Serious Organised Crime and Police Act 2005; and section 82(3) of the Deregulation Act 2015 (c. 20). There is another amendment to this section but it is not relevant to these Regulations.
 - (4) Section 15 was amended by section 113(6) to (8) and 114(4) to (7) of, and paragraph 1 of Part 2 of Schedule 17 to, the Serious Organised Crime and Police Act 2005 and article 7 of the Serious Organised Crime and Police Act 2005 (Amendment) Order 2005 (S.I. 2005/3496).
 - (5) Section 19 was amended by paragraph 13(1) and (2)(a) of Part 2 of Schedule 2 to the 2001 Act.
 - (6) Section 20 was amended by paragraph 13(1) and (2)(a) of Part 2 of Schedule 2 to the 2001 Act.
 - (7) Section 21 was amended by paragraphs 1 and 3 of Schedule 1 to the Criminal Justice Act 2003.
 - (8) Section 22(7) was inserted by paragraphs 1 and 4 of Schedule 1 to the Criminal Justice Act 2003.
 - (9) Section 60B was inserted by section 77 of the Policing and Crime Act 2017 (c. 3).
 - (10) Section 66 was amended by section 57(4) of the Criminal Justice and Court Services Act 2000 (c. 43). There are other amendments but none is relevant to these Regulations.
 - (11) Section 67 was amended by Part 1 of Schedule 37 to the Criminal Justice Act 2003. There are other amendments but none is relevant to these Regulations.