Agenda – Y Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

Lleoliad:
Fideo gynadledda drwy Zoom
Dyddiad: Dydd Llun, 25 Ionawr 2021
Amser: 10.00

I gael rhagor o wybodaeth cysylltwch a:
Gareth Williams
Clerc y Pwyllgor
0300 200 6565
SeneddDCC@senedd.cymru

Yn unol â Rheol Sefydlog 34.19, penderfynodd y Cadeirydd wahardd y cyhoedd o gyfarfod y Pwyllgor er mwyn diogelu iechyd y cyhoedd. Bydd y cyfarfod hwn yn cael ei ddarlledu'n fyw ar www.senedd.tv

Rhag-gyfarfod anffurfiol (09.30-10.00)

1 Cyflwyniad, ymddiheuriadau, dirprwyon a datgan buddiannau

10.00

2 Offerynnau nad ydynt yn codi materion i gyflwyno adroddiad arnynt o dan Reol Sefydlog 21.2 na 21.3

10.00-10.05 (Tudalen 1)

CLA(5)-03-21 – Papur 1 – Offerynnau statudol sydd ag adroddiadau clir

Offerynnau'r Weithdrefn Penderfyniad Negyddol

2.1 **SL(5)717 – Rheoliadau Addysg (Ffioedd Myfyrwyr, Dyfarndaliadau a Chymorth) (Preswylfa Arferol) (Cymru) 2021**

3 Offerynnau sy'n codi materion i gyflwyno adroddiad arnynt i'r Senedd o dan Reol Sefydlog 21.2 neu 21.3

10.05-10.15

Offerynnau'r Weithdrefn Penderfyniad Negyddol

3.1 **SL(5)702 – Gorchymyn Cynllun Masnachu Allyriadau Nwyon Tŷ Gwydr (Diwygio) 2020**

(Tudalennau 2 – 102)

CLA(5)-03-21 – Papur 2 – Adroddiad

CLA(5)-03-21 – Papur 3 – Gorchymyn

CLA(5)-03-21 – Papur 4 – Memorandwm Esboniadol

CLA(5)-03-21 – Papur 5 – Llythyr gan y Gweinidog Cyllid a'r Trefnydd, 17 Rhagfyr 2020

3.2 **SL(5)707 – Rheoliadau'r Gwasanaeth Iechyd Gwladol (Ffioedd Ymwelwyr Tramor) (Diwygio) (Cymru) (Ymadael â'r UE) 2020**

(Tudalennau 103 – 126)

CLA(5)-03-21 – Papur 6 – Adroddiad

CLA(5)-03-21 – Papur 7 – Rheoliadau

CLA(5)-03-21 – Papur 8 – Memorandwm Esboniadol

CLA(5)-03-21 – Papur 9 – Llythyr gan y Gweinidog Cyllid a'r Trefnydd, 21 Rhagfyr 2020

3.3 **SL(5)721 – Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) (Diwygio) 2021**

(Tudalennau 127 – 142)

CLA(5)-03-21 – Papur 10 – Adroddiad

CLA(5)-03-21 – Papur 11 – Rheoliadau

CLA(5)-03-21 – Papur 12 – Memorandwm Esboniadol

CLA(5)-03-21 – Papur 13 –Llythyr gan y Gweinidog Cyllid a'r Trefnydd, 11 Ionawr 2021

CLA(5)-03-21 – Papur 14 – Datganiad ysgrifenedig, 11 Ionawr 2021

3.4 **SL(5)724 – Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol, Profion cyn Ymadael at Atebolrwydd Gweithredwyr) (Cymru) (Diwygio) 2021**

(Tudalennau 143 – 166)

CLA(5)-03-21 – Papur 15 – Adroddiad

CLA(5)-03-21 – Papur 16 – Rheoliadau

CLA(5)-03-21 – Papur 17 – Memorandwm Esboniadol

CLA(5)-03-21 – Papur 18 –Llythyr gan y Gweinidog Cyllid a'r Trefnydd, 15 Ionawr 2021

3.5 **SL(5)725 – Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) (Diwygio) (Rhif 2) (2021)**

(Tudalennau 167 – 181)

CLA(5)-03-21 – Papur 19 – Adroddiad

CLA(5)-03-21 – Papur 20 – Rheoliadau

CLA(5)-03-21 – Papur 21 – Memorandwm Esboniadol

CLA(5)-03-21 – Papur 22 – Llythyr gan y Gweinidog Iechyd a Gwasanaethau Cymdeithasol, 16 Ionawr 2021

Offerynnau'r Weithdrefn Penderfyniad Gwneud Cadarnhaol

3.6 **SL(5)723 – Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol a Chyfyngiadau) (Diwygio) (Rhif 2) (Cymru) 2021**

(Tudalennau 182 – 204)

CLA(5)-03-21 – Papur 23 – Adroddiad

CLA(5)-03-21 – Papur 24 – Rheoliadau

CLA(5)-03-21 – Papur 25 – Memorandwm Esboniadol

CLA(5)-01-21 – Papur 26– Llythyr gan y Gweinidog Iechyd a Gwasanaethau Cymdeithasol, 14 Ionawr 2021

CLA(5)-03-21 – Papur 27 – Datganiad ysgrifenedig, 14 Ionawr 2021

3.7 **SL(5)726 – Rheoliadau Diogelu Iechyd (Cyfyngiadau Coronafeirws) (Rhif 5) (Cymru) (Diwygio) 2021**

(Tudalennau 205 – 225)

CLA(5)-03-21 – Papur 28 – Adroddiad

CLA(5)-03-21 – Papur 29 – Rheoliadau

CLA(5)-03-21 – Papur 30 – Memorandwm Esboniadol

CLA(5)-03-21 – Papur 31 – Llythyr gan y Prif Weinidog, 19 Ionawr 2021

CLA(5)-03-21 – Papur 32 – Datganiad ysgrifenedig, 19 Ionawr 2021

3.8 **SL(5)703 - Rheoliadau Marchnata Hadau a Deunyddiau Lluosogi Planhigion (Diwygio) (Cymru) (Ymadael â'r UE) 2020**

(Tudalennau 226 - 253)

CLA(5)-03-21 - Papur 33 – Adroddiad

CLA(5)-03-21 - Papur 34 – Rheoliadau

CLA(5)-03-21 - Papur 35 – Memorandwm Esboniadol

CLA(5)-03-21 - Papur 36 – Llythyr gan Weinidog yr Amgylchedd, Ynni a Materion Gwledig, 15 Rhagfyr 2020

4 Offerynnau sy'n codi materion i gyflwyno adroddiad arnynt i'r Senedd o dan Reol Sefydlog 21.2 neu 21.3 - trafodwyd yn flaenorol

10.15-10.20

4.1 **SL(5)719 – Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol a Chyfyngiadau) (Diwygio) (Cymru) 2021**

(Tudalennau 254 - 257)

CLA(5)-03-21 - Papur 37 – Adroddiad

CLA(5)-03-21 - Papur 38 – Ymateb Llywodraeth Cymru

5 Is-ddeddfwriaeth sy'n codi materion i gyflwyno adroddiad arnynt i'r Senedd o dan Reol Sefydlog 21.7

10.20-10.25

5.1 **SL(5)722 – Cyfarwyddiadau Gofal Sylfaenol (Cynllun Imiwneiddio Brechlyn Rhydychen/AstraZeneca COVID-19) 2020**

(Tudalennau 258 - 284)

CLA(5)-03-21 - Papur 39 – Adroddiad

CLA(5)-03-21 - Papur 40 – Cyfarwyddebau

6 Datganiadau ysgrifenedig o dan Reol Sefydlog 30C

10.25-10.30

6.1 **WS-30C(5)27 – Rheoliadau Cynhyrchion Organig (Dynodyddion Organig) (Diwygio) (Ymadael â'r UE) 2020**

(Tudalennau 285 – 288)

CLA(5)-03-21 – Papur 41 – Datganiad ysgrifenedig

CLA(5)-03-21 – Papur 42 – Sylwadau

7 Papur(au) i'w nodi

10.30–10.35

7.1 **Llythyr gan y Llywydd at Gadeirydd y Pwyllgor Gweithdrefnau, Tŷ'r Cyffredin: Gweithdrefn Tŷ'r Cyffredin a'r cyfansoddiad tiriogaethol**

(Tudalennau 289 – 294)

CLA(5)-03-21 – Papur 43 – Llythyr oddi wrth y Llywydd at Gadeirydd y Pwyllgor Gweithdrefnau, 4 Ionawr 2021

7.2 **Datganiad ysgrifenedig gan Lywodraeth Cymru: Her gyfreithiol i Ddeddf Marchnad Fewnol y DU 2020**

(Tudalennau 295 – 323)

CLA(5)-03-21 – Papur 44 – Datganiad ysgrifenedig, 19 Ionawr 2021

7.3 **Llythyr gan y Comisiynydd Cyfraith Gyhoeddus a'r Gyfraith yng Nghymru, Comisiwn y Gyfraith: Papur ymgynghori ar ddyfodol tribiwnlysoedd datganoledig yng Nghymru**

(Tudalen 324)

CLA(5)-03-21 – Papur 45 – Llythyr gan Nicholas Paines QC, Y Comisiynydd Cyfraith Gyhoeddus a'r Gyfraith yng Nghymru, 20 Ionawr 2021

7.4 **Llythyr gan y Cwnsler Cyffredinol: Gorchymyn Deddf Llywodraeth Cymru 2006 (Diwygio) 2021**

(Tudalen 325)

CLA(5)-03-21 – Papur 46 – Llythyr gan y Cwnsler Cyffredinol, 20 Ionawr 2021

8 Cynnig o dan Reol Sefydlog 17.42 i benderfynu gwahardd y cyhoedd o weddill y cyfarfod

10.35

9 Memorandwm Cydsyniad Deddfwriaethol Atodol ar Fil yr Amgylchedd – trafod yr adroddiad drafft

10.35–10.55 (Tudalennau 326 – 353)

CLA(5)-03-21 – Papur 47 – Adroddiad Drafft

CLA(5)-03-21 – Papur 48 – Llythyr at Weinidog yr Amgylchedd, Ynni a Materion Gwledig, 23 Rhagfyr 2020

CLA(5)-03-21 – Papur 49 – Llythyr gan Weinidog yr Amgylchedd, Ynni a Materion Gwledig, 28 Awst 2020

CLA(5)-03-21 – Papur 50 – Nodyn Cyngor Cyfreithiol

10 Craffu ar reoliadau a wnaed o dan Ddeddf yr Undeb Ewropeaidd (Ymadael) 2018 – y wybodaeth ddiweddaraf

10.55–11.00 (Tudalen 354)

CLA(5)-03-21 – Papur 51 – Llythyr gan y Gweinidog Cyllid a'r Trefnydd, 21 Ionawr 2021

Dyddiad y cyfarfod nesaf – 1 Chwefror 2021

Offerynnau Statudol sydd ag Adroddiadau Clir
25 Ionawr 2021

SL(5)717 – Rheoliadau Addysg (Ffioedd Myfyrwyr, Dyfarndaliadau a Chymorth) (Preswylfa Arferol) (Cymru) 2021

Gweithdrefn: Negyddol

Mae'r Rheoliadau hyn yn gwneud diwygiadau i'r rheoliadau a restrir isod. Mae'r diwygiadau'n ymwneud â gofynion preswylio arferol o fewn y rheoliadau hynny, a'u nod yw sicrhau bod unigolion y rhoddwyd iddynt ddiogelwch dyngarol, caniatâd i aros fel person diwladwriaeth neu sydd â chaniatâd i aros o dan adran 67 o Ddeddf Mewnfudo 2016 yn cael eu trin yn yr un modd â'r rhai y rhoddwyd iddynt statws ffoadur:

- Rheoliadau Addysg (Ffioedd a Dyfarniadau) (Cymru) 2007;
- Rheoliadau Addysg (Athrofa Brifysgol Ewropeaidd) (Cymru) 2014;
- Rheoliadau Addysg Uwch (Cyrsiau Cymhwysol, Personau Cymhwysol a Darpariaeth Atodol) (Cymru) 2015;
- Rheoliadau Addysg (Cymorth i Fyfyrwyr) (Cymru) 2017;
- Rheoliadau Addysg (Benthyciadau at Radd Feistr Ôl-raddedig) (Cymru) 2017;
- Rheoliadau Addysg (Cymorth i Fyfyrwyr) (Cymru) 2018;
- Rheoliadau Addysg (Benthyciadau at Radd Ddoethurol Ôl-raddedig) (Cymru) 2018;
- Rheoliadau Addysg (Cymorth i Fyfyrwyr) (Graddau Meistr Ôl-raddedig) (Cymru) 2019.

Bydd y diwygiadau yn dileu'r gofyniad am breswylio fel arfer am gyfnod o dair blynedd ar gyfer y categorïau hyn o fyfyrwyr. Mewn perthynas â chymhwystra i gael cymorth i fyfyrwyr, ceir gofyniad bod person yn preswylio fel arfer yn y Deyrnas Unedig am gyfnod o dair blynedd cyn diwrnod cyntaf blwyddyn academaidd gyntaf ei gwrs. Mae'r gofyniad i breswylio fel arfer am gyfnod o dair blynedd i'w ddileu ar gyfer y rheini sydd â math o ganiatâd sy'n seiliedig ar ddiogelwch i ddod i mewn i'r DU neu aros yn y DU. O ganlyniad, bydd myfyrwyr yn y categorïau hyn yn cael eu trin yn yr un modd ag y mae ffoaduriaid yn cael eu trin at ddibenion cymorth i fyfyrwyr. Ar hyn o bryd, nid oes angen i ffoaduriaid fodloni gofyniad i breswylio fel arfer am gyfnod o dair blynedd cyn dechrau eu cwrs.

Rhiant-Ddeddf: Deddf Addysg (Ffioedd a Dyfarndaliadau) 1983, Deddf Addysgu ac Addysg Uwch 1998, Deddf Addysg Uwch (Cymru) 2015
Fe'u gwnaed ar: 06 Ionawr 2021
Fe'u gosodwyd ar: 07 Ionawr 2021
Yn dod i rym ar: 28 Ionawr 2021

SL(5)702 – Gorchymyn Cynllun Masnachu Allyriadau Nwyon Tŷ Gwydr (Diwygio) 2020

Cefndir a Diben

Sefydlwyd Cynllun Masnachu Allyriadau'r Deyrnas Unedig gan Orchymyn Cynllun Masnachu Allyriadau Nwyon Tŷ Gwydr 2020. Mae Cynllun Masnachu Allyriadau'r DU yn rhedeg am ddeg "blwyddyn cynllun" gan ddechrau yn 2021, wedi'u rhannu'n ddau "gyfnod dyrannu", sef cyfnod dyrannu 2021-2025 a chyfnod dyrannu 2026-2030. Mae'n ofynnol i rai gweithredwyr safleoedd diwydiannol a rhai gweithredwyr awyrennau fonitro "lwfansau" sy'n cyfateb i'w hallyriadau nwyon tŷ gwydr ym mhob blwyddyn cynllun, ac adrodd ar y rhain a'u hildio.

Mae'r Gorchymyn hwn yn diwygio Gorchymyn Cynllun Masnachu Allyriadau y DU a deddfwriaeth arall, i raddau helaeth i ddarparu ar gyfer cofrestrfa ar gyfer Cynllun Masnachu Allyriadau y DU ac ar gyfer dyrannu lwfansau am ddim. Mae'r ddeddfwriaeth sy'n cael ei diwygio yn cynnwys Rheoliad Dirprwyedig y Comisiwn (UE) 2019/331 (y "Rheoliad Dyrannu Am Ddim") a Rheoliad Gweithredu'r Comisiwn (UE) 2019/1842 (y "Rheoliad Newidiadau Lefel Gweithgaredd"). Mae'r ddau Reoliad yn gyfraith yr UE a ddargedwir, a wnaed yn wreiddiol ar gyfer System Masnachu Allyriadau'r UE, ond a addaswyd ar gyfer Cynllun Masnachu Allyriadau y DU.

Mae erthygl newydd 8A o Orchymyn Cynllun Masnachu Allyriadau y DU yn diffinio pum corff fel "gweinyddwr y gofrestrfa", gan gynnwys Cyfoeth Naturiol Cymru a'r Ysgrifennydd Gwladol. Yn ymarferol, y bwriad yw i Asiantaeth yr Amgylchedd arfer swyddogaethau gweinyddwr y gofrestrfa ar ran y pedwar corff arall.

Gweithdrefn

Negyddol.

Materion technegol: craffu

Nodir y pwyntiau a ganlyn i gyflwyno adroddiad arnynt o dan Reol Sefydlog 21.2 mewn perthynas â'r offeryn hwn.

1. Rheol Sefydlog 21.2 (ix) - nad yw wedi'i wneud neu i'w wneud yn Gymraeg ac yn Saesneg.

Mae'r Gorchymyn wedi'i wneud yn Saesneg yn unig. Mae Rhan 1, Adran 2 o Femorandwm Esboniadol Llywodraeth Cymru (ar dudalen 2) yn nodi fel a ganlyn:

> "*Gan y bydd Senedd y DU yn craffu ar y Gorchymyn yn y Cyfrin Gyngor, ni ystyrir ei bod yn rhesymol ymarferol i'r offeryn hwn gael ei greu na'i osod yn ddwyieithog.*"

Rhinweddau: craffu

Nodwyd y pwyntiau a ganlyn i gyflwyno adroddiad arnynt o dan Reol Sefydlog 21.3 mewn perthynas â'r offeryn hwn.

1. Rheol Sefydlog 21.3(ii) – ei fod o bwysigrwydd gwleidyddol neu gyfreithiol neu ei fod yn codi materion polisi cyhoeddus sy'n debyg o fod o ddiddordeb i'r Senedd

Nodwn y torrir y rheol 21 diwrnod (h.y. y rheol y dylai 21 diwrnod fynd heibio rhwng y dyddiad y gosodir offeryn penderfyniad negyddol gerbron y Senedd a'r dyddiad y daw'r offeryn i rym), a'r esboniad am dorri'r rheol a roddodd Rebecca Evans AS, y Gweinidog Cyllid a'r Trefnydd, mewn llythyr at y Llywydd, dyddiedig 17 Rhagfyr 2020.

Yn benodol, nodwn y canlynol yn y llythyr:

> *"Gwnaed y Gorchymyn ar 16 Rhagfyr 2020, dyddiad cyfarfod cyntaf y Cyfrin Gyngor ar ôl y cyfarfod lle gwnaed y prif Orchymyn, a chafodd ei osod cyn gynted ag y bo'n rhesymol ymarferol ar ôl hynny. Ystyrir bod dyddiad dod i rym hwyrach yn amhosibl am ddau reswm. Yn gyntaf, er mwyn sicrhau na fydd oedi yn y rhwymedigaethau ar weithredwyr safleoedd sy'n ymwneud â monitro data at ddibenion dyrannu am ddim. Mae hyn yn osgoi ansicrwydd i gyfranogwyr ac yn sicrhau proses bontio ddidrafferth o System Masnachu Allyriadau yr Undeb Ewropeaidd i ETS y DU. Yn ail, mae angen dadwneud dirymiad arfaethedig o Reoliad Dirprwyedig y Comisiwn (UE) 2019/331 ("y Rheoliad Dyrannu am Ddim") drwy reoliad 62 o Reoliadau'r Cynllun Masnachu Allyriadau Nwyon Tŷ Gwydr (Diwygio) (Ymadael â'r UE) (Rhif 2) 2019, sy'n dod i rym ar ddiwrnod cwblhau'r Cyfnod Gweithredu. Gwnaed yr offeryn fel rhan o baratoadau "ymadael heb gytundeb" blaenorol Llywodraeth y DU yng ngwanwyn 2019."*

Ymateb Llywodraeth Cymru

Nid oes angen ymateb gan Lywodraeth Cymru.

Cynghorwyr Cyfreithiol
Y Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad
20 Ionawr 2021

STATUTORY INSTRUMENTS

2020 No. 1557

CLIMATE CHANGE

The Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020

Made - - - -	*16th December 2020*
Laid before Parliament	*17th December 2020*
Laid before the Northern Ireland Assembly	*17th December 2020*
Laid before the Scottish Parliament	*17th December 2020*
Laid before Senedd Cymru	*17th December 2020*
Coming into force in accordance with article 2	

At the Court at Windsor Castle, the 16th day of December 2020

Present,

The Queen's Most Excellent Majesty in Council

This Order is made in exercise of the powers conferred by sections 44, 46(3), 54 and 90(3) of, and Schedule 2 and paragraph 9 of Schedule 3 to, the Climate Change Act 2008(**a**).

In accordance with paragraph 10 of Schedule 3 to that Act, before the recommendation to Her Majesty in Council to make this Order was made—

(a) the advice of the Committee on Climate Change, including on the amount of the limit referred to in section 48(2) of that Act, was obtained and taken into account; and

(b) such persons likely to be affected by the Order as the Secretary of State, the Department of Agriculture, Environment and Rural Affairs, the Scottish Ministers, the Welsh Ministers considered appropriate were consulted.

Accordingly, Her Majesty, by and with the advice of Her Privy Council, makes the following Order:

(**a**) 2008 c. 27.

PART 1

Preliminary

Citation

1. This Order may be cited as the Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020.

Commencement

2.—(1) Except as provided by paragraph (2), this Order comes into force on 31st December 2020.

(2) The following provisions come into force on IP completion day—

(a) article 46 and Schedule 1 (Free Allocation Regulation amended);

(b) article 47 and Schedule 2 (Activity Level Changes Regulation amended).

Extent

3. This Order extends to the whole of the United Kingdom.

PART 2

Greenhouse Gas Emissions Trading Scheme Order 2020 amended

Greenhouse Gas Emissions Trading Scheme Order 2020 amended

4. The Greenhouse Gas Emissions Trading Scheme Order 2020(**a**) is amended in accordance with this Part.

Article 4 amended (interpretation)

5.—(1) Article 4 is amended as follows.

(2) In paragraph (1)—

(a) after the definition of "2026-2030 allocation period" insert—

""account" means account in the registry;

"Activity Level Changes Regulation" means Commission Implementing Regulation (EU) 2019/1842 of 31 October 2019, as it forms part of domestic law;";

(b) after the definition of "aircraft operator" insert—

""aircraft operator holding account" means an aircraft operator holding account opened under paragraph 13(3) of Schedule 5A;";

(c) after the definition of "allocation period" insert—

""allocation table" means an allocation table for the 2021-2025 allocation period or the 2026-2030 allocation period referred to in article 34A;";

(d) after the definition of "aviation activity" insert—

""aviation allocation table" means the aviation allocation table for the 2021-2025 allocation period referred to in article 34N;";

(e) after the definition of "CCA 2008" insert—

(**a**) S.I. 2020/1265.

""central account" has the meaning given in paragraph 9(2) of Schedule 5A;";

(f) after the definition of "excluded flights" insert—

""FA installation", "FA installation for the 2021-2025 allocation period" and "FA installation for the 2026-2030 allocation period" must be construed in accordance with article 4A;";

(g) after the definition of "flight" insert—

""free allocation" means the allocation of allowances free of charge under Part 4A;

"free allocation conditions" means the conditions referred to in paragraph 4(6) of Schedule 6;

"Free Allocation Regulation" means Commission Delegated Regulation (EU) 2019/331 of 19 December 2018, as it forms part of domestic law;";

(h) in the definition of "Monitoring and Reporting Regulation 2018" after "of the Council" insert "(disregarding any amendments adopted after 11th November 2020) and, except in article 24 and Schedule 4, it means that Regulation";

(i) after the definition of "operator" insert—

""operator holding account" means an operator holding account for an installation opened under paragraph 11(4) or 12(3) of Schedule 5A;";

(j) in the definition of "permit" after "Schedule 7)" insert "and, in the case of a greenhouse gas emissions permit, any monitoring methodology plan (see paragraph 4(1)(hb) and (7) of Schedule 6)";

(k) after the definition of "permit" insert—

""registry" has the meaning given in paragraph 5(1) of Schedule 5A;

"registry administrator" has the meaning given in article 8A;";

(l) in the definition of "surrender" for "in such a way that the allowance ceases to be available for any other purpose" substitute "in accordance with article 27 or 34";

(m) in the definition of "Verification Regulation 2018" after "of the Council" insert "(disregarding any amendments adopted after 11th November 2020) and, except in article 25 and Schedule 5, it means that Regulation as given effect subject to modifications by article 25";

(n) after the definition of "Verification Regulation 2018" insert—

""verification report" has the same meaning as in the Verification Regulation 2018.".

Article 4A inserted

6. After article 4 insert—

"Meaning of FA installation, etc.

4A.—(1) For the purposes of this Order, an installation is an "FA installation" if the installation is—

(a) an FA installation for the 2021-2025 allocation period; or

(b) an FA installation for the 2026-2030 allocation period.

(2) For the purposes of this Order, an installation is an FA installation for the 2021-2025 allocation period from—

(a) the date of publication of the allocation table for the 2021-2025 allocation period (including an updated allocation table) that first includes an entry for the installation; or

(b) if earlier, the date on which the regulator gives notice of the final annual amount of allowances to be allocated in respect of the installation for any scheme year in the 2021-2025 allocation period under—

(i) article 34H(7) (installations: errors in applications for free allocation, etc.);

(ii) Article 18a(9) of the Free Allocation Regulation (new entrants);

(iii) Article 25(9) of that Regulation (mergers and splits).

(3) An installation ceases to be an FA installation for the 2021-2025 allocation period at the earliest of—

(a) the end of the 2025 scheme year;

(b) if the operator of the installation gives a renunciation notice under Article 24 of the Free Allocation Regulation in respect of the installation as a whole, the end of the scheme year in which the renunciation notice is given;

(c) the date on which, following the partial transfer under paragraph 9 of Schedule 6 of the greenhouse gas emissions permit of an installation that is an FA installation, the regulator gives notice to the transferring operator (within the meaning of that paragraph) under Article 25(9)(b) of the Free Allocation Regulation that the installation is not an FA installation for the 2021-2025 allocation period;

(d) if the installation's permit is surrendered under paragraph 11(1) of Schedule 6 or revoked under paragraph 12(1) of that Schedule, the end of the scheme year in which the installation ceases operation;

(e) if the installation's permit is surrendered under paragraph 11(2) of Schedule 6 or revoked under paragraph 12(3) of that Schedule, the end of the scheme year in which the surrender or revocation takes effect;

(f) the date on which, following the inclusion of an entry for the installation in the allocation table for the 2021-2025 allocation period in error, the regulator gives notice to the operator under article 34H(7)(c) that the installation is not an FA installation for the 2021-2025 allocation period.

(4) For the purposes of this Order, an installation is an FA installation for the 2026-2030 allocation period from—

(a) the date of publication of the allocation table for the 2026-2030 allocation period (including an updated allocation table) that first includes an entry for the installation; or

(b) if earlier, the date on which the regulator gives notice of the final annual amount of allowances to be allocated in respect of the installation for any scheme year in the 2026-2030 allocation period under—

(i) article 34H(7) (installations: errors in applications for free allocation, etc.);

(ii) Article 18a(9) of the Free Allocation Regulation (new entrants);

(iii) Article 25(9) of that Regulation (mergers and splits).

(5) An installation ceases to be an FA installation for the 2026-2030 allocation period at the earliest of—

(a) the end of the 2030 scheme year;

(b) if the operator of the installation gives a renunciation notice under Article 24 of the Free Allocation Regulation on or after 1st January 2025 in respect of the installation as a whole, the end of the scheme year in which the renunciation notice is given;

(c) the date on which, following the partial transfer under paragraph 9 of Schedule 6 of the greenhouse gas emissions permit of an installation that is a FA installation, the regulator gives notice to the transferring operator (within the meaning of that paragraph) under Article 25(9)(b) of the Free Allocation Regulation that the installation is not an FA installation for the 2026-2030 allocation period;

(d) if the installation's permit is surrendered under paragraph 11(1) of Schedule 6 or revoked under paragraph 12(1) of that Schedule, the end of the scheme year in which the installation ceases operation;

(e) if the installation's permit is surrendered under paragraph 11(2) of Schedule 6 or revoked under paragraph 12(3) of that Schedule, the end of the scheme year in which the surrender or revocation takes effect;

(f) the date on which, following the inclusion of an entry for the installation in the allocation table for the 2026-2030 allocation period in error, the regulator gives notice to the operator under article 34H(7)(c) that the installation is not an FA installation for the 2026-2030 allocation period.".

Article 8A inserted

7. After article 8 insert—

"Meaning of registry administrator

8A.—(1) A reference in this Order to the "registry administrator" is a reference to—

(a) the chief inspector;

(b) the Environment Agency(**a**);

(c) NRW(**b**);

(d) the Secretary of State; and

(e) SEPA(**c**).

(2) Functions conferred or imposed by this Order on the "registry administrator" may be exercised—

(a) by all of the persons referred to in paragraph (1) jointly; or

(b) by one of the persons referred to in paragraph (1) (or by more than one of the persons referred to in paragraph (1) jointly) on behalf of the other persons referred to in paragraph (1) with their agreement.".

Article 9 amended (meaning of regulator)

8.—(1) Article 9 is amended as follows.

(2) After paragraph (2) insert—

"(2A) Articles 11 to 13 apply for the purpose of determining the regulator of a person other than an aircraft operator in relation to—

(a) monitoring and reporting of the person's aviation emissions;

(b) free allocation to the person under Chapter 2 of Part 4A (aviation free allocation);

(c) the opening, operation or closure of the person's aircraft operator holding account,

as if references to "aircraft operator" were to the person.".

Article 14 amended (meaning of UK ETS authority, etc.)

9.—(1) Article 14 is amended as follows.

(2) After paragraph (4) insert—

"(5) In this article, a reference to this Order includes a reference to the Monitoring and Reporting Regulation 2018, the Verification Regulation 2018, the Free Allocation Regulation and the Activity Level Changes Regulation.".

(**a**) The Environment Agency was established by section 1 of the Environment Act 1995 (c. 25).

(**b**) "NRW" is defined in article 4(1) of S.I. 2020/1265 as the "Natural Resources Body for Wales", which was established by article 3 of S.I. 2012/1903 (W.230).

(**c**) "SEPA" is defined in article 4(1) of S.I. 2020/1265 as the "Scottish Environment Protection Agency", which was established by section 20 of the Environment Act 1995.

Article 18 amended (allowances)

10.—(1) Article 18 is amended as follows.

(2) In paragraph (1) for "direct that allowances be created" substitute "create allowances in the registry".

(3) After paragraph (2) insert—

"(3) Allowances may be held only in accounts in the registry.".

Article 20 amended (cap for scheme years)

11.—(1) Article 20 is amended as follows.

(2) For paragraph (1) substitute—

"(1) The number of allowances created in a scheme year may not exceed the sum of—

(a) the base for the scheme year multiplied by—

(i) if the scheme year is in the 2021-2025 allocation period, the 2021-2025 hospital and small emitter reduction factor;

(ii) if the scheme year is in the 2026-2030 allocation period, the 2026-2030 hospital and small emitter reduction factor; and

(b) the balance of allowances in the new entrants' reserve on 1st January in the scheme year (see article 34G for the new entrants' reserve).".

Article 21 amended (cap: hospital and small emitter reduction factors)

12.—(1) Article 21 is amended as follows.

(2) In paragraph (4)—

(a) in sub-paragraph (a) after "verified" insert "as satisfactory";

(b) after sub-paragraph (a) insert—

"(aa) determined under regulation 44 of GGETSR 2012 or article 45 of this Order;".

Article 24 amended (monitoring and reporting of emissions)

13.—(1) Article 24 is amended as follows.

(2) For "Commission Implementing Regulation (EU) 2018/2066 of 19 December 2018 on the monitoring and reporting of greenhouse gas emissions pursuant to Directive 2003/87/EC of the European Parliament and of the Council" substitute "The Monitoring and Reporting Regulation 2018".

Article 25 substituted

14. For article 25 substitute—

"Verification of data and accreditation of verifiers

25. The Verification Regulation 2018 has effect for the purpose of the UK ETS, subject to the modifications in Schedule 5 (see also paragraph 4 of Schedule 8 which makes further modifications in relation to ultra-small emitters).".

Chapter 4 of Part 2 inserted

15. After article 25 insert—

"CHAPTER 4

Registry

Registry

25A. Schedule 5A (registry) has effect.".

Article 27A inserted

16. After article 27 insert—

"Installations: information to be submitted before 2026-2030 allocation period where no application for free allocation, etc. is made

27A.—(1) This article applies where the operator of an installation referred to in paragraph (2) does not make an application under any of the following—

(a) paragraph 5 of Schedule 7 (hospital or small emitter status for 2026-2030 allocation period);

(b) paragraph 3 of Schedule 8 (ultra-small emitter status for 2026-2030 allocation period);

(c) Article 4 of the Free Allocation Regulation (free allocation in 2026-2030 allocation period).

(2) The installations are—

(a) an installation for which a permit is issued on or before 30th June 2024;

(b) an installation that is an ultra-small emitter for the 2024 scheme year;

(c) an installation for which an application for a permit has been made but not yet determined.

(3) The operator must submit the following to the regulator—

(a) details of the installation, including details of any permit in force;

(b) activity information (that is to say, the information set out in section 1.3 of Annex 4 to the Free Allocation Regulation);

(c) details of eligibility for free allocation (that is to say, the information set out in section 1.4 of Annex 4 to the Free Allocation Regulation);

(d) a statement that the operator is not applying for free allocation in the 2026-2030 allocation period under Article 4 of the Free Allocation Regulation.

(4) The information referred to in paragraph (3) must be submitted in the period beginning on 1st April 2024 and ending on 30th June 2024.

(5) The regulator must send the information submitted by the operator to the UK ETS authority on or before 30th September 2024.".

Article 33 amended (reporting aviation emissions)

17.—(1) Article 33 is amended as follows.

(2) In paragraph (1) after "verified" insert "as satisfactory".

(3) In paragraph (2) for "verified in accordance" substitute "verified as satisfactory in accordance".

(4) In paragraph (3) after "under paragraph (1)" insert "(and the verification report)".

Part 4A inserted

18. After Part 4 insert—

"PART 4A

Free Allocation

CHAPTER 1

Installations

Allocation tables

34A.—(1) The UK ETS authority must compile a table (an "allocation table") for each allocation period as soon as reasonably practicable after approval under Article 16b of the Free Allocation Regulation of the final annual number of allowances to be allocated in respect of installations—

(a) in the case of the allocation table for the 2021-2025 allocation period, in respect of which a deemed application for free allocation in the 2021-2025 allocation period (as defined in Article 2(19) of that Regulation) is made;

(b) in the case of the allocation table for the 2026-2030 allocation period, in respect of which an application for free allocation in the 2026-2030 allocation period is made under Article 4 of that Regulation.

(2) The allocation table for the 2021-2025 allocation period must contain an entry for each relevant installation.

(3) For the purposes of paragraph (2), an installation is a "relevant" installation if—

(a) a deemed application for free allocation in the 2021-2025 allocation period (as defined in Article 2(19) of the Free Allocation Regulation) is made in respect of the installation that the UK ETS authority subsequently informs the regulator is valid; or

(b) an application for free allocation in the 2021-2025 allocation period is made in respect of the installation under Article 5(1)(a) of the Free Allocation Regulation that the UK ETS authority subsequently informs the regulator is valid.

(4) But an installation referred to in paragraph (3)(a) is not a "relevant" installation if—

(a) the installation is included in the hospital and small emitter list for 2021-2025 or the ultra-small emitter list for 2021-2025;

(b) the installation ceases operation (within the meaning of GGETSR 2012) on or before 31st December 2020; or

(c) the installation's permit (within the meaning of GGETSR 2012) is revoked under regulation 14 of GGETSR 2012 on or before that date.

(5) The allocation table for the 2026-2030 allocation period must contain an entry for each relevant installation.

(6) For the purposes of paragraph (5), an installation is a "relevant" installation if—

(a) an application for free allocation in the 2026-2030 allocation period is made in respect of the installation under Article 4 of the Free Allocation Regulation that the UK ETS authority subsequently informs the regulator is valid; or

(b) an application for free allocation in the 2026-2030 allocation period is made in respect of the installation under Article 5(1)(b) of the Free Allocation Regulation that the UK ETS authority subsequently informs the regulator is valid.

(7) But an installation referred to in paragraph (6)(a) is not a "relevant" installation if—

(a) the installation is included in the hospital and small emitter list for 2026-2030 or the ultra-small emitter list for 2026-2030;

(b) the installation ceases operation on or before 31st December 2025; or

(c) the installation's permit is revoked under paragraph 12 of Schedule 6 on or before that date.

(8) The entry for an installation must set out—

(a) the installation identifier used in the registry;

(b) for each scheme year in the allocation period, the final annual number of allowances to be allocated in respect of the installation for the scheme year, in 3 columns as follows (see article 34B)—

(i) column A (standard free allocation);

(ii) column B (new entrants' reserve);

(iii) column C (total).

Allocation tables: supplementary

34B.—(1) This article applies for the purposes of article 34A(8)(b).

(2) Where the final annual number of allowances to be allocated in respect of an installation is approved under Article 16b of the Free Allocation Regulation, that number must be included in column A.

(3) Where the final annual number of allowances to be allocated in respect of an installation is approved under Article 18a of that Regulation, that number must be included in column B.

(4) Paragraphs (5) and (6) apply where a calculation (a "relevant calculation") of the final annual number of allowances to be allocated in respect of the installation for a scheme year is approved by the UK ETS authority under either or both of the following—

(a) Article 24(3)(a)(ii) of the Free Allocation Regulation (renunciation other than in respect of whole installation);

(b) Article 6a of the Activity Level Changes Regulation.

(5) If the effect of the relevant calculation is a final annual number of allowances to be allocated in respect of the installation for the scheme year that is greater than the number that would otherwise be set out in the entry for the installation for the scheme year, the net increase must be added to the amount that would otherwise be included in column B.

(6) If the effect of the relevant calculation is a final annual number of allowances to be allocated in respect of the installation for the scheme year that is less than the number that would otherwise be set out in the entry for the installation for the scheme year, the net decrease must be deducted first from any amount that would otherwise be included in column B, before being deducted from any amount that would otherwise be included in column A.

(7) The total final annual number of allowances to be allocated in respect of the installation for the scheme year (that is to say, the sum of columns A and B) must be included in column C.

Allocation tables: updates

34C.—(1) The UK ETS authority must update an allocation table to take account of any approval of the UK ETS authority under—

(a) Article 18a of the Free Allocation Regulation (new entrants);

(b) Article 6a of the Activity Level Changes Regulation (activity level changes);

(c) Article 24 of the Free Allocation Regulation (renunciation);

(d) Article 25 of that Regulation (mergers and splits);

(e) Article 26 of that Regulation (cessation);

(f) article 34H of this Order (installations: errors in applications for free allocation, etc.).

(2) To avoid doubt, the UK ETS authority may update an allocation table under paragraph (1) so as to increase or reduce the final annual number of allowances to be allocated in

respect of an installation for a scheme year after allowances have already been allocated in respect of the installation for the scheme year under article 34E. (See article 34S in relation to the return of allowances where the number of allowances to be allocated in respect of an installation for a scheme year is reduced after allowances for the scheme year have been allocated, for example, because of a decrease in activity levels.)

Allocation tables: publication, etc.

34D.—(1) The UK ETS authority must notify the registry administrator of an allocation table as soon as reasonably practicable after it is compiled and of an updated allocation table as soon as reasonably practicable after it is updated.

(2) The UK ETS authority must publish the allocation table for the 2021-2025 allocation period as soon as reasonably practicable after it is compiled and in any event before 30th June 2021.

(3) The UK ETS authority must publish the allocation table for the 2026-2030 allocation period as soon as reasonably practicable after it is compiled and in any event before 1st January 2026.

(4) The UK ETS authority must publish an updated allocation table as soon as reasonably practicable after the allocation table is updated.

(5) Paragraphs (2) to (4) are subject to article 75C (national security).

Allocation of allowances

34E.—(1) The registry administrator must allocate allowances in respect of an installation in accordance with the allocation table by transferring allowances to the operator holding account for the installation.

(2) Allowances—

(a) for the 2021 scheme year must be allocated as soon as reasonably practicable after the allocation table for the 2021-2025 allocation period is published;

(b) for any other scheme year must be allocated on or before 28th February in that year.

(3) Where, after allowances for a scheme year have been allocated in respect of an installation in accordance with paragraph (2), an update to the allocation table results in an increase in the final annual number of allowances to be allocated in respect of the installation for the scheme year, the increased number of allowances must be allocated as soon as reasonably practicable.

(4) This article is subject to—

(a) article 34F (no allocation unless monitoring methodology plan approved);

(b) article 34G(2) (new entrants' reserve);

(c) article 34W (notice to withhold allowances).

No allocation unless monitoring methodology plan approved

34F.—(1) Where a monitoring methodology plan has not been approved in relation to an installation under Article 8 of the Free Allocation Regulation, the regulator may, by notice to the registry administrator, require the registry administrator to withhold allowances that would otherwise have been allocated in respect of the installation under article 34E.

(2) Where a notice under paragraph (1) is given, no allowances may be allocated in respect of the installation set out in the notice until the regulator gives a further notice to the registry administrator, which must be given as soon as reasonably practicable after a monitoring methodology plan is approved.

New entrants' reserve

34G.—(1) The new entrants' reserve is a reserve of 30,249,066 allowances for the trading period.

(2) The number of allowances set out in column B of an allocation table must be allocated from the new entrants' reserve until the new entrants' reserve is exhausted, after which no allocation may be made for a scheme year in respect of allowances set out in that column.

(3) Where an allocation table or an updated allocation table requires an allocation to be made from the new entrants' reserve in respect of more than one installation, allowances must be allocated in accordance with paragraphs (4) and (5) (until the new entrants' reserve is exhausted).

(4) Allowances must first be allocated in respect of sub-installations of installations in respect of which the historical activity level of the sub-installation has been determined under Article 17(1) of the Free Allocation Regulation or Article 3a(2) of the Activity Level Changes Regulation, in chronological order of the date (and, where relevant, time) on which the operator submitted sufficient information to enable the historical activity level of the sub-installation to be determined.

(5) Allowances must next be allocated in respect of sub-installations of installations in respect of which the historical activity level of the sub-installation has not been so determined, in chronological order of the date (and, where relevant, time) on which the operator submitted sufficient information to enable the activity level of the sub-installation to be determined for the purposes of Article 18(2) of the Free Allocation Regulation or under Article 3a(3) of the Activity Level Changes Regulation.

(6) Where allowances to which a person is not entitled (see article 34S) are allocated from the new entrants' reserve, for the purposes of this article, those allowances must be treated as not having been allocated from the new entrants' reserve, to the extent that an equal number of allowances are transferred or returned in accordance with a notice under article 34U or 34V.

(7) For the purposes of this article, each regulator must—

(a) keep such records as the regulator considers appropriate to enable the chronological order referred to in paragraph (4) or (5) to be determined;

(b) provide any information required by the UK ETS authority or the registry administrator to enable allowances to be allocated in accordance with this article.

(8) In this article, "historical activity level" and "sub-installation" have the same meanings as in the Free Allocation Regulation.

Installations: errors in applications for free allocation, etc.

34H.—(1) This article applies where the regulator considers that, as a result of a relevant error—

(a) the final annual number of allowances set out in an allocation table to be allocated in respect of an installation for a scheme year; or

(b) the number of allowances allocated in accordance with an allocation table under article 34E in respect of an installation for a scheme year,

is materially greater, or materially less, than the number that would otherwise have been set out in the table but for the relevant error.

(2) In this article, "relevant error" means—

(a) an error in an application for free allocation made in respect of an installation under Article 4 or 5 of the Free Allocation Regulation (including a deemed application for free allocation in the 2021-2025 allocation period as defined in Article 2(19) of that Regulation);

(b) an error in an activity level report submitted by the operator of an installation under the Activity Level Changes Regulation;

(c) an error of the regulator or the UK ETS authority in the exercise of functions under this Order (including under this article), the Free Allocation Regulation or the Activity Level Changes Regulation.

(3) The regulator may do any of the following—

(a) determine the historical activity level of a sub-installation of the installation that the regulator considers would have been determined for the purposes of the UK ETS but for the relevant error;

(b) calculate the preliminary annual number of allowances to be allocated in respect of a sub-installation of the installation for the scheme year that the regulator considers would have been calculated for the purposes of the UK ETS but for the relevant error;

(c) calculate the final annual number of allowances to be allocated in respect of a sub-installation of the installation for the scheme year that the regulator considers would have been calculated for the purposes of the UK ETS but for the relevant error.

(4) For the purposes of paragraph (3), the regulator may make a conservative estimate of the value of any relevant parameter; and if the regulator does so, the regulator must give notice of the value to the operator.

(5) Where the regulator does any of the things referred to in paragraph (3), the regulator must send to the UK ETS authority—

(a) details of the relevant error;

(b) any determination or calculation referred to in paragraph (3);

(c) the regulator's recalculation of the final annual number of allowances to be allocated in respect of the installation of which the sub-installation is part for the scheme year, taking account of the determination or calculation referred to in paragraph (3).

(6) If the UK ETS authority considers that, as a result of the relevant error, the final annual number of allowances set out in an allocation table to be allocated in respect of an installation for a scheme year, or the number of allowances allocated in accordance with an allocation table under article 34E in respect of an installation for a scheme year, is materially greater, or materially less, than the number that would otherwise have been set out in the table but for the relevant error, the UK ETS authority must—

(a) approve the final annual number of allowances to be allocated in respect of the installation for the scheme year, making any corrections to the historical activity level, preliminary annual number of allowances or final annual number of allowances determined or calculated by the regulator that the UK ETS authority considers appropriate; and

(b) inform the regulator accordingly.

(7) The regulator must give notice to the operator of the installation—

(a) of the relevant error;

(b) of the final annual number of allowances approved;

(c) where the relevant error was the error of including an entry for the installation in an allocation table for an allocation period, that the installation is not an FA installation for the allocation period.

(8) In this article, "historical activity level" and "sub-installation" have the same meanings as in the Free Allocation Regulation.

CHAPTER 2

Aviation

Interpretation

34I.—(1) In this Chapter—

"Annex 1 activities" means activities listed under "Aviation" in Annex 1 to the Directive;

"attributable" must be construed in accordance with article 34J(4);

"aviation free allocation entitlement" must be construed in accordance with article 34K;

"business reorganisation" must be construed in accordance with paragraph (2);

"historical aviation activity level" has the meaning given in article 34J;

"special reserve application" means an application for a free allocation of allowances under the EU ETS from the special reserve referred to in Article 3f of the Directive;

"tonne-kilometre" has the meaning given in Article 3(3) of the Monitoring and Reporting Regulation 2018;

"transferor", "transferee" and "relevant transferee" must be construed in accordance with paragraph (2).

(2) For the purposes of this Chapter—

(a) where a part of a person's business responsible for performing an aviation activity has been transferred to another person, the person has been subject to a "business reorganisation" that affects the aviation activity; and, in relation to the aviation activity, the first person is the "transferor" and the second person is a "transferee";

(b) where there has been a business reorganisation affecting an aviation activity, a transferee is the "relevant transferee" in relation to that aviation activity where the transferee has not been subject to a further business reorganisation affecting the aviation activity.

Meaning of historical aviation activity level and attributable

34J.—(1) A person's historical aviation activity level is—

(a) the number of tonne-kilometres of aviation activity performed by the person in 2010;

(b) in the case of a person who fell within Article 3f(1)(a) of the Directive and made a successful special reserve application, the number of tonne-kilometres of aviation activity performed by the person in 2014; or

(c) in the case of a person who fell within Article 3f(1)(b) of the Directive and made a successful special reserve application, the sum of—

(i) the number of tonne-kilometres of aviation activity performed by the person in 2010; and

(ii) the person's aviation activity ratio multiplied by the difference between the person's 2010 to 2014 growth in Annex 1 activities and the person's threshold figure.

(2) In this article, a person's—

"2010 to 2014 growth in Annex 1 activities" means the difference between the number of tonne-kilometres of Annex 1 activities performed by the person in 2010 and the number of tonne-kilometres of Annex 1 activities performed by the person in 2014;

"2010 to 2014 growth in aviation activity" means—

(a) if the number of tonne-kilometres of aviation activity performed by the person in 2014 is greater than the number of tonne-kilometres of aviation activity performed by the person in 2010, the difference;

(b) if the number of tonne-kilometres of aviation activity performed by the person in 2014 is less than or equal to the number of tonne-kilometres of aviation activity performed by the person in 2010, zero;

"aviation activity ratio" means the person's 2010 to 2014 growth in aviation activity divided by the person's 2010 to 2014 growth in Annex 1 activities;

"threshold figure" means the number of tonne-kilometres of Annex 1 activities performed by the person in 2010 multiplied by 1.93877776.

(3) A tonne-kilometre of aviation activity or Annex 1 activities performed by a person in 2014 is not to be counted in a total for the purposes of this article if it would have been excluded by the words following point (b) in Article 3f(1) of the Directive (exclusion where activity a continuation of activity performed by another) from forming the basis of an application for free allocation of allowances under the EU ETS.

(4) A person's historical aviation activity level is "attributable" to a person ("A") for the purposes of this Chapter if and to the extent that—

(a) there has been no business reorganisation affecting aviation activity relevant to the historical aviation activity level and A is the person who performed that aviation activity; or

(b) there has been a business reorganisation affecting aviation activity relevant to the historical aviation activity level and in relation to that aviation activity A is the relevant transferee.

Aviation: entitlement to free allocation in 2021-2025 allocation period

34K. A person is only entitled to a free allocation of allowances under this Chapter for scheme years—

(a) in the 2021-2025 allocation period; and

(b) in relation to which the person is an aircraft operator,

and references in this Chapter to a person's "aviation free allocation entitlement" must be construed accordingly.

Application for aviation free allocation entitlement

34L.—(1) A person (the "applicant") may apply for an aviation free allocation entitlement in reliance on the historical aviation activity level of one or more persons being attributable to the applicant immediately before 1st January 2021.

(2) Where an applicant can rely on a person's historical aviation activity level within article 34J(1)(a) or (c), the applicant may choose which to rely on but may not rely on both.

(3) An application under paragraph (1) must include—

(a) for each person on whose historical aviation activity level the applicant relies, a statement as to whether it is the person's historical aviation activity level within article 34J(1)(a), (b) or (c);

(b) verified tonne-kilometre data as follows—

(i) where the applicant relies on a person's historical aviation activity level within article 34J(1)(a), verified tonne-kilometre data for the person's Annex 1 activities performed in 2010;

(ii) where the applicant relies on a person's historical aviation activity level within article 34J(1)(b), verified tonne-kilometre data for the person's Annex 1 activities performed in 2014;

(iii) where the applicant relies on a person's historical aviation activity level within article 34J(1)(c), verified tonne-kilometre data for the person's Annex 1 activities performed in 2010 and 2014;

(c) if there has been no business reorganisation affecting an aviation activity included in the verified tonne-kilometre data, a statement of that fact;

(d) if there has been a business reorganisation affecting an aviation activity included in the verified tonne-kilometre data, evidence of that business reorganisation;

(e) where the application relies on a person's historical aviation activity level within article 34J(1)(b) or (c), the other information that was included in the person's special reserve application and evidence that the application was successful.

(4) In this article, "verified tonne-kilometre data" means—

(a) a tonne-kilometre data report containing the information set out in section 3 of Annex 10 to Commission Regulation (EU) 2018/2066 (as it has effect in EU law), together with a verification report in relation to it containing the information set out in Article 27 of Commission Implementing Regulation (EU) 2018/2067 (as it has effect in EU law); or

(b) where paragraph (5) applies, the items submitted to the regulator under that paragraph.

(5) This paragraph applies where—

(a) the applicant submits to the regulator the same items as the applicant submitted for the purpose of an application for free allocation of allowances under the EU ETS;

(b) the previously submitted data included in the items referred to in sub-paragraph (a) was produced and verified in accordance with whichever of the following applied in relation to that previous submission—

(i) Commission Decision 2007/589/EC of 18 July 2007 establishing guidelines for the monitoring and reporting of greenhouse gas emissions pursuant to Directive 2003/87/EC of the European Parliament and of the Council(**a**);

(ii) the Monitoring and Reporting Regulation 2012 and the Verification Regulation 2012; and

(c) the applicant submits to the regulator a statement from the competent authority to which the data was submitted for the purpose of the application referred to in sub-paragraph (a) confirming that the data was not altered before the free allocation was calculated.

(6) An application under this article must be submitted to the regulator on or before 31st March 2021.

Processing of applications and calculation of aviation free allocation entitlement

34M.—(1) Where an application is made in accordance with article 34L, the regulator must submit to the UK ETS authority—

(a) the application and any related information the regulator holds; and

(b) a calculation of the applicant's aviation free allocation entitlement for each scheme year in the 2021-2025 allocation period, applying paragraphs (2) to (6).

(2) The number of allowances that make up an applicant's aviation free allocation entitlement for each scheme year in the 2021-2025 allocation period is 0.000642186914222035 multiplied by the applicant's historical aviation activity figure multiplied by the reduction factor for the scheme year.

(**a**) OJ No L 229, 31.8.2007, p. 1; this act was repealed by the Monitoring and Reporting Regulation 2012 (Article 76) so has no effect in relation to monitoring and reporting for years from 2013 onwards but the version as last amended by Commission Decision 2009/339/EC was applicable in relation to the submission of tonne-kilometre data from 2010.

(3) The applicant's "historical aviation activity figure" is the sum of all persons' historical aviation activity levels that are—

(a) attributable to the applicant immediately before 1st January 2021; and

(b) relied on for the purposes of the application.

(4) In determining whether and to what extent a person's historical aviation activity level is attributable to the applicant, it is permissible to have regard to whether the person's historical aviation activity level is relied on for the purposes of any other application under article 34L and, if so, to the information included in that application.

(5) For the purpose of this article, the reduction factor for a scheme year set out in column 1 of table B1 is the value set out in the corresponding entry in column 2.

Table B1

Column 1 *Scheme year*	*Column 2* *Reduction factor*
2021	0.978
2022	0.956
2023	0.934
2024	0.912
2025	0.89

(6) The result of each calculation referred to in paragraph (2) must be expressed as the nearest integer, taking 0.5 as nearest to the previous integer.

(7) The UK ETS authority must—

(a) approve the applicant's aviation free allocation entitlement, making any corrections to the calculation referred to in paragraph (1)(b) that the UK ETS authority considers appropriate;

(b) inform the regulator accordingly.

Aviation allocation table for 2021-2025 allocation period

34N.—(1) The UK ETS authority must compile an aviation allocation table for the 2021-2025 allocation period as soon as reasonably practicable after 31st March 2021.

(2) The aviation allocation table must contain an entry for each person with an aviation free allocation entitlement, as approved by the UK ETS authority under article 34M.

(3) The person's entry must set out—

(a) the person's full name and Eurocontrol Central Route Charges Office identification number;

(b) the person's aviation free allocation entitlement for each scheme year in the 2021-2025 allocation period.

(4) The UK ETS authority must update the aviation allocation table to take account of any approval of the UK ETS authority under article 34Q (transfers of allocations) or article 34R (errors in aviation allocation table).

(5) To avoid doubt, the UK ETS authority may update the aviation allocation table under paragraph (4) so as to increase or reduce the number of allowances to be allocated to a person for a scheme year after allowances have already been allocated to the person for the scheme year under article 34O. (See article 34T in relation to the return of allowances where the number of allowances to be allocated to a person for a scheme year is reduced after allowances for the scheme year have been allocated.)

(6) The UK ETS authority must notify the registry administrator of the aviation allocation table as soon as reasonably practicable after it is compiled and of an updated aviation allocation table as soon as reasonably practicable after it is updated.

(7) The UK ETS authority must publish the aviation allocation table as soon as reasonably practicable after it is compiled and must publish an updated aviation allocation table as soon as reasonably practicable after it is updated.

(8) Paragraph (7) is subject to article 75C (national security).

Aviation: allocation of allowances for 2021-2025 allocation period

34O.—(1) The registry administrator must allocate allowances in accordance with this article.

(2) Subject to paragraphs (3) to (8), allowances must be allocated in accordance with the aviation allocation table—

(a) for the 2021 scheme year, as soon as reasonably practicable after the aviation allocation table is published;

(b) for any other scheme year, on or before 28th February in that year.

(3) Allowances must not be allocated to a person unless and until the person has an aircraft operator holding account; they must be allocated by transferring them to that account.

(4) The regulator may, by notice to the registry administrator, require the registry administrator to withhold allowances that would otherwise have been allocated to a person for the 2022 scheme year or a subsequent scheme year if, in relation to the year before, the person was not an aircraft operator.

(5) If allowances for a scheme year are withheld from a person in accordance with paragraph (4) but the person becomes an aircraft operator in relation to that scheme year—

(a) the regulator must as soon as reasonably practicable, by further notice to the registry administrator, withdraw the notice under paragraph (4); and

(b) the allowances must be allocated as soon as reasonably practicable after the registry administrator receives the further notice.

(6) Where, after allowances for a scheme year have been allocated to a person, an update to the aviation allocation table results in an increase in the number of allowances to be allocated to the person for the scheme year, the increased number of allowances must be allocated as soon as reasonably practicable.

(7) Where a number of allowances ("N") has been allocated in accordance with this article for a scheme year in relation to which the person to whom they were allocated was not an aircraft operator, the regulator may give notice to the registry administrator requiring the registry administrator to deduct allowances from any allocation to be made to the person under this article until the sum of—

(a) the allowances so deducted; and

(b) allowances allocated for that scheme year that have been returned in accordance with a notice given under article 34U or 34V because the person was not an aircraft operator in relation to that scheme year,

is equal to N.

(8) Allowances may also be withheld under article 34W (notice to withhold allowances).

Permanent cessation of aviation activity

34P.—(1) This paragraph applies if the regulator is satisfied that—

(a) a person has ceased to perform aviation activity; and

(b) there is no realistic prospect that the person will resume aviation activity.

(2) Where paragraph (1) applies—

(a) the regulator must inform the UK ETS authority; and

(b) the UK ETS authority must update the aviation allocation table to record that the person has permanently ceased to perform aviation activity.

Transfers of aviation free allocation entitlement

34Q.—(1) This article applies where a person with an aviation free allocation entitlement has been subject to a business reorganisation affecting aviation activity that was relevant to the approval of the UK ETS authority under article 34M.

(2) The relevant transferee in relation to the aviation activity may apply to the regulator for a transfer of some or all the transferor's aviation free allocation entitlement.

(3) An application under paragraph (2) must—

(a) include evidence of the business reorganisation;

(b) identify what part of the aviation free allocation entitlement (expressed as a whole number of allowances) should be transferred to the applicant, justified by reference to the business reorganisation;

(c) include confirmation that each person who is a transferor or transferee in relation to aviation activity affected by the business reorganisation is aware of the application.

(4) Where an application is made in accordance with paragraph (3), the regulator must submit to the UK ETS authority—

(a) the application and any related information the regulator holds; and

(b) a calculation as to what part of the entitlement to free allocation (expressed as a whole number of allowances) should be transferred to the applicant, applying paragraphs (5) and (6).

(5) The aviation free allocation entitlement to be transferred is what would have been the transferee's aviation free allocation entitlement under article 34M in respect of aviation activity affected by the business reorganisation had the business reorganisation taken place before 1st January 2021, except that—

(a) for each complete scheme year before the business reorganisation took place, the aviation free allocation entitlement to be transferred is zero;

(b) for the scheme year in which the business reorganisation took place, what would have been the transferee's aviation free allocation entitlement is to be calculated as if article 34M(6) did not apply, then adjusted on a pro rata basis according to when the business reorganisation took place, with the result expressed as the nearest integer, taking 0.5 as nearest to the previous integer.

(6) In determining what part of the entitlement to free allocation should be transferred to the applicant, it is permissible to have regard to any application under this article and any representations made by a person who, in relation to aviation activity affected by the business reorganisation, is a transferor or transferee.

(7) The UK ETS authority must—

(a) approve the transfer of some or all of the transferor's free allocation entitlement to the transferee with effect from a specified date, making any corrections to the calculation referred to in paragraph (4)(b) that the UK ETS authority considers appropriate; and

(b) inform the regulator accordingly.

(8) The regulator must give notice to the applicant, and any person who has made representations for the purposes of paragraph (6), of the outcome of the application.

Errors in aviation allocation table

34R.—(1) This article applies where the regulator considers that, but for a relevant error, the number of allowances set out in the aviation allocation table as a person's aviation free allocation entitlement for a scheme year would be materially greater or materially less.

(2) In this article, "relevant error" means—

(a) an error in an application under article 34L or 34Q;

(b) an error of the regulator or the UK ETS authority in the exercise of functions under this Order (including under this article).

(3) The regulator must calculate the number of allowances that, in the regulator's opinion, make up the person's correct aviation free allocation entitlement for the scheme year.

(4) The regulator must send to the UK ETS authority—

(a) details of the relevant error;

(b) the calculation referred to in paragraph (3).

(5) If the UK ETS authority considers that but for the relevant error, the number of allowances set out in the aviation allocation table as the person's aviation free allocation entitlement for the scheme year would be materially greater or materially less, the UK ETS authority must—

(a) approve the person's aviation free allocation entitlement for the scheme year, making any corrections to the calculation referred to in paragraph (3) that the UK ETS authority considers appropriate; and

(b) inform the regulator accordingly.

(6) The regulator must give notice to the person of—

(a) the relevant error;

(b) the person's aviation free allocation entitlement for the scheme year as approved by the UK ETS authority under paragraph (5).

CHAPTER 3

Common provisions

Return of allowances: installations

34S.—(1) This article applies where—

(a) allowances are allocated under article 34E to a person in respect of an installation for a scheme year in accordance with an allocation table; and

(b) the final annual number of allowances set out in the allocation table to be allocated in respect of the installation for the scheme year is subsequently reduced in consequence of an update to the allocation table to take account of any approval of the UK ETS authority under a provision referred to in article 34C(1)(b) to (f).

(2) The regulator may give a notice under article 34U or 34V (or both).

(3) For the purposes of this Chapter, the person to whom the allowances are allocated is "not entitled" to any allowances which would not have been allocated in respect of the installation if the allocation table had been updated before the allocation of allowances referred to in paragraph (1)(a).

Return of allowances: aviation

34T.—(1) This article applies where—

(a) allowances are allocated under article 34O to a person for a scheme year in accordance with the aviation allocation table; and

(b) either—

(i) the number of allowances set out in the aviation allocation table to be allocated to that person for the scheme year is subsequently reduced in consequence of an update to the aviation allocation table; or

(ii) the person was not an aircraft operator in relation to the scheme year.

(2) The regulator may give a notice under article 34U or 34V (or both).

(3) For the purposes of this Chapter, the person to whom the allowances are allocated is "not entitled" to any allowances which—

(a) would not have been allocated if the aviation allocation table had been updated before the allocation of allowances referred to in paragraph (1)(a); or

(b) are allocated for a scheme year in relation to which the person is not an aircraft operator.

Return of allowances: notice to registry administrator

34U.—(1) A notice under this article is a notice to the registry administrator requiring the registry administrator to transfer allowances equal to the number of allowances to which a person is not entitled from the person's operator holding account or aircraft operator holding account to a central account.

(2) The notice must set out—

(a) the number of allowances to which the person is not entitled;

(b) the reason why the person is not entitled to the allowances;

(c) the operator and installation from whose operator holding account, or the person from whose aircraft operator holding account, the transfer must be made.

(3) The registry administrator—

(a) must comply with the notice to the extent that there are sufficient allowances in the person's account;

(b) may suspend other transfers from the account until the notice is complied with.

(4) Paragraph (3)(a) does not apply until the period for bringing an appeal against the notice under article 70 has expired or, if an appeal is brought, until the appeal is determined or withdrawn.

(5) Where the regulator gives a notice under this article to the registry administrator, the regulator must also give a copy of the notice to the person who is not entitled to the allowances.

Return of allowances: notice to operator, etc.

34V.—(1) A notice under this article is a notice to a person requiring the person to return allowances equal to the number of allowances to which the person is not entitled.

(2) The notice must set out—

(a) the number of allowances to which the person is not entitled;

(b) the reason why the person is not entitled to the allowances;

(c) the process by which the allowances must be returned;

(d) the date by which the allowances must be returned.

(3) The person to whom the notice is given must comply with the notice.

(4) Where a notice is given under this article to a transferring operator in respect of allowances to which the transferring operator is not entitled that were allocated before the transfer of a greenhouse gas emissions permit under paragraph 9 of Schedule 6 takes effect, the notice may provide for the transferring operator to transfer allowances to the new operator and for the process by which the allowances must be returned by the new operator;

and in such a case the notice must be given to the new operator as well as the transferring operator and both must comply with the notice.

(5) In paragraph (4), "new operator" and "transferring operator" have the meanings given in paragraph 7(5) of Schedule 6.

Notice to withhold allowances

34W.—(1) The regulator may, by notice (a "notice to withhold") to the registry administrator, require the registry administrator to withhold allowances that would otherwise have been allocated in respect of an installation under article 34E or to a person with an entry in the aviation allocation table under article 34O in any of the following circumstances—

(a) if the regulator is investigating whether the installation has ceased operation;

(b) if the operator of the installation has applied to surrender the installation's permit under paragraph 11 of Schedule 6 but the application has not yet been determined;

(c) if a surrender notice under that paragraph or a revocation notice under paragraph 12 of that Schedule has been given to the operator of the installation but the surrender or revocation of the permit has not yet taken effect;

(d) if an appeal against a revocation notice given to the operator of the installation has been made and has not been determined or withdrawn;

(e) if the regulator is assessing a renunciation notice given by the operator of the installation under Article 24 of the Free Allocation Regulation;

(f) if, following an application for the transfer of the installation's permit under paragraph 7 of Schedule 6, the regulator—

(i) considers that, if the application is granted, there may be a merger or split (as defined in Article 2(17) and (18) of the Free Allocation Regulation); or

(ii) is assessing the reports referred to in Article 25(3) of that Regulation;

(g) in a case where allowances have not already been allocated in respect of the installation for a scheme year, if the regulator is investigating whether, as a result of a relevant error (as defined in article 34H), the final annual number of allowances set out in the allocation table to be allocated in respect of the installation for the scheme year exceeds the number that would otherwise have been set out in the table but for the relevant error;

(h) if the regulator is investigating whether the person with an entry in the aviation allocation table has permanently ceased to perform aviation activity under article 34P;

(i) if the regulator is assessing an application under article 34Q for the transfer of some or all of the aviation free allocation entitlement of the person with an entry in the aviation allocation table;

(j) in a case where allowances have not already been allocated to a person for a scheme year under article 34O, if the regulator is investigating whether, but for a relevant error (as defined in article 34R), the number of allowances set out in the aviation allocation table as the person's aviation free allocation entitlement for the scheme year would be materially less.

(2) The notice to withhold must set out the installation referred to in paragraph (1)(a) to (g) or the person referred to in paragraph (1)(h) to (j).

(3) Where a notice to withhold is given, no allowances may be allocated in respect of the installation set out in the notice, or to the person set out in the notice, until a further notice under paragraph (4) is given.

(4) The regulator may by further notice to the registry administrator withdraw the notice to withhold at any time, and must do so as soon as reasonably practicable after the

circumstances for giving the notice to withhold no longer apply and, where relevant, the UK ETS authority has updated the allocation table in consequence of those circumstances.

(5) Where the regulator gives a notice to withhold, the regulator must also give notice to the operator of the installation set out in the notice to withhold, or to the person set out in the notice to withhold, setting out the reasons for giving the notice.

(6) Where the regulator gives a further notice under paragraph (4), the regulator must also give notice to the operator of the installation set out in the notice to withhold, or to the person set out in the notice to withhold, setting out any explanation that the regulator considers appropriate.".

Article 35 amended (charges)

19.—(1) Article 35 is amended as follows.

(2) In paragraph (1) after "regulator" in both places insert "or the registry administrator".

(3) In paragraph (2) after sub-paragraph (h) insert—

"(i) estimating the value of a parameter under article 34H(4) of this Order or Article 3(4) of the Activity Level Changes Regulation;

(j) administering an account in the registry.".

(4) In paragraph (4) after "regulator" insert "or the registry administrator".

(5) In paragraph (5) after "regulator" in both places insert "or, as the case may be, the registry administrator".

(6) In paragraph (6) after "regulator" insert "or the registry administrator".

(7) In paragraph (7) after "regulator" insert "or the registry administrator".

(8) In paragraph (8) for "The regulator is not" substitute "Neither the regulator nor the registry administrator is".

(9) After paragraph (8) insert—

"(9) In this article, a reference to this Order includes a reference to the Monitoring and Reporting Regulation 2018, the Verification Regulation 2018, the Free Allocation Regulation and the Activity Level Changes Regulation.".

Article 36 substituted and article 36A inserted

20. For article 36 substitute—

"Charging scheme: regulators

36.—(1) The regulator must publish a document (a "charging scheme") setting out the charges payable in accordance with article 35(1) or how they will be calculated.

(2) Before publishing a charging scheme, the regulator must—

(a) bring the proposals to the attention of persons likely to be affected by them;

(b) specify the period within which representations or objections to the proposals may be made.

(3) A charging scheme may not be published unless it has been approved by the appropriate national authority.

(4) Where a proposed charging scheme is submitted for approval under paragraph (3), the appropriate national authority—

(a) must consider any representations or objections made under paragraph (2)(b);

(b) may make such modifications to the proposals as the appropriate national authority considers appropriate.

(5) If the regulator proposes to revise a charging scheme in a material way, paragraphs (2) to (4) apply to the revised charging scheme.

(6) Paragraphs (2) to (5) do not apply in relation to a charging scheme published by the Secretary of State.

(7) In this article, "appropriate national authority" means—

(a) where the regulator is the Environment Agency, the Secretary of State;

(b) where the regulator is the chief inspector, the Department of Agriculture, Environment and Rural Affairs.

(c) where the regulator is SEPA, the Scottish Ministers;

(d) where the regulator is NRW, the Welsh Ministers.

Charging scheme: registry administrator

36A.—(1) The registry administrator must publish a document (a "charging scheme") setting out the charges payable in accordance with article 35(1) or how they will be calculated.

(2) Before publishing a charging scheme, the registry administrator must—

(a) bring the proposals to the attention of persons likely to be affected by them;

(b) specify the period within which representations or objections to the proposals may be made.

(3) A charging scheme may not be published unless it has been approved by the UK ETS authority.

(4) Where a proposed charging scheme is submitted for approval under paragraph (3), the UK ETS authority—

(a) must consider any representations or objections made under paragraph (2)(b);

(b) may make such modifications to the proposals as the UK ETS authority considers appropriate.

(5) If the registry administrator proposes to revise a charging scheme in a material way, paragraphs (2) to (4) apply to the revised charging scheme.".

Article 37 substituted

21. For article 37 substitute—

"Remittance of charges

37.—(1) The regulator must pay any charge received in accordance with a charging scheme under article 36 to the appropriate national authority (as defined in paragraph (7) of that article).

(2) Paragraph (1) does not apply to a charge received by the Secretary of State.

(3) The registry administrator must pay any charge received in accordance with a charging scheme under article 36A to the UK ETS authority.".

Article 39 amended (inspections)

22.—(1) Article 39 is amended as follows.

(2) In paragraph (1) after "this Order" insert ", the Monitoring and Reporting Regulation 2018, the Verification Regulation 2018, the Free Allocation Regulation or the Activity Level Changes Regulation".

Article 40 amended (powers of entry, etc.)

23.—(1) Article 40 is amended as follows.

(2) In paragraph (1)(d)(i) after "this Order" insert ", the Monitoring and Reporting Regulation 2018, the Verification Regulation 2018, the Free Allocation Regulation or the Activity Level Changes Regulation".

(3) In paragraph (2) after "this Order" insert ", the Monitoring and Reporting Regulation 2018, the Verification Regulation 2018, the Free Allocation Regulation or the Activity Level Changes Regulation".

Article 44 amended (enforcement notices)

24.—(1) Article 44 is amended as follows.

(2) In paragraph (2)(a)—

(a) in paragraph (i) after "this Order" insert ", except for Schedule 5A";

(b) after paragraph (ii) insert—

"(iii) the Verification Regulation 2018;

(iv) the Free Allocation Regulation;

(v) the Activity Level Changes Regulation.".

(3) After paragraph (2) insert—

"(2A) Where the registry administrator considers that a person has contravened, is contravening or is likely to contravene a requirement imposed on the person by or under Schedule 5A, the registry administrator may give notice (an "enforcement notice") to the person.".

(4) In paragraph (3)(a) after "regulator" insert ", or the requirement imposed by or under Schedule 5A that the registry administrator,".

(5) In paragraph (5) after "regulator" insert "or the registry administrator".

Article 49 amended (regulator must publish names of persons subject to civil penalty under article 52)

25.—(1) Article 49 is amended as follows.

(2) After paragraph (2) insert—

"(3) This article is subject to article 75C (national security).".

Article 65 amended (failure to comply with enforcement notice)

26.—(1) Article 65 is amended as follows.

(2) In the heading omit "given by regulator".

(3) In paragraph (1) omit "by the regulator".

Article 70 amended (right of appeal)

27.—(1) Article 70 is amended as follows.

(2) In paragraph (1)—

(a) in sub-paragraph (a) after "regulator" insert "or the registry administrator";

(b) for sub-paragraph (b) substitute—

"(b) a person who is aggrieved by a notice given—

(i) to the person under a provision referred to in paragraph (2);

(ii) to the registry administrator—

(aa) under article 34U in respect of the transfer of allowances from the person's operator holding account or aircraft operator holding account;

(bb) under article 34W(1) in respect of the withholding of allowances that would otherwise have been allocated in respect of an installation of which the person is the operator under article 34E or to the person under article 34O.".

(3) In paragraph (2)—

(a) after sub-paragraph (b) insert—

"(ba) article 34H(4) (notice of regulator's estimate of value of parameter);

(bb) article 34V (return of allowances: notice to operator, etc.);";

(b) in sub-paragraph (c) for "article 44(1)" substitute "article 44(1) or (2A)";

(c) after sub-paragraph (g) insert—

"(ga) paragraph 11(5) of Schedule 5A (notice suspending operator holding account);

(gb) paragraph 12(4) of Schedule 5A (notice suspending operator holding account on transfer);

(gc) paragraph 13(4) of Schedule 5A (notice suspending aircraft operator holding account);

(gd) paragraph 14(4)(b) of Schedule 5A (notice refusing to open trading account);

(ge) paragraph 16(7)(b) of Schedule 5A (notice refusing to appoint authorised representative);

(gf) paragraph 17(4)(b) of Schedule 5A (notice refusing to change account permission);

(gg) paragraph 18(2) of Schedule 5A (notice suspending access to registry of authorised representative);

(gh) paragraph 19(2) of Schedule 5A (notice removing authorised representative);

(gi) paragraph 25(3) of Schedule 5A (notice suspending account);

(gj) paragraph 29(4) of Schedule 5A (notice closing trading account);";

(d) after sub-paragraph (m) insert—

"(n) Article 8(6)(b) of the Free Allocation Regulation (notice rejecting monitoring methodology plan);

(o) Article 3(5) of the Activity Level Changes Regulation (notice of regulator's estimate of value of parameter in activity level report).".

(4) For paragraph (4) substitute—

"(4) To avoid doubt, no appeal may be brought under paragraph (1)(a) in respect of—

(a) a calculation of the regulator under article 34M(1)(b) or 34Q(5)(b);

(b) a preliminary assessment of the regulator under paragraph 5(3) of Schedule 7 or paragraph 3(3) of Schedule 8.".

Article 71 amended (appeal body)

28.—(1) Article 71 is amended as follows.

(2) After paragraph (3) insert—

"(4) For the purposes of determining the appeal body to which an appeal against a decision or notice of the registry administrator must be made, the decision or notice must be treated as the decision or notice of the person (or if more than one, any one of them) exercising the functions of the registry administrator in accordance with article 8A(2) to make the decision or give the notice, as set out in the decision or notice.".

Article 72 amended (effect of appeals)

29.—(1) Article 72 is amended as follows.

(2) In paragraph (1) for "paragraphs (2) to (4)" substitute "paragraphs (2) to (6)".

(3) In paragraph (2)(c)—

(a) after paragraph (i) insert—

"(ia) article 34W(1) (notice to withhold allowances);";

(b) in paragraph (ii) for "article 44(1)" substitute "article 44(1) or (2A)";

(c) after paragraph (ii) insert—

"(iia) paragraph 11(5) of Schedule 5A (notice suspending operator holding account);

(iib) paragraph 12(4) of Schedule 5A (notice suspending operator holding account on transfer);

(iic) paragraph 13(4) of Schedule 5A (notice suspending aircraft operator holding account);

(iid) paragraph 14(4)(b) of Schedule 5A (notice refusing to open trading account);

(iie) paragraph 16(7)(b) of Schedule 5A (notice refusing to appoint authorised representative);

(iif) paragraph 17(4)(b) of Schedule 5A (notice refusing to change account permission);

(iig) paragraph 18(2) of Schedule 5A (notice suspending access to registry of authorised representative);

(iih) paragraph 19(2) of Schedule 5A (notice removing authorised representative);

(iii) paragraph 25(3) of Schedule 5A (notice suspending account);

(iij) paragraph 29(4) of Schedule 5A (notice closing trading account);";

(d) after paragraph (v) insert—

"(vi) Article 8(6)(b) of the Free Allocation Regulation (notice rejecting monitoring methodology plan).".

(4) After paragraph (5) insert—

"(6) The bringing of an appeal against a notice under article 34U (return of allowances: notice to registry administrator) does not affect the registry administrator's power under paragraph (3)(b) of that article (power to suspend transfers from account).".

Article 73 amended (determination of appeals)

30.—(1) Article 73 is amended as follows.

(2) In paragraph (1)(d) after "regulator's" insert "or the registry administrator's".

Article 75 amended (information notices)

31.—(1) Article 75 is amended as follows.

(2) In paragraph (1)—

(a) for "or a regulator" substitute ", a regulator or the registry administrator";

(b) after sub-paragraph (c) insert—

"(d) the Free Allocation Regulation;

(e) the Activity Level Changes Regulation.".

Articles 75A to 75C inserted

32. After article 75 insert—

"National authority may require regulator, etc. to provide information

75A.—(1) The UK ETS authority or the relevant national authority may, by notice to a regulator or the registry administrator, require the regulator or registry administrator to provide any information that the UK ETS authority or relevant national authority considers necessary or expedient for the exercise of the authority's functions.

(2) The regulator or the registry administrator must comply with a notice under paragraph (1) so far as reasonably practicable.

Restriction on disclosing information

75B.—(1) This article applies to the following persons—

(a) the UK ETS authority;

(b) a national authority;

(c) a regulator;

(d) the registry administrator.

(2) A person to whom this article applies must not disclose information held or obtained under UK ETS legislation to another person.

(3) But paragraph (2) does not apply to the disclosure of information by the person in any of the following circumstances—

(a) if the disclosure is required by law;

(b) if the disclosure is necessary or expedient—

(i) for the exercise of the person's functions under UK ETS legislation;

(ii) for the purpose of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties;

(iii) in the case of a disclosure by a national authority—

(aa) for the purpose of monitoring and evaluating the effectiveness of the UK ETS;

(bb) for the purpose of preparing and publishing national energy and emissions statistics or the national inventory referred to in Article 4(1)(a) of the United Nations Framework Convention on Climate Change(**a**);

(iv) in the case of a disclosure by the Environment Agency, for the exercise of the Environment Agency's functions under the Emissions Performance Standard Regulations 2015(**b**);

(v) in the case of a disclosure by the chief inspector, for the exercise of the chief inspector's functions under the Emissions Performance Standard Monitoring and Enforcement Regulations (Northern Ireland) 2016(**c**);

(vi) in the case of a disclosure by NRW, for the exercise of NRW's functions under the Emissions Performance Standard (Enforcement) (Wales) Regulations 2015(**d**);

(**a**) Cm 2833. The Convention entered into force on 21st March 1994.
(**b**) S.I. 2015/933, amended by S.I. 2016/1108.
(**c**) S.R. 2016 No. 28, amended by S.R. 2018 No. 200.
(**d**) S.I. 2015/1388 (W. 137).

(c) if the disclosure is made with the consent of the person from or on behalf of whom the information was obtained;

(d) if the disclosure is to another person to whom this article applies.

(4) In this article, "UK ETS legislation" means any of the following—

(a) this Order;

(b) the Monitoring and Reporting Regulation 2018;

(c) the Verification Regulation 2018;

(d) the Free Allocation Regulation;

(e) the Activity Level Changes Regulation.

National security

75C.—(1) The UK ETS authority may not publish any information under article 34D (allocation tables: publication, etc.) or 34N (aviation allocation table) if the publication of the information would be contrary to the interests of national security.

(2) The regulator may not publish any information under article 49 (publication of names of persons subject to civil penalty under article 52) if the publication of the information would be contrary to the interests of national security.

(3) The UK ETS authority and the regulator must exercise functions under this article, and the registry administrator must exercise functions under a relevant provision, in accordance with a direction given by the Secretary of State under section 52 of CCA 2008 as to what is or is not contrary to the interests of national security.

(4) Except where the regulator is the Secretary of State, the regulator must notify the Secretary of State of any information excluded from publication under paragraph (2).

(5) The registry administrator must notify the Secretary of State of any matter excluded from a notice under a relevant provision on the grounds that its inclusion in the notice would be contrary to the interests of national security.

(6) In this article, "relevant provision" means any of the following provisions of Schedule 5A—

(a) paragraph 11(6) (operator holding accounts);

(b) paragraph 12(5) (transfer of operator holding accounts);

(c) paragraph 13(5) (aircraft operator holding accounts);

(d) paragraph 14(5) (trading accounts);

(e) paragraph 16(8) (appointment of authorised representatives);

(f) paragraph 17(5) (change in account permission of authorised representatives);

(g) paragraph 18(3) (suspension of access to registry of authorised representatives);

(h) paragraph 19(3) (removal of authorised representatives);

(i) paragraph 25(4) (suspension of accounts);

(j) paragraph 29(5) (closure of trading accounts).".

Article 77 amended (transitional provisions)

33.—(1) Article 77 is amended as follows.

(2) After paragraph (3) insert—

"(4) The Monitoring and Reporting Regulation 2018 and the Verification Regulation 2018 are to be read as if references, however expressed, to a report submitted or information obtained under Commission Implementing Regulation 2018/2067 in relation to a year or other period before 2021 were to a report submitted or other information obtained under that Regulation as it had effect in EU law or under the Verification Regulation 2012.

(5) A person referred to in paragraph (6) may—

(a) use information held or obtained for the purposes of the EU ETS in the exercise of the person's functions under UK ETS legislation;

(b) disclose such information in the exercise of the person's functions under UK ETS legislation—

(i) to another person referred to in paragraph (6);

(ii) to any other person, if the disclosure is necessary or expedient for the exercise of the person's functions under UK ETS legislation.

(6) The persons are—

(a) the Secretary of State;

(b) the Environment Agency;

(c) the chief inspector;

(d) SEPA;

(e) NRW.

(7) In this article, "UK ETS legislation" means any of the following—

(a) this Order;

(b) the Monitoring and Reporting Regulation 2018;

(c) the Verification Regulation 2018;

(d) the Free Allocation Regulation;

(e) the Activity Level Changes Regulation.".

Schedule 3 amended (applications, notices, etc.)

34.—(1) Schedule 3 is amended as follows.

Paragraph 1 amended (submission of applications, notices, etc. to regulators)

(2) In paragraph 1—

(a) after sub-paragraph (1)(a) insert—

"(aa) the Monitoring and Reporting Regulation 2018;

(ab) the Verification Regulation 2018;

(ac) the Free Allocation Regulation;

(ad) the Activity Level Changes Regulation;";

(b) in sub-paragraph (5) after "previous application made to the regulator" insert "(including an application under GGETSR 2012)";

(c) in sub-paragraph (11) for "as the regulator may require" substitute "as may be required".

Paragraph 2 amended (determination of applications by regulators)

(3) In paragraph 2(5), before sub-paragraph (a) insert—

"(za) article 34L (application for aviation free allocation entitlement);

(zb) article 34Q (application for transfer of aviation free allocation entitlement);".

Heading to Part 2 amended

(4) In the heading to Part 2 for "or UK ETS authority" substitute ", UK ETS authority or registry administrator".

Paragraph 3 amended (service of notices, etc.)

(5) In paragraph 3—

(a) after sub-paragraph (1)(c) insert—

"(d) the registry administrator.";

(b) in sub-paragraph (3)(b) after "service of notices or directions" insert "(including an address provided under GGETSR 2012)";

(c) after sub-paragraph (3) insert—

"(3A) A notice may be given by the registry administrator to a person who holds an account—

(a) in any of the ways set out in paragraph (3);

(b) by sending it by electronic means in the registry.";

(d) after sub-paragraph (6) insert—

"(7) In this paragraph and paragraph 4, a reference to this Order includes a reference to the Monitoring and Reporting Regulation 2018, the Verification Regulation 2018, the Free Allocation Regulation and the Activity Level Changes Regulation.".

Schedule 4 amended (modifications to Monitoring and Reporting Regulation 2018)

35.—(1) Schedule 4 is amended as follows.

(2) In the heading for "Commission Regulation (EU) 2018/2066" substitute "Monitoring and Reporting Regulation 2018".

(3) In paragraph 1—

(a) for "Commission Implementing Regulation (EU) 2018/2066" substitute "The Monitoring and Reporting Regulation 2018";

(b) after paragraph (a) insert—

"(aa) for "greenhouse gas emissions permit" in each place there were substituted "permit";".

(4) For paragraph 4(e) substitute—

"(e) after point (5), there were inserted—

"(5a) 'Implementing Regulation (EU) 2018/2067' or 'Commission Implementing Regulation (EU) 2018/2067' means the Verification Regulation 2018 (as defined in the 2020 Order);

(5b) 'monitoring plan' in relation to an aircraft operator, except in Articles 11 to 13 of this Regulation, means the aircraft operator's emissions monitoring plan as defined in article 4 of the 2020 Order;";".

(5) In paragraph 11 before sub-paragraph (a) insert—

"(za) for paragraph 1 there were substituted—

"**1.** The operator or aircraft operator must notify the regulator of:

(a) any significant modification (within the meaning of paragraph 3) of the monitoring plan at least 14 days before making the modification or, where this is not possible, as soon as reasonably practicable; and

(b) any other modification of the monitoring plan on or before 31 December in the year in which the modification is made.";".

(6) After paragraph 31 insert—

"**31A.** Article 72(1) is to be read as if for the first subparagraph there were substituted—

"Total annual emissions of each of the greenhouse gases CO_2, N_2O and PFCs shall be reported as rounded tonnes of CO_2 or $CO_{2(e)}$. The total annual emissions of the installation shall be calculated as the sum of these three rounded values.".".

(7) Omit paragraph 33(c).

(8) After paragraph 38(a) insert—

"(aa) in section 8, in subsection B, in calculation method B (overvoltage method) for "F_{CF2F6}" in both places there were substituted "F_{C2F6}";".

Schedule 5 substituted

36. For Schedule 5 substitute—

"SCHEDULE 5

Article 25

Modifications to Verification Regulation 2018

1. The Verification Regulation 2018 is to be read as if—

(a) for "…/…" in each place there were substituted "2019/331";

(b) for "competent authority" in each place there were substituted "regulator";

(c) Articles 56, 65 to 68, 74, 75, 78 and 79 were omitted;

(d) the words "This Regulation shall be binding in its entirety and directly applicable in all Member States", immediately following Article 79, were omitted,

and subject to the following additional modifications.

2. Article 1 is to be read as if—

(a) in the first subparagraph for "Directive 2003/87/EC" there were substituted "the 2020 Order, Delegated Regulation (EU) 2019/331 or Implementing Regulation (EU) 2019/1842";

(b) the second subparagraph were omitted.

3. Article 2 is to be read as if for "2019, reported pursuant to Article 14 of Directive 2003/87/EC" there were substituted "2021, reported pursuant to the 2020 Order and permits issued in accordance with it".

4. Article 3 is to be read as if—

(a) for the words before point (1) there were substituted—

"In this Regulation, references to Implementing Regulation (EU) 2018/2066 are to that Regulation as modified by the Greenhouse Gas Emissions Trading Scheme Order 2020 ("the modified MRR") and expressions used in both the modified MRR and this Regulation have the same meaning in this Regulation as they do in the modified MRR; in addition the following definitions apply for the purposes of this Regulation:";

(b) in point (2)—

(i) for "a national" there were substituted "the national";

(ii) for "harmonised standards, within the meaning of point 9 of Article 2 of Regulation (EC) No 765/2008," there were substituted "EN ISO 14065:2013(**a**)";

(c) in point (3)—

(i) for "a national" there were substituted "the national";

(ii) the words "or a natural person otherwise authorised, without prejudice to Article 5(2) of that Regulation," were omitted;

(d) after point (3) there were inserted—

(**a**) ISO 14065:2013 specifies principles and requirements for bodies that undertake validation or verification of greenhouse gas (GHG) assertions. It can be accessed at https://www.iso.org/standard/60168.html. A copy may be inspected at the Department for Business, Energy and Industrial Strategy, 1 Victoria Street, London SW1H 0ET.

"(3a) 'national accreditation body' means the national accreditation body of the United Kingdom appointed in accordance with Article 4(1) of Regulation (EC) 765/2008(**a**);";

(e) after point (4) there were inserted—

"(4a) 'Delegated Regulation (EU) 2019/331' means the Free Allocation Regulation (as defined in the 2020 Order);

(4b) 'Implementing Regulation (EU) 2019/1842' means the Activity Level Changes Regulation (as defined in the 2020 Order);";

(f) after point (6) there were inserted—

"(6a) 'annual activity level report' means a report submitted by an operator pursuant to Article 3(3) of Implementing Regulation (EU) 2019/1842;";

(g) for point (7) there were substituted—

"(7) 'operator's or aircraft operator's report' means the annual emission report to be submitted by the operator or aircraft operator pursuant to a permit issued in accordance with Schedule 6 or 7 to the 2020 Order or pursuant to article 33 of the 2020 Order, the baseline data report submitted by the operator pursuant to Article 4(2) of Delegated Regulation (EU) 2019/331, the new entrant data report submitted by the operator pursuant to Article 5(5) of that Regulation or the annual activity level report;";

(h) in point (13)—

(i) in paragraph (a) "greenhouse gas emissions" were omitted;

(ii) for paragraph (c) there were substituted—

"(c) for the purposes of verifying the baseline data report submitted by the operator pursuant to Article 4(2)(a) of Delegated Regulation (EU) 2019/331, the new entrant data report submitted by the operator pursuant to Article 5(5) of that Regulation or the annual activity level report, any act or omission of an act by the operator that is contrary to the requirements in the monitoring methodology plan;";

(i) in points (22) and (23) for "EU" in each place there were substituted "UK";

(j) in point (22) for "an" in the first place it occurs there were substituted "a";

(k) in point (26) for "a" in the second place it occurs there were substituted "the";

(l) after point (27) there were inserted—

"(27a) 'monitoring methodology plan' has the same meaning as in Delegated Regulation (EU) 2019/331;";

(m) after point (28) there were inserted—

"(28a) 'baseline period' has the same meaning as in Delegated Regulation (EU) 2019/331;";

(n) after point (29) there were inserted—

"(30) 'activity level reporting period' means the applicable period preceding the submission of the annual activity level report pursuant to Article 3(1) of Implementing Regulation (EU) 2019/1842.".

5. Article 4 is to be read as if—

(a) for the words from "the relevant harmonised standards" to "*European Union*" there were substituted "EN ISO 14065:2013";

(b) for "the applicable harmonised standards" there were substituted "those standards".

(**a**) Regulation (EC) 765/2008 is amended prospectively by S.I. 2019/696 with effect from IP completion day.

6. Article 5 is to be read as if for "bodies" there were substituted "body".

7. Article 6 is to be read as if for "or new entrant data report" there were substituted ", new entrant data report or annual activity level report".

8. Article 7 is to be read as if—

(a) in paragraph 3 for "competent authorities responsible for Directive 2003/87/EC" there were substituted "regulator";

(b) in paragraph 4—

(i) in point (a) for the words from "or in Annex IV" to the end there were substituted ", in Annex IV to Delegated Regulation (EU) 2019/331 or in Article 3(2) of Implementing Regulation (EU) 2019/1842, as appropriate;";

(ii) in point (b) "greenhouse gas emissions" were omitted;

(iii) in point (c) for "or new entrant data report" there were substituted ", new entrant data report or annual activity level report";

(c) in paragraph 5 for the words from "or with" to "that irregularity" there were substituted ", Delegated Regulation (EU) 2019/331 or Implementing Regulation (EU) 2019/1842, that irregularity";

(d) in paragraph 6 for the second subparagraph there were substituted—

"If the monitoring methodology plan has not been approved by the regulator pursuant to Article 8 of Delegated Regulation (EU) 2019/331 or is incomplete, or if significant modifications referred to in Article 9(5) of that Regulation have been made which have not been approved by the regulator, the verifier must advise the operator to obtain the necessary approval from the regulator.".

9. Article 10(1) is to be read as if—

(a) in point (a) "greenhouse gas emissions" were omitted;

(b) in point (h) for "or new entrant data report" there were substituted ", new entrant data report or annual activity level report";

(c) in point (i) for the words from "and annual" to the end there were substituted "under Directive 2003/87/EC and any previous allocation periods under the UK ETS, together with annual activity level reports of the previous years submitted to the competent authority for the purposes of Implementing Regulation (EU) 2019/1842";

(d) after point (k) there were inserted—

"(ka) if the monitoring methodology plan was modified, a record of all modifications in accordance with Article 9 of Delegated Regulation (EU) 2019/331;";

(e) in point (l) for "report referred to in Article 69(4)" there were substituted "reports referred to in Article 69(1) and (4)";

(f) after point (l) there were inserted—

"(la) where applicable, information on how the operator has corrected nonconformities or addressed recommendations of improvements that were reported in the verification report concerning an annual activity level report from the previous year or a relevant baseline data report;";

(g) in point (n) after "methodology plan" there were inserted "as well as corrections of reported data";

(h) in point (p)—

(i) for "Directive 2009/31/EC" there were substituted "the CCS licensing regime";

(ii) for "required by that Directive and the reports required by Article 14 of that Directive" there were substituted "and reports required by that regime".

10. Article 11(4) is to be read as if—

(a) in point (b) the words from "or" to the end were omitted;

(b) after point (b) there were inserted—

"(ba) whether there have been any modifications to the monitoring methodology plan during the baseline period or the activity level reporting period, as appropriate;";

(c) in point (c) for the words from "notified" to the end there were substituted "notified to and, if required, approved by the regulator pursuant to Part 4 of or Schedule 6 to the 2020 Order";

(d) in point (d) for the words from "point (b)" to the end there were substituted "point (ba) have been notified to and, if required, approved by the regulator pursuant to Schedule 6 to the 2020 Order".

11. Article 13(1)(c) is to be read as if for "or new entrant data report" there were substituted ", new entrant data report or annual activity level report".

12. Article 16(2) is to be read as if—

(a) in point (b) for "or new entrant data report" there were substituted ", new entrant data report or annual activity level report";

(b) in point (c) for "or new entrant data report" there were substituted ", new entrant data report or annual activity level report";

(c) in point (d) "listed in Annex I to Directive 2003/87/EC" were omitted;

(d) after point (f) there were inserted—

"(fa)for the purposes of verifying an annual activity level report, the accuracy of the parameters listed in Article 16(5), 19, 20, 21 or 22 of Delegated Regulation (EU) 2019/331 as well as data required under paragraphs 1, 2 and 4 of Article 6 of Implementing Regulation (EU) 2019/1842;".

13. Article 17 is to be read as if—

(a) in paragraph 3—

(i) in the words before point (a) for "or new entrant data report" there were substituted ", new entrant data report or annual activity level report";

(ii) in point (d) for "delegated acts adopted pursuant to Article 10b(5) of Directive 2003/87/EC" there were substituted "Commission Delegated Decision (EU) 2019/708";

(iii) at the end there were inserted—

"(e) whether the energy consumption has been correctly attributed to each sub-installation where applicable;

(f) whether the value of the parameters listed in Articles 16(5), 19, 20, 21 or 22 of Delegated Regulation (EU) 2019/331 is based on a correct application of that Regulation;

(g) for the purposes of verifying an annual activity level report and a new entrant data report, the date of start of normal operation as referred to in Article 5(5) of Delegated Regulation (EU) 2019/331;

(h) for the purposes of verifying an annual activity level report whether the parameters listed in points 2.3 to 2.7 of Annex IV to Delegated Regulation (EU) 2019/331, as appropriate to the installation, have been monitored and reported in the correct way in accordance with the monitoring methodology plan.";

(b) in paragraph 4 after "is not counted" there were inserted "as emitted";

(c) paragraph 5 were omitted.

14. Article 18 is to be read as if for paragraph 3 there were substituted—

"**3.** Where data gaps in baseline data reports, new entrant data reports or annual activity level reports have occurred, the verifier shall check whether methods are laid down in the monitoring methodology plan to deal with data gaps pursuant to Article 12 of Delegated Regulation (EU) 2019/331, whether those methods were appropriate for the specific situation and whether they have been applied correctly.

Where no applicable data gap method is laid down in the monitoring methodology plan, the verifier shall check whether the approach used by the operator to compensate for the missing data is based on reasonable evidence and ensures that the data required by Annex IV to Delegated Regulation (EU) 2019/331 or Article 3(2) of Implementing Regulation (EU) 2019/1842 are not underestimated or overestimated."
.

15. Article 21 is to be read as if—

(a) in paragraph 4 for "or new entrant data report" there were substituted ", new entrant data report or annual activity level report";

(b) in paragraph 5 for "or new entrant data report" there were substituted ", new entrant data report or annual activity level report".

16. Article 22 is to be read as if—

(a) in paragraph 1—

(i) in the first subparagraph for the words from "or Delegated" to "as appropriate" there were substituted ", Delegated Regulation (EU) 2019/331 or Implementing Regulation (EU) 2019/1842 as appropriate";

(ii) in the third subparagraph for the words from "or Delegated" to "has been identified" there were substituted ", Delegated Regulation (EU) 2019/331 or Implementing Regulation (EU) 2019/1842 has been identified";

(b) in paragraph 2 for the words from "or Delegated" to "that have" there were substituted ", Delegated Regulation (EU) 2019/331 or Implementing Regulation (EU) 2019/1842 that have";

(c) in paragraph 3 in the fourth subparagraph for the words from "or Delegated" to "in accordance" there were substituted ", Delegated Regulation (EU) 2019/331 or Implementing Regulation (EU) 2019/1842 in accordance".

17. Article 23(4) is to be read as if in the words before point (a) for "or new entrant data reports" there were substituted ", new entrant data reports or annual activity level reports".

18. Article 27 is to be read as if—

(a) in paragraph 1 in the words before point (a) for "or new entrant data report" there were substituted ", new entrant data report or annual activity level report";

(b) in paragraph 3—

(i) for point (f) there were substituted—

"(f) in the case of verification of a baseline data report or new entrant data report, unless the monitoring methodology plan has already been approved by the regulator, the verifier's confirmation that the monitoring methodology plan, so far as it is used as a basis for the report, is compliant with Delegated Regulation (EU) 2019/331;";

(ii) in point (g) for "per activity referred to in Annex 1 to Directive 2003/87/EC and per installation or aircraft operator" there were substituted "per regulated activity and per installation or per aviation activity and per aircraft operator";

(iii) after point (h) there were inserted—

"(ha) where it concerns the verification of the annual activity level report, aggregated annual verified data for each year in the activity level reporting period for each sub-installation for its annual activity level;";

(iv) in point (i) for "or baseline period" there were substituted ", baseline period or activity level reporting period";

(v) for point (o) there were substituted—

"(o) any issues of non-compliance with Implementing Regulation (EU) 2018/2066, Delegated Regulation (EU) 2019/331 or Implementing Regulation (EU) 2019/1842 which have become apparent during the verification;";

(vi) point (r) were omitted;

(vii) after point (s) there were inserted—

"(sa) where the verifier has observed relevant changes to the parameters listed in Article 16(5), 19, 20, 21 or 22 of Delegated Regulation (EU) 2019/331 or changes in the energy efficiency pursuant to paragraphs 1, 2 and 3 of Article 6 of Implementing Regulation 2019/1842, a description of those changes and related remarks;

(sb) where applicable, confirmation that the date of start of normal operation as referred to in Article 5(5) of Delegated Regulation (EU) 2019/331 has been checked;";

(viii) in point (t) for "EU" in both places there were substituted "UK";

(c) in paragraph 4—

(i) in the words before point (a), for "or Delegated" to "in sufficient detail" there were substituted ", Delegated Regulation (EU) 2019/331 or Implementing Regulation (EU) 2019/1842 in sufficient detail";

(ii) for point (a) there were substituted—

"(a) the size and nature of the misstatement, non-conformity or non-compliance with Implementing Regulation (EU) 2018/2066, Delegated Regulation (EU) 2019/331 or Implementing Regulation (EU) 2019/1842;";

(iii) for point (d) there were substituted—

"(d) to which Article in Implementing Regulation (EU) 2018/2066, Delegated Regulation (EU) 2019/331 or Implementing Regulation (EU) 2019/1842 the non-compliance relates.";

(d) paragraph 5 were omitted.

19. Article 28 is to be read as if point (e) were omitted.

20. Article 29 is to be read as if after paragraph 1 there were inserted—

"**1A.** For the purposes of the verification of the annual activity level report, the verifier shall assess whether the operator has corrected the non-conformities indicated in the verification report related to the corresponding baseline data report, the new entrant data report or the annual activity level report from the previous activity level reporting period.

If the operator has not corrected those non-conformities, the verifier shall consider whether the omission increases or may increase the risk of misstatements.

The verifier shall report in the verification report whether those non-conformities have been resolved by the operator.".

21. Article 30(1)(e) is to be read as if for "and new entrant reports" there were substituted ", new entrant data reports and annual activity level reports".

22. Article 31 is to be read as if—

(a) in paragraph 1—

(i) for "a" in the first place it occurs there were substituted "the";

(ii) in point (c) after "paragraph 3" there were inserted ", read with paragraph 3b,";

(b) in paragraph 3—

(i) in point (a) after "emission report" there were inserted "or annual activity level report";

(ii) in point (b) at the beginning there were inserted "for the purposes of verifying the operator's emission report,";

(iii) after point (b) there were inserted—

"(ba) for the purposes of verifying the operator's annual activity level report, if a verifier has not carried out a site visit during the verification of an annual activity level report or a baseline data report in the two activity level reporting periods immediately preceding the current activity level reporting period;";

(iv) after point (c) there were inserted—

"(ca) if, during the activity level reporting period, there have been significant changes to the installation or its sub-installations which require significant modifications to the monitoring methodology plan, including those changes referred to in Article 9(5) of Delegated Regulation (EU) 2019/331;";

(c) after paragraph 3 there were inserted—

"**3A.** The reference in point (b) of paragraph 3 to reporting periods immediately preceding the current reporting period includes reporting periods for the purposes of Directive 2003/87/EC.

3B. In respect of installations within Article 32(5), points (b) and (ba) of paragraph 3 apply as if, in each of those points, for "two" there were substituted "four".";

(d) for paragraph 4 there were substituted—

"**4.** Points (c) and (ca) of paragraph 3 are not applicable where, during the reporting period, there have been only modifications of the default value as referred to in Article 15(3)(h) of Implementing Regulation (EU) 2018/2066 or Article 9(5)(c) of Delegated Regulation (EU) 2019/331.".

23. Article 32 is to be read as if—

(a) in point (1) after "verification" there were inserted "of an operator's emission report";

(b) in point (2) after "verification" there were inserted "of an operator's emission report";

(c) in point (3) after "verification" there were inserted "of an operator's emission report";

(d) after point (3) there were inserted—

"(3a) the verification of an operator's annual activity level report concerns a category A installation referred to in Article 19(2)(a) of Implementing Regulation (EU) 2018/2066, a category B installation referred to in Article 19(2)(b) of that Implementing Regulation or an installation with low emissions as referred to in Article 47(2) of that Implementing Regulation and:

(a) that installation's only sub-installation is one to which a product benchmark pursuant to Article 10(2) of Delegated Regulation (EU) 2019/331 is applicable; and

(b) the production data relevant for the product benchmark has been evaluated as part of an audit for financial accounting purposes and the operator provides evidence of that;

(3b) the verification of an operator's annual activity level report concerns a category A installation referred to in Article 19(2)(a) of Implementing Regulation (EU) 2018/2066, a category B installation referred to in Article 19(2)(b) of that Implementing Regulation or an installation with low emissions as referred to in Article 47(2) of that Implementing Regulation and:

(a) the installation has no more than two sub-installations;

(b) if the installation has two sub-installations, one contributes less than 5% to the installation's total final allocation of allowances; and

(c) the verifier has sufficient data available to assess the split of sub-installations if relevant;

(3c) the verification of an operator's annual activity level report concerns a category A installation referred to in Article 19(2)(a) of Implementing Regulation (EU) 2018/2066, a category B installation referred to in Article 19(2)(b) of that Implementing Regulation or an installation with low emissions as referred to in Article 47(2) of that Implementing Regulation and:

(a) the installation has only heat benchmark or district heating sub-installations; and

(b) the verifier has sufficient data available to assess the split of sub-installations if relevant;";

(e) in point (4)—

(i) in the words before point (a) after "verification" there were inserted "of the operator's emission report or annual activity level report";

(ii) in paragraph (c) after "2018/2066" there were inserted "or Article 11 of Delegated Regulation (EU) 2019/331";

(f) in point (5)—

(i) in the words before point (a) after "verification" there were inserted "of the operator's emission report or annual activity level report";

(ii) in paragraph (b) after "2018/2066" there were inserted "or Article 11 of Delegated Regulation (EU) 2019/331";

(g) at the end there were inserted—

"Point (3b) may not be applied if the sub-installation contributing 95% or more to the installation's total final allocation of allowances is a sub-installation to which a product benchmark pursuant to Article 10(2) of Delegated Regulation (EU) 2019/331 is applicable, unless the production data relevant for the product benchmark has been evaluated as part of an audit for financial accounting purposes and the operator provides evidence of that.".

24. The Verification Regulation 2018 is to be read as if after Article 34 there were inserted—

"Article 34a

Virtual site visits because of force majeure

Where serious, extraordinary and unforeseeable circumstances, outside the control of the operator or aircraft operator, prevent the verifier from carrying out a physical site visit in accordance with Article 21(1) and where these circumstances cannot, after using all reasonable efforts, be overcome, the verifier may decide, subject to the approval of the regulator in accordance with the second and third subparagraph of this Article, to carry out a virtual site visit. The verifier shall take measures to reduce the verification risk to an acceptable level and carry out a physical visit to the site of

the installation or aircraft operator without undue delay. The decision to carry out a virtual site visit shall be based on the outcome of the risk analysis and after determining that the conditions for carrying out a virtual site visit are met. The verifier shall inform the operator or aircraft operator thereof without undue delay.

The operator or the aircraft operator shall submit an application to the regulator requesting the regulator to approve the verifier's decision to carry out a virtual site visit.

On an application submitted by the operator or aircraft operator concerned, the regulator shall decide whether to approve the verifier's decision to carry out a virtual site visit, taking into consideration all of the following elements:

(a) evidence that it is not possible to carry out a physical site visit because of the force majeure circumstances;

(b) the information provided by the verifier on the outcome of the risk analysis;

(c) information on how the virtual site visit will be carried out;

(d) evidence that measures are taken to reduce the verification risk to an acceptable level.".

25. Article 36 is to be read as if—

(a) in paragraphs 2(b) and 6 for "EU" in each place there were substituted "UK";

(b) in paragraph 6 for "an" there were substituted "a".

26. Article 37 is to be read as if—

(a) in paragraph 2 for "an" there were substituted "a";

(b) in paragraphs 2 and 6 for "EU" in each place there were substituted "UK";

(c) in paragraph 5—

(i) in the first subparagraph the second sentence were omitted;

(ii) in the second subparagraph for "and new entrant data reports" there were substituted ", new entrant data reports or annual activity level reports".

27. Article 38 is to be read as if—

(a) for "EU ETS" in each place (including the heading) there were substituted "UK ETS";

(b) in paragraph 1 in the words before point (a), for "An" there were substituted "A";

(c) for paragraph 1(a) there were substituted—

"(a) knowledge of the 2020 Order, Implementing Regulation (EU) 2018/2066, Delegated Regulation (EU) 2019/331 and Implementing Regulation (EU) 2019/1842 in the case of verification of the baseline data report, new entrant data report or annual activity level report, this Regulation, relevant standards, and other relevant legislation and applicable guidelines;";

(d) in paragraph 2—

(i) for "An" there were substituted "A";

(ii) for "an" there were substituted "a".

28. Article 39(2) is to be read as if for "an EU" there were substituted "a UK".

29. Article 40 is to be read as if for "EU" in each place there were substituted "UK".

30. Article 41 is to be read as if "harmonised" were omitted in both places.

31. Article 42 is to be read as if "harmonised" were omitted in both places.

32. Article 43 is to be read as if—

(a) in paragraph 1 at the end there were inserted "or under the trading scheme established by the 2020 Order";

(b) in paragraphs 2, 5 and 6 "harmonised" were omitted in each place;

(c) after paragraph 6 there were inserted—

"**6A.** When verifying the same operator or aircraft operator as in the previous year, the verifier shall consider the risk to impartiality and take measures to reduce the risk to impartiality.";

(d) in paragraph 7 for "EU" in both places there were substituted "UK";

(e) at the end there were inserted—

"**8.** If the UK ETS lead auditor undertakes verifications of emissions or allocation data for an installation in respect of five consecutive years beginning with 2021 or a subsequent year, then the UK ETS lead auditor may not undertake such verifications for that installation in respect of any of the next three years.".

33. Article 45 is to be read as if, in the words before point (a), for "each" there were substituted "the".

34. Article 46(1) is to be read as if "harmonised" were omitted.

35. Article 47 is to be read as if—

(a) in paragraph 1 for "each" there were substituted "the";

(b) in paragraph 2 "harmonised" were omitted.

36. Article 48 is to be read as if in each of paragraphs 1 and 2 "harmonised" were omitted.

37. Article 49 is to be read as if "harmonised" were omitted in both places.

38. Article 50 is to be read as if—

(a) in paragraph 3 "harmonised" were omitted;

(b) paragraph 5 were omitted.

39. Article 51(2) is to be read as if "harmonised" were omitted.

40. Article 52(2) is to be read as if "harmonised" were omitted.

41. Article 54(4) is to be read as if for "Member States" there were substituted "The national accreditation body".

42. Article 55 is to be read as if—

(a) in paragraph 1 for the words from "national accreditation bodies" to the end there were substituted "national accreditation body";

(b) paragraphs 2 to 5 were omitted;

(c) in paragraph 6 "harmonised" were omitted.

43. Article 57(4) is to be read as if "harmonised" were omitted.

44. Article 59(1) is to be read as if—

(a) in point (a) for "harmonised standard pursuant to Regulation (EC) No 765/2008" there were substituted "standard";

(b) in point (b) for the words from "Directive 2003/87/EC" to "where" there were substituted "the 2020 Order, Implementing Regulation (EU) 2018/2066, Delegated Regulation (EU) 2019/331 and Implementing Regulation 2019/1842 where".

45. Article 60(2)(a) is to be read as if for the words from "Directive 2003/87/EC" to "where" there were substituted "the 2020 Order, Implementing Regulation (EU) 2018/2066, Delegated Regulation (EU) 2019/331 and Implementing Regulation 2019/1842 where".

46. Article 63(2) is to be read as if for "harmonised standard pursuant to Regulation (EC) No 765/2008" there were substituted "standard".

47. Article 69 is to be read as if—

(a) in paragraph 1—

(i) for "Member States" there were substituted "The regulator";

(ii) the words from "in accordance with Article 74(1)" to the end were omitted;

(b) in paragraph 2 "in accordance with Article 74(2) of Implementing Regulation (EU) 2018/2066" were omitted.

48. Article 70 is to be read as if—

(a) in paragraph 1—

(i) for "Member State" there were substituted "UK ETS authority";

(ii) for "their" there were substituted "the";

(iii) ", or where applicable, the national authority entrusted with the certification of verifiers," were omitted;

(b) in paragraph 2—

(i) for the words from "Where" to "competent authorities" there were substituted "The Environment Agency or such other regulator as may be designated by the UK ETS authority from time to time is";

(ii) after "information" there were inserted "for the purposes of this Chapter".

49. Article 71 is to be read as if—

(a) in paragraph 1 in the words before point (a)—

(i) "of each Member State" were omitted;

(ii) for "that" in the first place it occurs there were substituted "the";

(iii) for "those Member States" there were substituted "the United Kingdom";

(b) paragraph (1)(d) were omitted;

(c) in paragraph 3—

(i) in the words before point (a), for "that" in the second place it occurs there were substituted "the";

(ii) in point (a) for "that" in the second place it occurs there were substituted "the".

50. Article 72 is to be read as if—

(a) for "a national" there were substituted "the national";

(b) for the words from "following parties" to the end there were substituted "regulator".

51. Article 73(1) is to be read as if—

(a) for "of the Member State where the verifier is carrying out the verification" there were substituted "of the operator of an installation or of an aircraft operator whose data is verified by a verifier";

(b) "which has accredited that verifier" were omitted.

52. Article 76 is to be read as if—

(a) in paragraph 1—

(i) for "National accreditation bodies, or where applicable national authorities referred to in Article 55(2)," there were substituted "The national accreditation body";

(ii) "other national accreditation bodies," were omitted;

(iii) for "competent authorities" there were substituted "regulators";

(iv) the second subparagraph were omitted;

(b) in paragraph 2(a) for "that" there were substituted "the";

(c) paragraph 2(b) were omitted.

53. Article 77(1)(b) is to be read as if for "or new entrant data reports" there were substituted ", new entrant data reports or annual activity level reports".

54. Annex 1 is to be read as if—

(a) in the words before the table the words from "pursuant to Annex I" to the end were omitted;

(b) in the table—

(i) in the entry for group 10 for "Directive 2003/87/EC" there were substituted "the 2020 Order";

(ii) in the entries for groups 10 and 11 for "Directive 2009/31/EC" in each place there were substituted "the CCS licensing regime";

(iii) in the entry for group 98 for "Article 10a of Directive 2003/87/EC" there were substituted "Part 4A of the 2020 Order, Delegated Regulation (EU) 2019/331 or Implementing Regulation (EU) 2019/1842";

(iv) the entry for group 99 were omitted.

55. Annex 2 is to be read as if for "the harmonised standard pursuant to Regulation (EC) No 765/2008" there were substituted "EN ISO 14065:2013".

56. Annex 3 is to be read as if for "the harmonised standard pursuant to Regulation (EC) No 765/2008" there were substituted "EN ISO/IEC 17011:2017(**a**)".".

Schedule 5A inserted

37. After Schedule 5 insert—

"SCHEDULE 5A

Article 25A

Registry

PART 1

Preliminary

Interpretation

1. In this Schedule—

"account permission" has the meaning given in paragraph 16(4);

(**a**) ISO/IEC 17011:2017 specifies requirements for the competence, consistent operation and impartiality of accreditation bodies assessing and accrediting conformity assessment bodies. It can be accessed at: https://www.iso.org/standard/67198.html. A copy may be inspected at the Department for Business, Energy and Industrial Strategy, 1 Victoria Street, London SW1H 0ET.

"Auctioning Regulations" means regulations under section 96 of the Finance Act 2020(**a**);

"authorised representative" means an authorised representative appointed for an account under paragraph 16;

"operational authorised representative" has the meaning given in paragraph 16(11);

"serious offence" means—

(a) an offence specified, or falling within a description specified, in Schedule 1 to the Serious Crime Act 2007(**b**);

(b) an offence under the law of a country or territory outside the United Kingdom which, if committed in or as regards any part of the United Kingdom, would be an offence referred to in paragraph (a);

(c) conduct which facilitates the commission by another person of an offence referred to in paragraph (a) or (b), whether the conduct takes place in the United Kingdom or elsewhere;

"working day" means any day other than—

(a) Saturday, Sunday, Good Friday or Christmas Day;

(b) a bank holiday in any part of the United Kingdom under the Banking and Financial Dealings Act 1971(**c**).

Submission of applications, etc. to registry administrator

2.—(1) An application, notice, instruction or request to the registry administrator under this Order must be in writing and must be given to the registry administrator in any of the following ways—

(a) by sending it to a postal or email address provided by the registry administrator for that purpose;

(b) by sending it by electronic means in the registry;

(c) by any other means permitted by the registry administrator.

(2) A charge that is required to be paid to the registry administrator must be paid by making payment to a postal address or an account provided by the registry administrator for that purpose.

Account holders: fit and proper person

3. When assessing for the purposes of this Schedule whether an account holder or prospective account holder is a fit and proper person to hold an account of a particular type, the registry administrator may take account of any information or factors that the registry administrator considers relevant, including in particular—

(a) where the account holder or prospective account holder is an individual, whether the account holder or prospective account holder is under investigation for, or has been convicted in the preceding 5 years of, a serious offence;

(**a**) 2020 c. 14.

(**b**) 2007 c. 27. Schedule 1 to that Act has been amended by Schedule 22 to the Marine and Coastal Access Act 2009 (c. 23); paragraph 101 of Schedule 7 to the Taxation (International and Other Provisions) Act 2010 (c. 8); paragraph 14 of Schedule 1 to the Bribery Act 2010 (c. 23); paragraph 142 of Schedule 9 to the Protection of Freedoms Act 2012 (c. 9); paragraph 7 of Schedule 4, and Schedule 5, to the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 (c. 2); section 47 of, and paragraph 31 of Schedule 1 and paragraph 81 of Schedule 4 to, the Serious Crime Act 2015 (c. 9); paragraph 7 of Schedule 5 to the Modern Slavery Act 2015 (c. 30); paragraph 8 of Schedule 5 to the Psychoactive Substances Act 2016 (c. 2); section 151 of the Policing and Crime Act 2017 (c. 3); section 51 of the Criminal Finances Act 2017 (c. 22); paragraph 5 of Schedule 3 to the Sanctions and Anti-Money Laundering Act 2018 (c. 13); section 14 of the Counter-Terrorism and Border Security Act 2019 (c. 3); and regulation 3 of S.I. 2019/1354.

(**c**) 1971 c. 80. Schedule 1 to that Act has been amended by section 1 of the St Andrew's Day Bank Holiday (Scotland) Act 2007 (asp 2).

(b) where the account holder or prospective account holder is a body corporate, whether a person with significant control of the body corporate is under investigation for, or has been convicted in the preceding 5 years of, a serious offence;

(c) whether the registry administrator considers that the account may be used in relation to the commission of an offence under the law of any part of the United Kingdom or a country or territory outside the United Kingdom.

Authorised representatives: fit and proper person

4. When assessing for the purposes of this Schedule whether an individual is a fit and proper person to be an authorised representative, the registry administrator may take account of any information or factors that the registry administrator considers relevant, including in particular—

(a) whether the individual is under investigation for, or has been convicted in the preceding 5 years of, a serious offence;

(b) whether the registry administrator considers that the individual may use the account in relation to the commission of an offence under the law of any part of the United Kingdom or a country or territory outside the United Kingdom;

(c) whether the appointment of the individual as an authorised representative would create a conflict of interest.

PART 2

Establishment and operation of registry

Registry

5.—(1) The UK ETS authority must establish an electronic system (the "registry") for the purposes of the UK ETS, in particular, to keep track of—

(a) operators of installations and aircraft operators participating in the UK ETS;

(b) allowances held by persons and the allocation and transfer of allowances;

(c) reportable emissions of installations and aviation emissions of aircraft operators;

(d) the surrender of allowances by operators and aircraft operators in accordance with articles 27 and 34.

(2) The UK ETS authority must ensure that the registry is established so as to allow for—

(a) the following types of account in which allowances may be held—

(i) central accounts (see paragraph 9);

(ii) an auction delivery account (see paragraph 10);

(iii) operator holding accounts for installations (see paragraph 11);

(iv) aircraft operator holding accounts (see paragraph 13);

(v) trading accounts (see paragraph 14);

(b) individuals to be appointed as authorised representatives for accounts with access to the registry to perform actions in relation to accounts on behalf of account holders.

Operation of registry

6.—(1) The registry administrator must operate the registry and for that purpose may, in particular—

(a) establish administrative arrangements and rules for the operation of the registry;

(b) take such actions the registry administrator considers necessary to ensure the proper functioning and good administration of the registry;

(c) perform actions in relation to accounts in accordance with instructions from account holders.

(2) In the operation of the registry, the registry administrator must, as soon as reasonably practicable and to the extent possible, comply with a notice or instruction given under this Order by the UK ETS authority or a regulator.

Suspension of registry due to security concerns

7.—(1) The UK ETS authority or the registry administrator may suspend access to the registry if the UK ETS authority or the registry administrator considers that—

(a) a security breach has occurred; or

(b) there is a significant risk that a security breach will occur.

(2) Where access to the registry is suspended, the UK ETS authority or, as the case may be, the registry administrator must, as soon as reasonably practicable after the suspension takes effect, inform—

(a) each regulator;

(b) if the UK ETS authority suspends access to the registry, the registry administrator;

(c) if the registry administrator suspends access to the registry, the UK ETS authority.

(3) The UK ETS authority must, as soon as reasonably practicable and in any event within 2 working days beginning with the day (the "relevant day") on which the UK ETS authority suspends access to the registry or is informed of a suspension under sub-paragraph (2)(c) or, if the relevant day is not a working day, within 2 working days beginning with the first working day after the relevant day consider whether the suspension should remain in place and—

(a) if the UK ETS authority considers the suspension should remain in place, inform each regulator and the registry administrator that the suspension will remain in place; or

(b) if the UK ETS authority considers the suspension should be lifted—

(i) lift the suspension or instruct the registry administrator to lift the suspension;

(ii) inform each regulator and, where the UK ETS authority lifts the suspension, the registry administrator that the suspension has been lifted.

(4) Where the suspension remains in place in accordance with sub-paragraph (3)(a), the UK ETS authority must, as soon as reasonably practicable after the UK ETS authority considers that the circumstances giving rise to the suspension no longer exist—

(a) lift the suspension or instruct the registry administrator to lift the suspension;

(b) inform each regulator and, where the UK ETS authority lifts the suspension, the registry administrator that the suspension has been lifted.

Suspension of registry for technical reasons

8.—(1) The UK ETS authority may suspend access to the registry for technical reasons.

(2) Where the suspension is unscheduled (for example, because a technical issue needs to be addressed immediately), the UK ETS authority must inform each regulator and the registry administrator as soon as reasonably practicable after the suspension takes effect.

(3) Where the suspension is scheduled, the UK ETS authority must inform each regulator and the registry administrator as soon as reasonably practicable and in any event at least 2 working days before the suspension takes effect.

(4) Where, after a suspension, the UK ETS authority considers that the reason for the suspension no longer exists, the UK ETS authority must as soon as reasonably practicable—

(a) lift the suspension;

(b) inform each regulator and the registry administrator that the suspension has been lifted.

PART 3

Accounts

CHAPTER 1

Opening accounts

Central accounts

9.—(1) The UK ETS authority may open accounts in the name of the UK ETS authority for the purposes of the UK ETS, in particular—

(a) a total quantity account (for the creation of allowances under article 18);

(b) an allocation account (to hold allowances to be allocated under Part 4A);

(c) a new entrants' reserve account (to keep track of the new entrants' reserve referred to in article 34G);

(d) an auction account (to hold allowances to be auctioned under the Auctioning Regulations);

(e) a market stability mechanism account (to hold excess allowances unsold at auctions under the Auctioning Regulations);

(f) a deletion account (to hold allowances deleted under paragraph 23);

(g) a surrender account (to hold allowances surrendered under paragraph 24);

(h) one or more general holding accounts (to hold allowances transferred from accounts before closure under paragraph 30).

(2) An account held by the UK ETS authority is a "central account".

Auction delivery account

10.—(1) Where a recognised auction platform is appointed to auction allowances under the Auctioning Regulations, the UK ETS authority must, as soon as reasonably practicable, instruct the registry administrator to open an auction delivery account in the name of the recognised auction platform.

(2) The recognised auction platform must as soon as reasonably practicable after appointment under the Auctioning Regulations submit to the registry administrator—

(a) the charge for opening the account set out in the charging scheme published under article 36A;

(b) applications under paragraph 16 to appoint at least 2 individuals as operational authorised representatives for the account with account permissions such that they are together able to propose and approve all types of action in relation to the account.

(3) The registry administrator may, by notice to the UK ETS authority or the recognised auction platform, require the UK ETS authority or the recognised auction platform to provide, in the form specified in the notice, such information as the registry administrator considers necessary to open the account.

(4) As soon as reasonably practicable after receiving the charge required under sub-paragraph (2)(a) and any information required under sub-paragraph (3) and at least 2 operational authorised representatives with the account permissions referred to in sub-paragraph (2)(b) have been appointed for the account, the registry administrator must open the account.

(5) In this paragraph, "recognised auction platform" means a recognised investment exchange in relation to which a recognition order under the Recognised Auction Platform Regulations 2011(**a**) is in force.

(6) In sub-paragraph (5), "recognised investment exchange" means an investment exchange in relation to which a recognition order under section 290 of the Financial Services and Markets Act 2000(**b**) is in force.

Operator holding accounts

11.—(1) This paragraph applies where the regulator—

(a) issues a greenhouse gas emissions permit for an installation under paragraph 3 of Schedule 6;

(b) grants an application for the partial transfer of a greenhouse gas emissions permit under paragraph 9 of Schedule 6;

(c) converts an installation's hospital or small emitter permit into a greenhouse gas emissions permit under paragraph 24(2) or 26(3) of Schedule 7; or

(d) converts an installation's permit (within the meaning of GGETSR 2012) into a greenhouse gas emissions permit under paragraph 1(4)(a) of Schedule 11.

(2) The regulator must, as soon as reasonably practicable—

(a) instruct the registry administrator to open an operator holding account for the installation in the name of the operator of the installation or, where sub-paragraph (1)(b) applies, for the installation consisting of the transferred units (as defined in paragraph 8(1) of Schedule 6) in the name of the new operator (as defined in paragraph 7(1) of that Schedule); or

(b) inform the registry administrator that a new operator holding account is not required.

(3) Where sub-paragraph (2)(a) applies, the registry administrator may, by notice to the operator or the regulator, require the operator or the regulator to provide, in the form specified in the notice, such information as the registry administrator considers necessary to—

(a) open the account; and

(b) assess whether the operator is a fit and proper person to hold an operator holding account.

(4) As soon as reasonably practicable after receiving an instruction under sub-paragraph (2)(a) and any information required under sub-paragraph (3), the registry administrator must assess whether the operator is a fit and proper person to hold an operator holding account and—

(a) if the registry administrator considers that the operator is a fit and proper person to hold an operator holding account, open the account; or

(b) if the registry administrator does not consider that the operator is a fit and proper person to hold an operator holding account, open, and immediately suspend, the account, imposing the restriction set out in paragraph 25(2)(b) or (c) (or both).

(**a**) S.I. 2011/2699, amended by S.I. 2012/1906, 2013/429, 2013/642, 2013/3115, 2016/680 and 2017/1064.

(**b**) 2000 c. 8. Section 290 has been amended by paragraph 6 of Schedule 8 to the Financial Services Act 2012 (c. 21) and S.I. 2007/126, 2013/504, 2017/701 and 2017/1064 and is amended prospectively by S.I. 2019/662 with effect from IP completion day.

(5) The registry administrator must give notice to the operator and the regulator of a decision to open and suspend an account under sub-paragraph (4)(b).

(6) A notice under sub-paragraph (5) must include the reason for the suspension unless the registry administrator considers that its inclusion might prejudice the investigation or prosecution of an offence under the law of any part of the United Kingdom or a country or territory outside the United Kingdom or would be contrary to the interests of national security.

(7) Where, after a suspension under sub-paragraph (4)(b), the registry administrator subsequently considers that the operator is a fit and proper person to hold an operator holding account, the registry administrator must, as soon as reasonably practicable—

(a) lift the suspension;

(b) give notice to the operator and the regulator that the suspension has been lifted.

Transfer of operator holding accounts

12.—(1) Where the regulator grants an application for the transfer (other than a partial transfer) of an installation's greenhouse gas emissions permit under paragraph 9 of Schedule 6, the regulator must, as soon as reasonably practicable—

(a) instruct the registry administrator to transfer the operator holding account for the installation held in the name of the transferring operator (as defined in paragraph 7(1) of Schedule 6) to the new operator (as defined in that sub-paragraph);

(b) instruct the registry administrator to—

(i) open an operator holding account for the installation in the name of the new operator; and

(ii) close the operator holding account held in the name of the transferring operator; or

(c) inform the registry administrator that no action under paragraph (a) or (b) is required.

(2) Where paragraph (1)(a) or (b) applies, the registry administrator may, by notice to the new operator or the regulator, require the new operator or the regulator to provide, in the form specified in the notice, such information as the registry administrator considers necessary to—

(a) transfer or, as the case may be, open the account; and

(b) assess whether the new operator is a fit and proper person to hold an operator holding account.

(3) As soon as reasonably practicable after receiving an instruction under sub-paragraph (1)(a) or (b) and any information required under sub-paragraph (2), the registry administrator must assess whether the new operator is a fit and proper person to hold an operator holding account and—

(a) if the registry administrator considers that the new operator is a fit and proper person to hold an operator holding account, transfer or, as the case may be, open the account; or

(b) if the registry administrator does not consider that the new operator is a fit and proper person to hold an operator holding account—

(i) transfer or, as the case may be, open the account; and

(ii) immediately suspend the account, imposing the restriction set out in paragraph 25(2)(b) or (c) (or both).

(4) The registry administrator must give notice to the new operator and the regulator of a decision to transfer or, as the case may be, open and suspend an account under sub-paragraph (3)(b).

(5) A notice under sub-paragraph (4) must include the reason for the suspension unless the registry administrator considers that its inclusion might prejudice the investigation or prosecution of an offence under the law of any part of the United Kingdom or a country or territory outside the United Kingdom or would be contrary to the interests of national security.

(6) Where, after a suspension under sub-paragraph (3)(b), the registry administrator subsequently considers that the new operator is a fit and proper person to hold an operator holding account, the registry administrator must, as soon as reasonably practicable—

(a) lift the suspension;

(b) give notice to the new operator and the regulator that the suspension has been lifted.

(7) Where the registry administrator receives an instruction to transfer an operator holding account under sub-paragraph (1)(a), no action may be performed in relation to the account until the registry administrator complies with sub-paragraph (3).

Aircraft operator holding accounts

13.—(1) Where the regulator issues an emissions monitoring plan to a person under article 29, the regulator must, as soon as reasonably practicable, instruct the registry administrator to open an aircraft operator holding account in the name of the person.

(2) The registry administrator may, by notice to the person or the regulator, require the person or the regulator to provide, in the form specified in the notice, such information as the registry administrator considers necessary to—

(a) open the account; and

(b) assess whether the person is a fit and proper person to hold an aircraft operator holding account.

(3) As soon as reasonably practicable after receiving an instruction under sub-paragraph (1) and any information required under sub-paragraph (2), the registry administrator must assess whether the person is a fit and proper person to hold an aircraft operator holding account and—

(a) if the registry administrator considers that the person is a fit and proper person to hold an aircraft operator holding account, open the account; or

(b) if the registry administrator does not consider that the person is a fit and proper person to hold an aircraft operator holding account, open, and immediately suspend, the account imposing the restriction set out in paragraph 25(2)(b) or (c) (or both).

(4) The registry administrator must give notice to the person and the regulator of a decision to open and suspend an account under sub-paragraph (3)(b).

(5) A notice under sub-paragraph (4) must include the reason for the suspension unless the registry administrator considers that its inclusion might prejudice the investigation or prosecution of an offence under the law of any part of the United Kingdom or a country or territory outside the United Kingdom or would be contrary to the interests of national security.

(6) Where, after a suspension under sub-paragraph (3)(b), the registry administrator subsequently considers that the person is a fit and proper person to hold an aircraft operator holding account, the registry administrator must, as soon as reasonably practicable—

(a) lift the suspension;

(b) give notice to the person and the regulator that the suspension has been lifted.

Trading accounts

14.—(1) Any person may apply to the registry administrator to open a trading account on terms agreed by the registry administrator.

(2) An application must be accompanied by—

(a) the charge for the application set out in the charging scheme published under article 36A;

(b) applications under paragraph 16 to appoint at least 2 individuals as operational authorised representatives for the account with account permissions such that they are together able to propose and approve all types of action in relation to the account.

(3) After receiving an application, the registry administrator may, by notice to the applicant, require the applicant to provide, in the form specified in the notice, such information as the registry administrator considers necessary to determine the application.

(4) As soon as reasonably practicable after receiving the application and any information required under sub-paragraph (3), the registry administrator must assess whether the applicant is a fit and proper person to hold a trading account and—

(a) if the registry administrator considers that the applicant is a fit and proper person to hold a trading account and at least 2 operational authorised representatives with the account permissions referred to in sub-paragraph (2)(b) have been appointed for the account, open the account; or

(b) if either—

(i) the registry administrator does not consider that the applicant is a fit and proper person to hold a trading account; or

(ii) at least 2 operational authorised representatives with the account permissions referred to in sub-paragraph (2)(b) have not been appointed for the account,

give notice to the applicant that the application to open the account is refused.

(5) A notice under sub-paragraph (4)(b) must include the reason for the refusal unless the registry administrator considers that its inclusion might prejudice the investigation or prosecution of an offence under the law of any part of the United Kingdom or a country or territory outside the United Kingdom or would be contrary to the interests of national security.

CHAPTER 2

Account representatives

Primary contacts and alternative primary contacts

15.—(1) An account holder must give details to the registry administrator of an individual whom the account holder appoints as a person authorised to give instructions to the registry administrator on the account holder's behalf in relation to the account.

(2) An individual appointed under sub-paragraph (1) is the "primary contact" for the account.

(3) An account holder who is an individual may appoint the account holder as the primary contact for the account.

(4) An account holder who has appointed a primary contact may give details to the registry administrator of a second individual whom the account holder appoints as a person authorised to give instructions to the registry administrator on the account holder's behalf in relation the account.

(5) An individual appointed under sub-paragraph (4) is the "alternative primary contact" for the account.

(6) The primary contact and any alternative primary contact must be at least 18 years of age.

(7) An account holder may, at any time by notice to the registry administrator—

(a) replace the primary contact;

(b) replace or remove the alternative primary contact.

Appointment of authorised representatives

16.—(1) An account holder or a prospective account holder may apply to the registry administrator for one or more individuals (up to a maximum number of 8) to be appointed as authorised representatives for the account with access to the registry to perform actions in relation to the account on behalf of the account holder.

(2) An account holder who is an individual may apply for the account holder to be appointed as an authorised representative for the account.

(3) An authorised representative must be at least 18 years of age.

(4) An authorised representative may have one of the following permissions (an "account permission")—

(a) permission to propose actions in relation to the account;

(b) permission to approve actions in relation to the account;

(c) permission to propose actions, and approve actions proposed by another operational authorised representative, in relation to the account;

(d) permission to review account information only.

(5) An application for an individual to be appointed as an authorised representative must—

(a) specify which account permission the individual is to have;

(b) be accompanied by the charge for the application set out in the charging scheme published under article 36A.

(6) After receiving an application, the registry administrator may, by notice to the applicant, require the applicant to provide, in the form specified in the notice, such information as the registry administrator considers necessary to determine the application.

(7) As soon as reasonably practicable after receiving the application and any information required under sub-paragraph (6), the registry administrator must assess whether the individual is a fit and proper person to be an authorised representative and—

(a) if the registry administrator considers that the individual is a fit and proper person to be an authorised representative, appoint the individual as an authorised representative with the account permission in respect of which the application is made and give notice to the applicant of the appointment; or

(b) if the registry administrator considers that the individual is not a fit and proper person to be an authorised representative, give notice to the applicant that the application is refused.

(8) A notice under sub-paragraph (7)(b) must include the reason for the refusal unless the registry administrator considers that its inclusion might prejudice the investigation or prosecution of an offence under the law of any part of the United Kingdom or a country or territory outside the United Kingdom or would be contrary to the interests of national security.

(9) The registry administrator may, in administrative rules made under paragraph 6(1)(a), provide for whether actions of a particular type require the approval of a second operational authorised representative in addition to the operational authorised representative proposing the action.

(10) The appointment of an authorised representative for an account does not preclude the account holder from instructing the registry administrator to perform actions in relation to the account on behalf of the account holder.

(11) In this Schedule, "operational authorised representative" means an authorised representative who has an account permission referred to in sub-paragraph (4)(a), (b) or (c).

Change in account permission of authorised representatives

17.—(1) An account holder may apply to the registry administrator to change the account permission of an individual appointed as an authorised representative.

(2) An application must—

(a) specify which account permission the individual is to have;

(b) be accompanied by the charge for the application set out in the charging scheme published under article 36A.

(3) After receiving an application, the registry administrator may, by notice to the account holder, require the account holder to provide, in the form specified in the notice, such information as the registry administrator considers necessary to determine the application.

(4) As soon as reasonably practicable after receiving the application and any information required under sub-paragraph (3), the registry administrator must assess whether the individual is still a fit and proper person to be an authorised representative and—

(a) if the registry administrator considers that the individual is still a fit and proper person to be an authorised representative, change the individual's account permission to the account permission in respect of which the application is made and give notice to the account holder of the change; or

(b) if the registry administrator considers that the individual has ceased to be a fit and proper person to be an authorised representative, give notice to the account holder that the application is refused.

(5) A notice under sub-paragraph (4)(b) must include the reason for the refusal unless the registry administrator considers that its inclusion might prejudice the investigation or prosecution of an offence under the law of any part of the United Kingdom or a country or territory outside the United Kingdom or would be contrary to the interests of national security.

Suspension of access to registry of authorised representatives

18.—(1) The registry administrator may suspend an authorised representative's access to the registry in either of the following circumstances—

(a) if the registry administrator considers that the suspension is necessary to ensure that the registry is secure and protected from misuse;

(b) if the registry administrator considers that the authorised representative has ceased to be a fit and proper person to be an authorised representative.

(2) Where the registry administrator suspends an authorised representative's access to the registry, the registry administrator must give notice of the suspension to the account holder as soon as reasonably practicable.

(3) A notice under sub-paragraph (2) must include the reason for the suspension unless the registry administrator considers that its inclusion might prejudice the investigation or prosecution of an offence under the law of any part of the United Kingdom or a country or territory outside the United Kingdom or would be contrary to the interests of national security.

(4) Where, after a suspension under sub-paragraph (2), the registry administrator subsequently considers that the circumstances giving rise to the suspension no longer exist, the registry administrator must as soon as reasonably practicable—

(a) lift the suspension;

(b) give notice to the account holder that the suspension has been lifted.

Removal of authorised representatives

19.—(1) The registry administrator may remove an individual as an authorised representative for an account—

(a) if the account holder requests the registry administrator to remove the individual as authorised representative;

(b) if the individual requests the registry administrator to remove the individual as authorised representative;

(c) if the registry administrator considers that the individual has ceased to be a fit and proper person to be an authorised representative; or

(d) where the individual's access to the registry has been suspended, if the registry administrator considers that the circumstances giving rise to the suspension still exist and are unlikely to be resolved within a reasonable period of time.

(2) The registry administrator must give notice to the account holder of a removal under sub-paragraph (1)(b), (c) or (d).

(3) A notice following a removal under sub-paragraph (1)(c) or (d) must include the reason for the removal unless the registry administrator considers that its inclusion might prejudice the investigation or prosecution of an offence under the law of any part of the United Kingdom or a country or territory outside the United Kingdom or would be contrary to the interests of national security.

CHAPTER 3

Transfers of allowances

Transfers between accounts

20.—(1) An allowance may be transferred from one account to another.

(2) Sub-paragraph (1) is subject to—

(a) paragraph 11(4)(b) (operator holding accounts);

(b) paragraph 12(3)(b) or (7) (transfer of operator holding accounts);

(c) paragraph 13(3)(b) (aircraft operator holding accounts);

(d) paragraph 25 (suspension of accounts).

Transfer cancellations

21. The transfer of an allowance between accounts may be cancelled by the account holder of the transferring account at any time before the transfer has completed.

Transfer reversals

22.—(1) A transfer of an allowance that has completed may not be reversed except as set out in this paragraph.

(2) The registry administrator must reverse the transfer of an allowance to the deletion account if, within 14 days beginning with the day on which the transfer completes, the account holder requests the registry administrator to reverse the transfer.

(3) The registry administrator must reverse the transfer of an allowance to the surrender account if, within 14 days beginning with the day on which the transfer completes, the account holder requests the registry administrator to reverse the transfer.

(4) Sub-paragraph (3) is subject to paragraph 24 (surrender of allowances).

(5) Where the account from which the allowance was transferred has been closed since the transfer completed (and the transfer cannot therefore be reversed), the account holder who requests the reversal of a transfer must give notice to the registry administrator of an alternative account to which the allowance is to be transferred.

Deletion of allowances

23.—(1) An account holder may delete an allowance by transferring the allowance from the account holder's account to the deletion account.

(2) An allowance transferred to the deletion account may not be transferred from the deletion account and ceases to be available for any other purpose unless the transfer is reversed under paragraph 22 (transfer reversals).

Surrender of allowances

24.—(1) The operator of an installation or a person who is an aircraft operator in relation to a scheme year may surrender an allowance by transferring the allowance from the operator's operator holding account for the installation or the aircraft operator's aircraft operator holding account to the surrender account.

(2) An allowance that has been transferred to the surrender account may not be transferred from the surrender account and ceases to be available for any other purpose.

(3) But the transfer of an allowance to the surrender account may be reversed under paragraph 22(3) if—

(a) the person requesting the reversal has complied with—

(i) where the person requesting the reversal is the operator of an installation, the person's obligations to surrender allowances under article 27 in respect of the installation;

(ii) where the person requesting the reversal is an aircraft operator in relation to a scheme year, the person's obligations to surrender allowances under article 34; and

(b) the reversal of the transfer would not result in the person being in breach of those obligations.

CHAPTER 4

Suspension and closure of accounts

Suspension of accounts

25.—(1) The registry administrator may suspend an account other than a central account in any of the following circumstances—

(a) if, on the death or dissolution of the account holder or the occurrence of an insolvency event in relation to the account holder, either—

(i) it is not clear who has the right to deal with the assets of the account holder; or

(ii) the registry administrator has not received instructions about the operation of the account from the person who has the right to deal with the assets of the account holder;

(b) if the registry administrator does not consider that the account holder is a fit and proper person to hold the account;

(c) if the registry administrator considers that the account has been, is being or may be used in relation to the commission of an offence under the law of any part of the United Kingdom or a country or territory outside the United Kingdom.

(2) A suspended account may be subject to one or more of the following restrictions—

(a) no allowances may be transferred to the account except from the allocation account;

(b) no authorised representative may perform an action in relation to the account by accessing the registry;

(c) no allowances may be transferred from the account except to a central account.

(3) Where the registry administrator suspends an account, the registry administrator must give notice of the suspension to the account holder as soon as reasonably practicable.

(4) A notice under sub-paragraph (3) must include the reason for the suspension unless the registry administrator considers that its inclusion might prejudice the investigation or prosecution of an offence under the law of any part of the United Kingdom or a country or territory outside the United Kingdom or would be contrary to the interests of national security .

(5) Where, after a suspension under sub-paragraph (1), the registry administrator subsequently considers that the circumstances giving rise to the suspension no longer exist, the registry administrator must as soon as reasonably practicable—

(a) lift the suspension;

(b) give notice to the account holder that the suspension has been lifted.

(6) For the purposes of this paragraph an "insolvency event" occurs in relation to an account holder if—

(a) an order for the winding-up of the account holder is made;

(b) a resolution for the voluntary winding-up of the account holder is passed;

(c) the account holder enters into administration;

(d) a bankruptcy order is made in relation to the account holder or, in Scotland, an award of sequestration is made against the account holder;

(e) a provisional liquidator is appointed for the account holder under section 135 of the Insolvency Act 1986(**a**); or

(f) an event (an "overseas insolvency event") occurs in a country or territory outside the United Kingdom in relation to the account holder that the registry administrator considers corresponds to an event (a "UK insolvency event") referred to in paragraphs (a) to (e).

(7) For the purpose of considering under sub-paragraph (6)(f) whether an overseas insolvency event corresponds to a UK insolvency event, where, in consequence of the UK insolvency event, a person is appointed to an office (for example, liquidator or trustee in bankruptcy) to deal with the assets of the account holder, it is immaterial whether or not there is a corresponding appointment in consequence of the overseas insolvency event.

Closure of central accounts and auction delivery account

26. The UK ETS authority may close—

(a) a central account;

(b) the auction delivery account.

Closure of operator holding accounts

27.—(1) This paragraph applies where—

(a) (i) an installation's greenhouse gas emissions permit is cancelled under paragraph 9(5)(b) of Schedule 6;

(**a**) 1986 c. 45.

(ii) after giving a surrender notice under paragraph 11(3) of that Schedule in respect of a greenhouse gas emissions permit for an installation, the regulator certifies under paragraph 11(6)(b) of that Schedule that the conditions of the permit and the requirements of the surrender notice have been complied with or that there is no reasonable prospect of their being complied with;

(iii) after giving a revocation notice under paragraph 12(4) of that Schedule in respect of a greenhouse gas emissions permit for an installation, the regulator certifies under paragraph 12(7)(b) of that Schedule that the conditions of the permit and the requirements of the revocation notice have been complied with or that there is no reasonable prospect of their being complied with; or

(iv) after the regulator converts an installation's greenhouse gas emissions permit into a hospital or small emitter permit under paragraph 10 of Schedule 7, the obligations of the operator under the permit in respect of specified emissions before 1st January 2026 are complied with; and

(b) where relevant, any notice given under article 34V (return of allowances: notice to operator, etc.) to the operator of the installation or to a transferring operator (as defined in paragraph 7(1) of Schedule 6) has been complied with or the regulator considers that there is no reasonable prospect of the notice being complied with.

(2) The regulator must instruct the registry administrator to close the operator holding account for the installation.

(3) The registry administrator must give notice to the operator of the installation as soon as reasonably practicable after the account is closed.

Closure of aircraft operator holding accounts

28.—(1) This paragraph applies where—

(a) the regulator is satisfied under article 34P that a person has ceased to perform aviation activity and there is no realistic prospect that the person will resume aviation activity;

(b) the person has complied with the requirements of article 34(1) or the regulator considers that there is no reasonable prospect of the requirements being complied with; and

(c) where relevant, any notice given under article 34V (return of allowances: notice to operator, etc.) to the person has been complied with or the regulator considers that there is no reasonable prospect of the notice being complied with.

(2) The regulator must instruct the registry administrator to close the aircraft operator holding account.

(3) The registry administrator must give notice to the person as soon as reasonably practicable after the account is closed.

Closure of trading accounts

29.—(1) Where the account holder of a trading account instructs the registry administrator to close the account, the registry administrator must close the account—

(a) within 14 days after receiving the instruction; or

(b) if there are allowances in the account at the date on which the instruction is received, as soon as reasonably practicable after the allowances are transferred to another account.

(2) Where a trading account has been suspended, the registry administrator may close the account if the registry administrator considers that the circumstances giving rise to the suspension still exist and are unlikely to be resolved within a reasonable period of time.

(3) Where no transfers have been made to or from a trading account for a period of at least 1 year, the registry administrator may give notice to the account holder that the trading

account will be closed; and if the account holder does not object in writing to the closure within 60 days after the date on which the notice is given, the registry administrator may close the account.

(4) The registry administrator must give notice to the account holder as soon as reasonably practicable after the account is closed under sub-paragraph (2) or (3).

(5) A notice following the closure of an account under sub-paragraph (2) must include the reason for the closure unless the registry administrator considers that its inclusion might prejudice the investigation or prosecution of an offence under the law of any part of the United Kingdom or a country or territory outside the United Kingdom or would be contrary to the interests of national security.

Balance in accounts to be closed

30.—(1) This paragraph applies where there are allowances in an account that is to be closed under paragraph 27, 28 or 29(2) or (3).

(2) Subject to sub-paragraph (3), the registry administrator must give notice to the account holder, requiring the account holder to transfer the allowances to another account on or before a date set out in the notice; and if the account holder does not comply with the notice, the registry administrator must transfer the allowances to a general holding account before closing the account.

(3) If the account to be closed has been suspended, the registry administrator must transfer the allowances to a general holding account before closing the account.".

Schedule 6 amended (permits)

38.—(1) Schedule 6 is amended as follows.

Paragraph 4 amended (greenhouse gas emissions permits: content of permit)

(2) In paragraph 4—

(a) after sub-paragraph (1)(h) insert—

"(ha) the free allocation conditions (see sub-paragraph (6));

(hb) where a monitoring methodology plan has been approved in relation to the installation under Article 8 of the Free Allocation Regulation, the monitoring methodology plan;";

(b) in sub-paragraph (2)(b)—

(i) after "verified" insert "as satisfactory";

(ii) after "submit the report" insert "(and the verification report)";

(c) after sub-paragraph (5) insert—

"(6) The free allocation conditions are the following conditions, which must be expressed to apply while the installation is an FA installation—

(a) a condition requiring the operator to monitor the activity level of the installation in accordance with—

(i) the Free Allocation Regulation; and

(ii) the monitoring methodology plan approved under Article 8 of the Free Allocation Regulation (including the written documentation of the procedures referred to in Article 8(3) of that Regulation);

(b) a condition requiring the operator, in accordance with the Activity Level Changes Regulation, to prepare an activity level report that is verified as satisfactory in accordance with the Verification Regulation 2018 and to submit the report (and the verification report) to the regulator on or before 30th June in the 2021 scheme year and on or before 31st March in each subsequent scheme year;

(c) a condition requiring the operator, if the installation has ceased operation, to notify the regulator on or before 31st December in the scheme year in which the cessation occurs or within 1 month of the cessation, whichever is later;

(d) any further conditions that the regulator considers necessary to give proper effect to the Free Allocation Regulation or the Activity Level Changes Regulation.

(7) Where, after the date of issue of, or conversion of a permit into, a greenhouse gas emissions permit, a monitoring methodology plan is approved in relation to an installation under Article 8 of the Free Allocation Regulation, the regulator must vary the permit under paragraph 6 so that it contains the monitoring methodology plan.".

Paragraph 6 amended (variation of permits)

(3) In paragraph 6—

(a) after sub-paragraph (2)(c) insert—

"(d) a failure by the operator to implement—

(i) a recommendation for improvement of the monitoring methodology plan as required by Article 9(2)(e) of the Free Allocation Regulation; or

(ii) a modification of the monitoring methodology plan requested by the regulator under Article 9(5)(d) of that Regulation.";

(b) in sub-paragraph (3) before paragraph (a) insert—

"(za) paragraph 4(7) (adding monitoring methodology plan);".

Paragraph 7 amended (transfer of permits: application)

(4) In paragraph 7(5) for "8(a)" in both places substitute "8(1)(a)".

Paragraph 8 amended (transfer of permits: contents of application)

(5) In paragraph 8 renumber the existing text as sub-paragraph (1) and insert after that sub-paragraph—

"(2) Where the application is for the transfer or partial transfer of a greenhouse gas emissions permit for an installation that is an FA installation, the application must also contain—

(a) either—

(i) the new operator's monitoring methodology plan in accordance with Article 8 of the Free Allocation Regulation; or

(ii) the new operator's specification of the parts of the existing monitoring methodology plan that it is proposed be varied;

(b) in the case of an application for the partial transfer of the permit, the transferring operator's specification of the parts of the existing monitoring methodology plan that it is proposed be varied.

(3) But sub-paragraph (2) does not apply if the application contains a statement by the new operator that the new operator renounces free allocation in respect of the transferred units.".

Paragraph 9 amended (transfer of permits: grant of application)

(6) In paragraph 9—

(a) in sub-paragraph (1)—

(i) in paragraph (a) omit the final "and";

(ii) in paragraph (b) for "paragraph)." substitute "paragraph); and";

(iii) after paragraph (b) insert—

"(c) where the application is for the transfer or partial transfer of a greenhouse gas emissions permit of an installation that is an FA installation, will be capable of complying with the free allocation conditions of the permit (including as varied under this paragraph).";

(b) after sub-paragraph (1) insert—

"(1A) But sub-paragraph (1)(c) does not apply if the application contains a statement by the new operator that the new operator renounces free allocation in respect of the transferred units.";

(c) after sub-paragraph (5) insert—

"(5A) Where a permit is cancelled under sub-paragraph (5)(b), the regulator must give notice to the registry administrator as soon as reasonably practicable.".

Paragraph 11 amended (surrender of permits)

(7) In paragraph 11(6)(b) after "complied with" insert "or that there is no reasonable prospect of their being complied with".

Paragraph 12 amended (revocation of permits)

(8) In paragraph 12—

(a) after sub-paragraph (3)(a)(i)(cc) insert—

"(dd) the Free Allocation Regulation;

(ee) the Activity Level Changes Regulation.";

(b) in sub-paragraph (7)(b) after "complied with" insert "or that there is no reasonable prospect of their being complied with".

Schedule 7 amended (hospitals and small emitters)

39.—(1) Schedule 7 is amended as follows.

Paragraph 5 amended (obtaining hospital or small emitter status for 2026-2030 allocation period)

(2) In paragraph 5(6)(a) after "verified" insert "as satisfactory".

Paragraph 11 amended (hospital or small emitter permits: content of permit)

(3) In paragraph 11(2)(b)—

(a) in sub-paragraph (i) after "verified" insert "as satisfactory";

(b) in the words after sub-paragraph (ii) for "(and any declaration)" substitute "and the verification report (where sub-paragraph (i) applies) or declaration (where sub-paragraph (ii) applies)".

Paragraph 13 amended (hospital and small emitters: modifications to Monitoring and Reporting Regulation 2018)

(4) In paragraph 13—

(a) omit sub-paragraph (2);

(b) in sub-paragraph (6) for "verified in accordance" substitute "verified as satisfactory in accordance".

Paragraph 16 amended (emissions targets for 2021-2025 allocation period)

(5) In paragraph 16(8)—

(a) in paragraph (a) after "verified" insert "as satisfactory";

(b) after paragraph (a) insert—

"(aa) determined under regulation 44 of GGETSR 2012 or article 45 of this Order; or".

Paragraph 17 amended (emissions targets for 2026-2030 allocation period)

(6) In paragraph 17(8)—

(a) in paragraph (a)—

(i) after "verified" insert "as satisfactory";

(ii) omit the final "or";

(b) after paragraph (a) insert—

"(aa) determined under article 45; or".

Schedule 8 amended (ultra-small emitters)

40.—(1) Schedule 8 is amended as follows.

Paragraph 3 amended (obtaining ultra-small emitter status for 2026-2030 allocation period)

(2) In paragraph 3(7)(a) after "verified" insert "as satisfactory".

Paragraph 4 amended (obtaining ultra-small emitter status for 2026-2030 allocation period: modifications to Verification Regulation 2018 for ultra-small emitters in 2021-2025 allocation period)

(3) In paragraph 4—

(a) omit sub-paragraph (3);

(b) for sub-paragraph (5)(a)(i) substitute—

"(i) in point (a) the words from "and meets the requirements" to the end were omitted;";

(c) in sub-paragraph (6)(c) after "points" insert "(c) and";

(d) in sub-paragraph (14)(a)—

(i) in sub-paragraph (i) for "the Verification Regulation 2018" substitute "Commission Implementing Regulation (EU) 2018/2067 (as it had effect in EU law)";

(ii) in sub-paragraph (ii) for "2021-2026" substitute "2021-2025".

Schedule 9 amended (appeals to Scottish Land Court)

41.—(1) Schedule 9 is amended as follows.

(2) In paragraph 1—

(a) in sub-paragraph (1)—

(i) in the words before paragraph (a) after "regulator" insert "or the registry administrator (in either case, the "respondent")";

(ii) in paragraph (b) for "regulator" substitute "respondent";

(b) in sub-paragraph (2)(d) for "regulator" substitute "respondent".

(3) In paragraph 4 for "regulator" in each place substitute "respondent".

Schedule 10 amended (appeals to Planning Appeals Commission (Northern Ireland))

42.—(1) Schedule 10 is amended as follows.

(2) In paragraph 1—

(a) in sub-paragraph (1) after "regulator" insert "or the registry administrator (in either case, the "respondent")";

(b) in sub-paragraph (3) for "regulator" substitute "respondent".

(3) In paragraph 2 for "regulator" substitute "respondent".

(4) In paragraph 3(2) for "regulator" substitute "respondent".

Schedule 11 amended (transitional provisions: installations)

43.—(1) Schedule 11 is amended as follows.

Paragraph 1 amended (permits under GGETSR 2012)

(2) In paragraph 1(7) for "the Verification Regulation 2018" substitute "Commission Implementing Regulation (EU) 2018/2067 (as it had effect in EU law)".

Paragraph 2 amended (applications for permits, etc. under GGETSR 2012)

(3) After paragraph 2(3) insert—

"(4) This sub-paragraph applies where—

(a) a permit for an installation is converted into a greenhouse gas emissions permit under paragraph 1(4);

(b) the monitoring methodology plan approved in respect of the installation under Article 8 of the Free Allocation Regulation is contained in the permit by virtue of paragraph 4(1)(hb) or (7) of Schedule 6; and

(b) a significant modification of the monitoring methodology plan is notified for approval under Article 9 of the Free Allocation Regulation on or before 31st December 2020, but not approved before that date.

(5) Where sub-paragraph (4) applies, the notification of the significant modification must be treated as an application to vary the permit under paragraph 6 of Schedule 6 to make the significant modification.".

PART 3

Amendments to other legislation

Climate Change Agreements (Amendment of Agreements) (EU Exit) Regulations 2018 amended

44.—(1) The Climate Change Agreements (Amendment of Agreements) (EU Exit) Regulations 2018(**a**) are amended as follows.

(2) In regulation 2(1)(d) after "the Greenhouse Gas Emissions Trading Scheme Regulations 2012" insert "or the Greenhouse Gas Emissions Trading Scheme Order 2020".

Greenhouse Gas Emissions Trading Scheme (Amendment) (EU Exit) (No. 2) Regulations 2019 amended

45.—(1) The Greenhouse Gas Emissions Trading Scheme (Amendment) (EU Exit) (No. 2) Regulations 2019(**b**) are amended as follows.

(2) Omit regulation 62 (revocation of Commission Delegated Regulation (EU) 2019/331).

Free Allocation Regulation amended

46. Schedule 1 (which amends Commission Delegated Regulation (EU) 2019/331 for the purposes of the United Kingdom Emissions Trading Scheme) has effect.

Activity Level Changes Regulation amended

47. Schedule 2 (which amends Commission Implementing Regulation (EU) 2019/1842 for the purposes of the United Kingdom Emissions Trading Scheme) has effect.

Richard Tilbrook
Clerk of the Privy Council

(**a**) S.I. 2018/1205.
(**b**) S.I. 2019/916.

SCHEDULE 1

Article 46

Free Allocation Regulation amended

Free Allocation Regulation amended

1. Commission Delegated Regulation (EU) 2019/331 is amended in accordance with this Schedule.

"Regulator" substituted for "competent authority"

2. For "competent authority" in each place substitute "regulator".

Article 1 amended (scope)

3.—(1) Article 1 is amended as follows.

(2) For the words from "emission allowances under Chapter III" to the end substitute "allowances to installations under the UK ETS".

Article 2 amended (definitions)

4.—(1) Article 2 is amended as follows.

(2) Renumber the existing text as paragraph 1.

(3) In paragraph 1—

(a) for point (1) substitute—

"(1) 'incumbent installation' means an installation in respect of which a deemed application for free allocation in the 2021-2025 allocation period or an application for free allocation in the 2026-2030 allocation period under Article 4 is made;";

(b) in point (3) (heat benchmark sub-installation) after "EU ETS" in both places insert "or UK ETS";

(c) in point (4) (district heating) after "EU ETS" insert "or UK ETS";

(d) in point (5) (district heating sub-installation) after "EU ETS" insert "or UK ETS";

(e) in point (10) (process emissions sub-installation) for "greenhouse gas emissions listed in Annex I to Directive 2003/87/EC" substitute "emissions of greenhouse gases set out in column 2 of table C in Schedule 2 to the UK ETS Order";

(f) in point (11) (waste gas) for "Article 3(50) of Regulation (EU) No 601/2012" substitute "Article 3(52) of the Monitoring and Reporting Regulation 2018";

(g) for point (14) substitute—

"(14) 'baseline period' means:

(a) in relation to a deemed application for free allocation in the 2021-2025 allocation period or an incumbent installation in respect of which such an application is made, the 5-year period beginning on 1 January 2014;

(b) in relation to an application for free allocation in the 2026-2030 allocation period under Article 4 or an incumbent installation in respect of which such an application is made, the 5-year period beginning on 1 January 2019;";

(h) omit point (15);

(i) after point (18) insert—

"(19) 'deemed application for free allocation in the 2021-2025 allocation period' must be construed in accordance with Article 3a;

(20) 'electricity generator' means an installation:

(a) that, on or after 1 January 2005, produced electricity for sale to third parties; and

(b) at which no regulated activity other than the regulated activity referred to in column 1 of the first entry in table C in Schedule 2 to the UK ETS Order (combustion of fuels) is carried out;

(21) 'emission allowance' means an allowance (as defined in the UK ETS Order);

(22) 'new entrant' means an installation in respect of which an application for free allocation under Article 5 is made;

(23) 'UK ETS Order' means the Greenhouse Gas Emissions Trading Scheme Order 2020. ".

(4) After paragraph 1 insert—

"2. Expressions used in this Regulation that are defined for the purposes of the Climate Change Act 2008 or the UK ETS Order have the meanings given in that Act or Order.

3. A reference in this Regulation to a "non-ETS" entity, installation or process is a reference to an entity, installation or process that is not covered by either the EU ETS or the UK ETS.".

Article 2a inserted

5. After Article 2 insert—

"Article 2a

Eligibility for free allocation

1. An application for free allocation of allowances may not be made under this Regulation in respect of:

(a) an installation used for any of the following:

(i) the capture of greenhouse gases from other installations for the purpose of transport and geological storage in a storage site;

(ii) the transport of greenhouse gases by pipelines for geological storage in a storage site;

(iii) the geological storage of greenhouse gases in a storage site;

(b) an electricity generator, except in relation to measurable heat:

(i) produced by an electricity generator that produced measurable heat by means of high-efficiency cogeneration (as defined in Article 2(34) of Directive 2012/27/EU of the European Parliament and of the Council of 25 October 2012(**a**)) in the relevant period, calculated over the relevant period as a whole; or

(ii) exported for the purposes of district heating.

2. For the purposes of paragraph 1(b)(i):

(a) the "relevant period" is:

(i) in the case of a deemed application for free allocation in the 2021-2025 allocation period or an application for free allocation in the 2026-2030 allocation period under Article 4, the baseline period;

(ii) in the case of an application for free allocation under Article 5, the period from the start of normal operation until the end of the year before the year in which the application is made;

(b) Directive 2012/27/EU has effect as if in Annex 2 in point (a) in the first indent after "heat and electricity" there were inserted "; and for the purposes of this indent, cogeneration production from cogeneration units certified under the standard applying from time to time for the purposes of the Combined Heat and Power Quality Assurance

(**a**) OJ No L 315, 14.11.2012, p. 1.

Programme(**a**) that provides primary energy savings during the period of certification must be treated as providing primary energy savings of at least 10% during that period".".

Article 3 omitted

6. Article 3 is omitted.

Article 3a inserted

7. After Article 2 and the cross-heading to Chapter 2 (application, data reporting and monitoring rules) insert—

"Article 3a

Applications for free allocation under EU ETS to be treated as applications for free allocation in 2021-2025 allocation period by operators of incumbent installations

1. This Article applies where before 1 January 2021, the operator of an installation made an application (an "EU ETS application") under Article 4 for free allocation of emission allowances under the EU ETS in respect of the allocation period in the EU ETS beginning on 1 January 2021.

2. For the purposes of this Regulation:

(a) the EU ETS application must be treated as an application (a "deemed application for free allocation in the 2021-2025 allocation period") by the operator of the installation for free allocation of allowances under the UK ETS in the 2021-2025 allocation period;

(b) the determination of historical activity levels under Article 15, and anything else done in connection with the EU ETS application under this Regulation, before IP completion day must be treated as done in connection with the deemed application for free allocation in the 2021-2025 allocation period.

3. Without limiting paragraph 2, in this Regulation—

(a) a reference to a monitoring methodology plan includes a monitoring methodology plan approved for the purposes of the EU ETS application;

(b) a reference to a baseline data report or a verification report includes a baseline data report or a verification report submitted for the purposes of the EU ETS application.".

Article 4 amended (application for free allocation in 2026-2030 allocation period by operators of incumbent installations)

8.—(1) Article 4 is amended as follows.

(2) In the heading after "allocation" insert "in 2026-2030 allocation period".

(3) For paragraph 1 substitute—

"1. The operator of any of the following installations may apply to the regulator for free allocation in the 2026-2030 allocation period:

(a) an installation for which a permit is issued on or before 30 June 2024;

(b) an installation that is an ultra-small emitter for the 2024 scheme year;

(c) an installation for which an application for a permit has been made but not yet determined.

(**a**) Details of the Combined Heat and Power Quality Assurance Programme are available at https://www.gov.uk/guidance/combined-heat-power-quality-assurance-programme. The current and previous standards can be accessed at https://www.gov.uk/government/publications/chpqa-standard. Copies may be inspected at the Department for Business, Energy and Industrial Strategy,1 Victoria Street, London SW1H 0ET.

1A. An application:

(a) may not be made before 1 April 2024;

(b) must be made on or before 30 June 2024.".

(4) In paragraph 2—

(a) in point (a)—

(i) for "verified as satisfactory in accordance with measures adopted pursuant to Article 15 of Directive 2003/87/EC" substitute "verified in accordance with the Verification Regulation 2018";

(ii) omit "relating to the allocation period to which the application relates";

(b) in point (b)—

(i) at the beginning insert "except where a monitoring methodology plan has already been approved in relation to the installation under Article 8,";

(ii) after "in accordance with" insert "Article 8 and";

(c) for point (c) substitute—

"(c) the verification report on the baseline data report, which (unless the monitoring methodology plan has already been approved by the regulator) must contain the confirmation relating to the plan referred to in Article 27(3)(f) of the Verification Regulation 2018.".

(5) After paragraph 2 insert—

"3. Where an application is made in respect of an installation referred to in paragraph 1(c), the application must be treated as never having been made unless the permit is issued on or before 30 June 2024.

4. An application may be made under this Article and under either of the following at the same time:

(a) paragraph 5 of Schedule 7 to the UK ETS Order (obtaining hospital or small emitter status for 2026-2030 allocation period);

(b) paragraph 3 of Schedule 8 to that Order (obtaining ultra-small emitter status for 2026-2030 allocation period).".

Article 5 substituted

9. For Article 5 substitute—

"Article 5

Application for free allocation by new entrants

1. The operator of an installation at which a regulated activity is carried out and for which a greenhouse gas emissions permit (including a greenhouse gas emissions permit within the meaning of GGETSR 2012) issued for the first time is in force may apply to the regulator:

(a) for free allocation in the 2021-2025 allocation period, if the permit is issued in the period beginning on 1 July 2019 and ending on 30 June 2024;

(b) for free allocation in the 2026-2030 allocation period, if the permit is issued in the period beginning on 1 July 2024 and ending on 30 June 2029.

2. An application may be made at any time after the end of the year in which the start of normal operation occurs.

3. But where an installation has not been operating for a full calendar year after the start of normal operation, an application may not be made unless:

(a) in the case of an application under paragraph 1(a), the start of normal operation is on or after 1 January 2021;

(b) in the case of an application under paragraph 1(b), the start of normal operation is on or after 1 January 2026.

4. For the purposes of the application, the operator must divide the installation into sub-installations in accordance with Article 10.

5. The application must set out the start of normal operation and be accompanied by:

(a) a new entrant data report, verified in accordance with the Verification Regulation 2018, containing each parameter set out in sections 1 and 2 of Annex 4 for each sub-installation separately from the start of normal operation until the end of the year before the year in which the application is made;

(b) a monitoring methodology plan in accordance with Article 8 and Annex 6;

(c) the verification report on the new entrant data report, which must contain the confirmation relating to the monitoring methodology plan referred to in Article 27(3)(f) of the Verification Regulation 2018.

6. The regulator:

(a) must assess the new entrant data report and the verification report to ensure conformity with the requirements of this Regulation;

(b) where appropriate, may request corrections by the operator of any non-conformity or error that impacts on the determination of activity levels;

(c) must not determine historical activity levels under Article 17, activity levels for the purpose of Article 18(2) or calculate the preliminary or final annual number of allowances under Article 18 or 18a unless:

(i) the regulator considers that the date set out in the application as the start of normal operation, or such other date proposed by the operator, is accurate;

(ii) the data relating to the installation has been verified as satisfactory or, where it has not been verified as satisfactory, the regulator considers that any data gaps referred to in the verifier's opinion are due to exceptional and unforeseeable circumstances that could not have been avoided even if all due care had been exercised; and

(iii) any corrections requested under point (b) have been made.".

Article 6 amended (general obligation to monitor)

10.—(1) Article 6 is amended as follows.

(2) Omit "pursuant to Article 10a of Directive 2003/87/EC".

(3) For "by 31 December 2020" substitute "under Article 8".

Article 7 amended (monitoring principles)

11.—(1) Article 7 is amended as follows.

(2) In paragraph 3 after "application for free allocation" insert "(including a deemed application for free allocation in the 2021-2025 allocation period)".

Article 8 amended (content and submission of the monitoring methodology plan)

12.—(1) Article 8 is amended as follows.

(2) In paragraph 1 for "Articles 4(2)b and 5(2) shall draw up" substitute "Article 4 or 5 must, except where a monitoring methodology plan has already been approved in relation to the installation under this Article, draw up".

(3) In paragraph 3 omit "and for the purposes of Article 12(3) of Regulation (EU) No 601/2012,".

(4) Omit paragraphs 4 and 5.

(5) After paragraph 3 insert—

"6. Where the operator has submitted a monitoring methodology plan to the regulator, the regulator must, by notice to the operator:

(a) if the plan is in accordance with this Regulation, approve it; or

(b) reject it.

7. A notice under paragraph 6 must be given:

(a) where the monitoring methodology plan is submitted with an application for free allocation in the 2026-2030 allocation period under Article 4, on or before 31 December 2025;

(b) where the monitoring methodology plan is submitted with an application for free allocation under Article 5, as soon as reasonably practicable after the application is made."

Article 9 amended (changes to the monitoring methodology plan)

13.—(1) Article 9 is amended as follows.

(2) For paragraph 3 substitute—

"3. The operator must notify the regulator of:

(a) any significant modification (within the meaning of paragraph 5) of the monitoring methodology plan at least 14 days before making the modification or, where this is not possible, as soon as reasonably practicable; and

(b) any other modification on or before 31 December in the year in which the modification is made.".

Article 10 amended (division into sub-installations)

14.—(1) Article 10 is amended as follows.

(2) In paragraph 1—

(a) after "data reporting and of monitoring" insert "under this Regulation and the Activity Level Changes Regulation";

(b) omit "eligible for the free allocation of emission allowances under Article 10a of Directive 2003/87/EC".

(3) In paragraph 3—

(a) in the first subparagraph for "deemed to be exposed to a significant risk of carbon leakage as determined in accordance with Article 10b(5) of Directive 2003/87/EC" in both places substitute "set out in the Annex to Commission Delegated Decision (EU) 2019/708";

(b) in the second subparagraph—

(i) for "deemed to be exposed to a significant risk of carbon leakage as determined in accordance with Article 10b(5) of Directive 2003/87/EC" substitute "set out in the Annex to Commission Delegated Decision (EU) 2019/708";

(ii) for "not deemed to be exposed to a significant risk of carbon leakage" substitute "other than those set out in the Annex to Commission Delegated Decision (EU) 2019/708".

(4) In paragraph 4 in the first subparagraph—

(a) for "installation included in the EU ETS" substitute "installation";

(b) after "not included in the EU ETS" insert "or the UK ETS";

(c) for "deemed to be exposed to a significant risk of carbon leakage as determined in accordance with Article 10b(5) of Directive 2003/87/EC" in both places substitute "set out in the Annex to Commission Delegated Decision (EU) 2019/708".

(5) In paragraph 5—

(a) in point (b)—

(i) after "Regulation (EU) No 601/2012" insert "or the Monitoring and Reporting Regulation 2018";

(ii) after "EU ETS" insert "or UK ETS";

(b) in point (d)—

(i) after "EU ETS" insert "or UK ETS";

(ii) for "non-EU ETS" substitute "non-ETS".

Article 12 amended (data gaps)

15.—(1) Article 12 is amended as follows.

(2) In paragraph 3 for "Article 5(2)" substitute "Article 5(5)(a)".

Articles 13 and 14 omitted

16. Articles 13 and 14 are omitted.

Article 15 amended (historical activity level for incumbent installations)

17.—(1) Article 15 is amended as follows.

(2) In paragraph 1 for "Member States" substitute "The regulator".

(3) In paragraph 2—

(a) for "Member States" in the first place where that expression occurs substitute "the regulator";

(b) for the words "Member States may" to the end substitute—

"But the regulator must not determine historical activity levels for an installation unless:

(a) the data relating to an installation has been verified as satisfactory or, where it has not been verified as satisfactory, the regulator considers that any data gaps referred to in the verifier's opinion are due to exceptional and unforeseeable circumstances that could not have been avoided even if all due care had been exercised; and

(b) any corrections requested under paragraph 1 have been made.".

(4) In paragraph 4 after "EU ETS" in each place insert "or UK ETS".

(5) In paragraph 7 in the third subparagraph—

(a) for "calendar year" in both places substitute "full calendar year";

(b) after "submitted" insert—

"(see Article 3a of the Activity Level Changes Regulation); and in Articles 16 to 16b:

(a) "sub-installation" does not include such a sub-installation;

(b) a reference to an installation must be treated as a reference to the installation excluding such a sub-installation or, where the installation consists entirely of such sub-installations, as excluding the installation.".

(6) In paragraph 8 for "Member States" substitute "the regulator".

Article 15a inserted

18. After Article 15 insert—

"Article 15a

Assessment of applications for free allocation by operators of incumbent installations

1. This Article applies where:

(a) a deemed application for free allocation in the 2021-2025 allocation period has been made by the operator of an incumbent installation; or

(b) an application under Article 4 for free allocation in the 2026-2030 allocation period has been made by the operator of an incumbent installation.

2. The regulator must send the information set out in paragraph 3 to the UK ETS authority:

(a) where paragraph 1(a) applies, as soon as reasonably practicable after IP completion day;

(b) where paragraph 1(b) applies, on or before 30 September 2024.

3. The information is:

(a) details of the installation, including details of any permit in force;

(b) the information contained in the baseline data report submitted with the application;

(c) the historical activity levels (if any) of the installation and each sub-installation determined under Article 15 or, if the regulator has not determined historical activity levels by virtue of Article 15(2), the regulator's explanation.

4. The UK ETS authority must as soon as reasonably practicable:

(a) assess the application for free allocation and, where relevant, the regulator's explanation under paragraph 3(c); and

(b) inform the regulator whether or not the application is valid, making any corrections to the historical activity levels that the UK ETS authority considers appropriate.

5. Where the application is not valid, the regulator must give notice to the operator of the installation of that fact and the reasons for it.

6. For the purposes of this Article, an application for free allocation is valid if:

(a) the application is one that may be made under this Regulation (see Article 2a); and

(b) the application is otherwise in accordance with this Regulation.".

Article 16 amended (preliminary allocation at installation level for incumbent installations)

19.—(1) Article 16 is amended as follows.

(2) In the heading for "Allocation" substitute "Preliminary allocation".

(3) For paragraph 1 substitute—

"1. Where the UK ETS authority informs the regulator under Article 15a(4)(b) that:

(a) a deemed application for free allocation in the 2021-2025 allocation period is valid, the regulator must calculate the preliminary annual number of allowances to be allocated in respect of the installation for each scheme year in the 2021-2025 allocation period;

(b) an application for free allocation in the 2026-2030 allocation period under Article 4 is valid, the regulator must calculate the preliminary annual number of allowances to be allocated in respect of the installation for each scheme year in the 2026-2030 allocation period.".

(4) In paragraph 2—

(a) in the first subparagraph—

(i) in the words before point (a) for "Member States" substitute "the regulator";

(ii) in point (d) for "five-year" substitute "allocation";

(b) omit the second subparagraph.

(5) In paragraph 3—

(a) for "For the purpose of Article 10b(4) of Directive 2003/87/EC, the" substitute "The";

(b) for "deemed not to be exposed to a significant risk of carbon leakage as determined in accordance with Article 10b(5) of Directive 2003/87/EC" substitute "other than those set out in the Annex to Commission Delegated Decision (EU) 2019/708".

(6) In paragraph 4 for "as determined in accordance with Article 10b(5) of Directive 2003/87/EC" substitute "set out in the Annex to Commission Delegated Decision (EU) 2019/708".

(7) In paragraph 5 for "From 2026" substitute "In the case of an application for free allocation in the 2026-2030 allocation period under Article 4"

(8) In paragraph 7 for "Member States and operators" substitute "the regulator".

(9) Omit paragraph 8.

(10) In paragraph 9—

(a) for "8" substitute "7";

(b) after "integer" insert ", taking 0.5 as nearest to the previous integer".

(11) After paragraph 9 insert—

"10. The regulator must send the preliminary annual number of allowances calculated in respect of each installation and each sub-installation of each installation to the UK ETS authority as soon as reasonably practicable after the benchmarks for the relevant allocation period referred to in paragraphs 2 and 5 have been adopted.

11. The regulator must make any corrections to the calculation required by the UK ETS authority.

12. In this Article and in Articles 19 to 22, "relevant allocation period" means, in relation to a benchmark adopted in accordance with Article 10a(2) of Directive 2003/87/EC:

(a) in the case of a deemed application for free allocation in the 2021-2025 allocation period or an application for free allocation in the 2021-2025 allocation period under Article 5(1)(a), the allocation period in the EU ETS beginning on 1 January 2021;

(b) in the case of an application for free allocation in the 2026-2030 allocation period under Article 4 or an application for free allocation in the 2026-2030 allocation period under Article 5(1)(b), the allocation period in the EU ETS beginning on 1 January 2026.".

Articles 16a and 16b inserted

20. After Article 16 insert—

"Article 16a

Cross-sectoral correction factors

1. This Article applies where, for a scheme year (the "relevant scheme year") in an allocation period:

(a) the sum ("PFA") of the preliminary annual number of allowances to be allocated in respect of all installations in the relevant scheme year calculated under Article 16 (including any corrections required under Article 16(11)) is greater than the industry cap ("IC") for the relevant scheme year; and

(b) the amount by which PFA exceeds IC is greater than the previous unallocated amount.

2. The previous unallocated amount is TIC + FS - TFA, where:

(a) TIC is the sum of the industry cap for each scheme year in the trading period preceding the relevant scheme year;

(b) FS is 40,984,970 allowances (the flexible share);

(c) TFA is the sum of the final allocation for each scheme year in the trading period preceding the relevant scheme year.

3. The final allocation for a scheme year is the sum of—

(a) the total preliminary annual number of allowances calculated under Article 16 to be allocated in the scheme year in respect of all installations other than electricity generators multiplied by the cross-sectoral correction factor (if any) for the scheme year determined under this Article; and

(b) the total preliminary annual number of allowances calculated under Article 16 to be allocated in the scheme year in respect of all electricity generators multiplied by the cross-sectoral correction factor (if any) for the scheme year determined under this Article or, if there is no cross-sectoral correction factor for the scheme year, the reduction factor for the scheme year.

4. The UK ETS authority must determine the cross-sectoral correction factor for the relevant scheme year, that is to say the factor that reduces PFA by such amount that TIC + IC + FS = TFA + the final allocation for the relevant scheme year.

5. The UK ETS authority must, as soon as reasonably practicable, publish for each allocation period:

(a) the cross-sectoral correction factors for scheme years in the allocation period determined under paragraph 4; or

(b) if there is no cross-sectoral correction factor for any scheme year in the allocation period, a statement to that effect.

6. For the purposes of this Article:

(a) the industry cap for a scheme year set out in column 1 of table A is the number of allowances set out in the corresponding entry in column 2;

(b) the reduction factor for a scheme year set out in column 1 of table A is the value set out in the corresponding entry in column 3.

Table A

Column 1 *Scheme year*	*Column 2* *Industry cap*	*Column 3* *Reduction factor*
2021	57,856,572	0.8562
2022	56,273,432	0.8342
2023	54,690,292	0.8122
2024	53,107,152	0.7902
2025	51,524,012	0.7682
2026	49,940,872	0.7462
2027	48,357,732	0.7242
2028	46,774,592	0.7022
2029	45,191,452	0.6802
2030	43,608,312	0.6582

7. In this Article and Article 16b, "installation" does not include an installation if:

(a) a deemed application for free allocation in the 2021-2025 allocation period was made in respect of the installation and the installation is included in the hospital and small emitter list for 2021-2025 or the ultra-small emitter list for 2021-2025; or

(b) an application for free allocation in the 2026-2030 allocation period is made in respect of the installation under Article 4 and the installation is included in the hospital and small emitter list for 2026-2030 or the ultra-small emitter list for 2026-2030.

8. Accordingly, the matters referred to in paragraph 5 must not, in relation to the 2026-2030 allocation period, be published before the publication of the hospital and small emitter list for 2026-2030 and the ultra-small emitter list for 2026-2030 under the UK ETS Order (see paragraph 5(5) of Schedule 7, and paragraph 3(6) of Schedule 8, to that Order).

Article 16b

Final allocation at installation level for incumbent installations

1. Where the preliminary annual number of allowances to be allocated in respect of an installation has been calculated under Article 16, the regulator must, as soon as reasonably practicable after the publication of the matters referred to in Article 16a(5):

(a) calculate the final annual number of allowances to be allocated in respect of each installation and each sub-installation of each installation:

(i) in the case of a deemed application for free allocation in the 2021-2025 allocation period, for each scheme year in the 2021-2025 allocation period;

(ii) in the case of an application for free allocation in the 2026-2030 allocation period under Article 4, for each scheme year in the 2026-2030 allocation period; and

(b) send the calculation to the UK ETS authority.

2. The final annual number of allowances to be allocated for a scheme year in respect of a sub-installation is the preliminary annual number of allowances calculated under Article 16 (including any corrections required under Article 16(11)) multiplied by:

(a) in the case of sub-installation of an installation other than an electricity generator, the cross-sectoral correction factor for the scheme year (if any) determined under Article 16a;

(b) in the case of a sub-installation of an electricity generator, the cross-sectoral correction factor for the scheme year determined under Article 16a or, if there is no cross-sectoral correction factor for the scheme year, the reduction factor for the scheme year (see Article 16a(6)).

3. The final annual number of allowances to be allocated in respect of an installation for a scheme year is the sum of the final annual number of allowances to be allocated in respect of all sub-installations of the installation.

4. The UK ETS authority must:

(a) approve the final annual number allowances, making any corrections to the calculation that the UK ETS authority considers appropriate;

(b) inform the regulator accordingly.

5. For the purpose of the calculation referred to in paragraphs 2 and 3, the number of allowances for sub-installations and installations must be expressed as the nearest integer, taking 0.5 as nearest to the previous integer.".

Article 17 amended (historical activity level for new entrants)

21.—(1) Article 17 is amended as follows.

(2) Renumber the existing text as paragraph 1.

(3) In paragraph 1—

(a) in the words before point (a) for "Member States" substitute "Where an application for free allocation is made under Article 5, the regulator";

(b) in point (a) omit "or pursuant to Article 24 of Directive 2003/87/EC";

(c) in point (b) after "EU ETS" in both places insert "or UK ETS";

(d) in point (c) after "EU ETS" insert "or UK ETS";

(4) After paragraph 1 insert—

"2. But if a sub-installation has not been operating for a full calendar year after the start of normal operation, the historical activity level must be determined when the activity level report after the first full calendar year of operation is submitted (see Article 3a of the Activity Level Changes Regulation).".

Article 18 amended (preliminary allocation to new entrants)

22.—(1) Article 18 is amended as follows.

(2) In the heading for "Allocation" substitute "Preliminary allocation".

(3) Before paragraph 1 insert—

"A1. The regulator must calculate the preliminary annual number of allowances to be allocated free of charge in respect of a new entrant for scheme years in the relevant allocation period in accordance with this Article.

A2. Where the start of normal operation of a new entrant is before the date on which the permit (including a permit within the meaning of GGETSR 2012) for the installation comes into force, for the purposes of this Article and Article 18a:

(a) the start of normal operation must be treated as the date on which the permit comes into force; and

(b) the activity level of the year in which the start of normal operation occurs must be treated as the activity level of that year excluding any days before the date on which the permit comes into force.".

(4) In paragraph 1—

(a) in the first subparagraph—

(i) in the words before point (a) for the words "For the purposes of the free allocation" to "each sub-installation separately," substitute "Where the historical activity level of a sub-installation of the new entrant has been determined under Article 17, the preliminary annual number of allowances to be allocated free of charge in respect of the sub-installation for the first scheme year in the relevant allocation period after the year in which the start of normal operation occurs and for each subsequent scheme year in the relevant allocation period is";

(ii) in point (a) after "relevant historical activity level" insert "; and in this point "benchmark for the relevant period" means the benchmark for the relevant allocation period (as defined in Article 16(12)) adopted in accordance with Article 10a(2) of Directive 2003/87/EC";

(b) in the second subparagraph for "to new entrants" substitute "in respect of new entrants under this paragraph and paragraph 2".

(5) In paragraph 2—

(a) for "The preliminary" substitute "Where the start of normal operation of a sub-installation of a new entrant occurs in a scheme year in the relevant allocation period, the preliminary";

(b) for "calendar year where the start of normal operation occurs" substitute "scheme year".

(6) After paragraph 2 insert—

"2A. Paragraph 2 applies whether or not the historical activity level of the sub-installation has been determined under Article 17.".

(7) Omit paragraphs 4 and 5.

(8) In paragraph 6—

(a) for "1 to 5" substitute "1 to 3";

(b) after "integer" insert ", taking 0.5 as nearest to the previous integer".

(9) After paragraph 6 insert—

"7. In this Article (except as provided in paragraph 1(a)) and Article 18b, "relevant allocation period" means:

(a) in relation to an application for free allocation made under Article 5(1)(a), the 2021-2025 allocation period;

(b) in relation to an application for free allocation made under Article 5(1)(b), the 2026-2030 allocation period.".

Article 18a inserted

23. After Article 18 insert—

"Article 18a

Assessment of applications and final allocation at installation level for new entrants

1. Where an application for free allocation is made by a new entrant under Article 5, the regulator must send the information set out in paragraph 2 to the UK ETS authority as soon as reasonably practicable.

2. The information is:

(a) details of the installation, including details of the greenhouse gas emissions permit in force;

(b) the information contained in the new entrant data report submitted with the application under Article 5;

(c) the historical activity levels (if any) determined under Article 17;

(d) the preliminary annual number of allowances to be allocated in respect of the installation and of each sub-installation separately, as calculated under Article 18;

(e) where the regulator has not, by virtue of Article 5(6)(c), determined historical activity levels or the preliminary annual number of allowances, the regulator's explanation;

(f) except where point (e) applies, the final annual number of allowances to be allocated in respect of each sub-installation of the installation:

(i) for the scheme year in the relevant allocation period in which the start of normal operation of the sub-installation occurs; and

(ii) where the historical activity level of the sub-installation has been determined under Article 17, for each subsequent scheme year in the relevant allocation period;

(g) except where point (e) applies, the final annual number of allowances to be allocated in respect of the installation for each scheme year in the relevant allocation period;

(h) whether or not a monitoring methodology plan has been approved in relation to the installation under Article 8.

3. The final annual number of allowances to be allocated in respect of a sub-installation for a scheme year is the preliminary annual number of allowances calculated under Article 18 multiplied by the reduction factor for the scheme year.

4. The final annual number of allowances to be allocated in respect of an installation for a scheme year is the sum of the final annual number of allowances to be allocated in respect of all sub-installations of the installation for the scheme year.

5. The UK ETS authority must as soon as reasonably practicable:

(a) assess the application for free allocation and, where relevant, the regulator's explanation under paragraph 2(e); and

(b) inform the regulator whether or not the application is valid.

6. Where the application is valid, the UK ETS authority must also:

(a) approve the final annual number of allowances, making any corrections to the historical activity levels, preliminary annual number of allowances and final annual number of allowances that the UK ETS authority considers appropriate; and

(b) inform the regulator of the matters referred to in point (a).

7. But where a monitoring methodology plan has not been approved in relation to the installation at the date on which the information set out in paragraph 2 is sent to the UK ETS authority, paragraph 6 applies only after the regulator informs the UK ETS authority that the monitoring methodology plan submitted to the regulator for approval has been approved and does not apply if the regulator informs the UK ETS authority that the monitoring methodology plan has been rejected.

8. The regulator must give notice to the operator of the installation of the following:

(a) whether or not the application is valid;

(b) if the application is not valid, the reasons why it is not valid.

9. Where the application is valid, the regulator must also give notice to the operator:

(a) of the final annual number of allowances approved under paragraph 6; or

(b) that a final annual number of allowances has not been approved because the monitoring methodology plan submitted to the regulator for approval has been rejected.

10. For the purpose of the calculations referred to in paragraphs 3 and 4, the number of allowances for sub-installations and installations must be expressed as the nearest integer, taking 0.5 as nearest to the previous integer.

11. For the purposes of this Article, the reduction factor for a scheme year set out in column 1 of table B is the value set out in the corresponding entry in column 2.

Table B

Column 1 *Scheme year*	*Column 2* *Reduction factor*
2021, 2026	1
2022, 2027	0.978
2023, 2028	0.956
2024, 2029	0.934
2025, 2030	0.912

12. For the purposes of this Article, an application for free allocation is valid if:

(a) the application is one which may be made under this Regulation (see Article 2a); and

(b) the application is otherwise in accordance with this Regulation.".

Article 19 amended (allocation in respect of steam cracking)

24.—(1) Article 19 is amended as follows.

(2) For "Article 17(a)" in both places substitute "Article 17(1)(a)".

Article 20 amended (allocation in respect of vinyl chloride monomer)

25.—(1) Article 20 is amended as follows.

(2) For "Article 17(a)" in both places substitute "Article 17(1)(a)".

Article 21 amended (heat flows between installations)

26.—(1) Article 21 is amended as follows.

(2) After "EU ETS" in both places insert "or UK ETS".

Article 22 amended (exchangeability of fuel and electricity)

27.—(1) Article 22 is amended as follows.

(2) For "Article 17(a)" in each place substitute "Article 17(1)(a)".

(3) In paragraph 2 after "EU ETS" insert "or UK ETS".

Article 23 omitted

28. Article 23 is omitted.

Article 24 substituted

29. For Article 24 substitute—

"Article 24

Renunciation of free allocation of allowances

1. Where an installation is an FA installation for the 2021-2025 allocation period, the operator of the installation may by giving notice (a "renunciation notice") to the regulator renounce free allocation in respect of the remaining scheme years in the 2021-2025 allocation period beginning with the scheme year after the year in which the notice is given.

2. Where an installation is an FA installation for the 2026-2030 allocation period, the operator of the installation may by giving notice (a "renunciation notice") to the regulator renounce free allocation in respect of the remaining scheme years in the 2026-2030 allocation period beginning with the scheme year after the year in which the notice is given.

3. The renunciation notice must set out:

(a) whether the renunciation is made in respect of:

(i) the installation as a whole; or

(ii) one or more sub-installations of the installation (but not all of them); and

(b) where point (a)(ii) applies, the sub-installation or sub-installations in respect of which the renunciation is made.

4. Where a renunciation notice is given, the regulator must:

(a) recalculate the final annual number of allowances to be allocated in respect of the installation for each of the remaining scheme years of the allocation period, to take account of the renunciation notice;

(b) send the calculation to the UK ETS authority.

5. The UK ETS authority must:

(a) approve the final annual number of allowances to be allocated in respect of the installation, making any corrections that the UK ETS authority considers appropriate; and

(b) inform the regulator accordingly.

6. The regulator must inform the operator of the final annual number of allowances approved.

7. Where an application under paragraph 7 of Schedule 6 to the UK ETS Order for the transfer of a greenhouse gas emissions permit containing a statement by the new operator (as defined in paragraph 7 of that Schedule) that the new operator renounces free allocation

in respect of the transferred units (as defined in that paragraph) is granted under paragraph 9 of that Schedule:

(a) for the purposes of this Article, the new operator must be treated as giving a renunciation notice in respect of the transferred units; and

(b) in the case of a transfer other than a partial transfer, for the purposes of article 4A(3)(b) and (5)(b) of the UK ETS Order, the renunciation notice must be treated as having been given by the new operator in respect of the installation as a whole.".

Article 25 substituted

30. For Article 25 substitute—

"Article 25

Mergers and splits

1. This Article applies where an application for the transfer of a greenhouse gas emissions permit of an installation that is an FA installation at the transfer date is granted under paragraph 9 of Schedule 6 to the UK ETS Order.

2. But this Article does not apply if the application contains a statement by the new operator (as defined in paragraph 7 of that Schedule) that the new operator renounces free allocation in respect of the transferred units (as defined in that paragraph).

3. The operators of installations ("new installations") resulting from a merger or split must submit the following to the regulator:

(a) the relevant report or reports (see paragraphs 4 and 5);

(b) a report on the activity level of each sub-installation of each new installation in the calendar year preceding the transfer date containing the information referred to in Article 3(2) of the Activity Level Changes Regulation, as if the merger or split had taken place at the beginning of that year;

(c) a verification report on the reports referred to in points (a) and (b) in accordance with the Verification Regulation 2018.

4. In the case of a merger, the relevant report is:

(a) if at least one of the installations before the merger was an incumbent installation whose start of normal operation occurred before the end of the baseline period, a report verified in accordance with the Verification Regulation 2018 containing the data referred to in Article 4(2)(a) covering the baseline period for the new installation and its sub-installations, as if the merger had taken place at the beginning of the baseline period;

(b) in any other case, a report verified in accordance with the Verification Regulation 2018 on the activity level of the first calendar year after the start of normal operation of the following installations before the merger and their sub-installations:

(i) the installation with the earliest start of normal operation; and

(ii) any other installation whose start of normal operation occurred in the same year as the installation with the earliest start of normal operation.

5. In the case of a split, the relevant reports are:

(a) if the installation before the split was an incumbent installation whose start of normal operation occurred before the end of the baseline period, a report verified in accordance with the Verification Regulation 2018 containing the data referred to in Article 4(2)(a) covering the baseline period for each new installation and its sub-installations, as if the split had taken place at the beginning of the baseline period;

(b) in any other case, a report verified in accordance with the Verification Regulation 2018 on the activity level of the installation in the first calendar year after the start of normal

operation for each new installation and its sub-installations, as if the split had taken place at the beginning of that year.

6. After assessing the reports referred to in paragraph 3, the regulator must:

(a) determine the historical activity level of each sub-installation of each new installation:

(i) where paragraph 4(a) or 5(a) applies, in accordance with Article 15;

(ii) where paragraph 4(b) or 5(b) applies in accordance with Article 17;

(b) based on the historical activity levels, calculate the preliminary and final annual number of allowances to be allocated in respect of each new installation and of each sub-installation of each new installation for each scheme year in the relevant allocation period beginning with the scheme year after the year in which the transfer date occurs:

(i) where paragraph 4(a) or 5(a) applies, in accordance with Articles 16 and 16b;

(ii) where paragraph 4(b) or 5(b) applies, in accordance with Article 18 and 18a;

(c) send the information contained in the relevant report or reports referred to in paragraph 3(a), the determination referred to in point (a) and the calculation referred to in point (b) to the UK ETS authority.

7. For the purposes of paragraph 6:

(a) where a sub-installation of an installation before a split is split into 2 or more sub-installations, the historical activity level and allocation in respect of the sub-installation of the new installation must be based on the historical activity level of the respective stationary technical units of the installation before the split;

(b) the final annual number of allowances to be allocated in respect of the new installation or installations for a scheme year must correspond to the final annual number of allowances to be allocated in respect of the installation or installations before the merger or split for the scheme year.

8. The UK ETS authority must:

(a) approve the final annual number of allowances to be allocated in respect of each new installation for each scheme year in the relevant allocation period beginning with the scheme year after the year in which the transfer date occurs, making any corrections that the UK ETS authority considers appropriate; and

(b) inform the regulator accordingly.

9. The regulator must give notice to the operator of each new installation:

(a) of the final annual number of allowances approved; and

(b) where the final annual number of allowances to be allocated in respect of a new installation for each scheme year in the relevant allocation period after the scheme year in which the transfer date occurs is zero, that the installation is not an FA installation for the relevant allocation period.

10. In this Article:

(a) "relevant allocation period" means:

(i) where any installation before the split or merger is an FA installation for the 2021-2025 allocation period, the 2021-2025 allocation period;

(ii) where any installation before the split or merger is an FA installation for the 2026-2030 allocation period, the 2026-2030 allocation period;

(b) "transfer date", in relation to the transfer referred to in paragraph 1, has the meaning given in paragraph 9 of Schedule 6 to the UK ETS Order.".

Articles 26 substituted

31. For Article 26 substitute—

"Article 26

Cessation of operations of an installation

1. This Article applies where:

(a) an installation that is an FA installation has ceased operation; or

(b) the greenhouse gas emissions permit of such an installation is surrendered under paragraph 11(2) of Schedule 6 to the UK ETS Order or revoked under paragraph 12(3) of that Schedule.

2. No allowances may be allocated in respect of the installation for the scheme year after the year in which the installation ceased operation or, where paragraph 1(b) applies, the surrender or revocation of the permit takes effect and for all subsequent scheme years.

3. The regulator must:

(a) recalculate the final annual number of allowances to be allocated in respect of the installation for those scheme years as zero; and

(b) send the calculation to the UK ETS authority.

4. The UK ETS authority must:

(a) approve the final annual number of allowances to be allocated in respect of the installation; and

(b) inform the regulator accordingly.

5. The regulator must give notice to the operator of the installation of the UK ETS authority's approval.".

Final text omitted

32. Omit "This Regulation shall be binding in its entirety and directly applicable in all Member States." (which follows Article 28).

Annex 3 amended (historical activity level for specific benchmarks referred to in Articles 15(8) and 17(1)(f))

33.—(1) Annex 3 is amended as follows.

(2) In the heading for "17(f)" substitute "17(1)(f)".

Annex 4 amended (parameters for baseline data collection)

34.—(1) Annex 4 is amended as follows.

(2) In the first paragraph for "relevant baseline period" substitute "baseline period beginning on 1 January 2019".

(3) In section 1—

(a) in section 1.1—

(i) in point (b) for "Union Registry" substitute "registry";

(ii) omit point (c);

(iii) in point (d) omit "GHG";

(b) in section 1.3—

(i) in point (a) for "activities pursuant to Annex I to Directive 2003/87/EC" substitute "regulated activities";

(ii) for point (c) substitute—

"(c) Whether the installation meets condition A, B or C referred to in paragraph 6 of Schedule 7 to the UK ETS Order or the relevant condition referred to in paragraph 3 of Schedule 8 to that Order.";

(c) in section 1.4—

(i) in point (a) omit "pursuant to Article 3(u) of Directive 2003/87/EC";

(ii) for point (b) substitute—

"(b) Whether the installation is used for any of the following:

(i) the capture of greenhouse gases from other installations for the purpose of transport and geological storage in a storage site;

(ii) the transport of greenhouse gases by pipelines for geological storage in a storage site;

(iii) the geological storage of greenhouse gases in a storage site;";

(d) in section 1.6—

(i) in the heading after "EU ETS" insert "or UK ETS";

(ii) in point (c)—

(aa) after "EU ETS" insert "or UK ETS";

(bb) for "Registry" substitute "Union Registry or registry".

(4) In section 2—

(a) in section 2.1—

(i) in the first subparagraph—

(aa) in point (b) for "GHG" substitute "greenhouse gas";

(bb) in point (c) for "Regulation (EU) No 601/2012" substitute "the Monitoring and Reporting Regulation 2018";

(ii) in the second subparagraph for "Member States may choose to allow operators to report" substitute "The report may include".

(b) in section 2.3—

(i) in point (c) after "EU ETS" insert "or UK ETS";

(ii) in point (d) after "EU ETS" insert "or UK ETS";

(iii) in point (i) after "EU ETS" insert "or UK ETS";

(iv) in point (j) after "EU ETS" insert "or UK ETS";

(v) in point (m) after "EU ETS" insert "or UK ETS";

(vi) in point (n) after "EU ETS" insert "or UK ETS";

(vii) in point (p)—

(aa) omit "carbon leakage and non-carbon leakage";

(bb) after "district heating sub-installations" insert "that serve and do not serve sectors or subsectors set out in the Annex to Commission Delegated Decision (EU) 2019/708";

(c) in section 2.6—

(i) in point (a) for "non-EU ETS" substitute "non-ETS";

(ii) in point (b) for "delegated acts adopted pursuant to Article 10b(5) of Directive 2003/87/EC" substitute "Commission Delegated Decision (EU) 2019/708";

(iii) in point (c)—

(aa) for "the carbon leakage heat benchmark sub-installation" substitute "a heat benchmark sub-installation that serves a sector or subsector set out in the Annex to Commission Delegated Decision (EU) 2019/708";

(bb) after "EU ETS" insert "or UK ETS";

(d) in section 2.7 in point (b) for "delegated acts adopted pursuant to Article 10b(5) of Directive 2003/87/EC" substitute "Commission Delegated Decision (EU) 2019/708".

Annex 5 amended (factors applicable for reducing free allocation)

35.—(1) Annex 5 is amended as follows.

(2) In the heading omit "pursuant to Article 10b(4) of Directive 2003/87/EC".

Annex 6 amended (minimum content of the monitoring methodology plan)

36.—(1) Annex 6 is amended as follows.

(2) In section 1—

(a) in point (a) for "Union Registry" substitute "registry";

(b) in point (e)—

(i) after "EU ETS" insert "or "UK ETS";

(ii) after "Union Registry" insert "or the registry".

(3) In section 4 in the first subparagraph in point (a) for "Regulation (EU) No 601/2012" substitute "the Monitoring and Reporting Regulation 2018".

Annex 7 amended (data monitoring methods)

37.—(1) Annex 7 is amended as follows.

(2) In section 1—

(a) after "pursuant to Regulation (EU) No 601/2012" insert "or the Monitoring and Reporting Regulation 2018";

(b) for "in accordance with Regulation (EU) No 601/2012" substitute "in accordance with either Regulation".

(3) In section 2—

(a) in the definition of "data set" in point (b) for "Regulation (EU) No 601/2012" substitute "the Monitoring and Reporting Regulation 2018";

(b) in the final subparagraph for "Regulation (EU) No 601/2012" substitute "the Monitoring and Reporting Regulation 2018".

(4) In section 3.1 for "Article 6" substitute "Article 8".

(5) In section 4—

(a) in section 4.2—

(i) in the second subparagraph for "EUR 20" substitute "£20";

(ii) in the fourth subparagraph—

(aa) for "EUR 2 000" substitute "£2,000";

(bb) for "Regulation (EU) No 601/2012" substitute "the Monitoring and Reporting Regulation 2018";

(cc) for "EUR 500" substitute "£500".

(b) in section 4.4 in the first subparagraph—

(i) in point (a) after "Regulation (EU) No 601/2012" insert "or the Monitoring and Reporting Regulation 2018";

(ii) in point (b) for "subject to national legal metrological control or measuring instruments compliant with the requirements of Directive 2014/31/EU of the European Parliament and of the Council or Directive 2014/32/EU of the European Parliament and of the Council" substitute "that comply with the Non-automatic

Weighing Instruments Regulations 2016(**a**) or the Measuring Instruments Regulations 2016(**b**)";

(c) in section 4.5 in the first subparagraph in point (a) for "subject to national legal metrological control or measuring instruments compliant with the requirements of the Directive 2014/31/EU or Directive 2014/32/EU" substitute "that comply with the Non-automatic Weighing Instruments Regulations 2016 or the Measuring Instruments Regulations 2016";

(d) in section 4.6 in the first subparagraph—

(i) in point (a) after "Regulation (EU) No 601/2012" insert "or the Monitoring and Reporting Regulation 2018";

(ii) in point (d) in the first indent for "Member State" substitute "United Kingdom";

(iii) in point (e) in the first indent for "Regulation (EU) No 601/2012" substitute "the Monitoring and Reporting Regulation 2018".

(6) In section 6.1 for "Regulation (EU) No 601/2012" in both places substitute "the Monitoring and Reporting Regulation 2018".

(7) In section 7.3—

(a) in the heading after "EU ETS" insert "or UK ETS";

(b) in the first subparagraph—

(i) after "EU ETS" insert "or UK ETS";

(ii) for "non-EU ETS" substitute "non-ETS";

(c) in the second subparagraph—

(i) after "EU ETS" insert "or UK ETS";

(ii) for "non-EU ETS" substitute "non-ETS".

(8) In section 10.1—

(a) in section 10.1.1 in point 1 for "Regulation (EU) No 601/2012" substitute "the Monitoring and Reporting Regulation 2012 or, where relevant, the Monitoring and Reporting Regulation 2018";

(b) in section 10.1.2 in point 4 after "EU ETS" in both places insert "or UK ETS".

SCHEDULE 2

Article 47

Activity Level Changes Regulation amended

Activity Level Changes Regulation amended

1. Commission Implementing Regulation (EU) 2019/1842 is amended in accordance with this Schedule.

Article 1 amended (scope)

2.—(1) Article 1 is amended as follows.

(2) For the words from "pursuant to Article 10a" to the end substitute "to installations under the UK ETS".

(**a**) S.I. 2016/1152.
(**b**) S.I. 2016/1153.

Article 2 amended (definitions)

3.—(1) Article 2 is amended as follows.

(2) Renumber the existing text as paragraph 1.

(3) In paragraph 1—

(a) omit points (5) and (6);

(b) after point (4) insert—

"(7) 'Delegated Regulation (EU) 2019/331' means the Free Allocation Regulation (as defined in the UK ETS Order);

(8) 'emission allowance' means an allowance (as defined in the UK ETS Order);

(9) 'Implementing Regulation (EU) 2018/2067' means the Verification Regulation 2018 (as defined in the UK ETS Order);

(10) 'UK ETS Order' means the Greenhouse Gas Emissions Trading Scheme Order 2020. ".

(4) After paragraph 1 insert—

"2. Expressions used in this Regulation that are defined for the purposes of the UK ETS Order or the Free Allocation Regulation have the meaning given in that Order or Regulation.

3. For the purposes of this Regulation, a sub-installation has ceased operation if:

(a) the sub-installation is no longer operating; and

(b) it is technically impossible to resume operation.

4. For the purpose of this Regulation, the number of allowances to be allocated in respect of sub-installations and installations must be expressed as the nearest integer, taking 0.5 as nearest to the previous integer.".

Article 3 amended (reporting requirements)

4.—(1) Article 3 is amended as follows.

(2) In paragraph 1—

(a) in the first subparagraph—

(i) for "to which free allocation has been given, in accordance with Article 10a of Directive 2003/87/EC, for the trading period from 2021 until 2030" substitute "that are FA installations";

(ii) after "its submission." insert "In 2026 this report must include data for the 2 years preceding its submission if the operator is not required under this Article to submit in 2025 a report including data for 2024.";

(b) omit the second subparagraph.

(3) In paragraph 2—

(a) in the first subparagraph—

(i) after "must" insert "be verified as satisfactory in accordance with the Verification Regulation 2018 and";

(ii) omit "on the structure of the group, if any, to which the installation belongs and";

(iii) for "to operate" substitute "operation";

(b) omit the second subparagraph.

(4) In paragraph 3—

(a) in the first subparagraph for the words from "by 31 March" to "submission" substitute "to the regulator on or before 30 June in the 2021 scheme year and on or before 31 March in each subsequent scheme year";

(b) omit the second to fifth subparagraphs.

(5) In paragraph 4—

(a) for "competent authority" in each place substitute "regulator";

(b) in the first subparagraph—

(i) in point (a)—

(aa) omit "verified";

(bb) omit "and the issuance of the allowances has not been suspended";

(ii) in point (c) after "verified" insert "as satisfactory";

(c) omit the second subparagraph (that is to say, the words from "The competent authority shall not" to "point (a).").

(6) After paragraph 4 insert—

"5. Where the regulator makes an estimate of the value of a parameter under paragraph 4, the regulator must give notice of the value to the operator.

6. Subject to paragraph 8, where notice of an estimate of the value of a parameter is given, for the purposes of this Regulation, the operator must be treated as having submitted an activity level report including the estimated value.

7. Where, after making an estimate of a parameter (including a rectified estimate, or a further rectified estimate, made under this paragraph), the regulator considers that there is an error in the estimate, the regulator must:

(a) withdraw any notice of the estimate given under paragraph 5;

(b) make a rectified estimate; and

(c) give notice of the rectified estimate in accordance paragraph 5,

and paragraph 6 applies to a notice of the rectified estimate as it does to the notice of the previous estimate.

8. Where no activity level report has been submitted by the operator of an installation by the time limit referred to in paragraph 3 and the regulator makes an estimate of the value of a parameter under paragraph 4(a):

(a) Article 3a does not apply;

(b) the regulator must not send to the UK ETS authority under Article 6a(2) any adjustment to free allocation calculated on the basis of such an estimate, or any recalculation of the preliminary or final annual number of allowances to be allocated in respect of the installation calculated on the basis of such an estimate, if the effect of the adjustment is to increase the final annual number of allowances to be allocated.".

Articles 3a inserted

5. After Article 3 insert—

"Article 3a

Sub-installations for which no historical activity level determined

1. This Article applies where the historical activity level of a sub-installation referred to in an activity level report has not been determined under Article 15 or 17 of the Free Allocation Regulation (see Articles 15(7) and 17(2) of that Regulation) or under this Article.

2. If the activity level report contains data for the first calendar year after the start of normal operation of the sub-installation, the regulator must:

(a) determine the historical activity level of the sub-installation in accordance with Article 17(1) of the Free Allocation Regulation (whether the sub-installation is a sub-installation of an incumbent installation or a new entrant);

(b) calculate in accordance with Article 18(1) of that Regulation the preliminary annual number of allowances to be allocated in respect of the sub-installation for each scheme year in the relevant allocation period beginning with the first scheme year after the start of normal operation; and

(c) calculate the final annual number of allowances to be allocated in respect of the sub-installation for each scheme year referred to in point (b):

(i) in the case of a sub-installation of an incumbent installation, in accordance with Article 16b(2) of that Regulation, but using the preliminary annual number of allowances calculated under point (b) instead of the preliminary annual number of allowances referred to in the words before point (a) of paragraph 2 of Article 16b;

(ii) in the case of a sub-installation of a new entrant, in accordance with Article 18a(3) of that Regulation.

3. If the year in which the start of normal operation of the sub-installation occurs is a scheme year in the relevant allocation period, the regulator must:

(a) determine the activity level of the sub-installation in the scheme year;

(b) calculate in accordance with Article 18(2) of the Free Allocation Regulation the preliminary annual number of allowances to be allocated in respect of the sub-installation for the scheme year;

(c) calculate the final annual number of allowances to be allocated in respect of the sub-installation for the scheme year:

(i) in the case of a sub-installation of an incumbent installation, in accordance with Article 16b(2) of that Regulation, but using the preliminary annual number of allowances calculated under point (b) instead of the preliminary annual number of allowances referred to in the words before point (a) of paragraph 2 of Article 16b;

(ii) in the case of a sub-installation of a new entrant, in accordance with Article 18a(3) of that Regulation.

4. In this Article, "relevant allocation period" means:

(a) in the case of a sub-installation of an incumbent installation in respect of which a deemed application for free allocation in the 2021-2025 allocation period was made or a new entrant in respect of which an application for free allocation is made under Article 5(1)(a) of the Free Allocation Regulation, the 2021-2025 allocation period;

(b) in the case of a sub-installation of an incumbent installation in respect of which an application for free allocation in the 2026-2030 allocation period is made under Article 4 of that Regulation or a new entrant in respect of which an application for free allocation is made under Article 5(1)(b) of that Regulation, the 2026-2030 allocation period.".

Article 4 amended (average activity levels)

6.—(1) Article 4 is amended as follows.

(2) In paragraph 1 for "competent authority" substitute "regulator".

Article 5 amended (adjustments to free allocation due to activity level changes)

7.—(1) Article 5 is amended as follows.

(2) In paragraph 1—

(a) for "competent authority" substitute "regulator";

(b) for "to that installation" substitute "in respect of the sub-installation";

(c) for "That adjustment shall be made" substitute "The regulator must calculate that adjustment".

(3) In paragraph 2—

(a) for "has been made" substitute "has been approved by the UK ETS authority under Article 6a";

(b) for "to that installation" substitute "in respect of the sub-installation".

(4) In paragraph 3—

(a) for "to that sub-installation" substitute "in respect of the sub-installation";

(b) for "determined by Article 16 or 18 of Delegated Regulation (EU) 2019/331" substitute "approved under Article 16b or 18a of the Free Allocation Regulation or under Article 6a of this Regulation";

(c) after "determining the average activity level." insert "The regulator must calculate an adjustment to the free allocation of the sub-installation accordingly.".

(5) In paragraph 4 for "the free allocation of this sub-installation shall be set to" substitute "the regulator must calculate an adjustment to the free allocation of the sub-installation so that it is".

(6) Omit paragraph 6.

(7) After paragraph 5 insert—

"7. In this Article, a reference to the historical activity level of a sub-installation includes a reference to the historical activity level approved under Article 6a.".

Article 6 amended (other changes in the operation of the installation)

8.—(1) Article 6 is amended as follows.

(2) In paragraph 1 for "competent authority" substitute "regulator".

(3) In paragraph 2 for "competent authority" in each place substitute "regulator".

(4) In paragraph 3—

(a) in the first subparagraph after "baseline data report" insert "or the new entrant data report";

(b) in the second subparagraph for "Article 6" substitute "Article 8".

(5) In paragraph 4—

(a) for "to that installation" substitute "in respect of the sub-installation";

(b) for "allowances, by increasing" substitute "allowances. The regulator must calculate that adjustment by increasing".

(6) After paragraph 4 insert—

"5. In this Article, where an application under Article 5 of the Free Allocation Regulation is made in respect of a new entrant that has not been operating for a full calendar year after the start of normal operation, a reference to the new entrant data report includes a reference to the activity level report submitted after the end of the first full calendar year of operation.".

Article 6a inserted

9. After Article 6 insert—

"Article 6a

Approval of changes by UK ETS authority

1. This Article applies where the regulator:

(a) determines the activity level or historical activity level of a sub-installation or calculates the preliminary or final annual number of allowances to be allocated in respect of a sub-installation for a scheme year under Article 3a; or

(b) calculates an adjustment to free allocation in respect of a sub-installation for a scheme year under Article 5 or 6.

2. Subject to Article 3(8), the regulator must as soon as reasonably practicable send to the UK ETS authority:

(a) the determination or calculation referred to in paragraph 1;

(b) the regulator's recalculation of the final annual number of allowances to be allocated in respect of the installation of which the sub-installation is part for the scheme year, taking account of the determination, calculation or adjustment referred to paragraph 1.

3. The UK ETS authority must:

(a) approve the final annual number of allowances to be allocated in respect of the installation for the scheme year, making any corrections to the activity level, historical activity level, preliminary annual number of allowances and final annual number of allowances that the UK ETS authority considers appropriate; and

(b) inform the regulator accordingly.

4. The regulator must inform the operator of the installation of the final annual number of allowances approved.".

Final text amended

10. Omit "This Regulation shall be binding in its entirety and directly applicable in all Member States." (which follows Article 7).

EXPLANATORY NOTE

(This note is not part of the Order)

The United Kingdom Emissions Trading Scheme (the "UK ETS") was established by the Greenhouse Gas Emissions Trading Scheme Order 2020 (the "UK ETS Order"). The UK ETS runs for ten "scheme years" beginning in 2021, divided into two "allocation periods", the 2021-2025 allocation period and the 2026-2030 allocation period. Operators of certain industrial installations and certain aircraft operators are required to monitor, report on, and surrender "allowances" equivalent to, their greenhouse gas emissions in each scheme year.

This Order amends the UK ETS Order and other legislation, largely to provide for a registry for the UK ETS and for the free allocation of allowances. The legislation amended includes Commission Delegated Regulation (EU) 2019/331 (the "Free Allocation Regulation") and Commission Implementing Regulation (EU) 2019/1842 (the "Activity Level Changes Regulation"). Both Regulations are retained EU law, originally made for the EU Emissions Trading System ("EU ETS"), but adapted for the UK ETS.

For provision for the registry, see new Schedule 5A to the UK ETS Order; for provision for free allocation for installations, see new Part 4A of the UK ETS Order, the Free Allocation Regulation and the Activity Level Changes Regulation; and for provision for free allocation for aircraft operators, see new Part 4A of the UK ETS Order.

Registry

The Order establishes a registry for the UK ETS to record the creation, allocation (whether by free allocation or auction), transfer and surrender of allowances. Operators and aircraft operators are required to have accounts in the registry in order to comply with their obligations under the scheme. Others may apply for trading accounts for the purpose of trading in allowances.

Registry functions are exercised by the "registry administrator", defined as the Secretary of State, the Environment Agency, the Natural Resources Body for Wales, the Scottish Environment Protection Agency and the Northern Ireland chief inspector: see new article 8A of the UK ETS Order.

Free allocation of allowances

Operators of eligible installations and eligible aircraft operators may apply for the free allocation of allowances. Decisions about free allocation are made by the Secretary of State, the Northern Ireland Department of Agriculture, Environment and Rural Affairs, the Scottish Ministers and the Welsh Ministers, referred to as the "UK ETS authority". Allowances are allocated to successful applicants in each scheme year in an allocation period in accordance with allocation tables published by the UK ETS authority. The allowances may be traded or surrendered to comply with the scheme obligation.

For installations, the Order provides for free allocation in both allocation periods in respect of (a) "incumbent installations" - installations for which a greenhouse gas emissions permit is issued by a specified cut-off date, who apply for free allocation for all scheme years in an allocation period; and (b) "new entrants" – new installations in respect of which such a permit is issued after the cut-off date, who apply for free allocation for scheme years in an allocation period after operation starts. For the 2021-2025 allocation period, only operators of installations who applied for free allocation under the EU ETS are eligible for free allocation under the UK ETS as "incumbent installations".

The number of allowances allocated in respect of incumbent installations is subject to an "industry cap" and may be reduced by a cross-sectoral correction factor: see new Article 16a of the Free Allocation Regulation. Allocations in respect of new entrants are reduced by an annual reduction factor over an allocation period: see new Article 18a of that Regulation. Operators of installations are required to report on their "activity level" each year, which may lead to an increase or decrease in the allowances allocated: see the Activity Level Changes Regulation. Allowances allocated in respect of new entrants and increases in allocations in respect of all installations come from a reserve of 30,249,066 allowances known as the "new entrants' reserve" until the reserve is exhausted: see new article 34G of the UK ETS Order.

For aircraft operators, the Order provides for free allocation in the 2021-2025 allocation period only. There is no provision for "new" aircraft operators to apply. Allocations are reduced by an annual reduction factor over the allocation period, but otherwise do not change: see new article 34M of the UK ETS Order. Only an "aircraft operator" as defined in article 6 of the UK ETS Order, that is a person who operates above a specified minimum threshold, is entitled to an allocation of allowances.

Where allowances have been over-allocated, operators and aircraft operators may be required to return them or an equivalent number may be taken directly from registry accounts: see new articles 34S to 34V of the UK ETS Order. The allocation of allowances may be withheld whilst investigation is underway into circumstances which may lead to a change in allocation: see new article 34W of the UK ETS Order. There are also some specific provisions, in article 34O, which take into account that it is not always possible to be certain whether a person will be an aircraft operator in a particular year (and so have an entitlement to free allocation) at the time allowances for that year are due to be allocated. These provide for allowances to be withheld if a person was not an aircraft operator in the previous year and for adjustments in later years where necessary.

A regulatory impact assessment of the effect that the UK ETS will have on the costs of business, the voluntary sector and the public sector is available from the Industrial Energy Directorate, Department for Business, Energy and Industrial Strategy, 1 Victoria Street, London SW1H 0ET and is available alongside the UK ETS Order on www.legislation.gov.uk.

Memorandwm Esboniadol ar gyfer Gorchymyn Cynllun Masnachu Allyriadau Nwyon Tŷ Gwydr (Diwygio) 2020

Lluniwyd y Memorandwm Esboniadol hwn gan Adran yr Amgylchedd, Ynni a Materion Gwledig ac fe'i gosodir gerbron Senedd Cymru ar y cyd â'r is-ddeddfwriaeth uchod ac yn unol â Rheol Sefydlog 27.1

Datganiad y Gweinidog/Dirprwy Weinidog

Yn fy marn i, mae'r Memorandwm Esboniadol hwn yn rhoi darlun teg a rhesymol o effaith ddisgwyliedig Gorchymyn Cynllun Masnachu Allyriadau Nwyon Tŷ Gwydr (Diwygio) 2020. Rwyf wedi fy modloni bod y manteision yn cyfiawnhau'r costau tebygol.

Lesley Griffiths
Gweinidog yr Amgylchedd, Ynni a Materion Gwledig
17 Rhagfyr 2020

RHAN 1

1. Disgrifiad

Cafodd Cynllun Masnachu Allyriadau'r DU ("ETS") ei sefydlu gan Orchymyn y Cynllun Masnachu Allyriadau Nwyon Tŷ Gwydr 2020 (y "prif Orchymyn") fel cynllun masnachu allyriadau nwyon tŷ gwydr i'r DU gyfan er mwyn annog y sectorau pŵer a hedfan, a diwydiant, i leihau allyriadau mewn modd costeffeithiol. Mae wedi'i ddylunio ar y cyd gan Lywodraethau Cymru, yr Alban a'r DU, a Gweithrediaeth Gogledd Iwerddon, a bydd yn cyfrannu at dargedau lleihau allyriadau'r DU a'r nod o ran sero-net, yn ogystal â'r targedau lleihau allyriadau yma yng Nghymru.

Mae'r Gorchymyn hwn yn gwneud darpariaethau pellach ar gyfer ETS y DU, yn benodol o ran dyrannu lwfansau am ddim a chofrestrfa ar gyfer ETS y DU.

2. Materion o ddiddordeb arbennig i'r Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

Mae Rhan 3 o Atodlen 3 i Ddeddf Newid yn yr Hinsawdd 2008 yn nodi bod rhaid sefydlu cynllun masnachu allyriadau sy'n berthnasol i Gymru, Lloegr, yr Alban a Gogledd Iwerddon – fel yn yr achos hwn – drwy Orchymyn yn y Cyfrin Gyngor. Rhagnodir gweithdrefn briodol ar gyfer Gorchymyn yn y Cyfrin Gyngor yn adran 48 o'r Ddeddf Newid yn yr Hinsawdd. Gan nad yw'r offeryn hwn yn cynnwys unrhyw ddarpariaethau y gallent fod wedi'u cynnwys yn adran 48(3) o'r Ddeddf Newid yn yr Hinsawdd, mae'r weithdrefn negyddol wedi cael ei defnyddio.

Bydd Senedd y DU yn craffu ar y Gorchymyn yn y Cyfrin Gyngor, felly ni ystyrir ei bod yn rhesymol ymarferol creu neu osod yr offeryn hwn yn ddwyieithog.

Gosodir y Gorchymyn hwn, a ddaw i rym ar 31 Rhagfyr 2020, gan dorri'r rheol 21 diwrnod, sef y confensiwn na ddylid gosod offeryn gerbron y Senedd lai na 21 diwrnod cyn y daw i rym. Gwnaed y Gorchymyn ar 16 Rhagfyr 2020, dyddiad cyfarfod cyntaf y Cyfrin Gyngor ar ôl y cyfarfod lle gwaned y prif Orchymyn, a chafodd ei osod cyn gynted ag y bo'n rhesymol ymarferol ar ôl hynny. Ystyrir bod dyddiad dod i rym hwyrach yn amhosibl am ddau reswm. Yn gyntaf, er mwyn sicrhau na fydd oedi yn y rhwymedigaethau ar weithredwyr safleoedd sy'n ymwneud â monitro data at ddibenion dyrannu am ddim. Mae hyn yn osgoi ansicrwydd i gyfranogwyr ac yn sicrhau proses bontio ddidrafferth o System Masnachu Allyriadau yr Undeb Ewropeaidd i ETS y DU. Yn ail, mae angen dadwneud dirymiad arfaethedig o Reoliad Dirprwyedig y Comisiwn (UE) 2019/331 ("y Rheoliad Dyrannu am Ddim") drwy reoliad 62 o Reoliadau'r Cynllun Masnachu Allyriadau Nwyon Tŷ Gwydr (Diwygio) (Ymadael â'r UE) (Rhif 2) 2019, sy'n dod i rym ar ddiwrnod cwblhau'r Cyfnod Gweithredu. Gwnaed yr offeryn fel rhan o baratoadau "ymadael heb gytundeb" blaenorol Llywodraeth y DU yng ngwanwyn 2019.

Mae tri mater arall yr hoffem eu dwyn i sylw'r Pwyllgor. Yn gyntaf, mae paragraff 6(1) o'r Atodlen 5A newydd i'r prif Orchymyn yn rhoi'r pŵer i weinyddwr y gofrestrfa sefydlu "trefniadau a rheolau gweinyddol" ar gyfer gweinyddu'r gofrestrfa. Mae paragraff 16(9) o'r Atodlen honno'n nodi'n glir beth mae'r rheolau gweinyddol arfaethedig yn debygol o'i gynnwys. Mae'r Adran yn ystyried bod adran 90(3) o'r Ddeddf Newid yn yr Hinsawdd yn c6ynnwys y pŵer i wneud darpariaeth o'r fath. Mae Gorchymyn Cynllun Effeithlonrwydd Ynni'r Ymrwymiad Lleihau Carbon 2013, a wnaed o dan adran 90(3) o'r Ddeddf Newid yn yr Hinsawdd hefyd, yn cynnwys darpariaeth debyg ar gyfer trefniadau a rheolau gweinyddol: gweler erthyglau 50(4) a 53(1)(a) o'r Gorchymyn hwnnw.

Yn ail, mae paragraff 6 o Atodlen 2 i'r Ddeddf Newid yn yr Hinsawdd yn mynnu bod deddfwriaeth a wneir wrth arfer y pwerau galluogi yn darparu na all lwfansau a ddefnyddir gan gyfranogwr at ddibenion cynllun masnachu gale eu defnyddio gan y cyfranogwr at unrhyw ddiben arall. Mae'r diffiniad o "ildio" yn erthygl 4(1) o'r prif Orchymyn, a oedd yn cynnwys darpariaeth o'r fath, yn cael ei ddiwygio gan yr offeryn hwn; ac mae paragraff 24(2) o'r Atodlen 5A newydd i'r prif Orchymyn bellach yn cynnwys y gofyniad hwnnw.

Yn drydydd, wrth lunio'r prif Orchymyn drafft, roedd yr Adran yn rhag-weld y byddai Rheoliad Gweithredu'r Comisiwn (UE) 2018/2067 ("Rheoliad Dilysu 2018") yn gyfraith yr UE a ddargedwir ond na fyddai Rheoliad Gweithredu'r Comisiwn (UE) 2018/2066 ("Rheoliad Monitro ac Adrodd 2018") yn cael ei ddargadw ac, felly, bod angen gwahanol ddulliau drafftio ar gyfer ymgorffori rheolau o'r mesurau hyn yn ETS y DU. Fodd bynnag, mae'r Gorchymyn hwn yn gwneud newid mewn cysylltiad â Rheoliad Dilysu 2018, gan gael gwared ar y gwahaniaeth. Roedd hyn yn cyd-fynd â'r disgwyliad, wedi gweld deddfwriaeth ddrafft yr UE gyda diwygiadau yn ymwneud â dyrannu am ddim, a fydd yn dod i rym ar 1 Ionawr 2021, na fyddai'r fersiwn o Reoliad Dilysu 2018 yr oeddem am ei defnyddio ar gyfer ETS y DU yn gyfraith yr UE a ddargedwir. Yn anffodus, yn y pen draw, ni chwblhawyd diwygiadau'r UE mewn pryd i'r Gorchymyn hwn gyfeirio atynt. Er hynny, rydym wedi cadw at y dull drafftio newydd ar gyfer Rheoliad Dilysu 2018, gan weithredu'r fersiwn wreiddiol â diwygiadau at ddibenion ETS y DU yn hytrach na gweithredu'r fersiwn ddiwygiedig yr oeddem yn ei disgwyl, yn seiliedig ar y ffaith y gallai hwyluso diwygiadau diweddarach a allai fod yn ddymunol er mwyn adlewyrchu cynllun yr UE (er enghraifft yng nghyd-destun unrhyw gysylltu).

3. Y cefndir deddfwriaethol

Roedd y prif Orchymyn yn sefydlu ETS y DU, a fydd yn weithredol o 1 Ionawr 2021 ymlaen. Roedd y darpariaethau allweddol yn y prif Orchymyn yn ymwneud â hyd a lled y cynllun, y gofynion monitro ac adrodd, y cap (cyfanswm lefel yr allyriadau a ganiateir) a'r trywydd (cyfradd gostwng y cap), a rolau'r rheoleiddwyr yn monitro a gorfodi rheolau'r cynllun.

Y prif Orchymyn oedd y cyntaf mewn pecyn deddfwriaethol a oedd wedi'i ddylunio i gyflenwi ETS y DU y gellir ei roi ar waith erbyn diwedd y Cyfnod Pontio, gan sicrhau na fydd bwlch prisiau carbon yn dod i'r amlwg pan fydd y DU yn rhoi'r gorau i gymryd rhan yn ETS yr UE. Gallai bwlch prisiau carbon arwain at gynnydd mewn allyriadau a pheryglu ein gallu i fodloni'r Gyllideb Garbon, a chyrraedd ein targedau lleihau allyriadau.

Y Gorchymyn hwn yw'r ail offeryn yn y pecyn. Ymysg pethau eraill, mae'n darparu ar gyfer dyrannu lwfansau am ddim a chofrestrfa ar gyfer ETS y DU. Mae'r Gorchymyn hwn yn diwygio'r prif Orchymyn, y Rheoliad Dyrannu am Ddim a Rheoliad Gweithredu'r Comisiwn (UE) 2019/1842, y cyfeirir ato yn y Gorchymyn fel y "Rheoliad Newidiadau i Lefelau Gweithgarwch", offeryn arall gan yr UE a ddeddfwyd ar gyfer ETS yr UE a fydd yn rhan o gyfraith ddomestig ar ôl diwrnod cwblhau'r Cyfnod Gweithredu, a chaiff ei fabwysiadu at ddibenion ETS y DU.

Y trydydd offeryn yn y pecyn fydd y rheoliadau a wneir o dan adran 96 o Ddeddf Cyllid 2020 i sefydlu rheolau ar gyfer arwerthu lwfansau a mecanweithiau i gefnogi sefydlogrwydd y farchnad[1]. Daw hyn i rym yn chwarter cyntaf 2021.

Yn ogystal â hynny, bydd offeryn pellach a fydd yn diwygio deddfwriaeth gwasanaethau ariannol yn cael ei osod ar ffurf drafft gerbron Tŷ'r Cyffredin a Thŷ'r Arglwyddi. Bydd yr offeryn statudol hwn yn nodi'r rheoliadau ar gyfer masnachu lwfansau yn ETS y DU. Bydd yn gosod rôl oruchwylio i'r Awdurdod Ymddygiad Ariannol mewn cyfraith ac yn sicrhau bod lwfansau ETS y DU yn destun yr un goruchwyliaeth a thriniaeth reoleiddiol berthnasol ag offerynnau ariannol. Daw hyn i rym yn chwarter cyntaf 2021.

Mae Llywodraeth y DU wedi nodi ei bod yn fodlon ystyried cyswllt rhwng ETS y DU ac ETS yr UE, os yw cytundeb cysylltu er budd y ddwy ochr ac yn cydnabod bod y ddau barti'n gyfartal yn sofran. Gallai cyswllt rhwng ETS y DU ac ETS yr UE helpu i sefydlu marchnad garbon fwy o lawer, a allai gynyddu'r cyfleoedd i leihau allyriadau ac i fasnachu allyriadau mewn modd costeffeithlon. Mae cyflenwi ETS y DU drwy'r pecyn deddfwriaethol hwn yn ei gwneud yn fwy tebygol y byddwn yn gallu sicrhau cytundeb cysylltu â'r UE drwy drafod. Byddai angen am ddeddfwriaeth bellach i gyflawni unrhyw gyswllt rhwng ETS y DU ac ETS yr UE.

[1] Mae paragraff 5(4) o Atodlen 2 i Ddeddf Newid yn yr Hinsawdd 2008 yn atal deddfwriaeth a wneir o dan y Ddeddf rhag darparu ar gyfer dyrannu lwfansau yn gyfnewid am gydnabyddiaeth.

4. Diben y ddeddfwriaeth a'r effaith y bwriedir iddi ei chael

Prif bwrpas y Gorchymyn hwn yw darparu ar gyfer dyrannu lwfansau am ddim a chofrestrfa ar gyfer ETS y DU.

Mae rhychwant tiriogaethol y Gorchymyn hwn yn cynnwys Cymru, Lloegr, yr Alban a Gogledd Iwerddon. Mae'r Gorchymyn yn effeithio ar ddiwydiant a'r sectorau pŵer ac awyrennau.

Mae'r Gorchymyn yn gwneud darpariaeth mewn cysylltiad â dyrannu lwfansau am ddim ac â chofrestrfa ETS y DU, fel a ganlyn:

Dyrannu lwfansau am ddim

Mae'r Gorchymyn yn darparu y gellir rhoi lwfansau am ddim i'r cyfranogwyr yn ETS y DU sy'n wynebu'r risg fwyaf o "ollyngiadau carbon".

Ceisiadau ar gyfer dyraniadau am ddim ar gyfer 2021-2026

Mae'r Gorchymyn yn darparu y bydd unrhyw geisiadau ar gyfer dyraniadau am ddim a wneir gan safleoedd yn y DU ar gyfer cyfnod dyrannu 2021-2026 o dan ETS yr UE yn cael eu trin fel ceisiadau o dan ETS y DU. Mae hyn yn golygu nad oes yn rhaid i weithredwyr ailgyflwyno unrhyw wybodaeth i Awdurdod y DU, sy'n cefnogi proses bontio ddidrafferth ymhellach.

Meincnodau

Mae'r cyfrifiad a ddefnyddir i bennu sawl lwfans am ddim a ddyfernir i bob cyfranogwr cymwys yn ETS y DU yn ystyried pa mor llygrol yw'r allyrrydd o'i gymharu â'i gystadleuwyr sy'n perfformio orau: y meincnod yw enw'r paramedr hwn ac mae meincnod ar wahân ar gyfer pob gweithgaredd sy'n gymwys i gael dyraniad am ddim. Dylai meincnodi lwfansau am ddim yn y modd hwn annog gweithredwyr llai effeithlon i wella eu perfformiad, a gwobrwyo'r rhai sy'n perfformio'n dda.

Rhestr gollyngiadau carbon

Rhan arall o'r gwaith o gyfrifo'r hawl i ddyraniadau am ddim yw a ydy'r safle dan sylw yn perfformio proses (ee cynhyrchu sment) yr ystyrir ei bod yn wynebu risg o ollyngiadau carbon. Mae prosesau yr ystyrir eu bod yn wynebu risg o ollyngiadau carbon wedi'u rhestru ar y Rhestr Gollyngiadau Carbon a byddant yn cael eu hawl lawn i ddyraniadau am ddim.

Cyfranogwyr newydd

Mae'r Gorchymyn hefyd yn datgan, eto gan adlewyrchu'r dull gweithredu yn ETS yr UE i ddarparu proses bontio ddidrafferth i fusnesau, y bydd cyfran o lwfansau ar gael i gyfranogwyr newydd yn ETS y DU, ac i weithredwyr presennol sy'n cynyddu eu gweithgareddau. Y Gronfa Newydd-ddyfodiaid yw enw hon.

Newidiadau i Lefelau Gweithgarwch

Yn ETS yr UE, o 2021 ymlaen, ar ôl cyfrifo'r dyraniadau am ddim yn y lle cyntaf yn 2021, byddant yn cael eu hailgyfrifo'n flynyddol ar sail unrhyw newidiadau sylweddol i'r lefelau cynhyrchu, fel y nodir yn yr Adroddiadau Lefelau Gweithgarwch blynyddol a gyflwynir gan y gweithredwyr. Bwriad hyn yw sicrhau na all gweithredwyr gael mwy o lwfansau yn berthynol i'w hallyriadau drwy ddim ond lleihau faint maent yn eu cynhyrchu. Bydd ETS y DU yn adlewyrchu'r dull deinamig hwn o gyfrifo dyraniadau am ddim, ac mae'r Gorchymyn yn darparu ar gyfer hynny.

Ffactorau cywiro a lleihau

Mae cyfanswm y dyraniadau yr ydym yn eu rhoi am ddim yn lleihau dros amser er mwyn cymell lleihad mewn allyriadau, ac mae nifer o ffactorau sy'n sicrhau'r lleihad hwn. Defnyddir ffactor cywiro ar draws sectorau (CSCF) os yw cyfanswm y dyraniad am ddim i gynhyrchwyr di-drydan yn fwy na'r swm cyfyngedig o lwfansau y gellir eu rhoi am ddim i safleoedd sefydlog, sef yr hyn a elwir yn "cap y diwydiant". Mae dyraniad am ddim safleoedd cynhyrchu trydan yn gostwng yn ôl y Ffactor Lleihau Liniarol, a nodir yn y Gorchymyn hwn, os yw'r CSCF yn berthnasol.

Ceisiadau am ddyraniad am ddim a'r trefniadau eithrio

Mae Erthygl 4(4) o'r Rheoliad ar Ddyrannu am Ddim yn darparu bod gweithredwr safle presennol yn gwneud cais am ddyraniad am ddim ar gyfer cyfnod dyrannu 2026-2030 ar yr un pryd ag y bydd yn gwneud cais am statws naill ai fel ysbyty neu allyrrydd bach neu allyrrydd isel iawn ar gyfer y cyfnod dyrannu, hy fel rhan o'r cynlluniau eithrio. Os na fydd y cais i fod yn un o'r cynlluniau optio allan yn llwyddo, ond bod y cais am ddyraniad am ddim yn llwyddo, gwneir dyraniad am ddim yn y ffordd arferol.

Mae'r dull gweithredu ar gyfer polisi dyrannu am ddim ar gyfer y sector awyrennau yn debyg i'r dull gweithredu yn ETS yr UE, yn enwedig er mwyn sicrhau proses bontio didrafferth i'r llawer o weithredwyr awyrennau a fydd yn parhau i gymryd rhan yn ETS yr UE ar ôl y Cyfnod Pontio. Mae'r diwygiadau i'r offeryn yn cynnwys creu proses ar gyfer gwneud cais am ddyraniadau am ddim i ETS y DU ar gyfer y sector, yn ogystal ag yn diffinio methodoleg dyrannu am ddim sy'n adlewyrchu gweithgarwch hanesyddol gweithredwyr awyrennau ar deithiau sy'n cael eu cwmpasu gan ETS y DU ar gyfer cyfnod dyrannu 2021-2025. Rydym yn adolygu dyraniad am ddim ar gyfer y sector awyrennau, gan ystyried cystadleurwydd a'n hymrwymiadau domestig a rhyngwladol i'r hinsawdd, ac mae'n debyg y bydd unrhyw newid yn cael ei roi ar waith erbyn dechrau 2024.

<u>Y Gofrestrfa</u>

Mae'r dull gweithredu ar gyfer polisi'r gofrestrfa yn debyg i'r dull a ddefnyddir yn ETS y DU; felly bydd cyfranogwyr yn gyfarwydd â'r broses. Mae Atodlen 5A newydd i'r prif Orchymyn yn sefydlu ETS y DU, ac mae'n gwneud darpariaeth gysylltiedig, gan gynnwys ar sut i agor/cau cyfrifon, cael mynediad i'r gofrestrfa ac atal cyfrifon. Bydd y gofrestrfa yn llwyfan ar-lein, fel banc ar-lein, a fydd yn cadw golwg ar lwfansau ETS y DU sy'n cael eu dal gan y cyfranogwyr. Y

gofrestrfa yw'r unig lwyfan sy'n gallu dal lwfansau y gellir eu trosglwyddo rhwng cyfrifon gwahanol. Bydd swyddogaeth y gofrestrfa yn golygu na fydd trosglwyddiadau'n cael eu cwblhau ar unwaith, er mwyn lliniaru yn erbyn pryderon posibl o ran twyll a diogelwch. Ochr yn ochr ag olrhain lwfansau, mae'r gofrestrfa hefyd yn cadw golwg ar gyfranogwyr ETS y DU, eu hallyriadau y mae modd eu cofnodi, ac ildio lwfansau gan y cyfranogwyr hyn. Mae'r system hon wrthi'n cael ei datblygu ar hyn o bryd ac mae ar y trywydd iawn i fod yn barod ar gyfer mis Ionawr 2021.

Mae'r Gorchymyn hwn yn darparu i awdurdod ETS y DU roi (creu) lwfansau yn unol â'r cap; creu a chadw cyfrifon canolog i sicrhau bod polisi dyrannu, arwerthu a sefydlogrwydd y farchnad yn cael ei gyflawni; ac atal y gofrestrfa mewn ymateb i fygythiadau diogelwch ac ar gyfer diweddariadau technegol. Ar ben hynny, gall gweinyddwr y gofrestrfa gael cyfarwyddyd gan awdurdod ETS y DU i gymryd camau penodol a gweinyddwr y gofrestrfa sy'n gyfrifol am weinyddu'r gofrestrfa.

Mae erthygl 8A newydd o'r prif Orchymyn yn diffinio "gweinyddwr y gofrestrfa" fel pob un o'r pum corff sy'n "rheoleiddwyr" fel y'u diffinnir yn erthygl 9. Yn ymarferol, y bwriad yw i Asiantaeth yr Amgylchedd arfer swyddogaethau gweinyddwr y gofrestrfa ar ran y cyrff eraill. Bydd hyn yn cael ei gyfleu i ddeiliaid cyfrif drwy arweiniad a gohebiaeth. Hefyd, bydd angen i unrhyw hysbysiadau/penderfyniadau a gymerir gan weinyddwr y gofrestrfa fod yn glir ynghylch pa gorff wnaeth y penderfyniad hwnnw. Bydd hyn yn galluogi deiliaid cyfrifon i wybod pa gorff i apelio yn ei erbyn.

Bydd yn rhaid i weithredwyr a gweithredwyr awyrennau ddal cyfrif cofrestrfa, a gall masnachwyr agor cyfrif i gymryd rhan yn y farchnad lwfansau ar delerau y cytunir arnynt gan weinyddwr y gofrestrfa. Os na all deiliad cyfrif fynd i'r gofrestrfa drwy ei ddefnyddiwr cofrestrfa awdurdodedig ("cynrychiolydd awdurdodedig") sy'n mewngofnodi i'r system, gall roi cyfarwyddyd i weinyddwr y gofrestrfa gymryd camau ar ei ran.

Mae gweinyddwr y gofrestrfa yn gallu rhoi hysbysiadau gorfodi o dan erthygl 44 o Orchymyn Cynllun Masnachu Allyriadau Nwyon Tŷ Gwydr 2020 am dorri gofynion sy'n ymwneud â gweinyddwr y gofrestrfa a gynhwysir yn Atodlen 5A neu a osodir arno, er enghraifft, dyletswydd deiliad cyfrif i ddarparu manylion prif gyswllt o dan baragraff 15 o'r Atodlen honno ac i gydymffurfio â hysbysiadau gwybodaeth a roddir gan weinyddwr y gofrestrfa o dan erthygl 75. Os na chydymffurfir â hysbysiad gorfodi a roddir gan weinyddwr y gofrestrfa, y bwriad yw y caiff unrhyw reoleiddiwr o dan erthygl 47 osod unrhyw gosb sifil mewn cysylltiad â'r toriad o dan erthygl 65.

Yn ogystal, mae rhai newidiadau mewn perthynas â'r rheolau ar fonitro, adrodd a gwirio allyriadau, yn bennaf i gefnogi'r rheolau ar ddyrannu am ddim. Fodd bynnag, mae'r darpariaethau hefyd yn rhagweld newidiadau tebygol ar lefel yr UE i Reoliad Monitro ac Adrodd 2018 a Rheoliad Dilysu 2018, maent yn casglu ynghyd mewn un lle yr addasiadau sy'n angenrheidiol ar gyfer cymhwyso Rheoliad Gwirio 2018 yng nghyd-destun ETS y DU.

5. Ymgynghori

Mae manylion yr ymgynghoriad wedi'u cynnwys yn yr Asesiad Effaith Rheoleiddiol yn Rhan 2, isod.

RHAN 2 – ASESIAD EFFAITH RHEOLEIDDIOL

Cafodd Asesiad Effaith Rheoleiddiol o Gynllun Masnachu Allyriadau'r DU yn ei gyfanrwydd ei gynnwys yn yr ME/Asesiad Effaith Rheoleiddiol a osodwyd ochr yn ochr â Gorchymyn Cynllun Masnachu Allyriadau Nwyon Tŷ Gwydr 2020. Mae ar gael yma (Saesneg yn unig):

https://senedd.wales/laid%20documents/sub-ld13345-em/sub-ld13345-em-e.pdf

Rebecca Evans AS/MS
Y Gweinidog Cyllid a'r Trefnydd
Minister for Finance and Trefnydd

Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: MA/LG/4013/20

Elin Jones, AS
Llywydd
Senedd Cymru
Bae Caerdydd
Caerdydd
CF99 1SN

17 Rhagfyr 2020

Annwyl Llywydd,

Gorchymyn Cynllun Masnachu Allyriadau Nwyon Tŷ Gwydr (Diwygio) 2020

Yn unol ag adrannau 11A(4) o Ddeddf Offerynnau Statudol 1946 rwy'n eich hysbysu bod yr Offeryn Statudol hwn yn dod i rym cyn iddo gael ei osod ac felly nid yw'n cadw at y confensiwn 21 diwrnod arferol. Mae'r Memorandwm Esboniadol sy'n cyd-fynd â'r Rheoliadau i'w cael ynghlwm, er gwybodaeth ichi.

Cafodd Cynllun Masnachu Allyriadau'r DU ("ETS") ei sefydlu gan Orchymyn y Cynllun Masnachu Allyriadau Nwyon Tŷ Gwydr 2020 (y "prif Orchymyn") fel cynllun masnachu allyriadau nwyon tŷ gwydr i'r DU gyfan er mwyn annog y sectorau pŵer a hedfan, a diwydiant, i leihau allyriadau mewn modd costeffeithiol. Mae wedi'i ddylunio ar y cyd gan Lywodraethau Cymru, yr Alban a'r DU, a Gweithrediaeth Gogledd Iwerddon, a bydd yn cyfrannu at dargedau lleihau allyriadau'r DU a'r nod o ran sero-net, yn ogystal â'r targedau lleihau allyriadau yma yng Nghymru.

Mae'r Gorchymyn hwn yn gwneud darpariaethau pellach ar gyfer ETS y DU, yn benodol o ran dyrannu lwfansau am ddim a chofrestrfa ar gyfer ETS y DU.

Gosodir y Gorchymyn hwn, a ddaw i rym ar 31 Rhagfyr 2020, gan dorri'r rheol 21 diwrnod, sef y confensiwn na ddylid gosod offeryn gerbron y Senedd lai na 21 diwrnod cyn y daw i rym. Gwnaed y Gorchymyn ar 16 Rhagfyr 2020, dyddiad cyfarfod cyntaf y Cyfrin Gyngor ar ôl y cyfarfod lle gwaned y prif Orchymyn, a chafodd ei osod cyn gynted ag y bo'n rhesymol ymarferol ar ôl hynny. Ystyrir bod dyddiad dod i rym hwyrach yn amhosibl am ddau reswm. Yn gyntaf, er mwyn sicrhau na fydd oedi yn y rhwymedigaethau ar weithredwyr safleoedd sy'n ymwneud â monitro data at ddibenion dyrannu am ddim. Mae hyn yn osgoi ansicrwydd i gyfranogwyr ac yn sicrhau proses bontio ddidrafferth o System Masnachu Allyriadau yr Undeb Ewropeaidd i ETS y DU. Yn ail, mae angen dadwneud dirymiad arfaethedig o

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400
Correspondence.Rebecca.Evans@gov.wales
Gohebiaeth.Rebecca.Evans@llyw.cymru

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1SN

Reoliad Dirprwyedig y Comisiwn (UE) 2019/331 (“y Rheoliad Dyrannu am Ddim”) drwy reoliad 62 o Reoliadau’r Cynllun Masnachu Allyriadau Nwyon Tŷ Gwydr (Diwygio) (Ymadael â’r UE) (Rhif 2) 2019, sy’n dod i rym ar ddiwrnod cwblhau’r Cyfnod Gweithredu. Gwnaed yr offeryn fel rhan o baratoadau “ymadael heb gytundeb” blaenorol Llywodraeth y DU yng ngwanwyn 2019.

Gan y bydd y Gorchymyn yn destun craffu gan Senedd y DU, nid ystyrir ei bod yn rhesymol ymarferol i'r offeryn hwn gael ei wneud na'i osod yn ddwyieithog.

Cynhaliwyd ymgynghoriad cyhoeddus ar nodweddion dylunio Cynllun Masnachu Allyriadau'r DU rhwng 2 Mai 2019 a 12 Gorffennaf 2019. Yn ogystal, cynhaliwyd dau ddigwyddiad i randdeiliaid yng Nghymru i gasglu barn partïon â diddordeb gan gynnwys darpar gyfranogwyr y cynllun. Cyhoeddwyd ymateb y Llywodraethau ar y cyd i'r ymgynghoriad ar 1 Mehefin 2020.

Mae'r Memorandwm Esboniadol wedi'i atodi er gwybodaeth i chi. Mae'n cael ei osod, ynghyd â'r Gorchymyn, yn y Swyddfa Gyflwyno. Gosodwyd Asesiad Effaith Rheoleiddiol yn cwmpasu holl effaith ETS y DU ynghyd â phrif Orchymyn; darperir dolen yn y Memorandwm Esboniadol sydd ynghlwm.

Mae copi o'r llythyr hwn yn mynd at Mick Antoniw AS, Cadeirydd y Pwyllgor Deddfwriaeth, Cyfiawnder a’r Cyfansoddiad, Siwan Davies, Cyfarwyddwr Busnes y Senedd, Sian Wilkins, Pennaeth Gwasanaethau'r Siambr a Phwyllgorau a Julian Luke, Pennaeth Gwasanaeth y Pwyllgorau Polisi a Deddfwriaeth.

Yn gywir,

Rebecca Evans AS/MS
Y Gweinidog Cyllid a’r Trefnydd
Minister for Finance and Trefnydd

SL(5)707 – Rheoliadau'r Gwasanaeth Iechyd Gwladol (Ffioedd Ymwelwyr Tramor) (Diwygio) (Cymru) (Ymadael â'r UE) 2020

Cefndir a Diben

Mae'r Rheoliadau hyn yn diwygio Rheoliadau Gwasanaeth Iechyd Gwladol (Ffioedd Ymwelwyr Tramor) 1989 (y Prif Reoliadau). Mae'r Prif Reoliadau yn caniatáu i Fyrddau Iechyd Lleol yng Nghymru adennill ffioedd gan ymwelwyr tramor nad ydynt yn preswylio fel arfer yn y Deyrnas Unedig (DU) ar gyfer categorïau penodol o ofal iechyd a ddarperir iddynt yng Nghymru, oni bai bod yr ymwelydd tramor, neu'r gwasanaeth y mae'n ei gael, yn destun esemptiad.

Mae'r Rheoliadau hyn yn cael eu gwneud yn sgil ymadawiad y Deyrnas Unedig â'r Undeb Ewropeaidd. Bydd y Rheoliadau hyn yn cywiro cyfeiriadau at gyfraith yr UE a fydd yn anweithredadwy ar ôl i'r DU adael yr UE ac yn gwneud darpariaeth ar statws y ffioedd sydd i'w codi ar ymwelwyr o Aelod-wladwriaethau'r UE/AEE a'r Swistir sy'n defnyddio gwasanaethau'r GIG yng Nghymru pe bai dim cytundeb ar ddiwrnod cwblhau'r cyfnod gweithredu. Bydd y diwygiadau yn sicrhau bod categorïau penodol o ymwelwyr o Aelod-wladwriaethau'r UE/AEE a'r Swistir yn parhau i fod yn esempt rhag codi tâl am ofal penodol gan y GIG.

Gweithdrefn

Negyddol.

Gwnaed y Rheoliadau hyn gan Weinidogion Cymru cyn iddynt gael eu gosod gerbron y Senedd.

Caiff y Senedd ddirymu'r Rheoliadau hyn o fewn 40 diwrnod (ac eithrio unrhyw ddiwrnodau pan fo'r Senedd: (i) wedi'i diddymu, neu (ii) ar doriad am fwy na phedwar diwrnod) i'r dyddiad y cawsant eu gosod gerbron y Senedd.

Materion technegol: craffu

Nodwyd y ddau bwynt a ganlyn i gyflwyno adroddiad arnynt o dan Reol Sefydlog 21.2 mewn perthynas â'r offeryn hwn.

1. Rheol Sefydlog 21.2(vi) – ei bod yn ymddangos bod y gwaith drafftio yn ddiffygiol neu ei fod yn methu â bodloni gofynion statudol.

Mae Rheoliad 4 yn cynnwys croesgyfeiriad anghywir. Dylai'r cyfeiriad at reoliad 4A y Prif Reoliadau yn y fersiynau Cymraeg a Saesneg o'r Rheoliadau hyn fod yn cyfeirio at reoliad 4A(1). Gofynnir am ymateb gan y Llywodraeth.

2. Rheol Sefydlog 21.2(v) – bod angen eglurhad pellach ynglŷn â'i ffurf neu ei ystyr am unrhyw reswm penodol.

Mae Rheoliad 8 yn diwygio Atodlen 2 i'r Prif Reoliadau, trwy fewnosod a hepgor gwledydd a thiriogaethau amrywiol. Mae Atodlen 2 i'r Prif Reoliadau yn rhestru'r gwledydd neu diriogaethau y mae'r Deyrnas Unedig wedi ymrwymo i gytundeb cilyddol mewn cysylltiad â hwy. Mae'r sefyllfa yn Lloegr wedi'i gynnwys yn Atodlen 2 i Reoliadau Gwasanaeth Iechyd Gwladol (Ffioedd Ymwelwyr Tramor) 1989 (Rheoliadau Ffioedd Lloegr). Nid yw'r Memorandwm Esboniadol yn cynnwys llawer o esboniad ychwanegol am y diwygiadau a wnaed gan reoliad 8.

Yn benodol, mae rheoliad 8(2)(d) o'r Rheoliadau hyn yn mewnosod Liechtenstein at Atodlen 2 i'r Prif Reoliadau ac mae rheoliad 8(3)(b) o'r Rheoliadau hyn yn hepgor Gwlad yr Iâ o Atodlen 2 i'r Prif Reoliadau. Mae Liechtenstein a Gwlad yr Iâ ill dau yn aelodau o Gymdeithas Masnach Rydd Ewrop (EFTA).

Ymhellach, nodir bod Sweden yn parhau i gael ei rhestru yn Atodlen 2 i'r Prif Reoliadau er ei bod yn aelod o'r UE.

Nid yw'n glir pam mae Liechtenstein yn cael ei mewnosod yn Atodlen 2 i'r Prif Reoliadau a Gwlad yr Iâ yn cael ei hepgor. Hefyd, nid yw'n glir pam mae Sweden yn parhau i gael ei rhestru yn Atodlen 2 i'r Prif Reoliadau pan nad oes Aelod-wladwriaethau eraill yr UE wedi'u rhestru.

Mae'r sefyllfa mewn perthynas â dinasyddion Liechtenstein a Gwlad yr Iâ, yn ogystal â Norwy, yn cael ei llywodraethu gan y cytundeb gwahanu rhwng yr AEE a Chymdeithas Masnach Rydd Ewrop. Yn yr un modd, mae'r sefyllfa mewn perthynas â dinasyddion Sweden, yn ogystal ag Aelod-wladwriaethau eraill yr UE, yn cael ei llywodraethu gan y cytundeb ymadael rhwng yr UE a'r DU.

Darperir ar gyfer hawliau o dan y ddau gytundeb o dan reoliad 4B o'r Prif Reoliadau, a fewnosodir yn rhinwedd rheoliad 5 o'r Rheoliadau hyn. Felly, nid yw'n ymddangos bod angen cynnwys llofnodwyr y cytundeb gwahanu rhwng yr AEE a Chytundeb Masnach Rydd Ewrop, na chytundeb ymadael yr UE, yn Atodlen 2 i'r Prif Reoliadau.

Ymhellach, noder fod y Memorandwm Esboniadol yn dweud yr hyn a ganlyn:

> *"Amendments to the Principal Regulations are required to ensure that the law remains operable, existing exemptions still operate effectively and there is consistency of approach with England following EU Exit implementation period completion date in the event of a No Deal exit."*

Nid yw Liechtenstein, Gwlad yr Iâ a Sweden wedi cael eu cynnwys yn Rheoliadau Ffioedd Lloegr, ac felly nid yw'r sefyllfa fel y'i nodwyd yn Atodlen 2 i'r Prif Reoliadau yn gyson â hynny o dan Reoliadau Ffioedd Lloegr.

Gofynnir i Lywodraeth Cymru egluro:

(a) pam mae Liechtenstein yn cael ei mewnosod yn Atodlen 2 i'r Prif Reoliadau a Gwlad yr Iâ yn cael ei hepgor ohoni, ac

(b) a ddylai Sweden gael ei hepgor o Atodlen 2 i'r Prif Reoliadau.

Rhinweddau: craffu

Nodwyd y ddau bwynt a ganlyn i gyflwyno adroddiad arnynt o dan Reol Sefydlog 21.3 mewn perthynas â'r offeryn hwn.

3. Rheol Sefydlog 21.3(ii) – ei fod o bwysigrwydd gwleidyddol neu gyfreithiol neu ei fod yn codi materion polisi cyhoeddus sy'n debyg o fod o ddiddordeb i'r Senedd.

Nodwn y torrir y rheol 21 diwrnod (h.y. y rheol y dylai 21 diwrnod fod rhwng y dyddiad y gosodir offeryn "gwneud negyddol" gerbron y Senedd a'r dyddiad y daw'r offeryn i rym), a'r esboniad am dorri'r rheol a ddarparwyd gan Rebecca Evans AS, y Gweinidog Cyllid a'r Trefnydd, mewn llythyr at y Llywydd, dyddiedig 21 Rhagfyr 2020.

Yn benodol, rydym yn nodi'r hyn y mae'r llythyr yn ei ddweud ynghylch pam mae'r Rheoliadau hyn (y cyfeirir atynt fel "Rheoliadau 2020" yn y llythyr) yn torri'r rheol 21 diwrnod:

> *"Cafodd Rheoliadau 2020 eu gwneud a'u gosod cyn gynted ag yr oedd yn ymarferol wedi i ddrafft terfynol yr OS ar gyfer diwygio Rheoliadau Codi Ffioedd Lloegr gael ei rannu gan Adran Iechyd a Gofal Cymdeithasol Llywodraeth y DU ddechrau mis Rhagfyr. Roedd Rheoliadau 2020 yn ddibynnol ar y rhain ac mae eu diweddarwch wedi golygu bod Rheoliadau Cymru wedi dod i rym lai na 21 o ddiwrnodau wedi iddynt gael eu gwneud er mwyn iddynt ddod i effaith erbyn diwrnod cwblhau'r cyfnod gweithredu fan bellaf.*
>
> *"Mae peidio â glynu wrth y confensiwn 21 o ddiwrnodau yn caniatáu i'r Rheoliadau ddod i rym ar 31 Rhagfyr, diwrnod cwblhau'r cyfnod gweithredu er mwyn sicrhau bod y Prif Reoliadau yn parhau i weithredu'n effeithiol ar ôl i'r DU ymadael â'r UE mewn sefyllfa Dim Cytundeb. Mae peidio â glynu at y rheol 21 o ddiwrnodau yn angenrheidiol felly, a gellir ei gyfiawnhau yn yr achos hwn."*

4. Rheol Sefydlog 21.3(ii) – ei fod o bwysigrwydd gwleidyddol neu gyfreithiol neu ei fod yn codi materion polisi cyhoeddus sy'n debyg o fod o ddiddordeb i'r Senedd.

Mae Rheoliad 2(2)(h) yn mewnosod diffiniad newydd ar gyfer "relevant services", sy'n cyfeirio at ddarpariaethau yn Neddf y Gwasanaeth Iechyd Gwladol (Cymru) 2006. Un o'r gwasanaethau yw "primary ophthalmic services provided under Part 6" o Ddeddf 2006, er bod Deddf 2006 yn defnyddio'r diffiniad "general ophthalmic services". Gofynnir am ymateb gan y Llywodraeth.

Ymateb Llywodraeth Cymru

Mae angen ymateb gan Lywodraeth Cymru mewn perthynas â Phwyntiau Technegol 1 a 2 yn ogystal â Phwynt Rhinweddau 4.

Cynghorwyr Cyfreithiol
Y Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad
20 Ionawr 2021

OFFERYNNAU STATUDOL CYMRU

2020 Rhif 1607 (Cy. 334)

YMADAEL Â'R UNDEB EWROPEAIDD, CYMRU

Y GWASANAETH IECHYD GWLADOL, CYMRU

Rheoliadau'r Gwasanaeth Iechyd Gwladol (Ffioedd Ymwelwyr Tramor) (Diwygio) (Cymru) (Ymadael â'r UE) 2020

NODYN ESBONIADOL

(Nid yw'r nodyn hwn yn rhan o'r Rheoliadau)

Mae'r Rheoliadau hyn yn diwygio Rheoliadau'r Gwasanaeth Iechyd Gwladol (Ffioedd Ymwelwyr Tramor) 1989 ("y Prif Reoliadau"), sy'n darparu ar gyfer codi ac adennill ffioedd am wasanaethau perthnasol a ddarperir o dan Ddeddf y Gwasanaeth Iechyd Gwladol (Cymru) 2006 (p. 42) i bersonau penodol nad ydynt yn preswylio fel arfer yn y Deyrnas Unedig.

Mae rheoliad 1 yn cynnwys darpariaethau cychwyn a dehongli. Ac eithrio rheoliad 9, daw'r Rheoliadau hyn i rym ar ddiwrnod cwblhau'r cyfnod gweithredu, fel y'i diffinnir yn Atodlen 1 i Ddeddf Deddfwriaeth (Cymru) 2019 (dccc 4). Daw rheoliad 9 i rym yn union cyn diwrnod cwblhau'r cyfnod gweithredu.

Mae rheoliad 2 yn diwygio rheoliad 1 o'r Prif Reoliadau i fewnosod diffiniadau o "the 2014 Act", "competent institution", "equivalent document", "immigration rules", "listed healthcare arrangements", "Regulation (EC) No 883/2004", "Regulation (EEC) No 1408/71" a "relevant services". Mae hefyd yn diwygio'r diffiniad presennol o "member of the family".

Mae rheoliad 3 yn diwygio rheoliad 4 o'r prif Reoliadau. Mae paragraffau (1) i (3) yn gwneud mân ddiwygiadau o ganlyniad i ymadawiad y Deyrnas Unedig â'r Undeb Ewropeaidd. Mae paragraff (4) yn darparu esemptiad rhag ffioedd ar gyfer ymwelwyr

tramor o dan amgylchiadau pan fo hyn wedi ei gwmpasu gan gytundeb cilyddol â gwlad a restrir yn Atodlen 2 i'r Prif Reoliadau neu â gwladwriaeth AEE neu'r Swistir o dan drefniant gofal iechyd a restrir. Mae paragraff (5) yn darparu, pan fo caniatâd i aros yn y Deyrnas Unedig at ddibenion ei driniaeth wedi ei roi i berson a chanddo dystysgrif gofal iechyd S2, ac y mae'r ffioedd iechyd mewnfudo wedi eu hepgor mewn cysylltiad ag ef, y caniateir i ffioedd gael eu codi am ddarparu gwasanaethau perthnasol nad ydynt wedi eu hawdurdodi gan y dystysgrif gofal iechyd S2.

Mae rheoliad 4 yn diwygio rheoliad 4A o'r Prif Reoliadau i adlewyrchu'r ffaith na fydd y term "Member State" yn cwmpasu'r Deyrnas Unedig ar ôl diwrnod cwblhau'r cyfnod gweithredu.

Mae rheoliad 5 yn mewnosod rheoliadau newydd 4B, 4C a 4D yn y Prif Reoliadau.

Mae rheoliad 4B yn darparu bod personau sydd o fewn cwmpas Teitl III o Ran 2 o'r cytundeb ymadael, Teitl III o Ran 2 o gytundeb gwahanu Cymdeithas Masnach Rydd Ewrop (EFTA) yr AEE neu'r cytundeb ar hawliau dinasyddion Swisaidd yn gallu parhau i gael gwasanaethau perthnasol yn ddi-dâl pan fo hawl i gael hyn o dan Reoliad (EU) Rhif 883/2004. Mae hefyd yn darparu bod gan aelodau o deulu person o'r fath hawlogaeth i gael gwasanaethau perthnasol yn ddi-dâl, yn ddarostyngedig i amodau penodol.

Mae rheoliad 4C yn darparu y bydd gwladolyn o'r Deyrnas Unedig sy'n cael pensiwn y Deyrnas Unedig ac sy'n preswylio fel arfer mewn gwladwriaeth AEE neu yn y Swistir ac a chanddo dystysgrif gofal iechyd S1 a ddyroddir gan y Deyrnas Unedig (neu ddogfen gyfatebol) yn cael gwasanaethau perthnasol yn ddi-dâl. Mae hefyd yn darparu y bydd gan aelodau o deulu person o'r fath hawlogaeth i gael gwasanaethau perthnasol yn ddi-dâl. Mae rheoliad 4D yn darparu na chodir ffi ar berson, sy'n gwneud cais hwyr o dan Atodiad EU i'r rheolau mewnfudo, am wasanaethau perthnasol sy'n cael eu darparu tra bo ei gais yn cael ei benderfynu. Os yw'r cais hwnnw yn aflwyddiannus, codir ffi ar y person am ddarparu'r gwasanaethau perthnasol hynny ac, os yw'r cais yn llwyddiannus ac os yw ffioedd wedi eu codi a'u hadennill, caiff y rhain eu had-dalu.

Mae rheoliad 6 yn diwygio rheoliad 5 o'r Prif Reoliadau drwy ychwanegu "a British citizen" at y categorïau o bersonau a fydd wedi eu hesemptio rhag ffioedd am driniaeth y mae'r angen amdani yn codi ar ôl diwrnod cwblhau'r cyfnod gweithredu.

Mae rheoliad 7 yn mewnosod rheoliad newydd 5A yn y Prif Reoliadau o ganlyniad i ymadawiad y Deyrnas Unedig â'r Undeb Ewropeaidd. Mae'r rheoliad newydd yn darparu, pan fo ymwelydd tramor

o wladwriaeth AEE neu'r Swistir naill ai wedi cael triniaeth cyn diwrnod cwblhau'r cyfnod gweithredu neu'n rhan o'r ffordd drwy driniaeth ar ddiwrnod cwblhau'r cyfnod gweithredu, y bydd y ffi a oedd yn gymwys cyn diwrnod cwblhau'r cyfnod gweithredu yn gymwys mewn cysylltiad â'r driniaeth honno.

Mae rheoliad 8 yn ychwanegu Bosnia-Herzegovina, Gogledd Macedonia, Kosovo, Liechtenstein, Montenegro, Serbia ac Ynysoedd Ffaröe at y rhestr o wledydd yn Atodlen 2 i'r Prif Reoliadau sy'n ymwneud â chytundebau cilyddol. Mae rheoliad 8 hefyd yn dileu Barbados, Ffederasiwn Rwsia, Gwlad yr Iâ, Iwgoslafia ac Undeb y Gweriniaethau Sofiet Sosialaidd o'r rhestr o wledydd yn Atodlen 2.

Mae rheoliad 9 yn dirymu Rheoliadau'r Gwasanaeth Iechyd Gwladol (Ffioedd Ymwelwyr Tramor) (Diwygio) (Cymru) (Ymadael â'r UE) 2019 a baratowyd at Ymadawiad "heb gytundeb" â'r UE ac nad ydynt yn adlewyrchu darpariaethau'r cytundeb ymadael â'r UE, darpariaethau cytundeb gwahanu EFTA yr AEE na darpariaethau'r cytundeb ar hawliau dinasyddion Swisaidd.

Ystyriwyd Cod Ymarfer Gweinidogion Cymru ar gynnal Asesiadau Effaith Rheoleiddiol mewn perthynas â'r Rheoliadau hyn. O ganlyniad, lluniwyd asesiad effaith rheoleiddiol o'r costau a'r manteision sy'n debygol o ddeillio o gydymffurfio â'r Rheoliadau hyn. Gellir cael copi oddi wrth: Yr Adran Iechyd a Gwasanaethau Cymdeithasol, Llywodraeth Cymru, Parc Cathays, Caerdydd, CF10 3NQ.

OFFERYNNAU STATUDOL CYMRU

2020 Rhif 1607 (Cy. 334)

YMADAEL Â'R UNDEB EWROPEAIDD, CYMRU

Y GWASANAETH IECHYD GWLADOL, CYMRU

Rheoliadau'r Gwasanaeth Iechyd Gwladol (Ffioedd Ymwelwyr Tramor) (Diwygio) (Cymru) (Ymadael â'r UE) 2020

Gwnaed *18 Rhagfyr 2020*

Gosodwyd gerbron Senedd Cymru *21 Rhagfyr 2020*

Yn dod i rym yn unol â rheoliad 1(2) ac 1(3)

Mae Gweinidogion Cymru yn gwneud y Rheoliadau hyn drwy arfer y pwerau a roddir gan adrannau 124 a 203(9) a (10) o Ddeddf y Gwasanaeth Iechyd Gwladol (Cymru) 2006(**1**).

RHAN 1

Cyffredinol

Enwi, cychwyn a dehongli

1.—(1) Enw'r Rheoliadau hyn yw Rheoliadau'r Gwasanaeth Iechyd Gwladol (Ffioedd Ymwelwyr Tramor) (Diwygio) (Cymru) (Ymadael â'r UE) 2020.

(2) Ac eithrio fel y'i darperir ym mharagraff (3), daw'r Rheoliadau hyn i rym ar ddiwrnod cwblhau'r cyfnod gweithredu.

(**1**) 2006 p. 42. *Gweler* adran 206(1) am y diffiniad o "prescribed" a "regulations".

(3) Daw rheoliad 9 i rym yn union cyn diwrnod cwblhau'r cyfnod gweithredu.

(4) Yn y Rheoliadau hyn, ystyr "y Prif Reoliadau" yw Rheoliadau'r Gwasanaeth Iechyd Gwladol (Ffioedd Ymwelwyr Tramor) 1989(**1**).

RHAN 2

Diwygio'r Prif Reoliadau

Diwygio rheoliad 1

2.—(1) Mae rheoliad 1(2) (enwi, cychwyn a dehongli) o'r Prif Reoliadau wedi ei ddiwygio fel a ganlyn.

(2) Yn y lle priodol mewnosoder—

(a) ""the 2014 Act" means the Immigration Act 2014(**2**);";

(b) ""competent institution" has the same meaning as in Regulation (EC) No 883/2004 or Regulation (EEC) No 1408/71, as the case may be;";

(c) ""equivalent document" means a document which, for the purposes of a listed healthcare arrangement is treated as equivalent to an S1 healthcare certificate(**3**);";

(d) ""immigration rules" means the rules laid before Parliament under section 3(2) (general provisions for regulation and control) of the Immigration Act 1971(**4**);";

(e) ""listed healthcare arrangement" has the meaning given in regulation 1(3) of the Healthcare (European Economic Area and

(**1**) O.S. 1989/306, a ddiwygiwyd gan O.S. 2004/614; O.S. 2004/1433 (Cy. 146); O.S. 2009/1824 (Cy. 165); O.S. 2009/3005 (Cy. 264); O.S. 2010/730 (Cy. 71); O.S. 2010/927 (Cy. 94); O.S. 2011/1043; O.S. 2011/2906 (Cy. 310), O.S. 2012/1809; O.S. 2014/1622 (Cy. 166); ac O.S. 2015/1985; mae offerynnau diwygio eraill ond nid yw'r un ohonynt yn berthnasol i'r Rheoliadau hyn.

(**2**) 2014 p. 22.

(**3**) Mae tystysgrif gofal iechyd S1 yn rhoi hawlogaeth i berson i gael gofal iechyd mewn gwladwriaeth AEE ac yn y Swistir ar yr un sail â phreswylwyr y wlad honno. Fe'i dyroddir gan wladwriaeth AEE a'r Swistir ac fe'i dyroddwyd gan y Deyrnas Unedig, cyn iddi ymadael â'r UE. Fe'i dyroddwyd i weithwyr penodol a oedd yn gweithio mewn gwladwriaeth AEE neu yn y Swistir a dalodd Gyfraniadau Yswiriant Gwladol yn y Deyrnas Unedig neu i bobl a oedd yn cael budd-daliadau penodol y Deyrnas Unedig y gellid eu hallforio (er enghraifft, pensiynau ymddeol). Yn dilyn ymadawiad y Deyrnas Unedig â'r UE, ni fydd y Deyrnas Unedig yn dyroddi tystysgrifau gofal iechyd S1 mwyach ond bydd yn dyroddi dogfen i bersonau cymhwysol penodol a fydd yn darparu'r un mynediad at ofal iechyd â'r ddogfen gofal iechyd S1.

(**4**) 1971 p. 77.

Switzerland Arrangements) (EU Exit) Regulations 2019(**1**);";

(f) ""Regulation (EC) No 883/2004" means Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems as it had effect immediately before implementation period completion day(**2**);";

(g) ""Regulation (EEC) No 1408/71" means Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community as it had effect immediately before implementation period completion day(**3**);";

(h) ""relevant services" means accommodation, services or facilities(**4**) which are provided, or whose provision is arranged, under the National Health Service (Wales) Act 2006(**5**) other than—

(i) primary medical services provided under Part 4 (medical services);

(ii) primary dental services provided under Part 5 (dental services);

(iii) primary ophthalmic services provided under Part 6 (ophthalmic services); or

(iv) equivalent services which are provided, or whose provision is arranged, under that Act;".

(3) Yn lle'r diffiniad o "member of the family" rhodder—

(**1**) O.S. 2019/1293, y mae diwygiadau iddo nad ydynt yn berthnasol i'r Rheoliadau hyn.

(**2**) OJ Rhif L 166, 30.4.2004, t. 1. Mae'r Rheoliad hwn gan yr UE wedi ei ddiwygio gan offerynnau amrywiol gan yr UE, yn ddiweddaraf gan Reoliad (EU) 2019/1149 Senedd Ewrop a'r Cyngor dyddiedig 20 Mehefin 2019 (OJ Rhif L 186, 11.7.2019, t. 21). Mae diwygiadau wedi eu gwneud yn rhagolygol gydag effaith o ddiwrnod cwblhau'r cyfnod gweithredu gan O.S. 2019/722.

(**3**) OJ Rhif L 149, 5.7.1971, t. 2. Diddymwyd Rheoliad (EEC) Rhif 1408/71 gan Reoliad (EC) Rhif 883/2004 ond fe'i harbedwyd at ddibenion penodol. Mae Rheoliad (EEC) Rhif 1408/71 wedi ei ddiwygio gan offerynnau amrywiol gan yr UE ac fe'i hailddatganwyd yn Rhan 1 o Atodiad A i Reoliad y Cyngor (EC) Rhif 118/97 dyddiedig 2 Rhagfyr 1996 (OJ Rhif L 28, 30.1.1997, t. 1). Mae wedi ei ddiwygio'n ddiweddaraf gan Reoliad (EC) Rhif 592/2008 Senedd Ewrop a'r Cyngor dyddiedig 17 Mehefin 2008 (OJ Rhif L 177, 4.7.2008, t. 1). Mae diwygiadau wedi eu gwneud yn rhagolygol gydag effaith o ddiwrnod cwblhau'r cyfnod gweithredu gan O.S. 2019/726.

(**4**) Mae "facilities" wedi eu diffinio yn adran 206(1) o Ddeddf y Gwasanaeth Iechyd Gwladol (Cymru) 2006.

(**5**) 2006 p. 42.

"member of the family" has the same meaning as in Regulation (EC) No 883/2004 or Regulation (EEC) No 1408/71 as the case may be;".

Diwygio rheoliad 4

3.—(1) Mae rheoliad 4(1) (ymwelwyr tramor sydd wedi eu hesemptio rhag ffioedd) o'r Prif Reoliadau wedi ei ddiwygio fel a ganlyn.

(2) Yn is-baragraff (l), yn lle "another" rhodder "a".

(3) Yn is-baragraff (m), ar ôl "member state" mewnosoder "or a British citizen".

(4) Yn lle is-baragraff (o) rhodder—

"(o) in whose case the services are provided in circumstances covered by a reciprocal agreement—

(i) with a country or territory specified in Schedule 2; or

(ii) with an EEA state or Switzerland where that agreement is a listed healthcare arrangement; or".

(5) Ar ôl is-baragraff (r) mewnosoder—

"(s) who—

(i) is granted leave to remain in the United Kingdom under Appendix S2 Healthcare Visitor to the immigration rules, and

(ii) in respect of whom a waiver to the immigration health charge applies,

except in the case of relevant services which do not form part of the planned healthcare treatment authorised by that person's S2 healthcare certificate(**1**).".

Diwygio rheoliad 4A

4.—(1) Mae rheoliad 4A (esemptiad rhag ffioedd yn ystod ymweliadau hirdymor gan bensiynwyr y Deyrnas Unedig) o'r Prif Reoliadau wedi ei ddiwygio fel a ganlyn.

(2) Yn is-baragraff (b), yn lle "another" rhodder "a".

(3) Yn is-baragraff (c), yn lle "another" rhodder "a".

(**1**) Dyroddir tystysgrif gofal iechyd S2 gan wladwriaeth AEE a'r Swistir, a, chyn iddi ymadael â'r UE, gan y Deyrnas Unedig. Mae'n rhoi hawlogaeth i berson i deithio i wladwriaeth AEE neu'r Swistir i gael triniaeth wedi ei chynllunio ac wedi ei hawdurdodi ymlaen llaw ar yr un sail â phreswylydd y wlad honno, gyda chostau'r driniaeth yn cael eu talu gan y wlad a ddyroddodd y dystysgrif gofal iechyd S2, yn unol â Rheoliad (EC) Rhif 883/2004.

Rheoliadau newydd 4B, 4C a 4D

5. Ar ôl rheoliad 4A (esemptiad rhag ffioedd yn ystod ymweliadau hirdymor gan bensiynwyr y Deyrnas Unedig) o'r Prif Reoliadau, mewnosoder—

"Overseas visitors with citizens' rights

4B—(1) No charge may be made or recovered in respect of any relevant services provided to an overseas visitor who has an entitlement to the provision of those services without charge by virtue of a right arising from—

(a) Title III of Part 2 of the withdrawal agreement;

(b) Title III of Part 2 of the EEA EFTA separation agreement; or

(c) the social security co-ordination provisions of the Swiss citizens' rights agreement.

(2) Subject to paragraphs (3) to (5) of this regulation, no charge may be made or recovered in respect of any relevant services provided to an overseas visitor who is a member of the family of another overseas visitor ("the principal overseas visitor") if—

(a) the overseas visitor is lawfully present in the United Kingdom;

(b) the overseas visitor is visiting the United Kingdom with the principal overseas visitor; and

(c) the principal overseas visitor is exempt from changes under paragraph (1).

(3) The exemption in paragraph (2) only applies if both conditions in paragraphs (4) and (5) are satisfied.

(4) The first condition is that—

(a) the overseas visitor does not have a right under an agreement mentioned in paragraph (1), and

(b) the reason that the overseas visitor does not have such a right is because the overseas visitor is not recognised as a member of the family (within the meaning of Article 1(i) of Regulation (EC) No 883/2004).

(5) The second condition is that the relevant services provided to the overseas visitor are services that the overseas visitor would be entitled to receive without charge by virtue of a right under an agreement mentioned in paragraph (1) if the overseas visitor had such a right.

(6) For the purposes of this regulation, unless otherwise provided, "member of the family" means—

(a) the spouse or civil partner of an overseas visitor; or

(b) a child in respect of whom an overseas visitor has parental responsibility.

(7) In paragraph (1), "withdrawal agreement", "EEA EFTA separation agreement" and "Swiss citizens' rights agreement" have the same meanings as in section 39(1) of the European Union (Withdrawal Agreement) Act 2020(**1**).

Overseas visitors with a United Kingdom issued S1 healthcare certificate or equivalent document

4C—(1) No charge may be made or recovered in respect of any relevant services provided to an overseas visitor who—

(a) was ordinarily resident in an EEA state or Switzerland immediately before implementation period completion day,

(b) continues to be ordinarily resident in an EEA state or Switzerland on and after implementation period completion day,

(c) receives a state pension paid by the United Kingdom Government, and

(d) holds a S1 healthcare certificate, or an equivalent document, issued to or in respect of that person by a competent institution of the United Kingdom.

(2) No charge may be made or recovered in respect of any relevant services provided to—

(a) the spouse or civil partner of an overseas visitor; or

(b) a child in respect of whom an overseas visitor has parental responsibility,

if that overseas visitor is exempt from charges under paragraph (1).

Persons who make late applications under Appendix EU to the immigration rules

4D.—(1) Subject to paragraph (4), no charge may be made or recovered in respect of relevant services provided to an overseas visitor to whom paragraph (2) or (3) applies during the period which begins on the date on which the application mentioned in paragraph (2)(b) or (3)(b), as the case may be, is made and which

(**1**) 2020 p. 1.

ends on the date on which that application is finally determined under Appendix EU to the immigration rules.

(2) This paragraph applies to a person who is an overseas visitor by virtue of section 39 of the 2014 Act who—

(a) is eligible to apply for leave to enter or remain in the United Kingdom under Appendix EU to the immigration rules, and

(b) makes a valid application for leave to enter or remain in the United Kingdom under that Appendix to those rules after the application deadline.

(3) This paragraph applies to a person who is an overseas visitor by virtue of section 39 of the 2014 Act who—

(a) was granted limited leave to enter or remain in the United Kingdom under Appendix EU to the immigration rules, and

(b) after the expiry of that limited leave to enter or remain, makes a valid application for indefinite leave to enter or remain in the United Kingdom under Appendix EU to the immigration rules.

(4) Where it is determined under Appendix EU to the immigration rules not to grant leave to enter or remain in the United Kingdom to a person pursuant to an application mentioned in paragraph (2)(b) or (3)(b), as the case may be, a Local Health Board or NHS trust must make and recover charges for any relevant services provided to that person during the period specified in paragraph (1).

(5) Where a person is granted leave to enter or remain in the United Kingdom pursuant to an application mentioned in paragraph (2)(b) or (3)(b)—

(a) if the Local Health Board or NHS trust has made charges for relevant services provided during the period specified in paragraph (1), it must not recover those charges;

(b) if the Local Health Board or NHS trust has made and recovered charges for relevant services provided during the period specified in paragraph (1), it must repay any sum paid in respect of those charges in accordance with regulation 8.

(6) In paragraph (2), "application deadline" has the meaning given in regulation 2 of the Citizens' Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020(**1**)."

Diwygio rheoliad 5

6. Yn rheoliad 5(a) (esemptiad rhag ffioedd am driniaeth y cododd yr angen amdani yn ystod yr ymweliad) o'r Prif Reoliadau, ar ôl "a national of a member state," mewnosoder "a British citizen,".

Rheoliad newydd 5A

7. Ar ôl rheoliad 5 (esemptiad rhag ffioedd am driniaeth y cododd yr angen amdani yn ystod yr ymweliad) o'r Prif Reoliadau mewnosoder—

"EU Exit: transitional arrangements

5A. Where an overseas visitor who is ordinarily resident in an EEA state or Switzerland has—

(a) before implementation period completion day received relevant services from a Local Health Board or NHS trust, or

(b) on or after implementation period completion day received relevant services from a Local Health Board or NHS trust as part of a course of treatment which commenced before implementation period completion day,

the charges payable in respect of those services must be calculated in the same way as provided for by regulation 13(1) of the National Health Service (Cross-Border Healthcare) Regulations 2013(**2**)."

Diwygio Atodlen 2

8.—(1) Mae Atodlen 2 (gwledydd neu diriogaethau y mae'r Deyrnas Unedig wedi ymrwymo i gytundeb cilyddol mewn cysylltiad â hwy) i'r Prif Reoliadau wedi ei diwygio fel a ganlyn.

(2) Yn y lle priodol mewnosoder—

(a) "Bosnia and Herzegovina";

(b) "Faroe Islands";

(**1**) O.S. 2020/1209.

(**2**) O.S. 2013/2269. Mae'r Rheoliadau hyn yn cael eu dirymu ar ddiwrnod cwblhau'r cyfnod gweithredu gan O.S. 2019/777, yn ddarostyngedig i ddarpariaethau arbed a darpariaethau trosiannol yn rheoliad 15 i 17 o'r Rheoliadau hynny.

(c) “Kosovo”;

(d) “Liechtenstein”;

(e) “Montenegro”;

(f) “North Macedonia”; ac

(g) “Serbia”.

(3) Hepgorer—

(a) “Barbados”;

(b) “Iceland”;

(c) “Russian Federation”;

(d) “the Union of Soviet Socialist Republics except the States of Estonia, Latvia, Lithuania and the Russian Federation”; ac

(e) “Yugoslavia”.

RHAN 3

Dirymu Rheoliadau’r Gwasanaeth Iechyd Gwladol (Ffioedd Ymwelwyr Tramor) (Diwygio) (Cymru) (Ymadael â’r UE) 2019

Dirymu Rheoliadau’r Gwasanaeth Iechyd Gwladol (Ffioedd Ymwelwyr Tramor) (Diwygio) (Cymru) (Ymadael â’r UE) 2019

9. Mae Rheoliadau’r Gwasanaeth Iechyd Gwladol (Ffioedd Ymwelwyr Tramor) (Diwygio) (Cymru) (Ymadael â’r UE) 2019(**1**) wedi eu dirymu.

Vaughan Gething
Y Gweinidog Iechyd, a Gwasanaethau Cymdeithasol, un o Weinidogion Cymru
18 Rhagfyr 2020

(**1**) O.S. 2019/1061 (Cy. 188).

Explanatory Memorandum to the National Health Service (Charges to Overseas Visitors) (Amendment) (Wales) (EU Exit) Regulations 2020

This Explanatory Memorandum has been prepared by Health and Social Services Group and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the National Health Service (Charges to Overseas Visitors) (Amendment) (Wales) (EU Exit) Regulations 2020 and I am satisfied that the benefits justify the likely costs.

Vaughan Gething AM
Minister for Health and Social Services
21 December 2020

PART 1

1. Description

These Regulations amend the National Health Service (Charges to Overseas Visitors) Regulations 1989 (SI 1989/306) (the Principal Regulations).

The Principal Regulations allow Local Health Boards (LHBs) in Wales to recover charges from overseas visitors who are not ordinarily resident in the United Kingdom (UK) for certain categories of healthcare provided to them in Wales, unless the overseas visitor, or the service they receive, falls within an exemption.

These Regulations are being made in consequence of the UK's withdrawal from the European Union (EU). Amendments to the Principal Regulations are required to ensure that the law remains operable, existing exemptions still operate effectively and there is consistency of approach with England following EU Exit implementation period completion date in the event of a No Deal exit.

2. Matters of special interest to the Legislation, Justice and Constitution Committee

In accordance with section 11A(4) of the Statutory Instruments Act 1946, as inserted by Sch.10 para 3 of the Government of Wales Act 2006, the Llywydd has been informed that the Regulations will come into force less than 21 days from the date of laying.

Not adhering to the 21 day convention allows the Regulations to come into force on 31 December, Implementation Period completion day. This will ensure the continued effective operation of the Principal Regulations and that specified categories of visitors from EU/EEA States and Switzerland remain exempt from charging for NHS services in Wales, in the event that the UK leaves the EU without a deal.

3. Legislative background

The instrument is being made under section 124 of the National Health Service (Wales) Act 2006 (the 2006 Act) which confers a power on the Welsh Ministers to make regulations for the making and recovery of charges from persons who are not "ordinarily resident" in Great Britain for NHS services.

The instrument is also being made under section 203(9) and (1) of the 2006 Act and is subject to the negative resolution procedure.

4. Purpose and intended effect of the legislation

The Regulations will correct references to EU law that will be inoperable after the UK leaves the EU and make provision on the chargeable status of EEA

State and Swiss visitors using NHS services in Wales in the event of a No Deal at implementation period completion day.

The amendments will ensure that specified categories of visitors from EU/EEA States and Switzerland remain exempt from charging for particular NHS care.

The Regulations:

- Remove references to EU law and rights derived under EU law contained in the Principal Regulations that may no longer be operable or coherent after implementation period completion day.
- Include a provision for a S2 Healthcare Visitor in the UK for planned treatment to be charged for any treatment not covered by their S2 certificate.
- Provide an exemption for charging overseas visitors with citizens' rights under Title III of Part 2 of the Withdrawal Agreement, Title III of Part 2 of the EEA EFTA separation agreement or the Swiss citizens' rights agreement.
- Provide an exemption from charging for UK S1 state pensioners on temporary visits to Wales to those already living in the EEA/Switzerland pre-2021.
- Provide an exemption from charging in relation to late applications to the EU Settlement Scheme.
- Preserves the existing rights from charging family members in certain cases.
- Amend Schedule 2 to the Principle Regulations to add Bosnia and Herzegovina, the Faroe Islands, Kosovo, Liechtenstein, Montenegro, North Macedonia and Serbia to the list of countries and remove Barbados, Iceland, Russian Federation, the Union of Soviet Socialist Republics and Yugoslavia from the list of countries.
- Revoke the National Health Service (Charges to Overseas Visitors) (Amendment) (Wales) (EU Exit) Regulations 2019 which were prepared for Exit Day and consequently do not reflect the provisions of the EU Withdrawal Agreement, the EEA EFTA separation agreement or the Swiss Citizens' rights agreement.

5. Consultation

No public consultation was undertaken. The purpose of the instrument is to enable the law and the existing exemptions still operate effectively after the withdrawal of the UK from the EU.

PART 2 – REGULATORY IMPACT ASSESSMENT

6. Options

Two options have been considered:

Option 1: - Do nothing, retain the National Health Service (Charges to Overseas Visitors) Regulations 1989 (SI 1989/306) as currently in force.

Option 2: - Amend the National Health Service (Charges to Overseas Visitors) Regulations 1989.

Option 1: Do nothing, retain The National Health Service (Charges to Overseas Visitors) Regulations 1989 (SI 1989/306) as currently in force

In the event that the UK leaves the EU without a ratified agreement, the rights of EU/EEA and Swiss citizens which derive from EU law would fall away.

Free movement rights for EU citizens, EEA EFTA nationals, and Swiss nationals is implemented primarily through the Immigration (European Economic Area) Regulations 2016 (the 'EEA Regulations 2016'). The EEA Regulations 2016 will be revoked on Implementation Period completion day (i.e. 31 December 2020) at which time EU citizens, EEA EFTA nationals, and Swiss nationals will become subject to immigration control and therefore require leave to enter or remain in the UK in accordance with the EU Settlement Scheme.

There would be an immediate loss of rights for particular residents of the EU/EEA/Switzerland in the event that the UK leaves the EU without a deal by implementation period completion date. For example, UK S1 state pensioners on temporary visits to Wales who are already living in the EEA/Switzerland pre-2021 would not have an automatic entitlement to receive free treatment on their return to the UK after 1 January 2021 and EU/EEA and Swiss citizens will be within the definition of "overseas visitor" (i.e. not ordinarily resident) if they make a late application to the EU Settlement Scheme until their application is processed and Settled or Pre-settled status is awarded.

Technical references to aspects of EU reciprocal healthcare arrangements will no longer be applicable following implementation period completion date in the event of a No Deal and parts of the Regulations would be inoperable. For example where an overseas visitor from an EEA state or Switzerland, has either received treatment before implementation period completion day or is part way through treatment on implementation period completion day, they would not remain exempt from charging after implementation period completion day in respect of that treatment.

Under option 1 there could be cost savings for the NHS in cases where an EU/EEA/Swiss resident is not covered by another existing exemption in the 1989 Regulations and is chargeable. However, it is not possible to estimate the extent of these savings but it is likely they would be minimal. Local Health Boards currently receive a recurring annual allocation of £822,000 from Welsh

Government for the treatment of overseas visitors who are not chargeable due to reciprocal healthcare agreements (this covers both EU and non EU agreements). The continuation of this allocation will assist LHBs in cases where no costs are recoverable from overseas visitors.

Option 2: - Amend the National Health Service (Charges to Overseas Visitors) Regulations 1989

The objective is to correct references to EU law that will be inoperable after the UK leaves the EU and ensure that specified categories of visitors from EU/EEA States and Switzerland remain exempt from charging for NHS services in Wales in the event of a No Deal at implementation period completion day. They will provide equality for EEA state or Switzerland citizens accessing healthcare with their counterparts in the rest of the United Kingdom.

In summary, the amendment regulations will:

- Remove references to EU law and rights derived under EU law contained in the Principal Regulations that may no longer be operable or coherent after implementation period completion day.
- Include a provision for a S2 Healthcare Visitor in the UK for planned treatment to be charged for any treatment not covered by their S2 certificate.
- Provide an exemption for charging overseas visitors with citizens' rights under Title III of Part 2 of the Withdrawal Agreement, Title III of Part 2 of the EEA EFTA separation agreement or the Swiss citizens' rights agreement.
- Provide an exemption from charging for UK S1 state pensioners on temporary visits to Wales to those already living in the EEA/Switzerland pre-2021.
- Provide an exemption from charging in relation to late applications to the EU Settlement Scheme.
- Preserves the existing rights from charging family members in certain cases.
- Amend Schedule 2 to the Principle Regulations to add Bosnia and Herzegovina, the Faroe Islands, Kosovo, Liechtenstein, Montenegro, North Macedonia and Serbia to the list of countries and remove Barbados, Iceland, Russian Federation, the Union of Soviet Socialist Republics and Yugoslavia from the list of countries.
- Revoke the National Health Service (Charges to Overseas Visitors) (Amendment) (Wales) (EU Exit) Regulations 2019, which were prepared for Exit Day in the event of a No Deal scenario, but consequently do not now reflect the provisions of the EU Withdrawal Agreement, the EEA EFTA separation agreement or the Swiss Citizens' rights agreement. Those provisions in the National Health Service (Charges to Overseas Visitors) (Amendment) (Wales) (EU

Exit) Regulations 2019 which are still required after implementation period completion day have been included in these new amendment regulations.

The changes being made essentially relate to ensuring the law operates correctly at EU implementation period completion day for EU citizens in a No Deal scenario; the continuation of existing rights under Title III of Part 2 of the Withdrawal Agreement, Title III of Part 2 of the EEA EFTA separation agreement or the Swiss citizens' rights agreement and preserves current healthcare arrangements post EU Implementation Period for EU citizens in a No Deal scenario. It is estimated that there would be minimal impact on costs in the day to day delivery of the service as these people are currently exempt from charging. LHBs will continue to receive the current annual allocation of £822,000 from Welsh Government for the treatment of overseas visitors who are not chargeable due to reciprocal healthcare agreements (this covers both EU and non EU agreements). The continuation of this allocation will assist LHBs in cases where there are not reciprocal healthcare agreements with Member States and where no costs are recoverable from overseas visitors.

Rebecca Evans AS/MS
Y Gweinidog Cyllid a'r Trefnydd
Minister for Finance and Trefnydd

Llywodraeth Cymru
Welsh Government

Ein cyf MA VG 4223 20

Elin Jones, AS
Llywydd
Senedd Cymru
Bae Caerdydd
CF99 1SN

21 Rhagfyr 2020

Annwyl Lywydd,

Rheoliadau'r Gwasanaeth Iechyd Gwladol (Ffioedd Ymwelwyr Tramor) (Diwygio) (Cymru) (Ymadael â'r UE) 2020

Yn unol ag adran 11A(4) o Ddeddf Offerynnau Statudol 1946, fel y'i mewnosodwyd gan Atod. 10 para. 3 o Ddeddf Llywodraeth Cymru 2006, rwy'n eich hysbysu y bydd yr Offeryn Statudol (OS) hwn yn dod i rym lai na 21 o ddiwrnodau o'r dyddiad gosod. Er gwybodaeth, mae copi o'r Memorandwm Esboniadol ar gyfer y Rheoliadau hyn ynghlwm wrth y llythyr hwn.

Mae Rheoliadau 2020 yn diwygio Rheoliadau'r Gwasanaeth Iechyd Gwladol (Ffioedd Ymwelwyr Tramor) 1989 ("y Prif Reoliadau"). Mae'r Prif Reoliadau yn gosod y fframwaith ar gyfer codi ffi ar bersonau nad ydynt yn preswylio fel arfer yn y Deyrnas Unedig (DU) am driniaeth frys ac nad yw'n frys mewn ysbyty a ddarperir yng Nghymru.

Os bydd y DU yn ymadael â'r Undeb Ewropeaidd (UE) heb gytundeb, mae angen diwygio'r Prif Reoliadau i sicrhau bod y gyfraith yn parhau i fod yn weithredol a bod categorïau penodedig o ymwelwyr o Wladwriaethau'r UE/Ardal Economaidd Ewropeaidd (AEE) a'r Swistir sydd â hawliau dinasyddion parhaus o dan Deitl III o Ran 2 o'r Cytundeb Ymadael, Teitl III o Ran 2 o gytundeb gwahanu Cymdeithas Masnach Rydd Ewrop (EFTA) yr AEE neu'r cytundeb ar hawliau dinasyddion y Swistir yn parhau i fod wedi'u heithrio rhag ffioedd ar gyfer gwasanaethau'r Gwasanaeth Iechyd Gwladol (GIG) yng Nghymru os ceir sefyllfa 'Dim Cytundeb' ar y diwrnod y daw'r cyfnod gweithredu i ben (31 Rhagfyr 2020). Bydd hyn yn rhoi cydraddoldeb i ddinasyddion gwladwriaeth yr AEE neu'r Swistir sy'n cael mynediad at ofal iechyd â'u cymheiriaid yng ngweddill y Deyrnas Unedig.

Cafodd Rheoliadau 2020 eu gwneud a'u gosod cyn gynted ag yr oedd yn ymarferol wedi i ddrafft terfynol yr OS ar gyfer diwygio Rheoliadau Codi Ffioedd Lloegr gael ei rannu gan Adran Iechyd a Gofal Cymdeithasol Llywodraeth y DU ddechrau mis Rhagfyr. Roedd

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
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CF99 1SN

Rheoliadau 2020 yn ddibynnol ar y rhain ac mae eu diweddarwch wedi golygu bod Rheoliadau Cymru wedi dod i rym lai na 21 o ddiwrnodau wedi iddynt gael eu gwneud er mwyn iddynt ddod i effaith erbyn diwrnod cwblhau'r cyfnod gweithredu fan bellaf.

Mae peidio â glynu wrth y confensiwn 21 o ddiwrnodau yn caniatáu i'r Rheoliadau ddod i rym ar 31 Rhagfyr, diwrnod cwblhau'r cyfnod gweithredu er mwyn sicrhau bod y Prif Reoliadau yn parhau i weithredu'n effeithiol ar ôl i'r DU ymadael â'r UE mewn sefyllfa Dim Cytundeb. Mae peidio â glynu at y rheol 21 o ddiwrnodau yn angenrheidiol felly, a gellir ei gyfiawnhau yn yr achos hwn.

Lluniwyd Memorandwm Esboniadol ac fe'i gosodwyd, ynghyd â'r Rheoliadau, yn y Swyddfa Gyflwyno.

Anfonir copi o'r llythyr hwn at Mick Antoniw AS, Cadeirydd y Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad, Sian Wilkins, Pennaeth Gwasanaethau'r Siambr a Phwyllgorau a Julian Luke, Pennaeth Gwasanaeth y Pwyllgorau Polisi a Deddfwriaeth.

Yn gywir,

Rebecca Evans.

Rebecca Evans AS/MS
Y Gweinidog Cyllid a'r Trefnydd
Minister for Finance and Trefnydd

SL(5)721 – Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) (Diwygio) 2021

Cefndir a Diben

Mae'r Rheoliadau hyn yn diwygio Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) 2020 ("y Rheoliadau Teithio Rhyngwladol") i weithredu'r newidiadau a nodwyd gan y Gydganolfan Bioddiogelwch yn statws risg iechyd cyhoeddus rhai gwledydd neu diriogaethau, fel y bo'n angenrheidiol er mwyn gwarchod iechyd y cyhoedd.

Mae'r Rheoliadau Teithio Rhyngwladol yn gosod gofynion ar bersonau sy'n dod i Gymru ar ôl bod dramor. Maent yn cynnwys gofyniad i bersonau sy'n cyrraedd Cymru ynysu am gyfnod i'w bennu yn unol â'r Rheoliadau Teithio Rhyngwladol.

Mae gofynion y Rheoliadau Teithio Rhyngwladol yn ddarostyngedig i eithriadau, ac mae categorïau penodol o bersonau wedi eu hesemptio rhag gorfod cydymffurfio.

Nid yw'n ofynnol i bersonau sy'n dod i Gymru ynysu ar ôl bod mewn un neu ragor o'r gwledydd a'r tiriogaethau a restrir yn Atodlen 3 i'r Rheoliadau Teithio Rhyngwladol ("gwledydd a thiriogaethau esempt"). Mae Rhan 2 o'r Rheoliadau hyn yn diwygio'r rhestr o wledydd a thiriogaethau esempt.

Mae rheoliad 2 yn diwygio'r Rheoliadau Teithio Rhyngwladol er mwyn hepgor y cofnod ar gyfer yr Emiradau Arabaidd Unedig. Mae rheoliad 3 yn gwneud darpariaethau trosiannol yn hyn o beth.[1]

Daeth y Rheoliadau hyn i rym am 4.00 ar 12 Ionawr 2021.

Gweithdrefn

Negyddol.

Gwnaed y Rheoliadau gan Weinidogion Cymru cyn iddynt gael eu gosod gerbron y Senedd. Gall y Senedd ddirymu'r Rheoliadau o fewn 40 diwrnod (ac eithrio unrhyw ddiwrnodau pan fo'r Senedd: (i) wedi'i diddymu neu (ii) ar doriad am fwy na phedwar diwrnod) i'r dyddiad y cawsant eu gosod gerbron y Senedd.

Materion technegol: craffu

Ni nodwyd unrhyw bwyntiau i gyflwyno adroddiad arnynt o dan Reol Sefydlog 21.2 mewn perthynas â'r offeryn hwn.

Rhinweddau: craffu

[1] Nodir bod y Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) (Diwygio) (Rhif 2) 2021 wedi tynnu pob gwlad oddi ar y rhestr o wledydd a thiriogaethau esempt ers hynny.

Nodwyd y tri phwynt a ganlyn i gyflwyno adroddiad arnynt o dan Reol Sefydlog 21.3 mewn perthynas â'r offeryn hwn.

1. Rheol Sefydlog 21.3(ii): ei fod o bwysigrwydd gwleidyddol neu gyfreithiol neu ei fod yn codi materion polisi cyhoeddus sy'n debyg o fod o ddiddordeb i'r Senedd.

Rydym yn nodi cyfiawnhad Llywodraeth Cymru dros unrhyw ymyrraeth bosibl â hawliau dynol gan y Rheoliadau hyn. Yn benodol, nodwn y paragraff a ganlyn yn y Memorandwm Esboniadol:

> *Nid yw'r diwygiadau yn y Rheoliadau hyn yn newid y ffaith fod hawliau unigol o dan Ddeddf Hawliau Dynol 1998 a Siarter Hawliau Sylfaenol Ewrop yn gysylltiedig â'r Rheoliadau Teithio Rhyngwladol; mae'r Llywodraeth o'r farn eu bod yn gymesur a hefyd yn gyfiawn at ddiben atal lledaeniad haint a/neu y caniateir ymyriad ar y sail ei fod yn anelu at gyflawni nod dilys, sef diogelu iechyd y cyhoedd.*

Mae adran 5(5) o Ddeddf yr Undeb Ewropeaidd (Ymadael) 2018 yn nodi nad yw Siarter Hawliau Sylfaenol Ewrop ("y Siarter") yn ffurfio rhan o gyfraith ddomestig ar nac ar ôl diwrnod cwblhau'r cyfnod gweithredu, sef am 23:00 ar 31 Rhagfyr 2020. Felly nid yw'r Siarter bellach yn rhan o gyfraith ddomestig. Yn sgil hyn, byddai o gymorth i'r Pwyllgor i gael esboniad pam y cyfeirir at y Siarter yn y Memorandwm Esboniadol.

2. Rheol Sefydlog 21.3(ii): ei fod o bwysigrwydd gwleidyddol neu gyfreithiol neu ei fod yn codi materion polisi cyhoeddus sy'n debyg o fod o ddiddordeb i'r Senedd.

Nodwn y torrir y rheol 21 diwrnod (h.y. y rheol y dylai 21 diwrnod fod rhwng y dyddiad y gosodir offeryn "gwneud negyddol" gerbron y Senedd a'r dyddiad y daw'r offeryn i rym), a'r esboniad am dorri'r rheol a ddarparwyd gan Rebecca Evans AS, y Gweinidog Cyllid a'r Trefnydd, mewn llythyr at y Llywydd, dyddiedig 11 Ionawr 2021.

Yn benodol, nodwn y paragraffau canlynol yn y llythyr:

> *"Bu'n rhaid dileu Emiradau Arabaidd Unedig (EAU) ar frys o'r rhestr o wledydd a thiriogaethau esempt sydd wedi'u nodi yn Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) 2020 yn dilyn cyngor sy'n dangos bod y risg i iechyd y cyhoedd yn sgil teithio i mewn o EAU wedi codi.*
>
> *Trwy beidio â chydymffurfio â'r confensiwn 21 diwrnod a dod â hwy i rym cyn iddynt gael eu gosod, yn caniatáu i'r Rheoliadau hyn ddod i rym cyn gynted ag y bo modd, ac o ystyried newid yn y dystiolaeth ar risg mewn cysylltiad â'r clefyd hwn, ystyrir bod hyn yn angenrheidiol ac yn gyfiawn yn yr achos hwn."*

3. Rheol Sefydlog 21.3(ii): ei fod o bwysigrwydd gwleidyddol neu gyfreithiol neu ei fod yn codi materion polisi cyhoeddus sy'n debyg o fod o ddiddordeb i'r Senedd.

Nodwn na chynhaliwyd ymgynghoriad ffurfiol ar y Rheoliadau hyn. Yn benodol, nodwn y paragraff a ganlyn yn y Memorandwm Esboniadol:

"Oherwydd y bygythiad difrifol ac uniongyrchol sy'n deillio o'r coronafeirws a'r angen am ymateb iechyd y cyhoedd brys, ni chynhaliwyd unrhyw ymgynghoriad cyhoeddus mewn perthynas â'r Rheoliadau hyn."

Rydym hefyd yn nodi bod y llythyr a anfonwyd at y Llywydd gan Rebecca Evans AS, y Gweinidog Cyllid a'r Trefnydd, dyddiedig 11 Ionawr 2021 yn nodi:

"Oherwydd natur frys y Rheoliadau, ni chynhaliwyd ymgynghoriad."

Ymateb Llywodraeth Cymru

Mae angen ymateb gan Lywodraeth Cymru mewn perthynas â'r pwynt adrodd cyntaf yn unig.

Cynghorwyr Cyfreithiol
Y Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad
20 Ionawr 2021

O F F E R Y N N A U S T A T U D O L
C Y M R U

2021 Rhif 24 (Cy. 8)

IECHYD Y CYHOEDD, CYMRU

Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) (Diwygio) 2021

NODYN ESBONIADOL

(Nid yw'r nodyn hwn yn rhan o'r Rheoliadau)

Mae'r Rheoliadau hyn yn diwygio Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) 2020 (O.S. 2020/574 (Cy. 132)) (y "Rheoliadau Teithio Rhyngwladol"). Diwygiwyd y Rheoliadau Teithio Rhyngwladol yn flaenorol gan:

- Rheoliadau Diogelu Iechyd (Coronafeirws, Gwybodaeth Iechyd y Cyhoedd ar gyfer Personau sy'n Teithio i Gymru etc.) 2020 (O.S. 2020/595) (Cy. 136);
- Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol a Gwybodaeth Iechyd y Cyhoedd i Deithwyr) (Cymru) (Diwygio) 2020 (O.S. 2020/714) (Cy. 160);
- Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) (Diwygio) 2020 (O.S. 2020/726) (Cy. 163);
- Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) (Diwygio) (Rhif 2) 2020 (O.S. 2020/804) (Cy. 177);
- Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) (Diwygio) (Rhif 3) 2020 (O.S. 2020/817) (Cy. 179);
- Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) (Diwygio) (Rhif 4) 2020 (O.S. 2020/840) (Cy. 185);
- Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) (Diwygio) (Rhif 5) 2020 (O.S. 2020/868) (Cy. 190);

- Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) (Diwygio) (Rhif 6) 2020 (O.S. 2020/886) (Cy. 196);
- Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) (Diwygio) (Rhif 7) 2020 (O.S. 2020/917) (Cy. 205);
- Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) (Diwygio) (Rhif 8) 2020 (O.S. 2020/944) (Cy. 210);
- Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) (Diwygio) (Rhif 9) 2020 (O.S. 2020/962) (Cy. 216);
- Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) (Diwygio) (Rhif 10) 2020 (O.S. 2020/981) (Cy. 220);
- Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) (Diwygio) (Rhif 11) 2020 (O.S. 2020/1015) (Cy. 226);
- Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) (Diwygio) (Rhif 12) 2020 (O.S. 2020/1042) (Cy. 231);
- Gorchymyn Trosglwyddo Swyddogaethau (Yr Ysgrifennydd Gwladol dros Faterion Tramor, Materion y Gymanwlad a Materion Datblygu) 2020 (O.S. 2020/942);
- Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) (Diwygio) (Rhif 13) 2020 (O.S. 2020/1080) (Cy. 243);
- Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) (Diwygio) (Rhif 14) 2020 (O.S. 2020/1098) (Cy. 249);
- Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) (Diwygio) (Rhif 15) 2020 (O.S. 2020/1133) (Cy. 258);
- Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) (Diwygio) (Rhif 16) 2020 (O.S. 2020/1165) (Cy. 263);
- Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) (Diwygio) (Rhif 17) 2020 (O.S. 2020/1191) (Cy. 269);
- Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) (Diwygio) (Rhif 18) 2020 (O.S. 2020/1223) (Cy. 277);
- Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) (Diwygio) (Rhif 19) 2020 (O.S. 2020/1232) (Cy. 278);
- Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol a Chyfyngiadau) (Diwygio) (Cymru) 2020 (O.S. 2020/1237) (Cy. 279);

- Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol a Chyfyngiadau) (Diwygio) (Rhif 2) (Cymru) 2020 (O.S. 2020/1288) (Cy. 286);
- Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) (Diwygio) (Rhif 20) 2020 (O.S. 2020/1329) (Cy. 295);
- Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) (Diwygio) (Rhif 21) 2020 (O.S. 2020/1362) (Cy. 301);
- Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol a Chyfyngiadau) (Diwygio) (Rhif 3) (Cymru) 2020 (O.S. 2020/1477) (Cy. 316);
- Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol a Gwybodaeth Iechyd y Cyhoedd i Deithwyr) (Cymru) (Diwygio) (Rhif 2) 2020 (O.S. 2020/1521) (Cy. 325);
- Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) (Diwygio) (Rhif 22) 2020 (O.S. 2020/1602) (Cy. 332);
- Rheoliadau Diogelu Iechyd (Coronafeirws, De Affrica) (Cymru) 2020 (O.S. 2020/1645) (Cy. 345); a
- Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol a Chyfyngiadau) (Diwygio) (Cymru) 2021 (O.S. 2021/20) (Cy. 7).

Mae'r Rheoliadau Teithio Rhyngwladol yn gosod gofynion ar bersonau sy'n dod i Gymru ar ôl bod dramor. Maent yn cynnwys gofyniad i bersonau sy'n cyrraedd Cymru ynysu am gyfnod i'w bennu yn unol â'r Rheoliadau hynny.

Mae gofynion y Rheoliadau Teithio Rhyngwladol yn ddarostyngedig i eithriadau, ac mae categorïau penodol o bersonau wedi eu hesemptio rhag gorfod cydymffurfio.

Nid yw'n ofynnol i bersonau sy'n dod i Gymru ynysu ar ôl bod mewn un neu ragor o'r gwledydd a'r tiriogaethau a restrir yn Atodlen 3 i'r Rheoliadau Teithio Rhyngwladol. Cyfeirir at y gwledydd a'r tiriogaethau a restrir yn Atodlen 3 fel "gwledydd a thiriogaethau esempt".

Mae Rhan 2 o'r Rheoliadau hyn yn diwygio'r rhestr o wledydd a thiriogaethau esempt. Mae rheoliad 2 yn diwygio'r Rheoliadau Teithio Rhyngwladol er mwyn hepgor yr Emiraethau Arabaidd Unedig o'r rhestr o wledydd a thiriogaethau esempt.

Mae rheoliad 3 o'r Rheoliadau hyn yn gwneud darpariaeth drosiannol mewn cysylltiad â'r newid yn statws y wlad honno. Mae'r ddarpariaeth drosiannol yn

ymdrin â maes a all fod yn destun amheuaeth o ran effaith y diwygiadau a wneir gan reoliad 2 o'r Rheoliadau hyn ar weithredu'r Rheoliadau Teithio Rhyngwladol.

Ystyriwyd Cod Ymarfer Gweinidogion Cymru ar gynnal Asesiadau Effaith Rheoleiddiol mewn perthynas â'r Rheoliadau hyn. O ganlyniad, ni luniwyd asesiad effaith rheoleiddiol o'r costau a'r manteision sy'n debygol o ddeillio o gydymffurfio â'r Rheoliadau hyn.

OFFERYNNAU STATUDOL CYMRU

2021 Rhif 24 (Cy. 8)

IECHYD Y CYHOEDD, CYMRU

Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) (Diwygio) 2021

Gwnaed *11 Ionawr 2021*

Yn dod i rym *am 4.00 a.m. ar 12 Ionawr 2021*

Gosodwyd gerbron Senedd Cymru *am 12.30 p.m. ar 12 Ionawr 2021*

Mae Gweinidogion Cymru, drwy arfer y pwerau a roddir iddynt gan adrannau 45B a 45P(2) o Ddeddf Iechyd y Cyhoedd (Rheoli Clefydau) 1984(**1**), yn gwneud y Rheoliadau a ganlyn.

RHAN 1

Cyffredinol

Enwi, dod i rym a dehongli

1.—(1) Enw'r Rheoliadau hyn yw Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) (Diwygio) 2021.

(2) Daw'r Rheoliadau hyn i rym am 4.00 a.m. ar 12 Ionawr 2021.

(**1**) 1984 p. 22. Mewnosodwyd Rhan 2A gan adran 129 o Ddeddf Iechyd a Gofal Cymdeithasol 2008 (p. 14). Mae'r swyddogaeth o wneud rheoliadau o dan Ran 2A wedi ei rhoi i "the appropriate Minister". O dan adran 45T(6) o Ddeddf 1984 y Gweinidog priodol, o ran Cymru, yw Gweinidogion Cymru.

(3) Yn y Rheoliadau hyn, ystyr y "Rheoliadau Teithio Rhyngwladol" yw Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) 2020(**1**).

RHAN 2

Diwygiad i'r rhestr o wledydd a thiriogaethau esempt yn Atodlen 3 i'r Rheoliadau Teithio Rhyngwladol

Hepgor yr Emiraethau Arabaidd Unedig o'r rhestr o wledydd a thiriogaethau esempt

2. Yn Rhan 1 o Atodlen 3 i'r Rheoliadau Teithio Rhyngwladol (gwledydd a thiriogaethau esempt y tu allan i'r ardal deithio gyffredin), hepgorer y cofnod a ganlyn—

"Yr Emiraethau Arabaidd Unedig".

Darpariaeth drosiannol mewn cysylltiad â rheoliad 2

3.—(1) Mae paragraff (2) yn gymwys pan fo person ("P")—

(a) yn cyrraedd Cymru am 4:00 a.m. ar 12 Ionawr 2021 neu wedi hynny, a

(b) wedi bod yn yr Emiraethau Arabaidd Unedig ddiwethaf—

(i) o fewn y cyfnod o 10 niwrnod sy'n dod i ben â'r diwrnod y mae P yn cyrraedd Cymru, a

(ii) cyn 4.00 a.m. ar 12 Ionawr 2021.

(2) Mae P, yn rhinwedd y ffaith iddo fod yn yr Emiraethau Arabaidd Unedig, i'w drin at ddibenion rheoliadau 7(1) ac 8(1) o'r Rheoliadau Teithio Rhyngwladol fel pe bai wedi cyrraedd Cymru o wlad neu diriogaeth nad yw'n esempt, neu fel pe bai wedi cyrraedd ar ôl bod mewn gwlad neu diriogaeth o'r fath.

(**1**) O.S. 2020/574 (Cy. 132), fel y'i diwygiwyd gan O.S. 2020/595 (Cy. 136), O.S. 2020/714 (Cy. 160), O.S. 2020/726 (Cy. 163), O.S. 2020/804 (Cy. 177), O.S. 2020/817 (Cy. 179), O.S. 2020/840 (Cy. 185), O.S. 2020/868 (Cy. 190), O.S. 2020/886 (Cy. 196), O.S. 2020/917 (Cy. 205), O.S. 2020/942, O.S. 2020/944 (Cy. 210), O.S. 2020/962 (Cy. 216), O.S. 2020/981 (Cy. 220), O.S. 2020/1015 (Cy. 226), O.S. 2020/1042 (Cy. 231), O.S. 2020/1080 (Cy. 243), O.S. 2020/1098 (Cy. 249), O.S. 2020/1133 (Cy. 258), O.S. 2020/1165 (Cy. 263), O.S. 2020/1191 (Cy. 269), O.S. 2020/1223 (Cy. 277), O.S. 2020/1232 (Cy. 278), O.S. 2020/1237 (Cy. 279), O.S. 2020/1288 (Cy. 286), O.S. 2020/1329 (Cy. 295), O.S. 2020/1362 (Cy. 301), O.S. 2020/1477 (Cy. 316), O.S. 2020/1521 (Cy. 325), O.S. 2020/1602 (Cy. 332), O.S. 2020/1645 (Cy. 345) ac O.S. 2021/20 (Cy. 7).

Vaughan Gething
Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol,
un o Weinidogion Cymru
11 Ionawr 2021

Memorandwm Esboniadol ar gyfer Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) (Diwygio) 2021

Lluniwyd y Memorandwm Esboniadol hwn gan Lywodraeth Cymru ac fe'i gosodir gerbron Senedd Cymru ar y cyd â'r is-ddeddfwriaeth uchod ac yn unol â Rheol Sefydlog 27.1.

Datganiad y Gweinidog

Yn fy marn i, mae'r Memorandwm Esboniadol hwn yn rhoi darlun teg a rhesymol o effaith ddisgwyliedig Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) (Diwygio) 2021.

Vaughan Gething
Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol

12 Ionawr 2021

1. Disgrifiad

Yn ddarostyngedig i esemptiadau penodedig, tan 10 Gorffennaf 2020, roedd Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) 2020 (“Y Rheoliadau Teithio Rhyngwladol”) yn ei gwneud yn ofynnol i bob teithiwr sy’n cyrraedd Cymru o’r tu allan i’r Ardal Deithio Gyffredin (h.y. yr ardal ffiniau agored sy’n cynnwys y Deyrnas Unedig, Ynysoedd y Sianel, Ynys Manaw a Gweriniaeth Iwerddon) ddarparu ei fanylion cyswllt a gwybodaeth am ei daith – ac ynysu am gyfnod o 14 o ddiwrnodau.

Diwygiwyd y Rheoliadau Teithio Rhyngwladol gan Reoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol a Gwybodaeth Iechyd y Cyhoedd i Deithwyr) (Cymru) (Diwygio) 2020 er mwyn (ymhlith pethau eraill) cyflwyno esemptiad rhag y gofyniad i ynysu ar gyfer teithwyr sy’n cyrraedd o wledydd a thiriogaethau penodedig, a elwir yn "wledydd esempt".

Mae'r Rheoliadau hyn yn diwygio’r Rheoliadau Teithio Rhyngwladol i weithredu newidiadau a nodwyd gan y Gydganolfan Bioddiogelwch yn statws risg iechyd cyhoeddus rhai gwledydd neu diriogaethau, fel y bo’n angenrheidiol er mwyn diogelu iechyd y cyhoedd.

2. Materion o ddiddordeb arbennig i’r Pwyllgor Deddfwriaeth, Cyfiawnder a’r Cyfansoddiad

Yn dod i rym

Yn unol ag adrannau 4(1) ac 11A(4) o Ddeddf Offerynnau Statudol 1946, hysbyswyd y Llywydd fod y Rheoliadau wedi dod i rym cyn iddynt gael eu gosod, ac nad ydynt yn cydymffurfio â’r confensiwn 21 o ddiwrnodau. Roedd hyn yn angenrheidiol oherwydd bod y dystiolaeth ynghylch y risg sy’n gysylltiedig â’r feirws hwn yn newid, mewn perthynas â theithwyr sy’n teithio i’r DU o’r Emiraethau Arabaidd Unedig.

Y Confensiwn Ewropeaidd ar Hawliau Dynol

Nid yw’r diwygiadau yn y Rheoliadau hyn yn newid y ffaith fod y Rheoliadau Teithio Rhyngwladol yn cyffwrdd â hawliau unigol o dan Ddeddf Hawliau Dynol 1998 a Siarter Hawliau Sylfaenol Ewrop; mae’r Llywodraeth o’r farn y gellir eu cyfiawnhau at ddiben atal lledaeniad clefydau heintus a/neu y caniateir ymyriad ar y sail ei fod yn anelu at gyflawni nod dilys, sef diogelu iechyd y cyhoedd. Mae’r Llywodraeth o’r farn hefyd eu bod yn gymesur.

3. Y cefndir deddfwriaethol

Mae Deddf Iechyd y Cyhoedd (Rheoli Clefydau) 1984 (“Deddf 1984”), a rheoliadau a wnaed oddi tani, yn darparu fframwaith deddfwriaethol ar gyfer diogelu iechyd yng Nghymru a Lloegr. Gwneir y Rheoliadau drwy ddibynnu ar y pwerau yn adrannau 45B a 45P(2) o Ddeddf 1984. Mae'r Memorandwm Esboniadol ar gyfer y Rheoliadau Teithio Rhyngwladol yn rhoi rhagor o wybodaeth am y pwerau hyn.

4. Diben y ddeddfwriaeth a'r effaith y bwriedir iddi ei chael

Gwnaed y Rheoliadau Teithio Rhyngwladol ar 5 Mehefin 2020 a daethant i rym ar 8 Mehefin 2020 mewn ymateb i'r bygythiad difrifol ac uniongyrchol i iechyd y cyhoedd a berir gan fynychder a lledaeniad syndrom anadlol acíwt difrifol coronafeirws 2 (SARS-CoV-2).

Mae'r Rheoliadau Teithio Rhyngwladol yn cael eu hadolygu'n rheolaidd ac mae newidiadau wedi'u gwneud i'r rhestr o'r gwledydd a'r tiriogaethau esempt na fyddai'n ofynnol i deithwyr hunanynysu ar ôl cyrraedd Cymru ohonynt – yn fwyaf diweddar ar 8 Ionawr 2021.

Mae'r cyngor sydd bellach wedi dod i law oddi wrth y Gydganolfan Bioddiogelwch yn dangos bod y risg i iechyd y cyhoedd yn sgil mynychder a lledaeniad y coronafeirws wedi cynyddu yn yr Emiraethau Arabaidd Unedig "EAU"). Ar sail y cyngor hwn, mae Llywodraeth Cymru o'r farn y dylai gofynion i ynysu yn awr gael eu cyflwyno ar gyfer teithwyr sy'n dod i Gymru o'r EAU.

Daeth y gofynion diwygiedig i rym ar gyfer unrhyw deithwyr sy'n cyrraedd yr Ardal Deithio Gyffredin o'r EAU am 4.00 a.m. y bore yma, 21 Ionawr 2021, neu wedi hynny.

Nid yw'r diwygiad hwn i'r Rheoliadau Teithio Rhyngwladol yn effeithio ar y gofynion o dan y Rheoliadau hynny i bersonau sy'n cyrraedd yr Ardal Deithio Gyffredin cyn i'r diwygiadau ddod i rym.

Mae Gweinidogion Cymru o'r farn fod y diwygiad hwn yn gymesur â'r hyn y maent yn ceisio ei gyflawni, sef ymateb i fygythiad difrifol ac uniongyrchol i iechyd y cyhoedd.

5. Ymgynghori

Oherwydd y bygythiad difrifol ac uniongyrchol sy'n deillio o'r coronafeirws a'r angen am ymateb iechyd y cyhoedd brys, ni chynhaliwyd unrhyw ymgynghoriad cyhoeddus mewn perthynas â'r Rheoliadau hyn.

6. Asesiad Effaith Rheoleiddiol

Ni chynhaliwyd unrhyw asesiad effaith rheoleiddiol mewn perthynas â'r Rheoliadau hyn oherwydd yr angen i'w rhoi ar waith ar fyrder i ymdrin â bygythiad difrifol ac uniongyrchol i iechyd y cyhoedd.

Rebecca Evans AS/MS
Y Gweinidog Cyllid a'r Trefnydd/Minister for Finance and Trefnydd

Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: MA/VG/0117/21

Elin Jones, AS
Llywydd
Senedd Cymru
Bae Caerdydd
CF99 1SN

11 Ionawr 2021

Annwyl Llywydd

Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) (Diwygio) 2021

Yn unol ag adrannau 4(1) ac 11A(4) o Ddeddf Offerynnau Statudol 1946, rwy'n eich hysbysu bod yr offeryn statudol hwn heb gydymffurfio a'r confensiwn 21 diwrnod a bydd yn dod i rym cyn iddo gael ei osod. Amgaeaf gopi o'r offeryn statudol a bwriadaf osod hwn a Memorandwm Esboniadol cysylltiedig unwaith y bydd yr offeryn statudol wedi'i gofrestru.

Bu'n rhaid dileu Emiradau Arabaidd Unedig (EAU) ar frys o'r rhestr o wledydd a thiriogaethau esempt sydd wedi'u nodi yn Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) 2020 yn dilyn cyngor sy'n dangos bod y risg i iechyd y cyhoedd yn sgil teithio i mewn o EAU wedi codi.

Trwy beidio â chydymffurfio â'r confensiwn 21 diwrnod a dod â hwy i rym cyn iddynt gael eu gosod, yn caniatáu i'r Rheoliadau hyn ddod i rym cyn gynted ag y bo modd, ac o ystyried newid yn y dystiolaeth ar risg mewn cysylltiad â'r clefyd hwn, ystyrir bod hyn yn angenrheidiol ac yn gyfiawn yn yr achos hwn.

Oherwydd natur frys y Rheoliadau, ni chynhaliwyd ymgynghoriad.

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1SN

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400
PSMFT@gov.wales

Rwy'n anfon copi o'r llythyr hwn at Mick Antoniw AS, Cadeirydd y Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad, Siwan Davies, Cyfarwyddwr Busnes y Senedd, Sian Wilkins, Pennaeth Gwasanaethau'r Siambr a Phwyllgorau a Julian Luke, Pennaeth Gwasanaeth y Pwyllgorau Polisi a Deddfwriaeth.

Yn gywir,

Rebecca Evans AS/MS
Y Gweinidog Cyllid a'r Trefnydd
Minister for Finance and Trefnydd

Llywodraeth Cymru
Welsh Government

DATGANIAD YSGRIFENEDIG
GAN
LYWODRAETH CYMRU

TEITL	**Diwygio Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) 2020**
DYDDIAD	**11 Ionawr 2021**
GAN	**Vaughan Gething, y Gweinidog Iechyd a Gwasanaethau Cymdeithasol**

Bydd yr Aelodau'n ymwybodol bod Llywodraeth Cymru wedi gwneud darpariaeth yn Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) 2020 i sicrhau bod teithwyr sy'n cyrraedd Cymru o wledydd a thiriogaethau tramor yn gorfod hunanynysu am 10 diwrnod, a darparu gwybodaeth amdanynt eu hunain fel teithwyr, er mwyn atal y coronafeirws rhag lledaenu ymhellach. Daeth y cyfyngiadau hyn i rym ar 8 Mehefin 2020.

Ar 10 Gorffennaf, diwygiodd Llywodraeth Cymru'r Rheoliadau hyn i gyflwyno eithriadau i'r gofyniad i hunanynysu ar gyfer rhestr o wledydd a thiriogaethau, ac ar gyfer ystod gyfyngedig o bobl mewn sectorau neu gyflogaeth arbenigol a allai fod wedi'u heithrio rhag y gofyniad i hunanynysu neu rhag rhai o ddarpariaethau'r gofynion ynghylch gwybodaeth am deithwyr.

Ers hynny, mae'r Rheoliadau hyn wedi'u hadolygu'n gyson ac mae nifer o newidiadau wedi'u gwneud i'r rhestr o wledydd a thiriogaethau sydd wedi'u heithrio.

Heddiw, adolygais asesiadau diweddaraf y Gydganolfan Bioddiogelwch ac rwyf wedi penderfynu y bydd yr Emiraethau Arabaidd Unedig yn cael eu tynnu oddi ar y rhestr o wledydd a thiriogaethau sydd wedi'u heithrio. Felly bydd rhaid i deithwyr o'r gwledydd hynny hunanynysu pan fyddant yn cyrraedd Cymru.

Daw'r rheoliadau angenrheidiol i rym am 04:00 ddydd Mawrth 12 Ionawr 2021, a byddant yn cael eu gosod yfory unwaith y byddant wedi'u cofrestru.

SL(5)724 - Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol, Profion cyn Ymadael ac Atebolrwydd Gweithredwyr) (Cymru) (Diwygio) 2021

Cefndir a Diben

Mae Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol, Profion cyn Ymadael ac Atebolrwydd Gweithredwyr) (Cymru) (Diwygio) 2021 ("y Rheoliadau") wedi eu gwneud wrth ddibynnu ar y pwerau yn adrannau 45B, 45F(2) a 45P(2) o Ddeddf Iechyd y Cyhoedd (Rheoli Clefydau) 1984.

Gwnaed Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) 2020 ("y Rheoliadau Teithio Rhyngwladol") ar 5 Mehefin 2020 a daethant i rym ar 8 Mehefin 2020 mewn ymateb i'r bygythiad difrifol ac uniongyrchol i iechyd y cyhoedd a berir gan fynychder a lledaeniad syndrom anadlol acíwt difrifol coronafeirws 2 (SARS-CoV-2). Cafodd Rheoliadau Diogelu Iechyd (Coronafeirws, Gwybodaeth Iechyd y Cyhoedd ar gyfer Personau sy'n Teithio i Gymru etc.) 2020 eu gwneud ar 15 Mehefin a daethant i rym ar 17 Mehefin. Maent yn gosod rhwymedigaethau ar weithredwyr gwasanaethau teithwyr rhyngwladol sy'n cyrraedd Cymru o'r tu allan i'r Ardal Deithio Gyffredin (h.y. yr ardal ffiniau agored sy'n cynnwys y Deyrnas Unedig, Ynysoedd y Sianel, Ynys Manaw a Gweriniaeth Iwerddon) i sicrhau bod teithwyr yn teithio ar y gwasanaethau hynny yn cael gwybod am eu rhwymedigaethau o dan y Rheoliadau Teithio Rhyngwladol iddarparu gwybodaeth a, lle y bo'n berthnasol, i hunanynysu ar ôl dychwelyd i Gymru.

Mae'r Rheoliadau hyn yn diwygio'r Rheoliadau Teithio Rhyngwladol er mwyn cyflwyno mesurau pellach i ddiogelu iechyd y cyhoedd, a hynny ar ffurf cynllun profi cyn ymadael, a fydd yn ei gwneud yn ofynnol i bawb sy'n cyrraedd Cymru o'r tu allan i'r Ardal Deithio Gyffredin feddu ar hysbysiad o brawf coronafeirws negatif. Maent hefyd yn cyflwyno gofyniad newydd ar weithredwyr gwasanaethau teithwyr rhyngwladol sy'n cyrraedd Cymru o'r tu allan i'r ardal deithio gyffredin i sicrhau bod teithwyr ar wasanaethau o'r fath yn meddu ar hysbysiad o ganlyniad prawf negatif. Bydd torri'r gofyniad hwn yn drosedd.

Daeth y gofynion newydd mewn perthynas â phrofion cyn gadael i rym ar gyfer unrhyw deithwyr sy'n cyrraedd Cymru o 04.00 ddydd Llun 18 Ionawr.

Gweithdrefn

Negyddol.
Gwnaed y Rheoliadau gan Weinidogion Cymru cyn iddynt gael eu gosod gerbron y Senedd. Gall y Senedd ddirymu'r Rheoliadau o fewn 40 diwrnod (ac eithrio unrhyw ddiwrnodau pan fo'r Senedd: (i) wedi'i diddymu neu (ii) ar doriad am fwy na phedwar diwrnod) i'r dyddiad y cawsant eu gosod gerbron y Senedd.

Materion technegol: craffu

Nodir y pwynt a ganlyn i gyflwyno adroddiad arno o dan Reol Sefydlog 21.2 mewn perthynas â'r offeryn hwn:

1. Rheol Sefydlog 21.2(vi) - ei bod yn ymddangos bod gwaith drafftio'r offeryn neu'r drafft yn ddiffygiol neu ei fod yn methu â bodloni gofynion statudol

Mae paragraff 3(1) o Atodlen 1A newydd, fel y'i mewnosodwyd gan reoliad 3(6) o'r Rheoliadau, yn cyfeirio'n anghywir at reoliad 6A(4)(a). Ymddengys mai'r cyfeiriad cywir yw rheoliad 6A(4)(c).

Mae paragraff 3(1)(a) o Atodlen 1A newydd, fel y'i mewnosodwyd gan reoliad 3(6) o'r Rheoliadau, yn cyfeirio'n anghywir at reoliad 8 o Atodlen 2. Ymddengys mai'r cyfeiriad cywir yw paragraff 7 o Atodlen 2.

Rhinweddau: craffu

Nodwyd y pwyntiau a ganlyn i gyflwyno adroddiad arnynt o dan Reol Sefydlog 21.3 mewn perthynas â'r offeryn hwn:

1. Rheol Sefydlog 21.3(ii) – ei fod o bwysigrwydd gwleidyddol neu gyfreithiol neu ei fod yn codi materion polisi cyhoeddus sy'n debyg o fod o ddiddordeb i'r Senedd

Nodwn fod y rheol 21 diwrnod yn cael ei thorri (h.y. y rheol y dylai 21 diwrnod fod rhwng y dyddiad y gosodir offeryn "gwneud negyddol" gerbron y Senedd a'r dyddiad y daw'r offeryn i rym), a nodwn yr esboniad am dorri'r rheol a ddarparwyd gan Rebecca Evans AS, y Gweinidog Cyllid a'r Trefnydd, mewn llythyr at y Llywydd, dyddiedig 15 Ionawr 2021.

Yn benodol, nodwn y paragraff canlynol yn y llythyr:

> *"Mae'r Rheoliadau hyn yn cyflwyno mesurau pellach i amddiffyn iechyd y cyhoedd, ar ffurf cynllun profi cyn ymadael, a fydd yn ei gwneud yn ofynnol i bawb sy'n cyrraedd Cymru o'r tu allan i'r ardal deithio gyffredin i gael hysbysiad o brawf coronafirws negyddol. Mae'r Rheoliadau hefyd yn cyflwyno gofyniad newydd ar weithredwyr gwasanaethau teithwyr rhyngwladol sy'n cyrraedd Cymru o'r tu allan i'r ardal deithio gyffredin i sicrhau bod teithwyr ar wasanaethau yn meddu â hysbysiad o ganlyniad prawf negyddol, a fydd yn drosedd i'w thorri.*
>
> *Trwy beidio â chydymffurfio â'r confensiwn 21 diwrnod yn caniatáu i'r Rheoliadau hyn ddod i rym cyn gynted ag y bo modd, ac o ystyried newid yn y dystiolaeth ar risg mewn cysylltiad â'r clefyd hwn, ystyrir bod hyn yn angenrheidiol ac yn gyfiawn yn yr achos hwn."*

2. Rheol Sefydlog 21.3(ii) – ei fod o bwysigrwydd gwleidyddol neu gyfreithiol neu ei fod yn codi materion polisi cyhoeddus sy'n debyg o fod o ddiddordeb i'r Senedd.

Rydym yn nodi cyfiawnhad Llywodraeth Cymru dros unrhyw ymyrraeth bosibl â hawliau dynol. Yn benodol, nodwn y paragraff a ganlyn yn y Memorandwm Esboniadol:

"*Mae'r diwygiadau i'r Rheoliadau Teithio Rhyngwladol a'r darpariaethau ynghylch y gofyniad ar weithredwyr sydd yn y Rheoliadau hyn yn parhau'n gyson â'r ffaith fod y Rheoliadau Teithio Rhyngwladol yn cyffwrdd â hawliau unigol o dan Ddeddf Hawliau Dynol 1998 a Siarter Hawliau Sylfaenol Ewrop; mae'r Llywodraeth o'r farn y gellir eu cyfiawnhau at ddiben atal lledaeniad clefydau heintus a/neu y caniateir ymyriad ar y sail ei fod yn anelu at gyflawni nod dilys, sef diogelu iechyd y cyhoedd. Mae'r Llywodraeth o'r farn hefyd eu bod yn gymesur.*"

Mae adran 5(5) o Ddeddf yr Undeb Ewropeaidd (Ymadael) 2018 yn nodi nad yw'r Siarter Hawliau Sylfaenol Ewropeaidd ("y Siarter") yn rhan o gyfraith ddomestig ar, neu ar ôl, diwrnod cwblhau'r cyfnod gweithredu, sef 23:00 ar 31 Rhagfyr 2020. Felly nid yw'r Siarter bellach yn rhan o gyfraith ddomestig. Yng ngoleuni hyn, byddai'n cynorthwyo'r Pwyllgor i gael eglurhad sy'n esbonio pam y cyfeirir at y Siarter yn y Memorandwm Esboniadol.

Nodir hefyd bod adran 4 o'r Memorandwm Esboniadol yn maentumio bod y Rheoliadau yn gymesur, ac mae'r Rheoliadau eu hunain, yn rheoliadau 9(4) a (6), yn cyflwyno mesurau diogelu o ran rhannu gwybodaeth.

3. Rheol Sefydlog 21.3(ii) – ei fod o bwysigrwydd gwleidyddol neu gyfreithiol neu ei fod yn codi materion polisi cyhoeddus sy'n debyg o fod o ddiddordeb i'r Senedd.

Nodwn na chynhaliwyd ymgynghoriad ffurfiol ar y Rheoliadau hyn. Yn benodol, nodwn y paragraff a ganlyn yn y Memorandwm Esboniadol:

"*Oherwydd y bygythiad difrifol ac uniongyrchol sy'n deillio o'r coronafeirws a'r angen am ymateb iechyd y cyhoedd brys, ni chynhaliwyd unrhyw ymgynghoriad cyhoeddus mewn perthynas â'r Rheoliadau hyn*."

4. Rheol Sefydlog 21.3(ii) – ei fod o bwysigrwydd gwleidyddol neu gyfreithiol neu ei fod yn codi materion polisi cyhoeddus sy'n debyg o fod o ddiddordeb i'r Senedd

Mae'r Memorandwm Esboniadol yn darparu na luniwyd asesiad effaith rheoleiddiol mewn perthynas â'r Rheoliadau hyn oherwydd yr angen i'w rhoi ar waith ar frys er mwyn mynd i'r afael â bygythiad difrifol ac uniongyrchol i iechyd y cyhoedd.

5. Rheol Sefydlog 21.3(ii) – ei fod o bwysigrwydd gwleidyddol neu gyfreithiol neu ei fod yn codi materion polisi cyhoeddus sy'n debyg o fod o ddiddordeb i'r Senedd

Mae'r cyfeiriadau at reoliadau 3(2), 3(3) a 3(4) ym mharagraffau 3, 4 a 5 o'r Nodyn Esboniadol yn anghywir. Dylent, yn hytrach, gyfeirio at reoliadau 3(3), 3(4) a 3(5) yn y drefn honno.

Derbynnir nad yw'r Nodyn Esboniadol yn rhan o'r Rheoliadau. Fodd bynnag, fe'i cynhwysir i helpu dinasyddion i gyrchu a deall y gyfraith newydd a weithredir gan y Rheoliadau ac, o'r herwydd, mae'n ddymunol bod y cyfeiriadau cywir yn cael eu defnyddio.

Ymateb Llywodraeth Cymru

Mae angen ymateb Llywodraeth Cymru mewn perthynas â'r pwynt adrodd technegol a'r ail bwynt adrodd rhinweddau.

Cynghorwyr Cyfreithiol
Y Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad
20 Ionawr 2021

OFFERYNNAU STATUDOL
CYMRU

2021 Rhif 48 (Cy. 11)

IECHYD Y CYHOEDD, CYMRU

TRAFNIDIAETH, CYMRU

Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol, Profion cyn Ymadael ac Atebolrwydd Gweithredwyr) (Cymru) (Diwygio) 2021

NODYN ESBONIADOL

(Nid yw'r nodyn hwn yn rhan o'r Rheoliadau)

Mae'r Rheoliadau hyn wedi eu gwneud mewn ymateb i'r perygl i iechyd y cyhoedd a berir gan fynychder a lledaeniad coronafeirws syndrom anadlol acíwt difrifol 2 (SARS-CoV-2) yng Nghymru. Mae adran 45B o Ddeddf Iechyd y Cyhoedd (Rheoli Clefydau) 1984 yn galluogi Gweinidogion Cymru, drwy reoliadau, i wneud darpariaeth at ddiben (ymysg pethau eraill) atal perygl i iechyd y cyhoedd o lestrau, awyrennau, trenau neu gludiant arall sy'n cyrraedd unrhyw le ("vessels, aircraft, trains or other conveyances arriving at any place").

Mae Rhan 2 o'r Rheoliadau hyn yn diwygio Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) 2020 (O.S. 2020/574 (Cy. 132)) ("y "Rheoliadau Teithio Rhyngwladol") i gyflwyno gofyniad i bersonau sy'n teithio i Gymru o'r tu allan i'r ardal ffiniau agored feddu ar hysbysiad o brawf coronafeirws negyddol wrth gyrraedd Cymru.

Mae rheoliad 3(2) o'r Rheoliadau hyn yn mewnosod rheoliad 6A newydd yn y Rheoliadau Teithio Rhyngwladol, sy'n nodi'r gofynion hysbysu ac yn rhoi manylion personau sy'n esempt rhag y gofynion hyn. Mae rheoliad 6A hefyd yn cyfeirio at Atodlen 1A newydd i'r Rheoliadau Teithio Rhyngwladol, a fewnosodir gan reoliad 3(6) ac sy'n rhoi manylion pellach ynghylch beth yw prawf a hysbysiad dilys at

ddibenion rheoliad 6A ac sy'n rhoi manylion pellach mewn perthynas â chategorïau o bersonau esempt.

Mae rheoliad 3(3) yn diwygio rheoliad 14 o'r Reoliadau Teithio Rhyngwladol fel bod torri'r gofynion yn rheoliad 6A yn drosedd ac yn rhoi rhestr nad yw'n hollgynhwysfawr o esgusodion rhesymol y gellir eu cyflwyno fel amddiffyniad.

Mae rheoliad 3(4) yn diwygio rheoliad 16 o'r Reoliadau Teithio Rhyngwladol fel y gellir dyroddi hysbysiad cosb benodedig mewn perthynas â throsedd a gyflawnwyd o dan reoliad 6A.

Mae Rhan 3 o'r Rheoliadau hyn yn cyflwyno gofyniad i bersonau sy'n gweithredu gwasanaethau rhyngwladol i deithwyr ("gweithredwyr") sy'n cyrraedd Cymru o'r tu allan i'r ardal deithio gyffredin i sicrhau bod teithwyr ar wasanaethau o'r fath yn meddu ar hysbysiad o ganlyniad prawf negyddol (rheoliad 5(1)). Mae torri'r gofyniad hwn yn drosedd (rheoliad 6(1)).

Mae rheoliad 7 yn caniatáu i berson awdurdodedig ymdrin â throsedd o dan reoliad 6(1) drwy hysbysiad cosb benodedig. Rhaid i hysbysiad cosb benodedig roi manylion y drosedd, gan gynnwys enw'r teithiwr sydd wedi methu â darparu hysbysiad o ganlyniad prawf negyddol.

Nid oes asesiad effaith llawn wedi ei gwblhau oherwydd natur frys yr offeryn hwn. Mae Memorandwm Esboniadol wedi ei gyhoeddi ochr yn ochr â'r offeryn hwn ar www.legislation.gov.uk.

O F F E R Y N N A U S T A T U D O L
C Y M R U

2021 Rhif 48 (Cy. 11)

IECHYD Y CYHOEDD, CYMRU

TRAFNIDIAETH, CYMRU

Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol, Profion cyn Ymadael ac Atebolrwydd Gweithredwyr) (Cymru) (Diwygio) 2021

Gwnaed	*am 3.00 p.m. ar 15 Ionawr 2021*
Gosodwyd gerbron Senedd Cymru	*am 5.30 p.m. ar 15 Ionawr 2021*
Yn dod i rym	*am 4.00 a.m. ar 18 Ionawr 2021*

Mae Gweinidogion Cymru yn gwneud y Rheoliadau a ganlyn drwy arfer y pwerau a roddir gan adrannau 45B, 45F(2) a 45P(2) o Ddeddf Iechyd y Cyhoedd (Rheoli Clefydau) 1984(**1**).

RHAN 1

Cyffredinol

Enwi, cychwyn a chymhwyso

1.—(1) Enw'r Rheoliadau hyn yw Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol, Profion cyn Ymadael ac Atebolrwydd Gweithredwyr) (Cymru) (Diwygio) 2021.

(2) Daw'r Rheoliadau hyn i rym am 4.00 a.m. ar 18 Ionawr 2021.

(**1**) 1984 p. 22. Mewnosodwyd Rhan 2A gan adran 129 o Ddeddf Iechyd a Gofal Cymdeithasol 2008 (p. 14).

(3) Mae'r Rheoliadau hyn yn gymwys o ran Cymru.

Dehongli

2. Yn y Rheoliadau hyn—

mae i "ardal deithio gyffredin" yr ystyr a roddir i "*common travel area*" yn adran 1(3) o Ddeddf Mewnfudo 1971(**1**);

ystyr "y Rheoliadau Teithio Rhyngwladol" ("*the International Travel Regulations*") yw Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) 2020(**2**).

RHAN 2

Profion cyn Ymadael

Diwygio'r Rheoliadau Teithio Rhyngwladol

3.—(1) Mae'r Rheoliadau Teithio Rhyngwladol wedi eu diwygio fel a ganlyn.

(2) Yn rheoliad 2(1) (dehongli) yn y man priodol, mewnosoder—

(a) "ystyr "dyfais" ("*device*") yw dyfais feddygol ddiagnostig *in vitro* o fewn yr ystyr a roddir i "*in vitro* diagnostic medical device" yn rheoliad 2(1) Reoliadau Dyfeisiadau Meddygol 2002(**3**);";

(b) "ystyr "prawf cymhwysol" ("*qualifying test*") yw prawf sy'n brawf cymhwysol at ddibenion rheoliad 6A;";

(c) "ystyr "sensitifrwydd" ("*sensitivity*"), mewn perthynas â dyfais, yw pa mor aml y mae'r ddyfais yn cynhyrchu canlyniad positif yn gywir;";

(**1**) 1971 p. 77. Mae adran 1(3) yn darparu y cyfeirir at y Deyrnas Unedig, Ynysoedd y Sianel, Ynys Manaw a Gweriniaeth Iwerddon gyda'i gilydd yn y Ddeddf honno fel "the common travel area".

(**2**) O.S. 2020/574 (Cy. 132), a ddiwygiwyd gan O.S. 2020/595 (Cy. 136), O.S. 2020/714 (Cy. 160), O.S. 2020/726 (Cy. 163), O.S. 2020/804 (Cy. 177), O.S. 2020/817 (Cy. 179), O.S. 2020/840 (Cy. 185), O.S. 2020/868 (Cy. 190), O.S. 2020/886 (Cy. 196), O.S. 2020/917 (Cy. 205), O.S. 2020/942, O.S. 2020/944 (Cy. 210), O.S. 2020/962 (Cy. 216), O.S. 2020/981 (Cy. 220), O.S. 2020/1015 (Cy. 226), O.S. 2020/1042 (Cy. 231), O.S. 2020/1080 (Cy. 243), O.S. 2020/1098 (Cy. 249), O.S. 2020/1133 (Cy. 258), O.S. 2020/1165 (Cy 263), O.S. 2020/1191 (Cy. 269), O.S. 2020/1223 (Cy. 277), O.S. 2020/1232 (Cy. 278), O.S. 2020/1237 (Cy. 279), O.S. 2020/1288 (Cy. 286), O.S. 2020/1329 (Cy. 295), O.S. 2020/1362 (Cy. 301), O.S. 2020/1477 (Cy. 316), O.S. 2020/1521 (Cy. 325), O.S. 2020/1602 (Cy. 332), O.S. 2020/1645 (Cy. 345), O.S. 2021/20 (Cy. 7) ac O.S. 2021/24 (Cy. 8).

(**3**) O.S. 2002/618, y mae diwygiadau iddo nad ydynt yn berthnasol i'r Rheoliadau hyn.

(d) "ystyr "penodolrwydd" ("*specificity*") mewn perthynas â dyfais, yw pa mor aml y mae'r ddyfais yn cynhyrchu canlyniad negyddol yn gywir;".

(3) Ar ôl rheoliad 6 (gwybodaeth am deithiwr nad yw ym meddiant neu o dan reolaeth person), mewnosoder—

"RHAN 2A

Hysbysiad o ganlyniad prawf negyddol etc.

Gofyniad i feddu ar hysbysiad o ganlyniad prawf negyddol

6A.—(1) Rhaid i berson ("P") sy'n 11 oed neu drosodd sy'n cyrraedd Cymru o'r tu allan i'r ardal deithio gyffredin feddu wrth gyrraedd—

(a) ar hysbysiad dilys o ganlyniad negyddol i brawf cymhwysol a gymerwyd gan P, a

(b) pan fo P yn oedolyn sy'n cyrraedd Cymru gyda phlentyn sy'n 11 oed neu drosodd y mae gan P gyfrifoldeb drosto, ar hysbysiad dilys o ganlyniad negyddol o brawf cymhwysol a gymerwyd gan y plentyn.

(2) O ran P—

(a) pan fo'n meddu ar hysbysiad y cyfeirir ato ym mharagraff (1), a

(b) pan ofynnir iddo wneud hynny gan swyddog mewnfudo,

rhaid i P ddangos yr hysbysiad, naill ai'n ffisegol neu'n ddigidol, os gofynnir iddo wneud hynny gan swyddog mewnfudo.

(3) Nid yw paragraffau (1) a (2) yn gymwys i P os yw P yn blentyn o dan 11 oed sy'n cyrraedd Cymru gydag oedolyn sydd â chyfrifoldeb dros P.

(4) Ym mharagraffau (1) a (2), nid yw cyfeiriadau at P yn cynnwys—

(a) person a ddisgrifir ym mharagraff 2, 3, 4, 7, 8, 9, 10, 11, 12 neu 28 o Atodlen 2,

(b) gweithiwr cludiant ffyrdd fel y'i disgrifir ym mharagraff 6 o Atodlen 2.

(c) person a ddisgrifir mewn unrhyw is-baragraff o baragraff 3(1) o Atodlen 1A.

(5) At ddibenion y rheoliad hwn—

(a) mae prawf yn brawf cymhwysol os yw'n cydymffurfio â pharagraff 1 o Atodlen 1A,

(b) mae hysbysiad o ganlyniad negyddol yn ddilys os yw'n cynnwys yr wybodaeth a bennir ym mharagraff 2 o Atodlen 1A."

(4) Yn rheoliad 14 (troseddau)—

(a) ar ôl paragraff (1)(a), mewnosoder —

"(aa) 6A(1) neu (2),",

(b) ar ôl paragraff (1), mewnosoder—

"(1A) Ond nid yw person yn cyflawni trosedd pan fo'n torri gofyniad yn rheoliad 6A(1), os oedd yn credu'n rhesymol ar adeg y toriad fod hysbysiad o ganlyniad negyddol yn ei feddiant yn ymwneud â'r person neu â phlentyn y mae gan y person gyfrifoldeb drosto (yn ôl y digwydd), yn ddilys ac o brawf cymhwysol (at ddibenion y rheoliad hwnnw).".

(c) ar ôl paragraff (5), mewnosoder—

"(5A) Mewn perthynas â throsedd o dorri rheoliad 6A(1), mae'r amgylchiadau y mae gan berson esgus rhesymol oddi tanynt yn cynnwys—

(a) pan oedd person yn anffit yn feddygol i ddarparu sampl ar gyfer prawf cymhwysol cyn teithio i Gymru ac yn meddu ar ddogfen, wedi ei llofnodi gan ymarferydd meddygol sydd â hawl i ymarfer yn y wlad neu'r diriogaeth y mae'r ymarferydd hwnnw wedi ei leoli ynddi, i'r perwyl hwnnw,

(b) pan nad oedd yn rhesymol ymarferol i berson gael prawf cymhwysol cyn teithio i Gymru oherwydd—

(i) anabledd,

(ii) yr angen i gael triniaeth feddygol frys,

(c) pan oedd person yn mynd gyda pherson a ddisgrifir yn is-baragraff (b) er mwyn darparu cymorth (boed feddygol neu fel arall) ac nad oedd yn rhesymol ymarferol i'r person a oedd yn mynd gydag ef gael prawf cymhwysol cyn teithio i Gymru,

(d) pan oedd person wedi dechrau ar ei daith i Gymru mewn gwlad neu diriogaeth lle nad oedd prawf cymhwysol ar gael i'r cyhoedd (gyda thaliad neu hebddo) neu nad oedd yn rhesymol ymarferol i berson gael prawf cymhwysol oherwydd diffyg mynediad rhesymol i brawf cymhwysol neu gyfleuster profi ac nad oedd yn rhesymol ymarferol iddo gael prawf cymhwysol yn ei fan ymadael diwethaf os oedd hwnnw'n wahanol i'r fan lle y dechreuodd ei daith,

(e) pan oedd yr amser y mae wedi ei gymryd i berson deithio o'r wlad neu'r diriogaeth lle y dechreuodd ar ei daith i wlad neu diriogaeth ei fan ymadael diwethaf cyn cyrraedd Cymru yn golygu nad oedd yn rhesymol ymarferol iddo fodloni'r gofyniad ym mharagraff 1(c) o Atodlen 1A, ac nad oedd yn rhesymol ymarferol iddo gael prawf cymhwysol yn ei fan ymadael diwethaf.".

(5) Yn rheoliad 16 (hysbysiadau cosb benodedig)—

(a) ym mharagraff (1)(a)(i), ar ôl "5(2)," mewnosoder "6A(1) neu (2)".

(b) Ar ôl paragraff (6)(a), mewnosoder—

"(aa) o dorri gofyniad a osodir gan reoliad 6A,".

(6) Ar ôl Atodlen 1, mewnosoder—

"ATODLEN 1A

Rheoliad 6A

Profion cyn cyrraedd Cymru

1. Mae prawf yn cydymffurfio â'r paragraff hwn—

(a) os yw'n brawf ar gyfer canfod y coronafeirws, sy'n—

(i) prawf adwaith cadwynol polymerasau, neu

(ii) prawf a gynhaliwyd gan ddefnyddio dyfais y mae'r gweithgynhyrchydd yn datgan bod ganddi—

(aa) sensitifrwydd o 80% o leiaf,

(bb) penodolrwydd o 97% o leiaf, a

(cc) terfyn canfod o lai na 100,000 o gopïau SARS-CoV-2 y mililitr neu'n hafal i hynny,

(b) os nad yw'n brawf a ddarperir neu a weinyddir o dan Ddeddf y Gwasanaeth Iechyd Gwladol 2006(**1**), Deddf y Gwasanaeth Iechyd Gwladol (Cymru) 2006(**2**), Deddf y Gwasanaeth Iechyd Gwladol (Yr Alban) 1978(**3**), neu Orchymyn Gwasanaethau Iechyd a Gwasanaethau Cymdeithasol Personol (Gogledd Iwerddon) 1972(**4**), a

(c) os cymerir sampl y prawf o berson ddim mwy na 72 o oriau cyn—

(i) yn achos person sy'n teithio i Gymru ar wasanaeth trafnidiaeth masnachol, yr amser a amserlennwyd ar gyfer ymadawiad y gwasanaeth, neu

(ii) mewn unrhyw achos arall, amser ymadael gwirioneddol y llestr neu'r awyren y mae'r person hwnnw yn teithio arni i Gymru.

2. Rhaid i hysbysiad o ganlyniad prawf negyddol gynnwys yr wybodaeth a ganlyn yn Saesneg, Ffrangeg neu Sbaeneg—

(a) enw'r person y cymerwyd y sampl ohono,

(b) dyddiad geni'r person hwnnw,

(c) canlyniad (negyddol) y prawf,

(d) y dyddiad y casglwyd sampl y prawf neu'r dyddiad y cafodd darparwr y prawf ef,

(e) datganiad bod y prawf yn—

(i) prawf adwaith cadwynol polymerasau, neu

(ii) prawf a gynhaliwyd gan ddefnyddio dyfais sydd â sensitifrwydd o 80% o leiaf a phenodolrwydd o 97% o leiaf, a therfyn canfod o lai na 100,000 o gopïau SARS-CoV-2 y mililitr neu'n hafal i hynny,

(f) enw gweithgynhyrchydd y ddyfais brofi a ddefnyddiwyd,

(g) enw darparwr y prawf.

(**1**) 2006 p. 41.
(**2**) 2006 p. 42.
(**3**) 1978 p. 29.
(**4**) 1972 Rhif 1265 (G.I. 14).

3.—(1) Y personau y cyfeirir atynt yn rheoliad 6A(4)(a) (nad yw'n ofynnol iddynt gydymffurfio â'r rheoliad hwnnw) yw—

(a) person a ddisgrifir ym mharagraff 8 o Atodlen 2, hyd yn oed os nad ydynt yn teithio i'r Deyrnas Unedig yng nghwrs eu gwaith neu eu dychweliad i'r Deyrnas Unedig yn unol â'r naill na'r llall o'r confensiynau y cyfeirir atynt yn y paragraff hwnnw,

(b) person a ddisgrifir yn—

(i) paragraff 13(1)(b) o Atodlen 2 pan fo'r Adran berthnasol, cyn i'r person ymadael i'r Deyrnas Unedig, wedi ardystio ei fod yn bodloni'r disgrifiad hwn ac nad yw'n ofynnol iddo gydymffurfio â rheoliad 6A, neu

(ii) paragraff 13A o Atodlen 2 pan fo'r Adran berthnasol, cyn i'r person ymadael i'r Deyrnas Unedig, hefyd wedi ardystio nad yw'n ofynnol iddo gydymffurfio â rheoliad 6A,

(c) gwas i'r Goron neu gontractwr llywodraeth ("C") y mae'n ofynnol iddo ymgymryd â gwaith llywodraeth hanfodol neu blismona hanfodol yn y Deyrnas Unedig neu sy'n dychwelyd o wneud gwaith o'r fath y tu allan i'r Deyrnas Unedig pan fo'r Adran berthnasol, cyn i P ymadael i'r Deyrnas Unedig, wedi ardystio ei fod yn bodloni'r disgrifiad hwn ac nad yw'n ofynnol iddo gydymffurfio â rheoliad 6A,

(d) cynrychiolydd ("C") gwlad neu diriogaeth dramor sy'n teithio i'r Deyrnas Unedig i gynnal busnes swyddogol gyda'r Deyrnas Unedig pan fo, cyn i C ymadael i'r Deyrnas Unedig—

(i) pennaeth perthnasol y genhadaeth, y swyddfa gonsylaidd neu'r swyddfa sy'n cynrychioli tiriogaeth dramor yn y Deyrnas Unedig, neu Lywodraethwr tiriogaeth dramor Brydeinig (yn ôl y digwydd), neu berson sy'n gweithredu ar ei awdurdod, yn cadarnhau yn ysgrifenedig i'r Swyddfa Dramor, y Gymanwlad a Datblygu ei bod yn ofynnol i C wneud gwaith sy'n hanfodol i'r wlad dramor a gynrychiolir gan y

genhadaeth neu'r swyddfa gonsylaidd, y diriogaeth dramor a gynrychiolir gan y swyddfa neu'r diriogaeth dramor Brydeinig, a

(ii) y Swyddfa Dramor, y Gymanwlad a Datblygu wedi cadarnhau yn ysgrifenedig wedi hynny i'r person sy'n rhoi'r hysbysiad yn is-baragraff (i)—

(aa) ei bod wedi cael y cadarnhad hwnnw, a

(bb) bod C yn teithio i'r Deyrnas Unedig i gynnal busnes swyddogol gyda'r Deyrnas Unedig ac nad yw'n ofynnol iddo gydymffurfio â rheoliad 6A,

(e) gweithiwr sydd â sgiliau technegol arbenigol, pan fo angen y sgiliau technegol arbenigol hynny ar gyfer gwaith neu wasanaethau brys (gan gynnwys comisiynu, cynnal a chadw, ac atgyweirio a gwiriadau diogelwch) i sicrhau y parheir i gynhyrchu, cyflenwi, symud, gweithgynhyrchu, storio neu gadw nwyddau neu wasanaethau, pan fo'r gweithiwr wedi teithio i'r Deyrnas Unedig yng nghwrs ei waith neu fel arall i ddechrau neu ailddechrau gweithio.

(2) Yn is-baragraff (1)—

mae i "contractwr llywodraeth" ("*government contractor*"), "gwaith llywodraeth hanfodol" ("*essential government work*") a "gwas i'r Goron" ("*Crown servant*") a "plismona hanfodol" ("*essential policing")* yr ystyron a roddir ym mharagraff 13(2) o Atodlen 2;

mae i "swyddfa gonsylaidd" ("*consular post*") yr ystyr a roddir ym mharagraff 1(3) o Atodlen 2.".

RHAN 3

Atebolrwydd gweithredwyr mewn cysylltiad â chyrraedd

Dehongli

4. Yn y Rhan hon—

ystyr "y gofyniad i feddu ar hysbysiad o ganlyniad prawf negyddol" ("*the requirement to possess notification of a negative test result*") yw'r

gofyniad yn rheoliad 6A(1) o'r Rheoliadau Teithio Rhyngwladol;

ystyr "gwasanaeth teithwyr rhyngwladol" ("*international passenger service*") yw gwasanaeth masnachol y mae teithwyr yn teithio ar lestr neu awyren arno o'r tu allan i'r ardal deithio gyffredin i borthladd yng Nghymru;

ystyr "gweithredwr" ("*operator*") yw gweithredwr gwasanaeth teithwyr rhyngwladol;

ystyr "hysbysiad gofynnol" ("*required notification*") yw hysbysiad dilys o ganlyniad prawf negyddol o brawf cymhwysol at ddibenion rheoliad 6A o'r Rheoliadau Teithio Rhyngwladol—

(a) a gymerwyd gan y person y mae'r hysbysiad hwnnw yn ei feddiant, neu

(b) a gymerwyd gan blentyn ac a gaiff ei drin fel pe bai yn ei feddiant yn rhinwedd y rheoliad hwnnw;

ystyr "llestr" ("*vessel*") yw pob disgrifiad o lestr a ddefnyddir wrth fordwyo (gan gynnwys hofrenfad o fewn ystyr "hovercraft" yn Neddf Hofrenfadau 1968) y mae ei hyd yn 24 o fetrau neu fwy;

ystyr "person awdurdodedig" ("*authorised person*") yw—

(c) mewn perthynas â theithwyr sy'n cyrraedd ar lestr, yr Ysgrifennydd Gwladol;

(d) mewn perthynas â theithwyr sy'n cyrraedd ar awyren, yr Awdurdod Hedfan Sifil(**1**);

ystyr "plentyn" ("*child*") yw person o dan 18 oed;

mae "porthladd" ("*port*") yn cynnwys maes awyr, maes hofrenyddion neu borthladd môr;

"prawf cymhwysol" ("*qualifying test*") yw prawf sy'n brawf cymhwysol at ddiben rheoliad 6A o'r Rheoliadau Teithio Rhyngwladol;

ystyr "swyddog mewnfudo" ("*immigration officer*") yw person a benodwyd gan yr Ysgrifennydd Gwladol yn swyddog mewnfudo o dan baragraff 1 o Atodlen 2 i Ddeddf Mewnfudo 1971(**2**);

ystyr "teithiwr" ("*passenger*") yw person sy'n teithio ar wasanaeth teithwyr rhyngwladol nad yw'n aelod o griw y gwasanaeth hwnnw;

ystyr "teithiwr perthnasol" ("*relevant passenger*") yw teithwyr sy'n methu, heb esgus rhesymol, â dangos hysbysiad pan ofynnir iddo wneud hynny

(**1**) Mae'r Awdurdod Hedfan Sifil yn gorff corfforedig a sefydlwyd gan adran 1 o Ddeddf Hedfan Sifil 1971 (p. 75).

(**2**) 1971 p. 77. Diwygiwyd paragraff 1 gan baragraff 3 o Atodlen 3 i Ddeddf yr Asiantaeth Diogelu Iechyd 2004 (p. 17), a chan O.S. 1993/1813.

gan swyddog mewnfudo yn unol â rheoliad 6A(2) o'r Rheoliadau Teithio Rhyngwladol;

ystyr "unigolyn cyfrifol" ("*responsible individual*") yw unigolyn—

(a) sydd â gwarchodaeth neu ofal am y plentyn am y tro, neu

(b) sydd â chyfrifoldeb rhiant dros y plentyn o fewn yr ystyr a roddir i "parental responsibility" yn adran 3 o Ddeddf Plant 1989(**1**).

Gofyniad i sicrhau bod teithwyr yn meddu ar hysbysiad o ganlyniad prawf negyddol

5.—(1) Rhaid i weithredwr sicrhau bod teithiwr sy'n cyrraedd Cymru ar wasanaeth teithwyr rhyngwladol yn meddu ar hysbysiad gofynnol.

(2) Nid yw paragraff (1) yn gymwys mewn perthynas â theithiwr—

(a) y mae'r gweithredwr, neu berson sy'n gweithredu ar ran y gweithredwr, yn credu'n rhesymol nad yw'n ofynnol iddo gydymffurfio â'r gofyniad i feddu ar hysbysiad o ganlyniad prawf negyddol neu fod ganddo esgus rhesymol dros fethu â chydymffurfio â'r gofyniad hwnnw;

(b) sy'n blentyn, sy'n teithio heb unigolyn cyfrifol; neu

(c) sy'n deithiwr tramwy, sydd â hawl i breswylio yn y Deyrnas Unedig ac nad oes ganddo'r hawl i ddod i'r wlad neu'r diriogaeth y mae'r gwasanaeth teithwyr rhyngwladol yn ymadael ohoni.

(3) Yn y rheoliad hwn, ystyr "teithiwr tramwy" yw person sydd wedi cyrraedd y wlad neu'r diriogaeth y mae'r gwasanaeth teithwyr rhyngwladol yn ymadael ohoni gyda'r bwriad o fynd drwyddi i Gymru heb fynd i'r wlad honno neu'r diriogaeth honno.

Troseddau

6.—(1) Mae gweithredwr sy'n methu â chydymffurfio â'r gofyniad yn rheoliad 5(1) yn cyflawni trosedd.

(2) Mae trosedd o dan baragraff (1) i'w chosbi ar gollfarn ddiannod drwy ddirwy.

(3) Mewn perthynas â'r drosedd ym mharagraff (1), mae'n amddiffyniad i weithredwr ddangos bod y teithiwr perthnasol wedi dangos dogfen sy'n honni ei bod yn hysbysiad gofynnol na ellid bod wedi disgwyl yn rhesymol i'r gweithredwr, neu berson sy'n

(**1**) 1989 p. 41.

gweithredu ar ran y gweithredwr, wybod nad oedd yn hysbysiad gofynnol.

Hysbysiadau cosb benodedig

7.—(1) Caiff person awdurdodedig ddyroddi hysbysiad cosb benodedig i unrhyw weithredwr y mae'r person awdurdodedig yn credu'n rhesymol ei fod wedi cyflawni trosedd o dan reoliad 6(1).

(2) Hysbysiad yw hysbysiad cosb benodedig sy'n cynnig i'r gweithredwr y'i dyroddir iddo y cyfle i gael ei ryddhau o unrhyw atebolrwydd am euogfarn am y drosedd drwy dalu cosb benodedig i—

(a) Gweinidogion Cymru; neu

(b) person sydd wedi ei ddynodi gan Weinidogion Cymru at ddibenion cael taliad o dan y rheoliad hwn.

(3) Pan ddyroddir hysbysiad i weithredwr o dan baragraff (1) mewn cysylltiad â throsedd—

(a) ni chaniateir dwyn unrhyw achos am y drosedd cyn diwedd y cyfnod o 28 o ddiwrnodau yn dilyn y dyddiad y dyroddir yr hysbysiad;

(b) ni chaniateir euogfarnu'r gweithredwr o'r drosedd os yw'r gweithredwr yn talu'r gosb benodedig cyn diwedd y cyfnod hwnnw.

(4) Rhaid i hysbysiad cosb benodedig—

(a) rhoi manylion rhesymol fanwl yr amgylchiadau yr honnir eu bod yn ffurfio'r drosedd, gan gynnwys enw'r teithiwr perthnasol;

(b) datgan y cyfnod pan (oherwydd paragraff (3)(a)) na ddygir achos am y drosedd;

(c) pennu swm y gosb benodedig;

(d) datgan enw a chyfeiriad y person y caniateir talu'r cosb benodedig iddo neu y mae tystiolaeth o'r amddiffyniad i'w darparu iddo; ac

(e) pennu dulliau o dalu a ganiateir.

(5) Swm yr hysbysiad cosb benodedig at ddibenion paragraff (4)(c) yw £1,000.

(6) Mewn unrhyw achos, mae tystysgrif—

(a) sy'n honni ei bod wedi ei llofnodi ar ran—

(i) Gweinidogion Cymru, neu

(ii) unrhyw berson sydd wedi ei ddynodi gan Weinidogion Cymru o dan baragraff (2)(b), a

(b) sy'n datgan bod y taliad am y gosb benodedig wedi dod i law, neu heb ddod i law, erbyn y dyddiad a bennir yn y dystysgrif,

yn dystiolaeth o'r ffeithiau a ddatgenir.

Erlyn

8. Ni chaniateir dwyn achos am drosedd o dan reoliad 6(1) ond gan berson awdurdodedig.

Pŵer i ddefnyddio ac i ddatgelu gwybodaeth

9.—(1) Mae'r rheoliad hwn yn gymwys i unrhyw berson ("P") sy'n dal gwybodaeth a ddisgrifir ym mharagraff (2) sy'n ymwneud â theithiwr perthnasol ("gwybodaeth berthnasol").

(2) Yr wybodaeth y cyfeirir ati ym mharagraff (1) yw—

(a) gwybodaeth a ddarparwyd gan y teithiwr perthnasol neu ar ei ran fel esboniad am fethu â chydymffurfio â rheoliad 6A o'r Rheoliadau Teithio Rhyngwladol,

(b) gwybodaeth am y camau a gymerwyd, yn unol â'r Rheoliadau Teithio Rhyngwladol, mewn perthynas â'r teithiwr perthnasol, gan gynnwys manylion unrhyw hysbysiad cosb benodedig a ddyroddwyd o dan y Rheoliadau hynny,

(c) manylion personol y teithiwr perthnasol, gan gynnwys ei—

(i) enw llawn,

(ii) dyddiad geni,

(iii) rhif basbort, neu gyfeirnod dogfen deithio (fel y bo'n briodol), dyddiadau dyroddi a dod i ben a'r awdurdod dyroddi,

(iv) cyfeiriad cartref,

(v) rhif ffôn,

(vi) cyfeiriad e-bost,

(d) manylion taith y teithiwr perthnasol, gan gynnwys—

(i) yr amser a'r dyddiad y cyrhaeddodd Gymru,

(ii) enw gweithredwr y gwasanaeth teithwyr rhyngwladol y cyrhaeddodd arno neu yr archebwyd ei daith drwyddo,

(iii) rhif yr hediad neu enw'r llestr,

(iv) lleoliadau ymadael a chyrraedd y gwasanaeth teithwyr rhyngwladol.

(3) Ni chaiff P ddefnyddio gwybodaeth berthnasol ond pan fo'n angenrheidiol at ddiben cyflawni swyddogaeth o dan y Rheoliadau hyn.

(4) Ni chaiff P ddatgelu gwybodaeth berthnasol i berson arall ("y derbynnydd") ond pan fo'n angenrheidiol i'r derbynnydd gael yr wybodaeth berthnasol at ddiben cyflawni swyddogaeth o dan y Rheoliadau hyn.

(5) Nid yw'r rheoliad hwn yn cyfyngu ar yr amgylchiadau y caniateir datgelu gwybodaeth yn gyfreithlon fel arall o dan unrhyw ddeddfiad arall neu reol gyfreithiol arall.

(6) Nid oes unrhyw beth yn y rheoliad hwn yn awdurdodi defnyddio neu ddatgelu data personol pan fo gwneud hynny yn torri'r ddeddfwriaeth diogelu data.

(7) At ddibenion y rheoliad hwn, mae i "data personol" a "deddfwriaeth diogelu data" yr un ystyron â "personal data" a "data protection legislation" yn adran 3 o Ddeddf Diogelu Data 2018(**1**).

Adolygu

10. Rhaid i Weinidogion Cymru adolygu'r angen am y gofyniad a osodir gan reoliad 5 o'r Rheoliadau hyn erbyn 8 Chwefror 2021 ac o leiaf unwaith bob 28 o ddiwrnodau ar ôl y dyddiad hwnnw.

Dod i ben

11.—(1) Daw'r Rheoliadau hyn i ben ar ddiwedd 7 Mehefin 2021.

(2) Nid yw'r ffaith bod y Rheoliadau hyn yn dod i ben yn effeithio ar ddilysrwydd unrhyw beth a wneir yn unol â'r Rheoliadau hyn cyn iddynt ddod i ben.

Vaughan Gething
Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol,
un o Weinidogion Cymru
Am 3.00 p.m. ar 15 Ionawr 2021

(**1**) 2018 p. 12.

Memorandwm Esboniadol ar gyfer Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol, Profion cyn Ymadael ac Atebolrwydd Gweithredwyr) (Cymru) (Diwygio) 2021

Lluniwyd y Memorandwm Esboniadol hwn gan Lywodraeth Cymru ac fe'i gosodir gerbron Senedd Cymru ar y cyd â'r is-ddeddfwriaeth uchod ac yn unol â Rheol Sefydlog 27.1.

Datganiad y Gweinidog

Yn fy marn i, mae'r Memorandwm Esboniadol hwn yn rhoi darlun teg a rhesymol o effaith ddisgwyliedig Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol, Profion cyn Ymadael ac Atebolrwydd Gweithredwyr) (Cymru) (Diwygio) 2021

Vaughan Gething
Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol

15 Ionawr 2021

1. Disgrifiad

Yn ddarostyngedig i esemptiadau penodedig, tan 10 Gorffennaf 2020, roedd Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) 2020 (“Y Rheoliadau Teithio Rhyngwladol”) yn ei gwneud yn ofynnol i bob teithiwr sy’n cyrraedd Cymru o’r tu allan i’r Ardal Deithio Gyffredin (h.y. yr ardal ffiniau agored sy’n cynnwys y Deyrnas Unedig, Ynysoedd y Sianel, Ynys Manaw a Gweriniaeth Iwerddon) ddarparu ei fanylion cyswllt a gwybodaeth am ei daith – ac ynysu am gyfnod o 14 o ddiwrnodau.

Mae'r Rheoliadau hyn yn diwygio'r Rheoliadau Teithio Rhyngwladol er mwyn cyflwyno mesurau pellach i ddiogelu iechyd y cyhoedd, a hynny ar ffurf cynllun profi cyn ymadael, a fydd yn ei gwneud yn ofynnol i bawb sy'n cyrraedd Cymru o'r tu allan i'r ardal deithio gyffredin feddu ar hysbysiad o brawf coronafeirws negatif.

Mae'r Rheoliadau hyn hefyd yn cyflwyno gofyniad newydd ar weithredwyr gwasanaethau teithwyr rhyngwladol sy'n cyrraedd Cymru o'r tu allan i'r ardal deithio gyffredin i sicrhau bod teithwyr ar wasanaethau o'r fath yn meddu ar hysbysiad o ganlyniad prawf negatif. Bydd torri’r gofyniad hwn yn drosedd.

2. Materion o ddiddordeb arbennig i’r Pwyllgor Deddfwriaeth, Cyfiawnder a’r Cyfansoddiad

Dod i rym

Yn unol ag adrannau 11A(4) o Ddeddf Offerynnau Statudol 1946, hysbyswyd y Llywydd nad yw’r Rheoliadau yn cydymffurfio â’r confensiwn 21 o ddiwrnodau. Roedd hyn yn angenrheidiol oherwydd yr angen i weithredu'n gyflym ac ar sail pedair gwlad er mwyn darparu amddiffyniad pellach yn yr ymdrech i atal perygl i iechyd y cyhoedd oddi wrth bobl sy'n teithio i Gymru o'r tu allan i'r ardal deithio gyffredin, yn enwedig mewn perthynas ag ymddangosiad amrywiolion newydd sy'n peri pryder.

Y Confensiwn Ewropeaidd ar Hawliau Dynol

Mae’r diwygiadau i’r Rheoliadau Teithio Rhyngwladol a’r darpariaethau ynghylch y gofyniad ar weithredwyr sydd yn y Rheoliadau hyn yn parhau’n gyson â’r ffaith fod y Rheoliadau Teithio Rhyngwladol yn cyffwrdd â hawliau unigol o dan Ddeddf Hawliau Dynol 1998 a Siarter Hawliau Sylfaenol Ewrop; mae’r Llywodraeth o’r farn y gellir eu cyfiawnhau at ddiben atal lledaeniad clefydau heintus a/neu y caniateir ymyriad ar y sail ei fod yn anelu at gyflawni nod dilys, sef diogelu iechyd y cyhoedd. Mae’r Llywodraeth o’r farn hefyd eu bod yn gymesur.

3. Y cefndir deddfwriaethol

Mae Deddf Iechyd y Cyhoedd (Rheoli Clefydau) 1984 (“Deddf 1984”), a rheoliadau a wnaed oddi tani, yn darparu fframwaith deddfwriaethol ar gyfer diogelu iechyd yng Nghymru a Lloegr. Gwneir y Rheoliadau drwy ddibynnu ar y pwerau yn adrannau 45B , 45F(2) a 45P(2) o Ddeddf 1984. Mae'r Memorandwm Esboniadol ar gyfer y Rheoliadau Teithio Rhyngwladol yn rhoi rhagor o wybodaeth am y pwerau hyn.

4. Diben y ddeddfwriaeth a’r effaith y bwriedir iddi ei chael

Cafodd y Rheoliadau Teithio Rhyngwladol eu gwneud ar 5 Mehefin 2020 a daethant i rym ar 8 Mehefin 2020 mewn ymateb i’r bygythiad difrifol ac uniongyrchol i iechyd y cyhoedd a berir gan fynychder a lledaeniad syndrom anadlol acíwt difrifol coronafeirws 2 (SARS-CoV-2). Cafodd y Rheoliadau Diogelu Iechyd (Coronafeirws, Gwybodaeth Iechyd y Cyhoedd i Bobl sy'n Teithio i Gymru etc.) 2020 eu gwneud ar 15 Mehefin, a daethant i rym ar 17 Mehefin. Maent yn gosod rhwymedigaethau ar weithredwyr gwasanaethau teithwyr rhyngwladol sy'n cyrraedd Cymru o'r tu allan i'r ardal deithio gyffredin i sicrhau bod teithwyr yn teithio ar y gwasanaethau hynny yn cael gwybod am eu rhwymedigaethau o dan y Rheoliadau Teithio Rhyngwladol i ddarparu gwybodaeth a, lle y bo'n berthnasol, i hunanynysu ar ôl dychwelyd i Gymru.

Caiff y ddwy set o Reoliadau eu hadolygu'n rheolaidd ac fel rhan o'r ymdrech barhaus i atal perygl i iechyd y cyhoedd mewn cysylltiad â lledaeniad y coronafeirws yng nghyd-destun teithio rhyngwladol, penderfynwyd y dylai teithwyr sy'n cyrraedd Cymru o'r tu allan i'r ardal deithio gyffredin feddu ar ganlyniad prawf coronafeirws negatif. Mae'r diwygiadau i'r Rheoliadau Teithio Rhyngwladol a wneir gan y Rheoliadau hyn yn cyflwyno'r gofyniad newydd hwn a manylion y prawf a'r hysbysiad sy'n ofynnol. Mae'r Rheoliadau hyn hefyd yn cyflwyno dyletswydd gyfatebol ar weithredwyr gwasanaethau teithwyr rhyngwladol i sicrhau bod teithwyr sy'n teithio ar y gwasanaethau hyn yn meddu ar hysbysiad o brawf negatif.

Mae'r gofynion newydd mewn perthynas â phrofi cyn ymadael yn dod i rym ar gyfer unrhyw deithwyr sy'n cyrraedd Cymru o 4.00am ddydd Llun 18 Ionawr.

Mae Gweinidogion Cymru o’r farn fod y darpariaethau a’r diwygiadau sydd yn y rheoliadau hyn yn gymesur â’r hyn y maent yn ceisio ei gyflawni, sef ymateb i fygythiad difrifol ac uniongyrchol i iechyd y cyhoedd.

5. Ymgynghori

Oherwydd y bygythiad difrifol ac uniongyrchol sy’n deillio o’r coronafeirws a’r angen am ymateb iechyd y cyhoedd brys, ni chynhaliwyd unrhyw ymgynghoriad cyhoeddus mewn perthynas â’r Rheoliadau hyn.

6. Asesiad Effaith Rheoleiddiol

Ni chynhaliwyd unrhyw asesiad effaith rheoleiddiol mewn perthynas â’r Rheoliadau hyn oherwydd yr angen i’w rhoi ar waith ar fyrder i ymdrin â bygythiad difrifol ac uniongyrchol i iechyd y cyhoedd.

Rebecca Evans AS/MS
Y Gweinidog Cyllid a'r Trefnydd/Minister for Finance and Trefnydd

Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: MA/VG/0197/21

Elin Jones, AS
Llywydd
Senedd Cymru
Bae Caerdydd
CF99 1SN

15 Ionawr 2021

Annwyl Llywydd

Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol, Profion cyn Ymadael ac Atebolrwydd Gweithredwyr) (Cymru) (Diwygio) 2021

Yn unol ag adran 11A(4) o Ddeddf Offerynnau Statudol 1946, rwy'n eich hysbysu bod yr offeryn statudol hwn yn dod i rym yn llai na 21 diwrnod ar ôl iddi gael ei gosod. Mae'r Memorandwm Esboniadol sy'n cyd-fynd â'r Rheoliadau wedi ynghlwm fel gwybodaeth.

Mae'r Rheoliadau hyn yn cyflwyno mesurau pellach i amddiffyn iechyd y cyhoedd, ar ffurf cynllun profi cyn ymadael, a fydd yn ei gwneud yn ofynnol i bawb sy'n cyrraedd Cymru o'r tu allan i'r ardal deithio gyffredin i gael hysbysiad o brawf coronafirws negyddol. Mae'r Rheoliadau hefyd yn cyflwyno gofyniad newydd ar weithredwyr gwasanaethau teithwyr rhyngwladol sy'n cyrraedd Cymru o'r tu allan i'r ardal deithio gyffredin i sicrhau bod teithwyr ar wasanaethau yn meddu â hysbysiad o ganlyniad prawf negyddol, a fydd yn drosedd i'w thorri.

Trwy beidio â chydymffurfio â'r confensiwn 21 diwrnod yn caniatáu i'r Rheoliadau hyn ddod i rym cyn gynted ag y bo modd, ac o ystyried newid yn y dystiolaeth ar risg mewn cysylltiad â'r clefyd hwn, ystyrir bod hyn yn angenrheidiol ac yn gyfiawn yn yr achos hwn.

Oherwydd natur frys y Rheoliadau, ni chynhaliwyd ymgynghoriad.

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1SN

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400
PSMFT@gov.wales

Rwy'n anfon copi o'r llythyr hwn at Mick Antoniw AS, Cadeirydd y Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad, Siwan Davies, Cyfarwyddwr Busnes y Senedd, Sian Wilkins, Pennaeth Gwasanaethau'r Siambr a Phwyllgorau a Julian Luke, Pennaeth Gwasanaeth y Pwyllgorau Polisi a Deddfwriaeth.

Yn gywir,

Rebecca Evans AS/MS
Y Gweinidog Cyllid a'r Trefnydd
Minister for Finance and Trefnydd

SL(5)725 - Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) (Diwygio) (Rhif 2) 2021

Cefndir a Diben

Mae Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) 2020 ("y Rheoliadau Teithio Rhyngwladol") yn gosod gofynion ar bobl sy'n dod i Gymru ar ôl bod dramor. Maent yn cynnwys gofyniad i bersonau sy'n cyrraedd Cymru ynysu am gyfnod i'w bennu yn unol â'r Rheoliadau Teithio Rhyngwladol.

Mae gofynion y Rheoliadau Teithio Rhyngwladol yn ddarostyngedig i eithriadau, ac mae categorïau penodol o bersonau wedi eu hesemptio rhag gorfod cydymffurfio.

Hyd yma, ni fu'n ofynnol i bersonau a oedd yn dod i Gymru ynysu ar ôl bod mewn un neu ragor o'r gwledydd a'r tiriogaethau a restrir yn Atodlen 3 i'r Rheoliadau Teithio Rhyngwladol ("gwledydd a thiriogaethau esempt"). Mae Rhan 2 o'r Rheoliadau hyn yn dileu'r holl wledydd a thiriogaethau esempt a restrir yn Atodlen 3.

Mae'r Rheoliadau hyn hefyd yn:

- Diwygio Atodlen 2 i'r Rheoliadau Teithio Rhyngwladol drwy ddileu rhai categorïau o weithwyr sydd wedi'u heithrio ar hyn o bryd rhag gorfod darparu gwybodaeth teithwyr ac ynysu;
    - Diwygio rheoliad 10 o'r Rheoliadau Teithio Rhyngwladol drwy ddileu rhai eithriadau i'r gofyniad i ynysu.

Gweithdrefn

Negyddol.

Gwnaed y Rheoliadau gan Weinidogion Cymru cyn eu gosod gerbron y Senedd. Gall y Senedd ddirymu'r Rheoliadau o fewn 40 diwrnod (ac eithrio unrhyw ddiwrnodau pan fo'r Senedd: (i) wedi'i diddymu neu (ii) ar doriad am fwy na phedwar diwrnod) i'r dyddiad y cawsant eu gosod gerbron y Senedd.

Materion technegol: craffu

Ni nodwyd unrhyw bwyntiau i gyflwyno adroddiad arnynt o dan Reol Sefydlog 21.2 mewn perthynas â'r offeryn hwn.

Rhinweddau: craffu

Nodwyd y pwyntiau a ganlyn i gyflwyno adroddiad arnynt o dan Reol Sefydlog 21.3 mewn perthynas â'r offeryn hwn:

1. Rheol Sefydlog 21.3(ii) – ei fod o bwysigrwydd gwleidyddol neu gyfreithiol neu ei fod yn codi materion polisi cyhoeddus sy'n debyg o fod o ddiddordeb i'r Senedd

Nodwn y torrir y rheol 21 diwrnod (h.y. y rheol y dylai 21 diwrnod fod rhwng y dyddiad y gosodir offeryn "gwneud negyddol" gerbron y Senedd a'r dyddiad y daw'r offeryn i rym), a'r esboniad am dorri'r rheol a ddarparwyd gan Vaughan Gething AS, y Gweinidog Iechyd a Gwasanaethau Cymdeithasol, mewn llythyr at y Llywydd, dyddiedig 16 Ionawr 2021.

Yn benodol, nodwn y canlynol yn y llythyr:

> *"Trwy beidio â chydymffurfio â'r confensiwn 21 diwrnod a dod â hwy i rym cyn iddynt gael eu gosod, yn caniatáu i'r Rheoliadau hyn ddod i rym cyn gynted ag y bo modd; a pharhau â'r ymagwedd pedair gwlad tuag at deithio rhyngwladol, o ystyried newid yn y dystiolaeth ar risg mewn cysylltiad â'r clefyd hwn, ystyrir bod hyn yn angenrheidiol ac yn gyfiawn yn yr* achos hwn."

2. Rheol Sefydlog 21.3(ii) – ei fod o bwysigrwydd gwleidyddol neu gyfreithiol neu ei fod yn codi materion polisi cyhoeddus sy'n debyg o fod o ddiddordeb i'r Senedd

Rydym yn nodi cyfiawnhad Llywodraeth Cymru dros unrhyw ymyrraeth bosibl â hawliau dynol. Yn benodol, nodwn y paragraff a ganlyn yn y Memorandwm Esboniadol:

> *"Nid yw'r diwygiadau yn y Rheoliadau hyn yn newid y ffaith fod y Rheoliadau Teithio Rhyngwladol yn cyffwrdd â hawliau unigol o dan Ddeddf Hawliau Dynol 1998 a Siarter Hawliau Sylfaenol Ewrop; mae'r Llywodraeth o'r farn y gellir eu cyfiawnhau at ddiben atal lledaeniad clefydau heintus a/neu y caniateir ymyriad ar y sail ei fod yn anelu at gyflawni nod dilys, sef diogelu iechyd y cyhoedd. Mae'r Llywodraeth o'r farn hefyd eu bod yn gymesur."*

Mae adran 5(5) o Ddeddf yr Undeb Ewropeaidd (Ymadael) 2018 yn nodi nad yw'r Siarter Hawliau Sylfaenol Ewrop ("y Siarter") yn rhan o gyfraith ddomestig ar, neu ar ôl, diwrnod cwblhau'r cyfnod gweithredu (sef 23:00 ar 31 Rhagfyr 2020). A all Llywodraeth Cymru roi esboniad pam y cyfeirir at y Siarter yn y Memorandwm Esboniadol?

3. Rheol Sefydlog 21.3(ii) – ei fod o bwysigrwydd gwleidyddol neu gyfreithiol neu ei fod yn codi materion polisi cyhoeddus sy'n debyg o fod o ddiddordeb i'r Senedd

Nodwn na chynhaliwyd ymgynghoriad ffurfiol ar y Rheoliadau hyn. Yn benodol, nodwn y paragraff a ganlyn yn y Memorandwm Esboniadol:

"Oherwydd y bygythiad difrifol ac uniongyrchol sy'n deillio o'r coronafeirws a'r angen am ymateb iechyd y cyhoedd brys, ni chynhaliwyd unrhyw ymgynghoriad cyhoeddus mewn perthynas â'r Rheoliadau hyn."

Ymateb Llywodraeth Cymru

Mae angen ymateb gan Lywodraeth Cymru o ran yr ail bwynt adrodd ar rinweddau.

Cynghorwyr Cyfreithiol
Y Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad
20 Ionawr 2021

OFFERYNNAU STATUDOL
CYMRU

2021 Rhif 50 (Cy. 12)

IECHYD Y CYHOEDD, CYMRU

Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) (Diwygio) (Rhif 2) 2021

NODYN ESBONIADOL

(Nid yw'r nodyn hwn yn rhan o'r Rheoliadau)

Mae'r Rheoliadau hyn yn diwygio Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) 2020 (O.S. 2020/574 (Cy. 132)) (y "Rheoliadau Teithio Rhyngwladol"). Diwygiwyd y Rheoliadau Teithio Rhyngwladol yn flaenorol gan:

- Rheoliadau Diogelu Iechyd (Coronafeirws, Gwybodaeth Iechyd y Cyhoedd ar gyfer Personau sy'n Teithio i Gymru etc.) 2020 (O.S. 2020/595) (Cy. 136);
- Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol a Gwybodaeth Iechyd y Cyhoedd i Deithwyr) (Cymru) (Diwygio) 2020 (O.S. 2020/714) (Cy. 160);
- Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) (Diwygio) 2020 (O.S. 2020/726) (Cy. 163);
- Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) (Diwygio) (Rhif 2) 2020 (O.S. 2020/804) (Cy. 177);
- Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) (Diwygio) (Rhif 3) 2020 (O.S. 2020/817) (Cy. 179);
- Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) (Diwygio) (Rhif 4) 2020 (O.S. 2020/840) (Cy. 185);
- Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) (Diwygio) (Rhif 5) 2020 (O.S. 2020/868) (Cy. 190);

- Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) (Diwygio) (Rhif 6) 2020 (O.S. 2020/886) (Cy. 196);
- Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) (Diwygio) (Rhif 7) 2020 (O.S. 2020/917) (Cy. 205);
- Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) (Diwygio) (Rhif 8) 2020 (O.S. 2020/944) (Cy. 210);
- Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) (Diwygio) (Rhif 9) 2020 (O.S. 2020/962) (Cy. 216);
- Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) (Diwygio) (Rhif 10) 2020 (O.S. 2020/981) (Cy. 220);
- Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) (Diwygio) (Rhif 11) 2020 (O.S. 2020/1015) (Cy. 226);
- Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) (Diwygio) (Rhif 12) 2020 (O.S. 2020/1042) (Cy. 231);
- Gorchymyn Trosglwyddo Swyddogaethau (Yr Ysgrifennydd Gwladol dros Faterion Tramor, Materion y Gymanwlad a Materion Datblygu) 2020 (O.S. 2020/942);
- Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) (Diwygio) (Rhif 13) 2020 (O.S. 2020/1080) (Cy. 243);
- Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) (Diwygio) (Rhif 14) 2020 (O.S. 2020/1098) (Cy. 249);
- Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) (Diwygio) (Rhif 15) 2020 (O.S. 2020/1133) (Cy. 258);
- Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) (Diwygio) (Rhif 16) 2020 (O.S. 2020/1165) (Cy. 263);
- Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) (Diwygio) (Rhif 17) 2020 (O.S. 2020/1191) (Cy. 269);
- Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) (Diwygio) (Rhif 18) 2020 (O.S. 2020/1223) (Cy. 277);
- Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) (Diwygio) (Rhif 19) 2020 (O.S. 2020/1232) (Cy. 278);
- Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol a Chyfyngiadau) (Diwygio) (Cymru) 2020 (O.S. 2020/1237) (Cy. 279);

- Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol a Chyfyngiadau) (Diwygio) (Rhif 2) (Cymru) 2020 (O.S. 2020/1288) (Cy. 286);
- Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) (Diwygio) (Rhif 20) 2020 (O.S. 2020/1329) (Cy. 295);
- Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) (Diwygio) (Rhif 21) 2020 (O.S. 2020/1362) (Cy. 301);
- Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol a Chyfyngiadau) (Diwygio) (Rhif 3) (Cymru) 2020 (O.S. 2020/1477) (Cy. 316);
- Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol a Gwybodaeth Iechyd y Cyhoedd i Deithwyr) (Cymru) (Diwygio) (Rhif 2) 2020 (O.S. 2020/1521) (Cy. 325);
- Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) (Diwygio) (Rhif 22) 2020 (O.S. 2020/1602) (Cy. 332);
- Rheoliadau Diogelu Iechyd (Coronafeirws, De Affrica) (Cymru) 2020 (O.S. 2020/1645) (Cy. 345);
- Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol a Chyfyngiadau) (Diwygio) (Cymru) 2021 (O.S. 2021/20) (Cy. 7);
- Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) (Diwygio) 2021 (O.S. 2021/24) (Cy. 8);
- Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol a Chyfyngiadau) (Diwygio) (Rhif 2) (Cymru) 2021 (O.S. 2021/46) (Cy. 10); a
- Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol, Profion cyn Ymadael ac Atebolrwydd Gweithredwyr) (Cymru) (Diwygio) 2021 (O.S. 2021/48) (Cy. 11).

Mae'r Rheoliadau Teithio Rhyngwladol yn gosod gofynion ar bersonau sy'n dod i Gymru ar ôl bod dramor. Maent yn cynnwys gofyniad i bersonau sy'n cyrraedd Cymru ynysu am gyfnod i'w bennu yn unol â'r Rheoliadau hynny.

Mae gofynion y Rheoliadau Teithio Rhyngwladol yn ddarostyngedig i eithriadau, ac mae categorïau penodol o bersonau wedi eu hesemptio rhag gorfod cydymffurfio.

Nid yw'n ofynnol i bersonau sy'n dod i Gymru ynysu ar ôl bod mewn un neu ragor o'r gwledydd a'r tiriogaethau a restrir yn Atodlen 3 i'r Rheoliadau

Teithio Rhyngwladol. Cyfeirir at y gwledydd a'r tiriogaethau a restrir yn Atodlen 3 fel "gwledydd a thiriogaethau esempt".

Mae Rhan 2 o'r Rheoliadau hyn yn diwygio'r rhestr o wledydd a thiriogaethau esempt. Mae rheoliad 2 yn diwygio'r Rheoliadau Teithio Rhyngwladol er mwyn hepgor yr holl wledydd a thiriogaethau a restrir yn Rhan 1 a Rhan 2 o Atodlen 3 i'r Rheoliadau Teithio Rhyngwladol o'r rhestr o wledydd a thiriogaethau esempt.

Mae rheoliad 3 o'r Rheoliadau hyn yn gwneud darpariaeth drosiannol mewn cysylltiad â'r newid yn statws y gwledydd hynny a'r tiriogaethau hynny. Mae'r ddarpariaeth drosiannol yn ymdrin â maes a all fod yn destun amheuaeth o ran effaith y diwygiadau a wneir gan reoliad 2 o'r Rheoliadau hyn ar weithredu'r Rheoliadau Teithio Rhyngwladol.

Mae Rhan 3 o'r Rheoliadau hyn yn diwygio Atodlen 2 (personau esempt) i'r Rheoliadau Teithio Rhyngwladol. Mae Atodlen 2 i'r Rheoliadau hynny yn esemptio categorïau penodol o weithiwr rhag gorfod darparu gwybodaeth am deithiwr ac rhag gorfod ynysu. Mae rheoliad 4 yn hepgor paragraff 37 o Atodlen 2 i'r Rheoliadau Teithio Rhyngwladol.

Mae Rhan 4 o'r Rheoliadau hyn yn diwygio rheoliad 10 o'r Rheoliadau Teithio Rhyngwladol (gofynion ynysu: eithriadau). Mae rheoliad 5 yn hepgor is-baragraffau 4(jc) a 4(jd) o reoliad 10.

Ystyriwyd Cod Ymarfer Gweinidogion Cymru ar gynnal Asesiadau Effaith Rheoleiddiol mewn perthynas â'r Rheoliadau hyn. O ganlyniad, ni luniwyd asesiad effaith rheoleiddiol o'r costau a'r manteision sy'n debygol o ddeillio o gydymffurfio â'r Rheoliadau hyn.

OFFERYNNAU STATUDOL CYMRU

2021 Rhif 50 (Cy. 12)

IECHYD Y CYHOEDD, CYMRU

Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) (Diwygio) (Rhif 2) 2021

Gwnaed *16 Ionawr 2021*

Yn dod i rym *am 4.00 a.m. ar 18 Ionawr 2021*

Gosodwyd gerbron Senedd Cymru am 12.30 p.m. ar 18 Ionawr 2021

Mae Gweinidogion Cymru, drwy arfer y pwerau a roddir iddynt gan adrannau 45B a 45P(2) o Ddeddf Iechyd y Cyhoedd (Rheoli Clefydau) 1984(**1**), yn gwneud y Rheoliadau a ganlyn.

RHAN 1

Cyffredinol

Enwi, dod i rym a dehongli

1.—(1) Enw'r Rheoliadau hyn yw Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) (Diwygio) (Rhif 2) 2021.

(2) Daw'r Rheoliadau hyn i rym am 4.00 a.m. ar 18 Ionawr 2021.

(**1**) 1984 p. 22. Mewnosodwyd Rhan 2A gan adran 129 o Ddeddf Iechyd a Gofal Cymdeithasol 2008 (p. 14). Mae'r swyddogaeth o wneud rheoliadau o dan Ran 2A wedi ei rhoi i "the appropriate Minister". O dan adran 45T(6) o Ddeddf 1984 y Gweinidog priodol, o ran Cymru, yw Gweinidogion Cymru.

(3) Yn y Rheoliadau hyn, ystyr y "Rheoliadau Teithio Rhyngwladol" yw Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) 2020(**1**).

RHAN 2

Diwygiadau i'r rhestr o wledydd a thiriogaethau esempt yn Atodlen 3 i'r Rheoliadau Teithio Rhyngwladol

Hepgor gwledydd a thiriogaethau o'r rhestr o wledydd a thiriogaethau esempt

2.—(1) Mae Atodlen 3 i'r Rheoliadau Teithio Rhyngwladol (gwledydd a thiriogaethau esempt y tu allan i'r ardal deithio gyffredin) wedi ei diwygio fel a ganlyn.

(2) Yn lle'r cofnodion yn Rhan 1 (gwledydd, tiriogaethau a rhannau o wledydd neu diriogaethau), rhodder "Nid yw unrhyw wledydd, unrhyw diriogaethau nac unrhyw rannau o wledydd neu diriogaethau wedi eu pennu yn y Rhan hon".

(3) Yn lle'r cofnodion yn Rhan 2 (tiriogaethau tramor y Deyrnas Unedig), rhodder "Nid yw unrhyw diriogaethau wedi eu pennu yn y Rhan hon".

Darpariaeth drosiannol mewn cysylltiad â rheoliad 2

3.—(1) Mae paragraff (2) yn gymwys pan fo person ("P")—

(a) yn cyrraedd Cymru am 4.00 a.m. ar 18 Ionawr 2021 neu wedi hynny, a

(b) wedi bod ddiwethaf mewn gwlad neu diriogaeth a oedd wedi ei rhestru yn Rhan 1 neu Ran 2 o Atodlen 3 i'r Rheoliadau Teithio Rhyngwladol yn union cyn 4.00 a.m. ar 18 Ionawr 2021—

(**1**) O.S. 2020/574 (Cy. 132), fel y'i diwygiwyd gan O.S. 2020/595 (Cy. 136), O.S. 2020/714 (Cy. 160), O.S. 2020/726 (Cy. 163), O.S. 2020/804 (Cy. 177), O.S. 2020/817 (Cy. 179), O.S. 2020/840 (Cy. 185), O.S. 2020/868 (Cy. 190), O.S. 2020/886 (Cy. 196), O.S. 2020/917 (Cy. 205), O.S. 2020/942, O.S. 2020/944 (Cy. 210), O.S. 2020/962 (Cy. 216), O.S. 2020/981 (Cy. 220), O.S. 2020/1015 (Cy. 226), O.S. 2020/1042 (Cy. 231), O.S. 2020/1080 (Cy. 243), O.S. 2020/1098 (Cy. 249), O.S. 2020/1133 (Cy. 258), O.S. 2020/1165 (Cy. 263), O.S. 2020/1191 (Cy. 269), O.S. 2020/1223 (Cy. 277), O.S. 2020/1232 (Cy. 278), O.S. 2020/1237 (Cy. 279), O.S. 2020/1288 (Cy. 286), O.S. 2020/1329 (Cy. 295), O.S. 2020/1362 (Cy. 301), O.S. 2020/1477 (Cy. 316), O.S. 2020/1521 (Cy. 325), O.S. 2020/1602 (Cy. 332), O.S. 2020/1645 (Cy. 345), O.S. 2021/20 (Cy. 7), O.S. 2021/24 (Cy. 8), O.S. 2021/46 (Cy. 10) ac O.S. 2021/48 (Cy. 11).

(i) o fewn y cyfnod o 10 niwrnod sy'n dod i ben â'r diwrnod y mae P yn cyrraedd Cymru, a

(ii) cyn 4.00 a.m. ar 18 Ionawr 2021.

(2) Mae P, yn rhinwedd y ffaith iddo fod mewn gwlad neu diriogaeth a oedd wedi ei rhestru yn Rhan 1 neu Ran 2 o Atodlen 3 i'r Rheoliadau Teithio Rhyngwladol yn union cyn 4.00 a.m. ar 18 Ionawr 2021, i'w drin at ddibenion rheoliadau 7(1) ac 8(1) o'r Rheoliadau Teithio Rhyngwladol fel pe bai wedi cyrraedd Cymru o wlad neu diriogaeth nad yw'n esempt, neu fel pe bai wedi cyrraedd ar ôl bod mewn gwlad neu diriogaeth o'r fath.

RHAN 3

Diwygiad i Ran 2 o Atodlen 2 i'r Rheoliadau Teithio Rhyngwladol

Diwygiad i Ran 2 o Atodlen 2 i'r Rheoliadau Teithio Rhyngwladol (personau esempt)

4. Yn Rhan 2 o Atodlen 2 i'r Rheoliadau Teithio Rhyngwladol (personau nad yw'n ofynnol iddynt gydymffurfio â rheoliad 7 nac 8), hepgorer paragraff 37.

RHAN 4

Diwygiad i Reoliad 10 o'r Rheoliadau Teithio Rhyngwladol

Diwygiad i Reoliad 10 o'r Rheoliadau Teithio Rhyngwladol (gofynion ynysu: eithriadau)

5. Yn rheoliad 10 o'r Rheoliadau Teithio Rhyngwladol (gofynion ynysu: eithriadau), hepgorer is-baragraffau (4)(jc) a (4)(jd).

Vaughan Gething
Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol, un o Weinidogion Cymru
16 Ionawr 2021

Memorandwm Esboniadol ar gyfer Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) (Diwygio) (Rhif 2) 2021

Lluniwyd y Memorandwm Esboniadol hwn gan Lywodraeth Cymru ac fe'i gosodir gerbron Senedd Cymru ar y cyd â'r is-ddeddfwriaeth uchod ac yn unol â Rheol Sefydlog 27.1.

Datganiad y Gweinidog

Yn fy marn i, mae'r Memorandwm Esboniadol hwn yn rhoi darlun teg a rhesymol o effaith ddisgwyliedig Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) (Diwygio) (Rhif 2) 2021.

Vaughan Gething
Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol

18 Ionawr 2021

1. Disgrifiad

Yn ddarostyngedig i esemptiadau penodedig, tan 10 Gorffennaf 2020, roedd Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) 2020 (“Y Rheoliadau Teithio Rhyngwladol”) yn ei gwneud yn ofynnol i bob teithiwr sy’n cyrraedd Cymru o’r tu allan i’r Ardal Deithio Gyffredin (h.y. yr ardal ffiniau agored sy’n cynnwys y Deyrnas Unedig, Ynysoedd y Sianel, Ynys Manaw a Gweriniaeth Iwerddon) ddarparu ei fanylion cyswllt a gwybodaeth am ei daith – ac ynysu am gyfnod o 14 o ddiwrnodau. Ar 10 Rhagfyr 2020, gostyngwyd y cyfnod ynysu i 10 diwrnod.

Diwygiwyd y Rheoliadau Teithio Rhyngwladol gan Reoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol a Gwybodaeth Iechyd y Cyhoedd i Deithwyr) (Cymru) (Diwygio) 2020 er mwyn (ymhlith pethau eraill) cyflwyno esemptiad rhag y gofyniad i ynysu ar gyfer teithwyr sy’n cyrraedd o wledydd a thiriogaethau penodedig, a elwir yn "wledydd esempt".

Mae'r Rheoliadau hyn yn diwygio'r Rheoliadau Teithio Rhyngwladol i ymateb i'r risg a achosir ac anawsterau wrth asesu'r risg o fathau o amrywiolion a fewnforiwyd o SARS-COV-2 ("coronafeirws"), sy'n angenrheidiol er mwyn diogelu iechyd y cyhoedd.

2. Materion o ddiddordeb arbennig i’r Pwyllgor Deddfwriaeth, Cyfiawnder a’r Cyfansoddiad

Yn dod i rym

Yn unol ag adrannau 4(1) ac 11A(4) o Ddeddf Offerynnau Statudol 1946, hysbyswyd y Llywydd fod y Rheoliadau wedi dod i rym cyn iddynt gael eu gosod, ac nad ydynt yn cydymffurfio â’r confensiwn 21 o ddiwrnodau. Roedd hyn yn angenrheidiol oherwydd y risg a achosir mewn perthynas â coronafeirws ac yn enwedig mathau amrywiolyn o'r un peth, gan deithwyr sy'n teithio i'r DU. .

Y Confensiwn Ewropeaidd ar Hawliau Dynol

Nid yw’r diwygiadau yn y Rheoliadau hyn yn newid y ffaith fod y Rheoliadau Teithio Rhyngwladol yn cyffwrdd â hawliau unigol o dan Ddeddf Hawliau Dynol 1998 a Siarter Hawliau Sylfaenol Ewrop; mae’r Llywodraeth o’r farn y gellir eu cyfiawnhau at ddiben atal lledaeniad clefydau heintus a/neu y caniateir ymyriad ar y sail ei fod yn anelu at gyflawni nod dilys, sef diogelu iechyd y cyhoedd. Mae’r Llywodraeth o’r farn hefyd eu bod yn gymesur.

3. Y cefndir deddfwriaethol

Mae Deddf Iechyd y Cyhoedd (Rheoli Clefydau) 1984 (“Deddf 1984”), a rheoliadau a wnaed oddi tani, yn darparu fframwaith deddfwriaethol ar gyfer diogelu iechyd yng Nghymru a Lloegr. Gwneir y Rheoliadau drwy ddibynnu ar y pwerau yn adrannau 45B a 45P(2) o Ddeddf 1984. Mae'r Memorandwm Esboniadol ar gyfer y Rheoliadau Teithio Rhyngwladol yn rhoi rhagor o wybodaeth am y pwerau hyn.

4. Diben y ddeddfwriaeth a’r effaith y bwriedir iddi ei chael

Gwnaed y Rheoliadau Teithio Rhyngwladol ar 5 Mehefin 2020 a daethant i rym ar 8 Mehefin 2020 mewn ymateb i’r bygythiad difrifol ac uniongyrchol i iechyd y cyhoedd a berir gan fynychder a lledaeniad syndrom anadlol acíwt difrifol coronafeirws 2 (SARS-CoV-2).

Mae'r Rheoliadau Teithio Rhyngwladol yn cael eu hadolygu'n rheolaidd ac mae newidiadau wedi’u gwneud i’r rhestr o'r gwledydd a'r tiriogaethau esempt na fyddai'n ofynnol i deithwyr hunanynysu ar ôl cyrraedd Cymru ohonynt – yn fwyaf diweddar ar 12 Ionawr 2021.

Mae cyngor sydd bellach wedi dod i law gan y Gydganolfan Bioddiogelwch yn dangos ei bod yn anodd asesu'n llawn y risg i iechyd y cyhoedd a achosir gan nifer yr achosion o amrywiolion o coronafeirws a'u lledaenu. Ar sail y cyngor hwn, mae Llywodraeth Cymru o'r farn na fyddai'n briodol ar hyn o bryd i unrhyw wlad neu diriogaeth y tu allan i'r ardal deithio gyffredin fod ar y rhestr coridorau teithio, gan eithrio teithwyr o'r gofynion ynysu a hynny yw y byddai'n ddoeth dileu rhai o'r eithriadau sectoraidd a'r eithriadau o'r gofyniad i ynysu sydd ar waith.

Daeth y gofynion diwygiedig i rym ar gyfer unrhyw deithwyr sy'n cyrraedd Cymru ar neu ar ôl 4.00am ar 18 Ionawr 2021.

Nid yw'r diwygiadau hyn i'r Rheoliadau Teithio Rhyngwladol yn effeithio ar y gofynion o dan y Rheoliadau hynny ar gyfer personau sy'n dod i Gymru cyn i'r diwygiad ddod i rym.

Nid yw'r gwelliannau hyn yn newid y trefniadau presennol ar gyfer teithio o fewn yr Ardal Deithio Gyffredin (Iwerddon, Ynys Manaw ac Ynysoedd y Sianel).

Mae Gweinidogion Cymru o’r farn fod y diwygiadau yma yn gymesur â’r hyn y maent yn ceisio ei gyflawni, sef ymateb i fygythiad difrifol ac uniongyrchol i iechyd y cyhoedd.

5. Ymgynghori

Oherwydd y bygythiad difrifol ac uniongyrchol sy’n deillio o’r coronafeirws a’r angen am ymateb iechyd y cyhoedd brys, ni chynhaliwyd unrhyw ymgynghoriad cyhoeddus mewn perthynas â’r Rheoliadau hyn.

6. Asesiad Effaith Rheoleiddiol

Ni chynhaliwyd unrhyw asesiad effaith rheoleiddiol mewn perthynas â’r Rheoliadau hyn oherwydd yr angen i’w rhoi ar waith ar fyrder i ymdrin â bygythiad difrifol ac uniongyrchol i iechyd y cyhoedd.

Vaughan Gething AS/MS
Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol
Minister for Health and Social Services

Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref MA/VG/0225/21

Elin Jones, AS
Llywydd
Senedd Cymru
Bae Caerdydd
CF99 1SN

16 Ionawr 2021

Annwyl Llywydd,

Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) (Diwygio) (Rhif 2) 2021

Yn unol ag adrannau 4(1) ac 11A(4) o Ddeddf Offerynnau Statudol 1946, rwy'n eich hysbysu bod yr offeryn statudol hwn heb gydymffurfio a'r confensiwn 21 diwrnod a bydd yn dod i rym cyn iddo gael ei osod. Amgaeaf gopi o'r offeryn statudol a bwriadaf osod hwn a Memorandwm Esboniadol cysylltiedig ddydd Llun, 18 Ionawr 2021.

Bu'n rhaid dileu ar frys yr holl wledydd a thiriogaethau a restrwyd ar hyn o bryd yr oedd teithwyr i Gymru wedi'u heithrio o'r gofynion cwarantîn, ynghyd â nifer o eithriadau ac eithriadau sectoraidd o'r gofyniad i ynysu, fel y nodir yn Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) 2020, er mwyn lleihau'r risg i iechyd y cyhoedd o fathau amrywiolion o'r coronafeirws.

Trwy beidio â chydymffurfio â'r confensiwn 21 diwrnod a dod â hwy i rym cyn iddynt gael eu gosod, yn caniatáu i'r Rheoliadau hyn ddod i rym cyn gynted ag y bo modd; a pharhau â'r ymagwedd pedair gwlad tuag at deithio rhyngwladol, o ystyried newid yn y dystiolaeth ar risg mewn cysylltiad â'r clefyd hwn, ystyrir bod hyn yn angenrheidiol ac yn gyfiawn yn yr achos hwn.

Oherwydd natur frys y Rheoliadau, ni chynhaliwyd ymgynghoriad.

Rwy'n anfon copi o'r llythyr hwn at y Gweinidog Cyllid a'r Trefnydd, Mick **Antoniw AS**, Cadeirydd y Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad, Siwan Davies, Cyfarwyddwr Busnes y Senedd, Sian Wilkins, Pennaeth Gwasanaethau'r Siambr a Phwyllgorau a Julian Luke, Pennaeth Gwasanaeth y Pwyllgorau Polisi a Deddfwriaeth.

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Bae Caerdydd • Cardiff Bay
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CF99 1SN

Yn gywir,

Vaughan Gething AS/MS
Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol
Minister for Health and Social Services

SL(5)723 – Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol a Chyfyngiadau) (Diwygio) (Rhif 2) (Cymru) 2021

Cefndir a diben

Mae'r Rheoliadau'n diwygio Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) 2020 (y Rheoliadau Teithio Rhyngwladol) a Rheoliadau Diogelu Iechyd (Cyfyngiadau Coronafeirws) (Rhif 5) (Cymru) 2020 (y Rheoliadau Cyfyngiadau).

Mae cyngor a gafwyd gan y Gydganolfan Bioddiogelwch yn dangos bod y risg i iechyd y cyhoedd yn sgil mynychder a lledaeniad cymunedol amrywiolyn newydd o'r coronafeirws yn yr Ariannin; Brasil; Bolivia; Chile; Colombia; Ecuador; Guiana Ffrengig; Guyana; Gweriniaeth Cabo Verde; Gweriniaeth Panamá; Paraguay; Periw; Portiwgal; Suriname; Uruguay; a Venezuela wedi cynyddu.

O ran y gwledydd a'r tiriogaethau hyn, mae'r Rheoliadau yn:

- diwygio Atodlen 3A i'r Rheoliadau Teithio Rhyngwladol, sy'n rhestru'r gwledydd hynny a'r tiriogaethau hynny sy'n ddarostyngedig i fesurau ychwanegol yn rhinwedd rheoliadau 12E a 12F o'r Rheoliadau Teithio Rhyngwladol;
- diwygio'r Rheoliadau Cyfyngiadau er mwyn gosod gofynion ynysu llymach ar bobl sydd wedi bod mewn un o'r gwledydd hynny a'r tiriogaethau hynny o fewn y cyfnod o 10 niwrnod cyn 4.00am ar 15 Ionawr 2021 ac ar unrhyw un ar yr un aelwyd â phobl o'r fath;
- cywiro testun Cymraeg paragraff 48 o Atodlen 4 i'r Rheoliadau Cyfyngiadau i egluro y caniateir i gartrefi arddangos aros ar agor mewn ardaloedd Lefel Rhybudd 4 – pwynt a godwyd mewn adroddiad blaenorol gan y Pwyllgor.

Cafwyd cyngor hefyd gan y Gydganolfan Bioddiogelwch bod y risg i iechyd y cyhoedd yn sgil mynychder a lledaeniad y coronafeirws yn Aruba, ynysoedd Açores, Bonaire, Sint Eustatius a Saba, Chile, Madeira a Qatar wedi cynyddu.

O ran y gwledydd hyn a'r tiriogaethau hyn, mae'r Rheoliadau yn:

- eu hepgor o'r rhestr o wledydd a thiriogaethau esempt sydd wedi eu cynnwys o dan y Rheoliadau Teithio Rhyngwladol;
- gwneud darpariaeth drosiannol mewn cysylltiad â'r newid yn eu statws.

Gweithdrefn

Gwneud cadarnhaol

Gwnaed y Rheoliadau gan Weinidogion Cymru cyn iddynt gael eu gosod gerbron y Senedd.

Mae'n rhaid i'r Senedd gymeradwyo'r Rheoliadau o fewn 28 diwrnod (ac eithrio diwrnodau pan fo'r Senedd: (i) wedi'i diddymu neu (ii) ar doriad am fwy na phedwar diwrnod) i'r dyddiad y'u gwnaed er mwyn iddynt barhau i gael effaith.

Materion technegol: craffu

Ni nodwyd unrhyw bwyntiau i gyflwyno adroddiad arnynt o dan Reol Sefydlog 21.2 mewn perthynas â'r offeryn hwn.

Rhinweddau: craffu

Nodwyd y tri phwynt technegol a ganlyn i gyflwyno adroddiad arnynt o dan Reol Sefydlog 21.3 mewn perthynas â'r offeryn hwn.

1. Rheol Sefydlog 21.3(ii) – ei fod o bwysigrwydd gwleidyddol neu gyfreithiol neu ei fod yn codi materion polisi cyhoeddus sy'n debyg o fod o ddiddordeb i'r Senedd.

Daeth y Rheoliadau i rym cyn iddynt gael eu gosod gerbron y Senedd. Nodwn yr hysbysiad a ddarparwyd gan Vaughan Gething AS, y Gweinidog Iechyd a Gwasanaethau Cymdeithasol, mewn llythyr at y Llywydd ar 14 Ionawr 2021, sy'n nodi'r canlynol:

> *"Heddiw, rwyf wedi gwneud y Rheoliadau yma o dan adrannau 45B, 45C(1) a (3), 45F(2) a 45P o Ddeddf Iechyd y Cyhoedd (Rheoli Clefydau) 1984. Daw'r Rheoliadau hyn i rym yn rhannol am 4.00am ar 15 Ionawr 2021 gyda'r darpariaethau sy'n weddill yn dod i rym am 4.00am ar 16 Ionawr 2021. Rwy'n amgáu copi o'r offeryn statudol ac yr wyf yn bwriadu gosod yr offeryn a'r memorandwm esboniadol cysylltiedig pan fydd yr offeryn statudol wedi'i gofrestru.*
>
> *"Yn unol ag adran 4(1) o Ddeddf Offerynnau Statudol 1946, rwy'n eich hysbysu y bydd y Rheoliadau hyn yn dod i rym yn rhannol cyn iddynt gael eu gosod gerbron y Senedd. Ystyrir bod hyn yn ymateb angenrheidiol i'r newyddion bod amrywiolyn newydd o Covid-19 wedi'i ganfod yn gyntaf ym Mrasil, sy'n cynyddu'r risg a achosir gan deithwyr i Gymru, a hefyd yn sicrhau y gellir cynnal ymagwedd pedair gwlad ar deithio rhyngwladol."*

2. Rheol Sefydlog 21.3(ii) – ei fod o bwysigrwydd gwleidyddol neu gyfreithiol neu ei fod yn codi materion polisi cyhoeddus sy'n debyg o fod o ddiddordeb i'r Senedd.

Nodwn gyfiawnhad Llywodraeth Cymru dros unrhyw ymyrraeth bosibl â hawliau dynol. Yn benodol, nodwn y paragraff a ganlyn yn y Memorandwm Esboniadol:

> *"Nid yw'r diwygiadau yn y Rheoliadau hyn yn newid y ffaith fod y Rheoliadau Teithio Rhyngwladol yn cyffwrdd â hawliau unigol o dan Ddeddf Hawliau Dynol 1998 a Siarter Hawliau Sylfaenol Ewrop; mae'r Llywodraeth o'r farn y gellir eu cyfiawnhau at ddiben atal lledaeniad clefydau heintus a/neu y caniateir ymyriad ar y sail ei fod yn anelu at gyflawni nod dilys, sef diogelu iechyd y cyhoedd. Mae'r Llywodraeth o'r farn hefyd eu bod yn gymesur."*

Mae'r Rheoliadau'n diwygio'r Rheoliadau Cyfyngiadau yn ogystal â'r Rheoliadau Teithio Rhyngwladol. Er nad oes cyfeiriad penodol at y Rheoliadau Cyfyngiadau yn y paragraff hwn, rydym yn cydnabod, fel gyda'r Rheoliadau Teithio Rhyngwladol, ei bod yn annhebygol y bydd y Rheoliadau'n newid materion o ran hawliau dynol o dan y Rheoliadau Cyfyngiadau. Byddai'n cynorthwyo'r Pwyllgor pe bai modd egluro'r sefyllfa mewn perthynas â'r Rheoliadau Cyfyngiadau.

At hynny, mae adran 5(4) o Ddeddf yr Undeb Ewropeaidd (Ymadael) 2018 yn nodi nad yw Siarter Hawliau Sylfaenol Ewrop yn rhan o gyfraith ddomestig ar ddiwrnod cwblhau'r cyfnod gweithredu (23:00 ar 31 Rhagfyr 2020) neu wedi hynny. O'r herwydd, byddai darparu esboniad am y cyfeiriad at y Siarter yn y Memorandwm Esboniadol yn cynorthwyo'r Pwyllgor.

3. Rheol Sefydlog 21.3(ii) – ei fod o bwysigrwydd gwleidyddol neu gyfreithiol neu ei fod yn codi materion polisi cyhoeddus sy'n debyg o fod o ddiddordeb i'r Senedd.

Nodwn na chynhaliwyd ymgynghoriad ffurfiol ar y Rheoliadau. Yn benodol, nodwn y paragraffau a ganlyn yn y Memorandwm Esboniadol:

> *"Oherwydd y bygythiad difrifol ac uniongyrchol sy'n deillio o'r coronafeirws a'r angen am ymateb iechyd y cyhoedd brys, ni chynhaliwyd unrhyw ymgynghoriad cyhoeddus mewn perthynas â'r Rheoliadau hyn."*

Ymateb Llywodraeth Cymru

Mae angen ymateb gan Lywodraeth Cymru mewn perthynas â'r ail bwynt rhinweddau.

Cynghorwyr Cyfreithiol
Y Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad
20 Ionawr 2021

Rheoliadau a wnaed gan Weinidogion Cymru, a osodwyd gerbron Senedd Cymru o dan adran 45R o Ddeddf Iechyd y Cyhoedd (Rheoli Clefydau) 1984 (p. 22), i'w cymeradwyo drwy benderfyniad gan Senedd Cymru o fewn wyth niwrnod ar hugain gan ddechrau â'r diwrnod y gwneir yr offeryn, yn ddarostyngedig i'w estyn dros gyfnodau o ddiddymu neu doriad am fwy na phedwar diwrnod.

OFFERYNNAU STATUDOL CYMRU

2021 Rhif 46 (Cy. 10)

IECHYD Y CYHOEDD, CYMRU

Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol a Chyfyngiadau) (Diwygio) (Rhif 2) (Cymru) 2021

NODYN ESBONIADOL

(Nid yw'r nodyn hwn yn rhan o'r Rheoliadau)

Mae Rhan 2A o Ddeddf Iechyd y Cyhoedd (Rheoli Clefydau) 1984 yn galluogi Gweinidogion Cymru, drwy reoliadau, i wneud darpariaeth at ddiben atal, diogelu rhag, rheoli neu ddarparu ymateb iechyd y cyhoedd i fynychder neu ledaeniad haint neu halogiad yng Nghymru.

Mae'r Rheoliadau hyn wedi eu gwneud mewn ymateb i'r bygythiad difrifol ac uniongyrchol i iechyd y cyhoedd a berir gan fynychder a lledaeniad coronafeirws syndrom anadlol acíwt difrifol 2 (SARS-CoV-2) yng Nghymru.

Mae'r Rheoliadau hyn yn diwygio Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) 2020 (O.S. 2020/574 (Cy. 132)) (y "Rheoliadau Teithio Rhyngwladol") a Rheoliadau Diogelu Iechyd (Cyfyngiadau Coronafeirws) (Rhif 5) (Cymru) 2020 (O.S. 2020/1609) (Cy. 335)) (y "Rheoliadau Cyfyngiadau").

Diwygiwyd y Rheoliadau Teithio Rhyngwladol yn flaenorol gan:

- Rheoliadau Diogelu Iechyd (Coronafeirws, Gwybodaeth Iechyd y Cyhoedd ar gyfer

Personau sy'n Teithio i Gymru etc.) 2020 (O.S. 2020/595) (Cy. 136);

- Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol a Gwybodaeth Iechyd y Cyhoedd i Deithwyr) (Cymru) (Diwygio) 2020 (O.S. 2020/714) (Cy. 160);
- Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) (Diwygio) 2020 (O.S. 2020/726) (Cy. 163);
- Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) (Diwygio) (Rhif 2) 2020 (O.S. 2020/804) (Cy. 177);
- Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) (Diwygio) (Rhif 3) 2020 (O.S. 2020/817) (Cy. 179);
- Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) (Diwygio) (Rhif 4) 2020 (O.S. 2020/840) (Cy. 185);
- Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) (Diwygio) (Rhif 5) 2020 (O.S. 2020/868) (Cy. 190);
- Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) (Diwygio) (Rhif 6) 2020 (O.S. 2020/886) (Cy. 196);
- Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) (Diwygio) (Rhif 7) 2020 (O.S. 2020/917) (Cy. 205);
- Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) (Diwygio) (Rhif 8) 2020 (O.S. 2020/944) (Cy. 210);
- Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) (Diwygio) (Rhif 9) 2020 (O.S. 2020/962) (Cy. 216);
- Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) (Diwygio) (Rhif 10) 2020 (O.S. 2020/981) (Cy. 220);
- Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) (Diwygio) (Rhif 11) 2020 (O.S. 2020/1015) (Cy. 226);
- Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) (Diwygio) (Rhif 12) 2020 (O.S. 2020/1042) (Cy. 231);
- Gorchymyn Trosglwyddo Swyddogaethau (Yr Ysgrifennydd Gwladol dros Faterion Tramor, Materion y Gymanwlad a Materion Datblygu) 2020 (O.S. 2020/942);
- Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) (Diwygio) (Rhif 13) 2020 (O.S. 2020/1080) (Cy. 243);

- Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) (Diwygio) (Rhif 14) 2020 (O.S. 2020/1098) (Cy. 249);
- Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) (Diwygio) (Rhif 15) 2020 (O.S. 2020/1133) (Cy. 258);
- Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) (Diwygio) (Rhif 16) 2020 (O.S. 2020/1165) (Cy. 263);
- Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) (Diwygio) (Rhif 17) 2020 (O.S. 2020/1191) (Cy. 269);
- Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) (Diwygio) (Rhif 18) 2020 (O.S. 2020/1223) (Cy. 277);
- Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) (Diwygio) (Rhif 19) 2020 (O.S. 2020/1232) (Cy. 278);
- Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol a Chyfyngiadau) (Diwygio) (Cymru) 2020 (O.S. 2020/1237) (Cy. 279);
- Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol a Chyfyngiadau) (Diwygio) (Rhif 2) (Cymru) 2020 (O.S. 2020/1288) (Cy. 286);
- Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) (Diwygio) (Rhif 20) 2020 (O.S. 2020/1329) (Cy. 295);
- Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) (Diwygio) (Rhif 21) 2020 (O.S. 2020/1362) (Cy. 301);
- Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol a Chyfyngiadau) (Diwygio) (Rhif 3) (Cymru) 2020 (O.S. 2020/1477) (Cy. 316);
- Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol a Gwybodaeth Iechyd y Cyhoedd i Deithwyr) (Cymru) (Diwygio) (Rhif 2) 2020 (O.S. 2020/1521) (Cy. 325);
- Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) (Diwygio) (Rhif 22) 2020 (O.S. 2020/1602) (Cy. 332);
- Rheoliadau Diogelu Iechyd (Coronafeirws, De Affrica) (Cymru) 2020 (O.S. 2020/1645) (Cy. 345);
- Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol a Chyfyngiadau) (Cymru) (Diwygio) 2021 (O.S. 2021/20) (Cy. 7); a

- Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) (Diwygio) 2021 (O.S. 2021/24) (Cy. 8).

Mae'r Rheoliadau Cyfyngiadau wedi eu diwygio yn flaenorol gan:

- Rheoliadau Diogelu Iechyd (Cyfyngiadau Coronafeirws) (Rhif 5) (Cymru) (Diwygio) 2020 (O.S. 2020/1610) (Cy. 336);
- Rheoliadau Diogelu Iechyd (Cyfyngiadau Coronafeirws) (Rhif 5) (Cymru) (Diwygio) (Rhif 2) 2020 (O.S. 2020/1623) (Cy. 340);
- Rheoliadau Diogelu Iechyd (Coronafeirws, De Affrica) (Cymru) 2020 (O.S. 2020/1645) (Cy. 345); a
- Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol a Chyfyngiadau) (Cymru) (Diwygio) 2021 (O.S. 2021/20) (Cy. 7).

Mae'r Rheoliadau Teithio Rhyngwladol yn gosod gofynion ar bersonau sy'n dod i Gymru ar ôl bod dramor. Maent yn cynnwys gofyniad i bersonau sy'n cyrraedd Cymru ynysu am gyfnod i'w bennu yn unol â'r Rheoliadau hynny.

Mae gofynion y Rheoliadau Teithio Rhyngwladol yn ddarostyngedig i eithriadau, ac mae categorïau penodol o bersonau wedi eu hesemptio rhag gorfod cydymffurfio.

Nid yw'n ofynnol i bersonau sy'n dod i Gymru ynysu ar ôl bod mewn un neu ragor o'r gwledydd a'r tiriogaethau a restrir yn Atodlen 3 i'r Rheoliadau Teithio Rhyngwladol. Cyfeirir at y gwledydd a'r tiriogaethau a restrir yn Atodlen 3 fel "gwledydd a thiriogaethau esempt".

Mae Rhan 2 o'r Rheoliadau hyn yn diwygio'r rhestr o wledydd a thiriogaethau esempt. Mae rheoliad 2 yn diwygio'r Rheoliadau Teithio Rhyngwladol er mwyn hepgor y cofnodion ar gyfer Aruba, ynysoedd Açores, Bonaire, Sint Eustatius a Saba, Chile, a Madeira a Qatar.

Mae rheoliad 3 o'r Rheoliadau hyn yn gwneud darpariaeth drosiannol mewn cysylltiad â'r newid yn statws y gwledydd a'r tiriogaethau hyn. Mae'r ddarpariaeth drosiannol yn ymdrin â maes a all fod yn destun amheuaeth o ran effaith y diwygiadau a wneir gan reoliad 2 o'r Rheoliadau hyn ar weithredu'r Rheoliadau Teithio Rhyngwladol.

Mae Rhan 3 o'r Rheoliadau hyn yn diwygio Atodlen 3A i'r Rheoliadau Teithio Rhyngwladol. Mae Atodlen 3A i'r Rheoliadau Teithio Rhyngwladol yn rhestru'r gwledydd hynny a'r tiriogaethau hynny sy'n ddarostyngedig i fesurau ychwanegol yn rhinwedd

rheoliadau 12E a 12F o'r Rheoliadau hynny. Mae rheoliad 12E yn darparu, pan fo person wedi bod mewn gwlad neu diriogaeth benodedig a restrir yn Atodlen 3A, ei bod yn ofynnol i'r person hwnnw ac aelodau ei aelwyd ynysu. At hynny, nid yw'r categorïau o bersonau esempt fel y'u disgrifir yn Atodlen 2 i'r Rheoliadau Teithio Rhyngwladol yn gymwys, a chaiff person adael ynysiad o dan amgylchiadau mwy cyfyngedig. Mae rheoliad 12F yn gosod cyfyngiadau ar awyrennau a llestrau sy'n cyrraedd yn uniongyrchol o wlad a restrir yn Atodlen 3A i'r Rheoliadau Teithio Rhyngwladol.

Mae rheoliad 4 yn rhestru'r gwledydd a'r tiriogaethau a ganlyn yn Atodlen 3A: Ariannin; Brasil; Bolivia; Chile; Colombia; Ecuador; Guiana Ffrengig; Guyana; Gweriniaeth Cabo Verde; Gweriniaeth Panamá; Paraguay; Periw; Portiwgal; Suriname; Uruguay; a Venezuela.

Mae Rhan 4 o'r Rheoliadau hyn yn diwygio'r Rheoliadau Cyfyngiadau er mwyn gosod gofynion ynysu llymach ar bobl sydd wedi bod mewn un o 16 gwlad restredig o fewn y cyfnod o 10 niwrnod cyn 4.00 a.m. ar 15 Ionawr 2021 ac ar unrhyw un ar yr un aelwyd â phobl o'r fath. Mae'r rhain yn wledydd lle y ceir tystiolaeth o ledaeniad cymunedol amrywiolyn newydd o'r coronafeirws. Mae'r diwygiadau hefyd yn cywiro testun Cymraeg paragraff 48 o Atodlen 4 i'r Rheoliadau Cyfyngiadau i egluro y caniateir i gartrefi arddangos aros ar agor mewn ardaloedd Lefel Rhybudd 4.

Ystyriwyd Cod Ymarfer Gweinidogion Cymru ar gynnal Asesiadau Effaith Rheoleiddiol mewn perthynas â'r Rheoliadau hyn. O ganlyniad, ni luniwyd asesiad effaith rheoleiddiol o'r costau a'r manteision sy'n debygol o ddeillio o gydymffurfio â'r Rheoliadau hyn.

Rheoliadau a wnaed gan Weinidogion Cymru, a osodwyd gerbron Senedd Cymru o dan adran 45R o Ddeddf Iechyd y Cyhoedd (Rheoli Clefydau) 1984 (p. 22), i'w cymeradwyo drwy benderfyniad gan Senedd Cymru o fewn wyth niwrnod ar hugain gan ddechrau â'r diwrnod y gwneir yr offeryn, yn ddarostyngedig i'w estyn dros gyfnodau o ddiddymu neu doriad am fwy na phedwar diwrnod.

OFFERYNNAU STATUDOL CYMRU

2021 Rhif 46 (Cy. 10)

IECHYD Y CYHOEDD, CYMRU

Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol a Chyfyngiadau) (Diwygio) (Rhif 2) (Cymru) 2021

Gwnaed *14 Ionawr 2021*

Yn dod i rym yn unol â rheoliad 1(2) a (3)

Gosodwyd gerbron Senedd Cymru am 12.30 p.m. ar 15 Ionawr 2021

Mae Gweinidogion Cymru, drwy arfer y pwerau a roddir iddynt gan adrannau 45B, 45C(1) a (3), 45F(2) a 45P(2) o Ddeddf Iechyd y Cyhoedd (Rheoli Clefydau) 1984(**1**), yn gwneud y Rheoliadau a ganlyn.

Mae'r Rheoliadau hyn wedi eu gwneud mewn ymateb i'r bygythiad difrifol ac uniongyrchol i iechyd y cyhoedd a berir gan fynychder a lledaeniad coronafeirws syndrom anadlol acíwt difrifol 2 (SARS-CoV-2) yng Nghymru.

(**1**) 1984 p. 22. Mewnosodwyd Rhan 2A gan adran 129 o Ddeddf Iechyd a Gofal Cymdeithasol 2008 (p. 14). Mae'r swyddogaeth o wneud rheoliadau o dan Ran 2A wedi ei rhoi i "the appropriate Minister". O dan adran 45T(6) o Ddeddf 1984 y Gweinidog priodol, o ran Cymru, yw Gweinidogion Cymru.

Mae Gweinidogion Cymru yn ystyried bod y cyfyngiadau a'r gofynion a osodir gan y Rheoliadau hyn yn gymesur â'r hyn y maent yn ceisio ei gyflawni, sef ymateb iechyd y cyhoedd i'r bygythiad hwnnw.

Yn unol ag adran 45R o'r Ddeddf honno, oherwydd brys, mae Gweinidogion Cymru o'r farn ei bod yn angenrheidiol gwneud yr offeryn hwn heb fod drafft wedi ei osod gerbron Senedd Cymru ac wedi ei gymeradwyo ganddi drwy benderfyniad.

RHAN 1

Cyffredinol

Enwi, dod i rym a dehongli

1.—(1) Enw'r Rheoliadau hyn yw Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol a Chyfyngiadau) (Diwygio) (Rhif 2) (Cymru) 2021.

(2) Daw Rhannau 1, 3 a 4 o'r Rheoliadau hyn i rym am 4.00 a.m. ar 15 Ionawr 2021.

(3) Daw Rhan 2 o'r Rheoliadau hyn i rym am 4.00 a.m. ar 16 Ionawr 2021.

(4) Yn y Rheoliadau hyn—

(a) ystyr y "Rheoliadau Teithio Rhyngwladol" yw Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) 2020(**1**);

(b) ystyr y "Rheoliadau Cyfyngiadau" yw Rheoliadau Diogelu Iechyd (Cyfyngiadau Coronafeirws) (Rhif 5) (Cymru) 2020(**2**).

(**1**) O.S. 2020/574 (Cy. 132), fel y'i diwygiwyd gan O.S. 2020/595 (Cy. 136), O.S. 2020/714 (Cy. 160), O.S. 2020/726 (Cy. 163), O.S. 2020/804 (Cy. 177), O.S. 2020/817 (Cy. 179), O.S. 2020/840 (Cy. 185), O.S. 2020/868 (Cy. 190), O.S. 2020/886 (Cy. 196), O.S. 2020/917 (Cy. 205), O.S. 2020/942, O.S. 2020/944 (Cy. 210), O.S. 2020/962 (Cy. 216), O.S. 2020/981 (Cy. 220), O.S. 2020/1015 (Cy. 226), O.S. 2020/1042 (Cy. 231), O.S. 2020/1080 (Cy. 243), O.S. 2020/1098 (Cy. 249), O.S. 2020/1133 (Cy. 258), O.S. 2020/1165 (Cy. 263), O.S. 2020/1191 (Cy. 269), O.S. 2020/1223 (Cy. 277), O.S. 2020/1232 (Cy. 278), O.S. 2020/1237 (Cy. 279), O.S. 2020/1288 (Cy. 286), O.S. 2020/1329 (Cy. 295), O.S. 2020/1362 (Cy. 301), O.S. 2020/1477 (Cy. 316), O.S. 2020/1521 (Cy. 325), O.S. 2020/1602 (Cy. 332), O.S. 2020/1645 (Cy. 345), O.S. 2021/20 (Cy. 7) ac O.S. 2021/24 (Cy. 8).

(**2**) O.S. 2020/1609 (Cy. 335) fel y'i diwygiwyd gan O.S. 2020/1610 (Cy. 336), O.S. 2020/1623 (Cy. 340), O.S. 2020/1645 (Cy. 345) ac O.S. 2021/20 (Cy. 7).

RHAN 2

Diwygiadau i'r rhestr o wledydd a thiriogaethau esempt yn Atodlen 3 i'r Rheoliadau Teithio Rhyngwladol

Hepgor gwledydd a thiriogaethau o'r rhestr o wledydd a thiriogaethau esempt

2. Yn Rhan 1 o Atodlen 3 i'r Rheoliadau Teithio Rhyngwladol (gwledydd a thiriogaethau esempt y tu allan i'r ardal deithio gyffredin), hepgorer y cofnodion a ganlyn—

"Aruba"

"ynysoedd Açores"

"Bonaire, Sint Eustatius a Saba"

"Chile"

"Madeira"

"Qatar".

Darpariaeth drosiannol mewn cysylltiad â rheoliad 2

3.—(1) Mae paragraff (2) yn gymwys pan fo person ("P")—

(a) yn cyrraedd Cymru am 4:00 a.m. ar 16 Ionawr 2021 neu wedi hynny, a

(b) wedi bod mewn gwlad neu diriogaeth a restrir yn rheoliad 2 ddiwethaf—

(i) o fewn y cyfnod o 10 niwrnod sy'n dod i ben â'r diwrnod y mae P yn cyrraedd Cymru, a

(ii) cyn 4.00 a.m. ar 16 Ionawr 2021.

(2) Mae P, yn rhinwedd y ffaith iddo fod mewn gwlad neu diriogaeth a restrir yn rheoliad 2, i'w drin at ddibenion rheoliadau 7(1) ac 8(1) o'r Rheoliadau Teithio Rhyngwladol fel pe bai wedi cyrraedd Cymru o wlad neu diriogaeth nad yw'n esempt, neu fel pe bai wedi cyrraedd ar ôl bod mewn gwlad neu diriogaeth o'r fath.

RHAN 3

Diwygiadau eraill i'r Rheoliadau Teithio Rhyngwladol

Ychwanegu gwledydd at y rhestr o wledydd a thiriogaethau sy'n ddarostyngedig i fesurau ychwanegol

4.Yn Atodlen 3A i'r Rheoliadau Teithio Rhyngwladol (gwledydd a thiriogaethau sy'n

ddarostyngedig i fesurau ychwanegol), yn y lle priodol mewnosoder—

"Ariannin"

"Brasil"

"Bolivia"

"Chile"

"Colombia"

"Ecuador"

"Guiana Ffrengig"

"Guyana"

"Gweriniaeth Cabo Verde"

"Gweriniaeth Panamá"

"Paraguay"

"Periw"

"Portiwgal"

"Suriname"

"Uruguay"

"Venezuela".

Darpariaeth drosiannol mewn cysylltiad â rheoliad 4

5. Nid yw rheoliad 12F o'r Rheoliadau Teithio Rhyngwladol yn gymwys mewn cysylltiad ag unrhyw hediad neu daith a gychwynnodd cyn i'r Rheoliadau hyn ddod i rym.

Diwygio rheoliad 12E o'r Rheoliadau Teithio Rhyngwladol

6. Yn rheoliad 12E o'r Rheoliadau Teithio Rhyngwladol, ar ôl paragraff (8) mewnosoder—

"(9) Nid yw'r rheoliad hwn yn gymwys pan, o ran P—

(a) mae'n weithiwr cludiant ffyrdd (o fewn yr ystyr a roddir ym mharagraff 6 o Atodlen 2),

(b) bu ddiwethaf ym Mhortiwgal o fewn y cyfnod o 10 niwrnod sy'n dod i ben ar y diwrnod y mae P yn cyrraedd Cymru, ac

(c) nid yw, yn ystod y cyfnod hwnnw, wedi bod mewn unrhyw wlad neu diriogaeth arall a restrir yn Atodlen 3A.
"

Diwygio Atodlen 2 i'r Rheoliadau Teithio Rhyngwladol

7. Ym mharagraff 8 o Atodlen 2 i'r Rheoliadau Teithio Rhyngwladol, hepgorer "yn unol â

Chonfensiwn Llafur Morwrol 2006 neu Gonfensiwn Gwaith mewn Pysgota 2007".

RHAN 4

Diwygiadau i'r Rheoliadau Cyfyngiadau

Diwygiadau i'r Rheoliadau Cyfyngiadau

8.—(1) Mae'r Rheoliadau Cyfyngiadau wedi eu diwygio fel a ganlyn.

(2) Yn rheoliad 11A, yn lle'r pennawd rhodder—

> **"Gofyniad i ynysu: darpariaeth benodol ar gyfer pobl sydd yng Nghymru ar 9 Ionawr 2021 ac sydd wedi bod mewn gwledydd penodol yn y 10 niwrnod blaenorol"**.

(3) Ar ôl rheoliad 11A mewnosoder—

> **"Gofyniad i ynysu: darpariaeth benodol ar gyfer pobl sydd yng Nghymru ar 15 Ionawr 2021 ac sydd wedi bod mewn gwledydd penodol yn y 10 niwrnod blaenorol**
>
> **11AA**.—(1) Mae'r rheoliad hwn yn gymwys pan fo person ("P")—
>
> (a) yng Nghymru am 4.00 a.m. ar 15 Ionawr 2021,
>
> (b) wedi cyrraedd Cymru o fewn y cyfnod o 10 niwrnod sy'n dod i ben yn union cyn 4.00 a.m. ar 15 Ionawr 2021, ac
>
> (c) wedi bod mewn gwlad restredig o fewn y cyfnod hwnnw.
>
> (2) Oni bai bod rheoliad 11B yn gymwys, ni chaiff P, nac unrhyw berson sy'n byw ar yr un aelwyd â P, adael y man lle y mae'n byw neu fod y tu allan iddo tan ddiwedd y cyfnod o 10 niwrnod sy'n dechrau â'r diwrnod yr oedd P mewn gwlad restredig ddiwethaf.
>
> (3) Os gofynnir iddo gan swyddog olrhain cysylltiadau, rhaid i P hysbysu'r swyddog olrhain cysylltiadau—
>
> (a) am enw pob person sy'n byw yn y man lle y mae P yn byw, a
>
> (b) am gyfeiriad y man hwnnw.
>
> (4) At ddibenion y rheoliad hwn, mae'r gwledydd a ganlyn yn wledydd rhestredig—
>
> (a) Ariannin;
>
> (b) Brasil;
>
> (c) Bolivia;
>
> (d) Chile;

(e) Colombia;

(f) Ecuador;

(g) Guiana Ffrengig;

(h) Guyana;

(i) Paraguay;

(j) Periw;

(k) Portiwgal;

(l) Gweriniaeth Cabo Verde;

(m) Gweriniaeth Panamá;

(n) Suriname;

(o) Uruguay;

(p) Venezuela.

(5) Nid yw'r rheoliad hwn yn gymwys pan, o ran P—

(a) mae'n weithiwr cludiant ffyrdd (o fewn yr ystyr a roddir ym mharagraff 6 o Atodlen 2 i'r Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) 2020),

(b) mae wedi bod ym Mhortiwgal o fewn y cyfnod o 10 niwrnod sy'n dod i ben yn union cyn 4.00 a.m. ar 15 Ionawr 2021, ac

(c) nid yw, yn ystod y cyfnod hwnnw, wedi bod mewn unrhyw wlad restredig arall."

(4) Yn rheoliad 11B(1), ar ôl "11A(2)" mewnosoder "neu 11AA(2)".

(5) Yn rheoliad 12, yn lle "neu 11A(2)" rhodder ", 11A(2) neu 11AA(2)".

(6) Yn rheoliad 14(2)(aa), ar ôl "11A(2)" mewnosoder "neu 11AA(2)".

(7) Yn rheoliad 22(4)(a), yn lle "neu 11A(2)" rhodder ", 11A(2) neu 11AA(2)".

(8) Yn rheoliad 30, yn lle "neu 11A(2)" rhodder ", 11A(2) neu 11AA(2)".

(9) Yn rheoliad 40—

(a) ym mharagraff (1)—

(i) yn is-baragraff (a), ar ôl "11A(2)" mewnosoder ", 11AA(2)";

(ii) yn is-baragraff (b), yn lle "neu 11A(3)" rhodder ", 11A(3) neu 11AA(3)";

(b) ym mharagraff (2)(a), yn lle "neu 11A(3)" rhodder ", 11A(3) neu 11AA(3)".

(10) Ym mharagraff 48 o Atodlen 4, yn y testun Cymraeg, yn lle "a chartrefi arddangos" rhodder "a swyddfeydd gwerthiant datblygwyr".

Vaughan Gething
Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol,
un o Weinidogion Cymru
14 Ionawr 2021

Memorandwm Esboniadol ar gyfer Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol a Chyfyngiadau) (Diwygio) (Rhif 2) (Cymru) 2021

Lluniwyd y Memorandwm Esboniadol hwn gan Lywodraeth Cymru ac fe'i gosodir gerbron Senedd Cymru ar y cyd â'r is-ddeddfwriaeth uchod ac yn unol â Rheol Sefydlog 27.1.

Datganiad y Gweinidog

Yn fy marn i, mae'r Memorandwm Esboniadol hwn yn rhoi darlun teg a rhesymol o effaith ddisgwyliedig Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol a Chyfyngiadau) (Diwygio) (Rhif 2) (Cymru) 2021.

Vaughan Gething
Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol

15 Ionawr 2021

1. Disgrifiad

Mae'r Rheoliadau hyn yn diwygio Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) 2029 ("y Rheoliadau Teithio Rhyngwladol") a Rheoliadau Diogelu Iechyd (Cyfyngiadau Coronafeirws) (Rhif 5) (Cymru) 2020 ("y Rheoliadau Cyfyngiadau")

2. Materion o ddiddordeb arbennig i'r Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

Mae'r Rheoliadau hyn yn cael eu gwneud o dan y weithdrefn frys a nodir yn adran 45R o Ddeddf Iechyd y Cyhoedd (Rheoli Clefydau) 1984 (p. 22) ("Deddf 1984"). Caiff y Rheoliadau eu gwneud heb i ddrafft gael ei osod a'i gymeradwyo gan y Senedd. Mae Gweinidogion Cymru o'r farn, gan fod brys, bod angen gwneud y Rheoliadau heb i ddrafft gael ei osod a'i gymeradwyo fel y gellir cymryd camau iechyd cyhoeddus er mwyn ymateb yn gyflym i'r bygythiad i iechyd pobl rhag coronafeirws. Mae Gweinidogion Cymru o'r farn bod y cyfyngiadau a'r gofynion fel y'u nodir yn y Rheoliadau hyn yn angenrheidiol ac yn gymesur fel ymateb iechyd cyhoeddus i'r bygythiad presennol a achosir gan y coronafeirws.

Yn dod i rym

Yn unol ag adrannau 4(1) o Ddeddf Offerynnau Statudol 1946, hysbyswyd y Llywydd y daeth y Rheoliadau i rym yn rhannol cyn iddynt gael eu gosod, am fod angen ymateb ar frys i newidiadau a nodwyd yn sgil yr amrywiolion newydd hyn sy'n peri gofid.

Y Confensiwn Ewropeaidd ar Hawliau Dynol

Nid yw'r diwygiadau yn y Rheoliadau hyn yn newid y ffaith fod y Rheoliadau Teithio Rhyngwladol yn cyffwrdd â hawliau unigol o dan Ddeddf Hawliau Dynol 1998 a Siarter Hawliau Sylfaenol Ewrop; mae'r Llywodraeth o'r farn y gellir eu cyfiawnhau at ddiben atal lledaeniad clefydau heintus a/neu y caniateir ymyriad ar y sail ei fod yn anelu at gyflawni nod dilys, sef diogelu iechyd y cyhoedd. Mae'r Llywodraeth o'r farn hefyd eu bod yn gymesur.

3. Y cefndir deddfwriaethol

Mae Deddf Iechyd y Cyhoedd (Rheoli Clefydau) 1984 ("Deddf 1984"), a rheoliadau a wnaed oddi tani, yn darparu fframwaith deddfwriaethol ar gyfer diogelu iechyd yng Nghymru a Lloegr. Gwneir y Rheoliadau drwy ddibynnu ar y pwerau yn adrannau 45B, 45C(1) a (3), 45F(2) a 45P(2) o Ddeddf 1984.

Mae'r Memorandwm Esboniadol ar gyfer y Rheoliadau Teithio Rhyngwladol a'r Rheoliadau Cyfyngiadau yn rhoi rhagor o wybodaeth am y pwerau hyn.

4. Diben y ddeddfwriaeth a'r effaith y bwriedir iddi ei chael

Gwnaed y Rheoliadau Teithio Rhyngwladol ar 5 Mehefin 2020 a daethant i rym ar 8 Mehefin 2020 mewn ymateb i'r bygythiad difrifol ac uniongyrchol i iechyd y cyhoedd

a berir gan fynychder a lledaeniad syndrom anadlol acíwt difrifol coronafeirws 2 (SARS-CoV-2).

Mae'r Rheoliadau Teithio Rhyngwladol yn cael eu hadolygu'n rheolaidd ac mae newidiadau wedi'u gwneud i'r rhestr o'r gwledydd a'r tiriogaethau esempt na fyddai'n ofynnol i deithwyr hunanynysu ar ôl cyrraedd Cymru ohonynt – yn fwyaf diweddar ar 8 Ionawr 2021.

Mae'r cyngor sydd bellach wedi dod i law oddi wrth y Gydganolfan Bioddiogelwch yn dangos bod y risg i iechyd y cyhoedd a achosir gan fynychder a lledaeniad cymunedol yr amrywiolyn newydd o'r coronafeirws yn yr Ariannin, Brasil, Bolivia, Chile, Colombia, Ecuador, Guiana Ffrengig, Guyana, Paraguay, Periw, Portiwgal, Gweriniaeth Cabo Verde, Gweriniaeth Panama, Suriname, Uruguay a Venezuela wedi cynyddu.

Mae mesurau newydd yn cael eu hychwanegu nawr at y Rheoliadau Teithio Rhyngwladol er mwyn ei gwneud yn ofynnol i unrhyw berson sy'n dod i Gymru o'r gwledydd hyn i ynysu a bydd y gofyn hwnnw i ynysu yn gymwys hefyd i holl aelodau aelwyd unrhyw berson sy'n dod i Gymru o 4.00am, fore 15 Ionawr 2021.

Mae'r Rheoliadau'n datgymhwyso hefyd yr holl esemptiadau sectorol yn Atodlen 2 o'r Rheoliadau Teithio Rhyngwladol, fel na chaiff unrhyw berson sy'n cyrraedd Cymru sydd wedi bod yn y gwledydd hyn yn y 10 niwrnod blaenorol ei esemptio rhag y gofynion i ddarparu gwybodaeth teithiwr ac i ynysu. Bydd rhestr fyrrach nag sy'n arferol o resymau dros beidio ag ynysu dros dro hefyd yn gymwys, fel rhan o'r ymateb i'r bygythiad i iechyd y cyhoedd.

Mae'r newidiadau hyn yn angenrheidiol oherwydd yr adroddiadau sy'n cyrraedd o'r gwledydd hynny am y peryglon sy'n ymddangos i iechyd o straen newydd sydd wedi'i nodi o coronafeirws sy'n heintus iawn.

Er mwyn ymateb yn effeithiol i'r sefyllfa sy'n dod i'r amlwg, gwnaed diwygiadau hefyd i Reoliadau Rhif 5, a fydd yn ei gwneud yn ofynnol i berson a gyrhaeddodd Cymru cyn 4.00 a.m. ar 15 Ionawr ar ôl bod yn y gwledydd hyn yn ystod y 10 diwrnod blaenorol i ynysu am 10 diwrnod o'r dyddiad yr oeddent ddiwethaf yn y gwledydd hynny. Bydd y gofyniad hwn hefyd yn ymestyn hefyd i unrhyw aelodau o aelwyd y person hwnnw.

Bydd cyfyngiadau yn y Rheoliadau Teithio Rhyngwladol sy'n atal llongau ac awyrennau rhag cyrraedd Cymru'n uniongyrchol yn gymwys hefyd i'r gwledydd hyn o 4.00am ar 16 Ionawr 2021.

Mae'r diwygiadau hyn yn cyd-fynd â gweithrediad Llywodraeth y DU o bwerau mewnfudo, a fydd yn gwrthod mynediad i bob teithiwr nad yw'n wladolyn neu'n breswylydd Prydeinig sy'n cyrraedd ffiniau'r DU o 4.00am ddydd Llun 18 Ionawr 2021.

Er mwyn cefnogi gweithredu'r gofynion newydd hyn yn effeithiol, mae Iechyd Cyhoeddus Cymru bellach yn cysylltu ar frys â holl drigolion Cymru sydd wedi bod yn y gwledydd hyn yn y 10 diwrnod diwethaf i esbonio'r gofynion ynysu newydd.

Yn ogystal, cafwyd cyngor gan y JBC bod y risg i iechyd y cyhoedd a achosir gan fynychder a lledaeniad y coronafeirws yn Aruba, yr Azores, Bonaire, Sint Eustatius a Saba, a Madeira wedi cynyddu. Ar sail y cyngor hwn, mae Llywodraeth Cymru o'r farn y dylai gofynion i ynysu yn awr gael eu cyflwyno ar gyfer teithwyr sy'n dod i Gymru o'r gwledydd a'r tiriogaethau hynny.

Daeth y gofynion diwygiedig i rym ar gyfer unrhyw deithwyr sy'n cyrraedd yr Ardal Deithio Gyffredin o'r gwledydd hyn am 4.00 a.m. 16 Ionawr 2021, neu wedi hynny.

Nid yw'r diwygiad hwn i'r Rheoliadau Teithio Rhyngwladol yn effeithio ar y gofynion o dan y Rheoliadau hynny i bersonau sy'n cyrraedd yr Ardal Deithio Gyffredin cyn i'r diwygiadau ddod i rym.

Mae Gweinidogion Cymru o'r farn fod y diwygiadau hyn yn gymesur â'r hyn y maent yn ceisio ei gyflawni, sef ymateb i fygythiad difrifol ac uniongyrchol i iechyd y cyhoedd.

5. Ymgynghori

Oherwydd y bygythiad difrifol ac uniongyrchol sy'n deillio o'r coronafeirws a'r angen am ymateb iechyd y cyhoedd brys, ni chynhaliwyd unrhyw ymgynghoriad cyhoeddus mewn perthynas â'r Rheoliadau hyn.

6. Asesiad Effaith Rheoleiddiol

Ni chynhaliwyd unrhyw asesiad effaith rheoleiddiol mewn perthynas â'r Rheoliadau hyn oherwydd yr angen i'w rhoi ar waith ar fyrder i ymdrin â bygythiad difrifol ac uniongyrchol i iechyd y cyhoedd.

Vaughan Gething AS/MS
Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol
Minister for Health and Social Services

Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref MA/VG/0168/21

Elin Jones AS
Llywydd
Senedd Cymru
Bae Caerdydd
CF99 1SN

14 Ionawr 2021

Annwyl Elin,

Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol a Chyfyngiadau) (Diwygio) (Rhif 2) (Cymru) 2021

Heddiw, rwyf wedi gwneud y Rheoliadau yma o dan adrannau 45B, 45C(1) a (3), 45F(2) a 45P o Ddeddf Iechyd y Cyhoedd (Rheoli Clefydau) 1984. Daw'r Rheoliadau hyn i rym yn rhannol am 4.00am ar 15 Ionawr 2021 gyda'r darpariaethau sy'n weddill yn dod i rym am 4.00am ar 16 Ionawr 2021. Rwy'n amgáu copi o'r offeryn statudol ac yr wyf yn bwriadu gosod yr offeryn a'r memorandwm esboniadol cysylltiedig pan fydd yr offeryn statudol wedi'i gofrestru.

Yn unol ag adran 4(1) o Ddeddf Offerynnau Statudol 1946, rwy'n eich hysbysu y bydd y Rheoliadau hyn yn dod i rym yn rhannol cyn iddynt gael eu gosod gerbron y Senedd. Ystyrir bod hyn yn ymateb angenrheidiol i'r newyddion bod amrywiolyn newydd o Covid-19 wedi'i ganfod yn gyntaf ym Mrasil, sy'n cynyddu'r risg a achosir gan deithwyr i Gymru, a hefyd yn sicrhau y gellir cynnal ymagwedd pedair gwlad ar deithio rhyngwladol.

Yn unol â'r weithdrefn frys a nodwyd yn adran 45R o Ddeddf Iechyd y Cyhoedd (Rheoli Clefydau) 1984, mae'n rhaid i'r Senedd gymeradwyo'r offeryn hwn erbyn 10 Chwefror 2021 er mwyn iddo barhau i fod mewn grym. Yn yr amgylchiadau hyn, rwy'n deall bod rheol sefydlog 21.4A yn berthnasol ac y caiff y Pwyllgor Busnes sefydlu a chyhoeddi amserlen i'r pwyllgor neu'r pwyllgorau perthnasol adrodd arno. Rwy'n bwriadu trefnu i'r Rheoliadau hyn gael eu trafod yn y Cyfarfod Llawn ar 26 Ionawr 2021.

Rwy'n anfon copi o'r llythyr hwn at y Gweinidog Cyllid a'r Trefnydd, Mick Antoniw AS fel Cadeirydd y Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad, Siwan Davies, Cyfarwyddwr Busnes y Senedd, Sian Wilkins, Pennaeth Gwasanaethau'r Siambr a'r Pwyllgorau, a Julian Luke, Pennaeth Gwasanaeth y Pwyllgorau Polisi a Deddfwriaeth.

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
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Yn gywir,

Vaughan Gething AS/MS
Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol
Minister for Health and Social Services

Llywodraeth Cymru
Welsh Government

DATGANIAD YSGRIFENEDIG GAN LYWODRAETH CYMRU

TEITL	**Diwygio Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) 2020**
DYDDIAD	**14 Ionawr 2021**
GAN	**Vaughan Gething, y Gweinidog Iechyd a Gwasanaethau Cymdeithasol**

Bydd yr Aelodau'n ymwybodol bod Llywodraeth Cymru wedi gwneud darpariaeth yn Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) 2020 i sicrhau bod teithwyr sy'n cyrraedd Cymru o wledydd a thiriogaethau tramor yn gorfod hunanynysu am 10 diwrnod, a darparu gwybodaeth amdanynt eu hunain fel teithwyr, er mwyn atal y coronafeirws rhag lledaenu ymhellach. Daeth y cyfyngiadau hyn i rym ar 8 Mehefin 2020.

Ar 10 Gorffennaf, diwygiodd Llywodraeth Cymru'r Rheoliadau hyn i gyflwyno eithriadau i'r gofyniad i hunanynysu ar gyfer rhestr o wledydd a thiriogaethau, ac ar gyfer ystod gyfyngedig o bobl mewn sectorau neu gyflogaeth arbenigol a allai fod wedi'u heithrio rhag y gofyniad i hunanynysu neu rhag rhai o ddarpariaethau'r gofynion ynghylch gwybodaeth am deithwyr.

Ers hynny, mae'r Rheoliadau hyn wedi'u hadolygu'n gyson ac mae nifer o newidiadau wedi'u gwneud i'r rhestr o wledydd a thiriogaethau sydd wedi'u heithrio.

Heddiw, adolygais asesiadau diweddaraf y Gydganolfan Bioddiogelwch (JBC) ac rwyf wedi penderfynu y bydd Aruba, Ynysoedd Açore, Bonaire, Sint Eustatius a Saba, Chile, Madeira a Qatar yn cael eu tynnu oddi ar y rhestr o wledydd a thiriogaethau sydd wedi'u heithrio. Felly bydd rhaid i deithwyr o'r gwledydd hynny hunanynysu pan fyddant yn cyrraedd Cymru.

Fe wnaeth asesiad y JBC hefyd ystyried ymddangosiad amrywiolyn newydd ym Mrasil ac mae'r JBC yn argymell bod dull rhagofalus yn briodol nes bod gwybodaeth bendant ar gael.

Mae gan Uruguay, Paraguay, Ariannin, Bolivia, Periw, Colombia, Surinam, a Guiana Ffrengig gysylltiadau teithio cryf â Brasil ac mae'r data epidemiolegol a adroddir ganddynt yn cynyddu, sy'n gyson ag amrywiolyn newydd. Yn ogystal, mae gan Chile ffin ag Ariannin, sydd wedi adrodd bod yr amrywiolyn yn lledaenu mewn cymunedau a bod ei metrigau epidemiolegol yn cynyddu.

Felly, rwyf wedi penderfynu y dylid cymryd camau i ddileu'r eithriadau sectoraidd ar gyfer teithwyr sy'n cyrraedd o'r gwledydd hyn y gallai fod cysylltiad rhyngddynt a'r amrywiolyn newydd hwn. Bydd yn ofynnol i bob teithiwr sy'n cyrraedd Cymru sydd wedi bod yn y gwledydd hyn yn ystod y 10 diwrnod blaenorol hunanynysu am 10 diwrnod, a dim ond

mewn amgylchiadau cyfyngedig iawn y bydd yn gallu gadael y man ynysu. Bydd yr un gofynion ynysu hefyd yn berthnasol i bob aelod o'u haelwyd. Bydd y gofynion ynysu cryfach hyn hefyd yn berthnasol i bobl sydd eisoes yng Nghymru sydd wedi bod yn y gwledydd hyn yn ystod y 10 diwrnod diwethaf, ac i aelodau eu haelwydydd.

Yn ogystal, ni fydd hediadau uniongyrchol o'r gwledydd hyn yn cael glanio yng Nghymru mwyach.

Bydd y rheoliadau angenrheidiol yn cael eu gwneud heddiw a bydd y mesurau ychwanegol sy'n ymwneud ag amrywiolyn Brasil yn dod i rym am 04:00 ddydd Gwener 15 Ionawr 2021, a'r gweddill yn dod i rym am 04:00 ddydd Sadwrn 16 Ionawr a byddant yn cael eu gosod yfory unwaith y byddant wedi'u cofrestru.

Rheoliadau a wnaed gan Weinidogion Cymru, a osodwyd gerbron Senedd Cymru o dan adran 45R o Ddeddf Iechyd y Cyhoedd (Rheoli Clefydau) 1984 (p. 22), i'w cymeradwyo drwy benderfyniad gan Senedd Cymru o fewn wyth niwrnod ar hugain gan ddechrau â'r diwrnod y gwneir yr offeryn, yn ddarostyngedig i'w estyn dros gyfnodau o ddiddymu neu doriad am fwy na phedwar diwrnod.

OFFERYNNAU STATUDOL CYMRU

2021 Rhif 57 (Cy. 13)

IECHYD Y CYHOEDD, CYMRU

Rheoliadau Diogelu Iechyd (Cyfyngiadau Coronafeirws) (Rhif 5) (Cymru) (Diwygio) 2021

NODYN ESBONIADOL

(Nid yw'r nodyn hwn yn rhan o'r Rheoliadau)

Mae Rhan 2A o Ddeddf Iechyd y Cyhoedd (Rheoli Clefydau) 1984 yn galluogi Gweinidogion Cymru, drwy reoliadau, i wneud darpariaeth at ddiben atal, diogelu rhag, rheoli neu ddarparu ymateb iechyd y cyhoedd i fynychder neu ledaeniad haint neu halogiad yng Nghymru.

Mae'r Rheoliadau hyn wedi eu gwneud mewn ymateb i'r bygythiad difrifol ac uniongyrchol i iechyd y cyhoedd a berir gan fynychder a lledaeniad coronafeirws syndrom anadlol acíwt difrifol 2 (SARS-CoV-2) yng Nghymru.

Mae'r Rheoliadau hyn yn diwygio Rheoliadau Diogelu Iechyd (Cyfyngiadau Coronafeirws) (Rhif 5) (Cymru) 2020 (O.S. 2020/1609 (Cy. 335)) ("y Rheoliadau Cyfyngiadau") er mwyn—

(a) ei gwneud yn ofynnol i bob person sy'n ddarostyngedig i'r rhwymedigaeth yn rheoliad 16 i gymryd mesurau i leihau'r risg o ddod i gysylltiad â'r coronafeirws yn ei fangre gynnal asesiad penodol o'r risg o ddod i gysylltiad â'r coronafeirws yn y fangre honno ac ymgynghori ar hynny;

(b) gwneud darpariaeth benodol ynghylch y mesurau y mae rhaid eu cymryd i leihau'r risg o ddod i gysylltiad â'r coronafeirws mewn mangreoedd manwerthu;

(c) gwneud darpariaeth sy'n gosod dyletswyddau ar berchnogion ysgolion a sefydliadau addysg bellach i atal disgyblion neu fyfyrwyr rhag mynd i'w mangreoedd, yn ddarostyngedig i rai eithriadau cyfyngedig;

(d) gwneud newidiadau canlyniadol a mân newidiadau eraill i sicrhau cysondeb â'r darpariaethau newydd.

Mae'r Rheoliadau hefyd yn diwygio Rheoliadau Diogelu Iechyd (Coronafeirws, Swyddogaethau Awdurdodau Lleol etc.) (Cymru) 2020 (O.S. 2020/1011 (Cy. 225)) ("y Rheoliadau Swyddogaethau Awdurdodau Lleol"). Mae'r diwygiad yn ganlyniadol ar wneud y Rheoliadau Cyfyngiadau ac mae'n ei gwneud yn ofynnol i awdurdod lleol, wrth benderfynu pa un ai i roi cyfarwyddyd digwyddiad o dan y Rheoliadau Swyddogaethau Awdurdodau Lleol, roi sylw i a all y digwyddiad arwain at bobl yn ymgynnull yn groes i'r Atodlen berthnasol i'r Rheoliadau Cyfyngiadau. Mae'r Rheoliadau hefyd yn dirymu deddfiadau sydd wedi eu disbyddu sy'n ymwneud â Rheoliadau Diogelu Iechyd (Cyfyngiadau Coronafeirws) (Rhif 4) (Cymru) 2020 (O.S. 2020/1219 (Cy. 276)).

Ystyriwyd Cod Ymarfer Gweinidogion Cymru ar gynnal Asesiadau Effaith Rheoleiddiol mewn perthynas â'r Rheoliadau hyn. O ganlyniad, ni luniwyd asesiad effaith rheoleiddiol o'r costau a'r manteision sy'n debygol o ddeillio o gydymffurfio â'r Rheoliadau hyn.

Rheoliadau a wnaed gan Weinidogion Cymru, a osodwyd gerbron Senedd Cymru o dan adran 45R o Ddeddf Iechyd y Cyhoedd (Rheoli Clefydau) 1984 (p. 22), i'w cymeradwyo drwy benderfyniad gan Senedd Cymru o fewn wyth niwrnod ar hugain gan ddechrau â'r diwrnod y gwneir yr offeryn, yn ddarostyngedig i'w estyn dros gyfnodau o ddiddymu neu doriad am fwy na phedwar diwrnod.

OFFERYNNAU STATUDOL CYMRU

2021 Rhif 57 (Cy. 13)

IECHYD Y CYHOEDD, CYMRU

Rheoliadau Diogelu Iechyd (Cyfyngiadau Coronafeirws) (Rhif 5) (Cymru) (Diwygio) 2021

Gwnaed *am 12.48 p.m. ar 19 Ionawr 2021*

Gosodwyd gerbron Senedd Cymru *am 5.30 p.m. ar 19 Ionawr 2021*

Yn dod i rym *20 Ionawr 2021*

Mae Gweinidogion Cymru yn gwneud y Rheoliadau a ganlyn drwy arfer y pwerau a roddir gan adrannau 45C(1) a (3)(c), 45F(2) a 45P(2) o Ddeddf Iechyd y Cyhoedd (Rheoli Clefydau) 1984(**1**).

Mae'r Rheoliadau hyn wedi eu gwneud mewn ymateb i'r bygythiad difrifol ac uniongyrchol i iechyd y cyhoedd a berir gan fynychder a lledaeniad coronafeirws syndrom anadlol acíwt difrifol 2 (SARS-CoV-2) yng Nghymru.

Mae Gweinidogion Cymru yn ystyried bod y cyfyngiadau a'r gofynion a osodir gan y Rheoliadau

(**1**) 1984 p. 22. Mewnosodwyd adrannau 45C, 45F a 45P gan adran 129 o Ddeddf Iechyd a Gofal Cymdeithasol 2008 (p. 14). Mae'r swyddogaethau o dan yr adrannau hyn wedi eu rhoi i "the appropriate Minister" ("y Gweinidog priodol"). O dan adran 45T(6) o Ddeddf 1984, y Gweinidog priodol, o ran Cymru, yw Gweinidogion Cymru.

hyn yn gymesur â'r hyn y maent yn ceisio ei gyflawni, sef ymateb iechyd y cyhoedd i'r bygythiad hwnnw.

Yn unol ag adran 45R o'r Ddeddf honno, oherwydd brys, mae Gweinidogion Cymru o'r farn ei bod yn angenrheidiol gwneud yr offeryn hwn heb fod drafft wedi ei osod gerbron Senedd Cymru ac wedi ei gymeradwyo ganddi drwy benderfyniad.

Enwi a dod i rym

1.—(1) Enw'r Rheoliadau hyn yw Rheoliadau Diogelu Iechyd (Cyfyngiadau Coronafeirws) (Rhif 5) (Cymru) (Diwygio) 2021.

(2) Daw'r Rheoliadau hyn i rym ar 20 Ionawr 2021.

Diwygio Rheoliadau Diogelu Iechyd (Cyfyngiadau Coronafeirws) (Rhif 5) (Cymru) 2020

2.—(1) Mae Rheoliadau Diogelu Iechyd (Cyfyngiadau Coronafeirws) (Rhif 5) (Cymru) 2020(**1**) wedi eu diwygio fel a ganlyn.

(2) Yn rheoliad 16—

(a) o flaen paragraff (1)(a), mewnosoder—

"(za) cynnal asesiad penodol o'r risg o ddod i gysylltiad â'r coronafeirws yn y fangre ac, wrth wneud hynny, ymgynghori â phersonau sy'n gweithio yn y fangre neu gynrychiolwyr y personau hynny;"

(b) ar ôl paragraff (2), mewnosoder—

"(3) Rhaid i asesiad o dan baragraff (1)(za)—

(a) bodloni gofynion rheoliad 3 o Reoliadau Rheoli Iechyd a Diogelwch yn y Gwaith 1999(**2**) ("Rheoliadau 1999"), a

(b) cael ei gynnal—

(i) pa un a yw'r person cyfrifol eisoes wedi cynnal asesiad o dan y rheoliad hwnnw ai peidio, a

(ii) pa un a yw'r rheoliad hwnnw yn gymwys i'r person cyfrifol ai peidio.

(4) At ddibenion paragraff (3)—

(a) mae rheoliad 3 o Reoliadau 1999 i'w ddarllen fel pe bai'r geiriau "by regulations 16, 17 and 17A of the Health Protection (Coronavirus

(**1**) O.S. 2020/1609 (Cy. 335) fel y'i diwygiwyd gan O.S. 2020/1610 (Cy. 336).

(**2**) O.S. 1999/3242. Diwygiwyd rheoliad 3 gan O.S. 2005/1541, O.S. 2015/21 ac O.S. 2015/1637.

Restrictions) (No. 5) (Wales) Regulations 2020" wedi eu rhoi yn lle "by or under the relevant statutory provisions and by Part II of the Fire Precautions (Workplace) Regulations 1997", yn y ddau le y maent yn digwydd, a

(b) os na fyddai rheoliad 3 o Reoliadau 1999 yn gymwys i berson cyfrifol oni bai am baragraff (3)(b)(ii)—

(i) mae'r rheoliad hwnnw i'w drin fel pe bai'n gymwys i'r person fel pe bai'r person yn gyflogwr, a

(ii) mae personau sy'n gweithio yn y fangre i'w trin, at ddibenion y rheoliad hwnnw fel y mae'n gymwys yn rhinwedd paragraff (3)(b)(ii), fel pe baent wedi eu cyflogi gan y person cyfrifol."

(3) Yn rheoliad 17—

(a) yn lle paragraffau (1) a (2) rhodder—

"(1) Pan fo rheoliad 16(1) yn gymwys i berson sy'n gyfrifol am fangre sydd wedi ei hawdurdodi ar gyfer gwerthu neu gyflenwi alcohol i'w yfed yn y fangre, mae'r mesurau sydd i'w cymryd gan y person cyfrifol yn cynnwys y canlynol (ond nid ydynt yn gyfyngedig iddynt)—

(a) cael person sy'n rheoli mynediad i'r fangre ac sy'n dyrannu cyfnod amser cyfyngedig y caiff cwsmeriaid aros yn y fangre ar ei gyfer;

(b) ei gwneud yn ofynnol i gwsmeriaid fod yn eistedd yn y fangre yn unrhyw le ac eithrio wrth far—

(i) pan fyddant yn archebu bwyd neu ddiod,

(ii) pan weinir bwyd neu ddiod iddynt, a

(iii) pan fyddant yn bwyta neu'n yfed.";

(b) ym mharagraff (4), yn lle "(2)" rhodder "(1)".

(4) Ar ôl rheoliad 17, mewnosoder—

"**Mesurau penodol sy'n gymwys i fangreoedd manwerthu**

17A. Pan fo rheoliad 16(1) yn gymwys i berson sy'n gyfrifol am fangre fanwerthu busnes sy'n cynnig nwyddau neu wasanaethau ar gyfer eu gwerthu neu eu llogi yn y fangre honno (gan gynnwys busnesau sy'n gwerthu bwyd neu ddiod i'w fwyta neu i'w hyfed oddi ar

y fangre), mae'r mesurau sydd i'w cymryd gan y person cyfrifol yn cynnwys y canlynol (ond nid ydynt yn gyfyngedig iddynt)—

(a) mesurau ar gyfer rheoli mynediad i'r fangre a chyfyngu ar nifer y cwsmeriaid sydd yn y fangre ar unrhyw adeg;

(b) darparu cynhyrchion diheintio dwylo neu gyfleusterau golchi dwylo i'w defnyddio gan gwsmeriaid pan fyddant yn mynd i'r fangre ac yn ymadael â hi;

(c) mesurau i ddiheintio unrhyw fasgedi, troliau neu gynwysyddion tebyg a ddarperir i gwsmeriaid eu defnyddio yn y fangre;

(d) er mwyn atgoffa cwsmeriaid i gynnal pellter o 2 fetr rhyngddynt ac i wisgo gorchudd wyneb—

(i) arddangos arwyddion a chymhorthion gweledol eraill;

(ii) gwneud cyhoeddiadau yn rheolaidd."

(5) Yn rheoliad 18(1), yn lle "neu 17(1)" rhodder ", 17(1) neu 17A".

(6) Yn rheoliad 25(3)(a)(i), yn lle "neu 17(1)" rhodder ", 17(1) neu 17A".

(7) Yn rheoliad 26, yn lle "a 17(1)" rhodder ", 17(1) a 17A".

(8) Ym mharagraff 6(5)(e) o Atodlen 1, yn y testun Saesneg, hepgorer "and is" yn y lle cyntaf y mae'n digwydd.

(9) Ym mharagraff 6(5)(e) o Atodlen 2, yn y testun Saesneg, hepgorer "and is" yn y lle cyntaf y mae'n digwydd.

(10) Ym mharagraff 6(5)(e) o Atodlen 3, yn y testun Saesneg, hepgorer "and is" yn y lle cyntaf y mae'n digwydd.

(11) Yn Atodlen 4, ar ôl paragraff 6 mewnosoder—

"RHAN 3A

Cyfyngiadau ar fynd i ysgolion a sefydliadau addysg bellach

Cyfyngiadau ar fynd i fangreoedd ysgolion

6A.—(1) Ni chaiff perchennog ysgol yng Nghymru ganiatáu i ddisgybl fynd i fangre'r ysgol.

(2) Ond nid yw is-baragraff (1) yn atal perchennog rhag caniatáu—

(a) i ddisgybl fynd i fangre ysgol—

(i) i sefyll arholiad neu wneud asesiad arall;

(ii) pa fo perchennog yr ysgol y mae'r disgybl wedi ei gofrestru ynddi yn hysbysu rhiant y disgybl ei fod yn ystyried ei bod yn briodol i'r disgybl fynd yno oherwydd hyglwyfedd y disgybl;

(iii) pan—

(aa) bo'r awdurdod lleol sy'n cynnal yr ysgol y mae'r disgybl wedi ei gofrestru ynddi, neu

(bb) perchennog yr ysgol annibynnol y mae'r disgybl wedi ei gofrestru ynddi,

yn penderfynu bod y disgybl yn blentyn i weithiwr hanfodol;

(b) disgybl rhag mynd i fangre ysgol arbennig;

(c) disgybl rhag mynd i fangre uned cyfeirio disgyblion;

(d) disgybl rhag mynd i fangre uned mewn ysgol, pan—

(i) bo awdurdod lleol yn cydnabod bod yr uned wedi ei neilltuo ar gyfer disgyblion ag anghenion addysgol arbennig, a

(ii) bo'r disgybl yn cael ei addysgu'n gyfan gwbl neu'n bennaf yn yr uned;

(e) disgybl sy'n ddisgybl preswyl rhag preswylio mewn llety ym mangre'r ysgol.

(3) Wrth benderfynu a yw disgybl yn blentyn i weithiwr hanfodol, rhaid i'r awdurdod lleol neu berchennog ysgol annibynnol roi sylw i unrhyw ganllawiau a gyhoeddir gan Weinidogion Cymru ynghylch adnabod plant gweithwyr hanfodol.

Cyfyngiad ar fynd i fangre addysg bellach

6B.—(1) Ni chaiff perchennog sefydliad addysg bellach yng Nghymru ganiatáu i fyfyriwr fynd i fangre'r sefydliad addysg bellach.

(2) Ond nid yw is-baragraff (1) yn atal perchennog rhag caniatáu i fyfyriwr fynd i fangre—

(a) sefydliad addysg bellach i sefyll arholiad neu wneud asesiad arall;

(b) sefydliad yn y sector addysg bellach pan fo'r sefydliad yn hysbysu'r myfyriwr ei fod yn ystyried ei bod yn briodol i'r myfyriwr fynd yno oherwydd hyglwyfedd y myfyriwr.

Gorfodi

6C. Mae unrhyw fethiant gan berchennog i gydymffurfio â pharagraff 6A neu 6B yn orfodadwy drwy gais am waharddeb gan Weinidogion Cymru neu gan yr awdurdod lleol y digwyddodd y methiant honedig yn ei ardal i'r Uchel Lys neu'r Llys Sirol, heb rybudd.

Dehongli Rhan 3A

6D. Yn y Rhan hon—

(a) ystyr "Deddf 1996" yw Deddf Addysg 1996(**1**);

(b) mae i "disgybl preswyl" yr ystyr a roddir i "boarder" gan adran 579 o Ddeddf 1996;

(c) ystyr "sefydliad addysg bellach" yw—

(i) sefydliad yn y sector addysg bellach;

(ii) darparwr addysg neu hyfforddiant o fewn ystyr "education or training" yn adran 31(1)(a) neu (b) neu 32(1)(a) neu (b) o Ddeddf Dysgu a Sgiliau 2000(**2**)—

(aa) nad yw'n sefydliad o fewn ystyr paragraff (i),

(bb) nad yw'n sefydliad yn y sector addysg uwch o fewn ystyr "higher education sector" yn adran 91(5) o Ddeddf Addysg Bellach ac Uwch 1992(**3**), ac

(cc) sy'n cael cyllid i ddarparu'r addysg honno neu'r hyfforddiant hwnnw gan Weinidogion Cymru neu awdurdod lleol,

ond nid yw'n cynnwys cyflogwr sy'n ddarparwr dim ond am fod y cyflogwr yn darparu addysg neu

(**1**) 1996 p. 56.
(**2**) 2000 p. 21.
(**3**) 1992 p. 13.

hyfforddiant o'r fath i'w gyflogeion;

(d) mae i "ysgol annibynnol" yr ystyr a roddir i "independent school" gan adran 463 o Ddeddf 1996;

(e) mae i "sefydliad o fewn y sector addysg bellach" yr ystyr a roddir i "institutions within the further education sector" gan adran 91(3) o Ddeddf Addysg Bellach ac Uwch 1992;

(f) mae i "rhiant" yr ystyr a roddir i "parent" gan adran 576 o Ddeddf 1996;

(g) mae i "perchennog" yr ystyr a roddir i "proprietor" gan adran 579 o Ddeddf 1996 mewn perthynas ag ysgol a'i ystyr, mewn perthynas â sefydliad nad yw'n ysgol, yw'r person neu'r corff o bersonau sy'n gyfrifol am reoli'r sefydliad;

(h) mae i "disgybl" yr ystyr a roddir i "pupil" gan adran 3 o Ddeddf 1996;

(i) mae i "uned cyfeirio disgyblion" yr ystyr a roddir i "pupil referral unit" gan adran 19 o Ddeddf 1996;

(j) mae i "anghenion addysgol arbennig" yr ystyr a roddir i "special educational needs" gan adran 312 o Ddeddf 1996;

(k) ystyr "ysgol arbennig" yw—

(i) ysgol arbennig o fewn yr ystyr a roddir i "special school" gan adran 337 o Ddeddf 1996;

(ii) ysgol annibynnol sy'n darparu'n gyfan gwbl neu'n bennaf addysg ar gyfer disgyblion ag anghenion addysgol arbennig;

(l) mae i "ysgol" yr ystyr a roddir i "school" gan adran 4 o Ddeddf 1996."

(12) Yn Atodlen 8—

(a) ym mharagraff 1—

(i) yn is-baragraff (1)(a), yn lle "neu 17" rhodder ", 17 neu 17A";

(ii) yn is-baragraff (2)(b), yn lle "neu 17" rhodder ", 17 neu 17A";

(b) ym mharagraff 2—

(i) yn is-baragraff (3)(a), yn lle "neu 17" rhodder ", 17 neu 17A";

(ii) yn is-baragraff (4)(b)(ii), yn lle "neu 17" rhodder ", 17 neu 17A";

(iii) yn is-baragraff (4)(c), yn lle "neu 17" rhodder ", 17 neu 17A";

(c) ym mharagraff 3(3)(c), ar ôl "17" mewnosoder "neu 17A";

(d) ym mharagraff 4(1)(b), ar ôl "17" mewnosoder "neu 17A".

Diwygio Rheoliadau Diogelu Iechyd (Cyfyngiadau Coronafeirws) (Swyddogaethau Awdurdodau Lleol etc.) (Cymru) 2020

3.—(1) Mae Rheoliadau Diogelu Iechyd (Cyfyngiadau Coronafeirws) (Swyddogaethau Awdurdodau Lleol etc.) (Cymru) 2020(**1**) wedi eu diwygio fel a ganlyn.

(2) Yn rheoliad 3(1), yn lle "19 Chwefror" rhodder "31 Mawrth".

(3) Yn rheoliad 6—

(a) yn lle paragraff (2) rhodder—

"(2) Wrth ystyried a yw'r amodau iechyd y cyhoedd wedi eu bodloni, rhaid i awdurdod lleol, yn benodol, roi sylw i a yw pobl yn ymgynnull, neu'n debygol o ymgynnull, yn y digwyddiad yn groes i ba un bynnag o'r darpariaethau a ganlyn o Reoliadau Diogelu Iechyd (Cyfyngiadau Coronafeirws) (Rhif 5) (Cymru) 2020 sy'n gymwys i'r ardal lle y cynhelir y digwyddiad neu lle y bwriedir cynnal y digwyddiad—

(a) paragraff 2 o Atodlen 1;

(b) paragraff 2 o Atodlen 2;

(c) paragraff 2 o Atodlen 3;

(d) paragraff 2 o Atodlen 4."

(b) hepgorer paragraff (8).

Dirymu

4. Mae'r Rheoliadau a ganlyn wedi eu dirymu —

(a) Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol a Chyfyngiadau) (Diwygio) (Cymru) 2020(**2**);

(b) rheoliad 7 o Reoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol a Chyfyngiadau) (Diwygio) (Rhif 2) (Cymru) 2020(**3**);

(c) rheoliad 2 o Reoliadau Diogelu Iechyd (Cyfyngiadau Coronafeirws a Swyddogaethau

(**1**) O.S. 2020/1011 (Cy. 225) fel y'i diwygiwyd gan O.S. 2020/1100 (Cy. 250), O.S. 2020/1149 (Cy. 261), O.S. 2020/1219 (Cy. 276), O.S. 2020/1409 (Cy. 311)_ac O.S. 2020/1609 (Cy. 335).

(**2**) O.S. 2020/1237 (Cy. 279) fel y'i diwygiwyd gan O.S. 2020/1288 (Cy. 286) ac O.S. 2020/1609 (Cy. 335).

(**3**) O.S. 2020/1288 (Cy. 286) fel y'i diwygiwyd gan O.S. 2020/1609 (Cy. 335).

Awdurdodau Lleol) (Diwygio) (Cymru) 2020(**1**);

(d) rheoliadau 4 a 5 o Reoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol a Chyfyngiadau) (Diwygio) (Rhif 3) (Cymru) 2020(**2**);

(e) Rheoliadau Diogelu Iechyd (Cyfyngiadau Coronafeirws) (Rhif 4) (Cymru) (Diwygio) 2020(**3**).

Mark Drakeford
Y Prif Weinidog, un o Weinidogion Cymru
Am 12.48 p.m. ar 19 Ionawr 2021

(**1**) O.S. 2020/1409 (Cy. 311).
(**2**) O.S. 2020/1477 (Cy. 316).
(**3**) O.S. 2020/1522 (Cy. 326).

Memorandwm Esboniadol ar gyfer Rheoliadau Diogelu Iechyd (Cyfyngiadau Coronafeirws) (Rhif 5) (Cymru) (Diwygio) 2021

Lluniwyd y Memorandwm Esboniadol hwn gan Lywodraeth Cymru ac fe'i gosodir gerbron Senedd Cymru ar y cyd â'r is-ddeddfwriaeth uchod ac yn unol â Rheol Sefydlog 27.1.

Datganiad y Gweinidog

Yn fy marn i, mae'r Memorandwm Esboniadol hwn yn rhoi darlun teg a rhesymol o effaith ddisgwyliedig Rheoliadau Diogelu Iechyd (Cyfyngiadau Coronafeirws) (Rhif 5) (Cymru) (Diwygio) 2021.

Mark Drakeford
Y Prif Weinidog

19 Ionawr 2021

1. Disgrifiad

Mae'r Rheoliadau hyn yn diwygio Rheoliadau Diogelu Iechyd (Cyfyngiadau Coronafeirws) (Rhif 5) (Cymru) (“y prif Reoliadau”) a Rheoliadau Diogelu Iechyd (Cyfyngiadau Coronafeirws) (Swyddogaethau Awdurdodau Lleol etc.) (Cymru) 2020 (“Rheoliadau Swyddogaethau Awdurdodau Lleol”).

2. Materion o ddiddordeb arbennig i’r Pwyllgor Deddfwriaeth, Cyfiawnder a’r Cyfansoddiad

Gwneir y Rheoliadau hyn o dan y weithdrefn frys a amlinellir yn adran 45R o Ddeddf Iechyd y Cyhoedd (Rheoli Clefydau) 1984 (p. 22) ("Deddf 1984"). Caiff y Rheoliadau eu gwneud heb fod drafft wedi'i osod gerbron y Senedd a’i gymeradwyo ganddi. Mae Gweinidogion Cymru o'r farn, oherwydd brys, ei bod yn angenrheidiol gwneud y Rheoliadau heb i ddrafft gael ei osod a'i gymeradwyo fel y gellir gweithredu mesurau iechyd y cyhoedd er mwyn ymateb yn gyflym i'r bygythiad a berir i iechyd pobl gan y coronafeirws. Mae Gweinidogion Cymru o’r farn bod y cyfyngiadau a'r gofynion sydd wedi'u nodi yn y Rheoliadau hyn yn angenrheidiol ac yn gymesur fel ymateb iechyd y cyhoedd i’r bygythiad presennol a berir gan y coronafeirws.

Y Confensiwn Ewropeaidd ar Hawliau Dynol

Er bod y prif Reoliadau, fel y’u diwygiwyd gan y Rheoliadau hyn, yn cyffwrdd â hawliau unigol o dan Ddeddf Hawliau Dynol 1998 a Siarter Hawliau Sylfaenol Ewrop, mae’r Llywodraeth o’r farn bod modd eu cyfiawnhau er mwyn atal lledaenu clefydau heintus a/neu bod hawl i wneud yr ymyriad ar y sail ei fod yn ceisio cyflawni nod dilys, sef diogelu iechyd y cyhoedd. Mae’r Llywodraeth o’r farn hefyd eu bod yn gymesur.

Mae Erthygl 5 (yr hawl i ryddid), Erthygl 8 (yr hawl i barch at fywyd preifat a theuluol), Erthygl 9 (rhyddid meddwl, cydwybod a chrefydd), Erthygl 11 (rhyddid i ymgynnull a chymdeithasu) ac Erthygl 1 o'r Protocol Cyntaf (diogelu eiddo) yn cael eu cyffwrdd gan y prif Reoliadau. Mae'r Rheoliadau hyn hefyd yn cyffwrdd ag Erthygl 2 o'r Protocol Cyntaf (hawl i addysg). Er gwaethaf cau mangreoedd ysgolion i rai dysgwyr, mae ysgolion a gynhelir yn parhau o dan eu dyletswyddau arferol, ond mae'r ddyletswydd i gyflwyno'r cwricwlwm wedi'i haddasu i ddyletswydd i ddefnyddio ymdrechion rhesymol i gyflwyno'r cwricwlwm (gan ddefnyddio hysbysiad o dan Atodlen 17 i Ddeddf Coronafeirws 2020).

Mae pob un o'r rhain yn hawliau amodol, sy'n caniatáu i Weinidogion Cymru ymyrryd ag arfer yr hawliau os oes angen gwneud hynny mewn cymdeithas ddemocrataidd er budd diogelwch y cyhoedd neu er mwyn diogelu iechyd. Rhaid cyfiawnhau'r holl gyfyngiadau a gofynion o'r fath ar y sail mai eu bwriad yw cyflawni nod cyfreithlon, sef diogelu iechyd y cyhoedd a'u bod yn gymesur. Hefyd, mae angen cydbwyso unrhyw ymyrraeth â'r hawliau hyn â rhwymedigaethau cadarnhaol y Wladwriaeth o dan Erthygl 2 (yr hawl i fywyd). Mae gweithredu’r cyfyngiadau a’r gofynion o dan prif Reoliadau yn ymateb cymesur i ledaeniad cynyddol y coronafeirws. Mae'n

cydbwyso'r angen i gynnal ymateb priodol i'r bygythiad a berir gan y coronafeirws yn erbyn hawliau unigolion a busnesau, mewn modd sy'n parhau'n gymesur â'r angen i leihau cyfradd trosglwyddo'r coronafeirws, gan ystyried y dystiolaeth wyddonol.

Nid yw'r Rheoliadau diwygio yn newid natur na chwmpas yr ymwneud â hawliau unigol.

3. Y cefndir deddfwriaethol

Mae Deddf Iechyd y Cyhoedd (Rheoli Clefydau) 1984 ("Deddf 1984"), a rheoliadau a wneir oddi tani, yn darparu fframwaith deddfwriaethol ar gyfer diogelu iechyd yng Nghymru a Lloegr. Mae'r Rheoliadau hyn yn cael eu gwneud o dan adrannau 45C(1) a (3)(c), 45F(2) a 45P(2) o Ddeddf 1984. Caiff rhagor o wybodaeth am y pwerau hyn eu hamlinellu yn y Memorandwm Esboniadol i'r prif Reoliadau.

4. Diben y ddeddfwriaeth a'r effaith y bwriedir iddi ei chael

Mae'r Rheoliadau hyn yn cael eu gwneud mewn ymateb i'r bygythiad difrifol ac uniongyrchol i iechyd y cyhoedd a berir gan nifer achosion a lledaeniad y coronafeirws syndrom anadlol acíwt difrifol 2 (SARS-CoV-2) sy'n achosi'r clefyd a elwir yn COVID-19 neu'r "coronafeirws".

Roedd y prif Reoliadau a wnaed ar 18 Rhagfyr yn amlinellu cyfyngiadau a gofynion a fydd yn berthnasol i bedair gwahanol Lefel Rhybudd a chaiff y Lefelau Rhybudd eu hamlinellu yn y fersiwn fwyaf diweddar o'r Cynllun Rheoli Coronafeirws. Mae Cymru wedi bod o dan Lefel Rhybudd Pedwar ers dechrau'r dydd ar 20 Rhagfyr 2020.

Mae'r Rheoliadau hyn yn diwygio'r prif Reoliadau er mwyn:

a. ei gwneud yn ofynnol i'r sawl sy'n gyfrifol am fangreoedd busnes sy'n agored i'r cyhoedd, cerbydau gwasanaeth cyhoeddus a gweithleoedd gynnal asesiad risg penodol ar gyfer y coronafeirws;

b. pennu mesurau rhesymol ychwanegol sy'n gymwys i fangreoedd manwerthu a mangreoedd sydd wedi'u trwyddedu i werthu neu gyflenwi alcohol i'w yfed yn y fangre;

c. ei gwneud yn ofynnol i berchennog ysgol neu sefydliad addysg bellach beidio â chaniatáu i ddisgyblion fynychu mangre'r ysgol, neu beidio â chaniatáu i fyfyrwyr fynychu mangre sefydliad addysg bellach (yn ddarostyngedig i eithriadau penodedig);

d. gwneud mân ddiwygiadau canlyniadol a thechnegol i'r prif Reoliadau ac i'r Rheoliadau Swyddogaethau Awdurdodau Lleol.

Asesiad risg coronafeirws

O dan Reoliadau Rheoli Iechyd a Diogelwch yn y Gwaith 1999, rhaid i gyflogwr nodi peryglon, penderfynu ar y risg a chymryd camau i ddileu'r perygl neu i reoli'r risg. Ochr yn ochr â'r gofynion hyn, mae Rhan 4 o'r prif Reoliadau yn gwneud darpariaeth at y diben o leihau'r risg o ddod i gysylltiad â'r coronafeirws mewn mangreoedd sy'n agored i'r cyhoedd ac mewn gweithleoedd.

Mae'r prif Reoliadau bellach wedi'u diwygio i'w gwneud yn ofynnol cynnal asesiad risg penodol ar gyfer y coronafeirws, gan ymgynghori ag unrhyw berson sy'n gweithio yn y fangre neu'r gweithle (neu ei gynrychiolwyr). Bydd yr asesiad risg hwn yn sail i'r rhwymedigaeth sy'n bodoli eisoes i gymryd "pob mesur rhesymol" i leihau'r risg o ddod i gysylltiad â'r coronafeirws mewn mangreoedd sy'n agored i'r cyhoedd a gweithleoedd. Mae canllawiau'n cael eu diweddaru i ddarparu y dylai'r asesiad risg ystyried materion megis:

- a yw'r awyru'n ddigonol i leihau'r risgiau ac a oes angen ystyried mesurau lliniaru;
- a yw cadw pellter o 2m yn ymarferol;
- i ba raddau y gall defnyddio sgriniau, cyfarpar diogelu personol a gorchuddion wyneb liniaru'r risgiau;
- i ba raddau y gall pobl weithio gartref.

Bydd yn ofynnol adolygu a diweddaru'r asesiad yn rheolaidd, yn enwedig pe bai'r lefelau rhybudd coronafeirws yn cael eu codi i lefel uwch yng Nghymru.

Mangreoedd manwerthu

Mae rheoliad 16 o'r prif Reoliadau yn gymwys i "fangre reoleiddiedig" sy'n cynnwys mangre fanwerthu. Mae'n ofynnol i fangre o'r fath gymryd (1) pob mesur rhesymol i sicrhau bod pellter o 2 fetr yn cael ei gynnal rhwng personau yn y fangre; (2) pob mesur rhesymol arall, er enghraifft i gyfyngu ar ryngweithio wyneb yn wyneb agos a chynnal hylendid; a (3) darparu gwybodaeth i'r rhai sy'n mynd i mewn i fangre neu sy'n gweithio ynddi ynghylch sut i leihau'r risg o ddod i gysylltiad â'r coronafeirws.

Ceir tystiolaeth o gydymffurfiaeth dda mewn busnesau o bob math a phob maint, ond mae pryderon hefyd yn cael eu codi gan awdurdodau lleol, a chan gyrff sy'n cynrychioli gweithwyr, ynghylch diffyg cadw pellter corfforol a gorlenwi mewn siopau manwerthu. Yng ngoleuni lledaeniad y coronafeirws, a'r lefelau trosglwyddo presennol, bydd y Rheoliadau bellach hefyd yn ei gwneud yn ofynnol yn benodol i berchnogion a gweithredwyr mangreoedd manwerthu sy'n agored:

- roi mesurau ar waith i reoli mynediad i'w mangreoedd a chyfyngu ar nifer y cwsmeriaid sydd yn y fangre ar unrhyw un adeg;
- darparu cynhyrchion diheintio dwylo neu gyfleusterau golchi dwylo i gwsmeriaid pan fyddant yn dod i mewn i'r fangre ac yn ei gadael;
- rhoi mesurau ar waith i ddiheintio basgedi neu drolïau; ac
- atgoffa cwsmeriaid o'r angen i gynnal pellter o 2m drwy arwyddion a chyhoeddiadau.

Mae'r gofynion hyn yn berthnasol i bob manwerthwr y caniateir iddo fod ar agor o fewn unrhyw Lefel Rhybudd.

Ysgolion a mangreoedd addysg bellach

Ar 4 Ionawr 2021, cytunodd pedwar Prif Swyddog Meddygol y Deyrnas Unedig fod y DU bellach ar y lefel risg uchaf, sef Lefel 5 y Gydganolfan Bioddiogelwch. Yng ngoleuni'r penderfyniad hwnnw cytunodd Llywodraeth Cymru, gan ymgynghori â Chymdeithas Llywodraeth Leol Cymru a Colegau Cymru, y dylai pob ysgol, coleg ac ysgol annibynnol symud i ddysgu ar-lein.

Ar 8 Ionawr cyhoeddais y byddai'r dull hwn yn parhau, ond y byddai'n cyd-fynd â chylch adolygu'r prif Reoliadau, bob tair wythnos. Oni bai bod gostyngiad sylweddol yn nifer yr achosion o'r coronafeirws cyn yr adolygiad y mae'n rhaid ei gynnal erbyn 29 Ionawr, dylai ysgolion a cholegau yng Nghymru barhau i gynnal darpariaeth ar-lein tan ddiwedd hanner tymor mis Chwefror.

Mae'r diwygiadau a wneir gan y Rheoliadau hyn:

- yn atal perchnogion rhag caniatáu i ddisgyblion fynychu mangre'r ysgol, gan gynnwys ysgolion annibynnol;
- yn atal perchnogion rhag caniatáu i fyfyrwyr fynychu mangreoedd sefydliadau addysg bellach.

Nid yw'r Rheoliadau yn atal y perchennog rhag caniatáu i'r canlynol fynychu'r fangre:

- dysgwyr yn yr ysgol neu'r sefydliad addysg bellach sy'n ymgymryd ag arholiadau neu asesiadau;
- dysgwyr yn yr ysgol neu'r sefydliad addysg bellach sy'n agored i niwed (fel y'u pennir gan y perchennog); a
- dysgwyr yn yr ysgol sy'n blant i weithwyr hanfodol (fel y'u pennir gan yr awdurdod lleol).

Mae'r Rheoliadau hefyd yn caniatáu i'r perchennog ganiatáu i ddysgwyr fynychu mangreoedd ysgolion arbennig, unedau cyfeirio disgyblion ac unedau anghenion addysgol arbennig mewn ysgolion. At hynny, nid ydynt yn atal disgybl preswyl rhag byw mewn llety ym mangre'r ysgol. Mae'r Rheoliadau hefyd yn darparu ar gyfer gorfodi unrhyw fethiant i gydymffurfio gan Weinidogion Cymru neu'r awdurdod lleol y digwyddodd y methiant honedig yn ei ardal.

Diwygiadau canlyniadol a thechnegol

Yng ngoleuni'r diwygiadau a wnaed uchod, mae angen nifer o fân ddiwygiadau canlyniadol hefyd i'r prif Reoliadau. Yn ogystal, manteisir ar y cyfle i gywiro rhai mân bwyntiau drafftio yn y prif Reoliadau, ond nad ydynt yn effeithio ar weithrediad nac effaith y darpariaethau hynny.

Mae dyddiad dod i ben Rheoliadau Swyddogaethau Awdurdodau Lleol wedi'i estyn i 31 Mawrth 2021, er mwyn sicrhau ei fod yn cyd-fynd â'r dyddiad y daw'r prif Reoliadau i ben. Manteisiwyd ar y cyfle hefyd i wneud mân ddiwygiad i reoliad 6 o'r Rheoliadau Swyddogaethau Awdurdodau Lleol. Gwneir y diwygiad o ganlyniad i wneud y prif Reoliadau, ac mae'n golygu newid cyfeiriadau at Reoliadau Diogelu Iechyd (Cyfyngiadau Coronafeirws) (Rhif 4) (Cymru) 2020 i gyfeiriadau at y prif Reoliadau.

Yn olaf, mae'r Rheoliadau hyn hefyd yn dirymu darpariaethau ac offerynnau sy'n ymwneud â'r ddeddfwriaeth cyfyngiadau coronafeirws sydd bellach wedi dod i ben.

5. Ymgynghori

O ystyried y bygythiad difrifol ac uniongyrchol sy'n deillio o'r coronafeirws a'r angen am ymateb iechyd cyhoeddus brys, nid oes ymgynghoriad cyhoeddus wedi'i gynnal mewn perthynas â'r Rheoliadau hyn.

Mae Llywodraeth Cymru wedi ymgysylltu â rhanddeiliaid yn y Fforwm Iechyd a Diogelwch i ofyn am eu barn ar y cynnig hwn ar gyfer Asesiad Covid penodol. Roedd hyn yn cynnwys yr undebau llafur canlynol; TUC Cymru, USDAW, UNITE, y GBM ac Unite a'r sefydliadau busnes canlynol: CBI, Ffederasiwn y Busnesau Bach a Siambrau Cymru. Yn ogystal, ceisiwyd barn Cymdeithas Llywodraeth Leol Cymru a'r Awdurdod Gweithredol Iechyd a Diogelwch.

Mae Gweinidog yr Amgylchedd, Ynni a Materion Gwledig wedi cyfarfod â chynrychiolwyr manwerthwyr, gan gynnwys archfarchnadoedd a manwerthwyr 'cymysg' eraill, i drafod eu rôl yn ystod y pandemig. Yn gyffredinol, roeddent yn croesawu'r arferion da presennol gan nifer o fangreoedd a'r ffaith fod cydymffurfiaeth â'r canllawiau'n cael ei 'ffurfioli' drwy ei gynnwys yn y prif Reoliadau.

Wrth benderfynu ar yr angen am y cyfyngiadau a'r gofynion sy'n ymwneud â chau mangreoedd ysgolion a sefydliadau addysg bellach, a manylion y cyfyngiadau a'r gofynion hynny, cynhaliodd swyddogion Llywodraeth Cymru gyfres o drafodaethau brys gyda sectorau a rhanddeiliaid allweddol, gan gynnwys llywodraeth leol ac ysgolion. Gwnaeth y Gweinidog Addysg ddatganiad ysgrifenedig ar y mater hwn ar 4 Ionawr 2021.

6. Asesiad Effaith Rheoleiddiol ac asesiadau effaith eraill

Nid oes asesiad effaith rheoleiddiol wedi'i lunio mewn perthynas â'r Rheoliadau hyn oherwydd bod angen eu rhoi ar waith ar frys i fynd i'r afael â'r bygythiad difrifol ac uniongyrchol i iechyd y cyhoedd.

Mewn perthynas â chau mangreoedd ysgolion a sefydliadau addysg bellach i ddysgwyr, mae Asesiad o'r Effaith ar Hawliau Plant ac Asesiadau o'r Effaith ar Gydraddoldeb wedi'u cwblhau a'u hystyried. Er ei bod yn anochel y bydd effeithiau

ar hawliau plant ac, yn benodol, ar grwpiau â nodweddion gwarchodedig, bydd rhywfaint o gyfle i liniaru'r effeithiau mwyaf arwyddocaol, yn enwedig i'r dysgwyr mwyaf agored i niwed drwy ganiatáu iddynt gael mynediad i fangre ysgol neu goleg, ond ni fydd yn bosibl ymdrin â'r holl effeithiau anghymesur a negyddol. Mae'r effeithiau negyddol hyn yn parhau i gael eu goddef ar sail y risg i iechyd y cyhoedd. Bydd copïau o'r asesiadau hyn yn cael eu cyhoeddi ar wefan LLYW.cymru:

https://llyw.cymru/asesiadau-o-effaith-coronafeirws

Y Gwir Anrh/Rt Hon Mark Drakeford AS/MS
Prif Weinidog Cymru/First Minister of Wales

Llywodraeth Cymru
Welsh Government

Elin Jones AS
Llywydd
Senedd Cymru
Bae Caerdydd
CF99 1SN

19 Ionawr 2021

Annwyl Elin

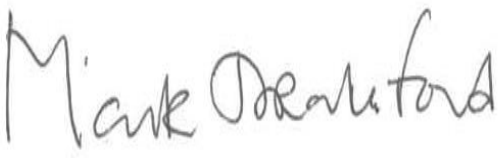
Rheoliadau Diogelu Iechyd (Cyfyngiadau Coronafeirws) (Rhif 5) (Cymru) (Diwygio) 2021

Heddiw, rwyf wedi gwneud y Rheoliadau yma o dan adrannau 45B, 45C(1) a (3)(c), 45F(2) a 45P o Ddeddf Iechyd y Cyhoedd (Rheoli Clefydau) 1984. Daw'r Rheoliadau hyn i rym ar 20 Ionawr 2021. Rwy'n amgáu copi o'r offeryn statudol ac yr wyf yn bwriadu gosod yr offeryn a'r memorandwm esboniadol cysylltiedig pan fydd yr offeryn statudol wedi'i gofrestru.

Yn unol â'r weithdrefn frys a nodwyd yn adran 45R o Ddeddf Iechyd y Cyhoedd (Rheoli Clefydau) 1984, mae'n rhaid i'r Senedd gymeradwyo'r offeryn hwn erbyn 22 Chwefror 2021 er mwyn iddo barhau i fod mewn grym. Yn yr amgylchiadau hyn, rwy'n deall bod rheol sefydlog 21.4A yn berthnasol ac y caiff y Pwyllgor Busnes sefydlu a chyhoeddi amserlen i'r pwyllgor neu'r pwyllgorau perthnasol adrodd arno. Rwy'n bwriadu trefnu i'r Rheoliadau hyn gael eu trafod yn y Cyfarfod Llawn ar 26 Ionawr 2021.

Rwy'n anfon copi o'r llythyr hwn at y Gweinidog Cyllid a'r Trefnydd, Mick Antoniw AS fel Cadeirydd y Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad, Siwan Davies, Cyfarwyddwr Busnes y Senedd, Sian Wilkins, Pennaeth Gwasanaethau'r Siambr a'r Pwyllgorau, a Julian Luke, Pennaeth Gwasanaeth y Pwyllgorau Polisi a Deddfwriaeth.

Yn gywir



MARK DRAKEFORD

Bae Caerdydd • Cardiff Bay
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YP.PrifWeinidog@llyw.cymru • ps.firstminister@gov.wales

Llywodraeth Cymru
Welsh Government

DATGANIAD YSGRIFENEDIG
GAN
LYWODRAETH CYMRU

TEITL	**Diwygio Rheoliadau Diogelu Iechyd (Cyfyngiadau Coronafeirws) (Rhif 5) (Cymru) 2020**
DYDDIAD	**19 Ionawr 2021**
GAN	**Mark Drakeford AS, Y Prif Weinidog**

Mae Rheoliadau Diogelu Iechyd (Cyfyngiadau Coronafeirws) (Rhif 5) (Cymru) 2020 ("y Rheoliadau") wedi cael eu diwygio mewn nifer o feysydd heddiw.

Yn dilyn fy Natganiad Ysgrifenedig ar 15 Ionawr, mae'r Rheoliadau yn awr yn gosod gofynion ar fusnesau a mangreoedd i gynnal asesiad penodol o'r risg o ddod i gysylltiad â'r coronafeirws.

Fel y nodais hefyd yr wythnos ddiwethaf, maent wedi cael eu diwygio i gryfhau'r gofynion ar fusnesau manwerthu er mwyn rhagnodi mesurau rhesymol penodol y mae'n rhaid iddynt eu cymryd.

At hynny, mae'r Rheoliadau wedi cael eu diwygio i'w gwneud yn ofynnol i berchennog ysgol neu sefydliad addysg bellach atal dysgwyr rhag mynd i fangre ysgol neu sefydliad addysg bellach o 20 Ionawr ymlaen.

Bydd y cyfyngiad yn berthnasol i bob ysgol, gan gynnwys ysgolion annibynnol a sefydliadau addysg bellach. Fodd bynnag, bydd y Rheoliadau hefyd yn darparu fel:

- y gall disgyblion/myfyrwyr fynd i'r ysgol neu'r sefydliad addysg bellach i sefyll arholiad neu ymgymryd ag asesiad arall
- y gall disgyblion/myfyrwyr fynd i'r fangre pan fo'r ysgol neu'r sefydliad addysg bellach yn ystyried ei fod yn briodol iddynt wneud hynny oherwydd bod y dysgwr yn agored i niwed
- y gall disgyblion sy'n blentyn i weithiwr hanfodol fynd i fangre'r ysgol. Wrth benderfynu a yw disgybl yn blentyn i weithiwr hanfodol, rhaid i'r awdurdod lleol a pherchennog ysgol annibynnol ystyried unrhyw ganllawiau a gyhoeddwyd gan Weinidogion Cymru ynglŷn ag adnabod plant gweithwyr hanfodol. Mae

Gweinidogion Cymru wedi cyhoeddi'r canllawiau canlynol: https://llyw.cymru/adnabod-plant-gweithwyr-hanfodol-canllawiau

- y gall disgyblion fynd i fangre ysgol arbennig, uned cyfeirio disgyblion, uned mewn ysgol pan fo'r uned yn cael ei chydnabod gan awdurdod lleol fel un sydd wedi ei neilltuo ar gyfer disgyblion sydd ag anghenion addysgol arbennig a lle mae'r disgyblion yn cael eu haddysgu'n gyfan gwbl neu'n bennaf yn yr uned
- y gall disgybl sy'n ddisgybl preswyl breswylio mewn llety ym mangre'r ysgol.

Bydd gosod y gofyniad ar bob ysgol a sefydliad addysg bellach i gau eu mangreoedd i'r mwyafrif o ddysgwyr ar sail statudol yn sicrhau cysondeb ac eglurder ledled Cymru.

Yn olaf, o ganlyniad i'r diwygiadau a ddisgrifir uchod, gwnaed nifer o ddiwygiadau canlyniadol i'r Rheoliadau.

SL(5)703 – Rheoliadau Marchnata Hadau a Deunyddiau Lluosogi Planhigion (Diwygio) (Cymru) (Ymadael â'r UE) 2020

Cefndir a Diben

Mae'r Rheoliadau hyn wedi eu gwneud gan Weinidogion Cymru o dan baragraff 1(1) o Atodlen 2 a pharagraff 21 o Atodlen 7 i Ddeddf yr Undeb Ewropeaidd (Ymadael) 2018, er mwyn ymdrin ag unrhyw fethiant yng nghyfraith yr UE a ddargedwir i weithredu'n effeithiol a diffygion eraill sy'n deillio o ymadawiad y Deyrnas Unedig â'r Undeb Ewropeaidd.

Mae'r Rheoliadau hyn yn gwneud diwygiadau technegol a chywiriadau i is-ddeddfwriaeth ddomestig ymadael â'r UE sy'n ymwneud â hadau, planhigion i'w plannu a deunyddiau atgenhedlu o ganlyniad i ymadael â'r UE. Mae'r Memorandwm Esboniadol i'r Rheoliadau yn cadarnhau nad yw'r Rheoliadau'n gwneud unrhyw newidiadau polisi.

Daeth y Rheoliadau hyn i rym ar 30 Rhagfyr 2020 (rheoliadau 1, 3 a 5) ac yn union cyn diwrnod cwblhau'r cyfnod gweithredu (rheoliadau 2 a 4).

Gweithdrefn

Gwneud cadarnhaol.

Gwnaed y Rheoliadau gan Weinidogion Cymru cyn iddynt gael eu gosod gerbron y Senedd.

Rhaid i'r Senedd gymeradwyo'r Rheoliadau o fewn 28 diwrnod (ac eithrio diwrnodau pan fo'r Senedd: (i) wedi'i diddymu neu (ii) ar doriad am fwy na phedwar diwrnod) i'r dyddiad y'u gwnaed er mwyn iddynt barhau i gael effaith.

Materion technegol: craffu

Nodwyd y pwynt a ganlyn i gyflwyno adroddiad arno o dan Reol Sefydlog 21.2 mewn perthynas â'r offeryn hwn:

1. Rheol Sefydlog 21.2(v) – bod angen eglurhad pellach ynglŷn â'i ffurf neu ei ystyr am unrhyw reswm penodol.

Mae Rheoliad 4(3)(j)(iv) o'r rheoliadau pwnc yn rhoi rheoliad newydd yn lle rheoliad 4(13)(f) o Reoliadau Marchnata Hadau a Deunyddiau Lluosogi Planhigion (Diwygio) (Cymru) (Ymadael â'r UE) 2019, sy'n diwygio paragraff 10 o Atodlen 4 i Reoliadau Marchnata Hadau (Cymru) 2012 ("Rheoliadau 2012").

Mae paragraff 10 o Atodlen 4 i Reoliadau 2012 yn ymwneud â marchnata amrywogaethau anrhestredig o hadau llysiau ac, fel y'i diwygiwyd, mae'n darparu yn is-baragraff (1) y caiff Gweinidogion Cymru, at y diben o gasglu gwybodaeth a chael profiad ymarferol yn ystod y

cyfnod tyfu, awdurdodi marchnata hadau llysiau nad ydynt wedi'u rhestru ar restr amrywogaethau Prydain Fawr, ar yr amod bod cais i'w cofnodi yn Rhestr Genedlaethol y Deyrnas Unedig neu Restr Amrywogaethau Gogledd Iwerddon wedi cael ei gyflwyno.

Mae is-baragraff (4) o'r paragraff hwnnw, fel y'i diwygiwyd, yn darparu na chaiff neb ofyn am awdurdodiad ac eithrio'r person a gyflwynodd gais am gofnodi'r amrywogaethau dan sylw yn Rhestr Genedlaethol y Deyrnas Unedig, Rhestr Amrywogaethau Gogledd Iwerddon neu restr gywerth mewn gwlad y caniatawyd cywerthedd iddi.

Nid yw'n amlwg ar unwaith pam y caiff person sy'n cyflwyno cais am gofnodi ar restr gywerth ofyn am awdurdodiad gan Weinidogion Cymru yn yr amgylchiadau hyn, o ystyried mai amod ar gyfer yr awdurdodiad hwnnw yw bod cais wedi'i gyflwyno i Restr y Deyrnas Unedig neu Restr Gogledd Iwerddon (ac nid rhestr gywerth).

Rhinweddau: craffu

Ni nodwyd unrhyw bwyntiau i gyflwyno adroddiad arnynt o dan Reol Sefydlog 21.3 mewn perthynas â'r offeryn hwn.

Ymateb Llywodraeth Cymru

Mae angen ymateb gan Lywodraeth Cymru.

Cynghorwyr Cyfreithiol
Y Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad
19 Ionawr 2021

Rheoliadau a wnaed gan Weinidogion Cymru, a osodwyd gerbron Senedd Cymru o dan baragraff 7(3) o Atodlen 7 i Ddeddf yr Undeb Ewropeaidd (Ymadael) 2018, i'w cymeradwyo drwy benderfyniad gan Senedd Cymru o fewn 28 niwrnod gan ddechrau ar y diwrnod y gwnaed y Rheoliadau, yn ddarostyngedig i'w estyn dros gyfnodau o ddiddymu neu doriad am fwy na phedwar diwrnod.

OFFERYNNAU STATUDOL CYMRU

2020 Rhif 1573 (Cy. 330)

YMADAEL Â'R UNDEB EWROPEAIDD, CYMRU

HADAU, CYMRU

Rheoliadau Marchnata Hadau a Deunyddiau Lluosogi Planhigion (Diwygio) (Cymru) (Ymadael â'r UE) 2020

NODYN ESBONIADOL

(Nid yw'r nodyn hwn yn rhan o'r Rheoliadau)

Mae'r Rheoliadau hyn wedi eu gwneud drwy arfer y pwerau a roddir gan Ddeddf yr Undeb Ewropeaidd (Ymadael) 2018 (p. 16) er mwyn ymdrin ag unrhyw fethiant yng nghyfraith yr UE a ddargedwir i weithredu'n effeithiol a diffygion eraill sy'n deillio o ymadawiad y Deyrnas Unedig â'r Undeb Ewropeaidd.

Mae'r Rheoliadau hyn yn diwygio is-ddeddfwriaeth ddomestig ymadael â'r UE sy'n ymwneud â hadau, planhigion i'w plannu a deunyddiau atgenhedlu o ganlyniad i ymadael â'r UE. Mae rheoliad 2 hefyd yn mynd i'r afael â gwallau a nodwyd mewn is-ddeddfwriaeth ddomestig ymadael â'r UE.

Ystyriwyd Cod Ymarfer Gweinidogion Cymru ar gynnal Asesiadau Effaith Rheoleiddiol mewn perthynas â'r Rheoliadau hyn. O ganlyniad, ystyriwyd nad oedd yn angenrheidiol cynnal asesiad effaith rheoleiddiol o'r costau a'r manteision sy'n debygol o ddeillio o gydymffurfio â'r Rheoliadau hyn.

Rheoliadau a wnaed gan Weinidogion Cymru, a osodwyd gerbron Senedd Cymru o dan baragraff 7(3) o Atodlen 7 i Ddeddf yr Undeb Ewropeaidd (Ymadael) 2018, i'w cymeradwyo drwy benderfyniad gan Senedd Cymru o fewn 28 niwrnod gan ddechrau ar y diwrnod y gwnaed y Rheoliadau, yn ddarostyngedig i'w estyn dros gyfnodau o ddiddymu neu doriad am fwy na phedwar diwrnod.

OFFERYNNAU STATUDOL CYMRU

2020 Rhif 1573 (Cy. 330)

YMADAEL Â'R UNDEB EWROPEAIDD, CYMRU

HADAU, CYMRU

Rheoliadau Marchnata Hadau a Deunyddiau Lluosogi Planhigion (Diwygio) (Cymru) (Ymadael â'r UE) 2020

Gwnaed	*15 Rhagfyr 2020*
Gosodwyd gerbron Senedd Cymru	*18 Rhagfyr 2020*

Yn dod i rym yn unol â rheoliad 1(2)

Mae Gweinidogion Cymru yn gwneud y Rheoliadau hyn drwy arfer y pwerau a roddir gan baragraff 1(1) o Atodlen 2 a pharagraff 21 o Atodlen 7 i Ddeddf yr Undeb Ewropeaidd (Ymadael) 2018(**1**).

Yn unol â pharagraff 4(a) o Atodlen 2 i'r Ddeddf honno, mae Gweinidogion Cymru wedi ymgynghori â'r Ysgrifennydd Gwladol o ran y Rheoliadau hyn sy'n dod i rym cyn diwrnod cwblhau'r cyfnod gweithredu.

(**1**) 2018 p. 16; gweler adran 20(1) am y diffiniad o "devolved authority". Diwygiwyd paragraff 21 o Atodlen 7 gan adran 41(4) o Ddeddf yr Undeb Ewropeaidd (Cytundeb Ymadael) 2020 (p. 1), a pharagraff 53(2) o Atodlen 5 iddi.

Oherwydd brys, mae Gweinidogion Cymru o'r farn ei bod yn angenrheidiol gwneud y Rheoliadau hyn heb fod drafft o'r offeryn wedi ei osod gerbron Senedd Cymru ac wedi ei gymeradwyo ganddi drwy benderfyniad(**1**).

Enwi a chychwyn

1.—(1) Enw'r Rheoliadau hyn yw Rheoliadau Marchnata Hadau a Deunyddiau Lluosogi Planhigion (Diwygio) (Cymru) (Ymadael â'r UE) 2020.

(2) Daw'r Rheoliadau hyn i rym fel a ganlyn—

(a) daw rheoliadau 1, 3 a 5 i rym ar 30 Rhagfyr 2020;

(b) daw rheoliadau 2 a 4 i rym yn union cyn diwrnod cwblhau'r cyfnod gweithredu.

Rheoliadau Tatws Hadyd (Cymru) (Diwygio) (Ymadael â'r UE) 2019

2.—(1) Mae Rheoliadau Tatws Hadyd (Cymru) (Diwygio) (Ymadael â'r UE) 2019(**2**) wedi eu diwygio fel a ganlyn.

(2) Yn rheoliad 1—

(a) ym mharagraff (2), hepgorer ", ac eithrio rheoliadau 3 a 4,";

(b) hepgorer paragraff (3).

(3) Yn rheoliad 2—

(a) ym mharagraff (2)—

(i) yn is-baragraffau (a), (c), (d), (i), (j), (k) ac (o)—

(aa) yn yr is-baragraff (ii) newydd sydd i'w fewnosod gan bob un o'r is-baragraffau hynny, ar ôl "Tiriogaeth Ddibynnol y Goron" mewnosoder "neu wlad y caniatawyd cywerthedd iddi";

(bb) hepgorer yr is-baragraff (iii) newydd sydd i'w fewnosod gan bob un o'r is-baragraffau hynny;

(ii) yn is-baragraff (b), yn lle "yn unol â chytundeb masnach y Swistir" rhodder "o "(neu, mewn perthynas â" hyd at y diwedd";

(**1**) Mae'r cyfeiriadau yn Neddf yr Undeb Ewropeaidd (Ymadael) 2018 at Gynulliad Cenedlaethol Cymru bellach yn cael effaith fel cyfeiriadau at Senedd Cymru, yn rhinwedd adran 150A(2) o Ddeddf Llywodraeth Cymru 2006 (p. 32).

(**2**) O.S. 2019/738 (Cy. 141), a ddiwygiwyd yn rhagolygol gan O.S. 2019/1281 (Cy. 225), rheoliad 5: mae'r rheoliad hwnnw'n cael ei hepgor gan y Rheoliadau hyn.

(iii) yn is-baragraff (d), yn lle'r is-baragraff (i) newydd sydd i'w fewnosod gan yr is-baragraff hwnnw rhodder—

"(i) yn achos tatws hadyd a gynhyrchir yn Lloegr, Ran 1 o Atodlen 2 i Reoliadau Tatws Hadyd (Lloegr) 2015(**1**);";

(iv) yn is-baragraffau (e), (f) ac (n), yn lle'r geiriau cyn y diffiniadau newydd sydd i'w mewnosod gan yr is-baragraffau hynny rhodder "ym mharagraff (1), yn y lle priodol mewnosoder—";

(v) yn is-baragraff (g), yn lle'r diffiniad newydd o "gradd" sydd i'w fewnosod gan yr is-baragraff hwnnw rhodder—

"mae "gradd" ("*grade*") yn cynnwys gradd Prydain Fawr;";

(vi) yn lle is-baragraff (h) rhodder—

"(h) hepgorer y diffiniad o "Rhestr Genedlaethol";";

(vii) yn is-baragraff (l), yn y diffiniad newydd o "tatws hadyd o amrywogaeth gadwraeth" sydd i'w fewnosod gan yr is-baragraff hwnnw, yn lle "y Rhestr Genedlaethol" rhodder "Rhestr Amrywogaethau Prydain Fawr";

(viii) yn is-baragraff (m), yn lle "ym mharagraff (b) hepgorer "ac eithrio'r Deyrnas Unedig"" rhodder "hepgorer paragraffau (b) ac (c) ac, ar y diwedd mewnosoder—

"neu

(b) tatws hadyd a gynhyrchir mewn gwlad y caniatawyd cywerthedd iddi;"";

(ix) yn is-baragraff (p), yn y diffiniad newydd o "gradd yr Undeb" sydd i'w fewnosod gan yr is-baragraff hwnnw, yn lle "mewn Aelod-wladwriaeth neu yn y Swistir" rhodder "yng Ngogledd Iwerddon";

(x) yn lle is-baragraff (q) rhodder—

"(q) ym mharagraff (1), yn y lleoedd priodol mewnosoder—

"ystyr "gradd gyfatebol" ("*equivalent grade*") yw—

(a) o ran Gogledd Iwerddon, radd Undeb gyfatebol;

(b) o ran un o Diriogaethau Dibynnol y Goron neu wlad y caniatawyd

(**1**) O.S. 2015/1953, a ddiwygiwyd gan O.S. 2017/288, O.S. 2019/472, O.S. 2019/1517 ac a ddiwygiwyd yn rhagolygol gan O.S. 2019/809.

cywerthedd iddi, radd a gydnabyddir gan Weinidogion Cymru fel un sy'n cyfateb i un o raddau Prydain Fawr;";

"ystyr "gradd Prydain Fawr" ("*GB grade*") yw—

(a) o ran tatws hadyd a gynhyrchir yng Nghymru, gradd Prydain Fawr a bennir yn unol ag Atodlen 4 wrth ardystio, sef—

(i) yn achos tatws hadyd cyn-sylfaenol, gradd PBTC Prydain Fawr neu radd PB Prydain Fawr;

(ii) yn achos tatws hadyd sylfaenol, gradd S Prydain Fawr, gradd SE Prydain Fawr neu radd E Prydain Fawr;

(iii) yn achos tatws hadyd ardystiedig, gradd A Prydain Fawr neu radd B Prydain Fawr;

(b) o ran tatws hadyd a gynhyrchir yn Lloegr neu'r Alban, gradd Prydain Fawr a bennir yn unol â'r rheoliadau tatws hadyd perthnasol;";

"ystyr "gradd Undeb gyfatebol" ("*equivalent Union grade*") yw—

(a) o ran "Gradd PBTC Prydain Fawr", "gradd PBTC yr Undeb";

(b) o ran "Gradd PB Prydain Fawr", "gradd PB yr Undeb";

(c) o ran "Gradd S Prydain Fawr", "gradd S yr Undeb";

(d) o ran "Gradd SE Prydain Fawr", "gradd SE yr Undeb";

(e) o ran "Gradd E Prydain Fawr", "gradd E yr Undeb";

(f) o ran "Gradd A Prydain Fawr", "gradd A yr Undeb";

(g) o ran "Gradd B Prydain Fawr", "gradd B yr Undeb";";

"ystyr "gwlad y caniatawyd cywerthedd iddi" ("*country granted equivalence*") yw gwlad y mae Gweinidogion Cymru wedi asesu bod tatws hadyd o'r wlad honno yn cael eu cynhyrchu o dan amodau sy'n cyfateb i ofynion y Rheoliadau hyn;";

"ystyr "Rhestr Amrywogaethau Prydain Fawr" ("*GB Variety List*") yw rhestr o amrywogaethau tatws a baratowyd ac a gyhoeddwyd yn unol â rheoliad 3 o'r Rheoliadau Rhestrau Cenedlaethol;";";

(xi) yn lle is-baragraff (r) rhodder—

"(r) hepgorer paragraff (2);";

(b) yn lle paragraff (3) rhodder—

"(3) Yn rheoliad 4, yn lle "i'r Undeb Ewropeaidd" rhodder "i Brydain Fawr".";

(c) ym mharagraff (4)—

(i) yn y testun Saesneg, ar ôl "accordance with", yn y lle cyntaf y mae'n digwydd, mewnosoder "to the end substitute";

(ii) yn y paragraff (ii) newydd, ar ôl "Tiriogaeth Ddibynnol y Goron" mewnosoder "neu wlad y caniatawyd cywerthedd iddi";

(iii) hepgorer y paragraff (iii) newydd sydd i'w fewnosod gan y paragraff hwnnw;

(d) ym mharagraff (5)—

(i) o flaen is-baragraff (a) mewnosoder—

"(za) ym mharagraff (1)(a), yn lle "y Rhestr Genedlaethol" rhodder "Rhestr Amrywogaethau Prydain Fawr";";

(ii) yn is-baragraff (b), yn y paragraff (3A) newydd, yn lle "the United Kingdom", ym mhob lle y mae'n digwydd, rhodder "Great Britain";

(e) ym mharagraff (6), yn yr is-baragraff (c) newydd sydd i'w fewnosod gan y paragraff hwnnw, yn lle "y diwrnod ymadael" rhodder "diwrnod cwblhau'r cyfnod gweithredu";

(f) ym mharagraff (7)—

(i) yn is-baragraff (a)—

(aa) ym mharagraff (i), yn lle "yn y Deyrnas Unedig" rhodder "ym Mhrydain Fawr";

(bb) ym mharagraff (ii), yn yr is-baragraff (iii) newydd sydd i'w fewnosod gan y paragraff hwnnw, yn lle "y diwrnod ymadael" rhodder "diwrnod cwblhau'r cyfnod gweithredu";

(ii) yn lle is-baragraff (b) rhodder—

"(b) ym mharagraff (6)(b), yn lle "mewn Rhestr Genedlaethol neu yn y Catalog Cyffredin" rhodder "yn Rhestr Amrywogaethau Prydain Fawr";";

(g) ym mharagraffau (8) a (9)—

(i) yn y paragraff (ii) newydd sydd i'w fewnosod gan y paragraffau hynny, ar ôl "Tiriogaeth Ddibynnol y Goron" mewnosoder "neu wlad y caniatawyd cywerthedd iddi";

(ii) hepgorer y paragraff (iii) newydd sydd i'w fewnosod gan y paragraffau hynny;

(h) yn lle paragraff (10) rhodder—

"(10) Yn rheoliad 16 ac yn y pennawd, yn lle "i'r Undeb Ewropeaidd" rhodder "i Ynysoedd Prydain".";

(i) ym mharagraff (11), yn y rheoliad 23A newydd a'i bennawd, sydd i'w mewnosod gan y paragraff hwnnw—

(i) yn lle "ar y diwrnod ymadael" rhodder "ar ddiwrnod cwblhau'r cyfnod gweithredu", yn lle "cyn y diwrnod ymadael" rhodder "cyn diwrnod cwblhau'r cyfnod gweithredu" ac yn lle "y mae'r diwrnod ymadael" rhodder "y mae diwrnod cwblhau'r cyfnod gweithredu";

(ii) ar ôl "label swyddogol", yn yr ail le y mae'n digwydd, mewnosoder "ar gyfer tatws hadyd sylfaenol neu datws hadyd ardystiedig";

(j) yn lle paragraff (12) rhodder—

"(12) Yn Atodlen 1—

(a) ym mharagraff 3(a), yn lle "mewn Rhestr Genedlaethol neu yn y Catalog Cyffredin" rhodder "yn Rhestr Amrywogaethau Prydain Fawr";

(b) ym mharagraffau 5, 6 a 10, yn lle "yr Undeb", ym mhob lle y mae'n digwydd, rhodder "Prydain Fawr";

(c) ym mharagraff 8(b)—

(i) yn y testun Saesneg, yn lle "Union", ym mhob lle y mae'n digwydd, rhodder "GB";

(ii) yn y testun Cymraeg—

(aa) ym mharagraff (i), ar ôl "gradd S" mewnosoder "Prydain Fawr";

(bb) ym mharagraff (ii), ar ôl "gradd SE" mewnosoder "Prydain Fawr"; ac

(cc) ym mharagraff (iii), ar ôl "gradd E" mewnosoder "Prydain Fawr".";

(k) ym mharagraff (13)—

(i) yn is-baragraff (b)(i), yn lle "UK" rhodder "GB";

(ii) yn lle is-baragraff (c) rhodder—

"(c) ym mharagraff 8(b)—

(i) ym mharagraff (i), yn lle "Aelod-wladwriaeth" rhodder "wlad";

(ii) ym mharagraff (vi), yn lle "Restr Genedlaethol" rhodder "Restr Amrywogaethau Prydain Fawr";";

(iii) yn is-baragraffau (d)(ii) ac (e), yn lle "UK" rhodder "GB", ac yn lle "y DU" rhodder "Prydain Fawr";

(l) ym mharagraff (14)(a) a (b), yn lle "y DU" rhodder "Prydain Fawr";

(m) ym mharagraff (16)—

(i) yn is-baragraff (a), yn lle "yn lle "Undeb" rhodder "Deyrnas Unedig"" rhodder "yn lle "un o raddau'r Undeb" rhodder "un o raddau Prydain Fawr"";

(ii) yn is-baragraff (b)(i), yn lle "y DU" rhodder "Prydain Fawr";

(iii) yn lle is-baragraff (b)(ii) rhodder—

"(ii) yn y rhes sy'n ymwneud â gradd "PB" yng ngholofn 2, ym mharagraff (1)(b), yn lle "gradd PB yr Undeb" rhodder "gradd PB Prydain Fawr neu radd gyfatebol";";

(n) ym mharagraff (17)—

(i) yn is-baragraff (a), yn lle "yn lle "Undeb" rhodder "Deyrnas Unedig"" rhodder "yn lle "un o raddau'r Undeb" rhodder "un o raddau Prydain Fawr"";

(ii) yn is-baragraff (b)(i), yn lle "y DU" rhodder "Prydain Fawr";

(iii) yn lle is-baragraff (b)(ii) i (iv) rhodder—

"(ii) yn y rhes sy'n ymwneud â gradd "S", yng ngholofn 2, ym mharagraff (1)(a), yn lle "radd S yr Undeb" rhodder "radd S Prydain Fawr neu radd gyfatebol";

(iii) yn y rhes sy'n ymwneud â gradd "SE", yng ngholofn 2, ym mharagraff (1)(a), yn lle "radd S yr Undeb neu'n radd SE yr Undeb" rhodder "radd S Prydain Fawr, gradd SE Prydain Fawr neu radd gyfatebol";

(iv) yn y rhes sy'n ymwneud â gradd "E", yng ngholofn 2—

(aa) ym mharagraff (1)(a), yn lle "radd S yr Undeb neu radd SE yr Undeb" rhodder "radd S Prydain Fawr, gradd SE Prydain Fawr neu radd gyfatebol";

(bb) ym mharagraff (1)(b), yn lle "radd S yr Undeb, gradd SE yr Undeb neu radd E yr Undeb" rhodder "radd S Prydain Fawr, gradd SE Prydain Fawr, gradd E Prydain Fawr neu radd gyfatebol.";

(o) yn lle paragraff (18) rhodder—

"(18) Yn Rhan 3, yn Nhabl 3—

(a) ym mhennawd colofn 1, yn lle "yr Undeb" rhodder "Prydain Fawr";

(b) yng ngholofn 2, yn lle "radd A yr Undeb", yn y ddau le y mae'n digwydd, rhodder "radd A Prydain Fawr neu radd gyfatebol";

(c) yng ngholofn 2, yn lle "radd B yr Undeb" rhodder "radd B Prydain Fawr neu radd gyfatebol."

(4) Hepgorer rheoliadau 3 a 4.

Rheoliadau Cyfraith yr UE a Ddargedwir (Diwygiadau Amrywiol) (Cymru) (Ymadael â'r UE) 2019

3.—(1) Mae Rheoliadau Cyfraith yr UE a Ddargedwir (Diwygiadau Amrywiol) (Cymru) (Ymadael â'r UE) 2019(**1**) wedi eu diwygio fel a ganlyn.

(2) Yn rheoliad 1(3), hepgorer ", 5".

(3) Hepgorer rheoliad 5.

Rheoliadau Marchnata Hadau a Deunyddiau Lluosogi Planhigion (Diwygio) (Cymru) (Ymadael â'r UE) 2019

4.—(1) Mae Rheoliadau Marchnata Hadau a Deunyddiau Lluosogi Planhigion (Diwygio) (Cymru) (Ymadael â'r UE) 2019(**2**) wedi eu diwygio fel a ganlyn.

(2) Yn y testun Cymraeg, ailrifer rheoliadau 2 i 6 yn rheoliadau 1 i 5, ac mae'r paragraffau a ganlyn yn cyfeirio at y rheoliadau hynny fel y'u hailrifwyd.

(3) Yn rheoliad 4—

(a) yn lle paragraff (2) rhodder—

"(2) Yn rheoliad 3, yn lle paragraff (1) rhodder—

"(1) At ddibenion y Rheoliadau hyn—

(a) "Rhestr Amrywogaethau Prydain Fawr" yw'r rhestr o amrywogaethau planhigion a baratowyd ac a gyhoeddwyd gan yr Ysgrifennydd Gwladol yn unol â darpariaethau Rheoliadau

(**1**) O.S. 2019/1281 (Cy. 225).
(**2**) O.S. 2019/368 (Cy. 90); a ddiwygiwyd yn rhagolygol gan O.S. 2019/1382 (Cy. 245), rheoliad 3: mae'r rheoliad hwnnw'n cael ei hepgor gan y Rheoliadau hyn.

Hadau (Rhestrau Cenedlaethol o Amrywogaethau) 2001(**1**);

(b) ystyr "gwlad y caniatawyd cywerthedd iddi" yw—

(i) gwlad y caniatawyd cywerthedd iddi o dan Benderfyniad y Cyngor 2003/17/EC ar gywerthedd archwiliadau maes a gynhelir mewn trydydd gwledydd ar gnydau sy'n cynhyrchu hadau ac ar gywerthedd hadau a gynhyrchir mewn trydydd gwledydd; neu

(ii) gwlad y mae Gweinidogion Cymru wedi asesu bod yr hadau o'r wlad honno yn cael eu cynhyrchu o dan amodau sy'n cyfateb i ofynion y Rheoliadau hyn o ran yr hadau y mae'r Rheoliadau hyn yn gymwys iddynt;

(c) ystyr "Tiriogaeth Ddibynnol y Goron" yw unrhyw un o Ynysoedd y Sianel neu Ynys Manaw;

(ch) ystyr "Rhestr Amrywogaethau Gogledd Iwerddon" yw'r rhestr o amrywogaethau planhigion a baratowyd ac a gyhoeddwyd gan yr Adran Amaethyddiaeth, Amgylchedd a Materion Gwledig yng Ngogledd Iwerddon yn unol â'r ddeddfwriaeth sy'n cyfateb o ran ei heffaith i Reoliadau Hadau (Rhestrau Cenedlaethol o Amrywogaethau) 2001.";

(b) yn lle paragraff (3) rhodder—

"(3) Yn rheoliad 4(2), yn lle "i'r Undeb Ewropeaidd" rhodder "i Brydain Fawr".";

(c) yn lle paragraff (4) rhodder—

"(4) Yn rheoliad 7, yn lle'r geiriau o "Rhestr Genedlaethol" hyd at y diwedd rhodder "Rhestr Amrywogaethau Prydain Fawr, Rhestr Amrywogaethau Gogledd Iwerddon neu restr

(**1**) O.S. 2001/3510, a ddiwygiwyd gan O.S.A. 2004/317, O.S. 2004/2949, O.S.A. 2005/328, 329, O.S. 2007/1871, 2009/1273, 2010/1195, 2011/464, 2012/2897, 2013/2042, 2014/487, O.S.A. 2015/395, O.S. 2016/106 (Cy. 52), 2018/942, 2020/579. Fe'i diwygir yn rhagolygol gan O.S. 2019/162.

gyfatebol mewn gwlad y caniatawyd cywerthedd iddi".";

(d) hepgorer paragraff (5);

(e) yn lle paragraff (6) rhodder —

"(6) Yn rheoliad 10, ym mharagraff (a), yn lle "Rhestr Genedlaethol y Deyrnas Unedig neu'r Catalog Cyffredin" rhodder "Rhestr Amrywogaethau Prydain Fawr".";

(f) ym mharagraff (9)—

(i) yn lle is-baragraff (a) rhodder—

"(a) yn y pennawd, yn lle "o'r tu allan i'r Undeb Ewropeaidd" rhodder "o wlad y caniatawyd cywerthedd iddi";";

(ii) ar ôl is-baragraff (a) mewnosoder—

"(aa) yn lle paragraff (1) rhodder—

"(1) Rhaid i hadau sy'n cael eu mewnforio o wlad y caniatawyd cywerthedd iddi—

(a) bod yn amrywogaeth a restrwyd yn Rhestr Amrywogaethau Prydain Fawr; a

(b) bod wedi eu labelu—

(i) o ran hadau llysiau safonol, â label cyflenwr yn unol â pharagraff 25(4) neu (5) o Atodlen 3;

(ii) o ran yr holl hadau eraill, â label a gymeradwywyd gan y Sefydliad ar gyfer Cydweithrediad a Datblygiad Economaidd ar gyfer ardystio amrywogaethau i reoli hadau sy'n symud yn y fasnach ryngwladol.";";

(iii) yn is-baragraff (b), yn lle "i'r Deyrnas Unedig" rhodder "o wlad y caniatawyd cywerthedd iddi";

(iv) hepgorer is-baragraff (c);

(g) ym mharagraff (10)—

(i) yn y rheoliad 32A newydd a'i bennawd sydd i'w mewnosod gan y paragraff hwnnw, ar ôl "Tiriogaeth Ddibynnol y Goron" mewnosoder "neu wlad y caniatawyd cywerthedd iddi";

(ii) yn y rheoliad 32B newydd a'i bennawd sydd i'w mewnosod gan y paragraff hwnnw—

(aa) yn lle "ar y diwrnod ymadael" rhodder "ar ddiwrnod cwblhau'r cyfnod gweithredu", yn lle "cyn y

diwrnod ymadael" rhodder "cyn diwrnod cwblhau'r cyfnod gweithredu" ac yn lle "y mae'r diwrnod ymadael" rhodder "y mae diwrnod cwblhau'r cyfnod gweithredu";

(bb) yn lle "ddwy flynedd" rhodder "un flwyddyn";

(h) ym mharagraff (11)—

(i) yn is-baragraff (a)(iii), yn yr is-baragraff (6)(b)(i)(bb) newydd sydd i'w fewnosod gan yr is-baragraff hwnnw, yn lle "United Kingdom National" rhodder "GB Variety";

(ii) yn lle is-baragraff (e) rhodder—

"(e) ym mharagraff 43(2), yn lle "Restr Genedlaethol y Deyrnas Unedig neu'r Catalog Cyffredin" rhodder "Restr Amrywogaethau Prydain Fawr";";

(i) ym mharagraff (12)—

(i) yn is-baragraff (c)(i), yn lle "UK" rhodder "GB";

(ii) yn lle is-baragraff (e) rhodder—

"(e) ym mharagraffau 12(2)(a) a 14(1)(a), yn lle "Restr Genedlaethol y Deyrnas Unedig neu'r Catalog Cyffredin" rhodder "Restr Amrywogaethau Prydain Fawr";";

(iii) yn is-baragraffau (g) a (j), yn lle "UK" rhodder "GB";

(j) ym mharagraff (13)—

(i) yn is-baragraff (d)—

(aa) o flaen paragraff (i), mewnosoder—

"(ai) yn is-baragraffau (2) a (3), yn lle "Rhestr Genedlaethol y Deyrnas Unedig" rhodder "Rhestr Amrywogaethau Prydain Fawr";";

(bb) ym mharagraff (i), yn yr is-baragraff (5A) newydd sydd i'w fewnosod gan y paragraff hwnnw, yn lle "the United Kingdom", ym mhob lle y mae'n digwydd, rhodder "Great Britain";

(ii) yn is-baragraff (e)(ii), yn lle "UK" rhodder "GB";

(iii) ar ôl is-baragraff (e) mewnosoder—

"(ea) ym mharagraff 9—

(i) yn is-baragraffau (1), (5) a (6), yn lle "Genedlaethol y Deyrnas

Unedig" rhodder "Amrywogaethau Prydain Fawr";

(ii) yn is-baragraff (8), yn y geiriau o flaen paragraff (a), yn lle "yn y Deyrnas Unedig" rhodder "ym Mhrydain Fawr";";

(iv) yn lle is-baragraff (f) rhodder—

"(f) ym mharagraff 10—

(i) yn is-baragraff (1), yn lle'r geiriau o "Rhestr Genedlaethol y Deyrnas Unedig" hyd at y diwedd rhodder "Rhestr Amrywogaethau Prydain Fawr ar yr amod bod cais wedi ei wneud i'w cofnodi yn Rhestr Amrywogaethau Prydain Fawr neu Restr Amrywogaethau Gogledd Iwerddon";

(ii) yn is-baragraff (4), yn lle "yn y Rhestr Genedlaethol berthnasol" rhodder "yn Rhestr Amrywogaethau Prydain Fawr, Rhestr Amrywogaethau Gogledd Iwerddon neu restr gyfatebol gwlad y caniatawyd cywerthedd iddi";

(iii) hepgorer is-baragraffau (7) ac (8); ";

(v) yn lle is-baragraff (g) rhodder—

"(g) ym mharagraff 11(2), yn lle "Rhestr Genedlaethol y Deyrnas Unedig neu'r Catalog Cyffredin" rhodder "Rhestr Amrywogaethau Prydain Fawr";";

(vi) yn is-baragraff (h)(ii)(bb), yn lle "y mae'r diwrnod ymadael" rhodder "y mae diwrnod cwblhau'r cyfnod gweithredu";

(vii) yn lle is-baragraff (l) rhodder—

"(l) hepgorer paragraff 16;";

(viii) yn lle is-baragraff (n) rhodder—

"(n) ym mharagraff 18, yn lle "Restr Genedlaethol y Deyrnas Unedig neu'r Catalog Cyffredin" rhodder "Restr Amrywogaethau Prydain Fawr";".

(4) Yn rheoliad 5—

(a) ym mharagraff (2)—

(i) yn is-baragraffau (a), (b), (c), (f), ac (i)—

(aa) yn yr is-baragraff (ii) newydd sydd i'w fewnosod gan bob un o'r is-baragraffau hynny, ar ôl "Tiriogaeth Ddibynnol y Goron" mewnosoder "neu wlad y caniatawyd cywerthedd iddi";

(bb) hepgorer yr is-baragraff (iii) newydd sydd i'w fewnosod gan bob un o'r is-baragraffau hynny;

(ii) ar ôl is-baragraff (c) mewnosoder—

"(ca) yn y lle priodol mewnosoder—

"ystyr "gwlad y caniatawyd cywerthedd iddi" ("*country granted equivalence*") yw gwlad sydd wedi ei hasesu o dan reoliad 5(3) ac y mae Gweinidogion Cymru wedi eu bodloni bod y deunyddiau planhigion o'r wlad yn cael eu cynhyrchu o dan amodau sy'n cyfateb i ofynion y Rheoliadau hyn o ran deunyddiau planhigion;";";

(iii) yn is-baragraff (g), yn lle ", unrhyw Aelod-wladwriaeth neu unrhyw Diriogaeth Ddibynnol y Goron" rhodder ", unrhyw Diriogaeth Ddibynnol y Goron neu unrhyw wlad y caniatawyd cywerthedd iddi";

(b) yn lle paragraff (3) rhodder—

"(3) Yn rheoliad 4(3), yn lle "i'r Undeb Ewropeaidd" rhodder "i Brydain Fawr".";

(c) yn lle paragraff (4) rhodder—

"(4) Yn rheoliad 5, ym mharagraff (3), yn lle "Undeb Ewropeaidd" rhodder "Deyrnas Unedig".";

(d) hepgorer paragraffau (6), (7) ac (8);

(e) ym mharagraff (9)—

(i) yn is-baragraffau (a) ac (c)(i), yn lle "UK" rhodder "GB";

(ii) yn is-baragraff (c)(ii), yn lle "is-baragraffau (b)(i) ac (x)" rhodder "is-baragraff (b)(i)";

(f) ym mharagraffau (13)(a), (15)(a) ac (16), yn yr is-baragraff (ii) newydd sydd i'w fewnosod gan y paragraffau hynny, yn lle "y mae'r diwrnod ymadael" rhodder "y mae diwrnod cwblhau'r cyfnod gweithredu".

Rheoliadau Hadau (Diwygio etc.) (Cymru) (Ymadael â'r UE) 2019

5.—(1) Mae Rheoliadau Hadau (Diwygio etc.) (Cymru) (Ymadael â'r UE) 2019(**1**) wedi eu diwygio fel a ganlyn.

(2) Hepgorer rheoliad 1(2)(b) a Rhan 3.

(**1**) O.S. 2019/1382 (Cy. 245).

Lesley Griffiths
Gweinidog yr Amgylchedd, Ynni a Materion Gwledig,
un o Weinidogion Cymru
15 Rhagfyr 2020

Memorandwm Esboniadol i Reoliadau Marchnata Hadau a Deunydd Lluosogi Planhigion (Diwygio) (Cymru) (Ymadael â'r UE) 2020

Paratowyd y Memorandwm Esboniadol hwn gan yr Is-adran Datblygu Gwledig a Deddfwriaeth yn Adran yr Amgylchedd, Sgiliau a Chyfoeth Naturiol Llywodraeth Cymru ac fe'i gosodir gerbron y Senedd ar y cyd â'r is-ddeddfwriaeth uchod ac yn unol â Rheol Sefydlog 27.1.

Datganiad y Gweinidog

Yn fy marn i, mae'r Memorandwm Esboniadol hwn yn rhoi barn deg a rhesymol am effaith ddisgwyliedig Rheoliadau Marchnata Hadau a Deunydd Lluosogi Planhigion (Diwygio) (Cymru) (Ymadael â'r UE) 2020.

Rwyf wedi gwneud y datganiadau sy'n ofynnol gan Ddeddf yr Undeb Ewropeaidd (Ymadael) 2018. Mae'r datganiadau hyn i'w gweld yn Rhan 2 o'r Atodiad i'r Memorandwm hwn.

Lesley Griffiths AS
Gweinidog yr Amgylchedd, Ynni a Materion Gwledig
18 Rhagfyr 2020

Rhan 1

1. Disgrifiad

Bydd Rheoliadau Marchnata Deunydd Lluosogi Hadau a Phlanhigion (Diwygio) (Cymru) (Ymadael â'r UE) 2020 (yr "offeryn") yn gwneud diwygiadau i is-ddeddfwriaeth, sy'n gymwys o ran Cymru, mewn perthynas â hadau, planhigion ar gyfer eu plannu a deunydd atgenhedlu.

Mae'r offeryn hwn yn gymwys i Gymru a daw i rym cyn diwrnod cwblhau'r cyfnod gweithredu.

2. Materion o ddiddordeb arbennig i'r Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

Mae'r offeryn yn cael ei wneud gan Weinidogion Cymru drwy arfer y pwerau a roddwyd gan baragraff 1(1) o Atodlen 2 a pharagraff 21 o Atodlen 7 i Ddeddf yr Undeb Ewropeaidd (Ymadael) 2018 (y 'Ddeddf Ymadael'), er mwyn mynd i'r afael â methiant cyfraith yr UE a ddargedwir i weithredu'n effeithiol a diffygion eraill sy'n deillio o ymadawiad y Deyrnas Unedig (DU) â'r Undeb Ewropeaidd (UE).

Mae'r offeryn yn cael ei osod o dan y weithdrefn Gadarnhaol "Gwnaed" ac mae'r datganiad Gweinidogol yn Rhan 2 o'r Atodiad yn nodi'r rhesymau dros y penderfyniad hwn.

Mae gofyniad o dan baragraff 4(a) o Atodlen 2 i Ddeddf Ymadael yr Undeb Ewropeaidd 2018 i Weinidogion Cymru ymgynghori â'r Ysgrifennydd Gwladol ynghylch unrhyw ddarpariaethau sydd i ddod i rym cyn cwblhau'r Cyfnod Gweithredu. Yn unol â'r gofyniad hwn, ymgynghorwyd â'r Ysgrifennydd Gwladol a nodwyd cofnod o'r broses mewn llythyr ar wahân a gyhoeddwyd ar 15 Rhagfyr 2020.

3. Cefndir deddfwriaethol

Mae angen diwygio deddfwriaeth ddomestig sy'n deillio o gyfraith yr UE er mwyn sicrhau bod y llyfr statud yn effeithlon ac yn effeithiol ar ôl i'r DU adael yr UE.

Mae'r Ddeddf Ymadael yn trosi'r rhan fwyaf o gyfraith yr UE sy'n uniongyrchol gymwys fel y saif yn union cyn diwrnod cwblhau'r Cyfnod Gweithredu yn gyfraith ddomestig ac yn cadw cyfreithiau a wneir yn y DU sy'n gweithredu rhwymedigaethau'r UE. Mae'r Ddeddf Ymadael hefyd yn creu pwerau dros dro i wneud is-ddeddfwriaeth i ddelio â diffygion a fyddai'n codi yn sgil ymadael â'r DU. Mae Adran 11 a pharagraff 1 o Atodlen 2 i'r Ddeddf Ymadael yn rhoi pwerau i Weinidogion Cymru fynd i'r afael â diffygion.

Yn unol â gofynion y Ddeddf Ymadael, mae Lesley Griffiths, Gweinidog yr Amgylchedd, Ynni a Materion Gwledig, wedi gwneud y datganiadau perthnasol fel y nodir yn Rhan 2 o'r Atodiad i'r Memorandwm Esboniadol hwn.

4. Diben y ddeddfwriaeth a'r effaith y bwriedir iddi ei chael

Mae'r offeryn hwn yn diwygio deddfwriaeth Ymadael â'r UE a wnaed yn 2019. Ers gwneud yr OSau Ymadael â'r UE, mae Cytundeb Ymadael rhwng y DU a'r UE wedi'i lofnodi. Mae angen diweddaru'r OSau Ymadael cynharach hynny er mwyn sicrhau y byddant yn gweithredu'n effeithiol ar ddiwedd y cyfnod pontio. Rhaid gwneud diwygiadau hefyd i adlewyrchu'r Protocol a chywiro mân wallau drafftio yn yr OSau cynharach hynny.

Diben yr offeryn yw sicrhau bod deddfwriaeth sy'n ymwneud â deunydd lluosogi planhigion a hadau yn parhau'n weithredol ar ddiwedd y cyfnod pontio.

5. Beth mae'r offeryn yn ei wneud

Mae'r offeryn yn diwygio Rheoliadau Tatws Hadyd (Cymru) (Diwygio) (Ymadael â'r UE) 2019 a Rheoliadau Marchnata Hadau a Deunydd Lluosogi Planhigion (Diwygio) (Cymru) (Ymadael â'r UE) 2019 ac yn dirymu elfennau o Reoliadau Cyfraith yr UE a Ddargedwir (Diwygiadau Amrywiol) (Cymru) (Ymadael â'r UE) 2019 a Rheoliadau Hadau (Diwygio etc.) (Cymru) (Ymadael â'r UE) 2019.

Mae Rheoliadau Tatws Hadyd (Cymru) (Diwygio) (Ymadael â'r UE) 2019 yn gwneud diwygiadau i Reoliadau Tatws Hadyd (Cymru) 2016 er mwyn mynd i'r afael â methiant cyfraith a ddargedwir yr UE i weithredu'n effeithiol a diffygion eraill yn deillio o ymadawiad y Deyrnas Unedig â'r Undeb Ewropeaidd.

Mae Rheoliadau Cyfraith yr UE a Ddargedwir (Diwygiadau Amrywiol) (Cymru) (Ymadael â'r UE) 2019 yn cynnwys diwygiad i Reoliadau Tatws Hadyd (Cymru) (Diwygio) (Ymadael â'r UE) 2019. Mae'r offeryn hwn yn ymgorffori ac yn dirymu'r gwelliant hwnnw.

Mae Rheoliadau Marchnata Hadau a Deunydd Lluosogi Planhigion (Diwygio) (Cymru) (Ymadael â'r UE) 2019 yn gwneud diwygiadau i Reoliadau Marchnata Hadau (Cymru) 2012 a Rheoliadau Marchnata Planhigion Ffrwythau a Deunyddiau Lluosogi (Cymru) 2017. Maent yn mynd i'r afael â diffygion yn y ddeddfwriaeth ddomestig ar farchnata hadau a phlanhigion ffrwythau a deunydd lluosogi sy'n deillio o ymadawiad y DU â'r UE.

Mae Rheoliadau Hadau (Diwygio ac ati) (Cymru) (Ymadael â'r UE) 2019 yn cynnwys diwygiad i Reoliadau Marchnata Hadau a Deunydd Lluosogi Planhigion (Diwygio) (Cymru) (Ymadael â'r UE) 2019 ac mae'r offeryn hwn yn disodli ac yn dirymu'r diwygiad hwnnw.

6. Casgliad

Mae'r offeryn hwn yn gwneud diwygiadau sy'n dechnegol eu natur ac nid ydynt yn adlewyrchu newid polisi. Gan nad oes newid polisi, ni oes ymgynghoriad cyhoeddus wedi'i gynnal.

7. Asesiad Effaith Rheoleiddiol (RIA)

Ni chynhaliwyd asesiad effaith mewn perthynas â'r offeryn hwn gan na ragwelir unrhyw effaith ar y sectorau preifat, gwirfoddol na chyhoeddus.

Atodiad: Datganiadau o dan Ddeddf yr Undeb Ewropeaidd (Ymadael) 2018

Rhan 1: Tabl o Ddatganiadau wnaed o dan Ddeddf 2018

Mae'r tabl hwn yn nodi'r datganiadau y gallai fod gofyn i Weinidogion Cymru eu gwneud o dan Ddeddf 2018. Mae'r tabl hefyd yn nodi'r datganiadau hynny y gallai fod gofyn i Weinidogion y Goron eu gwneud o dan Ddeddf 2018, y mae Gweinidogion Cymru wedi ymrwymo i'w darparu hefyd os bydd angen. Mae'r datganiadau gofynnol i'w gweld yn Rhan 2 o'r atodiad hwn.

Datganiad	Ble mae'r gofyn	Ar bwy y mae'n effeithio	Beth y gofynnir amdano
Priodoldeb	Is-baragraff (2) o baragraff 28, Atodlen 7	Gweinidogion y Goron wrth arfer pwerau yn adrannau 8(1), 9 a 23(1) neu wrth arfer pwerau ar y cyd yn Atodlen 2. Mae Gweinidogion Cymru wedi ymrwymo i wneud yr un datganiad wrth arfer pwerau yn Atodlen 2.	Datganiad nad yw'r OS yn gwneud mwy nag sy'n briodol.
Rhesymau da	Is-baragraff (3) o baragraff 28, Atodlen 7	Gweinidogion y Goron wrth arfer pwerau yn adrannau 8(1), 9 a 23(1) neu wrth arfer pwerau ar y cyd yn Atodlen 2. Mae Gweinidogion Cymru wedi ymrwymo i wneud yr un datganiad wrth arfer pwerau yn Atodlen 2.	Datganiad i esbonio'r rhesymau da dros wneud yr offeryn a bod yr hyn sy'n cael ei wneud yn rhesymol.
Cydraddoleb	Is-baragraffau (4) a (5) o baragraff 28, Atodlen 7	Gweinidogion y Goron wrth arfer pwerau yn adrannau 8(1), 9 a 23(1) neu wrth arfer pwerau ar y cyd yn Atodlen 2. Mae Gweinidogion Cymru wedi ymrwymo i wneud yr un	Datganiad i esbonio pa ddiwygiadau, dirymiadau a diddymiadau, os o gwbl, a wneir i Ddeddfau Cydraddoldeb 2006 a 2010 a'r ddeddfwriaeth a wnaed trwyddynt. Datganiad bod y Gweinidog

		datganiad wrth arfer pwerau yn Atodlen 2.	wedi rhoi'r ystyriaeth briodol i'r angen i ddileu gwahaniaethu ac ymddygiadau eraill a waherddir o dan Ddeddf Cydraddoldeb 2010.
Esboniadau	Is-baragraff (6) o baragraff 28, Atodlen 7	Gweinidogion y Goron wrth arfer pwerau yn adrannau 8(1), 9 a 23(1) neu wrth arfer pwerau ar y cyd yn Atodlen 2. Mae Gweinidogion Cymru wedi ymrwymo i wneud yr un datganiad wrth arfer pwerau yn Atodlen 2.	Datganiad i esbonio'r offeryn, nodi'r gyfraith berthnasol cyn y diwrnod ymadael, esbonio effaith yr offeryn ar gyfraith a ddargedwir yr UE a rhoi gwybodaeth am ddiben yr offeryn, e.e. a fwriedir mân newidiadau neu newidiadau technegol yn unig i gyfraith a ddargedwir yr UE.
Troseddau	Is-baragraffau (3) a (7) o baragraff 28, Atodlen	Gweinidogion y Goron wrth arfer pwerau yn adrannau 8(1), 9 a 23(1) neu wrth arfer pwerau ar y cyd yn Atodlen 2. Mae Gweinidogion Cymru wedi ymrwymo i wneud yr un datganiad wrth arfer pwerau yn Atodlen 2.	Datganiad sy'n nodi'r 'rhesymau da' dros greu trosedd a'r gosb gysylltiedig.
Is-ddirprwyo	Paragraff 30, Atodlen 7	Gweinidogion y Goron wrth arfer pwerau yn adrannau 8(1), 9 a pharagraff 1 o Atodlen 4 i greu pŵer deddfwriaethol na chaiff Gweinidog y Goron nac Awdurdod Datganoledig ei arfer. Mae Gweinidogion Cymru wedi ymrwymo i wneud yr un datganiad wrth arfer pwerau yn Atodlen 2 neu baragraff 1 o Atodlen 4 i greu pŵer deddfwriaethol na chaiff Gweinidog y Goron nac Awdurdod	Datganiad i esbonio pam ei bod yn briodol creu'r cyfryw bŵer is-ddirprwyedig.

		Datganoledig ei arfer.	
Brys	Is-baragraff (2) ac (8) o baragraff 7, Atodlen 7	Gweinidogion Cymru yn arfer pwerau yn Rhan 1 o Atodlen 2 ond gan ddefnyddio'r weithdrefn frys ym mharagraff 7 o Atodlen 7	Datganiad bod Gweinidogion Cymru o'r farn bod angen gwneud OS gan ddefnyddio'r weithdrefn frys a'r rhesymau am y farn honno.

Part 2

Statements required when using enabling powers under the European Union (Withdrawal) Act 2018

1. Appropriateness statement

The Minister for Environment, Energy and Rural Affairs has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Marketing of Seeds and Plant Propagating Material (Amendment) (Wales) (EU Exit) Regulations 2020 do no more than is appropriate. This is the case because all the changes being made are solely in order to address deficiencies arising from EU exit.”

2. Good reasons

The Minister for Environment, Energy and Rural Affairs has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action”.

3. Equalities

The Minister for Environment, Energy and Rural Affairs has made the following statement:

“The Marketing of Seeds and Plant Propagating Material (Amendment) (Wales) (EU Exit) Regulations 2020 do not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts.”

The Minister for Environment, Energy and Rural Affairs has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to the Marketing of Seeds and Plant Propagating Material (Amendment) (Wales) (EU Exit) Regulations 2020, I, Lesley Griffiths, have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct which is prohibited by or under the Equality Act 2010.”

4. Explanations

The explanations statement has been made in section 4 (Purpose and intended effect of the legislation) of the main body of this explanatory memorandum.

5. Criminal offences

Not applicable/required.

6. Legislative sub-delegation

Not applicable/required.

7. Urgency

The Minister for Environment, Energy and Rural Affairs, Lesley Griffiths, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my opinion, by reason of urgency, it is necessary to make the Marketing of Seeds and Plant Propagating Material (Amendment) (Wales) (EU Exit) Regulations 2020, without a draft of the Regulations being laid before, and approved by a resolution of the Senedd”.

This is because the Welsh Ministers have concluded that the ‘urgent made affirmative’ procedure provided for in the European Union (Withdrawal) Act 2018 is needed to ensure that this instrument is in place before implementation period (IP) completion day.”

It is important to have this instrument in place before IP completion day to provide confidence and certainty to the public and business and to ensure the continued effective functioning of the statute book. If this instrument is not in force before IP completion day, the UK will not be able to meet its commitments and obligations under the Withdrawal Agreement and the Protocol on Ireland / Northern Ireland, in relation to plant propagating material and seeds.

Using this procedure still allows for scrutiny and the Senedd will need to approve the Regulations for them to remain in force.

Lesley Griffiths AS/MS
Gweinidog yr Amgylchedd, Ynni a Materion Gwledig
Minister for Environment, Energy and Rural Affairs

Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref MA-LG-3828-20

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15 Rhagfyr 2020

Annwyl Elin

Rheoliadau Marchnata Hadau a Deunyddiau Lluosogi Planhigion (Diwygio) (Cymru) (Ymadael â'r UE) 2020

Heddiw rwyf wedi gwneud Rheoliadau Marchnata Hadau a Deunyddiau Lluosogi Hadau a Phlanhigion (Diwygio) (Cymru) (Ymadael â'r UE) 2020, o dan baragraff 1(1) o Atodlen 2 a pharagraff 21 o Atodlen 7 i Ddeddf yr Undeb Ewropeaidd (Ymadael) 2018. Bydd y Rheoliadau'n dod i rym cyn y diwrnod cwblhau gweithredu. Amgaeaf gopi o'r offeryn statudol a'r Memorandwm Esboniadol cysylltiedig, y bwriadaf ei osod unwaith y bydd yr offeryn statudol wedi cael ei gofrestru.

Yn unol â pharagraff 7(3) a 7(4) o Atodlen 7 i Ddeddf yr Undeb Ewropeaidd (Ymadael) 2018, rhaid i'r offeryn hwn gael ei osod gerbron y Senedd a'i gymeradwyo ganddo erbyn 2 Chwefror 2021 er mwyn iddo barhau i fod mewn grym. O dan yr amgylchiadau hyn, rwy'n deall bod Rheol Sefydlog 21.4A yn berthnasol, ac y caiff y Pwyllgor Busnes bennu a chyhoeddi amserlen i'r pwyllgor neu'r pwyllgorau cyfrifol gyflwyno adroddiad arni. Efallai y byddai'n ddefnyddiol gwybod fy mod yn bwriadu cynnal y ddadl yn y Cyfarfod Llawn ynghylch yr eitem hon o is-ddeddfwriaeth ar 26 Ionawr 2021.

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
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Rwy'n anfon copi o'r llythyr hwn at Mick Antoniw AS, y Gweinidog Cyllid a'r Trefnydd, gan mai ef yw Cadeirydd y Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad, Siwan Davies, Cyfarwyddwr Busnes y Senedd, Siân Wilkins, Pennaeth Gwasanaethau'r Siambr a Phwyllgorau a Julian Luke, Pennaeth Gwasanaeth y Pwyllgorau Polisi a Deddfwriaeth.

Yn gywir,

Lesley Griffiths AS/MS
Gweinidog yr Amgylchedd, Ynni a Materion Gwledig
Minister for Environment, Energy and Rural Affairs

SL(5)719 – Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol a Chyfyngiadau) (Diwygio) (Cymru) 2021

Cefndir a Diben

Mae'r Rheoliadau hyn yn diwygio Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) 2020 (y "Rheoliadau Teithio Rhyngwladol") a Rheoliadau Diogelu Iechyd (Cyfyngiadau Coronafeirws) (Rhif 5) (Cymru) 2020 ("Rheoliadau Rhif 5"), gan gadw'r cyfyngiadau ychwanegol sydd eisoes ar waith mewn perthynas â De Affrica a'u hymestyn i deithwyr (a'u haelwydydd) sy'n cyrraedd Cymru o wledydd eraill yn ne cyfandir Affrica (a restrir yn Atodlen 3A newydd i'r Rheoliadau Teithio Rhyngwladol) ar neu ar ôl 4.00 a.m. ar 9 Ionawr 2021.

At hynny, mae'r Rheoliadau hyn yn:

- Ymestyn y gwaharddiad presennol ar awyrennau teithwyr a llestrau sy'n cyrraedd yn uniongyrchol yng Nghymru, i'r gwledydd ychwanegol a restrir yn Atodlen 3A newydd; a
- Caniatáu i gartrefi arddangos aros ar agor mewn ardaloedd Lefel Rhybudd 4 (er na chaniateir gweld eiddo mewn cysylltiad â gwerthiant neu osod dim ond os yw'n rhesymol angenrheidiol ac nad oes dewis arall sy'n rhesymol ymarferol).

Gweithdrefn

Gwneud cadarnhaol.

Gwnaed y Rheoliadau gan Weinidogion Cymru cyn iddynt gael eu gosod gerbron y Senedd. Rhaid i'r Senedd gymeradwyo'r Rheoliadau o fewn 28 diwrnod (ac eithrio unrhyw ddiwrnodau pan fo'r Senedd wedi'i diddymu neu ar doriad am fwy na phedwar diwrnod) i'r dyddiad y'u gwnaed er mwyn iddynt barhau i gael effaith.

Materion technegol: craffu

Nodir y pwynt a ganlyn i gyflwyno adroddiad arno o dan Reol Sefydlog 21.2 mewn perthynas â'r offeryn hwn:

1. Rheol Sefydlog 21.2(vii) – ei bod yn ymddangos bod anghysondebau rhwng ystyr testun Cymraeg a thestun Saesneg yr offeryn neu'r drafft.

Mae rheoliad 8 (7) yn y testun Saesneg yn amnewid "developer sales offices and show homes" ym mharagraff 48 o Atodlen 4 i Reoliadau Rhif 5 gyda "developer sales offices". Fodd bynnag, mae'r un rheoliad yn y testun Cymraeg yn amnewid "swyddfeydd gwerthiant datblygwyr a chartrefi arddangos" gyda "chartrefi arddangos".

Rhinweddau: craffu

Nodwyd y pwyntiau a ganlyn i gyflwyno adroddiad arnynt o dan Reol Sefydlog 21.3 mewn perthynas â'r offeryn hwn:

1. Rheol Sefydlog 21.3(ii) – ei fod o bwysigrwydd gwleidyddol neu gyfreithiol neu ei fod yn codi materion polisi cyhoeddus sy'n debyg o fod o ddiddordeb i'r Senedd.

Rydym yn nodi cyfiawnhad Llywodraeth Cymru dros unrhyw ymyrraeth bosibl â hawliau dynol. Yn benodol, nodwn y paragraff a ganlyn yn y Memorandwm Esboniadol:

> "*Nid yw'r diwygiadau yn y Rheoliadau hyn yn newid y ffaith bod hawliau unigolion o dan Ddeddf Hawliau Dynol 1998 a Siarter Hawliau Sylfaenol Ewrop yn gysylltiedig â'r Rheoliadau Teithio Rhyngwladol a Rheoliadau Rhif 5; mae'r Llywodraeth o'r farn eu bod yn gymesur a hefyd yn gyfiawn at ddiben atal lledaeniad haint a/neu y caniateir ymyriad ar y sail ei fod yn anelu at gyflawni nod dilys, sef diogelu iechyd y cyhoedd.*"

2. Rheol Sefydlog 21.3(ii) – ei fod o bwysigrwydd gwleidyddol neu gyfreithiol neu ei fod yn codi materion polisi cyhoeddus sy'n debyg o fod o ddiddordeb i'r Senedd.

Nodwn na chynhaliwyd ymgynghoriad ffurfiol ar y Rheoliadau hyn. Yn benodol, nodwn y paragraff a ganlyn yn y Memorandwm Esboniadol:

> "*Oherwydd y bygythiad difrifol ac uniongyrchol sy'n deillio o'r coronafeirws a'r angen am ymateb iechyd y cyhoedd brys, ni chynhaliwyd unrhyw ymgynghoriad cyhoeddus mewn perthynas â'r Rheoliadau hyn*."

3. Rheol Sefydlog 21.3 (ii) – ei fod o bwysigrwydd gwleidyddol neu gyfreithiol neu ei fod yn codi materion polisi cyhoeddus sy'n debyg o fod o ddiddordeb i'r Senedd

Mae'r Memorandwm Esboniadol yn darparu na luniwyd asesiad effaith rheoleiddiol mewn perthynas â'r Rheoliadau hyn oherwydd yr angen i'w rhoi ar waith ar frys er mwyn mynd i'r afael â bygythiad difrifol ac uniongyrchol i iechyd y cyhoedd.

4. Rheol Sefydlog 21.3 (ii) – ei fod o bwysigrwydd gwleidyddol neu gyfreithiol neu ei fod yn codi materion polisi cyhoeddus sy'n debyg o fod o ddiddordeb i'r Senedd

Mae troednodyn (2) ar dudalen 8 o'r Rheoliadau hyn yn cyfeirio at "O.S. 2020/163" ac "O.S. 2020/165". Rydym yn tybio y dylen nhw gyfeirio at O.S. 2020/16***2***3 ac O.S. 16***4***5 (*ychwanegwyd pwyslais*) gan mai dyna'r rhifau O.S. ar gyfer Rheoliadau Diogelu Iechyd (Cyfyngiadau Coronafeirws) (Rhif 5) (Cymru) (Diwygio) (Rhif 2) 2020 a Rheoliadau Diogelu Iechyd (Coronafeirws, De Affrica) (Cymru) 2020, yn y drefn honno.

Derbynnir nad yw'r troednodyn yn rhan o'r gyfraith. Fodd bynnag, os mai diben ei gynnwys yw cynorthwyo darllenydd, byddai'n ddefnyddiol pe bai'r cyfeiriadau cywir yn cael ei ddefnyddio.

Ymateb Llywodraeth Cymru

Mae angen ymateb gan Lywodraeth Cymru mewn perthynas â'r pwynt adrodd technegol.

Trafodaeth y Pwyllgor

Trafododd y Pwyllgor yr offeryn yn ei gyfarfod ar 18 Ionawr 2021 ac mae'n cyflwyno adroddiad i'r Senedd yn unol â'r pwyntiau adrodd uchod.

YMATEB Y LLYWODRAETH: RHEOLIADAU DIOGELU IECHYD (CORONAFEIRWS, TEITHIO RHYNGWLADOL A CHYFYNGIADAU) (DIWYGIO) (CYMRU) 2021

Pwynt craffu technegol 1: *anghysondeb rhwng y testun Cymraeg a'r testun Saesneg*

Mae'r Llywodraeth yn ddiolchgar am gael gwybod am y mater. Dylai'r testun Cymraeg gyfeirio at "swyddfeydd gwerthiant datblygwyr" yn hytrach nag at "cartrefi arddangos". Mae Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol a Chyfyngiadau) (Diwygio) (Rhif 2) (Cymru) 2021 yn mynd i'r afael â'r gwall.

SL(5)722 – Cyfarwyddydau Gofal Sylfaenol (Cynllun Imiwneiddio COVID-19 Brechlyn Rhydychen/ AstraZeneca) 2020

Cefndir a Diben

Rhaid i fyrddau iechyd lleol yng Nghymru baratoi, gweithredu a diwygio, fel y bo'n briodol, Gynllun Imiwneiddio COVID-19 Brechlyn Rhydychen/AstraZeneca Gofal Sylfaenol.

Diben y Cynllun yn y bôn yw galluogi'r gwaith o ddarparu gwasanaethau i roi'r brechlyn fel rhan o'r gwasanaeth iechyd yng Nghymru.

Fel rhan o'i Gynllun, caiff pob bwrdd iechyd lleol ymrwymo i drefniadau ar gyfer darparu gwasanaethau yn unol â Manyleb Cynllun Imiwneiddio COVID-19 Brechlyn Rhydychen/AstraZeneca Gofal Sylfaenol gyda—

(a) deintydd;

(b) ymarferydd meddygol cyffredinol—

(i) mewn perthynas â chleifion cofrestredig yr ymarferydd meddygol cyffredinol hwnnw,

(ii) un neu ragor o bractisau sy'n arweinwyr ar glystyrau, mewn perthynas â chleifion cofrestredig y practis sy'n arwain clwstwr a chleifion cofrestredig yr ymarferwyr meddygol cyffredinol hynny, os oes rhai, sy'n rhan o'r clwstwr nad ydynt wedi cytuno i gyflwyno'r Cynllun i'w cleifion cofrestredig o fewn y cyfnod sy'n ofynnol gan y bwrdd iechyd lleol, a hynny'n unol ag is-baragraff (i),

(iii) ymarferydd meddygol cyffredinol sydd wedi cytuno i gyflawni'r Cynllun yn unol ag is-baragraff (i) mewn perthynas â chleifion cofrestredig ymarferydd meddygol cyffredinol arall neu grŵp o ymarferwyr meddygol cyffredinol, yn ddarostyngedig i gytundeb yr ymarferydd meddygol cyffredinol arall neu grŵp o ymarferwyr meddygol cyffredinol;

(c) optegydd; neu

(d) fferyllydd.

Gweithdrefn

Nid yw'n ddarostyngedig i un o weithdrefnau'r Senedd – nid oes rhaid gosod y Cyfarwyddydau gerbron y Senedd.

Gwaith craffu o dan Reol Sefydlog 21.7

Nodir un pwynt i gyflwyno adroddiad arno o dan Reol Sefydlog 21.7 mewn perthynas â'r Cyfarwyddydau hyn.

Nodwn y pwerau eang sydd gan Weinidogion Cymru o dan Ddeddf y Gwasanaeth Iechyd Gwladol (Cymru) 2006, gan gynnwys y pŵer i roi cyfarwyddydau i fyrddau iechyd lleol yng Nghymru sy'n ymwneud â'r gwasanaeth iechyd.

Yn benodol, nodwn fod y pŵer i roi cyfarwyddydau yn ddigon eang i ganiatáu i Weinidogion Cymru gyfarwyddo byrddau iechyd lleol i baratoi cynllun brechu cenedlaethol i ymdrin â phandemig y coronafeirws, heb fod angen deddfwriaeth sylfaenol nac is-ddeddfwriaeth y mae'n rhaid ei gosod gerbron y Senedd.

Ymateb y Llywodraeth

Nid oes angen ymateb gan Lywodraeth Cymru.

Cynghorwyr Cyfreithiol
Y Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad
18 Ionawr 2021

SUBORDINATE LEGISLATION

WG No. 20-XX

THE NATIONAL HEALTH SERVICE (WALES) ACT 2006

The Primary Care (Oxford/AstraZeneca Vaccine COVID-19 Immunisation Scheme) Directions 2020

Made	**** December 2020*
Coming into force	**** December 2020*

The Welsh Ministers, in exercise of the powers conferred on them by sections 10, 12(3) and 203(9) and (10) of the National Health Service (Wales) Act 2006(**1**), make the following Directions.

Title, application and commencement

1.—(1) The title of these Directions is the Primary Care (Oxford/AstraZeneca Vaccine COVID-19 Immunisation Scheme) Directions 2020.

(2) These Directions are given to Local Health Boards.

(3) These Directions come into force immediately after they are signed.

Interpretation

2. In these Directions—

"the Act" ("*y Deddf*") means the National Health Service (Wales) Act 2006;

"cluster" ("*clwstwr*") means a group of local service providers involved in health and care who have agreed to collaboratively work together to deliver primary medical services across a specified geographical area;

"cluster lead practice" ("*practis arweiniol y clwstwr*") means a general medical practitioner that

(**1**) 2006 c. 42.

has agreed to provide the Scheme to its registered patients, and to the registered patients of a general medical practitioner in its cluster that is not an engaged provider, and which the Local Health Board agrees will be a cluster lead practice;

"corporate optician" ("") means a body corporate registered in the register of bodies corporate maintained under section 9 of the Opticians Act 1989(**1**), which is carrying on business as an optometrist;

"dentist" ("*deintydd*") means a dental practitioner who is registered in the dentists register;

"dentists register" ("") means the register referred to in section 14(1) of the Dentists Act 1984(**2**);

"engaged provider" ("XX *â chytundeb*") means a dentist, general medical practitioner (whether acting for itself, as a cluster lead practice or on behalf of another practice or group of practices), optician or pharmacist that agrees with a Local Health Board to provide services under the Scheme pursuant to an arrangement made in accordance with Direction 4;

"general medical practitioner" ("") means a medical practitioner whose name is included in the General Practitioner Register kept by the General Medical Council under section 34C of the Medical Act 1983(**3**);

"health care professional" ("*gweithiwr gofal iechyd proffesiynol*") means a person who is a member of a profession regulated by a body mentioned in section 25(3) of the National Health Service Reform and Health Care Professions Act 2002(**4**);

"Local Health Board" ("*Bwrdd Iechyd Lleol*") means a Local Health Board established under section 11 of the Act (local health boards);

"optician" means a person registered in the register of optometrists maintained under section 7 (register of opticians) of the Opticians Act 1989 or in the register of visiting optometrists from relevant European States maintained under section 8B(1)(a) of that Act, or a corporate optician;

"pharmacist" ("*fferyllydd"*) means a person who is—

(**1**) 1989 c. 44.
(**2**) 1984 c. 24, amended by S.I. 2005/2011 and S.I. 2007/3101.
(**3**) 1983 c. 54. Section 34C was inserted by paragraph 10 of Schedule 1 to the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2010 (S.I. 2010/234).
(**4**) 2002 c. 17.

(a) registered in Part 1 of the General Pharmaceutical Council Register(**1**) or in the register maintained under Articles 6 and 9 of the Pharmacy (Northern Ireland) Order 1976(**2**), or

(b) lawfully carrying on a retail pharmacy business in accordance with section 69 of the Medicines Act 1968, and

whose name is included in a pharmaceutical list under regulation 10 (preparation and maintenance of pharmaceutical lists) of the National Health Service (Pharmaceutical Services) (Wales) Regulations 2020, for the provision of pharmaceutical services in particular by the provision of drugs;

"registered patient" ("*claf cofrestredig*") means—

(a) a person who is recorded by the Local Health Board as being on a general medical practitioner's list of patients, or

(b) a person whom the general medical practitioner has accepted for inclusion on its list of patients, whether or not notification of that acceptance has been received by the Local Health Board and who has not been notified by the Local Health Board as having ceased to be on that list;

"Oxford/AstraZeneca Vaccine Primary Care COVID-19 Immunisation Scheme Specification" ("") means the Oxford/AstraZeneca Vaccine Primary Care COVID-19 Immunisation Scheme Specification at the Schedule to these Directions;

"Scheme" ("y *Cynllun*") means the Oxford/AstraZeneca Vaccine Primary Care COVID-19 Immunisation Scheme established by a Local Health Board in accordance with Direction 3;

"the vaccine" ("") means the (ChAdOx1 nCoV-19) (Oxford) Vaccine.

Establishment of an Oxford/AstraZeneca Vaccine Primary Care COVID-19 Immunisation Scheme

3.—(1) Each Local Health Board must establish, operate and, as appropriate, revise an Oxford/AstraZeneca Vaccine Primary Care COVID-19 Immunisation Scheme.

(2) The underlying purpose of the Scheme is to enable the provision of services to administer the vaccine as part of the health service in Wales by dentists, general medical practitioners, opticians and pharmacists.

(**1**) Maintained under article 19 (establishment, maintenance of and access to the Register) of the Pharmacy Order 2010 (S.I. 2010/231).
(**2**) S.I. 1976/1213 (N.I.22).

Oxford/AstraZeneca Vaccine Primary Care COVID-19 Immunisation Scheme

4. As part of its Scheme, each Local Health Board may enter into arrangements for the provision of services in accordance with the Oxford/AstraZeneca Vaccine Primary Care COVID-19 Immunisation Scheme Specification with—

(a) a dentist;

(b) a general medical practitioner—

(i) in relation to the registered patients of that general medical practitioner,

(ii) one or more cluster lead practices, in relation to the registered patients of the cluster lead practice and the registered patients of those general medical practitioners, if any, in its cluster that have not agreed within such time period as the Local Health Board requires, to deliver the Scheme to their registered patients pursuant to sub-paragraph (i),

(iii) a general medical practitioner that has agreed to deliver the Scheme pursuant to sub-paragraph (i) in relation to the registered patients of another general medical practitioner or group of general medical practitioners, subject to the agreement of the other general medical practitioner or group of general medical practitioners;

(c) an optician; or

(d) a pharmacist.

5. Where the registered patients of a general medical practitioner will not receive the services under the Scheme, either from the general medical practitioner in relation to whom they are registered patients, or from a cluster lead practice, the Local Health Board must make arrangements to ensure the provision of the services to the registered patients of that general medical practitioner as close to the practice premises of that general medical practitioner as is reasonably practicable and the Local Health Board may deliver the services under the Scheme to those patients in any way it believes is appropriate (including, but not limited to, by providing the services itself or arranging for the delivery of those services by any engaged provider).

6. An arrangement made between a cluster lead practice and a Local Health Board in accordance with direction 4(b)(ii) must include a requirement that each engaged provider co-operates with the other engaged providers and the cluster lead practice in its cluster in order for the cluster lead practice to complete, by such date as the Local Health Board requires, a plan setting out the arrangement for the delivery of the services under the Scheme to all registered patients of the general medical practitioners across the cluster

(whether or not a general medical practitioner is a member of the cluster is an engaged provider or not).

7.—(1) Where arrangements are made between a Local Health Board and an engaged provider, those arrangements must include—

(a) a requirement that the engaged provider—

(i) reads and takes account of these Directions alongside complying with the Oxford/AstraZeneca Vaccine Primary Care COVID-19 Immunisation Scheme Specification and its appendices which together provide the detailed requirements for the Scheme;

(ii) maintains and keeps up to date a record on the Welsh Immunisation System of all persons receiving treatment under the Scheme;

(iii) provides the services outlined in the Oxford/AstraZeneca Vaccine Primary Care COVID-19 Immunisation Scheme Specification and, where applicable, in line with the plan specified in direction 6;

(b) a requirement that the engaged provider takes all reasonable steps to ensure that the lifelong medical records held by the general medical practitioner with whom the person receiving the vaccine is a registered patient are kept up-to-date with regard to that person's immunisation status, and in particular to include—

(i) any refusal of an offer of vaccination,

(ii) where an offer of vaccination was accepted—

(aa) details of the consent to the vaccination or immunisation (where a person has consented on another person's behalf, the relationship to the person receiving the vaccine must also be recorded),

(bb) the batch number, expiry date and title of the vaccine,

(cc) the dose of the vaccine administered,

(dd) the name of the person drawing up the vaccine,

(ee) the name of the person administering the vaccine (if different to the person in (dd)),

(ff) the date and time the vaccine was administered,

(gg) the route of administration and the injection site of each dose of the vaccine,

(hh) any contraindications to the vaccination or immunisation, and

(ii) any adverse reactions to the vaccination or immunisation;

(c) a requirement that the engaged provider ensures that it adheres to the current guidance on "Storage, distribution and disposal of vaccines in the latest edition of the "Green Book"(**1**) and has the minimum necessary security requirements specified in paragraph 8(cc) to (gg) of the Oxford/AstraZeneca Vaccine Primary Care COVID-19 Immunisation Scheme Specification;

(d) a requirement that the engaged provider—

(i) supplies Public Health Wales with information on persons they have administered the vaccine to, via automated data extraction, for the purpose of monitoring local and national uptake;

(ii) supplies NHS Wales Shared Services Partnership, via the Welsh Immunisation System, with information on persons who have received the vaccine, for payment and post payment verification purposes;

(iii) provides data, subject to paragraph (iv) below, to the cluster lead practice of a cluster (where applicable), Local Health Boards and Welsh Government when required;

(iv) ensures consistent coding for capture of data and compliance with relevant information governance legislation;

(v) ensures that each health care professional involved in the provision of services under the Scheme has the necessary skills, training, competence and experience in order to provide those services;

(vi) ensures that each health care professional involved in the provision of services under the Scheme completes any relevant training provided by Public Health Wales and that the engaged provider keeps a record to confirm that each health care professional has undertaken the relevant training prior to participating in the administration of vaccinations;

(vii) ensures each health care professional involved in the provision of services under the Scheme completes relevant CPD activity through, for example, regular educational updates, attendance at relevant courses

(**1**) "Green Book" means 'Immunisation against infectious disease' at http://immunisation.dh.gov.uk/category/the-green-book/

provided by the Local Health Boards, as well as self-directed learning, to be able to demonstrate they have adequate knowledge and skills through their annual appraisal and revalidation;

(viii) ensures that each health care professional involved in the provision of services under the Scheme is adequately indemnified / insured for any liability arising from the work performed;

(ix) ensures that any person involved in the administration of the vaccine who is not a health care professional—

(aa) is authorised, listed, referred to or otherwise identified by reference to the Human Medicines (Coronavirus and Influenza) (Amendment) Regulations 2020,

(bb) is supervised by a health care professional who satisfies the criteria in sub-paragraphs (v) to (viii) while preparing and/or administering vaccinations,

(cc) has completed the online COVID-19 specific training modules available on the e-learning for health website when available,

(dd) has the necessary skills and training to administer vaccines in general, including completion of the general immunisation training available on e-learning for health and face-to-face administration training, where relevant, and

(ee) has the necessary skills and training, including training with regard to the recognition and initial treatment of anaphylaxis;

(x) in accordance with paragraph 9 of the Oxford/AstraZeneca Vaccine Primary Care COVID-19 Immunisation Scheme Specification gives at least 4 weeks' notice in writing prior to terminating their provision of the Scheme;

(xi) supplies its Local Health Board with such information as the Local Health Board may reasonably request for the purposes of monitoring the performance of obligations under the Scheme and, where applicable, the cluster's performance in relation to the plan specified in direction 6; and

(xii) completes an annual report of outcomes by 31 March each year;

(e) payment arrangements for an engaged provider which must provide for it to be able to claim, in accordance with paragraph 7 of the Oxford/AstraZeneca Vaccine Primary Care COVID-19 Immunisation Scheme Specification, a payment of—

(i) £12.58 per vaccine administered, and

(ii) £400 per 1,000 vaccines administered.

(2) Any disputes arising as a result of provision of services under the Scheme will be dealt with in accordance with paragraph 10 of the Oxford/AstraZeneca Vaccine Primary Care COVID-19 Immunisation Scheme Specification.

(3) Where the Local Health Board delivers the Scheme pursuant to an arrangement in accordance with Direction 6, the Local Health Board must ensure that paragraphs (1) and (2) apply to such arrangements as they would to an engaged provider.

Signed by Alex Slade, Deputy Director, Primary Care Division under the authority of the Minister for Health and Social Services, one of the Welsh Ministers

Dated: 18 December 2020

Schedule
Oxford / AstraZeneca Vaccine
Primary Care COVID-19
Immunisation Scheme Specification

1. Introduction

The long term response to the COVID-19 pandemic requires the deployment of a safe and effective vaccine with enough uptake in the 'at risk' and overall population to protect individual patients and reduce the burden on and risk to NHS services. Rapid progress has been made. UK governments have announced the advanced purchase of four different COVID-19 vaccine technologies, totalling 350 million doses, including the Oxford / AstraZeneca Vaccine*,* a collaboration between Oxford University and AstraZeneca.

Planning for delivery is exceptionally challenging due to the emerging nature of data on vaccine characteristics and of developing understanding of which individuals are most at risk of severe COVID-19 infection. The overall Wales Programme Covid 19 Vaccination strategic intent is to immunise as many eligible individuals, as swiftly as possible, safely with minimum waste.

Primary Care in Wales has an excellent track record of delivering immunisation programmes, and has the skilled and experienced workforce necessary to deliver a COVID-19 vaccination programme. Successful delivery will require significant resources to deliver a mass vaccination programme with additional workforce, venues, logistics and data management solutions to ensure safe and timely vaccine deployment.

This Primary Care COVID-19 Immunisation Scheme Specification specifically relates to the administration of the Oxford / AstraZeneca Vaccine by Primary Care providers, defined for the purpose of this specification as "engaged providers".

2. Background

SARS-CoV-2 virus is the official name of the strain of coronavirus that causes the disease known as COVID-19. When a human is exposed to the SARS-CoV-2 virus, spike glycoprotein (S) found on the surface of the virus binds to ACE2 receptors on human cells to gain entry to the cells and cause an infection. Early vaccines act by boosting the ability of the body to recognise and develop an immune response to the spike protein, and this will help stop the SARS-CoV-2 virus from entering human cells and therefore prevent infection.

Vaccinating people against the SARS-CoV-2 virus is key to reducing the severe morbidity and mortality it causes and providing a long term solution to controlling the current COVID-19 pandemic. When safe and effective vaccines against COVID-19 are available it is essential that they are delivered quickly to those who need it.

The Oxford / AstraZeneca Vaccine is a non-replicating viral vector vaccine made from a weakened version of a common cold virus (adenovirus) that causes infections

in chimpanzees. The virus has been genetically changed so that it is impossible for it to replicate in humans. Assuming successful trials demonstrate effectiveness and safety, and exemption or licensure, which are currently uncertain, it's expected the Oxford / AstraZeneca Vaccine will be available from January 2021.

Vaccine supply to Wales is being managed centrally by Welsh Government in conjunction with Local Health Boards. Engaged providers who participate in the Primary Care COVID-19 Immunisation Scheme (PCCIS) will not be required to purchase any stock of the vaccine. Supplies of the Oxford / AstraZeneca Vaccine will be delivered regularly but in limited quantities over several months and so care must be taken to ensure that the most vulnerable have adequate access before the general population. All vaccines will be free and mandatory vaccination is not planned. Private supplies of vaccine will not be available.

A Patient Group Direction for administering COVID-19 vaccine has been authorised by each HB.

The Human Medicines (Coronavirus and Influenza) (Amendment) Regulations 2020 (https://www.legislation.gov.uk/uksi/2020/1125/pdfs/uksi_20201125_en.pdf) also allow the vaccine to be administered according to a two-step national protocol using registered trained and competent healthcare professionals to carry out the clinical assessment, consent and preparation and a suitably trained non registered trained and competent member of staff will be able to administer the vaccine itself under clinical supervision by a registered healthcare professional. The Regulations do not specify who these non-registered vaccinators might be. This will be covered in the protocol which will be published soon.

Those persons engaged in delivery of the PCCIS will be covered by existing indemnity arrangements pursuant to regulation 8 of the NHS (Clinical Negligence Scheme) (Wales) Regulations 2019.

3. Primary Care COVID-19 Immunisation Scheme Aims

The Primary Care COVID-19 Immunisation Scheme (PCCIS) will provide a mechanism for Primary Care providers to enter in to an arrangement with their Local Health Board ("the relevant LHB") to enable the provision of services to administer the Oxford / AstraZeneca Vaccine as part of the health service in Wales and the wider COVID-19 vaccination programme led by Local Health Boards.

4. Cluster Working

Engaged providers are strongly encouraged to work collectively within cluster groupings, whether or not these have previously been in place and irrespective of which primary care services a provider usually provides, to increase the vaccine administration rates. For example, for a general medical practitioner this may mean administering vaccinations to people who are not registered with the provider administering the vaccine, whilst for other providers, it could also mean administering vaccines at venues away from their normal working location.

5. Eligible Cohorts for Vaccination under the Primary Care COVID-19 Immunisation Scheme

The Joint Committee on Vaccination and Immunisation (JCVI) advises UK health departments on immunisation and will determine eligibility for specific COVID-19 vaccines. However, prioritisation amongst the eligible groups will depend on vaccine characteristics and advice from the JCVI. This means that the use of the Oxford / AstraZeneca Vaccine needs to be considered as part of the wider COVID-19 vaccination programme, where multiple vaccines and multiple models of delivery are in use. JCVI priority groups are listed in Appendix A.

Consequently, **this PCCIS only relates to those specific eligible groups as determined by the contracting Local Health Board based on the JCVI advice**. Engaged providers who participate in this PCCIS should ensure all of their staff are aware of which groups are eligible for vaccination under this PCCIS and the prioritised sequence for delivery. Vaccination outside of these specific eligible groups will not receive payments under this PCCIS.

For full details of vaccination against COVID-19, healthcare practitioners should refer to the relevant chapters of the Green Book “Immunisation against infectious disease” at:

https://www.gov.uk/government/collections/immunisation-against-infectious-disease-the-green-book

and MHRA authorisation documents COVID-19 - GOV.UK (www.gov.uk)

6. Conditions for Service Delivery

In order for a primary care provider to be considered for participation in this PCIS, all of the following conditions must be met:

a. There must be an up-to-date and appropriate level of equipment for **resuscitation and anaphylaxis,** specifically adrenaline, at any site where vaccination occurs.
b. All persons who are involved in administration of vaccinations must be;
    I. adequately **trained** in administration of multi-dose vaccinations, vaccine storage, handling, security and assessment and management of **resuscitation, anaphylaxis and aseptic no-touch techniques**, and
    II. **trained in the use of PPE, be supplied with and wear the appropriate PPE** for the setting in which they are working.
c. All venues where vaccination occurs must have **been risk-assessed for transmission of coronavirus, based on local guidance,** and action taken to reduce risk where possible.
d. Patients who for the purposes of this specification shall be defined to mean a person who will be or has been administered the vaccine under the PCCIS, should be advised in advance not to attend if feeling unwell. Nonetheless, some patients may present to the

vaccination location unwell, or may become unwell whilst attending the vaccination location. Facilities must be in place for the assessment and management of patients who are unwell, this must include resources to manage fainting and anaphylaxis/cardiac arrest to a primary care level of skill. Reliance on 999 Paramedics is not appropriate

e. The engaged provider and any person involved in the administration of the Oxford / AstraZeneca Vaccine must have undertaken an appropriate training program specific to the vaccine being used. Public Health Wales has provided an e-learning module: https://www.e-lfh.org.uk/programmes/covid-19-vaccination/
f. Primary care providers are encouraged to collaborate with other primary care providers both within existing clusters but also, where necessary, to form new clusters specifically to deliver this PCCIS, which can be with providers outside of their own profession, if they have not already done so.
g. A clinical record of immunisation with COVID-19 vaccine must be entered onto the Welsh Immunisation System (WIS). Arrangements are being made at UK level with GP system providers for the Welsh Immunisation System (and NHSE NIMS) to populate patient records automatically, to avoid double entry.

7. Payment for administration of the (ChAdOx1 nCoV-19) (Oxford) COVID-19 Vaccine under the Scheme

a. The Local Health Board must pay to an engaged provider who qualifies for the payment in accordance with paragraphs b to p, a payment of—

(i) £12.58 in respect of each dose of the vaccine administered to a person under the Scheme, and

(ii) £400 for every 1,000 vaccines administered under the Scheme.

Eligibility for payment

b. A dentist, general medical practitioner, optician or pharmacist is only eligible for a payment for provision of services under the Scheme in circumstances where the following conditions are met—

i. they are an engaged provider,
ii. the person in respect of whom the payment is claimed was allocated to the engaged provider by the Local Health Board with whom the engaged provider has an agreement to provide services under the Scheme,
iii. all required details have been entered on to the Welsh Immunisation System to create a clinical record of immunisation with the vaccine for each person in respect of whom a payment is being claimed by the engaged provider,
iv. the engaged provider does not receive any payment from any other source in respect of the vaccine (if the engaged provider does receive payments from other sources in respect of any person, the Local Health Board must consider whether to recover any payment made under the Scheme in respect of that person

pursuant to sub-paragraphs j and k (overpayments and withheld amounts), and

v. the engaged provider creates the clinical record on the Welsh Immunisation System at point of administration of each dose.

c. An engaged provider is not entitled to receive payment of more than £25.16 in respect of any one person under the Scheme.

Payment

d. The engaged provider will receive an automatic payment based on information recorded on the Welsh Immunisation System in respect of each person who has received a vaccine and, where applicable, for every 1,000 vaccines administered, and the activity of the engaged provider will be captured by NHS Wales Shared Services Partnership as at the tenth day of each calendar month.

e. Any amount payable in accordance with sub-paragraph d falls due following the expiry of 14 days after the activity is captured under sub-paragraph d—
   i. in the case of a GDS contractor, on the next date when the GDS contractor's payable monthly Annual Contract Value Payment falls due in accordance with the relevant GDS Statement of Financial Entitlements;
   ii. in the case of a GMS contractor, on the next date when the GMS contractor's Global Sum monthly payment falls due in accordance with the relevant Statement of Financial Entitlements;
   iii. in the case of a GOS contractor, on the date in the next month when the GOS contractor's General Ophthalmic Services monthly reimbursement falls due in accordance with the Statement of Remuneration;
   iv. in the case of a pharmacist, on the next date when the pharmacist receives any other payments due under the Drug Tariff, and
   v. in the case of any other engaged provider, no later than 8 weeks beginning with the date on which the engaged provider creates or updates the clinical record on the Welsh Immunisation System or as otherwise may be agreed between the Local Health Board and the engaged provider.

f. The Local Health Board must ensure that the receipt and payment in respect of any automatic payments made pursuant to sub-paragraph d are properly recorded and that each such payment has a clear audit trail.

Conditions attached to payment

g. A payment under the provisions of these Directions is only payable if an engaged provider satisfies the following conditions;

i. in respect of each person for which a payment under the Scheme is claimed, the engaged provider has supplied the Local Health Board, via the Welsh Immunisation System, with—
    a. the name of the person,
    b. the date of birth of the person,
    c. the NHS number, where known, of the person,
    d. the date each dose of the vaccine is administered

h. to the Local Health Board may request from an engaged provider any information which the Local Health Board does not have but needs, and the engaged provider either has or could be reasonably expected to obtain, in order for the Local Health Board to form an opinion on whether the engaged provider is eligible for payment under the provisions of the Scheme,

i. the Local Health Board may, in appropriate circumstances, withhold payment of any, or any part of, payments due under the Scheme if an engaged provider breaches any of these conditions.

Overpayments and withheld amounts

j. If the Local Health Board makes a payment to an engaged provider pursuant to the Scheme and;
    i. the engaged provider was not entitled to receive all or part thereof, whether because it did not meet the entitlement conditions for the payment or because the payment was calculated incorrectly (including where a payment on account overestimates the amount that is to fall due);
    ii. the Local Health Board was entitled to withhold all or part of the payment because of a breach of a condition attached to the payment, but is unable to do so because the money has already been paid; or
    iii. the Local Health Board is entitled to repayment of all or part of the money paid,
    iv. the Local Health Board may recover the money paid by deducting an equivalent amount from any payment payable pursuant to these Directions, and where no such deduction can be made, it is a condition of the payments made pursuant to these Directions that the engaged provider must pay to the Local Health Board that equivalent amount.

k. Where the Local Health Board is entitled pursuant to sub-paragraph j to withhold all or part of a payment because of a breach of a payment condition, and the Local Health Board does so or recovers the money by deducting an equivalent amount from another payment made in accordance with sub-paragraph b, it may, where it sees fit to do so, reimburse the engaged provider the amount withheld or recovered, if the breach is cured.

Underpayments and late payments

l. If the full amount of a payment that is payable pursuant to the Scheme has not been paid before the date on which the payment falls due, then unless;
   i. this is with the consent of the engaged provider; or
   ii. the amount of, or entitlement to, the payment, or any part thereof, is in dispute,

once it falls due, it must be paid promptly.

m. If the engaged provider's entitlement to the payment is not in dispute but the amount of the payment is in dispute, then once the payment falls due, pending the resolution of the dispute, the Local Health Board must;
   i. pay to the engaged provider, promptly, an amount representing the amount that the Local Health Board accepts that the engaged provider is at least entitled to, and
   ii. thereafter pay any shortfall promptly, once the dispute is finally resolved.

n. However, if an engaged provider has;
   i. not claimed a payment to which it would be entitled pursuant to the Scheme if it claimed the payment; or
   ii. claimed a payment to which it is entitled pursuant to the Scheme but a Local Health Board is unable to calculate the payment until after the payment is due to fall due because it does not have the information it needs in order to calculate that payment (all reasonable efforts to obtain the information having been undertaken),

   that payment is (instead) to fall due on the first working day of the month after the month during which the Local Health Board obtains the information it needs in order to calculate the payment.

Payments on account

o. Where the Local Health Board and the engaged provider agree (but the Local Health Board's agreement may be withdrawn where it is reasonable to do so and if it has given the engaged provider reasonable notice thereof), the Local Health Board must pay to an engaged provider on account any amount that is;
   i. the amount of, or a reasonable approximation of the amount of, a payment that is due to fall due pursuant to the Scheme; or
   ii. an agreed percentage of the amount of, or a reasonable approximation of the amount of, a payment that is due to fall due pursuant to the Scheme, and if that payment results in an overpayment in respect of the payment, sub-paragraphs j and k apply.

Post payment verification

p. Post payment verification(**9**) applies to the provision of services under the Scheme.

8. Scheme Specification

Agreement of Eligible Cohorts

a. The relevant LHB will develop a proactive and preventative approach to offering the Oxford / AstraZeneca Vaccine by adopting robust call and reminder systems to contact individuals within eligible cohorts, with the aims of—
    i. maximising uptake in the interests of those persons, and
    ii. meeting any public health targets in respect of the administration of the Oxford / AstraZeneca Vaccine .

The engaged provider must agree with the relevant LHB to;

b. participate in a scheme to maximise the vaccination of specific cohorts of the population with the Oxford / AstraZeneca Vaccine **listed in Appendix A;**
c. accept the order of the cohorts and timescale over which the vaccines will be administered; and
d. in the case of general medical practitioners, vaccinate appropriate people who are not registered with their practice.

Publicity & Promotion

e. The engaged provider must **prominently display provided materials** advertising the availability of the Oxford / AstraZeneca vaccinations for eligible groups. This should include displaying advertisements on the premises website, using social media as well as inside the premises.
f. **Booking** of the first appointments for vaccination and any appointments for second vaccinations, will be according to local policy set by the Health Board and the Welsh Immunisation System will be used.

Model for Delivery

g. The **engaged provider and LHB must agree the timing and location of the vaccination clinic sessions**
h. The engaged provider is actively encouraged to **work collaboratively with other engaged providers** in a cluster to share resources and maximise efficiencies to deliver the PCCIS.
i. The engaged provider **must notify the relevant LHB of the number of vaccination slots they have available and of all vaccination clinic sessions** start and finish times, and their locations, at least 14 days in advance.
j. **Vaccination appointments and number of people per session will be agreed between the LHB and engaged provider** and will be in multiples of 8 or 10 doses, depending on vial supplier to minimise waste

(**9**) For more information on post payment verification, please see; https://nwssp.nhs.wales/ourservices/primary-care-services/general-information/post-payment-verification-ppv/

as the Oxford / AstraZeneca Vaccine is contained within a multi-dose vial.

k. The engaged provider must **administer the Oxford / AstraZeneca Vaccine to those persons allocated to them by the relevant LHB in accordance with the Directions and this PCCIS**, after obtaining consent, and following guidance in the Green Book.

l. The engaged provider must ensure that all persons who receive vaccinations are eligible under the cohorts and suitable clinically in accordance with law and guidance;

    i. Informed consent is obtained by a registered healthcare professional and the Patient's consent to the vaccination (or the name of the person who gave consent to the vaccination and that person's relationship to the Patient) must be recorded in accordance with law and guidance;

m. Consent obtained in accordance with paragraph k(i) must be recorded (as appropriate) for any necessary information sharing with the relevant LHB in accordance with data protection law and guidance;

n. Engaged providers must ensure a person receives a complete course of the same vaccine, unless in exceptional circumstances in which, for a person attending for a second vaccination, that first vaccine type is not available, or the vaccine type received is not known.

o. Engaged providers must:

    i. ensure the correct dosage of the vaccine is administered, as clinically appropriate;

    ii. that they comply with relevant guidance issued by JCVI on, but not limited to:

        1. which vaccine is the most suitable for each cohort of people;
        2. the relevant maximum and minimum intervals (as applicable) for administration of each vaccination;
        3. the relevant vaccination time limitations and expiry date following reconstitution;
        4. the number of doses of each vaccine required to achieve the desired immune response; and
        5. any other relevant guidance relating to the administration of the different types of vaccine and the different cohorts from time to time.

Persons involved in administering the vaccine

p. The engaged provider must ensure that vaccinations are administered only by a person permitted to do so in accordance with the Human Medicines Regulations 2012 as amended by the Human Medicines (Coronavirus and Influenza) (Amendment) Regulations 2020, including under a relevant Patient Group Direction or under a National Protocol approved by Welsh Ministers.

q. All healthcare professionals administering the vaccine, must have:

    i. read and understood the clinical guidance available at http://nww.immunisation.wales.nhs.uk/covid-19-vaccination-programme

ii. completed the additional online COVID-19 specific training modules available on the e-learning for health website when available. Engaged providers will be expected to oversee and keep a record to confirm that all persons administering the vaccines have undertaken the training prior to participating in vaccinations;
iii. the necessary experience, skills, training and competency to administer vaccines in general, including completion of the general immunisation training available on e-learning for health and face-to-face administration training, where relevant;
iv. the necessary experience, skills, training and competency to administer vaccines in general, including training with regard to the recognition and initial treatment of anaphylaxis; and
v. ensured that registered healthcare professionals were involved in the preparation (in accordance with the manufacturer's instructions) of the vaccine(s) unless unregistered staff have been trained to do this.

r. All other persons administering the vaccine, must:
i. be authorised, listed, referred to or otherwise identified by reference to The Human Medicines (Coronavirus and Influenza) (Amendment) Regulations 2020, including under a relevant Patient Group Direction or National Protocol approved by Welsh Ministers;
ii. while preparing and/or administering vaccinations be supervised by a healthcare professional fulfilling the requirements of paragraph p, above;
iii. have completed the additional online COVID-19 specific training modules available on the e-learning for health website when available. Engaged providers must oversee and keep a record to confirm that all staff have undertaken the training prior to participating in administration of the vaccination. This includes any additional training associated with new vaccines that become available while this PCCIS is in operation;
iv. have the necessary skills and training to administer vaccines in general, including completion of the general immunisation training available on e-learning for health and face-to-face administration training, where relevant; and
v. the necessary skills and training, including training with regard to the recognition and initial treatment of anaphylaxis.

s. Engaged providers must ensure that all vaccines are received, stored, prepared and subsequently transported (where appropriate) in accordance with the relevant manufacturer's, Public Health Wales and Local Health Board instructions and all associated Standard Operating Procedures, including that all refrigerators in which vaccines are stored have a maximum/minimum thermometer and that the readings are taken

and recorded from that thermometer on all working days and that appropriate action is taken when readings are outside the recommended temperature. Appropriate procedures must be in place to ensure stock rotation, monitoring of expiry dates and appropriate use of multi-dose vials to ensure that wastage is minimised and certainly does not exceed 5% of the total number of vaccines supplied. Wastage levels will be reviewed by the relevant LHB on an ongoing basis. Where wastage exceeds 5% of the vaccines supplied and that wastage is as a result of supply chain or relevant LHB fault, those vaccines shall be removed from any wastage calculations when reviewed by the relevant LHB on an ongoing basis.

t. Engaged providers must ensure that services are accessible, appropriate and sensitive to the needs of all persons. No person allocated by a relevant LHB shall be excluded or experience particular difficulty in accessing and effectively using this PCCIS due to a protected characteristic, as outlined in the Equality Act (2010) – this includes Age, Disability, Gender Reassignment, Marriage and Civil Partnership, Pregnancy and Maternity, Race, Religion or Belief, Sex or Sexual Orientation.

Record-keeping

u. The engaged provider must use the **Welsh Immunisation System (WIS);**
    i. for recording consent for vaccination,
    ii. for noting any contraindications,
    iii. for recording when a vaccination has been given, including the batch number and expiry date,
    iv. for recording immediate adverse events,
    v. for providing evidence for payments under the PCCIS, including for Post Payment Verification.
    v. By using the Welsh Immunisation System (WIS), the record of vaccination of a person by the engaged provider will be sent electronically to the individuals GMS record
    w. The engaged provider must;
        i. supply Public Health Wales with information on persons who have received the vaccine, via the Welsh Immunisation System (WIS), for the purpose of monitoring local and national uptake;
        ii. supply NHS Wales Shared Services Partnership with information on persons who have received the vaccine, via the Welsh Immunisations System (WIS) for the purposes of payment, and/or post payment verification
        iii. provide data, to the cluster lead practice of a cluster (where applicable), Local Health Boards and Welsh Government when required; and
        iv. ensure consistent coding for capture of data and compliance with relevant information governance legislation.

Adverse Events

x. All adverse events relating to the vaccine **must** be
    1. reported to the MHRA using the Yellow Card scheme www.yellowcard.gov.uk
    2. And reported to the Health Board Primary Care Team (by using DATIX or the all Wales Concerns Management System, or existing local arrangements).

y. Although no data for co-administration of COVID-19 vaccine with other vaccines exists, in the absence of such data, first principles would suggest that interference between inactivated vaccines with different antigenic content is likely to be limited. Whilst there is no evidence of any safety concerns, the Oxford / AstraZeneca Vaccine should not be routinely offered at the same time as other vaccines. Engaged providers should refer to the available guidance which can currently be found here.

z. The engaged provider must ensure the person receiving the Oxford / AstraZeneca Vaccine has understood that failure to receive all recommended doses of the vaccine may render the vaccination ineffective and should ensure that a follow up appointment to receive the subsequent dose has been booked, acknowledging that in exceptional circumstances appointments may need to be moved, before administering the first dose of the vaccine.

Vaccine stock and consumables

aa.
    i. Vaccine supplies will be coordinated by the Health Board.
    ii. Consumables such as PPE, syringes and needles will be provided by the Health Board.

Publicity and Information Materials

bb. Publicity materials and information leaflets will be provided by the Health Board.

Security

cc. The security assessment related to delivery of the vaccine is continually evolving. In order to ensure the safety of patients, staff and the vaccine itself, engaged providers must have robust security measures in place.

dd. At this moment, at a minimum this must include:

1. Lockable temperature controlled storage (vaccine fridge). This can include adaptation to an existing fridge;
2. Lockable internal doors preventing access to vaccine storage by unauthorised persons;
3. Lockable external windows and doors;

4. An operational intruder alarm, preferably linked to an Alarm Receiving Centre; and
5. A robust and operational security process which all staff are aware of and are compliant with.

ee. All packaging must be destroyed or defaced in such a manner that prevents it being reused for any purpose. This includes the safe and secure disposal of empty vials to ensure they cannot be reused.

ff. Additional measures that should also be considered but are desirable, include:

1. Operational external CCTV covering all entry points;
2. External Lighting; and
3. Operational internal CCTV covering the location of the vaccine storage.

gg. Due to the continually changing nature of the COVID-19 pandemic and the resources and vaccines that the NHS is able to deploy, these security arrangements must be responsive and may be frequently updated as necessary, dictated by any changes in the threat assessment. Engaged providers are expected to be alive to this issue and committed to providing the best possible COVID-19 PCCIS.

9. Notice Period

Notice period for ending the agreement for service provision will be four weeks for the relevant LHB and the engaged provider, unless varied by mutual agreement between the LHB and engaged provider. Notice must be given in writing setting out detailed reasons.

The arrangements between an engaged provider and a relevant LHB may be terminated on any of the following events:

i. automatically when the COVID-19 vaccination programme comes to an end;

ii. the relevant LHB is entitled to require that the engaged provider withdraws from the arrangement

iii. the relevant LHB terminates the arrangement with the engaged provider by giving not less than 4 weeks' notice to the engaged provider;

iv. the relevant LHB is entitled to terminate the arrangement by giving not less than 4 weeks' notice where the engaged provider has failed to comply with any reasonable request for information

from the relevant LHB relating to the provision of the services pursuant to this PCCIS; or

v. Where the engaged provider cannot meet the requirements of this PCCIS it must withdraw from this PCCIS by serving written notice on the relevant LHB to that effect with supporting reasons as to why it cannot meet the requirements, such notice must be received by the relevant LHB no less than 4 weeks' prior to date on which the engaged provider wishes to withdraw its provision of services under the PCCIS.

The agreement cannot be terminated until any second completing dose has been administered to those persons who have received a first dose on the date the engaged provider or relevant LHB gives notice of termination.

10. Disputes

Local resolution of contract disputes

a. In the case of any dispute arising out of or in connection with the Scheme, the engaged provider and the Local Health Board must make every reasonable effort to communicate and cooperate with each other with a view to resolving the dispute, before referring the dispute for consideration and determination to the Welsh Ministers in accordance with the NHS dispute resolution procedure (or, where applicable, before commencing court proceedings) specified in paragraphs b to n of this section.

NHS dispute resolution procedure

b. The procedure specified in the following sub-paragraphs applies in the case of any dispute arising out of or in connection with the Scheme which is referred to the Welsh Ministers.

c. Any party wishing to refer a dispute as mentioned in sub-paragraph b must send to the Welsh Ministers a written request for dispute resolution which must include or be accompanied by—
   i. the names and addresses of the parties to the dispute;
   ii. a copy of any arrangement made under the Scheme; and
   iii. a brief statement describing the nature and circumstances of the dispute.

d. Any party wishing to refer a dispute as mentioned in sub-paragraph b must send the request under sub-paragraph c within a period of 3 years beginning with the date on which the matter giving rise to the dispute happened or should reasonably have come to the attention of the party wishing to refer the dispute.

e. The Welsh Ministers may determine the matter themselves or, if the Welsh Ministers consider it appropriate, appoint a person or persons to consider and determine it.

f. Before reaching a decision as to who should determine the dispute, under sub-paragraph e, the Welsh Ministers must, within 7 days beginning with the date on which a matter under dispute was referred to them, send a written request to the parties to make in writing, within a specified period, any representations which they may wish to make about the matter under dispute.

g. The Welsh Ministers must give, with the notice given under sub-paragraph f, to the party other than the one which referred the matter to dispute resolution a copy of any document by which the matter was referred to dispute resolution.

h. The Welsh Ministers must give a copy of any representation received from a party to the other party and must in each case request (in writing) a party to whom a copy of the representations is given to make within a specified period any written observations which it wishes to make on those representations.

i. Following receipt of any representations from the parties or, if earlier at the end of the period for making such representations specified in the request sent under sub-paragraph f or h, the Welsh Ministers must, if they decide to appoint a person or person to hear the dispute;
    i. inform the parties in writing of the name of the person or persons whom it has appointed; and
    ii. pass to the person or persons so appointed any documents received from the parties under or pursuant to paragraph c, f or h.

j. For the purpose of assisting the adjudicator in the consideration of the matter, the adjudicator may—
    i. invite representatives of the parties to appear before the adjudicator to make oral representations either together or, with the agreement of the parties, separately, and may in advance provide the parties with a list of matters or questions to which the adjudicator wishes them to give special consideration; or
    ii. consult other persons whose expertise the adjudicator considers will assist in the consideration of the matter.

k. Where the adjudicator consults another person under sub-paragraph j.ii., the adjudicator must notify the parties accordingly in writing and, where the adjudicator considers that the interests of any party might be substantially affected by the result of the consultation, the adjudicator must give to the parties such opportunity as the adjudicator considers reasonable in the circumstances to make observations on those results.

l. In considering the matter, the adjudicator must consider—

i. any written representations made in response to a request under sub-paragraph j, but only if they are made within the specified period;
ii. any written observations made in response to a request under sub-paragraph h, but only if they are made within the specified period;
iii. any oral representations made in response to an invitation under sub-paragraph j.i.;
iv. the results of any consultation under sub-paragraph j.ii.; and
v. any observations made in accordance with an opportunity given under sub-paragraph m.

m. In section 10 of this Specification, “specified period” means such period as the Welsh Ministers specify in the request, being not less than 2, nor more than 4, weeks beginning with the date on which the notice referred to is given, but the Welsh Ministers may, if they consider that there is good reason for doing so, extend any such period (even after it has expired) and, where they do so, a reference in this paragraph to the specified period is to the period as so extended.

n. Subject to the other provisions within section 10 of this Specification and to any agreement by the parties, the adjudicator has wide discretion in determining the procedure of the dispute resolution to ensure the just, expeditious, economical and final determination of the dispute.

Determination of dispute

o. The determination of the adjudicator and the reasons for it, must be recorded in writing and the adjudicator must give notice of the determination (including the record of the reasons) to the parties.

11. Application for Participation

Signature of engaged provider
Date

Appendix A

List of eligible cohorts that may be chosen by the LHB for inclusion in this PCIS:

1. residents in a care home for older adults and their carers
2. all those 80 years of age and over and frontline health and social care workers
3. all those 75 years of age and over
4. all those 70 years of age and over and clinically extremely vulnerable individuals
5. all those 65 years of age and over
6. all individuals aged 16 years to 64 years with underlying health conditions which put them at higher risk of serious disease and mortality
7. all those 60 years of age and over
8. all those 55 years of age and over
9. all those 50 years of age and over

Llywodraeth Cymru
Welsh Government

DATGANIAD YSGRIFENEDIG GAN LYWODRAETH CYMRU

TEITL **Rheoliadau Cynhyrchu Organig (Dynodiadau Organig) (Diwygio) (Ymadael â'r UE) 2020**

DYDDIAD **08 Ionawr 2021**

GAN **Rebecca Evans AS, Y Gweinidog Cyllid a'r Trefnydd**

SO30C – Hysbysiad mewn perthynas â'r Offerynnau Statudol a wnaed gan Weinidogion y DU mewn meysydd datganoledig o dan Ddeddf yr Undeb Ewropeaidd (Ymadael) na chawsant eu cyflwyno gerbron Senedd Cymru.

Rheoliadau Cynhyrchu Organig (Dynodiadau Organig) (Diwygio) (Ymadael â'r UE) 2020 ("Rheoliadau 2020")

Y gyfraith sy'n cael ei diwygio

Deddfwriaeth yr UE

- Rheoliad y Cyngor (CE) rhif 834/2007 ar gynhyrchu organig a labelu cynnyrch organig.

Unrhyw effaith y gall yr OS ei chael ar gymhwysedd deddfwriaethol Senedd Cymru a/neu gymhwysedd gweithredol Gweinidogion Cymru

Mae Rheoliadau 2020 yn gwneud mân ddiwygiadau technegol i ddeddfwriaeth uniongyrchol yr UE a ddargedwir i sicrhau y gall y ddeddfwriaeth hon weithio'n effeithiol ar ddiwedd y cyfnod pontio. Nid yw'n cael unrhyw effaith ar gymhwysedd gweithredol Gweinidogion Cymru nac ar gymhwysedd deddfwriaethol Senedd Cymru.

Diben y diwygiadau

Mae Rheoliadau 2020 yn sicrhau bod rheolau organig yn cael eu diweddaru i baratoi ar gyfer diwedd y cyfnod pontio trwy ddiwygio diffygion yn neddfwriaeth yr UE a ddargedwir.

Mae'r Rheoliadau a'u Memorandwm Esboniadol, sy'n disgrifio effeithiau'r diwygiadau, i gweld yma: https://www.legislation.gov.uk/uksi/2020/1669/made

Pam y cafodd cydsyniad ei roi

Mae cydsyniad wedi'i roi i Lywodraeth y DU wneud y cywiriadau hyn mewn cysylltiad â Chymru ac ar ei rhan ar faterion yn ymwneud â labelu organig er sicrhau effeithlonrwydd a hwylustod ac oherwydd natur dechnegol y diwygiadau. Ni fydd y diwygiadau'n newid polisi ar ôl ystyried yn llawn a gofalus y diwygiadau, yr asesiad o gyfarwyddiadau'r polisi a'r dadansoddiad cyfreithiol o'r gwaith drafftio. Bydd y diwygiadau hyn yn sicrhau bod y llyfr statud yn parhau'n ymarferol ar ddiwedd y Cyfnod Gweithredu.

Bydd Rheoliadau 2020 yn dilyn y 'weithdrefn gadarnhaol gwnaed ar frys' a ddisgrifir ym mharagraff 5 o Atodlen 7 Deddf yr Undeb Ewropeaidd (Ymadael) 2018. Yn unol â'r weithdrefn hon, caniateir gwneud Rheoliadau 2020 heb orfod cyflwyno drafft o'r offeryn gerbron dau Dŷ'r Senedd, a'i gymeradwy trwy benderfyniad ganddynt, cyn belled â bod y Gweinidog perthnasol yn datgan fod angen gwneud y rheoliadau hyn, gan eu bod yn fater o frys, heb orfod cyflwyno a chymeradwyo drafft ohonynt.

GWEINIDOGION Y DU SY'N GWEITHREDU MEWN MEYSYDD DATGANOLEDIG

214 - Rheoliadau Cynhyrchion Organig (Dynodyddion Organig) (Diwygio) (Ymadael â'r UE) 2020

Dyddiad gosod yn Senedd y DU: 5 Ionawr 2021

Sifftio	
Yn destun gwaith sifftio yn Senedd y DU?	Na
Gweithdrefn:	Gwneud Cadarnhaol
Dyddiad trafod gan Bwyllgor Offerynnau Statudol Ewropeaidd Tŷ'r Cyffredin	Amherthnasol
Dyddiad trafod gan Bwyllgor Craffu ar Is-ddeddfwriaeth Tŷ'r Arglwyddi	Amherthnasol
Dyddiad y daw'r cyfnod sifftio i ben yn Senedd y DU	Amherthnasol
Memorandwm Cydsyniad Offeryn Statudol (SICM) o dan Reol Sefydlog 30A (oherwydd eu bod yn diwygio deddfwriaeth sylfaenol)	Dim angen
Gweithdrefn graffu	
Canlyniad y broses sifftio	Amherthnasol
Gweithdrefn	Gwneud Cadarnhaol
Dyddiad trafod gan y Cydbwyllgor ar Offerynnau Statudol	Anhysbys
Dyddiad trafod gan Bwyllgor Offerynnau Statudol Tŷ'r Cyffredin	Anhysbys
Dyddiad trafod gan Bwyllgor Craffu ar Is-ddeddfwriaeth Tŷ'r Arglwyddi	Anhysbys

Cefndir

Gwnaed y Rheoliadau hyn gan Lywodraeth y DU yn unol ag adran 8(1) o Ddeddf yr Undeb Ewropeaidd (Ymadael) 2018, a pharagraff 21 o Atodlen 7 iddi.

Crynodeb

Mae'r Rheoliadau hyn yn gwneud diwygiadau gweithredol i ddeddfwriaeth yr UE a ddargedwir yn ymwneud â chynhyrchion organig, i sicrhau ei bod yn parhau'n gydlynol ac yn parhau i weithredu fel y bwriadwyd ar ôl i'r DU adael yr UE.

Mae'r Rheoliadau'n diwygio Rheoliad y Cyngor (EC) Rhif 834/2007 a ddargedwir ar gynhyrchu organig a labelu cynnyrch organig i sicrhau bod rheoliadau labelu organig yn gweithio mewn cyfraith ddomestig. Maent yn dileu'r gofyniad gorfodol i logo organig yr UE gael ei ddefnyddio ym Mhrydain Fawr ac yn nodi rheolau ar gyfer defnyddio unrhyw logo organig y Deyrnas Unedig pan gaiff ei ddatblygu. Mae'r offeryn hefyd yn diwygio'r

datganiad o darddiad amaethyddol i gyfeirio at y DU ac yn darparu bod yn rhaid ei ddefnyddio ar gynhyrchion organig Prydain Fawr hyd yn oed os nad oes logo y DU.

Datganiad gan Lywodraeth Cymru
Mae'r Cynghorwyr Cyfreithiol yn cytuno â'r datganiad a osodwyd gan Lywodraeth Cymru dyddiedig 8 Ionawr 2021 ynghylch effaith y Rheoliadau hyn.

Cytundeb Rhynglywodraethol ar Fil yr Undeb Ewropeaidd (Ymadael)
Mae'r crynodeb uchod a chynnwys y Memorandwm Esboniadol i'r Rheoliadau hyn yn cadarnhau eu heffaith.

Nid yw'r Cynghorwyr Cyfreithiol o'r farn bod unrhyw faterion arwyddocaol yn codi o dan baragraff 8 o'r Memorandwm ar Fil yr Undeb Ewropeaidd (Ymadael) a Sefydlu Fframweithiau Cyffredin mewn perthynas â'r Rheoliadau hyn.

Elin Jones AS, Llywydd
Senedd Cymru
Elin Jones MS, Presiding Officer
Welsh Parliament

Pwyllgor Gweithdrefnau
Tŷ'r Cyffredin
Llundain
SW1A 0AA
proccom@parliament.uk

Ein cyf: EJ/HoC

04 Ionawr 2021

Annwyl Gadeirydd,

Galwad am Dystiolaeth: gweithdrefn Tŷ'r Cyffredin a'r cyfansoddiad tiriogaethol

Rwy'n ysgrifennu yn rhinwedd fy rôl fel Llywydd Senedd Cymru – a elwir yn gyffredin y Senedd – mewn ymateb i wahoddiad y Pwyllgor i wneud sylwadau ar y ffyrdd y mae gweithdrefnau Tŷ'r Cyffredin yn ymgysylltu â chyfansoddiad tiriogaethol y Deyrnas Unedig.

Rwyf wedi canolbwyntio ar eich ceisiadau am dystiolaeth ar y canlynol:

- Y gweithdrefnau o ran hysbysu'r Tŷ am benderfyniadau'r deddfwrfeydd datganoledig sy'n berthnasol i faterion sy'n cael eu hystyried yn y Tŷ, gan gynnwys penderfyniadau ar gynigion cydsyniad deddfwriaethol.
- Y camau gweithdrefnol sy'n ofynnol eu cael er mwyn hwyluso mwy o gydweithio rhwng pwyllgorau pob un o ddeddfwrfeydd datganoledig y DU, a phwyllgorau'r Tŷ, at ddibenion sy'n cynnwys cynnal gwaith craffu ar y cyd ynghylch gweithio rhynglywodraethol ar feysydd polisi o ddiddordeb cyffredin, a chynnal gwaith craffu effeithiol ar fframweithiau cyffredin.

<u>Hysbysiad o benderfyniadau deddfwrfeydd datganoledig</u>

Mae swyddogion ein priod Seneddau yn gweithredu ar sail cyd-ddealltwriaeth o'r trefniadau ar gyfer hysbysu Senedd y DU o benderfyniadau cydsyniad deddfwriaethol. Yn dilyn penderfyniad gan y Senedd o ran a ddylid cytuno ar gynnig cydsyniad deddfwriaethol neu beidio, bydd Clerc y Senedd yn anfon gohebiaeth yn nodi penderfyniad y Senedd i'w chymheiriaid yn Senedd y DU, ynghyd ag unrhyw femoranda cysylltiedig gan Lywodraeth Cymru a ddaeth i law. Cyhoeddir llythyrau a memoranda o'r fath ar dudalen berthnasol y Bil ar wefan Senedd y DU, a gellir eu 'tagio' hefyd ar y Papur Gorchymyn yn Nhŷ'r Cyffredin.

Senedd Cymru
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llywydd@senedd.cymru
0300 200 7403

Welsh Parliament
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0300 200 7403

Mae gwybodaeth am yr holl benderfyniadau cydsyniad deddfwriaethol, felly, ar gael ar wefan Senedd y DU, gan gynnwys unrhyw benderfyniad gan ddeddfwrfa lle nad oes cydsyniad wedi'i roi.

Efallai y bydd y Pwyllgor am ystyried rhinweddau cyflwyno gweithdrefn i gydnabod yn ffurfiol a yw deddfwrfeydd datganoledig wedi cydsynio i Senedd y DU ddeddfu ar faterion datganoledig.

Fel y byddwch yn ymwybod yn sgil gohebiaeth flaenorol, mae'r Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad – sef un o bwyllgorau'r Senedd – wrthi'n ystyried sut y gellid diwygio'r broses o weithredu Confensiwn Sewel.[1] Disgwylir i'r gwaith hwn ddod i ben yn gynnar yn y Flwyddyn Newydd, a allai arwain at argymhellion penodol yn hyn o beth.

At hynny, fe awgrymodd Pwyllgor Gweithdrefn a Breintiau Tŷ'r Arglwyddi – mewn adroddiad a gyhoeddwyd ar 13 Hydref 2020 ac y cytunwyd arno gan Dŷ'r Arglwyddi ar 20 Hydref 2020 – fel a ganlyn:

> "*when legislative consent has been refused, or not yet granted by the time of third reading, a minister should orally draw it to the attention of the House before third reading commences. In doing this the Minister should set out the efforts that were made to secure consent and the reasons for the disagreement.*"[2]

Byddai gweithdrefn o'r fath – yn enwedig os caiff ei mabwysiadu gan ddau Dŷ Senedd y DU – yn cynnig mwy o dryloywder o ran a yw'r Senedd wedi rhoi cydsyniad deddfwriaethol ai peidio, a sut mae Gweinidogion y DU wedi ystyried penderfyniadau o'r fath. Gallai fynd yn eithaf pell tuag at sicrhau bod barn y deddfwrfeydd datganoledig yn cael eu parchu trwy gydol y broses ddeddfwriaethol. Dylai gweithdrefn o'r fath fod yn berthnasol i'r holl benderfyniadau cydsyniad deddfwriaethol a wneir gan y Senedd, gan gynnwys Cynigion Cydsyniad Deddfwriaethol, Cynigion Cydsyniad Offeryn Statudol, a Chynigion Penderfyniad Cydsynio (mae manylion pellach am yr amgylchiadau pan fydd cynigion o'r fath yn digwydd wedi'u nodi mewn atodiad i'r ohebiaeth hon).

<u>Y camau gweithdrefnol sy'n ofynnol i hwyluso mwy o gydweithio rhwng pwyllgorau pob un o ddeddfwrfeydd datganoledig y DU a phwyllgorau'r Tŷ</u>

Gall cynnal gwaith craffu rhyng-seneddol fod yn offeryn effeithiol wrth ddwyn llywodraethau i gyfrif, ac rwy'n croesawu diddordeb y Pwyllgor mewn archwilio'r camau gweithdrefnol ar gyfer hwyluso mwy o weithio ar y cyd yn well.

At hynny, mae yna ystod eang o fecanweithiau sy'n galluogi ein seneddau i weithio ar y cyd. Gall pwyllgorau gydweithio trwy ohebiaeth, rhannu adroddiadau, cynnal deialog rhwng eu swyddogion, rhannu arferion da, cyfarfodydd anffurfiol ac ati. Mae swyddogion

[1] Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad (y Senedd), Ymchwiliad i weithdrefn Tŷ'r Cyffredin a'r cyfansoddiad tiriogaethol, 1 Hydref 2020.
[2] Tŷ'r Arglwyddi, Gweithdrefn a Breintiau, 4ydd Adroddiad Sesiwn 2019–21 https://publications.parliament.uk/pa/ld5801/ldselect/ldproced/140/140.pdf, paragraff 43.

sy'n cefnogi pwyllgorau'r DU a seneddau datganoledig eisoes yn cydweithio'n anffurfiol i rannu gwybodaeth, er mwyn cefnogi gwaith craffu gan bwyllgorau ar Fframweithiau Cyffredin, a gwaith arall sy'n gysylltiedig â Brexit. Mae hon wedi bod yn enghraifft gadarnhaol o weithio rhyng-seneddol ar lefel swyddogol, a gallai fod yn fodel ar gyfer ymgysylltu rhyng-seneddol mewn meysydd eraill, yn enwedig mewn perthynas â deddfwriaeth. Er enghraifft, gallai deialog barhaus, ragweithiol ynghylch deddfwriaeth – gan gynnwys diwygiadau – hwyluso swyddogion y Senedd i gynllunio a gwneud y mwyaf o'r amser sydd ar gael i Aelodau'r Senedd ystyried Memoranda Cydsyniad Deddfwriaethol a Memoranda Cydsyniad Offeryn Statudol yn ogystal â dylanwadu ar yr ystyriaeth o'r ddeddfwriaeth gysylltiedig yn San Steffan. .

Cynigiodd y Fforwm Rhyng-seneddol ar Brexit – a ohiriwyd oherwydd y pandemig COVID-19 – fodel ar gyfer gweithio ar y cyd. Mae swyddogion sy'n cefnogi gwaith y fforwm wedi parhau i gwrdd yn absenoldeb ymgysylltiad ffurfiol ar lefel Aelod. Mae aelodau o Bwyllgor Materion Allanol a Deddfwriaeth Ychwanegol y Senedd, ac aelodau'r Pwyllgor Cyfiawnder, Deddfwriaeth a'r Cyfansoddiad, wedi mynegi awydd cryf i barhau i weithio gyda chydweithwyr mewn deddfwrfeydd eraill ar faterion sy'n ymwneud â Brexit ac yn benodol, ar faterion sy'n ymwneud â dyfodol cysylltiadau rhynglywodraethol, a chyfansoddiad y DU yn y dyfodol. Yn unol â hynny, mae pwyllgorau'r Senedd yn parhau i fynd ar drywydd cysylltiadau dwyochrog.

Cyfarfodydd sy'n cydredeg

Mae un cam gweithdrefnol y bydd y Pwyllgor, efallai, am ei ystyried yn ymwneud â chyfarfodydd sy'n cydredeg. Ar hyn o bryd mae Rheolau Sefydlog y Senedd yn darparu y gall ei phwyllgorau "gydredeg ag unrhyw bwyllgor neu gyd-bwyllgor o unrhyw ddeddfwrfa yn y DU."[3] Yn ôl Rheolau Sefydlog Tŷ'r Cyffredin, gall y Pwyllgor Materion Cymreig wahodd aelodau unrhyw bwyllgor penodol yng Nghynulliad Cenedlaethol Cymru (*sic*)[4] i fod yn bresennol yn ei drafodion a chymryd rhan ynddyn nhw (ond i beidio â phleidleisio). [5]

Mae'r darpariaethau hyn wedi galluogi Pwyllgorau'r Senedd i gydredeg â'r Pwyllgor Materion Cymreig, gan gynnwys Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol y Senedd yn cydredeg â'r Pwyllgor Materion Cymreig yn 2015 i gynnal gwaith craffu ar Fil Cymru drafft. Yn dilyn hynny, ysgrifennodd Cadeirydd y Pwyllgor Materion Cymreig at Lefarydd Tŷ'r Cyffredin yn gofyn am newid ei Reolau Sefydlog, er mwyn caniatáu i holl bwyllgorau Tŷ'r Cyffredin gydredeg â phwyllgorau deddfwrfeydd eraill y DU. Roedd hyn yn adlewyrchu mai nad y Pwyllgor Materion Cymreig yw'r unig bwyllgor yn Nhŷ'r Cyffredin y

[3] Y Senedd, Rheolau Sefydlog, 17.53

[4] Ym mis Mai 2020, newidiodd Cynulliad Cenedlaethol Cymru ei enw yn ffurfiol i Senedd Cymru, a elwir yn gyffredin y Senedd.

[5] Tŷ'r Cyffredin, Rheolau Sefydlog ar gyfer Busnes Cyhoeddus, 5 Tachwedd 2019, 137A(3)

mae ei waith yn gorgyffwrdd â gwaith pwyllgorau'r Senedd.[6] Fodd bynnag, hyd yn hyn, mae rheol sefydlog 137A (1b) Tŷ'r Cyffredin wedi'i gyfyngu i ddarparu fel a ganlyn:

> *"Any select committee or sub-committee with power to send for persons, papers and records shall have power— to meet concurrently with any committee or sub-committee of either House of Parliament for the purpose of deliberating or taking evidence."*[7]

Er mwyn hwyluso cydweithio ar draws ystod o feysydd polisi a deddfwriaethol, efallai y bydd y Pwyllgor am argymell y dylid ehangu'r Rheol Sefydlog hon i alluogi cyfarfodydd yr holl bwyllgorau neu is-bwyllgorau dethol i gydredeg â phwyllgorau deddfwrfeydd eraill y DU.

Cytundebau rhyngwladol

Ar hyn o bryd nid yw'r prosesau sydd ohonynt at ddibenion cynnal gwaith craffu ar gytundebau rhyngwladol, a'u cadarnhau – yn enwedig cytundebau masnach ryngwladol – yn caniatáu ar gyfer ystyried barn y deddfwrfeydd datganoledig yn ffurfiol mewn meysydd a fyddai'n cael effaith sylweddol ar feysydd cymhwysedd datganoledig, er enghraifft iechyd ac amaethyddiaeth.

Mae Pwyllgor Materion Allanol a Deddfwriaeth Ychwanegol y Senedd – wrth gyflwyno ymateb i Is-bwyllgor Cytundebau Rhyngwladol Tŷ'r Arglwyddi – wedi tynnu sylw at yr angen am broses ddiwygiedig o gynnal gwaith craffu Seneddol y DU ar gytundebau rhyngwladol, i ymgorffori'r canlynol:

> *"the need to consider the views of the Senedd before the conclusion of its scrutiny process."*[8]

Cytunodd yr Is-bwyllgor Cytundebau Rhyngwladol Tŷ'r Arglwyddi â'r asesiad hwn, gan nodi fel a ganlyn:

> "*it is vital that Westminster committees engage closely with the Welsh and Scottish Parliaments and the Northern Ireland Assembly in scrutinising the negotiation and agreement of future treaties.*"[9]

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[6] Er enghraifft, mae ymgysylltu â fframweithiau yn debygol o fod yn fwy buddiol rhwng pwyllgorau sydd â chylchoedd gwaith polisi cyfatebol, yn hytrach na gyda phwyllgorau tiriogaethol Tŷ'r Cyffredin.
[7] Tŷ'r Cyffredin, Rheolau Sefydlog ar gyfer Busnes Cyhoeddus, 5 Tachwedd 2019, 137A(1b)
[8] Pwyllgor Materion Allanol a Deddfwriaeth Ychwanegol y Senedd, tystiolaeth ysgrifenedig i Is-bwyllgor Cytundebau Rhyngwladol Tŷ'r Arglwyddi, Mehefin 2020
[9] Tŷ'r Arglwyddi, Pwyllgor yr Undeb Ewropeaidd, Craffu ar Gytundebau: arfer gweithio, 10 Gorffennaf 2020, https://publications.parliament.uk/pa/ld5801/ldselect/ldeucom/97/97.pdf, Paragraff 52.

Efallai yr hoffai'r Pwyllgor ystyried sut y gellid diwygio gweithdrefnau sy'n llywodraethu'r trefniadau gweithio ar y cyd rhwng y deddfwrfeydd datganoledig a Thŷ'r Cyffredin i annog ymgynghori ffurfiol â'r seneddau datganoledig mewn prosesau cadarnhau, a chynnal gwaith craffu ar gytundebau rhyngwladol.

Fe fyddwn innau, neu fy swyddogion, yn hapus i archwilio'r materion hyn ymhellach gyda'r Pwyllgor.

Yn gywir,

Elin Jones AS
Llywydd

Croesewir gohebiaeth yn Gymraeg neu Saesneg / We welcome correspondence in Welsh or English

Elin Jones AS, Llywydd
Senedd Cymru
Elin Jones MS, Presiding Officer
Welsh Parliament

Atodiad: Penderfyniadau Cydsyniad Deddfwriaethol

Fel y nodir yn Rheol Sefydlog 29 y Senedd, mae **Cynnig Cydsyniad Deddfwriaethol** yn gynnig sy'n ceisio cytundeb y Senedd i gynnwys darpariaeth berthnasol mewn Bil perthnasol yn y DU. Mae "Bil perthnasol" yn Fil sy'n cael ei ystyried yn Senedd y DU ac sy'n gwneud darpariaeth ("darpariaeth berthnasol") mewn perthynas â Chymru: at unrhyw ddiben sydd o fewn cymhwysedd deddfwriaethol y Senedd (ac eithrio darpariaethau cysylltiedig, canlyniadol, trosiannol, dros dro, atodol neu ddarpariaethau arbed sy'n ymwneud â materion nad ydynt o fewn cymhwysedd deddfwriaethol y Senedd); neu sy'n addasu cymhwysedd deddfwriaethol y Senedd.

Fel y nodir yn Rheol Sefydlog 30A y Senedd, mae **Cynnig Cydsyniad Offeryn Statudol** yn gynnig sy'n ceisio cytundeb y Senedd i gynnwys darpariaeth berthnasol mewn 'offeryn statudol perthnasol.' Ystyr 'offeryn statudol perthnasol' yw offeryn statudol neu offeryn statudol drafft y bydd Gweinidogion y DU yn ei osod gerbron Senedd y DU sy'n gwneud darpariaeth ("darpariaeth berthnasol") mewn perthynas â Chymru sy'n diwygio deddfwriaeth sylfaenol o fewn cymhwysedd deddfwriaethol y Senedd (ac eithrio darpariaethau cysylltiedig, canlyniadol, trosiannol, dros dro, atodol neu ddarpariaethau arbed sy'n ymwneud â materion nad ydynt o fewn cymhwysedd deddfwriaethol y Senedd).

Fel y nodir yn Rheol Sefydlog 30B y Senedd, mae **Cynnig Penderfyniad Cydsynio** yn gynnig am benderfyniad sydd naill ai'n rhoi neu'n gwrthod cydsyniad y Senedd i 'reoliadau drafft perthnasol' gael eu gosod gerbron Senedd y DU. Yn y cyd-destun hwn mae 'rheoliadau drafft perthnasol' yn Offerynnau Statudol a wneir gan Weinidogion y DU o dan y Ddeddf sy'n cyfyngu cymhwysedd deddfwriaethol y Senedd dros dro, neu gymhwysedd gweithredol Gweinidogion Cymru sy'n ceisio rheoliadau drafft y mae Gweinidog y Goron yn bwriadu eu gosod gerbron Senedd y DU, yn unol ag adran 109A neu 80(8) o'r Ddeddf.

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Llywodraeth Cymru
Welsh Government

DATGANIAD YSGRIFENEDIG GAN LYWODRAETH CYMRU

TEITL **Her gyfreithiol i Ddeddf Marchnad Fewnol y DU 2020**

DYDDIAD **19 Ionawr 2021**

GAN **Jeremy Miles AS, Y Cwnsler Cyffredinol a'r Gweinidog Pontio Ewropeaidd**

Mewn datganiadau i Senedd Cymru, mewn cyfarfodydd pwyllgorau ac mewn gohebiaeth, rwyf wedi ymrwymo i roi'r wybodaeth ddiweddaraf i'r Aelodau o'r Senedd ynglŷn â'r camau y mae Llywodraeth Cymru yn eu cymryd i ddiogelu'r Senedd rhag ymosodiad Deddf Marchnad Fewnol y DU 2020 ar ei chymhwysedd.

Hyd yma, mae gohebiaeth cyn camau cyfreithiol wedi'i chyfnewid â Llywodraeth y DU ynglŷn â'r Ddeddf. Bydd yr Aelodau'n cofio y cafodd llythyr cyn camau cyfreithiol ei anfon i Lywodraeth y DU ar 16 Rhagfyr, ychydig cyn i'r Ddeddf gael ei phasio a derbyn y Cydsyniad Brenhinol. Cawsom ymateb i'r llythyr hwnnw ar 8 Ionawr. Ni roddodd yr ymateb hwnnw sylw digonol i unrhyw rai o'n pryderon ynghylch effaith y Ddeddf ar ddatganoli.

Felly, heddiw, rwyf wedi dwyn achos ffurfiol yn y Llys Gweinyddol i geisio caniatâd am adolygiad barnwrol. Rydym yn cydnabod yr anawsterau sy'n wynebu'r Senedd yn sgil yr ansicrwydd y mae'r Ddeddf hon yn ei greu o ran gallu'r Senedd i ddeddfu. Rwyf felly wedi gofyn i'r achos ddilyn y broses gyflym ond mater i'r Llys yw hynny yn llwyr. Rwyf wedi cynnig amserlen i'r Llys a fyddai'n golygu bod yr achos hwn yn cael ei glywed yn ystod wythnos olaf mis Mawrth 2021.

Atodaf fanylion Sail yr Hawliad. Mae'r sail hon yn cadarnhau'r ddwy elfen o'n her; sef bod y Ddeddf yn diddymu, mewn modd annerbyniol ac ymhlyg, rannau o Ddeddf Llywodraeth Cymru 2006, gan leihau cymhwysedd deddfwriaethol y Senedd, a bod y Ddeddf yn rhoi pŵer i Lywodraeth y DU, drwy gyfrwng pwerau Harri VIII eang, y gallai Gweinidogion y DU ei ddefnyddio i ddiwygio Deddf Llywodraeth Cymru yn sylweddol mewn ffordd sy'n cwtogi'r setliad datganoli.

Byddaf yn parhau i roi'r wybodaeth ddiweddaraf i'r Aelodau am hynt yr achos hwn.

IN THE HIGH COURT OF JUSTICE

QUEEN'S BENCH DIVISION

ADMINISTRATIVE COURT IN WALES

BETWEEN

THE COUNSEL GENERAL FOR WALES

Claimant

-v-

THE SECRETARY OF STATE FOR BUSINESS, ENERGY AND INDUSTRIAL STRATEGY

Defendant

-and-

(1) THE LORD ADVOCATE FOR SCOTLAND

(2) THE ATTORNEY GENERAL FOR NORTHERN IRELAND

Interested Parties

GROUNDS FOR JUDICIAL REVIEW

Introduction & Overview

1. This is a judicial review to seek declarations as to the scope of provisions of the United Kingdom Internal Market Act 2020 ('UKIMA') which ostensibly – albeit implicitly - limit the scope of the devolved powers of the Senedd and Welsh Government; and which appear to confer upon the Defendant power to limit the devolved powers further using secondary legislation. The ambit of these powers is set out in the Government of Wales Act 2006 as amended by the Wales Act 2017 ('GoWA'), and it was no part of the stated rationale for UKIMA that they should be curtailed: indeed, the Defendant asserts that they have not. UKIMA received Royal Assent on 17 December 2020 and was brought into force on 31 December 2020.

2. The Claimant is the Chief Law Officer for the Welsh Government, with statutory authority to bring litigation in the public interest under s67 of GoWA. The Defendant is the sponsoring Minister of the enactment.

3. The Claimant makes two central submissions:
    a. In so far as s54(2) of UKIMA purports impliedly to repeal areas of the Senedd's legislative competence, by including UKIMA – and the mutual recognition principle contained in s2 of UKIMA - in the list of enactments in schedule 7B of GoWA which may not be amended by the Senedd in their application to Wales, it must be interpreted in accordance with the principle of legality so that it does not prevent the Senedd legislating inconsistently with the mutual recognition principle;
    b. The delegated powers in UKIMA to amend primary legislation contained in ss 6(5), 8(7), 10(2), 18(2) and 21(8), read together with s56(2)(a), must be limited in application in relation to UKIMA and GoWA to incidental and consequential amendments, in accordance with the principle of legality.

4. Accordingly, the Claimant seeks declarations to the following effect:
    a. The amendment of schedule 7B of GoWA by s54(2) of UKIMA, to add UKIMA to the list of protected enactments, does not amount to a reservation and does not operate so as to prevent the Senedd from legislating on devolved matters in a way that is inconsistent with the mutual recognition principle in UKIMA;
    b. The Defendant's powers to make delegated legislation in ss 6(5), 8(7), 10(2), 18(2) and 21(8) of UKIMA, read together with s56(2)(a), cannot lawfully be used to amend either UKIMA or GoWA in a way which would substantively limit the legislative competence of the Senedd.

5. The devolution settlement for Wales is contained in GoWA, which is constitutional legislation. As is set out in sA1 of GoWA, the Senedd (formerly referred to as 'the Assembly') and Welsh Government are a permanent part of the constitutional arrangements of the United Kingdom, to which the United Kingdom Government and

Parliament have expressed their commitment, and which Parliament has expressly stated are not to be abolished without the consent of the people of Wales through a referendum. It is against that background that this claim is issued.

6. The need for these advisory declarations arises because:
    a. UKIMA leaves the ambit of the devolution settlement with Wales uncertain, and ostensibly limited, in important ways which are not clear on its face and which have a practical effect on the operation of democracy in Wales, by rendering uncertain the extent of the Senedd's ability to consider legislation and the operation of the Welsh Government; and
    b. The ostensible scope of the Defendant's regulation-making powers in UKIMA apparently render the scope of the Senedd and Welsh Government's devolved powers under GoWA susceptible to wide substantive future amendment, and serious diminution, at the hands of the Defendant, inadequately supervised by Parliament.

7. There was limited consultation with the Welsh Government before or during the Act's passage through Parliament and the Senedd refused legislative consent to UKIMA. The statutory mechanism set out in s109 of GoWA for amending the list of statutes 'protected' by provisions of schedule 7B of GoWA (which schedule precludes the Senedd from legislating in a way which would conflict with a scheduled enactment), was not used.

8. In short, the Claimant is concerned to establish that UKIMA cannot be interpreted so as to have the effect of cutting down the ambit of constitutional legislation, which protects the devolved powers of the Senedd and Welsh Government, either by implication or by secondary legislation. This is a matter of practical, constitutional and democratic significance.

The two issues in more detail

Implied Repeal

9. The Welsh devolution settlement means that the Senedd has power to legislate for Wales in all matters save those expressly reserved to the Westminster Parliament by being listed in schedule 7A of GoWA. For example, legislating in relation to consumer standards is a matter generally reserved to the Westminster Parliament by virtue of section C6, paras 72-76, schedule 7A of GoWA. However, food standards ("food, food products and food contact materials") are an explicit exception under section C6. Therefore, legislating for sale and supply of food is within the Senedd's devolved competence.

10. Even in relation to devolved matters, the Senedd may not legislate for matters within its own competence to the extent that any such Senedd legislation would conflict with the operation of 'protected enactments', which are set out in a list at para 5(1), schedule 7B of GoWA. These include, for example, the Human Rights Act 1998 and the Civil Contingencies Act 2004. It is because of the important implications for the scope of the devolution settlement that a mechanism was put into s109 of GoWA for amending schedule 7B, which required the consent both of the Senedd and the Westminster Parliament (but which mechanism was not invoked when adding UKIMA to schedule 7B).

11. Section 54(2) of UKIMA amends schedule 7B of GoWA so as to include UKIMA in the list of 'protected enactments'. No provision in UKIMA (save the limited exception of new C18 schedule 7A) expressly reserves any matter which was previously within the Senedd's devolved competence under schedule 7A of GoWA. In other words, save in the limited respects identified above, UKIMA does not expressly cut down or amend the ambit of the Senedd's devolved competence.

12. Nonetheless, for reasons explained below, the combination of the mutual recognition principle in s2 of UKIMA and the protection of UKIMA in schedule 7B of GoWA would

seem by implication to render certain devolved matters empty of content and implicitly 're-reserve' them by a sidewind, without expressly facing up to this on the face of the legislation. To the extent that the inclusion of UKIMA in schedule 7B of GoWA would protect it from modification by the Senedd in exercise of its power to legislate for Wales, this would amount to impermissible implied amendment of the ambit of devolved matters in schedule 7A of GoWA. The proposal to protect UKIMA would amount to a substantial diminution of the powers of the Senedd and Welsh Government, without their consent.

13. Schedule 7A of GoWA is constitutional legislation and so cannot be impliedly repealed in this way. It is important for the Welsh legislature and executive to be able to operate on the basis of a correct legal appreciation of this position. (It is also democratically important – in the forthcoming elections to be held in May 2021 – for all political parties to be able to set out their stalls on the basis of a proper understanding of the ambit of matters in relation to which legislative promises can be made).

Parliament purporting to delegate power to amend GoWA to a Minister

14. The Claimant's second concern is that UKIMA contains provisions which appear on their face to grant the Secretary of State power to make regulations from time to time amending the scope of UKIMA (and indeed other primary legislation). GoWA is constitutional legislation and can only be repealed by express Parliamentary authority. So, Parliament cannot - consistently with the long-established principle of legality - legislate so as to enable the extent of UKIMA (or GoWA) to be modified by a Minister, to the extent that, by doing so, it may permit the Government substantively to alter the ambit of the devolution settlement in Wales without express Parliamentary authority. Again, it is important for the proper operation of democratically accountable government in Wales that all constitutional actors operate on the basis of a proper understanding of this issue.

Legislative Material

United Kingdom Internal Market Act 2020

15. Part 1 of UKIMA sets out the new market access rules for goods, namely the mutual recognition principle and the non-discrimination principle.

16. The mutual recognition principle, set out in section 2 of UKIMA, provides:

> "***The mutual recognition principle for goods***
> *(1) The mutual recognition principle for goods is the principle that goods which—*
> *(a) have been produced in, or imported into, one part of the United Kingdom ("the originating part"), and*
> *(b) can be sold there without contravening any relevant requirements that would apply to their sale, should be able to be sold in any other part of the United Kingdom, **free from any relevant requirements** that would otherwise apply to the sale.*
>
> *(2) Where goods are to be sold in a particular way in the other part of the United Kingdom, the condition in subsection (1)(b) has effect as if the reference to "their sale" were a reference to their sale in that particular way.*
>
> *So, for example, if goods are to be sold by auction, the condition is met if (and only if) they can be sold by auction in the originating part without contravening any applicable relevant requirements there.*
>
> *(3) Where the principle applies in relation to a sale of goods in a part of the United Kingdom because the conditions in subsection (1)(a) and (b) are met, any relevant requirements there do not apply in relation to the sale*." [emphasis added]

17. Section 3 of UKIMA defines "*relevant requirements*" for the purpose of section 2 and provides so far as material:

> "***Relevant requirements for the purposes of section 2***

(1) This section defines "relevant requirement" for the purposes of the mutual recognition principle for goods as it applies in relation to a particular sale of goods in a part of the United Kingdom.

(2) A statutory requirement in the part of the United Kingdom concerned which—

(a) prohibits the sale of the goods or, in the case of an obligation or condition, results in their sale being prohibited if it is not complied with, and

(b) is within the scope of the mutual recognition principle,

is a relevant requirement in relation to the sale unless excluded from being a relevant requirement by any provision of this Part.

(3) A statutory requirement is within the scope of the mutual recognition principle if it relates to any one or more of the following—

(a) characteristics of the goods themselves (such as their nature, composition, age, quality or performance);

(b) any matter connected with the presentation of the goods (such as the name or description applied to them or their packaging, labelling, lot- marking or date-stamping);

(c) any matter connected with the production of the goods or anything from which they are made or is involved in their production, including the place at which, or the circumstances in which, production or any step in production took place;

…

(g) anything not falling within paragraphs (a) to (f) which must (or must not) be done to, or in relation to, the goods before they are allowed to be sold."

18. Section 4 of UKIMA excludes pre-existing statutory requirements from the operation of the mutual recognition and non-discrimination principles.

19. Section 5 states the non-discrimination principle for goods, namely that the sale of goods in one part of the United Kingdom should not be affected by "*relevant requirements*" which directly or indirectly discriminate against goods that have a relevant connection with another part of the United Kingdom. Section 6 defines a "*relevant requirement*" for the purposes of the non-discrimination principle as follows:

"***Relevant requirements for the purposes of the non-discrimination principle***

(1) This section defines "relevant requirement" for the purposes of the non-discrimination principle for goods.

(2) A relevant requirement, for the purposes of the principle as it has effect in relation to a part of the United Kingdom, is a statutory provision that—

(a) applies in that part of the United Kingdom to, or in relation to, goods sold in that part, and

(b) is within the scope of the non-discrimination principle.

(3) A statutory provision is within the scope of the non-discrimination principle if it relates to any one or more of the following—

(a) the circumstances or manner in which goods are sold (such as where, when, by whom, to whom, or the price or other terms on which they may be sold);

(b) the transportation, storage, handling or display of goods;

(c) the inspection, assessment, registration, certification, approval or authorisation of the goods or any similar dealing with them;

(d) the conduct or regulation of businesses that engage in the sale of certain goods or types of goods.

*(4) **A statutory provision is not a relevant requirement—***

***(a) to the extent that it is a relevant requirement for the purposes of the mutual recognition principle** for goods (see section 3), or*

(b) if section 9 (exclusion of certain existing provisions) so provides.

*(5) **The Secretary of State may by regulations amend subsection (3) so as to add, vary or remove a paragraph of that subsection.***

(6) Regulations under subsection (5) are subject to affirmative resolution procedure.

(7) Before making regulations under subsection (5) the Secretary of State must seek the consent of the Scottish Ministers, the Welsh Ministers and the Department for the Economy in Northern Ireland.

*(8) If consent to the making of the regulations is not given by any of those authorities within the period of one month beginning with the day on which it is sought from that authority, **the Secretary of State may make the regulations without that consent**.*

(9) If regulations are made in reliance on subsection (8), the Secretary of State must publish a statement explaining why the Secretary of State decided to make the regulations without the consent of the authority or authorities concerned.

(10) In this section "statutory provision" means provision contained in legislation." [emphasis added]

20. Section 8 provides so far as material:

"***The non-discrimination principle: indirect discrimination***

(1) A relevant requirement indirectly discriminates against incoming goods if—

(a) it does not directly discriminate against the goods,

(b) it applies to, or in relation to, the incoming goods in a way that puts them at a disadvantage,

(c) it has an adverse market effect, and

(d) it cannot reasonably be considered a necessary means of achieving a legitimate aim.

…

(6) "Legitimate aim" means one, or a combination, of the following aims—

(a) the protection of the life or health of humans, animals or plants;

(b) the protection of public safety or security.

(7) ***The Secretary of State may by regulations amend subsection (6) so as to add, vary or remove an aim.***

(8) Regulations under subsection (7) are subject to affirmative resolution procedure.

(9) Before making regulations under subsection (7), the Secretary of State must seek the consent of the Scottish Ministers, the Welsh Ministers and the Department for the Economy in Northern Ireland.

*(10) If consent to the making of the regulations is not given by any of those authorities within the period of one month beginning with the day on which it is sought from that authority****, the Secretary of State may make the regulations without that consent****.*

(11) If regulations are made in reliance on subsection (10), the Secretary of State must publish a statement explaining why the Secretary of State decided to make the regulations without the consent of the authority or authorities concerned." [emphasis added]

21. Section 10 provides so far as material:

"***Further exclusions from market access principles***

(1) Schedule 1 contains provision excluding the application of the United Kingdom market access principles in certain cases.

(2) ***The Secretary of State may by regulations amend that Schedule****.*

(3) The power under subsection (2) may, for example, be exercised to give effect to an agreement that—

(a) forms part of a common framework agreement, and

(b) provides that certain cases, matters, requirements or provision should be excluded from the application of the market access principles.

(4) A "common framework agreement" is a consensus between a Minister of the Crown and one or more devolved administrations as to how devolved or transferred matters previously governed by EU law are to be regulated after IP completion day.

…

(8) Regulations under subsection (2) are subject to affirmative resolution procedure.

(9) Before making regulations under subsection (2), the Secretary of State must seek the consent of the Scottish Ministers, the Welsh Ministers and the Department for the Economy in Northern Ireland.

(10) If consent to the making of the regulations is not given by any of those authorities within the period of one month beginning with the day on which it is sought from that authority, ***the Secretary of State may make the regulations without that consent****.*

(11) If regulations are made in reliance on subsection (10), the Secretary of State must publish a statement explaining why the Secretary of State decided to make the regulations without the consent of the authority or authorities concerned." [emphasis added]

22. Part 2 of UKIMA provides for a new market access regime for services in the UK based on the same mutual recognition and non-discrimination principles as for goods. Section 18 provides for exclusions from the definition of "services" to which UKIMA will apply as follows, so far as material:

"***Services: exclusions***

(1) Schedule 2 contains—

(a) a list of services specified in the first column of the table in Part 1 of that Schedule, to which section 19 (mutual recognition) does not apply;

(b) a list of services specified in the first column of the table in Part 2 of that Schedule, to which sections 20 and 21 (non-discrimination) do not apply;

(c) a list of authorisation requirements in Part 3 of that Schedule, to which section 19 does not apply;
(d) a list of regulatory requirements in Part 4 of that Schedule, to which sections 20 and 21 do not apply.

(2) ***The Secretary of State must keep Schedule 2 under review, and may by regulations—***

(a) remove entries in the tables in Part 1 or Part 2 of that Schedule *or entries in the lists in Part 3 or Part 4 of that Schedule;*
(b) amend entries in those tables or lists;
(c) add entries to those tables or lists.

(3) The power under subsection (2) may, for example, be exercised to give effect to an agreement that—
(a) forms part of a common framework agreement, and
(b) provides that certain cases, matters, requirements or provision should be excluded from the application of this Part.

(4) A "common framework agreement" is a consensus between a Minister of the Crown and one or more devolved administrations as to how devolved or transferred matters previously governed by EU law are to be regulated after IP completion day." [emphasis added]

23. Section 21 of UKIMA provides so far as material:

"***Indirect discrimination in the regulation of services***
…
(2) A regulatory requirement indirectly discriminates against an incoming service provider if—
…
(d) it cannot reasonably be considered a necessary means of achieving a legitimate aim.
…
(7) In this section "legitimate aim" means one, or a combination of any, of the following aims—
(a) the protection of the life or health of humans, animals or plants;
(b) the protection of public safety or security;
(c) the efficient administration of justice.

(8) ***The Secretary of State may by regulations amend subsection (7) so as to add, vary or remove a legitimate aim.***

(9) Regulations under subsection (8) are subject to affirmative resolution procedure.

(10) Before making regulations under subsection (8), the Secretary of State must seek the consent of the Scottish Ministers, the Welsh Ministers and the Department for the Economy in Northern Ireland.

*(11) If consent to the making of the regulations is not given by any of those authorities within the period of one month beginning with the day on which it is sought from that authority**, the Secretary of State may make the regulations without that consent**.*

(12) If regulations are made in reliance on subsection (11), the Secretary of State must publish a statement explaining why the Secretary of State decided to make the regulations without the consent of the authority or authorities concerned." [emphasis added]

24. Section 54(2) inserts UKIMA into paragraph 5(1) of Schedule 7B of GoWA.

25. Section 56 provides so far as material:

"***Regulations: general***

…

(2) ***Any power to make regulations under this Act includes power****—*

(a) ***to amend, repeal or otherwise modify legislation****;*

(b) to make different provision for different purposes;

(c) to make supplementary, incidental, consequential, transitional, transitory or saving provision (including provision made in reliance on paragraph (a))." [emphasis added]

26. Paragraph 2 of schedule 1 of UKIMA provides so far as material:

"*(1) The mutual recognition principle for goods does not apply to (and section 2(3) does not affect the operation of) legislation so far as it satisfies the conditions set out in this paragraph.*

*(2) The first condition is that the aim of the legislation is to prevent or reduce the movement of **unsafe food** or feed into the part of the United Kingdom in which the legislation applies ("the restricting part") from another part of the United Kingdom ("the affected part").*

(3) The second condition is that it is reasonable to believe that the food or feed affected by the legislation is, is likely to be, or is at particular risk of being unsafe in a particular respect.

(4) The third condition is the potential movement of food or feed that is unsafe in that respect into the restricting part from the affected part poses (or would in the absence of the legislation pose) ***a serious threat to the health of humans*** *or animals in the restricting part.*

(5) The fourth condition is that the responsible administration has provided to the other administrations an assessment of the available evidence in relation to—

(a) the threat referred to in sub-paragraph (4), and

(b) the likely effectiveness of the legislation in addressing that threat.

(6) The fifth condition is that the legislation can reasonably be justified as necessary in order to address the threat referred to in sub-paragraph (4).

(7) In this paragraph "food" and "feed" have the same meaning as in Regulation (EC) No 178/2002 (see Articles 2 and 3);

"unsafe" —

(a) in relation to food, has the same meaning as in Article 14 of Regulation (EC) No 178/2002;

(b) in relation to feed, means "unsafe for its intended use" within the meaning given by Article 15(2) of Regulation (EC) No 178/2002;

"Regulation (EC) No 178/2002" means Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law (etc), as it forms part of retained EU law on IP completion day." [emphasis added]

Government of Wales Act 2006 (as amended by the Wales Act 2017) ("GoWA")

27. Devolution in Wales is now based on a model of 'reserved powers' rather than (as in the first model of Welsh devolution) on a 'conferred powers' model. In other words, the Senedd can legislate in any field unless and to the extent that the matter in question is expressly reserved to the Westminster Parliament. Reserved matters are listed in schedule 7A of GoWA subject to listed exceptions.

28. As explained in paragraph 10 above, the extent of the Senedd's power in devolved fields is also limited to the extent that any exercise of its power may not modify specific items of parliamentary legislation which are protected from such modification by being listed in schedule 7B of GoWA.

29. Section A1 of GoWA provides:

> "***Permanence of the Senedd and Welsh Government***
> *(1) The Senedd established by Part 1 and the Welsh Government established by Part 2 are a* ***permanent part of the United Kingdom's constitutional arrangements****.*
>
> *(2) The purpose of this section is, with due regard to the other provisions of this Act, to signify the commitment of the Parliament and Government of the United Kingdom to the Senedd and the Welsh Government.*
>
> *(3) In view of that commitment it is declared that the Senedd and the Welsh Government are not to be abolished except on the basis of a decision of the people of Wales voting in a referendum.*" [emphasis added]

30. Section 107 of GoWA provides so far as material:

> "***Acts of the Senedd***
> *…*
> *(5) This Part does not affect the power of the Parliament of the United Kingdom to make laws for Wales.*
>
> *(6) But it is recognised that the Parliament of the United Kingdom will not normally legislate with regard to devolved matters without the consent of the Senedd.*"

31. Section 108A of GoWA provides so far as material:

> "***Legislative competence***
> *(1) An Act of the Senedd is not law so far as any provision of the Act is outside the Senedd's legislative competence.*
>
> *(2) A provision is outside that competence so far as any of the following paragraphs apply…*
> *(c) it relates to reserved matters (see Schedule 7A);*
> *(d) it breaches any of the restrictions in Part 1 of Schedule 7B, having regard to any exception in Part 2 of that Schedule from those restrictions…"*

32. Section 109 of GoWA provides so far as material:

"***Legislative competence: supplementary***

(1) Her Majesty may by Order in Council amend Schedule 7A or 7B.

…

(4) No recommendation is to be made to Her Majesty in Council to make an Order in Council under this section unless a draft of the statutory instrument containing the Order in Council has been laid before, ***and approved*** *by a resolution of, each House of Parliament and* ***the Senedd****."* [emphasis added]

33. Section 112 of GoWA provides so far as material:

"***Scrutiny of Bills by Supreme Court (legislative competence)***

(1) The Counsel General or the Attorney General may refer the question whether a Bill, or any provision of a Bill, would be within the Senedd's legislative competence to the Supreme Court for decision." [emphasis added]

34. Part 2 of schedule 7A ("Specific Reservations") section C6 Consumer Protection, provides so far as is material:

"*72 The regulation of;*

(a) the sale and supply of goods and services to consumers

Exceptions
Food, food products and food contact materials.
Agricultural and horticultural produce, animals and animal products, seeds, animal feeding stuffs, fertilisers and pesticides (including anything treated as if it were a pesticide by virtue of an enactment)."

"Food" is defined by reference to Regulation (EC) No. 178/2002 and "Food contact materials" means materials and articles to which Regulation (EC) No. 1935/2004 applies.

35. Schedule 7A of GoWA sets out a list of matters which are reserved to the competence of the Westminster Parliament. In Part 2 of schedule 7A, section C7 Product standards, safety and liability, provides so far as material:

"*77 The subject matter of all technical standards and requirements in relation to products that had effect immediately before IP completion day in pursuance of an obligation under EU law.*

…

79 Product safety and liability.

80 Product labelling.

Exceptions

Food, food products and food contact materials.

Agricultural and horticultural produce, animals and animal products, seeds, animal feeding stuffs, fertilisers and pesticides (including anything treated as if it were a pesticide by virtue of an enactment)."

36. Schedule 7B of GoWA sets out a list of restrictions upon the powers of the Senedd to legislate, even in fields of devolved competence. It does this in two ways. First, by precluding modification of provisions of enactments which concern 'reserved' matters as they apply to Wales, and secondly, by listing a set of enactments which are protected from modification by Senedd legislation.

37. Paragraph 1 of Part 1 of schedule 7B ("General Restrictions") provides:

"*(1) A provision of an Act of the Senedd cannot make modifications of, or confer power by subordinate legislation to make modifications of, the law on reserved matters.*

(2) "The law on reserved matters" means—

(a) any enactment the subject-matter of which is a reserved matter and which is comprised in an Act of Parliament or subordinate legislation under an Act of Parliament, and

(b) any rule of law which is not contained in an enactment and the subject-matter of which is a reserved matter, and in this sub-paragraph "Act of Parliament" does not include this Act."

38. Paragraph 5 of Part 1 of schedule 7B provides that a "*provision of an Act of the Senedd cannot make modifications of, or confer power by subordinate legislation to make modifications of, any of the provisions listed in the table below*". UKIMA is now listed in the table.

39. “Modifications” are defined by s158(1) of GoWA to include “*amendments, repeals and revocations*”.

Background

40. There is a distinction between a ‘conferred powers’ model of devolution (whereby a devolved legislature has the powers expressly granted to it by parent enactment) and a ‘reserved powers’ model (whereby a devolved legislature has power to legislate for all matters in its jurisdiction save for those expressly reserved by the devolution legislation). The Welsh devolution settlement was originally a ‘conferred powers’ model, but became a ‘reserved’ model when the Wales Act 2017 came into force.

41. The current reserved powers model of devolution in Wales has its origins in 2011. The coalition government of the United Kingdom committed itself to a review of the operation of GoWA as originally enacted if the people of Wales voted for more primary legislative powers for the (then) Welsh Assembly, which they did in the 2011 Welsh devolution referendum. The Commission on Devolution in Wales, led by Paul Silk, was duly established. Part 2 of the ‘Silk Report’ on legislative powers, published in March 2014, recommended a change from the original “conferred powers” model to a “reserved powers” model, and this is what was implemented by the Wales Act 2017, which amended GoWA by, inter alia, replacing what was formerly schedule 7 of GoWA 2006 (which set out the scope of conferred powers) with schedules 7A and 7B of GoWA as amended (which set out those matters which are reserved, and/or protected from modification by Senedd legislation) with effect from 1 April 2018.

42. The Wales Act 2017 also inserted ss A1 and 107(6) into GoWA with effect from 31 March 2017.

43. Food standards and environmental protection were devolved matters before the changes brought about by the Wales Act 2017. The now repealed schedule 7 conferred power on the Welsh Assembly to legislate in the following areas, amongst others:

a. Paragraph 6: "*Environmental protection, including pollution, nuisances and hazardous substances…*";
b. Paragraph 8: "*Food and food products. Food safety (including packaging and other materials which come into contact with food). Protection of interests of consumers in relation to food*".

44. Following the European Union (Withdrawal) Act 2018, the UK and devolved governments entered into discussions regarding Common Frameworks in relation to areas where retained EU law overlapped with matters of devolved competence. The aim of those discussions was to agree parameters for divergence between standards imposed by the four nations. The Common Frameworks process is described in the Cabinet Office document *Revised Frameworks Analysis* (April 2019). It states at p2:

> *"In October 2017, the UK, Scottish and Welsh Governments agreed a set of principles to underpin this work.* ***They agreed that common frameworks will be established where they are necessary in order to: enable the functioning of the UK internal market, while acknowledging policy divergence****; ensure compliance with international obligations; ensure the UK can negotiate, enter into and implement new trade agreements and international treaties; enable the management of common resources; administer and provide access to justice in cases with a cross-border element, and safeguard the security of the UK.*
>
> ***It was further agreed that the frameworks established would respect the devolution settlements and democratic accountability of the devolved legislatures. They would maintain current levels of flexibility; increase the decision making powers of the devolved institutions; and would be based on existing conventions and practices, such as those around not normally adjusting devolved competence without their consent****" (emphasis added).*

45. However, the White Paper on the UK Internal Market, published in July 2020, marked a shift in the Defendant's approach to the devolved governments. At §32 it stated:

> "*Under the Government's proposed approach, the devolved administrations would retain the right to legislate in devolved policy areas that they currently enjoy. Legislative innovation would remain a central feature – and strength – of our Union. The Government is committed to ensuring that this power of*

innovation does not lead to any worry about a possible lowering of standards – by both working with the devolved administrations via the Common Frameworks programme and by continuing to uphold our own commitment to the highest possible standards."

46. This White Paper explained the decision to introduce legislation notwithstanding the Common Framework process in the following way:

> "*92. Common Frameworks constitute a valuable mechanism to ensure all parts of the UK agree common approaches where possible. The additional cross-cutting measures set out in this White Paper, will be, however, necessary to complement them. This is for a number of reasons.*
>
> *93. Firstly, Frameworks are not able to assess the wider economic impacts or knock-on effects of regulatory divergence, including how regulatory differences in one sector affects other sectors (the so called 'spill-over effect'). Secondly, Common Frameworks do not address how the overall UK Internal Market will operate once the UK has left the overarching EU system at the end of the Transition Period. Lastly, as Frameworks are limited to a specific number of policy areas, they will not account for the full UK economy across goods and services, and therefore will not be able to provide a comprehensive safety net for businesses and consumers.*
>
> *94. As a result, in order to ensure that a post-EU UK Internal Market delivers continued fair, coherent, frictionless trade across all parts of the UK, these gaps need to be addressed through a more robust legal architecture.*"

47. In respect of international trade deals, the White Paper states:

> "*123. As reflected in the devolution settlements, the UK Government is responsible for international relations of the whole of the UK and alone has the power to enter into international agreements binding on the whole or any part of the UK. The devolved administrations have competence to observe and implement international obligations that relate to devolved matters. The UK Government is responsible, as a matter of international law, for compliance with those obligations.*
>
> *124. To ensure such compliance, however, consideration must be given to the important interactions between a well-functioning Internal Market in the UK and the implementation of future trade deals.*"

48. The United Kingdom Market Bill was introduced to Parliament on 9 September 2020. The Scottish Parliament voted to refuse consent to the Bill on 8 October 2020 and the Senedd voted to refuse legislative consent to the Bill on 8 December 2020. However, UKIMA was passed by both Houses of Parliament, received Royal Assent on 17 December 2020, and came into force on 31 December 2020.

49. During a debate in the House of Commons, the Minister stated on 7 December 2020 (Hansard, volume 685, column 652[1]):

> "*I stress that the proposals in the Bill are designed to ensure that devolution can continue to work for everyone.* ***All devolved policy areas will stay devolved*** *and the proposals ensure only that there are no new barriers to UK internal trade. Indeed, at the end of the transition period hundreds of powers that are currently exercised by the EU will flow back to the UK. Many of these powers will fall within the competence of the devolved Administrations, and this flow therefore represents a substantial transfer of powers to the devolved Administrations that they did not exercise before the EU exit*" (*emphasis added).*

50. On 16 December 2020, the Claimant sent a pre-action protocol letter to the Defendant. The Defendant replied on 8 January 2021. In that letter, the Defendant stated at §13 that "*Senedd Cymru has competence to legislate in all areas which are not reserved… The boundaries of Senedd Cymru's devolved competence set by the reservations in Schedule 7A to GOWA are – save for the amendment made by section 52 of the Act [concerning the regulation of distortive or harmful subsidies] – unamended*."

Issue 1 – Devolved competence cannot be impliedly repealed

51. The 'protection' of UKIMA by its inclusion in schedule 7B of GoWA must be read down to the extent that it would otherwise implicitly re-reserve to the Westminster Parliament matters which have been devolved to the Senedd by GoWA, which is

[1] Available at https://hansard.parliament.uk/Commons/2020-12-07/debates/03F9AA70-3B1F-453B-A834-0498A5DDF1BF/UnitedKingdomInternalMarketBill

constitutional legislation. This reading is required by operation of the principle of legality; and to give effect to Parliament's intention (legislating in the light of the Minister's statement quoted at §49 above) that all devolved policy areas would stay devolved.

52. The Claimant relies upon two practical examples of how this concern arises.

53. First, the language of schedule 7A of GoWA puts it beyond doubt that legislating for food standards in Wales is a devolved matter. This is not expressly changed by UKIMA. However, it is impliedly undercut by the listing of UKIMA in schedule 7B of GoWA, which could be said to preclude any Senedd legislation requiring higher food standards in Wales than that in force in any other nation of the United Kingdom. That is because, on one reading, the ambit of the mutual recognition principle in Part 1 of UKIMA is so comprehensive that any future Senedd legislation or Welsh ministerial action which regulated the sale of food in Wales would be void and of no effect, save in the very limited circumstances set out in paragraph 2 of schedule 1 of the UKIMA. If that *were* the effect of the amendment of schedule 7B of GoWA, it would mean that UKIMA has the implicit effect of rendering the express terms of schedule 7A of GoWA which devolve food standards to the Senedd completely inoperable, notwithstanding that food standards remains an unreserved – ie devolved – policy area on the face of the legislation.

54. Second, the Senedd passed legislation banning certain single use plastics before such legislation was passed in England[2]. The Welsh Government has announced a proposal to implement legislation which mirrors the terms of Article 5 of Directive (EU) 2019/904, the European Union's Single Use Plastic Directive, and so to ban a whole range of single use plastics in 2021. If the ostensible 'protection' of UKIMA in schedule 7B of GoWA is not read down so as to give continuing effect to the devolution of environmental standards, the Senedd will not be able to give effect to this intention, notwithstanding that environmental protection is a devolved policy area. This is

[2] The Environmental Protection (Microbeads) (Wales) Regulations 2018

because s2 of UKIMA (which would be protected) would preclude the application of higher environmental standards for goods sold in in Wales than those applicable elsewhere in the United Kingdom. The protection of the market access principles in UKIMA would ostensibly preclude the Senedd from exercising its devolved power to regulate the sale of products on grounds of environmental protection, notwithstanding the fact that the power to do so remains unaffected by schedule 7A of UKIMA and the UK Government claims not to have cut down the devolution settlement.

55. Unless the Court makes the declaration which the Claimant seeks as to the proper reading of UKIMA in relation to the ambit of the devolution settlement, UKIMA would have the effect of reserving areas of devolved competence (such as regulation of the sale of goods on environmental protection grounds) *sub silentio,* and contrary to the express Ministerial statement to Parliament that the effect of UKIMA would be that "*all devolved policy areas will remain devolved"*. It would prevent the Senedd from legislating in any field where to do so might infringe the mutual recognition principle in Part 1 of UKIMA, which is very wide.

56. The Senedd, a permanent feature of the UK's constitutional arrangements, will have its competence very substantially diminished to the point of extinction in respect of significant fields of devolved policy, without any express admission that the devolution settlement has been seriously cut down.

57. The Court should make the declaration sought to ensure that this incorrect reading of the interaction between UKIMA and GoWA does not have a chilling effect on the operation of devolved powers. If Parliament intended to amend constitutional devolution legislation in such important respects, it should have done so by express language. The principle of legality means that Parliament cannot lawfully achieve by implication through schedule 7B of GoWA what it could have done expressly through amending the ambit of schedule 7A: see *UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill* [2018] UKSC 64 at §51. UKIMA itself recognises this and amends schedule 7A of GoWA in respect of harmful subsidies; s52(2) of UKIMA.

58. It is well-established that; (i) GoWA is a constitutional enactment; and (ii) constitutional enactments cannot be impliedly amended or repealed: see *Thoburn v Sunderland City Council* [2002] EHWC 195 (Admin) per Laws LJ at §§ 62 – 63; *AXA General Insurance Ltd v HM Advocate* [2011] UKSC 46 per Lord Reid at §153; *H v Lord Advocate* [2013] 1 AC 413 at §30; *R (HS2 Action Alliance) v Secretary of State for Transport* [2014] UKSC 3 at §207; *R (Miller) v Secretary of State for Exiting the European Union* [2018] AC 61 at §66. To the extent that ss 2(3) and 54(2) of UKIMA purport to reduce the Senedd's competence, they are contrary to the principle of legality and inoperable.

59. The Defendant's position is that the Senedd can continue to legislate in all devolved areas; his Ministers said so in the White Paper, in Parliament and in pre-action correspondence. So he should agree to the Court making it clear that the effect of UKIMA is not to re-reserve policy making for food standards or environmental protection measures by a sidewind and that the mutual recognition principle in s2 of UKIMA cannot be read to have that effect, notwithstanding para 5 of schedule 7B of GoWA.

Issue 2 – Devolved competence cannot be cut down by secondary legislation

60. Further, and in any event, the regulation-making provisions of UKIMA must be read down to the extent that they could otherwise be used to diminish the ambit of the powers of the devolved legislatures without express Parliamentary authority.

61. Sections 6(5), 8(7), 10(2), 18(2) and 21(8) of UKIMA, read together with s56(2)(a), purport to give the Defendant wide and unconstrained powers to amend the scope of the principles of mutual recognition and non-discrimination in substantive ways, with limited Parliamentary scrutiny.

62. As described above, s54(2) of UKIMA states on its face that UKIMA is a protected enactment for the purposes of GoWA. If that were read in a wide and literal way, it would mean that the Minister could alter the scope of devolved competence by secondary legislation. If that were the right reading, *any* amendments to the ambit of UKIMA made by the Minister using his regulation-making powers would thereafter prevent the Senedd from being competent to act in any way which might modify the operation of UKIMA as so modified. In other words, future regulations made under UKIMA could have far-reaching – but obviously uncertain - consequential effects on the scope of the Senedd's legislative competence because any changes to the ambit of UKIMA would be protected from modification.

63. Still further, s56(2)(a) of UKIMA would, on its face, give the executive an unfettered power to amend any other legislation whatsoever, which would include GoWA.

64. The Court is asked to declare that the scope of the regulation-making powers in UKIMA cannot be so broad so as to grant the *executive* wide and unrestricted powers to amend the ambit of the constitutional settlement subject to inadequate Parliamentary scrutiny. That would be contrary to the rule of law.

65. The long-established principles of legality and certainty require clear and express legislative language to be used to have the effect of amending constitutional principles (*a fortiori* constitutional legislation): *R v Secretary of State for the Home Department, Ex p Simms* [2000] 2 AC 115 per Lord Hoffman at p131. Secondary legislation must be read with respect for the concept of the separation of powers and Parliamentary supremacy over the executive: see *R (Public Law Project) v Lord Chancellor* [2016] UKSC 39 at §§ 23 – 28.

66. Section 107(5) of GoWA reserves the power of *Parliament* to make laws for Wales. It does not reserve the power of the *executive* to make laws for Wales, or to decide the scope of devolved competence, and it cannot be interpreted as including a power for Parliament to delegate its power of constitutional amendment to a Minister.

67. Accordingly, the principles of legality and certainty in combination with fundamental constitutional values require the Henry VIII clauses in UKIMA to be given a narrow construction so that they may only be used to effect incidental and consequential amendments; and for it to be accepted that they cannot be used to make any substantive amendment to UKIMA or GoWA.

68. Other recent Henry VIII powers recognise these principles and are constrained in their scope so that they may not amend constitutional legislation, including GoWA and the Human Rights Act 1998: see s8(7) of the European Union (Withdrawal) Act 2018 and s31(4) the European Union (Future Relationship) Act 2020. The powers in UKIMA should be limited by the Court in the same way.

The declarations sought are neither academic nor premature

69. The Defendant seeks to argue in his response to the pre-action letter that the declarations sought are in some way abstract and/or hypothetical, and should await some future attempt by the Senedd to legislate. This assertion is misconceived. The application for the declarations sought is neither academic nor premature.

70. The Defendant, properly, does not suggest that the Court has no jurisdiction to make the declarations sought. It is well established that the Court has a discretion to make an advisory declaration where there is good reason in the public interest and/or a real practical purpose would be achieved: see *R (Williams) v Secretary of State for the Home Department* [2015] EWHC 1268 (Admin) per Hickinbottom J at §55; *R (Yalland) v Secretary of State for Exiting the European Union* [2017] EWHC 630 (Admin) per Lloyd-Jones LJ at §24. That is also true in a case concerning the interpretation of primary legislation: see *Jackson v HM Attorney General* [2005] UKHL 56 per Lord Bingham at §§ 2 and 27 (where a declaration of invalidity was sought in relation to Hunting Act 2004 upon it receiving Royal Assent).

71. The declarations sought affect the operation of democratic devolved government in Wales (and indeed in the other nations of the United Kingdom) and the nature of the

Senedd's powers in ways which may affect the scope of the statements which political parties can properly make as to the scope of their legislative ambitions in the forthcoming Senedd elections in May 2021.

72. It is plainly in the public interest for the Court to provide clarity to the Welsh Government (and, by extension, all of the devolved governments) now as to what they are permitted to achieve through their legislative programmes. It would cause legislative and constitutional uncertainty if a dispute had to be resolved by the Supreme Court every time the Welsh Government sought to introduce legislation in relation to devolved matters which potentially affected the operation of the internal market. Moreover, the proper legal interpretation of the ambit of the devolution settlement is a matter of constitutional importance.

73. Further, the suggestion made in the response to the pre-action letter that the interaction of schedule 7A and paragraph 5 of schedule 7B of GoWA should await a reference under s112 of GoWA is misconceived. An application for judicial review must be brought promptly and in any event within three months of grounds first arising (i.e. UKIMA receiving Royal Assent on 17 December 2020). So, this is the only point at which the Court can give a declaration in relation to issue 1 (implied repeal).

74. This ground would simply not arise on a reference of a Welsh bill to the Supreme Court under s112 of GoWA. On such a reference, the sole question for the Supreme Court is whether the bill is within the legislative competence of the Senedd by reference to the statutory scheme of GoWA itself. The Claimant would not be permitted to rely on common law grounds of challenge concerning the proper constitutional interpretation of the separate legislation (UKIMA): see *UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill* [2018] UKSC 64 at §§ 26 and 35. Thus, the Claimant would not be permitted on such a reference to seek the declaration sought in these proceedings that the purported protection of UKIMA in paragraph 5 of schedule 7B should be read down in accordance with the principle of legality. That is a point of administrative law which must be determined on an application for judicial review.

75. Finally, the declaration sought in relation to issue 2 is a point of principle which does not turn on a specific set of facts. The specific context in which the executive may in future seek to exercise its regulation-making powers under UKIMA is immaterial to this point of principle as to their proper constitutional scope.

Venue

76. The Court is requested to hear this application in Cardiff; CPR PD54D §5.2(10). The Claimant is the Counsel General for Wales, based in Cardiff, and the applications raises devolution issues of importance to the people of Wales. Given the constitutional importance of this matter, it ought to be heard by a Divisional Court.

Timing & Directions

77. As noted, the outcome of this application is material to the scope of devolved policy areas and therefore the matters upon which all political parties can properly campaign in the forthcoming elections to the Senedd in May 2021. This application is therefore one which ought to be expedited.

78. The Claimant therefore respectfully invites the Court to amend the usual directions as to timetable, with view to enabling the substantive hearing to take place before the end of the Hilary term:

    a. Acknowledgement of service to be lodged and served within 21 days (9 February 2021);
    b. Permission decision on papers within 7 days (16 February 2021);
    c. Detailed grounds of defence and any evidence within 21 days (9 March 2021);
    d. Any reply and application to rely on evidence in reply within 7 days (16 March 2021);
    e. Claimant's skeleton argument also by 16 March 2021;
    f. Agreed bundle by 19 March 2021;

g. Defendant's skeleton argument by 23 March 2021;
h. A further copy of the Claimant's skeleton argument, amended to include bundle references, also by 23 March 2021;
i. Agreed bundle of authorities two days prior to the date of the hearing;
j. Hearing for two days between 26 and 31 March 2021.

Conclusion

79. The declarations sought are plainly properly arguable ones and the application raises issues of considerable constitutional and democratic significance, in relation to which declarations would be of real practical importance. It is not premature because it affects the day-to-day operation of the Welsh Government and the ambit of the Senedd's power to legislate for Wales.

80. The Claimant respectfully invites the Court:

a. to grant permission;
b. to expedite the hearing of the application in accordance with the timetable suggested at §78 above; and
c. (at the substantive hearing) to make the declarations sought at §3 of these grounds.

Helen Mountfield QC
Christian J Howells
Mark Greaves
18 January 2021

Law Commission
Reforming the law

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20 January 2021

Dear Mr Antoniw,

May I begin by wishing you and the people of Wales a happy new year.

We were very pleased that the Legislation, Justice and Constitution Committee took note, at its meeting last week, of the publication of our consultation paper on the future of devolved tribunals in Wales. The paper has opened a consultation period running until 19 March.

The operation of the devolved tribunals seems to us to be relevant to the Committee's inquiry into making justice work in Wales. We have always valued our relationship with the Committee, and so I am writing to assure you that if the Committee have any questions about the contents of the consultation paper, or our project more generally, we would be very willing to meet with you. That could involve giving evidence formally, or providing a more informal briefing session to enable Committee members to familiarise themselves with the contents of the consultation paper. Please let us know if you would like to set up a meeting.

Yours sincerely,

Nicholas Paines

Nicholas Paines QC
Commissioner for Public Law and the Law in Wales

Jeremy Miles AS/MS
Cwnsler Cyffredinol a'r Gweinidog Pontio Ewropeaidd
Counsel General and Minister for European Transition

Llywodraeth Cymru
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Cadeirydd
Y Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad
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20 Ionawr 2021

Annwyl Mick,

Rwy'n ddiolchgar am ystyriaeth eich Pwyllgor o Orchymyn Deddf Llywodraeth Cymru 2006 (Diwygio) 2021 ac am eich adroddiad. Ysgrifennaf atoch i'ch hysbysu fy mod i nawr wedi gosod y Gorchymyn drafft ac y bydd yn destun dadl ar 2 Chwefror.

Fel ymateb i'r argymhellion yn eich adroddiad:

Argymhelliad 1. Dylai'r Cwnsler Cyffredinol egluro ei sylwadau ynghylch yr angen am Orchymyn pellach yn y Cyfrin Gyngor o ganlyniad i'r cyfnod pontio.

Derbyniwyd. Mae Llywodraeth Cymru mewn trafodaethau â Llywodraeth y DU ynghylch cyflwyno Gorchymyn pellach yn y Cyfrin Gyngor o dan adran 109 o Ddeddf Llywodraeth Cymru 2006 i wneud darpariaeth gyfatebol ar gyfer swyddogaethau cydredol o dan Ddeddf yr Undeb Ewropeaidd (Perthynas y Dyfodol) 2020 â'r hyn a wnaed ar gyfer deddfwriaeth arall mewn perthynas ag ymadael â'r UE yn y Gorchymyn yr adroddwyd arno gennych.

Argymhelliad 2. Dylai'r Cwnsler Cyffredinol roi'r wybodaeth ddiweddaraf i'r Pwyllgor am ddatblygiadau yn ymwneud â swyddogaethau cydredol a chydredol plws sydd wedi codi neu sy'n codi yn y dyfodol o ganlyniad i ddeddfwriaeth y DU.

Derbyniwyd. Byddaf yn rhoi'r wybodaeth ddiweddaraf i'r Pwyllgor.

Yn gywir

Jeremy Miles AS/MS
Cwnsler Cyffredinol a'r Gweinidog Pontio Ewropeaidd
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Mae cyfyngiadau ar y ddogfen hon

Lesley Griffiths AS
Gweinidog yr Amgylchedd, Ynni a Materion Gwledig

23 Rhagfyr 2020

Annwyl Lesley

Bil yr Amgylchedd

Diolch eto i chi am eich **llythyr dyddiedig 28 Awst 2020**, lle gwnaethoch ymateb i'r argymhellion a gyflwynwyd i chi yn ein **hadroddiad ar y Memorandwm Cydsyniad Deddfwriaethol ar Fil Amgylchedd y DU** (adroddiad cyntaf).

Yn ein cyfarfod ar 14 Rhagfyr 2020, gwnaethom ystyried y **Memorandwm Cydsyniad Deddfwriaethol Atodol (Memorandwm Rhif 2)** a osodwyd gennych gerbron y Senedd ar 4 Rhagfyr 2020.

Byddwch yn ymwybodol bod y Pwyllgor Busnes wedi **pennu dyddiad cau ar ein cyfer, ar gyfer adrodd**, sef 4 Chwefror 2021 ar gyfer Memorandwm Rhif 2. O ystyried yr amser cymharol fyr sydd ar gael i'r Pwyllgor roi ystyriaeth, byddai'n ddefnyddiol pe gallech ymateb i'r cwestiynau isod.

1. Nodwn eich bod yn ystyried bod cymal 107 newydd ac Atodlen 16 newydd o fewn cymhwysedd deddfwriaethol y Senedd. O ystyried y farn hon, a wnewch chi ddweud a ydych chi wedi:
    a. gofyn i Lywodraeth y DU gyflwyno gwelliant i'r Bil i roi'r un pwerau i Weinidogion Cymru â'r Ysgrifennydd Gwladol mewn perthynas â Chymru?
    b. mynd ar drywydd – gyda Llywodraeth y DU – unrhyw newidiadau i'r Bil i sicrhau cyfranogiad Gweinidogion Cymru wrth wneud rheoliadau sy'n ymwneud â Chymru o dan Atodlen 16?

2. A allwch chi ymhelaethu ar eich rheswm dros ystyried bod cymal 107 newydd ac Atodlen 16 newydd yn ymwneud â materion o fewn cymhwysedd datganoledig pan – yn ôl DEFRA – eu bod yn ymwneud â'r cymal cadw yn adran C1, paragraff 65 o Atodlen 7A i *Ddeddf Llywodraeth Cymru 2006* (creu, gweithredu, rheoleiddio a diddymu mathau o gymdeithas fusnes)?

3. A oes trafodaethau parhaus rhwng Llywodraeth Cymru a Llywodraeth y DU i geisio datrys yr anghydfod o ran cymal 107 newydd ac Atodlen 16 newydd? Os felly, rhowch fanylion trafodaethau o'r fath.

4. A allwch chi roi copïau o bob gohebiaeth i ni rhwng Llywodraeth Cymru a Llywodraeth DU ynghylch adran 107 ac Atodlen 16 o'r Bil (gan gynnwys unrhyw ymatebion i'ch llythyrau dyddiedig 8 Medi a 4 Rhagfyr 2020)?

5. Os na ellir dod i gytundeb ar yr anghydfod ynghylch cymal 107 newydd ac Atodlen 16 newydd, pa gamau pellach ydych chi'n bwriadu eu cymryd?

6. Mewn perthynas â'r pwerau cydredol plws yn y Bil, nodwn nad yw'r Mesur Amgylchedd yn cael ei gwmpasu gan Orchymyn 2021, Deddf Llywodraeth Cymru 2006 (Diwygio) a osodwyd gerbron Senedd Cymru ar 10 Rhagfyr 2020. A allwch chi roi'r wybodaeth ddiweddaraf o ran y modd y mae Llywodraeth Cymru yn bwriadu mynd i'r afael â'r materion sy'n ymwneud â'r pwerau cydredol plws yn y Bil?

Rydym yn bwriadu mynd i'r afael â phryderon sy'n codi yn sgil eich hymateb, dyddiedig 28 Awst 2020, yn ein hadroddiad ar y Memorandwm Cydsyniad Deddfwriaethol Atodol. Fodd bynnag, hoffem godi un mater gyda chi ynghylch yr ymateb a roesoch i argymhelliad 20, oedd yn gofyn yn rhannol i chi esbonio pam nad oeddech wedi trafod cymal 81 gyda Gweinidogion y DU. Yn ôl eich ymateb, “mae ymgysylltu ar lefel Swyddogol wedi bod yn ddigon i sicrhau cytundeb” ar gymalau 81 ac 82.

7. A wnewch chi egluro, mewn perthynas â'ch ymateb i'r pwynt bwled cyntaf o argymhelliad 20:

    - union natur y cytundeb rhwng swyddogion, h.y. beth sydd wedi'i gytuno, a beth yw statws y cytundeb?
    - a yw Gweinidogion Llywodraeth Cymru a Llywodraeth y DU wedi llofnodi'r cytundeb rhwng swyddogion, a chynnwys y cytundeb?
    - pam yr ystyriwyd ei bod yn briodol peidio â thrafod pŵer cydredol plws gyda Gweinidogion y DU?

Byddem yn ddiolchgar petai eich ymateb yn dod i law heb fod yn hwyrach na 13 Ionawr 2021.

Yn gywir

Mick Antoniw AS
Cadeirydd Y Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

Croesewir gohebiaeth yn Gymraeg neu Saesneg
We welcome correspondence in Welsh or English

Lesley Griffiths MS/AS
Gweinidog yr Amgylchedd, Ynni a Materion Gwledig
Minister for Environment, Energy and Rural Affairs

Llywodraeth Cymru
Welsh Government

Mick Antoniw AS
Cadeirydd y Pwyllgor Deddfau, Cyfiawnder a Chyfansoddiad

28 Awst 2020

Annwyl Mick

Adroddiad y Pwyllgor Deddfau, Cyfiawnder a Chyfansoddiad ar y Memorandwm Cydsyniad Deddfwriaethol ar gyfer Bil Amgylchedd y DU

Diolch am ddarparu copi o adroddiad ac argymhellion y Pwyllgor Deddfau, Cyfiawnder a Chyfansoddiad ar y Memorandwm Cydsyniad Deddfwriaethol ar gyfer Bil Amgylchedd y DU.

Gweler ymateb Llywodraeth Cymru i argymhellion yr adroddiad yn Atodiad A.

Hoffwn fanteisio ar y cyfle hwn i roi'r wybodaeth ddiweddaraf i'r Pwyllgor am y sefyllfa bresennol gyda Senedd y DU a Senedd Cymru yn ystyried y Bil. Roedd y Bil yn cael ei ystyried gan bwyllgor bil cyhoeddus yn Nhŷ'r Cyffredin ond ataliwyd cyfarfodydd y Pwyllgor ar 18 Mawrth hyd nes y clywir yn wahanol. Bydd y Pwyllgor yn awr yn cyflwyno adroddiad erbyn dydd Mawrth 29 Medi. Ni chafwyd yr wybodaeth ddiweddaraf ynghylch pryd y bydd craffu seneddol ar y Bil yn debygol o ailddechrau.

O ystyried yr ansicrwydd yn amserlen Bil y DU, nid oes dadl ar y cynnig cydsyniad deddfwriaethol wedi'i threfnu ar gyfer y Senedd ar hyn o bryd. Disgwyliaf yn awr i hyn ddigwydd ar ôl toriad yr haf.

Cofion

Lesley Griffiths

Lesley Griffiths MS/AS
Gweinidog yr Amgylchedd a Materion Gwledig
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Atodiad A

Ymatebion Llywodraeth Cymru i Argymhellion y Pwyllgor Deddfau, Cyfiawnder a Chyfansoddiad ar y Memorandwm Cydsyniad Deddfwriaethol ar gyfer Bil Amgylchedd y DU

Argymhelliad	Ymateb Llywodraeth Cymru
Argymhelliad 1: Dylai'r Gweinidog ymateb i'r holl argymhellion yn yr adroddiad hwn fel mater o frys ac mewn da bryd cyn i Lywodraeth Cymru gyflwyno'r cynnig cydsyniad deddfwriaethol perthnasol.	**Derbyn** **Goblygiadau** Ariannol – Nid oes unrhyw oblygiadau ariannol o ganlyniad i dderbyn yr argymhelliad hwn.
Argymhelliad 2. Dylai'r Gweinidog: ▪ ddatgan yn glir pa gymalau o Fil y DU sydd mewn meysydd polisi sydd â fframweithiau cyffredin a nodwyd; ▪ sut mae'r cymalau hynny'n ymwneud â'r fframweithiau cyffredin arfaethedig perthnasol, yn llawn neu'n rhannol; ▪ ddatgan pryd y bydd fframwaith cyffredin yn y meysydd polisi hynny'n cael ei gyflwyno ac yn nodi'r mecanweithiau ar gyfer ei gyflawni.	**Derbyn** Mae'r Bil yn cynnwys darpariaethau ar gyfer rheoleiddio cemegion a gwastraff. Dau faes polisi yw'r rhain lle mae fframweithiau'n cael eu datblygu, sef y Fframwaith Rheoleiddio Cemegion (gan gynnwys Plaladdwyr) a'r Fframwaith Gwastraff ac Adnoddau. Nid yw'r Bil yn darparu sail ddeddfwriaethol i sefydlu'r fframweithiau hyn. Mae'r fframweithiau'n cael eu datblygu ar hyn o bryd ar y sail y byddant yn anneddfwriaethol eu natur, sy'n debygol o gael eu hategu gan Goncordatau Gweinidogol. Ar ôl eu gweithredu, gall y fframweithiau ddarparu strwythurau priodol i'r pedair llywodraeth drafod datblygu polisi a deddfwriaeth sy'n ymwneud â'r meysydd fframwaith hynny. Er enghraifft, drwy grwpiau rhynglywodraethol a sefydlwyd o dan y fframweithiau. Mae trafodaethau'n parhau rhwng y pedair llywodraeth i ddatblygu'r ddwy fframwaith hyn. Yn benodol, mae gwaith yn mynd rhagddo ar Gytundebau Amlinellol drafft y Fframwaith sy'n nodi'r trefniadau gwneud penderfyniadau a llywodraethu arfaethedig. Erbyn diwedd 2020 bydd gan y fframweithiau hyn Gytundeb Amlinellol ar gyfer y Fframwaith ar waith, sydd wedi cael cadarnhad dros dro gan Weinidogion, ac sy'n weithredol ar ffurf ddrafft. **Goblygiadau** Ariannol – Nid oes unrhyw oblygiadau ariannol o ganlyniad i dderbyn yr argymhelliad hwn.

Argymhelliad 3: Dylai'r Gweinidog nodi'n glir, a chydag esboniad priodol, pa gymalau o Fil y DU, fel y maent yn gymwys i Gymru: ✦ sydd yn angenrheidiol i fodloni rhwymedigaethau cyfreithiol sy'n deillio o ymadawiad y DU o'r UE; ✦ sydd yn gysylltiedig ag ymadawiad y DU o'r UE ond nid oes eu hangen i fodloni rhwymedigaethau cyfreithiol	**Derbyn** Nid oes angen yr un o'r cymalau yn y Bil, fel y maent yn gymwys i Gymru, er mwyn cyflawni rhwymedigaethau cyfreithiol sy'n deillio o ymadawiad y DU o'r UE Mae'r cymalau canlynol yn gysylltiedig â ymadawiad y DU o'r Undeb Ewropeaidd ond nid oes eu hangen i fodloni rhwymedigaethau cyfreithiol. <u>Rhan 3</u> Cymal 52 ac Atodlen 9 - O dan Erthygl 4 o Gyfarwyddeb Plastig Defnydd Sengl (CYFARWYDDYD (EU) 2019/904 yr UE), mae rhwymedigaeth ar Aelod-wladwriaethau i sicrhau gostyngiad 'sylweddol a pharhaus' yn nifer y cwpanau plastig untro ar gyfer diodydd a chynwysyddion bwyd. Nid yw'r Erthygl yn nodi sut y dylid cyflawni'r gostyngiad hwn, ond mae mecanweithiau awgrymedig yn cynnwys cyflwyno taliadau ariannol neu ardollau. Mae'r tâl am fagiau siopa untro wedi dangos effeithiolrwydd defnyddio'r dull hwn. Er bod y DU wedi pleidleisio i adael yr UE pan gyflwynwyd y Gyfarwyddeb, roedd ansicrwydd parhaus ar adeg ein rhwymedigaethau yn y dyfodol a manylion unrhyw gytundeb posibl â'r UE. Er gwaethaf hyn, cefnogwyd nod y Gyfarwyddeb o leihau effaith amgylcheddol plastigau untro gan Lywodraeth Cymru ac roedd yn adlewyrchu ein huchelgeisiau o symud Cymru tuag at economi gylchol. Ar y sail hon, penderfynwyd i Weinidogion Cymru geisio pwerau codi tâl ym Mesur Amgylchedd y DU i'n galluogi i gynnal cydraddoldeb ag aelod-wladwriaethau eraill yr UE ac i ganiatáu cyflwyno rheoliadau'n amserol yn absenoldeb Bil Cymreig addas. Cymal 57 – Gwastraff peryglus: Gwnaed Rheoliadau Gwastraff Peryglus (Cymru) 2005 o dan adran 2(2) o Ddeddf y Cymunedau Ewropeaidd 1972. Mae'r Cymal hwn yn darparu pŵer i ganiatáu i Weinidogion Cymru barhau i allu diwygio neu ddisodli Rheoliadau 2005 er mwyn sicrhau bod y modd y caiff gwastraff peryglus ei reoleiddio yn atal niwed sylweddol i'r amgylchedd ac iechyd pobl. Cymal 66 – Hysbysiadau Cosb Benodedig: Mae angen y pŵer hwn gan nad oes pŵer yn Neddf Diogelu'r Amgylchedd 1990 i ddiwygio lefel y SSNs sy'n ymwneud â thipio anghyfreithlon a dyletswydd gofal deiliaid tai. Yn y gorffennol, gwnaed diwygiadau o'r fath o dan adran 2(2) o Ddeddf y Cymunedau Ewropeaidd, sydd bellach wedi'i diddymu ac na ellir ei ddefnyddio ar ôl diwedd y Cyfnod Gweithredu. Heb Gymal 66 ni fydd Gweinidogion Cymru yn gallu diwygio'r cosbau presennol am yr Hysbysiadau Cosb Benodedig sy'n ymwneud â thipio anghyfreithlon a dyletswydd gofal deiliaid tai. <u>Rhan 8</u>

	Mae cymal 125 ac Atodlen 19 (REACH) yn gysylltiedig â ymadawiad y DU o'r UE, ac ystyrir bod angen galluogi Gweinidogion i ddiweddaru trefn REACH y DU/PRYDAIN FAWR (gan gynnwys adlewyrchu newidiadau i REACH yr UE lle y bo'n briodol) ar ôl diwedd y cyfnod gweithredu. **Goblygiadau** Ariannol – Nid oes unrhyw oblygiadau ariannol o ganlyniad i dderbyn yr argymhelliad hwn.
Argymhelliad 4. Dylai'r Gweinidog nodi'n glir pa gymalau o Fil y DU fel y maent yn gymwys i Gymru sydd ddim yn dod o dan argymhelliad 3.	**Derbyn** Nid yw'r cymalau canlynol, fel y maent yn gymwys i Gymru, wedi'u cynnwys yn argymhelliad 3: <u>Rhan 1</u> Cymal 19 - Datganiadau am Filiau sy'n cynnwys cyfraith amgylcheddol newydd a Chymal 43 - Ystyr cyfraith amgylcheddol (fel y mae'n ymwneud â chymal 19). <u>Rhan 3</u> Cymal 47 ac Atodlen 4 – Rhwymedigaethau Cyfrifoldeb Cynhyrchwyr Cymal 48 ac Atodlen 5 – Costau Gwaredu Cyfrifoldeb Cynhyrchwyr Cymalau 49 – 51 – Effeithlonrwydd adnoddau Cymal 55: Olrhain Gwastraff Electronig Cymal 60 – Rheoliadau a wnaed o dan Ddeddf Diogelu'r Amgylchedd 1990 Cymal 61 – Pwerau i wneud cynlluniau codi tâl Cymal 63 ac Atodlen 10 – Pwerau Gorfodi Cymal 65 – Gorfodi Sbwriel1 Cymal 67 – Rheoleiddio Gweithgareddau Llygredig <u>Rhan 4</u> Cymal 69 – Rheoli Ansawdd Aer Lleol Cymal 70 – Ardaloedd Rheoli Mwg <u>Rhan 5</u> Cymalau 75 a 76 – Cynlluniau a chynigion Cymal 77 – Pŵer yr Awdurdod i fynnu gwybodaeth Cymal 79 – Cyflwyno dogfennau'n electronig Cymal 81 – Pwerau'r Ysgrifennydd Gwladol ar Ansawdd Dŵr Cymal 82 – Pwerau Ansawdd Dŵr Gweinidogion Cymru Cymal 85 – Dehongli Ansawdd Dŵr Cymalau 87 – 89 – Draenio tir **Goblygiadau** Ariannol – Nid oes unrhyw oblygiadau ariannol o ganlyniad i dderbyn yr argymhelliad hwn.
Argymhelliad 5.	**Derbyn**

Dylai'r Gweinidog egluro pam yr oedd angen cynnwys y cymalau a nodwyd yn argymhelliad 4 ym Mil y DU, yn hytrach nag o fewn Bil Cymreig yn y Chweched Senedd	Nododd y cyn Brif Weinidog y meini prawf lle byddai'n dderbyniol defnyddio Bil y DU i ddatblygu polisi Llywodraeth Cymru. Y rhain o hyd yw'r dull polisi a ddefnyddir wrth bennu priodoldeb defnyddio Biliau'r DU. Mae'r pwerau y gofynnir amdanynt ar gyfer Gweinidogion Cymru ym Mesur Amgylchedd y DU yn glynu wrth y meini prawf hyn naill ai: • Byddai cynnig deddfwriaethol Llywodraeth y DU hefyd yn briodol ar gyfer amgylchiadau Cymru ond nid oes amser ar gael i gyflwyno darpariaethau tebyg yn y Cynulliad; • Hefyd, mae'r cysylltiadau agos rhwng y systemau gweinyddol perthnasol yng Nghymru a Lloegr yn golygu mai'r ffordd fwyaf effeithiol a phriodol o weithredu yw bwrw ymlaen â darpariaethau'r Bil ar gyfer y ddwy wlad ar yr un pryd yn yr un offeryn deddfwriaethol. **Goblygiadau** Ariannol – Nid oes unrhyw oblygiadau ariannol o ganlyniad i dderbyn yr argymhelliad hwn.
Argymhelliad 6 Dylai'r Gweinidog egluro pam na chafodd Bil Amgylcheddol ei flaenoriaethu yn unrhyw un o raglenni deddfwriaethol blynyddol Llywodraeth Cymru i gynnwys: ✦ llywodraethu amgylcheddol, gan gynnwys corff priodol i Gymru, sy'n deillio o ymadawiad y DU o'r UE; ✦ polisïau amgylcheddol eraill nad ydynt yn gysylltiedig â Brexit sydd bellach yn ymddangos ym Mesur y DU.	**Derbyn** Cyhoeddodd y Prif Weinidog newidiadau i raglen ddeddfwriaethol Llywodraeth Cymru ar gyfer gweddill y Senedd hon ar 15 Gorffennaf. Myfyriodd ar y pwysau yr oedd diwedd y cyfnod pontio a Covid-19 wedi'u rhoi ar y rhaglen a bod angen penderfyniadau anodd i ddileu Biliau o'r rhaglen yn seiliedig ar flaenoriaethau. Yn anffodus, roedd hyn yn golygu na ellid cyflwyno deddfwriaeth ar egwyddorion amgylcheddol a llywodraethu y tymor hwn, ond ailadroddodd y Prif Weinidog ei ymrwymiad i wneud hynny. Fel y nodais o'r blaen, mae gan Lywodraeth Cymru adnoddau cyfyngedig ar gyfer datblygu ei rhaglen ddeddfwriaethol. Mae mwy o gynigion bob amser yn gofyn am ddeddfwriaeth sylfaenol nag sydd â'r gallu i'w gyflawni. Mae penderfyniadau ynghylch pa gynigion sydd i'w datblygu ac a gynhwysir yn y pen draw mewn rhaglen ddeddfwriaethol yn cael eu gwneud gan y Cabinet, gan ystyried nifer o ffactorau megis blaenoriaethau'r Llywodraeth ar draws ei holl gyfrifoldebau, aeddfedrwydd cymharol datblygu cynnig, ei faint a'i amserlen debygol ar gyfer cyflawni a'r pwysau polisi a chyfreithiol eraill mewn portffolio a allai effeithio ar gyflawni. Mae gwaith yn mynd rhagddo ar hyn o bryd i ddatblygu a pharatoi mesurau dros dro ar gyfer derbyn cwynion am lywodraethu amgylcheddol yng Nghymru a fyddai'n dod i rym erbyn diwedd y cyfnod pontio ar gyfer gadael yr UE ar 31 Rhagfyr 2020.

	O ran egwyddorion, er bod gennym, wrth gwrs, gyfres o egwyddorion amgylcheddol yn ein Deddf yr Amgylchedd, mae Llywodraeth Cymru wedi ymrwymo eisoes i barhau i gymhwyso pedair egwyddor amgylcheddol yr UE wrth lunio polisïau hyd nes y byddwn yn eu cynnwys mewn deddfwriaeth. **Goblygiadau** Ariannol – Nid oes unrhyw oblygiadau ariannol o ganlyniad i dderbyn yr argymhelliad hwn.
Argymhelliad 7 Dylai'r Gweinidog gadarnhau mai polisi Llywodraeth Cymru o hyd yw creu corff llywodraethu amgylcheddol i Gymru gan ddefnyddio deddfwriaeth sylfaenol.	**Derbyn** Cyhoeddodd y Prif Weinidog newidiadau i raglen ddeddfwriaethol Llywodraeth Cymru ar gyfer gweddill y Senedd hon ar 15 Gorffennaf. Myfyriodd ar y pwysau yr oedd diwedd y cyfnod pontio a Covid-19 wedi'u rhoi ar y rhaglen ac roedd angen penderfyniadau anodd i ddileu Biliau o'r rhaglen yn seiliedig ar flaenoriaethau. Yn anffodus, roedd hyn yn golygu na ellid cyflwyno deddfwriaeth ar egwyddorion amgylcheddol a llywodraethu y tymor hwn, ond ailadroddodd y Prif Weinidog ei ymrwymiad i wneud hynny. Mae gwaith yn mynd rhagddo ar hyn o bryd i ddatblygu a pharatoi mesurau dros dro ar gyfer derbyn cwynion am lywodraethu amgylcheddol yng Nghymru a fyddai'n dod i rym erbyn diwedd y cyfnod pontio ar gyfer gadael yr UE ar 31 Rhagfyr 2020. O ran egwyddorion, er bod gennym, wrth gwrs, gyfres o egwyddorion amgylcheddol yn ein Deddf yr Amgylchedd, mae Llywodraeth Cymru wedi ymrwymo eisoes i barhau i gymhwyso pedair egwyddor amgylcheddol yr UE wrth lunio polisïau hyd nes y byddwn yn eu cynnwys mewn deddfwriaeth. **Goblygiadau** Ariannol – Nid oes unrhyw oblygiadau ariannol o ganlyniad i dderbyn yr argymhelliad hwn.
Argymhelliad 8. Dylai'r Gweinidog gadarnhau y bydd deddfwriaeth sylfaenol i greu corff llywodraethu amgylcheddol i Gymru yn cynnwys adrannau annibynnol, yn unol â'i hymrwymiad i ddeddfwriaeth gyfunol, ac na fydd yn diwygio Bil y DU fel ffordd o gyflawni amcanion	**Derbyn** Y bwriad yw i Gymru gael ei Bil Egwyddorion Amgylcheddol a Llywodraethu ei hun yng Nghymru, a bydd ei darpariaethau'n darparu'r fframwaith a'r mecanwaith angenrheidiol ar gyfer corff llywodraethu amgylcheddol i Gymru, ynghyd â deddfu i ymgorffori pedair egwyddor amgylcheddol yr UE yng nghyfraith Cymru. Yn ystod ein cam presennol o ddatblygu polisi, nid ydym yn rhagweld diwygio Bil y DU fel ffordd o gyflawni amcanion polisi Llywodraeth Cymru.

polisi Llywodraeth Cymru.	Fodd bynnag, efallai y bydd angen gwneud diwygiadau canlyniadol i Fil y DU unwaith y bydd Bil Cymreig ar waith i sicrhau bod y ddau ddarn o ddeddfwriaeth yn gallu gweithredu'n esmwyth ochr yn ochr â'i gilydd. **Goblygiadau** Ariannol – Nid oes unrhyw oblygiadau ariannol ychwanegol o ganlyniad i dderbyn yr argymhelliad hwn.
Argymhelliad 9: Dylai'r Gweinidog egluro sut y bydd yn ceisio gwelliannau i Fil y DU i adlewyrchu canlyniad ymarferion ymgynghori perthnasol Llywodraeth Cymru sydd wedi cau ar ôl i Fil y DU gael ei gyflwyno i Senedd y DU.	**Derbyn** Os bydd canlyniad ymgynghoriadau diweddar yn arwain at angen newid y darpariaethau arfaethedig yn y Bil, byddaf yn gofyn i Lywodraeth y DU geisio'r gwelliannau angenrheidiol ar ein rhan. **Goblygiadau** Ariannol – Nid oes unrhyw oblygiadau ariannol o ganlyniad i dderbyn yr argymhelliad hwn.
Argymhelliad 10. Dylai'r Gweinidog ofyn am welliant i Fil y DU fel bod y cymalau a gwmpesir gan argymhelliad 4 yn ddarostyngedig i gymal machlud sy'n ei gwneud yn ofynnol iddynt ddod i ben ar ôl dyddiad penodedig.	**Gwrthod** Cyhoeddodd y Prif Weinidog newidiadau i raglen ddeddfwriaethol y Llywodraeth ar gyfer gweddill y Senedd hon ar 15 Gorffennaf. Myfyriodd ar y pwysau yr oedd diwedd y cyfnod pontio a Covid-19 wedi'u rhoi ar y rhaglen ac roedd angen penderfyniadau anodd i ddileu Biliau o'r rhaglen yn seiliedig ar flaenoriaethau. Fel arfer, rydym yn ystyried cymalau machlud yn neddfwriaeth y DU lle mae amserlen glir ar gyfer disodli darpariaethau Cymreig ac oherwydd nad oes gennym Fil Amgylchedd wedi'i drefnu yn y tymor hwn, nid oes gennym ddigon o sicrwydd.
Argymhelliad 11 Dylai'r Gweinidog egluro: ✦ pam mae angen cydsyniad ar gyfer cymalau 21, 45, 46, 78, 90, 100, 115, 122 a 124 o Fil y DU i'r graddau y maent yn ymwneud â'r darpariaethau cyffredinol yn Rhan 8 o Fil y DU; ✦ pam nad yw gwybodaeth a gynhwysir yn ei llythyr dyddiedig 14 Mai 2020 mewn ymateb i C11 wedi'i chynnwys yn y	**Derbyn** Cafodd y rhestr a ddarparwyd mewn ymateb i C11 ei chynnwys mewn camgymeriad. Mae natur y darpariaethau cyffredinol yn golygu na allwn adrodd yn bendant beth fydd eu cais penodol ym mhob achos, ac felly pa gysylltiad penodol a allai fod ganddynt gyda 'darpariaeth berthnasol'. Fodd bynnag, i'r graddau y gellir arfer neu ddeall y darpariaethau cyffredinol yng nghymalau 126 i 133 naill ai'n ymwneud neu fel arall mewn modd sy'n brathu ar ddarpariaeth berthnasol mewn mannau eraill yn y Bil (h.y. ar gymalau 19, 43, 47 i 52, 55, 57, 60 i 61, 63, 65 i 66 i 67, 69 i 70, 75 i 77, 79, 81 i 82, 85, 87 i 89 a 125), credwn eu bod yn 'ddarpariaeth berthnasol' at ddibenion Rheol Sefydlog 29 yn eu rhinwedd eu hunain.

Cynnig Cydsyniad Deddfwriaethol gyda sylwebaeth briodol ac yn unol â Rheol Sefydlog 29; ✦ pam nad yw ei hymateb i C11 yn cyfeirio at gymalau 55, 57, 60, 61, 65, 66, 67, 75-77, 79, 81, 82, 85 ac 87-89.	**Goblygiadau** Ariannol – Nid oes unrhyw oblygiadau ariannol o ganlyniad i dderbyn yr argymhelliad hwn.
Argymhelliad 12: Dylai'r Gweinidog ddarparu gwybodaeth, naill ai mewn dogfen atodol neu mewn unrhyw Femorandwm atodol, yn cyfiawnhau pam ei bod yn briodol cymryd pob un o'r pwerau dirprwyedig ar gyfer Gweinidogion Cymru sydd wedi'u cynnwys ym Mesur y DU, a'r dewis o weithdrefn ar gyfer pob pŵer.	**Derbyn** Roedd y wybodaeth a ddarparwyd yn Atodiad A i'r Memorandwm yn bodloni gofynion SO29.3: “Rhaid i Femorandwm Cydsyniad Deddfwriaethol" SO29.3(iv):"pan fo'r Bil yn cynnwys unrhyw ddarpariaeth berthnasol sy'n rhoi pŵer i wneud is-ddeddfwriaeth i Weinidogion Cymru, nodi gweithdrefn y Senedd (os oes un) y mae'r is-ddeddfwriaeth sydd i'w gwneud iddi wrth arfer y pŵer i fod yn ddarostyngedig iddi;” Ers hynny, rwyf wedi darparu'r wybodaeth ychwanegol y gofynnwyd amdani i'r Pwyllgor yn fy llythyr dyddiedig 14 Mai. Er mwyn sicrhau mynediad rhwydd at yr holl wybodaeth, byddaf yn cyfarwyddo fy swyddogion i goladu'r wybodaeth mewn un ddogfen a chyhoeddi hyn ochr yn ochr â'r Memorandwm ar ôl toriad yr haf. **Goblygiadau** Ariannol – Nid oes unrhyw oblygiadau ariannol o ganlyniad i dderbyn yr argymhelliad hwn
Argymhelliad 13. Dylai'r Gweinidog gadarnhau ei bod wedi gofyn i'r weithdrefn gael ei defnyddio ar gyfer pob pŵer dirprwyedig ar gyfer Gweinidogion Cymru sydd ym Mesur y DU a bod ei chais wedi'i ganiatáu ym mhob achos.	**Derbyn** Ar gyfer pob pŵer dirprwyedig i Weinidogion Cymru, cytunais ar y weithdrefn i'w defnyddio. **Goblygiadau** Ariannol – Nid oes unrhyw oblygiadau ariannol o ganlyniad i dderbyn yr argymhelliad hwn
Argymhelliad 14. Dylai'r Gweinidog egluro pam yr oedd	**Derbyn** Fel y nodwyd yn Argymhelliad 3, ceisiodd Llywodraeth Cymru gynnwys pwerau drwy Fil y DU gan mai hwn oedd y cyfrwng

angen cynnwys pwerau gwneud rheoliadau ym Mil y DU o dan gymal 52 ac Atodlen 9 yn hytrach nag mewn Bil Cymreig yn y dyfodol sy'n ymdrin â pholisi ailgylchu fel rhan o'i agenda amgylcheddol a chynaliadwyedd ehangach.	mwyaf addas ar y pryd, i'n galluogi i fodloni rhwymedigaethau posibl Cyfarwyddeb yr UE. Er bod telerau ymadael y DU yn golygu ar hyn o bryd nad oes rheidrwydd cyfreithiol i drosi'r Gyfarwyddeb na bodloni'r amserlenni gofynnol, mae Llywodraeth Cymru yn dal i geisio cyd-fynd â'i huchelgeisiau mewn perthynas â phlastig untro. **Goblygiadau** Ariannol – Nid oes unrhyw oblygiadau ariannol o ganlyniad i dderbyn yr argymhelliad hwn.
Argymhelliad 15 Dylai'r Gweinidog egluro pam ei bod yn cymryd pwerau gwneud rheoliadau ym Mesur y DU heb syniad clir pryd y mae'n bwriadu eu defnyddio ac felly pam na ellid eu cynnwys mewn Bil Amgylcheddol i Gymru yn y Chweched Senedd.	**Derbyn.** Cyfeiriaf y Pwyllgor at fy ymatebion i argymhelliad 3 a 5. **Goblygiadau** Ariannol – Nid oes unrhyw oblygiadau ariannol o ganlyniad i dderbyn yr argymhelliad hwn.
Argymhelliad 16 Dylai'r Gweinidog ofyn am welliant i Fil y DU sy'n cymhwyso'r weithdrefn gadarnhaol i wneud rheoliadau o dan adran 33ZB(10A) a 34ZB(8A) o *Ddeddf Diogelu'r Amgylchedd 1990*, fel y'u mewnosodwyd gan gymal 66 o Fil y DU.	**Gwrthod** O ystyried bod hwn yn bŵer diweddaru (rhoi un ffigur ar gyfer un arall), bernir bod y weithdrefn negyddol yn briodol o ystyried ei chwmpas cyfyngedig. Mae'r broses o ddiwygio'r symiau cosb yn gofyn am is-ddeddfwriaeth ac maent yn destun asesiad priodol o'r effeithiau er mwyn sicrhau bod yr hysbysiadau cosb benodedig yn cael eu gosod ar lefel addas.
Argymhelliad 17 Dylai'r Gweinidog egluro: ▪ pam ei bod mor bwysig cynnwys cymal 70 fel y mae'n berthnasol i Gymru ym Mil y DU, yn hytrach nag yn y Bil Aer Glân sydd i'w gyflwyno yn y Chweched Senedd;	**Derbyn** O ran ansawdd aer, yn benodol cymal 70 ac Atodlen 12 i Fil Amgylchedd y DU, y rhesymeg dros ddefnyddio Bil Amgylchedd y DU yw sicrhau manteision i weithgynhyrchu a defnyddwyr cyn gynted â phosibl. Bydd busnesau a /gweithgynhyrchwyr yn elwa wrth i'r oedi rhwng cael argymhelliad gan yr arbenigwyr technegol sy'n argymell cynhyrchion i'w defnyddio a rhoi cynnyrch ar y farchnad gael ei leihau; bydd mabwysiadu rhestri cyhoeddedig yn lleihau'r lwfans ansicrwydd wrth gofnodi a diweddaru'r rhestri o gynhyrchion y gellir eu defnyddio'n gyfreithlon; a bydd proses symlach, fwy effeithiol yn cynyddu dewis y defnyddiwr wrth i fwy o gynhyrchion ddod i'r farchnad yn

▪ heb y pwerau hyn, pan fyddai Gweinidogion Cymru yn diwygio rheoliadau sy'n ymwneud ag ardaloedd rheoli mwg nesaf, gan ddefnyddio eu pwerau o dan Ddeddf *Aer Glân 1993*.	gynt. Yn ogystal â manteision economaidd i weithgynhyrchwyr a mwy o ddewid i'r cyhoedd, bydd manteision amgylcheddol hefyd gan y bydd gwella sut y gweithredir y gyfundrefn rheoli mwg yng Nghymru yn ei gwneud yn haws i nodi cynhyrchion y gellir eu defnyddio'n gyfreithlon mewn ardaloedd rheoli mwg. Barnwyd mai Mesur Amgylchedd y DU oedd y cyfrwng cyflenwi a allai sicrhau'r gwelliant hwn i weithrediad y gyfundrefn rheoli mwg yng Nghymru yn gynt nag unrhyw fecanwaith arall. Unwaith y bydd cymal 70 wedi ei ddeddfu, diddymir pŵer Gweinidogion Cymru i wneud is-ddeddfwriaeth i awdurdodi tanwyddau cymeradwy o dan adran 20(6) o Ddeddf Aer Glân 1993, yn ogystal â phŵer Gweinidogion Cymru i wneud is-ddeddfwriaeth i eithrio cyfarpar/lleoedd tân o dan adran 21(5) o'r un Ddeddf. Bydd y ddyletswydd ar Weinidogion Cymru (yn wahanol i bŵer) a gyflwynir drwy ddeddfu'r Bil i greu rhestrau cyhoeddedig yn swyddogaeth weinyddol yn hytrach na swyddogaeth gwneud rheoliadau/deddfwriaethol. **Goblygiadau** Ariannol – Nid oes unrhyw oblygiadau ariannol o ganlyniad i dderbyn yr argymhelliad hwn.
Argymhelliad 18. Dylai'r Gweinidog egluro'n glir pam ei bod yn fwy priodol disodli adrannau presennol Deddf y *Diwydiant Dŵr 1991* â phwerau gwneud rheoliadau o dan y Ddeddf honno.	**Derbyn** Mae cymal 75(3) i'r graddau y mae'n gymwys i Gymru yn diddymu adran 37B a 37C o Ddeddf y Diwydiant Dŵr 1991. Mae'r darpariaethau hyn yn ymwneud â Chynlluniau Rheoli Adnoddau Dŵr a Chynlluniau Sychder. Mae adran 37B yn ymdrin â chyhoeddi'r cynlluniau hynny a sylwadau arnynt. Mae hyn yn cynnwys pwerau eang i Weinidogion Cymru wneud Rheoliadau a Chyfarwyddiadau mewn perthynas â chynlluniau o'r fath. Yna, mae adran 37C yn ymdrin â darpariaethau gwybodaeth rhwng cyflenwyr dŵr trwyddedig i ddarparu'r ymgymerwyr dŵr. Mae adran 37B yn cynnwys gofyniad i gwmnïau dŵr ymgynghori â Gweinidogion Cymru a Chyfoeth Naturiol Cymru cyn paratoi Cynllun Rheoli Adnoddau Dŵr drafft ar Gyfer Sychder. Fodd bynnag, mae gofyniad i ymgynghori ar gynlluniau drafft wedi'i gynnwys yn Rheoliadau Cynllun Rheoli Adnoddau Dŵr 2007 a Rheoliadau Cynllun Sychder 2005 ac felly mae'r gofyniad i ymgynghori yn dal i fodoli er gwaethaf diddymu adran 37B o'r Ddeddf. Mae cymal 75(7) o Fil yr Amgylchedd yn mewnosod Adran 39F newydd yn Neddf y Diwydiant Dŵr 1991. Nid yw hyn yn rhoi pwerau newydd i Weinidogion – yn ei hanfod mae'n ailddeddfu'r rhan fwyaf o'r pwerau sydd wedi'u cynnwys ar hyn o bryd yn Adran 37B i wneud rheoliadau a chyfarwyddiadau ac, yn hytrach na'i gwneud yn ofynnol i ymatebion i'r ymgynghoriad ar gynlluniau gael eu hanfon at Weinidogion Cymru, mae'n galluogi'r rheoliadau i ddarparu ar gyfer system arall, er enghraifft i ymateb yn uniongyrchol i'r cwmni dŵr sy'n cynnal yr ymgynghoriad.

	Goblygiadau Ariannol – Nid oes unrhyw oblygiadau ariannol o ganlyniad i dderbyn yr argymhelliad hwn.
Argymhelliad 19 Dylai'r Gweinidog egluro'r rhesymeg dros gymryd y pwerau cyfarwyddo yn adrannau arfaethedig 39G(1) a 94C(8) o *Ddeddf y Diwydiant Dŵr 1991* (a fewnosodwyd gan gymalau 75 a 76 o Fil y DU) ac egluro sut y dylid eu defnyddio.	**Derbyn** Mae Adran 39G(1) arfaethedig yn dweud y caiff rheoliadau a wneir o dan adran 39F roi pŵer i'r Gweinidog wneud darpariaeth drwy gyfarwyddiadau. Nid yw hyn yn rhoi pwerau i'r Gweinidog wneud Cyfarwyddiadau – mae'n galluogi rheoliadau i roi pwerau cyfarwyddo i'r Gweinidog. Mae'r pŵer i alluogi'r Gweinidog i roi Cyfarwyddiadau yn gul ac yn benodol ac mae wedi'i gyfyngu i'r weithdrefn a'r manylion ar gyfer paratoi a chyhoeddi cynlluniau rheoli adnoddau dŵr neu sychder. Maent i raddau helaeth yn ailadrodd y pwerau Cyfarwyddo a roddir i'r Gweinidog ar hyn o bryd gan adran 37 y mae'r Bil yn eu diddymu ac nad ydynt yn darparu pwerau ychwanegol. Un enghraifft yw Cyfarwyddiadau Cynllun Rheoli Adnoddau Dŵr (Cymru) 2016 sy'n cyfarwyddo'r cwmnïau dŵr i baratoi WRMP ar gyfer 2020 Bwriedir i'r weithdrefn ar gyfer paratoi Cynlluniau Draenio a Rheoli Gwastraff (DWMP) adlewyrchu'n fras y broses a gymhwysir at gynlluniau rheoli adnoddau dŵr a sychder, felly mae adran 94C(8) sy'n berthnasol i DWMP yn ail-adrodd adran adran 39G(1) sy'n berthnasol i gynlluniau eraill. Bydd unrhyw ddefnydd o'r pwerau Cyfarwyddo yn cael ei ragnodi i'r Rheoliadau a wneir o dan y darpariaethau hyn, a byddant yn rhan o'r fframwaith rheoleiddio. Ymgynghorir ar y rhain cyn iddynt gael eu gwneud. Defnyddir y pwerau Cyfarwyddo ar gyfer pwyntiau proses neu weithdrefn manwl fel ar hyn o bryd. **Goblygiadau** Ariannol – Nid oes unrhyw oblygiadau ariannol o ganlyniad i dderbyn yr argymhelliad hwn.
Argymhelliad 20 Dylai'r Gweinidog egluro: ▪ pam nad yw wedi trafod cymal 81 gyda Gweinidogion y DU o gofio ei fod yn bŵer cydamserol a mwy sy'n effeithio ar Gymru; a ▪ pam mae pwerau'r Ysgrifennydd Gwladol o dan y cymal hwn yn fwy cyfyngedig yn yr	**Derbyn** Mae ymgysylltu ar lefel Swyddogol wedi bod yn ddigon i sicrhau cytundeb ar y cymalau hyn. Mae swyddogion Llywodraeth Cymru a Defra wedi trafod Cymal 82 annibynnol a Chymal 81 ar yr un pryd. Y rhesymeg dros raddau tiriogaethol Cymal 81 oedd, pe bai'r gweinyddiaethau datganoledig yn cydsynio, y gellid gosod y sylweddau a'r safonau i'w hystyried wrth asesu statws cemegol dŵr wyneb neu ddŵr daear ar sail y DU i raddau Cymru, Lloegr, Gogledd Iwerddon a'r ardaloedd basn afon trawsffiniol â'r Alban. Byddai hyn yn sicrhau dau fantais; cael safonau unffurf ar draws y tiriogaethau hyn ac osgoi'r angen am sawl set o reoliadau.

Alban nag yng Nghymru.	Nid yw pwerau'r Ysgrifennydd Gwladol yng Nghymal 81 yn fwy cyfyngedig yn yr Alban nag yng Nghymru. Mae is-adran (4) yn sefydlu mai dim ond gyda'u caniatâd y gall yr Ysgrifennydd Gwladol arfer y pwerau yn yr adran hon i wneud darpariaeth y gallai Gweinidogion Cymru neu DAERA ei gwneud o dan eu pwerau eu hunain yng nghymalau 82 ac 83 yn y drefn honno. Gan nad oes cymal annibynnol tebyg ar gyfer Gweinidogion yr Alban*, mae is-adran (5) yn sefydlu mecanwaith cydsyniad tebyg pe bai'r Ysgrifennydd Gwladol yn arfer y pwerau mewn rhan o ardaloedd basn afon trawsffiniol yn yr Alban sydd yn yr Alban. Mae hyn yn angenrheidiol gan fod is-adran (2), sy'n sefydlu'r ddeddfwriaeth ansawdd dŵr berthnasol, yn cynnwys Rheoliadau Dosbarth Basn Afon Solway Tweed a Northumbria (RBD). Rhanbarthau trawsffiniol yw'r rhain sy'n pontio'r ffin rhwng Lloegr a'r Alban. Nid oedd Gweinidogion yr Alban am gymryd pŵer annibynnol math cymal 82/83 ym Mil yr Amgylchedd gan fod y Rheoliadau ar gyfer ardal anffiniol yr Alban ('RBD yr Alban') wedi'u nodi yn neddfwriaeth sylfaenol yr Alban ac maent yn bwriadu creu pwerau eu hunain mewn Bil yn yr Alban. **Goblygiadau** Ariannol – Nid oes unrhyw oblygiadau ariannol o ganlyniad i dderbyn yr argymhelliad hwn.

Mae cyfyngiadau ar y ddogfen hon

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