

Finance Committee

The Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) (Amendment) (Wales) Order 2018

This Statutory Instrument is being considered by the Finance Committee under Standing Order 27.8A.

Background and Purpose

1. This Order amends the Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2010 (SI 2010/521) ('the 2010 Order') by inserting an entry into Part 1 of the Schedule to the Principal Order in relation to the Welsh Revenue Authority ('WRA'). The purpose of this amendment is to prescribe the rank of those persons within WRA (at civil services grade 7 of equivalent) who can authorise activity for the purposes of sections 28 and 29 (for the use of directed surveillance and covert human intelligences sources) of the Regulation of Investigatory Powers Act 2000.

Procedure

2. Negative.

Merits Scrutiny

3. This Order makes as technical amendment to the 2010 Order that will an enable an appropriately qualified person at civil services grade 7 or equivalent to grant authorisation for the use of directed surveillance and covert human intelligence sources in relation to WRA wider powers for the investigation of offences. The Explanatory Memorandum details the policy rationale which does not seem unreasonable. Nevertheless, attention is drawn to the Regulations on the basis that they are of legal or political importance or give rise to issues of public policy that are likely to be of interest to the Assembly. [Standing Order 21.3(ii)]

Policy objectives

Statement of policy intent



4. To support the Committee’s scrutiny of the Tax Collection and Management (Wales) Bill, the Welsh Government provided information on the policy intent for the delegated powers within the Bill.
5. The regulation tabled is **in accordance** with related policies in the statement.
6. It noted that Section 185 of the Tax Collection and Management Bill (Section 187 in the Act) “amends the Regulation of Investigatory Powers Act 2000 (“RIPA”) so as to give WRA access to certain powers to undertake directed surveillance, and covert human intelligence surveillance, subject to necessary safeguards provided by RIPA.”
7. The regulation authorises the WRA to use directed surveillance and covert human intelligence sources if it is necessary:
 - For the purpose of preventing or detecting crime or of preventing disorder
 - For the purpose of assessing or collecting any tax, duty, levy or other imposition, contribution or charge payable to a government department.
8. This is set out in Sections 28(3) and 29(3) of the Regulation of Investigatory Powers Act 2000.

Finance Committee Stage 1 scrutiny

9. A couple of comments were made at Stage 1 about the investigatory powers in the Bill replicating HMRC’s powers. The Law Society commented:

“the Bill seeks to replicate existing powers across England and Wales. So, we have no strong feeling in terms of additional powers...”

10. The Institute for Chartered Accountants in England and Wales (ICAEW) agreed that the powers appear to replicate what is used by HMRC. However, it did note that the Welsh Government may want to review the performance of these powers.

“I think there needs to be some recognition, perhaps after three years of operation, that there is a review that could identify things that need to be added or amended in a legal sense.”



11. The previous Finance Committee supported the proposal for a review of the powers “once the taxes have been established and in operation for a number of years.”

Consultation responses

Assembly consultation

12. **No comments** were made.

Welsh Government consultation

13. The majority of respondents suggested that, whilst it was important for the WRA to have the powers proposed, they should stay as close to the HMRC powers as possible. The recurring reason for this view was to avoid confusion.

Scottish Regulations

14. Revenue Scotland **does not** have investigatory powers relating to directed surveillance and covert human intelligence sources. In its evidence submitted during Stage 1 scrutiny, Revenue Scotland noted:

“...But we haven’t provided Revenue Scotland with what you might call the top of the range powers in relation, for example, to intrusive surveillance [covert surveillance], because we didn’t think that that was either necessary or appropriate in relation to the two taxes for which Revenue Scotland are responsible.”

UK Regulations

15. Regulations are consistent with HMRC who is also included in the Schedule of The Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2010.

16. The Schedule makes provisions for a senior officer at HMRC to authorise the use of investigatory powers specified in the regulation whilst a higher officer can authorise in urgent cases. For WRA, an individual at Grade 7 or equivalent will be allowed to authorise the use of such powers in either case.



Government Response

17. The Welsh Government notes the report and recognises that this SI does contain matters likely to be of interest to the Assembly.

Committee View

18. The Committee noted the Order.

