

# TAX COLLECTION AND MANAGEMENT (WALES) ACT 2016

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### Part 5 - Penalties

#### *Sections 146-153 – Penalties relating to investigations*

175. [Section 146](#) provides that a person is liable to a penalty of £300 where that person:
- (i). fails to comply with an information notice (as defined in section 83);
  - ((ii). deliberately obstructs the WRA in the course of an inspection approved by the tribunal;
  - ((iii). deliberately obstructs WRA in the course of exercising powers under section 113(3); or
  - ((iv). fails to comply with a reasonable request for assistance under section 113(5).
176. Subsection (3) provides that failing to comply with an information notice includes concealing, destroying or disposing of a document even where this would be an offence under section 114 or 115. If a person was convicted under those sections section 155 prevents the person from incurring a penalty for the same act but the penalty is available as a sanction if no criminal conviction is pursued.
177. [Section 147](#) provides that a person is liable to a further daily penalty of up to £60 for each subsequent day the failure or obstruction continues after notice of that penalty has been issued by WRA. A person is not liable to a daily penalty where the person fails to respond to a notice issued by WRA under section 93 which requires the contact details for debtors. Subsection (2)(b) prevents a daily penalty from accruing while a review or appeal is taking place.
178. [Section 148](#) provides that a person is not liable to a penalty under section 146 or 147 if the WRA allows them further limited time to correct the failure and the person then does so. Section 149 also provides for a person not being liable to a penalty under section 146 or 147 if the person satisfies WRA (or, on appeal the tribunal) that there is reasonable excuse. The section defines some circumstances which would not be accepted as reasonable excuse.
179. Where a person has been liable to the daily default penalty under section 147 for more than 30 days and the failure or obstruction continues, section 150 provides for the WRA to make an application to the tribunal for an increase in the daily penalty. Before making an application, WRA must tell the person responsible for the failure or obstruction that an application may be made. On hearing the application, the tribunal may approve an increased amount up to a maximum of £1,000 for each applicable day and must have regard to factors including the likely cost of complying with the notice and the benefits to the person or anyone else arising from the non-compliance. If the tribunal approves

the request, the WRA must issue a notice to the person and state the day when the increased daily penalty would apply.

180. **Section 151** makes provision that, where certain criteria apply, a person can be made liable for an additional penalty whose amount is decided by the Upper Tribunal. The criteria are that: a person is liable to a penalty under section 146; the failure or obstruction continues; the WRA believes that the amount of tax the person has paid or is likely to pay is significantly less than it would have been if they had complied; the WRA makes an application to the Upper Tribunal for an additional penalty to be imposed; and the Upper Tribunal decides it is appropriate to do so.
181. In deciding the amount of the penalty, the Upper Tribunal must factor in the amount of tax which has not been, or is not likely to be, paid by the person. Any additional penalty imposed by a decision of the Upper Tribunal against this section is additional to the fixed and daily penalties already applied as a result of a continued failure or obstruction.
182. **Section 152** provides that in certain circumstances a person is liable to a penalty of up to £3,000 if, in the course of complying with an information notice, they submit a document which contains an inaccuracy. The circumstances are: if the error is due to careless or deliberate behaviour; if the person is aware of the inaccuracy at the time of submitting the document but fails to tell the WRA; or if the person discovers the error after submitting the document, but fails to take reasonable steps to inform the WRA. Where there is more than one inaccuracy in a document, a penalty is payable for each inaccuracy. It will be for WRA to decide the level of penalty (up to the £3,000 maximum) in each case.
183. Where a person becomes liable for a penalty under this Chapter, section 153 requires the WRA to assess the penalty and then notify the person of this. The assessment of a penalty under section 146 or 147 must be made within 12 months of the person becoming liable to the penalty, or, where there is a right to appeal against an information notice, 12 months from the end of the appeal period or conclusion of an appeal. Where a person becomes liable to a penalty under section 150, WRA must undertake an assessment of the penalty every 7 days until the end of the failure that gives rise to the penalty. The assessment of a penalty under section 151 must be made within 12 months of the Upper Tribunal's decision. An assessment of a penalty under section 152 must be made within 12 months on the date that the error first came to the attention of WRA and within six years of the date on which the person became liable to the penalty.