

Explanatory Memorandum to the:

Tax Collection and Management (Wales) Act 2016 (Consequential and Supplemental Provisions) Regulations 2018

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 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 Tax Collection and Management (Wales) Act 2016 (Consequential and Supplemental Provisions) Regulations 2018. I am satisfied that the benefits justify the likely costs.

Mark Drakeford AM – Cabinet Secretary for Finance

5 March 2018

1. Description

- 1.1 These Regulations make consequential amendments, and supplemental provision, to secondary and primary legislation. The need for the amendments arises from the establishment of the Welsh Revenue Authority (WRA) on 18 October 2017. These Regulations are scheduled to come into force on 1 April 2018 when the WRA will become fully operational.

2. Matters of special interest to the Constitutional Affairs Committee

- 2.1 None.

3. Legislative background

- 3.1 Section 188 of the Tax Collection and Management (Wales) Act 2016 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.
- 3.2 These Regulations will be subject to the negative procedure as per section 189(Regulations) of the Tax Collection and Management (Wales) Act 2016.

4. Purpose & intended effect of the legislation

Amendment of the Public Contracts Regulations 2015 (“2015 Regulations”)

- 4.1 Regulation 2 amends Schedule 1 to the 2015 Regulations. In doing so, the WRA will be treated as a “*central government authority*” for purposes of the 2015 Regulations.
- 4.2 The 2015 Regulations, which implement a European Union (EU) directive, place obligations on public bodies aka contracting authorities in relation to how they award public contracts for the execution of works, the supply of products or the provision of services. While the WRA is automatically treated as a contracting authority, it is appropriate for it to be listed in Schedule 1 as a “*central government authority*” in order for public contracts it awards to be subject to slightly lower thresholds which are prescribed in the EU legislation.

Amendment of the Equality Act 2010 (“2010 Act”)

- 4.3 Regulation 3 amends Schedule 19 to the 2010 Act so as to treat WRA as a “*relevant Welsh authority*”. Other public bodies in Wales are individually listed in the 2010 Act as being a “*relevant Welsh authority*”.
- 4.4 The WRA is already under the Public Sector Equality Duty by way of automatic operation of the 2010 Act. The amendment will place the WRA under duties which are contained in the Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011. Those duties will include the need for WRA to publish its own equality objectives, and to undertake equality impact assessments where necessary.

Amendment of the National Assembly for Wales (Disqualification) Order 2015 (“2015 Order”)

- 4.5 Regulation 4 amends the 2015 Order in order to provide that the chairperson and other non-executive members of WRA are disqualified from becoming Assembly members.
- 4.6 The 2015 Order currently lists offices and memberships of various bodies which disqualify their holders from membership of the National Assembly for Wales. Hence the 2015 Order needs to be amended to disqualify the chairperson and non executive members of WRA. Executive members of WRA, along with WRA staff members, are already disqualified from becoming Assembly members by virtue of their status as civil servants (see section 16(1)(a) of the Government of Wales Act 2006).

Supplemental provision in the Proceeds of Crime Act 2002 (“POCA”)

- 4.7 Section 186 of the Tax Collection and Management (Wales) Act 2016 (“TCMA”) amended POCA to enable the Welsh Ministers by order to provide that a specified reference in POCA to an accredited financial investigator (AFI) includes a reference to a person exercising a function of WRA who falls within a specified description.
- 4.8 Regulation 5 of these Regulations, further amend POCA in order to make supplemental provision in connection with section 186 TCMA. The amendments made ensure the POCA powers set out in the Schedule to the Proceeds of Crime Act 2002 (References to Welsh Revenue Authority Financial Investigators) Order 2018 can be exercised by an AFI who falls within a description specified in an order made by the Welsh Ministers.

5. Consultation

- 5.1 No formal consultation has been undertaken as these Regulations make consequential and supplemental provision, and there is no statutory requirement for prior consultation.
- 5.2 The attention of the members of WRA has 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 making consequential and supplemental provision in these 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.