

Explanatory Memorandum to the:

The Proceeds of Crime Act 2002 (References to Welsh Revenue Authority Financial Investigators) (Amendment) Order 2018 and the Tax Collection and Management (Wales) Act 2016 (Supplemental Provision) Regulations 2018

This Explanatory Memorandum has been prepared by the Welsh Treasury, Tax Strategy, Policy and Engagement Division and the Welsh Revenue Authority, (WRA) and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1

Cabinet Secretary's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The Proceeds of Crime Act 2002 (References to Welsh Revenue Authority Financial Investigators) (Amendment) Order 2018 and The Tax Collection and Management (Wales) Act 2016 (Supplemental Provision) Regulations 2018.

Mark Drakeford AM – Cabinet Secretary for Finance
28 June 2018

1. Description

- 1.1 The Proceeds of Crime Act 2002 (References to Welsh Revenue Authority Financial Investigators) (Amendment) Order 2018 (*“the Amendment Order”*) amends the Proceeds of Crime Act 2002 (References to Welsh Revenue Authority Financial Investigators) Order 2018 to enable accredited financial investigators (“AFIs”) employed by the Welsh Revenue Authority (“WRA”) to exercise further powers under the Proceeds of Crime Act 2002 (“POCA”) which have been introduced by the Criminal Finances Act 2017 (“the CFA”).
- 1.2 The Tax Collection and Management (Wales) Act 2016 (Supplemental Provision) Regulations 2018 (*“the Supplemental Regulations”*), makes a number of small amendments to various sections of POCA in connection with WRA’s use of those powers as provided by section 186 of the Tax Collection and Management (Wales) Act 2016 (“TCMA”).

2. Matters of special interest to the Constitutional Affairs Committee

- 2.1 None.

3. Legislative background

- 3.1 The Amendment Order is made pursuant to section 453(1A) and (2) of POCA, which confers powers upon the Welsh Ministers, by order, to provide that a specified reference in POCA to an AFI includes a reference to a person exercising a function of WRA who falls within a specified description. In accordance with section 459(4A) of POCA(1), the Order is subject to the negative resolution procedure.
- 3.2 The Supplemental Regulations are made pursuant to section 188 of TCMA, which confers powers upon the Welsh Ministers to make regulations which may make, consequential or supplemental provision, as they think appropriate, for the purposes of, or in connection with, that Act. In accordance with section 189(3) of TCMA, the Supplemental Regulations are subject to the negative resolution procedure.

4. Purpose & intended effect of the legislation

The Amendment Order

- 4.1 The Proceeds of Crime Act 2002 (References to Welsh Revenue Authority Financial Investigators) Order 2018(2) was laid before the Assembly on 21 February 2018 and came into force on 1 April 2018. It enables AFIs who are members of staff of the WRA to exercise specific powers under POCA set out in the Schedule to that order.
- 4.2 After the order was laid, the Proceeds of Crime Act 2002 (References to Financial Investigators) (Amendment) (England and Wales) Order 2018(3), (‘the UK Order’) was made by the Minister for the Home Office on 6 March 2018. The UK Order makes amendments to the Proceeds of Crime Act 2002 (References to Financial Investigators) (England and Wales) Order 2015(4) which are required as a result of amendments made to POCA by the Criminal Finances Act 2017 to introduce new powers to deal with the proceeds of crime. The UK Order came into force on the 17 April.
- 4.3 The Criminal Finances Act 2017 introduces powers into POCA to seize, detain and forfeit certain listed items of property, and to freeze and forfeit money in bank and building society

(1) Sections 453(1A) and 459(4A) of POCA were inserted by section 186 of TCMA.
(2) S.I. 2018/196 (W. 45).
(3) S.I. 2018/318.
(4) S.I. 2015/1853.

accounts. These powers are supported by the creation of two new categories of investigation in Part 8 of POCA.

- 4.4 The Amendment Order will specify that an AFI who is a member of staff of the WRA can have access to these additional powers, including:
- 4.4.1 Seizure detention and forfeiture of ‘listed items’, (metals, stones, watches, artistic works, face-value vouchers and postage stamps that can be used to move value across international borders are designated as “listed assets”);
 - 4.4.2 Freezing and forfeiture of monies in bank and building society accounts on application to a magistrates’ court subject to a minimum balance of £1,000;
 - 4.4.3 Two new types of investigation in Part 8 of POCA – detained property investigations and frozen funds investigations – to support the freezing and forfeiture activities above.
- 4.5 The Amendment Order also specifies which AFIs are “senior officers” for the purposes of those provisions. In addition, the Amendment Order makes provision in respect of the access to search powers in sections 352 and 353 of POCA. The scope of the provision in the Proceeds of Crime Act 2002 (References to Welsh Revenue Authority Financial Investigators) Order 2018 is extended to include the new investigations described in paragraph 4.4.
- 4.6 The Criminal Finances Act 2017 also inserts provisions into Part 7 of POCA which allow AFIs who are senior officers to make an application to the magistrates’ court for an order under section 336A of POCA to extend the moratorium period. This is a period of 31 days which arises when suspicions of money laundering have been disclosed, and during which law enforcement cannot be assumed to consent to a particular transaction proceeding. The Amendment Order also inserts provision into the Proceeds of Crime Act 2002 (References to Welsh Revenue Authority Financial Investigators) Order 2018 to specify which AFIs are senior officers for the purposes of an order under section 336A of POCA.

The Supplemental Regulations

- 4.7 The Tax Collection and Management (Wales) Act 2016 (Consequential and Supplemental Provisions) Regulations 2018⁽⁵⁾ amended POCA to make supplemental provision in connection with section 186 of the Tax Collection and Management (Wales) Act 2016.
- 4.8 The Supplemental Regulations make further amendments to POCA in connection with section 186 TCMA. The amendments made ensure the full suite of POCA powers set out in the Schedule to the Proceeds of Crime Act 2002 (References to Welsh Revenue Authority Financial Investigators) Order 2018 (as amended by the Amendment Order) can be exercised by an AFI who falls within a description specified in an order made by the Welsh Ministers by inserting “or the Welsh Ministers” after “Secretary of State” in various sections of POCA.

(5) S.I. 2018/285 (W. 54).

5. Consultation

- 5.1 On the 10 July, the Welsh Government published a consultation on WRA access to criminal powers to tackle tax crime, which closed on 2 October. In total, the Welsh Government received 17 responses from a range of stakeholders from various sectors, all from within Wales.
- 5.2 A full Welsh Government response to the consultation can be viewed here: <https://consultations.gov.wales/consultations/welsh-revenue-authority-powers-tackle-tax-crime>.
- 5.3 Following the consultation, engagement was undertaken with the Home Office, HMRC, CPS, NRW, National Crime Agency and the Police as well as other WRA stakeholders. Their views were taken into account when developing the Order.
- 5.4 The purpose of this Amended Order is to introduce a small number of additional powers following the Criminal Finances Act 2017, while the regulations make technical amendments in connection with those new powers.
- 5.5 No formal consultation has been undertaken as the Regulations amend the original Order and also make supplemental provisions, and there is no statutory requirement for prior consultation.
- 5.6 The attention of the members of the WRA and NCA have been drawn to the effect of the proposed provision in these Regulations.

6. Regulatory Impact Assessment

- 6.1 An assessment of the costs and benefits has not been conducted because it is considered that no significant costs will arise as result of amending the original Order and making supplemental provision in the Supplemental Regulations.
- 6.2 These Regulations have no impact on the statutory duties: sections 77, 78 and 79 Government of Wales Act 2006 "GOWA 2006", or on the statutory partners: sections 72 to 75 GOWA 2006.