

NRW response on Criminal consultation post discussion with WG 27th Sept

Consultation Response Form

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<p>Q1 Do you agree that criminal powers should be made available to help tackle devolved tax crime? Please provide reasons for your answer and share any comments you wish to make.</p>
<p>Yes, NRW's view is that the powers to be vested in WRA should mirror HMRC's existing powers, with differences/modifications only if justified with good reasons. Criminal powers are an absolute must if WRA are to progress any recovery against the criminal element in the waste industry.</p>
<p>Q2 Do you agree that the Welsh Revenue Authority should be responsible for investigating devolved tax offences? Please provide reasons for your answer and share any comments you wish to make.</p>
<p>Yes, WRA should be responsible for investigations related to the devolved tax offences, and should have the associated criminal powers to deliver the investigation. This would be comparable to the role of HMRC.</p>
<p>Question 3: Do you think the Crown Prosecution Service should prosecute devolved tax offences to be consistent with HMRC? Or should this be done by the Welsh Revenue Authority? Please provide reasons for your answer and share any comments you wish to make.</p>
<p>As the CPS currently prosecutes for HMRC, to create a level playing field, CPS could prosecute LDT evasion in Wales.</p>
<p>Question 4: It is proposed that the WRA should not be provided with stop and search powers under the Police and Criminal Evidence Act to conduct a criminal investigation in relation to investigation of devolved tax offences. What are the benefits or disbenefits of the WRA not having these powers? Please provide examples.</p>
<p>Our overarching view is that WRA's powers should be consistent with HMRC's powers, therefore no SSP powers are deemed necessary for WRA. However we think that vesting these powers in WRA would improve their effectiveness in enforcing LDT (ability to stop and search vehicles). Therefore NRW propose powers are granted to WRA to ensure an effective role.</p> <p>NRW does not have stop powers, however it accesses other organisations' powers via Joint days of action with Police and Driver Vehicle Standards Agency (DVSA) where vehicles are stopped by the Police and NRW can search the vehicle and gain information by serving a notice (the notice is served using NRW's own powers). NRW are also part of the Government Agencies Investigative Network (GAIN) which co-ordinates its actions and again would use the Police's stop powers.</p>
<p>Question 5: It is proposed that WRA officers be given the power to apply to a justice of the peace for a warrant to enter, search and seize items from premises or search a person found on those premises when investigating devolved tax offences. This will include the power to use reasonable force if necessary in the exercise of that function. What are the benefits or disbenefits of providing WRA with these powers? Please provide examples.</p>

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<p>Yes. WRA should have the same powers as HMRC. This is important from the point of view of consistency. If one investigating authority has more powers than the other this could cause complexities in the case of cross-border issues. From the operator perspective it creates a level playing field/consistency in understanding if the powers of equivalent bodies are the same.</p>
<p>Question 6: It is proposed that the WRA is not provided with powers to arrest detain, or question individuals as part of a criminal investigation. What are the benefits or disbenefits of not providing WRA with these powers? Please provide examples.</p>
<p>We believe WRA should have the same powers as HMRC and so should have criminal powers to arrest, detain and question individuals. This avoids additional burden on the police. Regarding powers to arrest and detain, it is worth clarifying that NRW can carry out voluntary PACE interviews (where the person is not under arrest) and undertakes its criminal investigations without the need for a power of arrest. Please note, however, that under the Salmon and Freshwater Fisheries Act 1975 specified officers in NRW have the power to apprehend offenders who are not acting in compliance with the Act, and to seize them without warrant until a Police Officer arrives or to deliver them to a Police Station. This is a particular set of circumstances where the aim is to identify the alleged offender.</p>
<p>Question 7: Should the WRA develop any additional safeguards/ guidance to exercise these powers? Please provide examples.</p>
<p>Would need to ensure appropriate governance and for staff to be trained in the use of these powers. A robust enforcement policy is needed, taking into account the Code of Crown Prosecutors and public interest test. The WRA may also want to consider the Regulator's Code that came out of the Hampton review, and against which regulators are measured. Robust governance should ensure proportionality and necessity of action with inbuilt accountability.</p>
<p>Question 8: It is proposed that the WRA be given the extended powers given under the Criminal Justice and Police Act to enhance the powers already provided to it by the Police and Criminal Evidence Act (if these powers are taken). What are the benefits or disbenefits of providing WRA with these powers? Please provide examples.</p>
<p>NRW agree that CJPA powers should be granted to WRA, to ensure an effective role and consistency with HMRC. These extended powers are complementary to the base powers under PACE and a logical extension if taking PACE powers. Any additional powers that enhance an investigators tool box are welcome.</p>
<p>Question 9: Should there be any additional powers from PACE/ CJPA conferred on the WRA? If so, please provide examples.</p>
<p>If powers of arrest are conferred then we support the use of all parts of PACE applicable to the investigation</p>
<p>Question 10: It is proposed that WRA staff are named as an AFI for the purposes of exercising various powers in POCA in the course of a confiscation or detained cash investigation. It is also proposed that a WRA AFI may also apply for restraint orders and exercise associated powers. What are the benefits and disbenefits of the above? Please provide examples.</p>
<p>NRW agree that WRA need these powers. You will be aware that a person cannot simply be "named" as an AFI – there is an accreditation process to go through. Also, if you want to use POCA you need access to the Joint Asset Recovery Database system, through the National Crime Agency. These are additional practical points for WRA to consider.</p>
<p>Question 11: It is proposed the WRA should be given powers to undertake directed surveillance for the prevention and detection of crime or the purpose of assessing or collecting tax. What are the benefits or disbenefits of providing the WRA with these powers? Please provide examples.</p>

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WG propose WRA is granted equivalent powers to HMRC with regard to directed surveillance. NRW agree these powers should be granted to WRA to ensure they can deliver an effective role consistent with HMRC. These powers need to be exercised particularly carefully due to their nature.
Question 12: It is proposed the WRA should be given powers to use covert human intelligence sources for the prevention and detection of crime or the purpose of assessing or collecting tax. What are the benefits or disbenefits of providing the WRA with these powers? Please provide examples.
NRW agree that these powers should be granted to WRA to ensure they can deliver an effective role consistent with HMRC. WRA should only then make use of its CHIS powers when its infrastructure is sufficiently well established to do the work.
Question 13: In addition to the existing safeguards included in the legislation for the Police and Criminal Evidence Act/ Regulation of Investigatory Powers Act /Proceeds Of Crime Act/ Criminal Justice and Police Act, what further internal safeguards should the WRA consider to ensure that criminal investigation powers are conducted appropriately?
WRA will need to have a clear approach to enforcement. For example, <ul style="list-style-type: none">• produce an officer competencies criteria to demonstrate that its officers have received appropriate training in PACE, their powers under LDT and have competent investigatory skills prior to them obtaining a warrant;• provide a scheme of delegation of powers; and• develop Governance of enforcement action to ensure consistency of approach.

Approved by Isobel Moore 2 Oct 2017