

Agenda – Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol

Lleoliad:	I gael rhagor o wybodaeth cysylltwch a:
Ystafell Bwyllgora 1 – y Senedd	Gareth Williams
Dyddiad: Dydd Llun, 4 Rhagfyr 2017	Clerc y Pwyllgor
Amser: 14.30	0300 200 6362
	SeneddMCD@cynulliad.cymru

1 Cyflwyniad, ymddiheuriadau, dirprwyon a datganiadau o fuddiant

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

(Tudalennau 1 – 2)

CLA(5)-29-17 – Papur 1 – Offerynnau statudol sydd ag adroddiadau clir
Offerynnau'r Weithdrefn Penderfyniad Cadarnhaol

2.1 SL(5)154 – Rheoliadau Gwasanaethau Rheoleiddiedig (Darparwyr Gwasanaethau ac Unigolion Cyfrifol) 2017

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

Offerynnau'r Weithdrefn Penderfyniad Negyddol

3.1 SL(5)152 – Rheoliadau Hadau (Diwygiadau Amrywiol) (Cymru) 2017

(Tudalennau 3 – 11)

CLA(5)-29-17 – Papur 2 – Rheoliadau

CLA(5)-29-17 – Papur 3 – Memorandwm Esboniadol (Saesneg yn unig)

CLA(5)-29-17 – Papur 4 – Adroddiad

CLA(5)-29-17 – Papur 5 – Ymateb Llywodraeth Cymru



4 Offerynnau nad ydynt yn cynnwys materion i gyflwyno adroddiad arnynt o dan Reol Sefydlog 21.2 na 21.3 ond sydd â goblygiadau o ganlyniad i'r DU yn gadael yr UE

Offerynnau'r Weithdrefn Penderfyniad Negyddol

4.1 SL(5)153 – Rheoliadau Bwydydd Newydd (Cymru) 2017

(Tudalennau 12 – 37)

CLA(5)-29-17 - Papur 6 – Rheoliadau

CLA(5)-29-17 - Papur 7 – Memorandwm Esboniadol (Saesneg yn unig)

CLA(5)-29-17 - Papur 8 – Adroddiad

5 Papurau i'w nodi

5.1 Adroddiad Pwyllgor Materion Gweinyddu Cyhoeddus a Chyfansoddiad Tŷ'r Cyffredin, Devolution and Exiting the EU a Chymal 11 o Fil yr Undeb Ewropeaidd (Ymadael): Materion i'w Trafod

(Tudalennau 38 – 72)

CLA(5)-29-17 - PTN 1 – Adroddiad Pwyllgor Materion Gweinyddu Cyhoeddus a Chyfansoddiad Tŷ'r Cyffredin, Devolution and Exiting the EU a Chymal 11 o Fil yr Undeb Ewropeaidd (Ymadael): Materion i'w Trafod (Saesneg yn unig)

6 Cynnig o dan Reol Sefydlog 17.42 i benderfynu gwahardd y cyhoedd o'r cyfarfod ar gyfer y busnes a ganlyn:

Eitemau 7, 8 a 9.

7 Memorandwm Cydsyniad Offeryn Statudol: SICM(5)1 Rheoliadau Asesiad o'r Effaith Amgylcheddol (Diwygiadau Amrywiol sy'n gysylltiedig â Harbyrau, Priffyrdd a Thrafnidiaeth) 2017: Trafod yr adroddiad drafft

(Tudalennau 73 – 83)

CLA(5)-29-17 Papur 9 – SICM(5)1 Rheoliadau Asesiad o'r Effaith Amgylcheddol (Diwygiadau Amrywiol sy'n gysylltiedig â Harbyrau, Priffyrrd a Thrafnidiaeth) 2017:

CLA(5)-29-17 – Papur 10 – Llythyr gan Ysgrifennydd y Cabinet dros yr Economi a Thrafnidiaeth – 15 Tachwedd 2017

CLA(5)-29-17 – Papur 11 – Adroddiad Drafft

8 Bil yr Undeb Ewropeaidd (Ymadael): Memorandwm Cydsyniad Deddfwriaethol

(Tudalennau 84 – 117)

CLA(5)-29-17 – Papur 12 – Memorandwm Cydsyniad Deddfwriaethol

CLA(5)-29-17 – Papur 13 – Briff ymchwil (Saesneg yn unig)

CLA(5)-29-17 – Papur 14 – Papur briffio gan y Gwasanaeth Cyfreithiol (Saesneg yn unig)

9 Diwygio trefniadau'r Cynulliad

(Tudalennau 118 – 127)

Adroddiad y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol (y Pedwerydd Cynulliad) – [Anghymhwysedd Aelodau o Gynulliad Cenedlaethol Cymru](#) – Gorffennaf 2014

CLA(5)-29-17 – Papur 15 – Papur y Pwyllgor (Saesneg yn unig)

CLA(5)-29-17 – Papur 16 – Llythyr gan y Llywydd at y Cadeirydd ynghylch Anghymhwysedd – 26 Hydref 2017

CLA(5)-29-17 – Papur 17 – Llythyr gan y Cadeirydd at y Llywydd – 4 Hydref 2017

CLA(5)-29-17 – Papur 18 – Llythyr gan y Llywydd at y Cadeirydd – 18 Awst 2017

10 Llais cryfach i Gymru: Ystyried y casgliadau a'r argymhellion drafft

(Tudalennau 128 – 133)

CLA(5)-29-17 – Papur 19 – Papur y Pwyllgor (Saesneg yn unig)

Dyddiad y cyfarfod nesaf

11 Rhagfyr 2017

Offerynnau Statudol sydd ag Adroddiadau Clir Eitem 2

4 Rhagfyr 2017

SL(5)154 – Rheoliadau Gwasanaethau Rheoleiddiedig (Darparwyr Gwasanaethau ac Unigolion Cyfrifol) (Cymru) 2017

Gweithdrefn: Gadarnhaol

Mae Rhan 1 o Ddeddf Rheoleiddio ac Arolygu Gofal Cymdeithasol (Cymru) 2016 ("y Ddeddf") yn cyflwyno system newydd o reoleiddio gwasanaethau gofal a chymorth yng Nghymru, gan ddisodli'r un a sefydlwyd o dan Ddeddf Safonau Gofal 2000 ("y Ddeddf Safonau Gofal").

Mae'r Ddeddf yn cyflwyno cysyniad newydd o "gwasanaethau rheoleiddiedig" sydd wedi ei ddiffinio yn adran 2 o'r Ddeddf.

Yn unol â'r pwerau yn adran 27 o'r Ddeddf, mae'r Rheoliadau hyn yn gosod gofynion ar ddarparwyr gwasanaethau mewn perthynas â gwasanaeth rheoleiddiedig, gan gynnwys gofynion o ran safon y gofal a'r cymorth sydd i gael eu darparu.

Yn unol â'r pwerau yn adran 28 o'r Ddeddf, mae'r Rheoliadau hyn yn gosod gofynion ar unigolion cyfrifol mewn perthynas â man y mae'r unigolyn wedi ei ddynodi mewn cysylltiad ag ef.

Mae'r Rheoliadau hyn hefyd yn darparu ar gyfer troseddau os bydd darparwr gwasanaeth neu unigolyn cyfrifol yn methu â chydymffurfio â gofynion penodedig.

Mae canllawiau wedi eu cyhoeddi ynghylch sut y caiff darparwyr gwasanaethau ac unigolion cyfrifol gydymffurfio â'r gofynion a osodir gan y Rheoliadau hyn (gan gynnwys sut y caiff darparwyr gyrraedd unrhyw safonau ar gyfer darparu gwasanaeth rheoleiddiedig) ac mae adran 29 o'r Ddeddf yn ei gwneud yn ofynnol i ddarparwyr gwasanaethau ac unigolion cyfrifol roi sylw i'r canllawiau hyn.

Deddf Wreiddiol: Ddeddf Rheoleiddio ac Arolygu Gofal Cymdeithasol (Cymru) 2016

Fe'i gwnaed ar: heb ei nodi

Fe'i gosodwyd ar: 27 Tachwedd 2017



Yn dod i rym ar: 2 Ebrill 2018



OFFER Y NNAU STATUDOL
CYMRU

2017 Rhif 1095 (Cy. 276)

HADAU, CYMRU

Rheoliadau Hadau (Diwygiadau Amrywiol) (Cymru) 2017

NODYN ESBONIADOL

(*Nid yw'r nodyn hwn yn rhan o'r Rheoliadau*)

Mae'r Rheoliadau hyn yn diwygio Rheoliadau Marchnata Hadau (Cymru) 2012 a Rheoliadau Tatws Hadyd (Cymru) 2016.

Mae rheoliad 2 yn gweithredu Cyfarwyddeb Weithredu'r Comisiwn (EU) 2016/2109 sy'n diwygio Cyfarwyddeb 66/401/EEC i adlewyrchu'r newid i enw botanegol y rhywogaeth *Lolium x boucheanum* Kunth (OJ Rhif L 327, 2.12.2016, t. 59). Mae rheoliad 2 yn diwygio Rheoliadau Marchnata Hadau (Cymru) 2012 i adlewyrchu'r newid hwnnw i'r enw botanegol.

Mae rheoliad 3 yn gweithredu Penderfyniad Gweithredu'r Comisiwn (EU) 2016/320 ("y Penderfyniad"). Mae'r Penderfyniad yn diwygio Penderfyniad 2004/842/EC yngylch y rheolau sy'n caniatáu i Aelod-wladwriaethau awdurdodi rhoi ar y farchnad hadau sy'n perthyn i amrywogaethau y mae cais i'w cynnwys yn y catalog cenedlaethol o amrywogaethau planhigion amaethyddol neu o rywogaethau llysieul wedi cael ei gyflwyno (OJ L 60, 5.3.2016, t. 88). Mae'r Penderfyniad yn cynnwys y gofyniad i rif cyfresol wedi ei neilltuo yn swyddogol gael ei nodi ar label swyddogol tatws had sydd wedi eu hawdurdodi i gael eu marchnata at ddibenion profion a threialon. Mae rheoliad 3 yn diwygio Rheoliadau Tatws Hadyd (Cymru) 2016 er mwyn adlewyrchu'r gofyniad hwnnw.

Ystyriwyd Cod Ymarfer Gweinidogion Cymru ar gynnal Asesiadau Effaith Rheoleiddiol mewn perthynas â'r Rheoliadau hyn. O ganlyniad, ystyriwyd nad oedd yn angenreiddiol cynnal asesiad effaith rheoleiddiol o'r costau a'r manteision sy'n debygol o ddeillio o gydymffurfio â'r Rheoliadau hyn.

OFFER Y NNAU STATUDOL
CYMRU

2017 Rhif 1095 (Cy. 276)

HADAU, CYMRU

Rheoliadau Hadau (Diwygiadau Amrywiol) (Cymru) 2017

Gwnaed 14 Tachwedd 2017

Gosodwyd gerbron Cynulliad Cenedlaethol
Cymru 16 Tachwedd 2017

Yn dod i rym 15 Rhagfyr 2017

Mae Gweinidogion Cymru, drwy arfer y pwerau a roddir gan adran 16(1), (2) a (3) o Ddeddf Amrywogaethau a Hadau Planhigion 1964(1), ac a freiniwyd bellach yn dynt hwy(2), yn gwneud y Rheoliadau a ganlyn.

Yn unol ag adran 16(1) o'r Ddeddf honno, mae Gweinidogion Cymru wedi ymgynghori â chynrychiolwyr y buddiannau hynny y mae'n ymddangos i Weinidogion Cymru yr effeithir arnynt.

Enwi, cychwyn a chymhwysedd

1.—(1) Enw'r Rheoliadau hyn yw Rheoliadau Hadau (Diwygiadau Amrywiol) (Cymru) 2017 a deuant i rym ar 15 Rhagfyr 2017.

(2) Mae'r Rheoliadau hyn yn gymwys o ran Cymru.

(1) 1964 p. 14. Diwygiwyd adran 16(1) gan adran 4 o Ddeddf y Cymunedau Ewropeaidd 1972 (p. 68) a pharagraff 5 o Atodlen 4 iddi. Diwygiwyd adran 16(3) gan O.S. 1977/1112.

(2) *Gweler* adran 38(1) am ddiffiniad o "the Minister". Yn unol ag ethygl 2(1) o Orchymyn Trosglwyddo Swyddogaethau (Cymru) (Rhif 1) 1978 (O.S. 1978/272) ac Atodlen 1 iddo, trosglwyddwyd swyddogaethau'r Gweinidog Amaethyddiaeth, Pysgodfeydd a Bwyd o dan Ddeddf Amrywogaethau a Hadau Planhigion 1964, i'r graddau y maent yn arferadwy o ran Cymru, i'r Ysgrifennydd Gwladol. Yn unol ag ethygl 2 o Orchymyn Cynulliad Cenedlaethol Cymru (Trosglwyddo Swyddogaethau) 1999 (O.S. 1999/672) ac Atodlen 1 iddo, trosglwyddwyd y swyddogaethau a drosglwyddwyd i'r Ysgrifennydd Gwladol gan Orchymyn 1978 i Gynulliad Cenedlaethol Cymru. Yn rhinwedd paragraff 30 o Atodlen 11 i Ddeddf Llywodraeth Cymru 2006 (p. 32) mae'r swyddogaethau hynny bellach yn arferadwy gan Weinidogion Cymru.

**Diwygio Rheoliadau Marchnata Hadau (Cymru)
2012**

2. Yn y tabl yn Atodlen 1 (hadau y mae'r Rheoliadau hyn yn gymwys iddynt) i Reoliadau Marchnata Hadau (Cymru) 2012(1), yn y golofn gyntaf (planhigion y mae'r Rheoliadau yn gymwys iddynt), yn lle "*Lolium x boucheanum* Kunth" rhodder "*Lolium x hybridum* Hausskn".

Diwygio Rheoliadau Tatws Hadyd (Cymru) 2016

3. Yn Rhan 1 o Atodlen 2 (labeli swyddogol a dogfennau swyddogol) i Reoliadau Tatws Hadyd (Cymru) 2016(2), ar ôl paragraff 8(b)(i) mewnosoder—

“(ia) rhif cyfresol wedi ei neilltuo yn swyddogol;”.

Hannah Blythyn

Gweinidog yr Amgylchedd o dan awrdurdod
Ysgrifennydd y Cabinet dros Ynni, Cynllunio and
Materion Gwledig, un o Weinidogion Cymru
14 Tachwedd 2017

(1) O.S. 2012/245 (Cy. 39), a ddiwygiwyd gan O.S. 2013/889 (Cy. 101), O.S. 2014/519 (Cy. 61) ac O.S. 2016/1242 (Cy. 294).
(2) O.S. 2016/106 (Cy. 52), a ddiwygiwyd gan O.S. 2017/596 (Cy. 139).

Explanatory Memorandum to the Seed (Miscellaneous Amendments) (Wales) Regulations 2017

This Explanatory Memorandum has been prepared by the Plant Health and Environment Protection Branch within the Economy, Skills and Natural Resources Department 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 Seed (Miscellaneous Amendments) (Wales) Regulations 2017.

Hannah Blythyn,
Minister for Environment
16 November 2017

1. Description

These Regulations amend the Seed Marketing (Wales) Regulations 2012 and the Seed Potatoes (Wales) Regulations 2016.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

There are no matters of special interest to the Constitutional and Legislative Affairs Committee.

3. Legislative background

The powers to make these Regulations are in section 16 of the Plant Varieties and Seeds Act 1964. Section 16 confers broad powers to make regulations in relation to seeds which include, but are not limited to, the power to make regulations in relation to sales, marketing, importation or exportation, prevention of the spread of disease, licensing, ensuring seeds stay true to variety, packaging, information, tests, samples, exemptions and charges. The functions in section 16 that were vested in the Secretary of State were transferred to the National Assembly for Wales pursuant to article 2 of and Schedule 1, to the National Assembly for Wales (Transfer of Functions) Order 1999. The functions are now vested in Welsh Ministers pursuant to section 162 of and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006.

These Regulations are subject to the negative procedure.

4. Purpose & intended effect of the legislation

The Seed Marketing (Wales) Regulations 2012 control the marketing of seed of the main agricultural and vegetable species in Wales. The International Seed Testing Association has recently changed the botanical name of hybrid ryegrass from *Lolium x boucheanum Kunth* to *Lolium x hybridum Hausskn*. These Regulations amend the Seed Marketing (Wales) Regulations 2012 to reflect the change of botanical name.

The Seed Potatoes (Wales) Regulations 2016 control the production with a view to the certification and the marketing of seed potatoes in Wales other than those intended for export outside the EU.

Commission Implementing Decision (EU) 2016/320 includes the requirement for an officially assigned serial number to be stated on the official label of seed potatoes that are authorised to be marketed for the purposes of tests and trials. These Regulations amend the Seed Potatoes (Wales) Regulations 2016 to reflect the requirement.

5. Consultation

Two separate targeted, twelve week consultations were launched on 27 July 2017 and ended 19 October 2017.

No responses were received in respect of the consultation concerning the botanical change of name.

One response was received from the British Potato Trade Association in respect of the consultation concerning the official labels of test and trial seed potatoes. The British Potato Trade Association represent over 100 potato trade companies across the UK and fully support this proposal.

6. Regulatory Impact Assessment (RIA)

There has been no regulatory impact assessment undertaken. Seed potato producers in Wales already use labels with unique numbers so the amendments will simply bring into law this existing industry practice for test and trial potatoes.

No impact on charities or voluntary bodies is foreseen.

No impact on the public or private sector is foreseen.

SL(5)152 - Rheoliadau Hadau (Diwygiadau Amrywiol) (Cymru) 2017

Cefndir a Phwrpas

Mae'r Rheoliadau hyn yn diwygio Rheoliadau Marchnata Hadau (Cymru) 2012 a Rheoliadau Tatws Hadyd (Cymru) 2016.

Mae rheoliad 2 yn gweithredu Cyfarwyddeb Weithredu'r Comisiwn (EU) 2016/2109 sy'n diwygio Cyfarwyddeb 66/401/EEC i adlewyrchu'r newid i enw botanegol y rhywogaeth *Lolium x boucheanum* Kunth. Mae rheoliad 2 yn diwygio Rheoliadau Marchnata Hadau (Cymru) 2012 i adlewyrchu'r newid hwnnw i'r enw botanegol.

Mae rheoliad 3 yn gweithredu Penderfyniad Gweithredu'r Comisiwn (EU) 2016/320 ("y Penderfyniad"). Mae'r Penderfyniad yn diwygio Penderfyniad 2004/842/EC ynghylch y rheolau sy'n caniatáu i Aelod-wladwriaethau awdurdodi rhoi ar y farchnad hadau sy'n perthyn i amrywogaethau penodol. Mae'r Penderfyniad yn cynnwys y gofyniad i rif cyfresol wedi ei neilltuo yn swyddogol gael ei nodi ar label swyddogol tatws had sydd wedi eu hawdurdodi i gael eu marchnata at ddibenion profion a threialon. Mae rheoliad 3 yn diwygio Rheoliadau Tatws Hadyd (Cymru) 2016 er mwyn adlewyrchu'r gofyniad hwnnw.

Gweithdrefn

Negyddol

Craffu Technegol

Ni nodwyd unrhyw bwyntiau i gyflwyno adroddiad arnynt o dan Reol Sefydlog 21.2 mewn perthynas â'r offeryn hwn.

Craffu ar rinweddau

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

Mae yn ofynnol rhoi Erthygl 2 o Gyfarwyddeb 2016/2109 (sy'n achosi rheoliad 2) ar waith erbyn 31 Rhagfyr 2017, gyda'r ddarpariaeth i fod yn gymwys o 1 Ionawr 2018. Daw'r Rheoliadau i rym ar 15 Rhagfyr, felly bydd y newid mewn grym o'r dyddiad hwnnw tan 31 Rhagfyr, cyfnod pan na ddylai fod yn gymwys. [Rheol Sefydlog 21.3(iv) – rhoi deddfwriaeth yr UE ar waith mewn ffordd amhriodol]

Gwnaed Penderfyniad y Comisiwn 2016/320 (sy'n achosi rheoliad 3) ar 3 Mawrth 2016 ac yr oedd yn gymwys o 1 Ebrill 2017. Ni fydd y Rheoliadau hyn, sy'n rhoi'r Penderfyniad ar waith, yn gymwys tan 15 Rhagfyr 2017. [Rheol Sefydlog 21.3(iv) – rhoi deddfwriaeth yr UE ar waith mewn ffordd amhriodol]

Y goblygiadau yn sgil gadael yr Undeb Ewropeaidd

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



Gall y Rheoliadau hyn barhau i fod yn weithredol wedi i'r DU adael yr UE, gan eu bod wedi'u gwneud o dan bwerau domestig yn y Ddeddf Amrywogaethau a Hadau Planhigion 1964, sef cyn i Brydain ddod yn aelod o'r UE. Mae hyn yn wir er iddynt gael eu gwneud i roi deddfwriaeth yr UE ar waith.

Ymateb y Llywodraeth

Mae angen ymateb gan y Llywodraeth.

Cyngorwyr Cyfreithiol

Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol

Tachwedd 2017



Cynulliad Cenedlaethol Cymru

Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol

Rheoliadau Hadau (Diwygiadau Amrywiol) (Cymru) 2017

Mae'r elfen 'Craffu ar rinweddau' o'r adroddiad yn gwneud dau bwynt o ran amser. Derbynnir y ddau bwynt. Mewn perthynas â'r cyntaf, mae'r diwygiad yn gyfyngedig i newid enw botanegol math o rygwel a ni ragwelir y caiff y diwygiad effaith sylweddol yn ddio'i hun. Mewn perthynas â'r ail bwynt, methwyd y terfyn amser oherwydd nifer o achosion o oedi yn ystod y broses o lunio'r Rheoliadau.

Item 4.1

OFFER Y NNAU STATUDOL
CYMRU

2017 Rhif 1103 (Cy. 279)

BWYD, CYMRU

**Rheoliadau Bwydydd Newydd
(Cymru) 2017**

NODYN ESBONIADOL

(Nid yw'r nodyn hwn yn rhan o'r Rheoliadau)

Mae'r Rheoliadau hyn yn darparu ar gyfer gweithredu a gorfodi yng Nghymru Reoliad (EU) 2015/2283 Senedd Ewrop a'r Cyngor dyddiedig 25 Tachwedd 2015 ar fwydydd newydd, sy'n diwygio Rheoliad (EU) Rhif 1169/2011 Senedd Ewrop a'r Cyngor ac yn diddymu Rheoliad (EC) Rhif 258/97 Senedd Ewrop a'r Cyngor a Rheoliad y Comisiwn (EC) Rhif 1852/2001 (OJ Rhif L 327, 11.12.2015, t 1) ("y Rheoliad Bwydydd Newydd").

Mae rheoliad 3 yn gwneud awdurdodau bwyd yn gyfrifol am orfodi'r Rheoliadau.

Mae rheoliad 4 yn darparu ei bod yn drosedd i berson fethu â chydymffurfio ag Erthygl 6(2) o'r Rheoliad Bwydydd Newydd ac y caniateir i'r drosedd gael ei chosbi ar euogfarn ddiannod drwy ddirwy. Mae Erthygl 6(2) yn darparu mai dim ond bwydydd newydd a awdurdodir gan y Comisiwn Ewropeaidd ac a gynhwysir yn rhestr yr Undeb Ewropeaidd o fwydydd newydd y caniateir eu rhoi ar y farchnad o fewn yr Undeb Ewropeaidd, a bod rhaid i'r bwydydd fod yn unol â'r amodau defnyddio a'r gofynion labelu a nodir yn y rhestr.

Mae rheoliad 5 ac Atodlen 2 yn cymhwys o darpariaethau penodol yn Neddf Diogelwch Bwyd 1990 (1990 p. 16) gydag addasiadau. Mae hyn yn cynnwys cymhwys (gydag addasiadau)—

- (a) adran 9, sy'n galluogi swyddog awdurdodedig, os yw'n ystyried bod Erthygl 6(2) o'r Rheoliad Bwydydd Newydd yn cael neu wedi cael ei thorri, i roi hysbysiad i'r person a chanddo ofal am y bwyd nad yw'r bwyd i gael ei fwyta gan bobl neu nad yw i gael ei symud ymaith ac eithrio i ryw fan a bennir yn yr hysbysiad, neu i ymafael yn y

- bwyd er mwyn i ynad heddwch ymdrin ag ef;
- a
- (b) adran 10(1), sy'n galluogi hysbysiad gwella i gael ei gyflwyno sy'n ei gwneud yn ofynnol i'r person a chanddo ofal am y bwyd gydymffurfio â darpariaethau'r Rheoliad Bwydydd Newydd a bennir yn Atodlen 1 i'r Rheoliadau hyn. Mae'r darpariaethau, fel y'u cymhwysir, yn gwneud methu â chydymffurfio â hysbysiad gwella yn drosedd.

Mae rheoliad 6 yn dirymu—

- (a) Rheoliadau Bwydydd Newydd a Chynhwysion Bwydydd Newydd 1997 (O.S. 1997/1335) o ran Cymru;
- (b) Rheoliadau Bwydydd Newydd a Chynhwysion Bwydydd Newydd (Ffioedd) 1997 (O.S. 1997/1336) o ran Cymru;
- (c) Rheoliadau Ensymau Bwyd (Cymru) 2009 (O.S. 2009/3377 (Cy. 299)).

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 Asiantaeth Safonau Bwyd yn: Asiantaeth Safonau Bwyd Cymru, 11^{eg} Llawr, Tŷ Southgate, Stryd Wood, Caerdydd, CF10 1EW neu oddi ar wefan yr Asiantaeth yn www.food.gov.uk/wales/wales.

OFFER Y NNAU STATUDOL
CYMRU

2017 Rhif 1103 (Cy. 279)

BWYD, CYMRU

Rheoliadau Bwydydd Newydd (Cymru) 2017

Gwnaed 14 Tachwedd 2017

*Gosodwyd gerbron Cynulliad Cenedlaethol
Cymru* 16 Tachwedd 2017

Yn dod i rym 1 Ionawr 2018

Mae Gweinidogion Cymru yn gwneud y Rheoliadau a ganlyn drwy arfer y pwerau a roddir gan adrannau 6(4), 16(1)(a), (e) ac (f), 17(2), 18(1)(a), 26(1)(a) a (3) ac 48(1) o Ddeddf Diogelwch Bwyd 1990(1) ac, â chydysniad y Trysorlys, drwy arfer y pwerau a roddir gan adran 56(1) o Ddeddf Cyllid 1973(2) ac a freiniwyd bellach ynddynt hwy(3).

Yn unol ag adran 48(4A)(4) o Ddeddf Diogelwch Bwyd 1990, mae Gweinidogion Cymru wedi rhoi sylw i gyngor perthnasol a roddwyd gan yr Asiantaeth Safonau Bwyd cyn gwneud y Rheoliadau hyn.

-
- (1) 1990 p. 16. Diwygiwyd adran 6(4) gan baragraff 6 o Atodlen 9 i Ddeddf Dadreoleiddio a Chontractio Allan 1994 (p. 40), paragraff 10(1) a (3) o Atodlen 5 ac Atodlen 6 i Ddeddf Safonau Bwyd 1999 (p. 28) ("Deddf 1999"), ac O.S. 2002/794. Diwygiwyd adran 16(1) gan baragraff 8 o Atodlen 5 i Ddeddf 1999. Diwygiwyd adran 17(2) gan baragraffau 8 a 12(a) o Atodlen 5 i Ddeddf 1999 ac O.S. 2011/1043. Diwygiwyd adran 26(3) gan Atodlen 6 i Ddeddf 1999. Diwygiwyd adran 48 gan baragraff 8 o Atodlen 5 i Ddeddf 1999. Trosglwyddwyd swyddogaethau a oedd gynt yn arferadwy gan "the Ministers", i'r graddau yr oeddent yn arferadwy o ran Cymru, i Gynulliad Cenedlaethol Cymru gan O.S. 1999/672 fel y'i ddarllenir gydag adran 40(3) o Ddeddf 1999, a'u trosglwyddo wedi hynny i Weinidogion Cymru gan baragraff 30 o Atodlen 11 i Ddeddf Llywodraeth Cymru 2006 (p. 32).
- (2) 1973 p. 51. Diwygiwyd is-adran (1) gan erthygl 6(1)(e) o O.S. 2011/1043.
- (3) Yn rhinwedd adran 59(5) o Ddeddf Llywodraeth Cymru 2006.
- (4) Mewnosodwyd adran 48(4A) gan baragraff 21 o Atodlen 5 i Ddeddf 1999.

Ymgynghorwyd yn agored ac yn dryloyw â'r cyhoedd wrth lunio a gwerthuso'r Rheoliadau hyn fel sy'n ofynnol gan Erthygl 9 o Reoliad (EC) Rhif 178/2002 Senedd Ewrop a'r Cyngor sy'n gosod egwyddorion cyffredinol a gofynion cyfraith bwyd, yn sefydlu Awdurdod Diogelwch Bwyd Ewrop ac yn gosod gweithdrefnau o ran materion diogelwch bwyd(1).

Enwi, cymhwysyo a chychwyn

- 1.**—(1) Enw'r Rheoliadau hyn yw Rheoliadau Bwydydd Newydd (Cymru) 2017.
- (2) Mae'r Rheoliadau hyn yn gymwys o ran Cymru.
- (3) Daw'r Rheoliadau hyn i rym ar 1 Ionawr 2018.

Dehongli

- 2.**—(1) Yn y Rheoliadau hyn—
 - ystyr “darpariaeth UE benodedig” (“*specified EU provision*”) yw darpariaeth yn Rheoliad (EU) 2015/2283 a bennir yng ngholofn 1, ac a ddisgrifir yng ngholofn 2, o'r tabl yn Atodlen 1;
 - ystyr “y Ddeddf” (“*the Act*”) yw Ddeddf Diogelwch Bwyd 1990;
 - ystyr “Rheoliad (EU) 2015/2283” (“*Regulation (EU) 2015/2283*”) yw Rheoliad (EU) 2015/2283 Senedd Ewrop a'r Cyngor ar 25 Tachwedd 2015 ar fwydydd newydd, sy'n diwygio Rheoliad (EU) Rhif 1169/2011 Senedd Ewrop a'r Cyngor ac yn diddymu Rheoliad (EC) Rhif 258/97 Senedd Ewrop a'r Cyngor a Rheoliad y Comisiwn (EC) Rhif 1852/2001(2).
- (2) Onid amlygir bwriad i'r gwrthwyneb, mae i unrhyw ymadrodd a ddefnyddir yn y Rheoliadau hyn a Rheoliad (EU) 2015/2283 yr un ystyr ag sydd iddo yn Rheoliad (EU) 2015/2283.

Gorfodi

- 3.** Dyletswydd awdurdod bwyd o fewn ei ardal yw gorfodi Rheoliad (EU) 2015/2283 a'r Rheoliadau hyn.

Troseedd a chosb

- 4.** Mae person sy'n methu â chydymffurfio ag Erthygl 6(2) fel y'i darllenir gydag Erthyglau 24 a 35(2) o Reoliad (EU) 2015/2283 yn euog o drosedd ac yn agored ar euogfarn ddiannod i ddirwy.

(1) OJ Rhif L 31, 1.2.2002, t 1, a ddiwygiwyd ddiwethaf gan Reoliad (EU) Rhif 652/2014 Senedd Ewrop a'r Cyngor (OJ Rhif L 189, 27.6.2014, t 1).

(2) OJ Rhif L 327, 11.12.2015, t 1.

Cymhwysو ac addasu darpariaethau'r Ddeddf

5.—(1) Mae adran 10(1) a (2) o'r Ddeddf (hysbysiadau gwella) yn gymwys at ddibenion y Rheoliadau hyn gyda'r addasiad (yn achos adran 10(1)) a nodir yn Rhan 1 o Atodlen 2 at ddibenion—

- (a) galluogi i hysbysiad gwella gael ei gyflwyno i berson sy'n ei gwneud yn ofynnol i'r person hwnnw gydymffurfio â darpariaeth UE benodedig; a
- (b) gwneud methu â chydymffurfio â hysbysiad y cyfeirir ato yn is-baragraff (a) yn drosedd.

(2) Mae adran 9 o'r Ddeddf (arolygu bwyd amheus ac ymafael ynddo) yn gymwys at ddibenion y Rheoliadau hyn gyda'r addasiadau a nodir yn Rhan 2 o Atodlen 2 at ddibenion galluogi swyddog awdurdodedig i awdurdod bwyd, os yw'n ymddangos i'r swyddog awdurdodedig fod Erthygl 6(2) o Reoliad (EU) 2015/2283, yn cael, neu wedi cael, ei thorri mewn perthynas ag unrhyw fwyd sydd wedi ei roi ar y farchnad, i naill ai—

- (a) rhoi hysbysiad i'r person a chanddo ofal am y bwyd nad yw'r bwyd i gael ei fwyta gan bobl, ac nad yw i gael ei symud ymaith neu nad yw i gael ei symud ymaith ac eithrio i ryw fan a bennir yn yr hysbysiad, neu
- (b) ymafael yn y bwyd a'i symud ymaith er mwyn i ynad heddwch ymdrin ag ef.

(3) Mae darpariaethau'r Ddeddf a bennir yng ngholofn 1 o'r tabl yn Rhan 3 o Atodlen 2 yn gymwys, gyda'r addasiadau (os oes rhai) a bennir yng ngholofn 2 o'r tabl hwnnw, at ddibenion y Rheoliadau hyn.

(4) Nid yw paragraffau (1) i (3) yn rhagfarnu cymhwysو'r Ddeddf i'r Rheoliadau hyn at ddibenion ac eithrio'r rhai a bennir ym mharagraffau (1) a (2).

Dirymiadau

6. Mae'r Rheoliadau a ganlyn wedi eu dirymu—

- (a) Rheoliadau Bwydydd Newydd a Chynhwysion Bwydydd Newydd 1997(1);
- (b) Rheoliadau Bwydydd Newydd a Chynhwysion Bwydydd Newydd (Ffioedd) 1997(2);
- (c) Rheoliadau Ensymau Bwyd (Cymru) 2009(3).

(1) O.S. 1997/1335.

(2) O.S. 1997/1336.

(3) O.S. 2009/3377 (Cy. 299).

Vaughan Gething
Ysgrifennydd y Cabinet dros Iechyd a Gwasanaethau
Cymdeithasol, un o Weinidogion Cymru
14 Tachwedd 2017

Rydym yn cydysynio
Guto Bebb
David Evennett
Dau o Gomisiynwyr Trysorlys ei Mawrhydi

10 Hydref 2017

YR ATODLENNI

ATODLEN 1 Rheoliad 2(1)

Darpariaethau UE penodedig

1. *Darpariaeth UE 2. Y pwnc
benodedig*

1. Erthygl 4(1). Gofyniad bod gweithredwyr busnes bwyd yn gwirhau a yw'r bwyd y maent yn bwriadu ei roi ar y farchnad o fewn cwmpas Rheoliad (EU) 2015/2283.
2. Erthygl 6(2) fel y'i darllenir gydag Erthyglau 24 a 35(2). Gofyniad mai dim ond bwydydd newydd a awdurdodir ac a gynhwysir yn rhestr yr Undeb y caniateir eu rhoi ar y farchnad felly, neu eu defnyddio mewn neu ar fwyd, yn unol â'r amodau defnyddio a'r gofynion labelu a bennir, ac ag unrhyw ofynion monitro ar ôl i'r bwydydd newydd gael eu rhoi ar y farchnad.
3. Erthygl 25. Gofyniad bod rhaid i weithredwr busnes bwyd sydd wedi rhoi bwyd newydd ar y farchnad hysbysu'r Comisiwn Ewropeaidd ar unwaith am unrhyw wybodaeth y daw'n ymwybodol ohoni ynghylch—
(a) unrhyw wybodaeth wyddonol neu dechnegol newydd a allai ddylanwadu ar werthuso diogelwch defnyddio'r bwyd newydd; neu
(b) unrhyw waharddiad neu gyfyngiad a osodir gan drydedd wlad y rhoddir y bwyd newydd ar y farchnad ynndi.

ATODLEN 2 Rheoliad 5

Cymhwysyo ac addasu darpariaethau'r Ddeddf

RHAN 1

Addasu adran 10(1)

1. Yn lle adran 10(1) o'r Ddeddf (hysbysiadau gwellia) rhodder—

“If an authorised officer has reasonable grounds for believing that a person is failing to comply with any provision specified in Schedule 1 to the Novel Foods (Wales) Regulations 2017, the authorised officer may, by a notice served on that person (in this Act referred to as an “improvement notice”—

- (a) state the officer's grounds for believing that the person is failing to comply with the relevant provision;
- (c) specify the matters which constitute the person's failure so to comply;
- (d) specify the measures which, in the officer's opinion, the person must take in order to secure compliance; and
- (e) require the person to take those measures, or measures that are at least equivalent to them, within such period (not being less than 14 days) as may be specified in the notice.”

RHAN 2

Addasu adran 9

2. Yn lle adran 9 o'r Ddeddf (arolygu bwyd amheus ac ymafael ynddo) rhodder—

“(1) This section applies where it appears to any authorised officer of a food authority that Article 6(2) of Regulation (EU) 2015/2283 is being or has been contravened in relation to any food which has been placed on the market.

(2) The authorised officer may either—

- (a) give notice to the person in charge of the food that, until the notice is withdrawn, the food—
 - (i) is not to be used for human consumption; and

- (ii) either is not to be removed or is not to be removed except to some place specified in the notice; or
- (b) seize the food and remove it in order to have it dealt with by a justice of the peace;

and any person who knowingly contravenes the requirements of a notice under paragraph (a) above is guilty of an offence and liable on summary conviction to a fine.

(3) Where the authorised officer exercises the powers conferred by subsection (2)(a) above, the authorised officer must, as soon as is reasonably practicable and in any event within 21 days, determine whether or not they are satisfied that the food complies with Article 6(2) of Regulation (EU) 2015/2283, and—

- (a) if so satisfied, immediately withdraw the notice;
- (b) if not so satisfied, seize the food and remove it in order to have it dealt with by a justice of the peace.

(4) Where an authorised officer exercises the powers conferred by subsection (2)(b) or (3)(b) above, the authorised officer must inform the person in charge of the food that it is to be dealt with by a justice of the peace and—

- (a) any person who might be liable to a prosecution in respect of the food must, if attending before the justice of the peace by whom the food falls to be dealt with, be entitled to be heard and to call witnesses; and
- (b) that justice of the peace may, but need not, be a member of the court before which any person is charged with an offence in relation to that food.

(5) If it appears to a justice of the peace, on the basis of such evidence as the justice of the peace considers appropriate in the circumstances, that any food falling to be dealt with under this section fails to comply with Article 6(2) of Regulation (EU) 2015/2283, the justice of the peace must condemn the food and order—

- (a) the food to be destroyed or to be disposed of as to prevent it from being used for human consumption; and
- (b) any expenses reasonably incurred in connection with the destruction or disposal to be defrayed by the owner of the food.

(6) If a notice under subsection (2)(a) above is withdrawn, or the justice of the peace by whom any food falls to be dealt with under this section refuses to condemn it, the food authority must compensate the owner of the food for any depreciation in its value resulting from the action taken by the authorised officer.

(7) Any disputed question as to the right to or the amount of any compensation payable under subsection (6) above is to be determined by arbitration.

(8) For the purposes of this section, “Regulation (EU) 2015/2283” means Regulation (EU) 2015/2283 of the European Parliament and of the Council of 25 November 2015 on novel foods, amending Regulation (EU) No 1169/2011 of the European Parliament and of the Council and repealing Regulation (EC) No 258/97 of the European Parliament and of the Council and Commission Regulation (EC) No 1852/2001.”

RHAN 3

Cymhwys o'r Ddeddf

<i>Colofn 1</i>	<i>Colofn 2</i>
<i>Darpariaeth y Ddeddf</i>	<i>Addasiadau</i>
Adran 2 (ystyr estynedig “sale” etc.)	Yn lle “this Act” (ym mhob lle y mae'n digwydd) rhodder “the Novel Foods (Wales) Regulations 2017”.
Adran 3 (rhagdybiaethau y bwriedir i fwyd gael ei fwyta gan bobl)	Yn is-adran (1), yn lle “this Act” rhodder “the Novel Foods (Wales) Regulations 2017”.
Adran 20 (troseddau oherwydd bai person arall)	Yn lle “any of the preceding provisions of this Part” rhodder “section 10(2), as applied by regulation 5(1) of the Novel Foods (Wales) Regulations 2017 or under regulation 4 of those Regulations”.
Adran 21(1) a (5) (amddiffyniad diwydrwydd	Yn is-adran (1), yn lle “any of the

<i>Colofn 1</i>	<i>Colofn 2</i>
<i>Darpariaeth y Ddeddf</i>	<i>Addasiadau</i>
dyladwy)	preceding provisions of this Part” rhodder “section 10(2), as applied by regulation 5(1) of the Novel Foods (Wales) Regulations 2017 or under regulation 4 of those Regulations”.
Adran 30(6) ac (8) (tystiolaeth o dystysgrifau a roddir gan ddadansoddydd neu archwilydd bwyd)	Yn is-adran (8), yn lle “this Act” rhodder “the Novel Foods (Wales) Regulations 2017”.
Adran 32 (pwerau mynediad)	Yn is-adran (1), yn lle paragraffau (a) i (c), rhodder “(a) to enter any premises within the authority’s area for the purpose of ascertaining whether Article 6(2) of Regulation 2015/2283, is being or has been contravened on the premises;”.
Adran 33 (rhwystro etc. swyddogion)	Yn is-adran (1), yn lle “this Act” (ym mhob lle y mae’n digwydd) rhodder “the Novel Foods (Wales) Regulations 2017”.

<i>Colofn 1</i>	<i>Colofn 2</i>
<i>Darpariaeth y Ddeddf</i>	<i>Addasiadau</i>
Adran 35(1)(1) a (2) (cosbi troseddau)	Yn is-adran (1), ar ôl “section 33(1) above”, mewnosoder “, as applied and modified by regulation 5 of, and Part 3 of Schedule 2 to, the Novel Foods (Wales) Regulations 2017”.
Adran 36 (troseddau gan gyrrff corfforaethol)	Yn is-adran (2), yn y geiriau agoriadol, yn lle “any other offence under this Act” rhodder “an offence under section 33(2), as applied by regulation 5 of, and Part 3 of Schedule 2 to, the Novel Foods (Wales) Regulations 2017.”.
Adran 36A(2) (troseddau gan bartneriaethau Albanaidd)	Yn is-adran (1), yn lle “this Act” rhodder “section 10(2), as applied by regulation 5(1) of the Novel Foods (Wales) Regulations 2017 or under regulation 4 of those Regulations”.
Adran 37(1) a (6) (apelau i lys ynadon)	Yn lle “this Act” rhodder “section 10(2), as applied by regulation 5(1) of the Novel Foods (Wales) Regulations 2017 or under regulation 4 of those Regulations”.
	Yn lle is-adran (1) rhodder—

- (1) Mae adran 35(1) wedi ei diwygio gan baragraff 42 o Atodlen 26 i Ddeddf Cyflawnder Troseddol 2003 (p. 44), o ddyddiad i’w bennu. Mae diwygiadau eraill i adran 35(1) nad ydynt yn berthnasol i’r Rheoliadau hyn.
- (2) Mewnosodwyd adran 36A gan adran 40(1) o Ddeddf Safonau Bwyd 1999 (p. 28) a pharagraffau 7 ac 16 o Atodlen 5 iddi.

<i>Colofn 1</i>	<i>Colofn 2</i>
<i>Darpariaeth y Ddeddf</i>	<i>Addasiadau</i>
	<p>“(1) Any person who is aggrieved by a decision of an authorised officer of a food authority to serve an improvement notice under section 10(1), as applied and modified by regulation 5 of, and Part 1 of Schedule 2 to, the Novel Foods (Wales) Regulations 2017, may appeal to a magistrates’ court.”</p> <p>Yn is-adran (6)— yn lle “(3) or (4)” rhodder “(1)”, ac ym mharagraff (a), hepgorer “or to the sheriff”.</p>
Adran 39 (apelau yn erbyn hysbysiadau gwella)	<p>Yn lle is-adran (1) rhodder—</p> <p>“(1) On an appeal against an improvement notice served under section 10(1), as applied and modified by regulation 5 of, and Part 1 of Schedule 2 to, the Novel Foods (Wales) Regulations 2017, the magistrates’ court may either cancel or affirm the notice and, if it affirms it, may do so either in its original form or with such modifications as the magistrates’ court may in the circumstances think fit.”</p> <p>Yn is-adran (3), hepgorer “for want of prosecution”.</p>

EXPLANATORY MEMORANDUM TO
The Novel Foods (Wales) Regulations 2017

This Explanatory Memorandum has been prepared by the Food Standards Agency (FSA) and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Member's Declaration

In my view the Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Novel Foods (Wales) Regulations 2017. I am satisfied that the benefits justify the likely costs.

Vaughan Gething AM
Cabinet Secretary for Health and Social Services

16 November 2017

EXPLANATORY MEMORANDUM TO Novel Foods (Wales) Regulations 2017

1. Description

Novel foods are foods or food ingredients that do not have a significant history of consumption within the EU before 15 May 1997. They are currently regulated in the EU by the Novel Foods Regulation (EC) No 258/97. The main purpose of the Regulation is to prohibit the sale of unauthorised novel foods, which could pose a risk to public health.

The Novel Foods Regulation (EC) No 258/97 is to be repealed and replaced by Regulation (EU) 2015/2283 on novel foods as of 1 January 2018. The Novel Food (Wales) Regulations 2017 will revoke and replace in Wales the Novel Food and Novel Food Ingredients Regulations 1997 (1997/1335), which provide for the enforcement of the Novel Foods Regulations (EC) No 258/97. The proposed Regulations will also revoke the Novel Foods and Novel Food Ingredients (Fees) Regulations 1997 (1997/1336) in relation to Wales and the Food Enzymes (Wales) Regulations 2009 (2009/3377). HM Treasury consent has been obtained to revoke the Novel Foods and Novel Food Ingredients (Fees) Regulations 1997 in relation to Wales.

2. Matters of Special Interest to the Constitutional and Legislative Affairs Committee

None.

3. Legislative Background

The powers enabling the Regulations to be made are conferred by sections 6(4), 16(1)(a), (e) and (f), 17(2), 18(1)(a), 26(1)(a) and (3) and 48(1) of the Food Safety Act 1990, and section 56(1) of the Finance Act 1973.

The powers given by these sections, which were vested in UK Government Ministers prior to devolution, were transferred to the National Assembly for Wales in 1999 by the National Assembly for Wales (Transfer of Functions) Order 1999 (SI 1999/672) and were subsequently transferred to the Welsh Ministers by paragraph 30 of Schedule 11 to the Government of Wales Act 2006.

The Regulations will be made by statutory instrument subject to the negative resolution procedure.

4. Purpose and Intended Effect of the Legislation

The purpose of the Novel Foods (Wales) Regulations 2017 is to:

- Ensure that those placing novel foods on the market within Wales are fully compliant with the new EU legislative requirements. This supports consumers accessing safe food innovation and facilitates trade in new foods by UK businesses, whilst providing a high level of protection of human health and consumer interests;
- Provide for the effective and proportionate enforcement of the new EU Regulation on novel foods through the use of improved enforcement tools that may be employed to deal with suspected non-compliances with the EU Regulation and a range of civil penalties;
- Maintain access to a back stop criminal offence and provide for defences against prosecution and establish a right of appeal against the imposition of an improvement notice in particular circumstances;
- Specify penalties that the Courts may impose upon conviction and enable the award of compensation where enforcement authorities are found not to have taken appropriate action; and
- Revoke the Novel Foods and Novel Food Ingredients Regulations 1997 and the Novel Foods and Novel Food Ingredients (Fees) Regulations 1997 in relation to Wales.

5. Consultation

The FSA in Wales held a public consultation between 3rd April and 26th June 2017. There were no responses to the consultation.

6. Regulatory Impact Assessment

The figures used in the Impact Assessment to calculate the costs and benefits to businesses are on a UK wide basis. The FSA does not hold details of the number of businesses in Wales using novel foods and so these figures are not available on a disaggregated basis. Novel foods can be used by any business so they are unlikely to be registered as a ‘novel foods business’ and therefore identifiable as such. During the consultation for the Novel Foods (Wales) regulations 2017 the FSA asked local authorities to draw this to the attention of any business using novel foods in their areas. We received no responses to the consultation in Wales. On this basis UK figures have been used above to calculate the cost to industry.

What policy options have been considered?

Option 1 – Do Nothing – do not make domestic Regulations to provide for the enforcement and execution of the new EU Regulation in Wales.

This option will not prevent the new EU Regulation applying in Wales as it is already legally binding and applicable throughout the EU. However, enforcement authorities would not have the necessary powers to enable them to enforce it. This could also

lead to infraction proceedings being brought against the UK for failing to enforce the new EU Regulation as part of its legal obligations to the EU.

Option 2 – Make appropriate domestic Regulations for the execution and enforcement of the new EU Regulation on novel foods.

This option will provide enforcement authorities with the necessary powers to enforce the new EU Regulation, and remove the risk of the UK incurring infraction proceedings.

This is the preferred option.

Option Appraisal

Costs and Benefits

Option 1: Do Nothing – do not make national Regulations to provide for the enforcement and execution of the new EU Regulation in England; Wales; and Northern Ireland.

There are no additional costs or benefits associated with this option. This is the baseline against which the alternative policy option is appraised. As noted above, failing to introduce the Regulations carries a risk of infraction proceedings and a fine from the EU.

Option 2: Make appropriate domestic Regulations for the execution and enforcement of the new EU Regulation on novel foods.

There will be some cost to industry and enforcement in ensuring compliance with the new EU Regulation as identified below.

Option 2 - One-off Costs to Industry

One –off familiarisation cost

This figure is calculated by firstly taking the 2016 Provisional ONS ASHE (Annual Survey of Hours and Earnings)¹ figure ‘Production managers and directors’ £25.54 and uprating it by 20%, according to the Standard Cost model², to account for overheads, giving a mean³ hourly wage rate of £30.65. It is estimated that the reading and understanding of the EU Regulation and the proposed Regulations will take one and half hours with a further one and a half hours more for dissemination to key staff within each firm (a total of three hours). Given the number of enquiries the FSA receives annually from companies concerning this area of legislation, it is estimated that approximately 1,000 companies⁴ across the UK will need to invest in

¹

<https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/datasets/occupation4digitsoct2010ashetab14>

² SCM methodology <http://www.berr.gov.uk/files/file44503.pdf>

³ The median figure would have been used but only the ‘mean’ figure was available at the time.

⁴ The FSA has made the reasonable assumption that approximately 1,000 food business operators are active in considering placing novel foods on the market based on the number of enquiries we receive; these enquiries generally concern whether a product is novel;

understanding the new legislation, thus yielding an approximate one-off familiarisation cost to firms across the UK of £92k.

Option 2 - Costs to Enforcement

One –off familiarisation cost

There are approximately 386 local authorities and 36 Port Health Authorities in England, Wales and Northern Ireland. It is estimated that one officer in each of these authorities (one / Health Officer from each local authority'; and one 'Inspector of Standards' from each Port Health Authority) is expected to read and familiarise themselves with the EU Regulation and the proposed Regulations and that it takes them one and a half hours to do so. In addition, we have estimated that a further hour and a half is required to disseminate to key staff within the organisation (three hours in total).

An estimate of the cost with respect to the time taken by enforcement officers at local authorities to familiarise themselves is £18.97. This figure taken from the 2016 Provisional ONS ASHE (Annual Survey of Hours and Earnings)⁵, figures for an Environmental Health Officer £18.97 per hour (median value), which, in line with the Standard Cost Model, is then up-rated by 20% to account for overheads, which gives an hourly wage rate of £22.76. With 386 local authorities, this gives a total cost of £26k. An estimate of the cost with respect to the time taken by 'Inspectors of standards' at Port Health Authorities, to familiarise themselves is £17.83. This figure taken from the 2016 Provisional ONS ASHE (Annual Survey of Hours and Earnings), figures for an 'Inspector of standards' £15 per hour (median value), which, in line with the Standard Cost Model, is then up-rated by 20% to account for overheads. With 36 Port Health Authorities, this gives a total cost of £2k. This result in a total approximate one-off cost for enforcement bodies across England, Wales and Northern Ireland of £28k.

Within Wales there are 22 local authorities, including one Port Health Authority. Using the figures above for hourly rates and familiarisation time this would result in a cost for local authorities of £1500 and the Port Health Authority of £55. The total approximate one-off cost for enforcement bodies in Wales would be £1555.

Compared with the current system, there would be no additional or new burden on enforcement bodies, other than those identified in the costs and benefits above.

Option 2 – Benefits to Industry

Generic Novel Food Authorisations

procedures for seeking authorisation of a novel food; and how to demonstrate that a product has a history of consumption in the EU.

5

<https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/datasets/occupation4digitsoct2010ashetab14>

Under current regulatory requirements operators wishing to place novel foods on the market may either submit:

- a full novel food application (with accompanying scientific dossier) for authorisation; or
- an application seeking to demonstrate the substantial equivalence (SE) of their novel food product to one that is already authorised.

Under the current system novel food authorisations are issued specifically to the company that submitted the application, consequently any other company wishing to market the same novel food product must submit a separate application. In most cases this can be done via a simplified procedure that is based on demonstrating to one of the national Competent Authorities that the two products are substantially equivalent. This has led to a large number of SE applications, creating unnecessary administrative burdens on applicants and national Competent Authorities.

By way of illustration, Company A wishes to place chia seeds on the market, and submits a full novel food application seeking authorisation. Company A's application is successful and is duly authorised to place their chia seeds on the market. Company B also wishes to place chia seeds on the market. Company B can submit a SE application, which should show how the novel food or novel food ingredient may be substantially equivalent to the existing authorised food as regards to its:

- composition (such as the source organism and preparation method);
- nutritional value;
- metabolism;
- intended use (such as a food ingredient or supplement); and the
- level of undesirable substances (such as contaminants, mycotoxins and allergens).

The new EU Regulation has introduced a move from applicant specific authorisations to generic authorisations. Once a novel food is authorised any operator could benefit from that authorisation subject to any proprietary data protection restrictions that may apply. This move to generic authorisations has removed the need for SE applications.

Informal enquiries amongst industry sources in the UK suggest the administrative cost of preparing an SE application and taking it through the existing process may be in the order of £5k-£25k; this is a saving for industry. It is expected that this will benefit small and medium sized businesses in particular as it means they too could place an authorised novel food on the market even if they did not submit the initial application for authorisation.

Streamlined procedures for the assessment and authorisation of novel foods

The current authorisation procedure is based on assessments carried out by the relevant authorities in one of the 28 EU MS, which are then scrutinised by the others.

In some cases, there are outstanding questions and concerns which, if they cannot be satisfied by further information from the applicant, are referred to EFSA. The new EU Regulation will replace this with a single centralised assessment by EFSA, in line with the approach used in other areas of EU food law, such as food additives. It is anticipated that whilst this will speed up the authorisation process, the financial cost of assembling data and preparing the initial dossiers would be substantially the same as at present. The centralised approach under the new EU Regulation is more supportive of a consortium of applicants than previously, providing opportunities for businesses to share the cost of preparing an application.

Reliance on a single, centralised safety assessment should not detract from the rigour of the safety assessment and it would be essential to ensure that assessments are carried out to a high standard and with the maximum degree of transparency.

The time taken for decisions to be made by the Commission on applications submitted under the current EU Regulation has varied between 6 months to more than 4 years. The Commission has calculated that authorisations have, on average, been issued 39 months after the application was submitted. This might be reduced to 18 months under the new EU Regulation if the authorisation process runs smoothly. Based on valid applications being forwarded for safety assessment within 1 month; 9 months for EFSA to carry-out the safety assessment and deliver its opinion; and 3 months thereafter to present a possible draft implementing decision for a vote by MS.

The cost to an applicant of making a novel application will vary from case to case; depending on the complexity of the case and the need to generate new data to demonstrate the acceptability of the product. Unilever estimated that the total cost of obtaining authorisation for their Phytosterol ingredient (used in spreads and other products under the brand name 'Flora Pro-activ' range) was €25 million⁶ (£19.8m), although this figure does not differentiate between costs which would have been incurred in the absence of the current Regulation (e.g. work required to satisfy general obligations under EU food law, to meet the company's own level of corporate safety assurance or to obtain authorisation in other regions of the world).

There are no data on which an estimate of the financial benefits of enabling a new product to be brought to the market in a shorter time after the dossier is submitted.

On-going (annual) benefit of savings due to lower 'Administrative Costs'

Informal enquiries amongst industry sources in the UK suggest that the administrative cost of preparing a full novel food application dossier and taking it through the existing process may be in the order of £20k-£50k. If the applicant does not already have the data to undertake a formal risk assessment, the cost of the individual studies could range from £5k-£12k (for a detailed analysis of the

⁶ This figure was provided in 200. To convert it to sterling the Bank of England annual average Spot exchange rate, Euro into Sterling (code: XUAAERS) was used. This resulted in a figure of £19,860,184.

composition of the product) to a possible £250k (for a full Organisation for Economic Co-operation and Development 90-day feeding study in laboratory rats).

Having centralised safety assessment will, however, remove some of the burden placed on National Competent Authorities; with this being transferred to EFSA. However, the ongoing need for expert advice on novel foods to support the effective functioning of the new EU Regulation is not yet clear, in particular in relation to assessment of traditional foods from third countries. No allowance has therefore, been made for financial savings resulting from the transfer of the safety assessment from national level to EFSA.

The centralised authorisation procedure might reduce the administrative burden on the applicant as they would have to liaise with a single body rather than with individual MS. However, it is anticipated that applicants may still wish to seek advice from competent authorities in the transitional period until understanding of the new regulatory framework is fully embedded. For the purpose of this Impact Assessment, it has been assumed the current administrative costs of preparing a dossier and taking it through the authorisation process is £20k - £50k and that 50% of this might be saved on full applications and 100% on SE applications. Sensitivity analysis has been used by taking an upper bound of £50k, a lower bound of £20k and best estimate of £35k, which is the mid-point of the two bounds. Calculations have been made on the basis of 5.2 full applications and 2.4 applications seeking an opinion on substantial equivalence per year in the UK (the novel food applications that were made during 2011-2016 were 26 full applications and 12 applications seeking to demonstrate substantial equivalence). For full applications, the best estimate of annual savings in England, Wales and Northern Ireland is £91k, with a total cost savings over 10 years of £783k (present value); with an upper bound estimate of £1.1m and a lower bound estimate of £448k (also present value figures). For opinions on substantial equivalence, the best estimate of annual savings is £36k, with a total cost savings over 10 years of £310k (present value; with an upper bound estimate of £516k and a lower bound estimate of £103k (also present value figures)).

No calculation could be made for UK businesses seeking authorisation through other MS as the number of business affected are unknown.

On-going (annual) benefit savings due to 'Removal of application fees'

In addition to the potential administrative costs that operators might save, the proposed Regulations provide for the removal of fees through revocation of the Novel Foods and Novel Food Ingredients (Fees) Regulations 1997; this Regulation empowers the FSA to charge:

£4,000 in respect of a full novel food applications; and
£1,725 in respect of an opinion on substantial equivalence.

Calculations have been made on the basis of 5.2 full applications and 2.4 applications seeking an opinion on substantial equivalence per year. For full applications, the administrative cost saving of £4k per application leads to a total

annual saving of £20.8k, leading to a total saving of £179k (present value) in England, Wales and Northern Ireland over ten years. For opinions on substantial equivalence, the administrative cost saving of £1.7k per application leads to a total annual cost saving of £4.1k, leading to a total annual saving of £36k (present value) over ten years.

Non-monetised benefit to industry of “the Establishment of a Union list of Authorised Novel Foods”

The establishment of a Union list of authorised novel foods and any applicable conditions of use will benefit industry by providing greater clarity as to the novel foods that may legally be placed on the market. This will assist operators in the delivery of the obligation placed on them by Chapter I, Article 4 of Regulation (EU) No 2015/2283 which requires operators to verify whether the food they intend to place on the market falls within the scope of the legislation.

Non-monetised benefit to industry of “A simplified safety assessment procedure for traditional food from third countries”

There is increasing interest in the introduction of exotic fruits and vegetables coming into the EU market from non-EU countries, which have not previously been exported to Europe. For example, a group of Andean countries (Columbia, Ecuador, and Peru) have estimated that there are about 60 plant species that are traditionally consumed in their regions that could in future be exported to the EU.

Whilst the existing Novel Foods Regulation does not prevent trade in traditional foods, such products need to go through the full authorisation procedure that applies to other novel food; but few applications have been received, possibly because the requirements for authorisation are seen by exporters as unduly onerous and burdensome.

The simplified traditional food from third countries notification procedure set out in the new EU Regulation requires the submission of a dossier demonstrating the safety of a traditional food. EFSA has developed a scientific and technical guidance document intended to support applicants in providing the type and quality of information needed by EU MS and EFSA to consider whether there are reasoned safety objections to the placing on the market within the Union of the traditional food with the proposed conditions of use.

Dossiers should contain specifications on the traditional food; reliable data on the composition of the food; information about the experience of continued use in a third country; and its proposed conditions of use. In addition to this, normal consumption of the traditional food should not be nutritionally disadvantageous for consumers. If the procedure were to operate smoothly (a valid dossier being forwarded to MS and EFSA for consideration within 1 month of receipt by the Commission and the specified 4 month period permitted for MS and EFSA to raise any reasoned safety objections) the notified traditional food could be added to the authorised Union list within 6 months.

This simplified procedure should help facilitate trade by enabling traditional foods to proceed swiftly to the market, unless a MS, or EFSA, lodges a reasoned objection to the claim that the product has a history of safe use in a non-EU country.

Option 2 – Benefits to Consumers

Non-monetised benefit to consumers of “the Establishment of a Union list of Authorised Novel Foods”

The establishment of a Union list of authorised novel foods is expected to benefit consumers by providing clarity on what novel foods have been risk assessed and are considered not to present a risk to human health. The Union list will also provide any applicable conditions of use that should be observed in relation use of the novel food.

Non-monetised benefit to consumers of “A simplified safety assessment procedure for traditional food from third countries” and streamlined procedures for the assessment and authorisation of novel foods

It is expected that the simplified process for traditional food from third countries and streamlined procedures for the assessment and authorisation of novel foods is likely to result in an increase in the choice of foods available to consumers. It is also expected that consumers will benefit from products proceeding to market more swiftly and potentially at a lower cost as the commensurate costs to industry of authorisation are reduced.

Competition Assessment

The competition filter test	
Question	Answer yes or no
Q1: In the market(s) affected by the new regulation, does any firm have more than 10% market share?	No
Q2: In the market(s) affected by the new regulation, does any firm have more than 20% market share?	No
Q3: In the market(s) affected by the new regulation, do the largest three firms together have at least 50% market share?	No
Q4: Would the costs of the regulation affect some firms substantially more than others?	No
Q5: Is the regulation likely to affect the market	No

The competition filter test	
Question	Answer yes or no
structure, changing the number or size of firms?	
Q6: Would the regulation lead to higher set-up costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q7: Would the regulation lead to higher ongoing costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q8: Is the sector characterised by rapid technological change?	No
Q9: Would the regulation restrict the ability of suppliers to choose the price, quality, range or location of their products?	No

The present system is regarded by many food businesses as a barrier to innovation and any improvements to the efficiency and clarity of the procedures (including allowing reasonable returns on investments by means of data protection) are expected to lead to increased innovation and potentially competition. This is especially the case, if the time-to-market of new novel food products/ingredients is reduced. These regulations will support businesses to be able to bring a wider range of products to market quicker.

SL(5)153 - Rheoliadau Bwydydd Newydd (Cymru) 2017

Cefndir a diben

Bydd Rheoliadau Bwyd Newydd (Cymru) 2017 yn dirymu ac yn disodli Rheoliadau Bwydydd Newydd a Chynhwysion Bwydydd Newydd 1997 (1997/1335) yng Nghymru, sy'n darparu ar gyfer gorfodi'r Rheoliadau Bwydydd Newydd (EC) Rhif 258/97. Bydd y Rheoliadau hefyd yn dirymu Rheoliadau Bwydydd Newydd a Chynhwysion Bwydydd Newydd (Ffioedd) 1997 (1997/1336) mewn perthynas â Chymru a Rheoliadau Ensymau Bwyd (Cymru) 2009 (2009/3377).

Diben Rheoliadau Bwydydd Newydd (Cymru) 2017 yw:

- i. Sicrhau bod y rheini sy'n dod â bwydydd newydd i'r farchnad yng Nghymru yn cydymffurfio'n llawn â gofynion deddfwriaethol newydd yr UE. Mae hyn yn cefnogi defnyddwyr sy'n manteisio ar arloesi bwyd diogel ac yn hwyluso masnach mewn bwydydd newydd gan fusnesau'r DU, gan roi amddiffyniad i iechyd dynol a buddiannau defnyddwyr;
- ii. Darparu ar gyfer gorfodi Rheoliad newydd yr UE ar fwydydd newydd drwy ddefnyddio dulliau gorfodi gwell y gellir eu defnyddio i ymdrin ag achosion lle mae amheuaeth o ddiffyg cydymffurfio â Rheoliad yr UE ac ystod o gosbau sifil;
- iii. Cadw'r opsiwn o gymryd camau erlyn a darparu ar gyfer amddiffynfeydd yn erbyn erlyniad a phennu hawl i apelio yn erbyn gosod hysbysiad gwella mewn amgylchiadau penodol; a
- iv. Phennu cosbau y gall y Llysoedd eu gosod yn sgil euogfarn a chaniatáu dyfarnu iawndal lle canfyddir nad yw awdurdodau gorfodi wedi cymryd camau priodol.

Y weithdrefn

Negyddol.

Materion technegol: craffu

Ni nodwyd unrhyw bwyntiau i gyflwyno adroddiad arnynt o dan Reol Sefydlog 21.2 mewn perthynas â'r offeryn hwn.

Craffu ar y rhinweddau

Ni nodwyd unrhyw bwyntiau i gyflwyno adroddiad arnynt o dan Reol Sefydlog 21.3 mewn perthynas â'r offeryn hwn.

Y goblygiadau yn sgil gadael yr Undeb Ewropeaidd

Mae'r dadansoddiad a ganlyn yn seiliedig ar Fil yr Undeb Ewropeaidd (Ymadael) ("y Bil") fel y'i cyflwynwyd.

Mae'r Rheoliadau hyn yn rhan o "ddeddfwriaeth ddomestig sy'n deillio o'r UE" o dan gymal 2 o'r Bil, felly bydd y Rheoliadau hyn yn cael eu cadw fel cyfraith ddomestig a byddant yn parhau i gael effaith yng Nghymru o'r diwrnod ymadael ymlaen. Mae'r Bil yn rhoi pŵer i Weinidogion Cymru addasu'r Rheoliadau hyn er mwyn ymdrin â diffygion sy'n deillio o ymadael â'r UE, yn amodol ar rai cyfyngiadau.

Mae'r Rheoliadau hefyd yn darparu ar gyfer gorfodi Rheoliadau Bwydydd Newydd (EC) Rhif 258/97. Ar hyn o bryd mae Rheoliad UE 258/97 yn cael effaith uniongyrchol ar aelod-wladwriaethau'r UE, gan gynnwys



Cymru. Ar ôl ymadael, bydd y Rheoliad hwn yn cael ei rewi a bydd yn cael ei gadw fel/ei drawsnewid yn gyfraith ddomestig o'r enw "deddfwriaeth uniongyrchol yr UE a gedwir".

Ni fydd y Bil yn rhoi pŵer i Weinidogion Cymru (neu Gynulliad Cenedlaethol Cymru) addasu unrhyw ddeddfwriaeth uniongyrchol yr UE a gedwir, gan gynnwys Rheoliad 258/97 yr UE sy'n ymwneud â'r maes bwyd datganoledig. Rhoddir pŵer i addasu holl ddeddfwriaeth uniongyrchol yr UE a gedwir i Weinidogion y DU; mae hyn yn cynnwys y pŵer i addasu ddeddfwriaeth uniongyrchol yr UE a gedwir mewn meysydd datganoledig, heb yr angen am ganiatâd Cynulliad Cenedlaethol Cymru neu Weinidogion Cymru.

Felly, os bydd Gweinidogion y Deyrnas Unedig yn defnyddio eu pwerau i addasu Rheoliad 258/97 yr UE fel ddeddfwriaeth uniongyrchol yr UE a gedwir, bydd pŵer Gweinidogion Cymru i addasu'r Rheoliadau hyn yn gyfyngedig fel na all Gweinidogion Cymru wneud unrhyw beth sy'n anghyson â'r addasiad a wneir gan Weinidogion y DU.

Ymateb y Llywodraeth

Nid oes angen ymateb y llywodraeth.

Cynghorwyr Cyfreithiol

Y Pwyllgor Materion Cyfansoddiadol a Ddeddfwriaethol

29 Tachwedd 2017



National Assembly for Wales

Constitutional and Legislative Affairs Committee

Ludalen y pecyn 37



House of Commons
Public Administration
and Constitutional Affairs
Committee

**Devolution and Exiting
the EU and Clause 11
of the European Union
(Withdrawal) Bill: Issues
for Consideration**

First Report of Session 2017–19

*Report, together with formal minutes relating
to the report*

*Ordered by the House of Commons to be printed
28 November 2017*

HC 484

Published on 29 November 2017
by authority of the House of Commons

Public Administration and Constitutional Affairs Committee

The Public Administration and Constitutional Affairs Committee is appointed by the House of Commons to examine the reports of the Parliamentary Commissioner for Administration and the Health Service Commissioner for England, which are laid before this House, and matters in connection therewith; to consider matters relating to the quality and standards of administration provided by civil service departments, and other matters relating to the civil service; and to consider constitutional affairs.

Current membership

[Mr Bernard Jenkin MP](#) (*Conservative, Harwich and North Essex*) (Chair)
[Ronnie Cowan MP](#) (*Scottish National Party, Inverclyde*)
[Paul Flynn MP](#) (*Labour, Newport West*)
[Mr Marcus Fysh MP](#) (*Conservative, Yeovil*)
[Mrs Cheryl Gillan MP](#) (*Conservative, Chesham and Amersham*)
[Kelvin Hopkins MP](#) (*Independent, Luton North*)
[Dr Rupa Huq MP](#) (*Labour, Ealing Central and Acton*)
[Mr David Jones MP](#) (*Conservative, Clwyd West*)
[Sandy Martin MP](#) (*Labour, Ipswich*)
[David Morris MP](#) (*Conservative, Morecambe and Lunesdale*)

Powers

The committee is one of the departmental select committees, the powers of which are set out in House of Commons Standing Orders, principally in SO No 146. These are available on the internet via www.parliament.uk.

Publication

Committee reports are published on the Committee's website at www.parliament.uk/pacac and in print by Order of the House.

Evidence relating to this report is published on the [inquiry publications page](#) of the Committee's website.

Committee staff

The current staff of the Committee are Dr Rebecca Davies (Clerk), Ian Bradshaw (Second Clerk), Dr Patrick Thomas (Committee Specialist), Mr Jonathan Bayliss (Committee Specialist), Ms Penny McLean (Committee Specialist), Dr Philip Larkin (Committee Specialist), Gabrielle Hill (Senior Committee Assistant), Iwona Hankin (Committee Assistant), and Mr Alex Paterson (Media Officer).

Contacts

All correspondence should be addressed to the Clerk of the Public Administration and Constitutional Affairs Committee, House of Commons, London SW1A 0AA. The telephone number for general enquiries is 020 7219 3268; the Committee's email address is pacac@parliament.uk.

Contents

Introduction	3
1 The Devolution Clause	4
2 Concerns relating to Clause 11	7
A power grab?	7
Constitutional balance	9
Reserved matters and conferred powers	10
Legislative consent	11
Common frameworks	12
Inter-institutional relations in the UK	15
3 Conclusion	17
Appendix 1: Powers Returning from the EU that Intersect with the Devolution Settlements	18
Powers returning from the EU that intersect with the devolution settlement in Scotland	18
Powers returning from the EU that intersects with the devolution settlement in Wales	22
Policy Areas/Powers returning from the EU which intersect with the devolution settlement in Northern Ireland (141)	25
Formal Minutes	31
Witnesses	32
Published written evidence	32
List of Reports from the Committee during the current Parliament	33

Introduction

1. On 12 October 2017, the Public Administration and Constitutional Affairs Committee (PACAC) launched an inquiry into *Devolution and Exiting the EU*. This report constitutes an interim paper with supporting evidence. Its purpose is to develop the themes and issues raised in our predecessor Committee's report in the previous Parliament *The Future of the Union, part two: Inter-institutional relations in the UK*.¹ Our inquiry is particularly focused on the long-term arrangements for devolution within the UK (and the inter-institutional relations which underpin those arrangements), following the UK's departure from the EU.

2. Many of these issues have been bought into sharp focus by the provisions in the EU (Withdrawal) Bill. While our inquiry is continuing, much of the evidence we have heard to date is pertinent to the consideration of the EU (Withdrawal) Bill - not least for the consideration of Clause 11. At this stage, we draw no conclusions and make no recommendations in this report. This short report presents the evidence we have heard on key issues relating to Clause 11, with the intention of informing the debate expected to take place on the Floor of the House on 4 December 2017.² The Committee will make a further report early in 2018. It is important to emphasise that we have not finished taking evidence on these matters at the time of publishing this report.

1 Sixth Report from the Public Administration and Constitutional Affairs Committee of Session 2016–17, [The Future of the Union, part two: Inter-institutional relations in the UK](#), HC 839, 8 December 2016

2 Other select committees who have reported and take evidence on these issues include reports of the Scottish Affairs Committee, [European Union Withdrawal Bill: Implications for devolution](#) and the Exiting the European Union Committee, [European Union \(withdrawal\) Bill](#). The Committee would also highlight the Northern Ireland Affairs Committees inquiry [The land border between Northern Ireland and Ireland](#), and the Welsh Affairs Committee inquiry [Brexit: Agriculture, Trade and the repatriation of powers inquiry](#) which have also taken evidence on these important devolution issues.

1 The Devolution Clause

3. The European Union (Withdrawal) Bill (EUW Bill) received its Second Reading on 7 and 11 September 2017, and is now being considered in Committee of the Whole House. Our report is particularly relevant to days 4 and 5 of the Committee stage. Day 4, on Monday 4 December, will include consideration of Clause 11 and Schedule 3. This includes the creation of UK wide frameworks, the Joint Ministerial Committee, and the powers of the devolved assemblies in relation to “retained EU law”. Day 5, on Wednesday 6 December, will be in two parts: the first to consider Clause 10 and Schedule 2 which grant the Government the power to make changes through delegated legislation in connection with devolved powers; the second to consider Clause 12 and Schedule 4 concerning financial provision in connection with these powers.

4. The UK Government’s stated intention in introducing the EUW Bill is to “provide a functioning statute book on the day the UK leaves the EU. As a rule, the same rules and laws will apply on the day after exit as on the day before”.³ In order to do this, the Government has stated that the EUW Bill should perform four main functions:

- a) To repeal the European Communities Act 1972 (ECA 1972) ([Clause 1](#))
- b) To retain EU law in the UK statute book that might otherwise have been removed by the repeal of the ECA 1972. It does this through preserving domestic primary and secondary legislation that gives effect to EU law ([Clause 2](#)), through converting EU law that applies in the UK into domestic law and saving rights based on EU law ([Clause 3 and 4](#)). This converted and preserved EU law forms a new body of UK law created by the Bill called “retained EU law”.
- c) The third function is performed by the Clauses that provide instructions for the courts ([Clause 5 and 6](#)) and creates powers for Ministers to deal with deficiencies in this new body of retained EU law that arise as a consequence of leaving the EU ([Clauses 7, 8 and 9](#)).
- d) To maintain the “current scope of devolved decision-making powers in areas currently governed by EU law”.⁴ The EUW Bill aims to achieve this through converting EU law into a new retained EU law and creating a requirement for the devolved legislatures in Scotland, Wales and Northern Ireland to legislate in a way compatible with retained EU law.

5. The main provisions in the EUW Bill dealing with devolution are [Clauses 10](#) and 11, and Schedules 2 and 3. Clause 10 has the sole function of giving effect to [Schedule 2](#), which provides for corresponding and concurrent powers for devolved authorities to those given to UK Ministers in Clauses 7, 8 and 9, to correct deficiencies in domestic devolved legislation that arise from withdrawal from the EU.⁵

6. [Clause 11](#) makes changes to the Scotland Act 1998 (section 29), Government of Wales Act 2006 (Section 108A) and Northern Ireland Act 1998 (Section 6). These changes remove the restriction preventing devolved institutions from legislating in a way incompatible with EU law. This currently ensures the devolution Acts are in line with the Court of Justice of

³ [Explanatory Notes to the European Union \(Withdrawal\) Bill](#) [Bill 5 (2017–19)], para 10

⁴ [Explanatory Notes to the European Union \(Withdrawal\) Bill](#) [Bill 5 (2017–19)], para 11

⁵ [European Union \(Withdrawal\) Bill](#), Briefing Paper 8079, House of Commons Library, 1 September 2017, p 104

the European Union (CJEU) judgments that assert primacy of EU law over national law.⁶ Clause 11 substitutes this restriction for a new restriction on devolved institutions that they cannot modify retained EU Law.

7. Schedule 3 makes corresponding changes to the Scotland Act 1998 (section 57), Government of Wales Act 2006 (Section 80) and Northern Ireland Act 1998 (Section 24), which replace the restriction on devolved authorities not to make subordinate legislation or act incompatibly with “EU Law” with a new restriction not to modify retained EU law.

8. The Acts of Parliament which established devolution in the UK were passed in the context of the UK’s membership of the EU. Consequently, many of the areas of devolved competence are governed by EU Law, regulations and common frameworks. Professor Alan Page, Professor of Public Law at the University of Dundee, explained that the restrictions in the original Acts ensure devolved administrations do not place the UK in breach of its obligations as an EU Member State.⁷ The Government’s intention in Clause 11 is to “maintain the current parameters of devolved competence as regards retained EU law” in line with the Government’s overall intention of ensuring legal continuity by having “the same rules and laws will apply on the day after exit as on the day before”.⁸ To ensure this legal continuity, the Bill prohibits devolved legislatures from modifying retained EU law within current devolved areas of competence, in a way which would not have been compatible with EU law immediately before exit day.⁹

9. In the explanatory notes to the Bill, the UK Government explains that devolution provisions in the Bill are intended as transitional arrangements, with decisions to be taken on long term common policy approaches later.¹⁰ Clause 11 includes a provision to “release areas from the limit on modifying retained EU law” through an Order in Council. This enables powers to be returned to devolved institutions in areas where it is decided that the common approach existing under EU law does not need to be maintained.¹¹ For example, carbon capture and storage is currently regulated under a common framework, but could be released for devolved areas to develop their own policy. Orders in Council can also be used to release areas where new or modified common frameworks will be established, so, for example, could be used to set up or change a UK wide agriculture policy. Orders in Council, for this purpose, require approval in devolved legislatures and both Houses of Parliament.¹² If changes to common frameworks were to be made by statute, this would trigger the Sewel Convention and consent would be sought by UK Government from the devolved legislatures.¹³

6 Court of Justice of the European Union, *Flamino Costa v E.N.E.L*, 15 July 1964; *Factortame Ltd, R (On the Application Of) v Secretary of State for Transport* [1990] UKHL 13; [European Union \(Withdrawal\) Bill](#), Briefing Paper 8079, House of Commons Library, 1 September 2017, p 53–5

7 Professor Alan Page ([DEU0008](#)) para 7; Q13

8 [Explanatory Notes to the European Union \(Withdrawal\) Bill](#) [Bill5 (2017–19)], paras 10, 34

9 [Explanatory Notes to the European Union \(Withdrawal\) Bill](#) [Bill5 (2017–19)], para 130

10 [Explanatory Notes to the European Union \(Withdrawal\) Bill](#) [Bill5 (2017–19)], para 34

11 European Union (Withdrawal) Bill [Bill5 (2017–19)], Clause 11(1)b, 11(2)b, 11(3); [Explanatory Notes to the European Union \(Withdrawal\) Bill](#) [Bill5 (2017–19)], para 36

12 [European Union \(Withdrawal\) Bill](#), Briefing Paper 8079, House of Commons Library, 1 September 2017, p 104

10. While there is a clear consensus amongst our witnesses that the effect of Clause 11 is to provide legal continuity, the means by which Clause 11 will achieve this has been the focus of some concern and controversy.¹⁴ These issues are crucial, as Clause 11 not only provides the statutory framework within which devolution will operate in the UK following its departure from the EU, but the debate around Clause 11 raises fundamental principles about how the relationships between central and devolved government in the UK will be conducted.

13 The Sewel Convention applies when the UK Parliament legislates on a matter which is devolved. It holds that this will happen only if the devolved legislature has given its consent. While it was originally not included in the legislation, it is now included in the Scotland Act 2016 and the Wales Act 2017. It is also stated in the Memorandum of Understanding between the UK Government and devolved executives, first drawn up in 1999. The thinking behind the Convention is that the UK Parliament, as a sovereign body, retains full legal power to legislate on devolved matters, yet the spirit of devolution implies that political power rests with the Scottish Parliament. In order to avoid conflict, the Government undertook not to seek nor support relevant legislation in the UK Parliament without the prior consent of the Scottish Parliament. This consent is embodied in a "Sewel motion," or, formally, a "Legislative Consent Motion". The Sewel Convention, Standard Note SN/PC/2084, House of Commons Library

14 Professor Alan page ([DEU0008](#)); Q13; Dr Tobias Lock (0001) para 5; Rawlings, Richard, [Brexit and the Territorial Constitution](#), 2017, p 5

2 Concerns relating to Clause 11

A power grab?

11. Without the inclusion of Clause 11 on the face of the EUW Bill, the powers currently held at EU level, to legislate in areas of devolved competency in Northern Ireland, Scotland and Wales, would return to the devolved legislatures and Governments.¹⁵ Professor Alan Page states that concerns had been raised that the EUW Bill “was drafted without a proper understanding of devolution law”, which raises questions about the mechanisms used in Clause 11.¹⁶ He explains that the requirement for devolved administrations to act compatibly with EU law is rooted in the obligation not to put the UK in a position where it is breaching its obligations as an EU Member State. But if that requirement is rooted in the UK’s membership of the EU, he adds, then when the UK has exited the EU, that requirement “ceases to have any justification”.¹⁷ Professor Page therefore poses the question: “Why would you expect Scotland, Wales and Northern Ireland to be bound after the UK has left? Surely you would expect the exact opposite, and I think that was the starting point for the devolved institutions’ response to the Bill”.¹⁸

12. Immediately after the publication of the EU Withdrawal Bill on 13 July 2017, the First Minister of Wales Carwyn Jones AM, and First Minister of Scotland, Nicola Sturgeon MSP, issued a joint statement calling the Bill a “naked power grab”.¹⁹ They stated that the Bill does not deliver on the promise to return powers from the EU to the devolved administrations, but rather returns them solely to the UK Government and Parliament, imposing new restrictions of devolved legislatures. This concern, Professor Richard Rawlings, Professor of Public Law at the University College London, explains, “goes to the heart of the controversy over the Bill from a devolved perspective”.²⁰

13. Professor Page and Professor Rawlings explain that this controversy comes down to the “difference of view between what is and what is not devolved”.²¹ The Secretary of State for Scotland David Mundell maintains that “there is no Power grab as the “Bill will maintain the scope of devolved decision making powers immediately after Exit—the Scottish Parliament and Scottish Government will not lose any of their current decision-making powers”.²²

14. From the perspective of the devolved administrations, however, powers coming back from the EU in areas of devolved competence should be devolved. Instead, Scottish Minister for UK Negotiations on Scotland’s Place in Europe Michael Russell argues that the EUW Bill is:

15 Q4 (Page); Michael Keating, [To Devolve or Not to Devolve](#), 17 July 2017; Page, Alan, [The implications of EU withdrawal for the devolution Settlement](#), 2016, p 3

16 Professor Page ([DEU0008](#))

17 [Q13](#)

18 [Q13](#)

19 Scottish Government, [EU \(withdrawal\) Bill](#), 13 July 2017; Welsh Government, [Joint statement from First Ministers of Wales and Scotland in reaction to the EU \(Withdrawal\) Bill](#), 13 July 2017

20 Q4 (Rawlings)

21 Q4 (Page)

22 Scottish Parliament’s Finance and Constitution Committee, [Correspondence from the Secretary of State of Scotland to the Convenor](#), 13 July 2017

a blatant power grab which would take existing competence over a wide range of devolved policy areas, including aspects of things like agriculture and fishing, away from Holyrood, giving them instead to Westminster and Whitehall.²³

Professor Rawlings suggests that “the very fact... that you can give [at least] two answers... tells you a lot about the controversy surrounding this Bill, because it shows that it is possible here to have different constitutional perspectives”.²⁴

15. Professor Nicola McEwen, Professor of Territorial Politics at the University of Edinburgh, argues that while Clause 11 is clearly intended to ensure continuity and certainty, other clauses in the EUW Bill provide a functional statute book on exit day “Clause 11 is about what comes next”.²⁵ Professor McEwen identifies that Clause 11:

is fundamentally a problem of trust. The UK Government doesn't trust the devolved Governments to refrain from using repatriated powers to create policy and regulatory divergence that may harm the UK's internal market and create problems in trade negotiations. This rather overlooks the considerable constitutional authority that the UK Parliament already retains over market regulation, trade and the making and implementation of international treaties. For their part, the Scottish and Welsh Governments don't trust the commitment of the UK Government to devolve repatriated powers after Brexit and/or to agree and govern UK common frameworks on a genuinely cooperative basis.²⁶

16. Professor Page suggests that the label ‘power grab’, is unhelpful as it distracts from “understanding what the key or most important points about the legislation and the process of leaving the European Union or the implications of that [are] for the devolved institutions”.²⁷ Professor Page notes that at the heart of the debate surrounding Clause 11, is the question of “how are we going to appropriately allocate those powers [returning from the EU] around the UK constitution? [and] What is going to be the appropriate balance between the centre and the devolved administrations?”²⁸

17. In written evidence, Nigel Smith, former Chair of Scotland Forward, the official “Yes” campaign in the 1997 Scottish devolution referendum, is no less critical of the Government for their handling of the devolution issues in the EUW Bill, but is less troubled by the substance of Clause 11:

His [Mike Russell MSP] initial remarks, as is typical of him, were very firm. He was right to say that the manner in which the Bill and Clause 11 emerged from Whitehall showed it was still rooted in pre-devolution Britain. It should have been better done. But I do not subscribe to his view that the approach of the UK Government is an ‘attack on the very foundations of

23 [Brexit Bill talks: Scottish Government to recommend consent is rejected](#), Scottish Government press release, 9 August 2017.

24 [Q4 \(Rawlings\)](#)

25 Professor McEwen ([0020](#)) para 3

26 Professor McEwen ([0020](#)) para 15

27 [Q4 \(Professor Page\);](#)

28 [Q16](#)

the devolution settlement' or that the 'reserved powers' model solves all. Nobody who voted for the Scottish Parliament exactly twenty years ago need worry - there is no 'power grab' underway.²⁹

Nigel Smith sets out how it was the Scotland Act itself which effectively reserved the 111 EU framework powers in respect of Scotland, while the UK was an EU Member State, in Section 29 (which requires the Scottish Parliament to "observe EU law"), and explains why it is the "absence of a British devolution framework" which is what needs to be addressed.³⁰

Constitutional balance

18. Professor Rawlings highlights that a central concern of the devolved administrations was that "Clause 11, when it comes to that negotiation... is essentially stacking the cards in favour of the centre".³¹ Dr Tobias Lock, Senior Lecturer, Edinburgh Law School, said that:

the European Union (Withdrawal) Bill will result in a shift in balance between the powers Westminster has in practice and the powers Holyrood has in practice with Westminster's powers being augmented and Holyrood's staying the same.³²

19. Professor Rawlings and Professor Page raise three related concerns in relation to this unbalance. First, while there is a promise on the part of the UK Government that Clause 11 is described as a transition arrangement, there is no provision for this on the face of the Bill. As Professor Rawlings explains:

Legally-speaking, suggested 'transitional' elements could so easily become permanent features. Nor need one be an expert in game theory to appreciate the way in which Clause 11 stacks the cards in favour of the centre when negotiating the different design choices with common frameworks: 'when', 'how', 'what', etc. Though the devolved authority has a veto power, in the absence of an agreed 'release' plan the default position is bar on competence.³³

20. Second, Professor Page highlights the suspicion within the devolved administrations "that the real purpose of Clause 11 is not to secure legal continuity but to strip the devolved institutions of any bargaining power that they might have when it comes to the discussion of common frameworks and all the rest... [and that] Whitehall Departments will find it convenient to hang on to these powers rather than to pass them on".³⁴

21. Third, Professor Rawlings highlights the concern over what he describes as the double hatted nature of the UK Government, meaning it is both simultaneously the UK wide Government and the government of England. This raises not only a concern of conflict of interest, but also that the subcultures, networks and assumptions of large departments like the Department for Environment, Food and Rural Affairs, which are focused on England. Professor Rawlings identifies that there is inevitably a concern in the constituent

29 Nigel Smith ([DEU0007](#))

30 Nigel Smith ([DEU0007](#))

31 [Q16](#)

32 Dr Lock ([0001](#))

33 Rawlings, Richard, [Brexit and the Territorial Constitution](#), 2017, p 26

34 [Q13](#)

parts of the UK that their interests will tend to get lost because of that, “not necessarily because of some sort of conspiracy thing; it is just subconsciously about how institutions operate in practice”.³⁵

Reserved matters and conferred powers

22. The devolution statutes operate on a reserved matters model, where certain matters are listed in the devolution statutes as matters that are reserved to the UK Parliament.³⁶ This means that matters not explicitly reserved to the UK Parliament are in the competence of the devolved legislatures. The advantage of the reserved powers model, Professor Page explains, “is that it allowed the devolution of discrete, meaningful, sensible policy areas”.³⁷

23. In its Legislative Consent Memorandum on the EUW Bill, the Scottish Government states that Clause 11 “creates further complexity in the devolution settlement by effectively grafting a “conferred powers” model, solely in retained EU law, onto, and across, the Scotland Act’s reserved powers model”.³⁸ There is a consensus in the evidence we received that Clause 11 has this effect. Professor Page suggests that trying to work out what the devolved legislatures can and cannot do is going to be “an extraordinarily difficult task”.³⁹ He also suggests that it would have the “effect of hamstringing the devolved legislatures so that they will not be able to do that which is sensible”, because instead of having discrete policy areas that belong to them, these areas will be legislated for by a mixture of the UK Parliament and the devolved legislatures.⁴⁰ Professor Rawlings agrees, and emphasises the importance of considering the “end user’s perspective” as it will not just be governments, but business, consumer groups and individuals that will have to work with this system.⁴¹

24. Referring to the Welsh experience of previously having a conferred powers model, Professor Rawlings and Professor McEwen highlight the lack of clarity over where the National Assembly of Wales had power or even the extent to which it has competence produces litigation.⁴² This uncertainty has resulted in Supreme Court litigation around the conferred powers model.⁴³ Professor Rawlings explains:

The discussions about meanings in the Bill become very sharp when we get to the devolved Administrations because it is a question for them as to whether or not they actually have powers. The Government lawyers have to be able to advise, the Presiding Officers of the National Assembly and the Scottish Parliament will have to make rulings as to whether something is within competence, and again they will be open to challenge in areas where, frankly, challenge is very likely. Of course, we are talking about market

³⁵ [Q16](#)

³⁶ The Wales Act 2017 made provision for a reserved matters model for Wales. In Northern Ireland it is a reserved or excepted matters. In the Northern Ireland Act reserved matters cover areas which could be devolved at a later date, such as postal services, financial services, the national minimum wage. Excepted matters covers areas not to be considered for further devolution, such as the Crown, Parliament, international relations, defence.

³⁷ [Q20](#)

³⁸ Legislative Consent Memorandum European Union (Withdrawal) Bill, Scottish Government, [LCM-S5-10](#), Session 5 (2017)

³⁹ [Q17](#)

⁴⁰ [Q19](#); [Q21](#)

⁴¹ [Q18](#)

⁴² [Q23](#); Professor McEwen ([0020](#)) para 8

⁴³ [Q23](#)

regulation, and where there is market regulation there is money involved, and where there is money involved there are lawyers involved. We have to be very aware of that.⁴⁴

Professor Rawlings suggests that a clear end point in order “to avoid, or at least get past this problem” was to include in the reserved powers model, reservations covering common frameworks. Such a reservation could be worded: “the subject matter of such and such common framework”.⁴⁵

Legislative consent

25. The explanatory notes to the EUW Bill explain that several of the provisions of the Bill fall within the legislative competence of the devolved Legislatures.⁴⁶ Under the Sewel Convention there is a requirement for the Government to seek a Legislative Consent Motion (LCM) from each of the devolved Legislatures for the EUW Bill, and the Government has made clear its intention to seek LCMs.⁴⁷

26. On 12 September 2017, the Scottish and Welsh Governments simultaneously published Legislative Consent Memoranda in relation to the EUW Bill. Both Governments made it clear that they would not present Legislative Consent Motions (LCMs) for the Bill in its current form.⁴⁸ The decision to state that Legislative consent will be withheld has raised speculation surrounding the Sewel Convention. As the Supreme Court’s decision in *Miller v. Secretary of State for Exiting the European Convention* highlighted, the convention, even though placed in statute, is not legally enforceable. The Supreme Court, however, also emphasised that this decision does not diminish the “importance of constitutional conventions, some of which play a fundamental role in the operation of our constitution”.⁴⁹

27. It is clear from the evidence we have heard that while the Convention is not justiciable, if “Parliament were to legislate notwithstanding the opposition of devolved legislatures, the argument would undoubtedly be made that that was a constitutional outrage; it was unconstitutional”.⁵⁰ Professor Page says that placing the convention into statute even though it was not legally binding was a constitutionally binding commitment that is “the most solemn expression of intention that you can provide under our constitution”.⁵¹

28. While there is a consensus that discussions around legislative consent and the Sewel Convention have served to reinforce Parliamentary Sovereignty within the UK constitution, questions have been raised about how Parliamentary Sovereignty is best deployed as a legislative and political tool in the context of Clause 11. Professor Rawlings suggests that, as currently drafted, Clause 11 treats Parliamentary Sovereignty as a “legislative blunderbuss” to be waved in the faces of the devolved administrations. He states that, regardless of what the Government has said about its intention, this is not a good way

⁴⁴ [Q23](#)

⁴⁵ [Q23](#)

⁴⁶ [Explanatory Notes to the European Union \(Withdrawal\) Bill \[Bill15 \(2017–19\)\]](#), paras 68–70, Annex A

⁴⁷ The Sewel Convention is now enshrined in statute in the [Scotland Act 2016](#) and [Wales Act 2017](#) and the mechanisms of consent set out in the Memorandum of Understanding and Supplementary Agreements.

⁴⁸ Legislative Consent Memorandum European Union (Withdrawal) Bill, Scottish Government, [LCM-S5-10](#), Session 5 (2017) para 25

⁴⁹ [R \(on the application of Miller and another\) v Secretary of State for Exiting the European Union](#) [2017] UKSC 5, Para 151

⁵⁰ [Q7](#)

⁵¹ [Q6; Q7; Q8; Q9; Q10](#)

to build trust.⁵² Instead, Professors Rawlings and Page both suggest that Parliamentary Sovereignty be used as a “backstop or reserve power to require common frameworks and common decisions, as at the end of the day if they are not reached Parliament would have the power to pass legislation”.⁵³ Such a model would be based on negotiation, cooperation and agreement, and could serve to build trust amongst the Governments and Legislatures of the UK.

Common frameworks

29. Following the UK’s departure from the EU, the power to make the decisions previously made at the EU level will return to the UK. Through EU common frameworks, which created and maintain the EU wide policies to support the EU internal (single) market, all parts of the UK follow the same rules and laws in areas such as the EU Common Agriculture Policy, Common Fisheries Policy or mutual recognition of professional qualifications. The UK Government’s overriding aim to have the same rules and laws apply after exit day is intended to ensure that common EU frameworks remain common UK frameworks. The concern is that, as some of these frameworks are in areas of devolved competence, differing policy focuses could lead to policy divergence, which could, unintentionally or not, threaten the UK’s internal market, and potentially lead to difficulties with conducting trade agreements with other countries.

30. In evidence to the Committee, Professor Page makes clear that common frameworks will be required, but that “it is also important not to exaggerate the threat to the integrity of the UK single [internal] market posed by the repatriation of EU competences to devolved areas”.⁵⁴ While there are a few areas where powers returning from the EU intersect with devolved settlements, the reserved matters dictate that most powers fall to the UK Parliament.⁵⁵ Even if the former EU powers, in areas such as agriculture, were devolved, this would be unlikely to result in devolved autonomy as there are areas under strong influence of international law and agreements, a competence that rests entirely with central Government.⁵⁶ Former Speakers Counsel, Michael Carpenter has in this regard described Clause 11 as an unnecessary “blanket provision” that amounts to a “proverbial steam hammer”.⁵⁷

31. The devolved statutes currently contain provisions which could have the effect of preserving the UK internal (single) market outside of the EU. There are already provisions for the relevant Secretary of State to require action by devolved legislatures and governments to comply with UK international obligations.⁵⁸ Evidence to the Committee highlights that it is in the clear mutual self-interests of Scotland, Wales, Northern Ireland and England not to take actions which may imperil a UK internal market. As Professor Page highlights, the EU is still trying to create a single (internal) market, but “we already have one. [The task in front of us is to] prevent damage to that market”.⁵⁹

52 [Q26](#)

53 [Q47; Q33](#)

54 Professor Page ([DEU0008](#)); [Q22](#)

55 Page, Alan, [The implications of the EU withdrawal for the devolution settlement](#), paper prepared for the Scottish Parliament Culture Tourism, Europe and External Relations Committee, 4 October 2016

56 Dr Lock ([0001](#)) para 8–9

57 Michael Carpenter ([DEU0009](#)) para 5

58 [Q30](#) (Rawlings); Scotland Act 1998, sections 35, 58; Government of Wales Act 2006, sections 82, 114; Northern Ireland Act 1998, sections 14, 26.

59 [Q29](#)

32. The UK Government's analysis of the existing EU competences that interact with the devolved statutes, identify 111 areas for Scotland, 64 for Wales and an estimated 149 for Northern Ireland.⁶⁰ (These are listed in Appendix 1). Of these areas Professor Page suggests that only a small number of areas are likely require common frameworks.⁶¹ Michael Carpenter has suggested that what is required is a "compromise position whereby such modification would be lawful for so long as it did not affect, or seriously affect, other parts of the United Kingdom, or fragment the UK's internal market".⁶² The first steps towards agreeing these common frameworks, were taken at the Joint Ministerial Council (European Negotiations) (JMC(EN)) on October 16 2017, where the principles that will underpin the how common frameworks will be considered, was agreed.⁶³ (As set out in Box 1 below).

Box 1: JMC Common Frameworks: Definition and Principles

Definition

As the UK leaves the European Union, the Government of the United Kingdom and the devolved administrations agree to work together to establish common approaches in some areas that are currently governed by EU law, but that are otherwise within areas of competence of the devolved administrations or legislatures. A framework will set out a common UK, or GB, approach and how it will be operated and governed. This may consist of common goals, minimum or maximum standards, harmonisation, limits on action, or mutual recognition, depending on the policy area and the objectives being pursued. Frameworks may be implemented by legislation, by executive action, by memorandums of understanding, or by other means depending on the context in which the framework is intended to operate.

Context

The following principles apply to common frameworks in areas where EU law currently intersects with devolved competence. There will also be close working between the UK Government and the devolved administrations on reserved and excepted matters that impact significantly on devolved responsibilities. Discussions will be either multilateral or bilateral between the UK Government and the devolved administrations. It will be the aim of all parties to agree where there is a need for common frameworks and the content of them. The outcomes from these discussions on common frameworks will be without prejudice to the UK's negotiations and future relationship with the EU.

Principles

1. 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;

60 [Q32 \(Page\)](#)

61 [Q43 \(Page\)](#)

62 Michael Carpenter (0009) para 5

63 Joint Ministerial Committee (EU Negotiations) Communiqué, 16 October 2017

- 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;
 - safeguard the security of the UK.
2. Frameworks will respect the devolution settlements and the democratic accountability of the devolved legislatures, and will therefore:
- be based on established conventions and practices, including that the competence of the devolved institutions will not normally be adjusted without their consent;
 - maintain, as a minimum, equivalent flexibility for tailoring policies to the specific needs of each territory as is afforded by current EU rules;
 - lead to a significant increase in decision-making powers for the devolved administrations.
3. Frameworks will ensure recognition of the economic and social linkages between Northern Ireland and Ireland and that Northern Ireland will be the only part of the UK that shares a land frontier with the EU. They will also adhere to the Belfast Agreement.

33. One suggestion made to the Committee by Professor Page was that a “standstill agreement” would maintain the EU common frameworks and would address the difficulties around the mechanism provided in Clause 11. He argues that:

... the UK Government’s ‘guiding principle’ can be more felicitously secured by a combination of the existing reservations and a ‘standstill agreement’ whereby the UK Government and the devolved administrations agree not to introduce, in the Prime Minister’s words, ‘new barriers to living and doing business within our own Union’ while the business of common frameworks - and, no less importantly, the necessary revisions to retained EU law - are being worked out. As well as preserving the integrity of the UK single market, reliance on the combination of reserved matters and a standstill agreement would avoid the undeniably damaging consequences of Clause 11.⁶⁴

34. Professor McEwen notes that a number suggestions have been put forward for how to resolve the impasse between the UK Government and the devolved Administrations, including “a sunset to Clause 11, narrowing its scope to focus on the internal market or international obligations, or replacing it with extensions to reserved powers”.⁶⁵ She suggests that the standstill provision proposed by Professor Page is the most persuasive, especially if given statutory underpinning in the Withdrawal Bill. Provided the form of words could be agreed, it could help to provide both parties with the reassurance they need. Standstill provisions would allow powers to lie where the fall under the existing allocations of constitutional authority, while securing the time and trust needed to negotiate, agree and implement new frameworks.⁶⁶

Inter-institutional relations in the UK

35. In the previous Parliament, our predecessor Committee published a report, *Future of the Union, part two: Inter-institutional relations in the UK*, which noted the potential of the UK’s departure from the EU to complicate and further test the current inter-institutional arrangements within the UK. The Committee concluded that Brexit “offers both risk and a fresh opportunity, and, therefore, an incentive, to develop more effective inter-governmental relations in the UK”.⁶⁷ The report highlighted the inadequacy of the current inter-governmental arrangements and made several key recommendations highlighting the starting points for establishing solid inter-governmental relations foundations. Our predecessor Committee highlighted the need to establish “formal inter-governmental machinery” and the importance of developing an atmosphere of trust and good-will among the four Administrations.⁶⁸ For this atmosphere to be established the Committee concluded, with a clear eye on the post exit constitutional settlement, that “the UK Government must show a genuine receptiveness to the concerns and suggestions put forward by the devolved administrations”.⁶⁹

36. Witnesses to our inquiry agreed unanimously that “one immediate problem, starkly revealed by the return of EU powers, is the lack of adequate inter-governmental arrangements capable of dealing with the developing situation”.⁷⁰ Professor Page notes that there is need for a “fresh start”. He continues:

If anything comes out of this, it is the recognition that inter-governmental relations is every bit as important a part of the devolution settlements as the powers possessed by the individual devolved Administrations. That cannot simply be left to happenstance, chance or the inclination and instinct of individual Administrations. Therefore, ... the basic machinery has to be

65 Professor McEwen ([0020](#)) para 15

66 Professor McEwen ([0020](#)) para 15

67 Sixth Report from the Public Administration and Constitutional Affairs Committee of Session 2016–17, [The Future of the Union, part two: Inter-institutional relations in the UK](#), HC 839, 8 December 2016. Para 4

68 Sixth Report from the Public Administration and Constitutional Affairs Committee of Session 2016–17, [The Future of the Union, part two: Inter-institutional relations in the UK](#), HC 839, 8 December 2016. Para 65

69 Sixth Report from the Public Administration and Constitutional Affairs Committee of Session 2016–17, [The Future of the Union, part two: Inter-institutional relations in the UK](#), HC 839, 8 December 2016. Para 67

70 Nigel Smith ([DEU0007](#)); Unlock Democracy ([DEU0004](#)); Professor Alan Page ([DEU0008](#))

put on a statutory footing so that the Parliaments are making it clear, “This is our expectation as to the way these relations will be conducted,” rather than leaving it to the discretion of individual Administrations.⁷¹

37. Nigel Smith, argued that the absence of a strong inter-governmental devolution framework is the major weakness of the otherwise “excellent” Scotland Act 1998.⁷² He argues that after the UK has left the EU there will be a third important area of shared policy in addition to the reserved and devolved competencies. Such shared areas, he argues, will require an inter-governmental institutional framework. This “is integral to the success of the return of EU powers - not an optional addition”.⁷³

38. There appears to be a consensus in the evidence we received of the desirability to place the UK’s inter-governmental machinery on a statutory footing. The current inter-governmental system relies on a series of ad hoc meetings between Ministers, and on central Government to adhere to the agreements set out in the Memorandum of Understanding, to convene JMC meetings when requested, which recently it has failed to do.⁷⁴ At the most basic level, placing inter-governmental machinery on a statutory footing would make clear the “expectation as to the way these relations will be conducted, rather than leaving it to the discretion of individual administrations”.⁷⁵ This would have the effect of guaranteeing a basic level of communication and dialogue, by getting people in a room they will be “talking about common frameworks, and what can work for them or what may be their sticking points”.⁷⁶ This would mark a very important step forward as it would help generate the trust that has been hitherto lacking in inter-governmental relations in the UK.

39. It has also been suggested to the Committee that the relations between the four Legislatures in the UK should be supported by more formal machinery. The Committee’s previous report, *Future of the Union, part two: Inter-institutional relations in the UK*, suggested that steps should be taken to allow committees of the House of Commons to meet jointly with committees of the devolved legislatures; that written notice and summaries of the Speakers and Presiding Officers quadrilaterals are published; and that there be greater interworking and training of the staff of both the Houses of Parliament and the devolved legislatures.⁷⁷

71 [Q56 \(Page\)](#)

72 Nigel Smith ([DEU0007](#)) para 19

73 Nigel Smith ([DEU0007](#)) para 9

74 [Q56 \(Rawlings\)](#)

75 [Q56 \(Page\)](#)

76 [Q58](#)

77 Sixth Report from the Public Administration and Constitutional Affairs Committee of Session 2016–17, [The Future of the Union, part two: Inter-institutional relations in the UK](#), HC 839, 8 December 2016. Paras 95–98

3 Conclusion

40. The UK Government's stated intention and guiding principle in the EUW Bill is to ensure legal continuity through ensuring "the same rules and laws will apply on the day after exit as on the day before".⁷⁸ While this is clearly a sensible guiding principle, several concerns have been raised, from the devolved Administrations and others, about the mechanism the Government has chosen to implement this principle in Clause 11 of the EUW Bill.
41. The key technical concern raised about Clause 11 is the potential complexity it could create in the UK statute book, due to a conferred powers model being overlaid onto the reserved matters model of devolution. The overall concerns regarding the devolution aspects of the EUW Bill arise from the constitutionally insensitive nature of the UK Government's approach in Clause 11. While the intention of Clause 11 may be simply to maintain legal continuity, it has been interpreted by the devolved Administrations as an attempt to reverse some elements of the devolution settlements.
42. Our witnesses noted that there was a clear lack of understanding of the territorial aspects of the UK's constitution, both in the design of, and debate around Clause 11. However, the main source of disquiet and disagreement between central and devolved Government, derives from the lack of communication and established mechanisms for both proper consultation and shared decision making between governments.
43. The predecessor Committee's report *Future of the Union, part two: Inter-institutional relations in the UK*, highlighted the importance of investing in stronger inter-institutional relations. The Committee recommended several achievable first steps in resuscitating these relations, which would have aided these relations in the year following the publication of that report. An effective system of inter-governmental relations is the missing aspect of the current UK constitutional arrangements and the dispute around Clause 11 brings this issue into sharp focus. A set of effective relationships based on mutual trust and effective communication and consultation are essential for the internal governance of the UK, following its departure from the European Union.

⁷⁸ Explanatory Notes to the European Union (Withdrawal) Bill [Bill 5 (2017–19)], para 10

Appendix 1: Powers Returning from the EU that Intersect with the Devolution Settlements

Powers returning from the EU that intersect with the devolution settlement in Scotland

1. Agricultural Support
2. Agriculture - Fertiliser Regulations
3. Agriculture - GMO Marketing & Cultivation
4. Agriculture - Organic Farming
5. Agriculture - Zootech
6. Animal Health and Traceability
7. Animal Welfare
8. Aviation Noise Management at Airports
9. Blood Safety and Quality
10. Carbon Capture & Storage
11. Chemicals regulation (including pesticides)
12. Civil judicial co-operation - jurisdiction and recognition & enforcement of judgments in civil & commercial matters (including B1 rules and related EU conventions)
13. Civil judicial co-operation - jurisdiction and recognition & enforcement of judgments instruments in family law (including BIIa, Maintenance and civil protection orders)
14. Civil judicial cooperation on service of documents and taking of evidence
15. Criminal offences minimum standards measures - Combating Child Sexual Exploitation Directive
16. Control of major accident hazards
17. Cross border mediation
18. Data sharing - (EU fingerprint database (EuroDac)
19. Data sharing - European Criminal Records Information System (ECRIS)
20. Data sharing - False and Authentic Documents Online (FADO)
21. Data sharing - passenger name records
22. Data sharing - Prüm framework

23. Data sharing - Schengen Information System (SIS II)
24. Efficiency in energy use
25. Elements of Reciprocal Healthcare
26. Elements of the Network and Information Security (NIS) Directive
27. Elements of Tobacco Regulation
28. Energy Performance of Buildings Directive
29. Environmental Impact Assessment (EIA) Directive
30. Environmental law concerning energy planning consents
31. Environmental law concerning offshore oil & gas installations within territorial waters
32. Environmental quality - Air Quality
33. Environmental quality - Chemicals
34. Environmental quality - Flood Risk Management
35. Environmental quality - International timber trade (EUTR and FLEGT)
36. Environmental quality - Marine environment
37. Environmental quality - Natural Environment and Biodiversity
38. Environmental quality - Ozone depleting substances and F-gases
39. Environmental quality - Pesticides
40. Environmental quality - Spatial Data Infrastructure Standards
41. Environmental quality - Waste Packaging & Product Regulations
42. Environmental quality - Waste Producer Responsibility Regulations
43. Environmental quality - Water Quality
44. Environmental quality - Water Resources
45. Environmental quality - Biodiversity - access and benefit sharing of genetic resources
46. Equal Treatment Legislation
47. EU agencies - EU-LISA
48. EU agencies - Eurojust
49. EU agencies - Europol
50. EU Social Security Coordination

51. Fisheries Management & Support
52. Food and Feed Law
53. Food Compositional Standards
54. Food Geographical Indications (Protected Food Names)
55. Food Labelling
56. Forestry (domestic)
57. Free movement of healthcare (the right for EEA citizens to have their elective procedure in another member state)
58. Genetically modified micro-organisms contained use
59. Good laboratory practice
60. Harbours
61. Hazardous Substances Planning
62. Heat metering and billing information
63. High Efficiency Cogeneration
64. Implementation of EU Emissions Trading System
65. Ionising radiation
66. Land use
67. Late payment (commercial transactions)
68. Legal aid in cross-border cases
69. Migrant Access to benefits
70. Minimum standards -housing & care: regulation of the use of animals
71. Minimum standards legislation - child sexual exploitation
72. Minimum standards legislation - cybercrime
73. Minimum standards legislation - football disorder
74. Minimum standards legislation - human trafficking
75. Mutual recognition of professional qualifications
76. Mutual recognition of criminal court judgments measures & cross border cooperation - European Protection Order, Prisoner Transfer Framework Directive, European Supervision Directive, Compensation to Crime Victims Directive
77. Nutrition health claims, composition and labelling

78. Onshore hydrocarbons licensing
79. Organs
80. Plant Health, Seeds and Propagating Material
81. Practical cooperation in law enforcement - Asset Recovery Offices
82. Practical cooperation in law enforcement - European Investigation Order
83. Practical cooperation in law enforcement - Joint Action on Organised Crime
84. Practical cooperation in law enforcement - Joint investigation teams
85. Practical cooperation in law enforcement - mutual legal assistance
86. Practical cooperation in law enforcement - mutual recognition of asset freezing orders
87. Practical cooperation in law enforcement - mutual recognition of confiscation orders
88. Practical cooperation in law enforcement - Schengen Article 40
89. Practical cooperation in law enforcement - Swedish initiative
90. Practical cooperation in law enforcement - European judicial network
91. Practical cooperation in law enforcement - implementation of European Arrest Warrant
92. Procedural rights (criminal cases) - minimum standards measures
93. Provision of legal services
94. Provision in the 1995 Data Protection Directive (soon to be replaced by the General Data Protection Regulation) that allows for more than one supervisory authority in each member state
95. Public sector procurement
96. Public health (serious cross-border threats to health)
97. Radioactive Source Notifications–Trans-frontier shipments
98. Radioactive waste treatment and disposal
99. Rail franchising rules
100. Rail markets and operator licensing
101. Recognition of insolvency proceedings in EU Member States
102. Renewable Energy Directive
103. Rules on applicable law in civil & commercial cross border claims

104. Sentencing - taking convictions into account
105. State Aid
106. Statistics
107. Strategic Environmental Assessment (SEA) Directive
108. Tissues and cells
109. Uniform fast-track procedures for certain civil and commercial claims (uncontested debts, small claims)
110. Victims rights measures (criminal cases)
111. Voting rights and candidacy rules for EU citizens in local government elections

Powers returning from the EU that intersects with the devolution settlement in Wales

Department for Business, Energy and Industrial Strategy

1. Carbon Capture & Storage
2. Efficiency in energy use
3. Environmental law concerning energy planning consents
4. Environmental law concerning offshore oil & gas installations within territorial waters
5. Implementation of EU Emissions Trading System
6. Mutual recognition of professional qualifications
7. Onshore hydrocarbons licensing
8. Radioactive Source Notifications - Transfrontier shipments
9. Radioactive waste treatment and disposal
10. State Aid

Cabinet Office

1. Public sector procurement
2. Statistics
3. Voting rights and candidacy rules for EU citizens in local government elections

Department for Communities and Local Government

1. Environmental Impact Assessment (EIA) Directive

2. Energy Performance of Buildings Directive
3. Hazardous Substances Planning
4. Strategic Environmental Assessment (SEA) Directive

Department for Digital, Culture, Media and Sport

1. Elements of the Network and Information Security (NIS) Directive
2. Provision in the 1995 Data Protection Directive (soon to be replaced by the General Data Protection Regulation) that allows for more than one supervisory authority in each member state

Department for the Environment, Food and Rural Affairs

1. Agricultural Support
2. Agriculture - Fertiliser Regulations
3. Agriculture - GMO Marketing & Cultivation (not food/feed law, see FSA return)
4. Agriculture - Organic Farming
5. Agriculture - Zootech
6. Animal Health and Traceability
7. Animal Welfare
8. Environmental quality - Air Quality
9. Environmental quality - Biodiversity - access and benefit sharing of genetic resources (ABS)
10. Environmental quality - Chemicals
11. Environmental quality - Flood Risk Management
12. Environmental quality - International timber trade (EUTR and FLEGT)
13. Environmental quality - Marine environment
14. Environmental quality - Natural Environment and Biodiversity
15. Environmental quality - Ozone depleting substances and F-gases
16. Environmental quality - Pesticides
17. Environmental quality - Spatial Data Infrastructure Standards
18. Environmental quality - Waste Packaging & Product Regulations
19. Environmental quality - Waste Producer Responsibility Regulations

21. Environmental quality - Water Quality
22. Environmental quality - Water Resources
23. Fisheries Management & Support
24. Food Compositional Standards (not hygiene / safety - see FSA return)
25. Food Geographical Indications (Protected Food Names)
26. Food Labelling
27. Forestry (domestic)
28. Land use
29. Plant Health, Seeds and Propagating Material

Department for Health

1. Blood Safety and Quality
2. Elements of Reciprocal Healthcare
3. Free movement of healthcare (the right for EEA citizens to have their elective procedure in another MS)
4. Good laboratory practice
5. Nutrition health claims, composition and labeling
6. Organs
7. Public health (serious cross-border threats to health) (notification system for pandemic flu, Zika etc)
8. Tissues and cells (apart from embryos and gametes)
9. Elements of Tobacco Regulation

Department for Transport

1. Harbours
2. Rail franchising rules

Food Standards Agency

1. Food and Feed Law (Food and feed safety and hygiene; food and feed law enforcement (official controls); food labelling (Defra, DH and FSA all have responsibilities for different parts); Commission consents.

Government Equalities Office

1. Equal Treatment Legislation

Health and Safety Executive

1. Chemicals regulation (including pesticides)
2. Control of major accident hazards
3. Genetically modified micro-organisms contained use (i.e. rules on protection of human health and the environment during the development)
4. Ionising radiation

Policy Areas/Powers returning from the EU which intersect with the devolution settlement in Northern Ireland (141)

1. Agricultural Support
2. Agriculture - Fertiliser Regulations
3. Agriculture - GMO Marketing & Cultivation
4. Agriculture - Organic Farming
5. Agriculture - Zootech
6. Animal Health and Traceability
7. Animal Welfare
8. Aviation Noise Management at Airports
9. Blood Safety and Quality
10. Carbon Capture & Storage
11. Chemicals regulation (including pesticides)
12. Civil judicial co-operation - jurisdiction and recognition & enforcement of judgments instruments in family law (including BIIa, Maintenance and civil protection orders)
13. Civil judicial co-operation - jurisdiction and recognition & enforcement of judgments in civil & commercial matters (including B1 rules and related EU conventions)
14. Civil judicial cooperation on service of documents and taking of evidence
15. Civil use of explosives
16. Clinical trials of medicinal products for human use
17. Company Law
18. Consumer law including protection and enforcement

19. Control of major accident hazards
20. Criminal offences minimum standards measures - Combatting Child Sexual Exploitation Directive
21. Cross border mediation
22. Data sharing - Eurodac
23. Data sharing - European Criminal Records Information System (ECRIS)
24. Data sharing - False and Authentic Documents Online (FADO)
25. Data sharing - passenger name records
26. Data sharing - Prüm framework
27. Data sharing - Schengen Information System (SIS II)
28. Driver Licensing Directive (roads). Also Driver Certificates of Professional Competence
29. Efficiency in energy use
30. Elements of Employment Law, including health and safety at work
31. Elements of reciprocal healthcare
32. Elements of the Network and Information Security (NIS) Directive
33. Elements of tobacco regulation
34. Energy Performance of Buildings Directive
35. Environmental Impact Assessment (EIA) Directive
36. Environmental law concerning energy planning consents
37. Environmental law concerning offshore oil & gas installations within territorial waters
38. Environmental quality - Air Quality
39. Environmental quality - Biodiversity - access and benefit sharing of genetic resources (ABS)
40. Environmental quality - Chemicals
41. Environmental quality - Flood Risk Management
42. Environmental quality - International timber trade (EUTR and FLEGT)
43. Environmental quality - Marine environment
44. Environmental quality - Natural Environment and Biodiversity

45. Environmental quality - Ozone depleting substances and F-gases
46. Environmental quality - Pesticides
47. Environmental quality - Spatial Data Infrastructure Standards
48. Environmental quality - Waste Packaging & Product Regulations
49. Environmental quality - Waste Producer Responsibility Regulations
50. Environmental quality - Water Quality
51. Environmental quality - Water Resources
52. Equal Treatment Legislation
53. EU agencies - EU-LISA
54. EU agencies - Eurojust
55. EU agencies - Europol
56. EU social security coordination
57. Fisheries Management & Support
58. Food and Feed Law (Food and feed safety and hygiene; food and feed law enforcement (official controls); food labelling; Commission consents.
59. Food Compositional Standards
60. Food Geographical Indications (Protected Food Names)
61. Food Labelling
62. Forestry (domestic)
63. Free movement of healthcare (the right for EEA citizens to have their elective procedure in another MS)
64. Genetically modified micro-organisms contained use (i.e. rules on protection of human health and the environment during the development)
65. Good laboratory practice
66. Harbours
67. Hazardous Substances Planning (Seveso III Directive)
68. Health and safety at work
69. Heat metering and billing information
70. High Efficiency Cogeneration
71. Implementation of EU Emissions Trading System

72. Inland transport of dangerous goods and transportable pressure equipment
73. Ionising radiation
74. Land use
75. Late payment (commercial transactions)
76. Legal aid in cross border cases
77. Maritime Employment and Social Rights
78. Medical devices
79. Medicinal products for human use
80. Medicine prices
81. Migrant access to benefits
82. Minimum standards -housing & care, regulates the use of animals
83. Minimum standards legislation - child sexual exploitation
84. Minimum standards legislation - cybercrime
85. Minimum standards legislation - football disorder
86. Minimum standards legislation - human trafficking
87. Mutual recognition of criminal court judgments measures & cross border cooperation - European Protection Order, Prisoner Transfer Framework Directive, European Supervision Directive, Compensation to Crime Victims Directive
88. Mutual recognition of professional qualifications
89. Non-food product design and labelling
90. Nutrition health claims, composition and labelling
91. Onshore hydrocarbons licensing
92. Operator licensing (roads)
93. Organs
94. Passenger Rights (rail)
95. Plant Health, Seeds and Propagating Material
96. Practical cooperation - Asset Recovery Offices
97. Practical cooperation - European Investigation Order
98. Practical cooperation - implementation of European Arrest Warrant (dealing with requests etc.)

99. Practical cooperation - Joint Action on Organised Crime
100. Practical cooperation - Joint investigation teams
101. Practical cooperation - mutual legal assistance
102. Practical cooperation - mutual recognition of asset freezing orders
103. Practical cooperation - mutual recognition of confiscation orders
104. Practical cooperation - Schengen Article 40
105. Practical cooperation - Swedish initiative
106. Practical cooperation- European judicial network
107. Private cross border pensions
108. Procedural rights (criminal cases) - minimum standards measures
109. Product safety and standards
110. Provision in the 1995 Data Protection Directive (soon to be replaced by the General Data Protection Regulation) that allows for more than one supervisory authority in each member state
111. Provision of legal services (temporary and permanent basis)
112. Public health (serious cross-border threats to health) (notification system for pandemic flu, Zika etc)
113. Public Sector Procurement
114. Radioactive Source Notifications - Transfrontier shipments
115. Radioactive waste treatment and disposal
116. Rail franchising rules
117. Rail markets and operator licensing (governance, structure, track access & charging)
118. Rail Markets: safety rules and régimes
119. Rail Markets: technical standards
120. Rail Markets: Train driving licenses and other certificates directive
121. Rail Workers Rights Directive
122. Recognition of insolvency proceedings in EU Member States
123. Renewable Energy Directive
124. Roads - Motor Insurance (minimum required levels of insurance and various compensation schemes, not insurance, financial and prudential regulation, which is reserved)

125. Roadworthiness Directive
126. Rules on applicable law in civil & commercial cross border claims (includes RI and II Regs)
127. Security of supply (emergency stocks of oil)
128. Security of supply (gas)
129. Sentencing - taking convictions into account
130. Single energy market/ Third Energy Package
131. State Aid
132. Statistics (where production is devolved)
133. Strategic Environmental Assessment (SEA) Directive
134. The Rental and Lending Directive (concerning library lending)
135. Tissues and cells (apart from embryos and gametes)
136. Transporting dangerous goods by rail, road and inland waterway Directive
137. Uniform fast track procedures for certain civil and commercial claims (uncontested debts, small claims)
138. Vehicle registration (roads)
139. Vehicle standards - various type approval Directives (roads)
140. Victims rights measures (criminal cases) - minimum standards
141. Working Time Rules and Harmonisation of Hours Directive and regulations on tachographs

Formal Minutes

Tuesday 28 November 2017

Members present:

Mr Bernard Jenkin, in the Chair

Ronnie Cowan	Dr Rupa Huq
Paul Flynn	Mr David Jones
Kelvin Hopkins	Sandy Martin

Draft Report (*Devolution and Exiting the EU and Clause 11 of the European Union (Withdrawal) Bill: Issues for Consideration*), proposed by the Chair, brought up, and read.

Motion made, and Question proposed, That the draft Report be read a second time, paragraph by paragraph.—(*The Chair*.)

The Committee Divided

Ayes, 6	Noes, 1
Ronnie Cowan	Paul Flynn
Paul Flynn	
Kelvin Hopkins	
Dr Rupa Huq	
Mr David Jones	
Sandy Martin	

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 43 read and agreed to.

Resolved, That the Report be the First Report of the Committee to the House.

Ordered, That the Chair make the Report to the House.

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

[Adjourned until 9.30am on Tuesday 5 December 2017]

Witnesses

The following witnesses gave evidence. Transcripts can be viewed on the [inquiry publications page](#) of the Committee's website.

Tuesday 31 October 2017

Question number

Professor Richard Rawlings, Professor of Public Law, University College London, and **Professor Alan Page**, Professor of Public Law, University of Dundee

[Q1–68](#)

Tuesday 28 November 2017

Sir Michael Carpenter, Former Speakers Counsel, and **Professor Nicola McEwen**, Professor of Territorial Politics, University of Edinburgh

[Q69–](#)

Published written evidence

The following written evidence was received and can be viewed on the [inquiry publications page](#) of the Committee's website.

DEU numbers are generated by the evidence processing system and so may not be complete.

- 1 Professor Alan Page ([DEU0008](#))
- 2 Dr Joanie Willett ([DEU0003](#))
- 3 Dr Tobias Lock ([DEU0001](#))
- 4 Martin Howe ([DEU0022](#))
- 5 Michael Carpenter ([DEU0009](#))
- 6 Nat O'Connor ([DEU0006](#))
- 7 Nigel Smith ([DEU0007](#))
- 8 Professor Nicola McEwen ([DEU0020](#))
- 9 Unlock Democracy ([DEU0004](#))

List of Reports from the Committee during the current Parliament

All publications from the Committee are available on the [publications page](#) of the Committee's website.

The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

Session 2017–19

First Special Report	Will the NHS never learn? Follow-up to PHSO report 'Learning from Mistakes' on the NHS in England: Government Response to the Committee's Seventh Report of Session 2016–17	HC 441
Second Special Report	The Future of the Union, part two: Inter-institutional relations in the UK: Government Response to the Sixth Report from the Committee, Session 2016–17	HC 442

MEMORANDWM CYDSYNIO OFFERYN STATUDOL

RHEOLIADAU ASESIAD O'R ENNAETH AMGYLCHEDDOL (DIWYGIADAU AMRYWIOL SY'N GYSYLLTEIEDIG Â HARBYRAU, PRIFFYDD, Â TRAFNIDIAETH) 2017

1. Caiff y Memorandwm Cydsynio Offeryn Statudol hwn ei osod o dan Reol Sefydlog 30A.2. Mae Rheol Sefydlog 30A yn pennu bod yn rhaid gosod Memorandwm Cydsynio a gosod Cynnig Cydsyniad Offeryn Statudol gerbron Cynulliad Cenedlaethol Cymru ("Cynulliad") os yw Offeryn Statudol y DU yn gwneud darpariaeth sy'n gysylltiedig â Chymru gan ddiwygio deddfwriaeth sylfaenol o fewn cymhwysedd deddfwriaethol y Cynulliad.
2. Cafodd Rheoliadau Asesiad o'r Effaith Amgylcheddol (Diwygiadau Amrywiol sy'n gysyllteiedig â harbyrau, priffydd â trafnidiaeth) 2017 eu gosod gerbron y Senedd ar 13 Tachwedd 2017a gerbron y Cynulliad ar 15 Tachwedd 2017. Mae'r rheoliadau ar gael ar:

<http://www.legislation.gov.uk/ksi/2017/1070/contents/made>

Crynodeb o'r Rheoliadau a'u nod

3. Nod y rheoliadau yw trosi Cyfarwyddeb 2014/52/EU, sy'n diwygio Cyfarwyddeb 2011/92/EU¹ ar asesu effaith prosiectau cyhoeddus a phreifat penodol ar yr amgylchedd. Gelwir yr asesiad hwn yn Asesiad o'r Effaith Amgylcheddol ('EIA').
4. Y Gyfarwyddeb:
 - Cadarnhau y berthynas rhwng Cyfarwyddeb EIA a chyfarwyddebau amgylcheddol eraill (e.e. Cyfarwyddeb Cynefinoedd).
 - Galw am wybodaeth ychwanegol i gael ei chynnwys yn y datganiad amgylcheddol (a gyfeirir ato hefyd fel adroddiad asesu yr effaith amgylcheddol), megis gwybodaeth am yr effaith ar y newid yn yr hinsawdd, a phoblogaeth a iechyd dynol.
 - Sicrhau bod mwy o dryloywder o fewn y broses EIA, yn benodol o ran swyddogaeth y Sefydliad sy'n Goruchwyllo.
 - Cryfhau gofynion y prosesau penderfynu a sgrinio.
5. Mae'r darpariaethau hyn yn dechnegol, yn cwmpasu gofynion gweithdrefnol EIA ac yn egluro elfennau y drefn bresennol. Mewn nifer o achosion mae'r ddeddfwriaeth bresennol yn debygol o fodloni gofynion Cyfarwyddeb 2014, ond defnyddiwyd dull o 'gopiō' yn y manau priodol, er

¹ Trwy'r ddogfen hon mae 'Cyfarwyddeb yr EIA' yn cyfeirio at Gyfarwyddeb 2011/92/EU fel y'i diwygydd gan Gyfarwyddeb 2014/52/EU. Mae 'Cyfarwyddeb 2014' yn cyfeirio at Gyfarwyddeb 2014/52/EU yn unig, a 'Chyfarwyddeb 2011' yn cyfeirio at Gyfarwyddeb 2011/92/EU yn unig. Defnyddir y termau hyn fel y bo angen i ddangos y newidiadau o dan 2014/52/EU sydd eu hangen i'w troisi, o gymharu â'r cynllun rheoleiddiol presennol sy'n ofynnol o dan Gyfarwyddeb 2011/92/EU.

mwyn ei gwneud yn llai tebygol o fethu trosi yn gywir. Nid oes llawer o oblygiadau ymarferol i'r newidiadau, gan bod EIAau yng Nghymru eisoes yn cael eu gweithredu ar gyfer Cyfarwyddeb 2014.

6. Mae'r Rheoliadau yn cynnwys Cymru a Lloegr. Mae elfennau o'r Rheoliadau yn berthnasol i'r Alban hefyd.

Darpariaeth briodol i'w gwneud gan y Rheoliadau

7. Ni fydd trosi'r Gyfarwyddeb hon yn cael effaith ar gynlluniau y penderfynwyd arnynt eisoes (h.y. cafwyd cadarnhad bod angen EIA) ac y gofynnwyd am gwmpas gwaith. Mae Erthygl 3(1) Cyfarwyddeb 2014 yn golygu y caiff gynlluniau o'r fath barhau o dan y darpariaethau sydd heb eu diwygio o Gyfarwyddeb 2011. Bydd y darpariaethau canlynol ond yn berthnasol i gynlluniau newydd sydd heb gyrraedd y pwynt hwn.
8. Mae'r rheoliadau hyn yn cynnwys meysydd o fewn y cymhwysedd datganoledig ac y tu allan i'r cymhwysedd datganoledig. Mae'n cwmpasu ystod o faterion sy'n gysylltiedig â trafenidiaeth. Deddf Prifffyrdd 1980 yw yr unig elfen sydd o fewn cymhwysedd datganoledig y Cynulliad Cenedlaethol yn gyfan gwbl. Mae gan y Cynulliad Cenedlaethol gymhwysedd deddfwriaethol dros harbyrau sy'n cael ei ddefnyddio ar gyfer pysgota, ac/neu ar gyfer cyfathrebu rhwng lleoliadau yng Nghymru, er nid ar gyfer pob harbwr yng Nghymru. Fodd bynnag, mae Gweinidogion Cymru wedi eu dynodi ar gyfer darpariaethau y Gyfarwyddeb hon ar gyfer cynlluniau trafenidiaeth mawr yn unig, sy'n eithrio harbyrau pysgodfeydd, er bod harbyrau pysgodfeydd o fewn cymhwysedd deddfwriaethol y Cynulliad Cenedlaethol.
9. Barn Llywodraeth Cymru yw bod y darpariaethau sy'n cael eu disgrifio ym mharagraff (8) uchod yn syrthio o fewn cymhwysedd deddfwriaethol Cynulliad Cenedlaethol Cymru ym harbyrau, priffydd â trafenidiaeth sy'n cael eu defnyddio neu sy'n ofynnol yn gyfan gwbl neu'n bennaf ar gyfer y diwydiant pysgota, ar gyfer hamddena neu i gyfathrebu rhwng lleoliadau yng Nghymru (neu ar gyfer dau neu fwy o'r dibenion hyn, sydd wedi'u rhestru o dan baragraff 10 Rhan 1, Atodlen 7 Deddf Llywodraeth Cymru 2006).

Deddf Harbyrau 1964

10. Mae Atodlen 2 y rheoliadau yn copïo diffiniad y broses EIA i Atodlen 3 y Ddeddf Harbyrau, gan gynnwys y newidiadau i derminoleg ac y dylai'r asesiad fod o effeithiau sylweddol tebygol y prosiect ar yr amgylchedd.
11. Mae'r rheoliadau yn trosi yr eithrio ar gyfer prosiectau ble mai ymateb i argyfyngau sifil neu i amddiffyn yw eu prif bwrrpas, ac mae'r hyblygrwydd ychwanegol yn cael ei roi mewn amgylchiadau eithriadol. Mae'r rheoliadau yn pennu pryd y gellir gohirio camau penodol o'r broses EIA.
12. Mae'r rheoliadau yn trosi y gofyniad pan fydd prosiect yn galw am EIA ac asesiad o dan y Gyfarwyddeb Cynefinoedd (Cyfarwyddeb 92/43) neu'r

Gyfarwyddeb Adar (Cyfarwyddeb 2009/147) mae'n rhaid i'r awdurdod sicrhau, ble y bo'n briodol, bod yr asesiadau perthnasol yn cael eu cydlynnu. Mae'r rheoliadau yn trosi'r prosiectau y mae galw am EIA ar eu cyfer a'r math o wybodaeth sydd ei angen neu allai gael ei ddarparu mewn cais trwy gyfeirio at y Gyfarwyddeb.

13. Mae'r rheoliadau yn diwygio'r broses ar gyfer yr adroddiad cwmpasu, sy'n ei wneud yn ofynnol i'r Ysgrifennydd Gwladol hysbysu'r ymgeisydd o'u penderfyniad yn ysgrifenedig o fewn 90 diwrnod, os nad oes amgylchiadau eithriadol. Mae'r rheoliadau bellach yn ychwanegu, ble nad oes gwybodaeth ddigonol wedi ei ddarparu, y caiff yr Ysgrifennydd Gwladol ysgrifennu o fewn 90 diwrnod yn gofyn am ragor o wybodaeth, gyda'r effaith ddilynol ar yr amserlenni ar gyfer penderfyniadau.
14. Mae'r rheoliadau yn trosi y math o wybodaeth sydd i gael ei darparu gan ddatblygwr er mwyn i awdurdod cymwys sgrinio cynnig, trosi y mein prawf dethol drwy gyfeirio at y Gyfarwyddeb, a chynnwys cyfeiriad wedi ei gopio at 'awdurdodau sydd â chymwyseddau lleol a rhanbarthol' ochr yn ochr â'r darpariaethau ymgynghori presennol.
15. Mae'r rheoliadau yn diwygio'r gofyniad i gyflwyno dogfennau i wneud cais am Orchymyn Diwygio Harbwr. Mae'r rheoliadau yn pennu yr wybodaeth ofynnol y mae'n rhaid i ddatblygwr ei darparu yn eu datganiad amgylcheddol fel rhan o'r broses asesu ym mharagraff 8 y Ddeddf Harbyrau. Mae'r rheoliadau yn copio bod yn rhaid i'r awdurdod cymwys roi barn ar gwmpas a manylder yr wybodaeth sydd ei hangen yn y datganiad, gan ystyried yr wybodaeth sydd yn cael ei darparu gan y datblygwr ar nodweddion penodol y prosiect a'r effaith debygol a gaiff ar yr amgylchedd.
16. Mae'r rheoliadau yn diweddar y trefniadau cyhoeddi ar gyfer hysbysiadau, i sicrhau eu bod ar gael yn electronig o fewn amseroedd penodol.
17. Mae'r rheoliadau yn pennu'r wybodaeth y mae'n rhaid i'r Ysgrifennydd Gwladol ei hystyried wrth wneud penderfyniad ar effaith amgylcheddol prosiect, gan gynnwys darpariaethau i sicrhau bod unrhyw amodau monitro angenheidol yn cael eu cynnwys mewn prosiect pan y bo'n briodol.
18. Mae'r rheoliadau yn gosod gofyniad ym mharagraff 19 bod yn rhaid i'r Ysgrifennydd Gwladol wneud penderfyniad o dan y paragraff hwnnw o fewn cyfnod amser rhesymol, gan ystyried natur a chymhlethdod y cais a'r gwaith arfaethedig, yn ogystal ag unrhyw weithdrefnau ychwanegol sydd eu hangen, o'r dyddiad y mae'r Ysgrifennydd Gwladol wedi derbyn yr wybodaeth amgylcheddol a ddarparwyd. Mae'r rheoliadau hefyd yn diweddarur darpariaethau ar gyfer cyhoeddi'r penderfyniad hwnnw.

Diwygio Deddf Prifyrdd 1980

19. Mae'r rheoliadau yn diwygio Adran 105A (1) y Ddeddf Prifyrdd i gyfeirio at Gyfarwyddebau diwygiedig 2011 a 2014, gan gynnwys y diffiniad newydd o "asesiad o effaith amgylcheddol" sy'n cael ei gynnwys yng Nghyfarwyddeb 2014. Mae adran 105A wedi ei diwygio yn pennu'r gweithdrefnau ar gyfer penderfynu a oes angen EIA ar gyfer prosiect prifyrdd a'r ffactorau y dylid eu hystyried wrth benderfynu ar hynny. Mae'r diwygiad i 105A yn egluro mai yr elfennau amgylcheddol y dylid eu hystyried fel rhan o'r asesiad ddylai fod effeithiau sylweddol y prosiect ar yr amgylchedd. Mae hefyd yn diwygio rhywfaint o'r derminoleg a ddefnyddir.
20. Mae'r diwygiadau i 105A hefyd yn nodi, ble y bydd prosiect yn cael ei asesu o dan y Gyfarwyddeb EIA ac o dan Gyfarwyddebau Cynefinoedd neu Adar, ble y bo'n briodol dylid cydlynnu'r asesiadau hyn. Cafodd adran 105A ei ddiwygio i bennu cynnwys datganiad amgylcheddol. Mae'r newidiadau i 105A hefyd yn cynnwys y gofyniad i'r datblygwr sicrhau bod y datganiad amgylcheddol yn cael ei baratoi gan arbenigwyr cymwys, tra bo'n rhaid i'r awdurdod cymwys sicrhau bod ganddo, neu bod ganddo fynediad i arbenigedd ddigonol i edrych ar yr adroddiad EIA.
21. Mae diwygiadau i Adran 105B yn pennu gweithdrefnau ar gyfer gwneud penderfyniad a oes angen EIA ai peidio. Bydd Adran 105B (1C) o Ddeddf Prifyrdd 1980 yn galw am benderfynu cyn gynted â phosib o fewn 90 niwrnod. Mae diwygiadau i 105B yn cynnwys y gofyniad y dylid hysbysu'r cyhoedd am gais a'r materion a amlinellir yn Erthygl 6(2) yn electronig. Mae'r diwygiadau i'r adran hon yn gosod isafswm o 30 niwrnod ar gyfer ymgynghoriad cyhoeddus ar yr adroddiad asesiad effaith amgylcheddol ac amserlen newydd ofynnol ar gyfer ymgynghoriadau cyhoeddus ar y datganiad amgylcheddol.
22. Mae Adrannau newydd wedi eu hychwanegu at 105B i adlewyrchu'r gofyniad bod yn rhaid cynnwys casgliad rhesymedig awdurdod cymwys o fewn unrhyw benderfyniad; bod yn rhaid i awdurdodau cymwys sicrhau hefyd bod unrhyw gamau lliniaru a, ble y bo'n briodol, fesurau monitro o fewn y cydsyniad; bod yn rhaid cynnwys hefyd, o fewn y penderfyniad i roi cydsyniad datblygu, ble yn briodol, fesurau monitro; a bod yr awdurdod cymwys yn gwneud unrhyw un o'r penderfyniadau y cyfeirir atynt o fewn cyfnod amser rhesymol.
23. Cafodd Adran 105B (6) o'r Ddeddf Prifyrdd ei diwygio i weithredu'r newidiadau i erthygl 9(1) o Gyfarwyddeb 2011, ynghylch gweithdrefnau a chynnwys ar gyfer gwneud penderfyniad i fynd ymlaen â phrosiect sy'n destun EIA yn hysbys.
24. Cafodd Adran 105C ei diwygio i gynnwys cynnal ymgynghoriadau ar effeithiau dros ffiniau trwy gorff ar y cyd priodol.

25. Mae'r rheoliadau yn trosi eithrio at ddibenion prosiectau amddiffyn ac argyfngau ac yn rhoi hyblygrwydd ychwanegol mewn amgylchiadau eithriadol i adran newydd 105E a 105F.

Pam y mae'n briodol i'r rheoliadau wneud y ddarpariaeth hon

26. Mae'n ofynnol o dan gyfraith yr UE i gynnal EIAau ar gyfer ystod o ddatblygiadau. Mae Cyfarwyddeb EIA wedi diweddu gofynion yr EIA, ac mae'n rhaid iddynt gael eu trosi i gyfraith y DU. Mae'r Gyfarwyddeb yn cael effaith ar ystod o feysysdd polisi, gan gynnwys cynllunio, amaethyddiaeth, coedwigaeth a thrafnidiaeth. Mae'r Memorandwm Cydsyniad Offeryn Statudol hwn yn gysylltiedig ag elfennau trafnidiaeth y trosi, ac mae'r Ysgrifennydd Gwladol yn bwriadu gwneud rheoliad ar ei gyfer.

27. Barn Llywodraeth Cymru yw ei fod yn briodol i ddelio â'r darpariaethau yn y rheoliadau hyn gan mai dyma'r dull cyfreithiol mwyaf ymarferol a theg i sichau bod y darpariaethau hyn yn berthnasol yng Nghymru. Mae'r rheoliadau hyn yn diwygio'r ddeddfwriaeth sylfaenol sy'n berthnasol yng Nghymru a Lloegr, ac nid oedd yn ymarferol nac yn gymesur i wneud rheoliadau ar wahân i Gymru er mwyn gwneud newidiadau union yr un fath i'r un darnau o ddeddfwriaeth sylfaenol.

28. Hefyd, nid yw Gweinidogion Cymru wedi'u dynodi i drosi darpariaethau sy'n gysylltiedig â harbyrau ac felly dim ond rhan o'r rheoliadau hyn y gellid eu trosi yng Nghymru. Bydd Deddf Cymru 2017 yn ymestyn y cymhwysedd ddeddfwriaethol dros borthladdoedd a harbyrau, er y bydd y ddeddfwriaeth galluogi erbyn hyn (Deddf Harbyrau 1064 a Deddf Prifyrdd 1980) yn parhau i fod yn berthnasol yng Nghymru a Lloegr. Mae'r dull hwn o weithio yn sichrau dull cyffredin o drosi y Gyfarwyddeb ledled y DU, a bydd yn helpu i symleiddio'r broses tuag at ddatganoli pellach.

29. Mae'r Memorandwm Cydsyniad Offeryn Statudol hwn yn gysylltiedig â rheoliadau a osodwyd gerbron Senedd y DU o dan y weithdrefn negyddol a ddaw yn gyfraith yn awtomatig os nad oes gwrthwynebiad gan aelod o un o'r Tai Cyffredin. Os nad oes gwrthwynebiad o'r fath, daw y rheoliadau i rym ar 5 Rhagfyr 2017.

Goblygiadau ariannol

30. Mae costau yn gysylltiedig â chynnal yr EIAau, sy'n cael eu cynnwys o fewn y cyllidebau ar gyfer prosiectau unigol. Mae gan y Gyfarwyddeb newydd ofynion monitro ychwanegol, a allai arwain at gostau ychwanegol i gadarnhau dilysrwydd y mesurau a sefydlwyd i ostwng, lleihau a gosod yn erbyn yr effaith amgylcheddol. Byddai'r dulliau o'u gweithredu hefyd yn cael effaith ar gostau prosiectau unigol, a byddai angen i'r rhain gael eu hystyried fesul achos. Mae'r ddarpariaeth ar gyfer trosi yn golygu na fydd y rheoliadau hyn yn cael effaith ar brosiectau sydd eisoes wedi dechrau.

Ken Skates AC
Ysgrifennydd y Cabinet dros yr Economi a Thrafnidiaeth
15 November 2017



Mick Antoniw AC
Cadeirydd
Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol
Cynulliad Cenedlaethol Cymru
Caerdydd
CF99 1NA

Llywodraeth Cymru
Welsh Government

15 Tachwedd 2017

Annwyl Mick

Rwyf wedi gosod Memorandwm Cydsyniad Offeryn Statudol ('y memorandwm') sy'n gysylltiedig â Rheoliadau Asesiad o'r Effaith Amgylcheddol (Diwygiadau Amrywiol gysylltiedig â Harbyrau, priffyrdd, a Tratnidiaeth) 2017, a osodwyd gerbron y Senedd ar 13 Tachwedd 2017, gan yr Ysgrifennydd Gwladol dros Drafnidiaeth. Mae'r Rheoliadau hyn yn cynnwys Cymru a Lloegr, ac mae rhannau ohonynt hefyd yn cynnwys yr Alban. Dõnt i rym ar 5 Rhagfyr 2017. Mae'r Rheoliadau hyn yn diwygio Deddf Harbyrau 1964 a Deddf Priffyrdd 1980 er mwyn trosi Cyfarwyddeb 2014/52/EU (Cyfarwyddeb Asesiad o'r Effaith Amgylcheddol, neu Gyfarwyddeb EIA) fel y bo'n berthnasol i ddeddfwriaeth trafnidiaeth.

Y Gyfarwyddeb:

- Cadarnhau y rhng-berthynas rhwng y Gyfarwyddeb EIA a chyfarwyddebau amgylcheddol eraill (e.e. Cyfarwyddeb Cynefinoedd).
- Mae'n golygu bod angen cynnwys gwybodaeth ychwanegol yn y datganiad amgylcheddol (y cyfeirir ato hefyd fel adroddiad asesiad o'r effaith amgylcheddol), megis gwybodaeth am yr effaith ar y newid yn yr hinsawdd, a'r boblogaeth a iechyd dynol.
- Mae'n galw am fwy o dryloywder o fewn y broses EIA, yn benodol yn nhermau swyddogaeth y Sefydliad sy'n Goruchwylion.
- Cryfhau'r gofyniad o benderfynu ar brosesau sgrinio.

Mae'r darpariaethau hyn yn dechnegol, yn cwmpasu gofynion caffael EIA ac elfennau o egluro'r drefn bresennol. Nid ydynt yn diwygio y polisi gwaelodol y tu ôl i'r EIA, dim ond y gofynion sut y caiff yr EIA eu cyflawni. Mae'r diwygiadau i ddeddfwriaeth sylfaenol wedi eu pennu yn y memorandwm.

Rwyf wedi gosod y memorandwm yn unol â'r gofyniad o dan Offeryn Statudol 30A i 'aelod o Lywodraeth Cymru ...[i]...osod memorandwm (memorandwm cydsyniad offeryn statudol) sy'n gysylltiedig ag unrhyw offeryn statudol perthnasol sy'n cael eu gosod gerbron Senedd y DU gan Weinidogion y DU'. Rwy'n ystyried y Rheoliadau yn offeryn statudol perthnasol gan eu bod yn gwneud darpariaethau sy'n gysylltiedig â Chymru gan ddiwygio deddfwriaeth sylfaenol o fewn cymhwysedd ddeddfwriaethol y Cynulliad Cenedlaethol, ac nid ydynt yn

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1NA

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400

Gohebiaeth.Ken.Skates@llyw.cymru
Correspondence.Ken.Skates@gov.wales

Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and responding in Welsh will not lead to a delay in responding.

faterion sy'n gysylltiedig neu'n dilyn materion sydd y tu allan i gymhwysedd deddfwriaethol y Cynulliad Cenedlaethol. Fodd bynnag, nid wyf yn bwriadu cyflwyno Cynnig Cydsyniad Offeryn Statudol ar gyfer trafodaeth.

Mae'r Rheoliadau wedi eu gwneud trwy weithdrefn negyddol. Cawsant eu gweund cyn yr un diwrnod ag y ciant eu gosod, ac ar yr amod nad oes Aelod Seneddol yn mynd yn eu herbyn, byddant yn dod i rym 21 diwrnod wedi iddynt gael eu gosod. Chi sydd i benderfynu fel Pwyllgor a ydych i ystired ac adrodd ar y memorandwm, fel y cyfeiriodd y Pwyllgor cyfrifol o dan Orchymyn Sefydlog 30A. Rwyf wedi ystyried yn ofalus i osod Cynnig Cydsyniad Offeryn Statudol o dan Reol Sefydlog 30A, i'w drafod wedi'r 35 niwrnod a ganiateir ar gyfer craffu gan y Pwyllgor cyfrifol ddod i ben. Nid yw'n ofynnol i Lywodraeth Cymru wneud hynny, ond fel arfer byddem yn cyflwyno cynnig i'w drafod fel y gall y Cynulliad gydsynio, neu ddim, i'r darpariaethau perthnasol cyn llunio yr offeryn statudol.

Gan na fyddai unrhyw effaith ymarferol i drafodaeth o'r fath, rwyf wedi penderfynu i beidio â chyflwyno Cynnig Cydsyniad Offeryn Statudol ar gyfer trafodaeth. Mae'n rhaid penderfynu ar bob achos yn ôl ei ragoriaethau, ac mae pob un o'r diwygiadau hyn, er yn niferus, hefyd yn dechnegol a gweithredol eu natur. Nid ydynt yn diwygio polisiau yng Nghymru, dim ond sut i gynnal yr ElAau. Nid wyf yn teimlo bod unrhyw rinwedd cynnal trafodaeth ble y mae'r newidiadau yn dechnegol eu natur a ble nad yw canlyniad y drafodaeth yn debygol o gael effaith ymarferol. Mae gan unrhyw Aelod o'r Cynulliad wrth gwrs hawl i gyflwyno eu memorandwm eu hunain i'w drafod os ydynt yn teimlo'n gryf y dylid ei drafod.

Yn gywir



Ken Skates AC/AM
Ysgrifennydd y Cabinet dros yr Economi a Thrafnidiaeth

Mae cyfyngiadau ar y ddogfen hon

Eitem 8

MEMORANDWM CYDSYNIAD DEDDFWRIAETHOL

BIL YR UNDEB EWROPEAIDD (YMADAEL)

1. Gosodir y Memorandwm Cydsyniad Deddfwriaethol hwn o dan Reol Sefydlog ("RhS") 29.2. Mae RhS29 yn rhagnodi bod rhaid gosod Memorandwm Cydsyniad Deddfwriaethol, ac y ceir cyflwyno Cynnig Cydsyniad Deddfwriaethol, gerbron Cynulliad Cenedlaethol Cymru os yw Bil Seneddol y DU yn gwneud darpariaeth mewn perthynas â Chymru at ddiben sydd o fewn cymhwysedd deddfwriaethol y Cynulliad Cenedlaethol, neu sy'n addasu'r cymhwysedd hwnnw.
2. Cyflwynwyd Bil yr Undeb Ewropeaidd (Ymadael) (y "Bil") yn Nhŷ'r Cyffredin ar 13 Gorffennaf 2017. Gellir cael copi o'r Bil yn: [Bill documents — European Union \(Withdrawal\) Bill 2017-19 — UK Parliament](#)
3. Mae'r Memorandwm yn ymwneud â'r Bil fel y'i cyflwynwyd ar 13 Gorffennaf 2017.

Amcan(ion) Polisi

4. Yr amcan polisi sydd wedi'i ddatgan gan Lywodraeth y DU ar gyfer y Bil yw sicrhau bod y DU yn ymadael â'r UE gyda chymaint o sicrwydd, dilyniant a rheolaeth â phosibl. Mae'n anelu at roi terfyn ar oruchafiaeth cyfraith yr Undeb Ewropeaidd ("yr UE") yng nghyfraith y DU ac at drosi cyfraith yr UE fel y saif adeg ymadael yn gyfraith ddomestig. Mae'r Bil hefyd yn creu pwerau dros dro i'r Gweinidogion wneud is-ddeddfwriaeth i alluogi i gywiriadau gael eu gwneud i'r cyfreithiau na fyddent bellach yn gweithredu'n briodol fel arall ar ôl i'r DU ymadael, er mwyn i'r system gyfreithiol ddomestig barhau i weithredu'n gywir y tu allan i'r UE. Mae'r Bil hefyd yn galluogi cyfraith ddomestig i adlewyrchu cynnwys cytundeb ymadael o dan Erthygl 50 o Gytuniad yr Undeb Ewropeaidd ar ôl i'r DU ymadael â'r UE.

Crynodeb o'r Bil

5. Noddir y Bil gan yr Adran dros Ymadael â'r Undeb Ewropeaidd.
6. Mae'r Nodiadau Esboniadol yn nodi barn Llywodraeth y DU fod y Bil yn cyflawni pedair prif swyddogaeth. Mae:
 - yn diddymu Deddf y Cymunedau Ewropeaidd 1972
 - yn trosi cyfraith yr UE fel y saif adeg ymadael yn gyfraith ddomestig cyn i'r DU ymadael â'r UE;
 - yn creu pwerau i wneud is-ddeddfwriaeth, gan gynnwys pwerau dros dro i alluogi i gywiriadau gael eu gwneud i'r cyfreithiau na fyddent bellach yn gweithredu'n briodol fel arall ar ôl i'r DU ymadael â'r UE ac i roi cytundeb ymadael ar waith; ac

- yn cadw cwmpas presennol pwerau datganoledig ar gyfer gwneud penderfyniadau mewn meysydd a lywodraethir gan gyfraith yr UE ar hyn o bryd.

7. Y cymalau sydd o berthnasedd penodol i faterion datganoledig yw:

- Cymalau 2 – 6 (sy'n diogelu ac yn cadw cyfraith yr UE mewn cyfraith ddomestig, gan gynnwys mewn meysydd sydd o fewn cymhwysedd deddfwriaethol)
- Cymalau 7 – 9 (sy'n darparu pwerau i Weinidogion y DU gywiros cyfraith gadwedig yr UE a gweithredu rhwymedigaethau rhyngwladol a'r cytundeb ymadael â'r UE, gan gynnwys mewn meysydd datganoledig)
- Cymal 10 ac Atodlen 2 (sy'n darparu pwerau i Weinidogion Cymru gywiros cyfraith gadwedig yr UE a gweithredu rhwymedigaethau rhyngwladol a'r cytundeb ymadael â'r UE);
- Cymal 11 ac Atodlen 3 (sy'n cyfyngu ar gymhwysedd Cynulliad Cenedlaethol Cymru a Gweinidogion Cymru); ac
- Atodlen 7 (sy'n nodi'r gweithdrefnau deddfwriaethol i'w dilyn ar gyfer amryw o ddarpariaethau is-ddeddfwriaeth yn y Bil, gan gynnwys pwerau Gweinidogion Cymru a Gweinidogion y DU sy'n gweithredu mewn meysydd datganoledig).

Darpariaethau yn y Bil y mae angen cydsyniad ar eu cyfer

8. Nodir y rhestr lawn o gymalau sydd o fewn cymhwysedd deddfwriaethol Cynulliad Cenedlaethol Cymru (“y Cynulliad”) neu sy'n addasu'r cymhwysedd hwnnw yn y tabl yn Atodiad A. Mae'r Llywodraeth yn nodi bod gan Lywodraeth yr Alban farn debyg am y darpariaethau sy'n gorfol cael cydsyniad deddfwriaethol oddi wrth Senedd y DU.

Darpariaethau sy'n addasu cymhwysedd deddfwriaethol y Cynulliad

9. Sef:

- Cymal 1 (diddymu Deddf y Cymunedau Ewropeaidd 1972). Mae'r ddarpariaeth yn addasu cymhwysedd y Cynulliad trwy ddileu'r gofyniad i'r Cynulliad ddeddfu yn gydnaws â chyfraith yr UE.
- Mae Cymal 11 yn diwygio adran 108A o Ddeddf Llywodraeth Cymru 2006 i ddiffinio cymhwysedd y Cynulliad trwy gyfeirio at gyfraith yr UE a gedwir mewn cyfraith ddomestig gan ddarpariaethau'r Bil. Mae'r ddarpariaeth yn addasu cymhwysedd y Cynulliad am y byddai'n atal y Cynulliad rhag addasu cyfraith gadwedig yr UE mewn ffordd na fyddai wedi bod o fewn cymhwysedd yn union cyn y diwrnod ymadael.

- Mae cymal 17 ac Atodlen 8 a 9 yn rhoi pwerau eang i Weinidog y Goron wneud darpariaeth ganlyniadol. Gallai'r pwerau hynny gael eu harfer yn y fath ffordd ag i addasu cymhwysedd deddfwriaethol y Cynulliad.

Darpariaethau sy'n deddfu at ddiben sydd o fewn cymhwysedd deddfwriaethol y Cynulliad

Cymalau 2 – 6

10. Mae'r darpariaethau hyn (yn ddarostyngedig i rai eithriadau) yn trosi'r corff o gyfraith bresennol yr UE yn gyfraith ddomestig ac yn diogelu'r cyfreithiau a wneir yn y DU i roi rhwymedigaethau'r UE ar waith. Mae'r darpariaethau allweddol wedi'u crynhoi isod:

- Mae Cymal 2 ac Atodlen 1 yn darparu bod deddfwriaeth ddomestig sy'n deillio o'r UE yn parhau i fod yn effeithiol mewn cyfraith ddomestig ar ôl i'r DU ymadael â'r UE. Er enghraift, is-ddeddfwriaeth a wneir o dan adran 2(2) o Ddeddf y Cymunedau Ewropeaidd 1972.
- Mae Cymal 3 yn gwneud darpariaeth ar wahân ar gyfer deddfwriaeth uniongyrchol yr UE (h.y. Rheoliadau'r UE).
- Mae Cymal 4 yn sicrhau bod unrhyw rai o hawliau a rhwymedigaethau uniongyrchol yr UE sy'n weddill yn parhau i gael eu cydnabod ac i fod ar gael mewn cyfraith ddomestig ar ôl ymadael, megis hawliau Cytuniad sy'n effeithiol yn uniongyrchol.
- Mae Cymal 5 ac Atodlen 1 yn nodi eithriadau i arbed ac ymgorffori cyfraith yr UE. Mae'r rhain yn cynnwys rhoi terfyn ar yr egwyddor o oruchafiaeth cyfraith yr UE a darpariaeth sy'n cadarnhau na fydd y Siarter Hawliau Sylfaenol yn effeithiol bellach mewn cyfraith ddomestig o'r dyddiad ymadael â'r UE.
- Mae Cymal 6 yn esbonio sut y bwriedir dehongli cyfraith gadwedig yr UE o'r dyddiad ymadael â'r UE. Mae'n cadarnhau y daw awdurdodaeth Llys Cyflawnder yr Undeb Ewropeaidd ("CJEU") i ben ac mae'n gwneud darpariaeth ar gyfer trin penderfyniadau CJEU gan y llysoedd domestig wrth ddehongli cyfraith gadwedig yr UE ar ôl ymadael â'r UE.

11. Mae Llywodraeth Cymru o'r farn bod angen cydsyniad ar gyfer y darpariaethau hyn. Mae gan y Cynulliad gymhwysedd i ddeddfu rheolau sy'n deillio o'r UE yn gyfraith ddomestig adeg ymadael â'r UE ac i ddiffinio sut y bwriedir dehongli'r gyfraith honno, i'r graddau y mae'r rheolau hynny'n ymwneud ag un neu ragor o bynciau yn Atodlen 7 i Ddeddf Llywodraeth Cymru 2006. Er enghraift, y pwnc "environmental protection" o dan baragráff 6 o'r Atodlen honno o dan amgylchiadau lle mae'r rheolau sy'n deillio o'r UE sydd i'w deddfu'n darparu ar gyfer diogelu'r amgylchedd.

Cymalau 7- 10 ac 16

12. Mae'r darpariaethau hyn yn rhoi pwerau i Weinidogion y Goron a Gweinidogion Cymru ddiwygio cyfraith gadwedig yr UE, ac yn cynnwys fel a ganlyn:

- Mae Cymal 7 yn caniatáu i Weinidog y Goron wneud darpariaeth trwy gyfrwng rheoliadau i atal, unioni neu liniaru unrhyw fethiant yng nghyfraith yr UE i weithredu'n effeithiol neu unrhyw ddiffyg arall yng nghyfraith gadwedig yr UE sy'n deillio o ymadael â'r UE.
- Mae Cymal 8 yn rhoi pŵer i Weinidog y Goron wneud rheoliadau i hwyluso cydymffurfio parhaus â rhwymedigaethau rhyngwladol y DU.
- Mae Cymal 9 yn rhoi pŵer i Weinidog y Goron weithredu cytundeb ymadael rhwng y DU a'r UE.
- Mae Cymal 10 ac Atodlen 2 yn rhoi pwerau cyfatebol i Weinidogion Cymru, ond maent wedi'u cyfyngu mewn nifer o ffyrdd. Er enghraifft, nid ydynt yn ymestyn ond i gywiro cyfraith yr UE sydd wedi cael effaith trwy ddeddfwriaeth ddomestig ac ni ellir eu defnyddio i addasu ddeddfwriaeth uniongyrchol yr UE megis Rheoliadau'r UE.
- Mae Cymal 16 ac Atodlen 7 yn gwneud darpariaeth ar gyfer craffu ar reoliadau a wneir o dan y Bil.

13. Mae Llywodraeth Cymru o'r farn bod angen cydsyniad ar gyfer pob un o'r darpariaethau hyn. Er bod rhai pwerau'n cael eu rhoi i Weinidogion Cymru i wneud rheoliadau sy'n gallu diwygio ddeddfwriaeth o fewn cymhwysedd y Cynulliad (Cymal 10 ac Atodlen 2), gall Gweinidog y Goron ddal i arfer y pwerau yng nghymalau 7-9 i addasu ddeddfwriaeth sydd o fewn cymhwysedd y Cynulliad.

14. Mae o fewn cymhwysedd y Cynulliad i roi pwerau i Weinidogion Cymru wneud rheoliadau i fynd i'r afael â diffygion sy'n deillio o ymadael â'r UE o dan amgylchiadau lle mae'r gyfraith sy'n cael eu haddasu'n ymwneud ag un neu ragor o bynciau yn Rhan 1 o Atodlen 7 i Ddeddf Llywodraeth Cymru 2006.

Cymal 12 ac Atodlen 4 – Darpariaeth ariannol

15. Mae'r darpariaethau hyn yn rhoi pwerau i Weinidog y Goron ac awdurdodau datganoledig wneud is-ddeddfwriaeth i alluogi awdurdodau cyhoeddus i godi ffioedd neu daliadau eraill.

16. Mae Llywodraeth Cymru o'r farn bod angen cydsyniad ar gyfer y ddarpariaeth hon. Mae o fewn cymhwysedd y Cynulliad i wneud darpariaeth ar gyfer codi ffioedd gan awdurdodau cyhoeddus, i'r graddau y mae'r awdurdodau hyn/eu swyddogaethau'n ymwneud ag un neu ragor o bynciau yn Rhan 1 o Atodlen 7 i Ddeddf Llywodraeth Cymru 2006.

Cymal 13 ac Atodlen 5 – Cyhoeddi a rheolau tystiolaeth.

17. Mae'r cymal hwn yn gwneud darpariaeth ar gyfer cyhoeddi deddfwriaeth uniongyrchol gadwedig yr UE gan Argraffydd y Frenhines yn yr Archifau Gwladol. Yn Atodlen 5 ceir darpariaeth bellach ynghylch y rheolau tystiolaeth sydd i fod yn gymwys i offerynnau'r UE.
18. Mae Llywodraeth Cymru o'r farn bod angen cydsyniad ar gyfer y ddarpariaeth hon. Mae o fewn cymhwysedd y Cynulliad i wneud darpariaeth ar gyfer cyhoeddi cyfraith gadwedig yr UE a sut y bwriedir dehongli'r gyfraith honno i'r graddau y mae'r gyfraith honno'n ymwneud ag un neu ragor o bynciau yn Rhan 1 o Atodlen 7 i Ddeddf Llywodraeth Cymru 2006.

Craffu ar bwerau is-ddeddfwriaeth Gweinidogion Cymru

19. Trwy roi effaith i Atodlen 2, mae cymal 10 yn rhoi pwerau i Weinidogion Cymru sy'n cyfateb i'r pwerau a roddir i Weinidogion y Goron yng nghymalau 7-9 fel y nodir uchod. Nodir y gweithdrefnau ar gyfer craffu seneddol ar y pwerau cywiro hyn yn Rhannau 1 a 2 o Atodlen 7.
20. Ar gyfer pob pŵer, mae'r Atodlen yn rhestru cyfres o ddarpariaethau, y bydd eu cynnwys mewn offeryn statudol ("OS") yn peri bod yr OS yn ddarostyngedig i'r weithdrefn penderfyniad cadarnhaol yn Senedd y DU. Mae'r Atodlen wedyn yn darparu bod OS Gweinidogion Cymru sy'n cynnwys unrhyw rai o'r darpariaethau hyn yn ddarostyngedig i'r weithdrefn penderfyniad cadarnhaol yn y Cynulliad. Pan fydd OS sy'n cynnwys y darpariaethau hyn yn cael ei wneud gan Weinidog y Goron a Gweinidogion Cymru ar y cyd, mae'r gweithdrefnau penderfyniad cadarnhaol yn gymwys mewn perthynas â Senedd y DU a'r Cynulliad. Mae unrhyw OS sy'n cynnwys unrhyw rai o'r darpariaethau a restrir yn ddarostyngedig i'r weithdrefn penderfyniad negyddol.
21. Mae'r darpariaethau a fydd yn sbarduno'r gofyniad ar gyfer penderfyniad cadarnhaol ar gyfer pob pŵer wedi'u rhestru yn Atodiad B.

Rhesymau dros wneud y darpariaethau hyn i Gymru ym Mil yr Undeb Ewropeaidd (Ymadael)

22. Mae Llywodraeth Cymru'n cytuno bod angen deddfwriaeth i gynnig eglurder a sicrwydd i ddinasyddion a busnesau wrth inni ymadael â'r UE. Rydym yn derbyn o ran egwyddor yr angen am ddarpariaethau sy'n trosi cyfraith yr UE yn gyfraith ddomestig, a darpariaethau sy'n creu pwerau i wneud is-ddeddfwriaeth, gan gynnwys pwerau dros dro i alluogi i gywiriadau gael eu gwneud i'r cyfreithiau na fyddent bellach yn gweithredu'n briodol pan fydd y DU wedi ymadael â'r UE. Mae Llywodraeth Cymru yn cytuno hefyd mai Senedd y DU, yn ddelfrydol, a ddylai wneud y ddeddfwriaeth honno, a hynny ar ran y DU gyfan, gan mai

hyn fyddai'n cynnig y mesur gorau o gysondeb a sicrwydd i ddinasyyddion a busnesau.

Safbwyt Llywodraeth Cymru ar y Bil fel y'i cyflwynwyd.

23. Ni fydd modd i Lywodraeth Cymru argymhell i'r Cynulliad ei fod yn rhoi cydsyniad i'r Bil fel y mae wedi'i ddrafftio ar hyn o bryd.
24. Nodir safbwyt Llywodraeth Cymru yn y [Datganiad Ysgrifenedig](#) a gyhoeddais pan gafodd y Bil ei gyflwyno yn Nhŷ'r Cyffredin ar 13 Gorffennaf, ac yn y [datganiad ar y cyd](#) a wneuthum â Phrif Weinidog yr Alban yr un diwrnod.
25. Mae prif wrthwynebiadau Llywodraeth Cymru'n ymwneud â chymalau 7-9 (sy'n rhoi i Weinidogion y Goron bwerau annerbyniol o eang i wneud rheoliadau, gan gynnwys y gallu i ddiwygio cyfraith ddatganoledig a'r setliad datganoli heb gydsyniad), cymal 10 (sy'n rhoi effaith i Atodlen 2 ac sy'n cyfyngu'n afresymol ar bwerau cywiro Gweinidogion Cymru i gyfraith ddomestig yr UE) a chymal 11 sy'n cyflwyno cyfyngiad newydd ar gymhwysedd deddfwriaethol.

Pwerau i Weinidogion y DU a Gweinidogion Cymru ddiwygio cyfraith ddatganoledig

26. Mae'r Bil yn rhoi pwerau i Weinidogion y Goron yng nghymal 7 (i ymdrin â diffygion sy'n deillio o ymadael), yng nghymal 8 (i alluogi cydymffurfio parhaus â rhwymedigaethau rhyngwladol y DU, a chymal 9 (i roi'r cytundeb ymadael ar waith). Byddai'r pwerau hyn yn caniatâu i Weinidog y Goron ddiwygio'n unochrog ddeddfwriaeth sydd o fewn cymhwysedd deddfwriaethol y Cynulliad, gan gynnwys deddfwriaeth lle bo Gweinidogion Cymru'n arfer swyddogaethau. Senedd y DU yn hytrach na'r Cynulliad fyddai'n cyflawni'r rhwymedigaeth graffu wedyn. Gallai'r pwerau hyn gael eu defnyddio hefyd i ddiwygio Deddf Llywodraeth Cymru 2006, heb unrhyw ofyniad i gael sêl bendith y Cynulliad.
27. Trwy roi effaith i Atodlen 2, mae cymal 10 yn rhoi pwerau i Weinidogion Cymru sy'n cyfateb i'r pwerau a roddir i Weinidogion y Goron yng nghymalau 7-9. Ond mae'r pwerau cyfatebol ar gyfer Gweinidogion gweinyddiaethau datganoledig yn ymestyn yn unig i orchmyntion cywiro mewn perthynas â deddfwriaeth sydd wedi'i gwneud gan sefydliadau domestig. Gweinidog y Goron yn unig sy'n cael diwygio deddfwriaeth uniongyrchol yr UE (megis Rheoliadau'r UE) a byddai Senedd y DU yn gorfod craffu arni hyd yn oed pe bai'n ymwneud â phwnc sydd wedi'i ddatganoli i'r Cynulliad.

Cyfyngiadau newydd ar gymhwysedd deddfwriaethol y Cynulliad

28. Mae Cymal 11 yn cyflwyno darpariaeth newydd a fydd yn golygu y bydd y tu allan i gymhwysedd y Cynulliad i addasu cyfraith gadwedig yr UE mewn

ffordd na fyddai wedi bod yn gydnaws â chyfraith yr UE yn union cyn ymadael. Mae hyn yn disodli'r ddarpariaeth newydd yn adran 108A o Ddeddf Llywodraeth Cymru 2006 sy'n ei gwneud yn ofynnol i'r Cynulliad ddeddfu'n gydnaws â chyfraith yr UE.

29. Oni bai fod darpariaeth ddeddfwriaethol yn cael ei gwneud yn Senedd y DU, mae'n dir cyffredin y byddai cymhwysedd deddfwriaethol ar gyfer materion datganoledig sy'n destun cyfyngiadau'r UE ar hyn o bryd yn aros gyda'r deddfwrfeidd datganoledig ar ôl ymadael, gyda'r deddfwrfeidd hynny'n gallu arfer eu cymhwysedd heb y cyfyngiadau sy'n cael eu gorfodi ar hyn o bryd o ganlyniad i aelodaeth y DU o'r UE.
30. Yn natganiad polisi Llywodraeth Cymru *Brexit a Datganoli*, a gyhoeddwyd ym mis Mehefin, fe'i gwnaed yn glir ein bod yn barod i negodi fframweithiau'r DU mewn rhai meysydd a oedd gynt yn cael eu cwmpasu gan gyfraith yr UE. Gallai hyn fod, er enghraifft, i helpu marchnad y DU i weithredu'n effeithiol ac atal rhwystrau rhag dod i'r amlwg a allai gyfyngu'n afresymol ar fusnesau, neu i hwyluso rheoli adnoddau amgylcheddol cyffredin.
31. Rhaid i'r broses o gytuno lle mae angen fframweithiau, a beth ddylai fod ynddynt, fod yn broses sy'n seiliedig ar gytundeb, ac nid gorfodaeth. Ond mae'r Bil yn cynnig, yn hytrach, set newydd o gyfyngiadau cyfreithiol ar gymhwysedd y sefydliadau datganoledig mewn perthynas â'r materion hyn, ac mae hyn yn gyfan gwbl annerbyniol inni o ran egwyddor. Ymhellach, wrth gyflwyno cyfyngiad newydd ar gymhwysedd a ddiffinnir mewn perthynas â 'chyfraith gadwedig yr UE', byddai'r Bil yn ychwanegu cymhlethdod ac ansicrwydd at y setliad datganoli ar ôl ymadael â'r UE.
32. Mae Llywodraeth y DU wedi awgrymu bod y cyfyngiad a orfodir gan gymal 11 yn drosiannol ei natur, ac mai ei fwriad yw caniatáu amser a lle ar gyfer trafod ac ymgynghori ag awdurdodau datganoledig ynghylch lle mae angen fframweithiau. Er hynny, yn groes i'r gwahanol ddarpariaethau machlud a gynhwysir yn y pwerau Gweinidogol, nid oes unrhyw derfynau amser ar weithrediad cymal 11.
33. Ym marn Llywodraeth Cymru, dylid dileu'r cymal o'r Bil. Rydym yn cynnig y dull gweithredu amgen sy'n parchu datganoli, fel y nodir uchod, ac rydym yn barod i gydweithio'n agos â Llywodraeth y DU a'r gweinyddiaethau datganoledig eraill i gyflawni hyn, er budd y DU gyfan.
34. Mae gorfodi'r cyfyngiad newydd hwn ar gymhwysedd y Cynulliad yn golygu canoli diangen ac annerbyniol ar bwerau ar lefel y DU, ac ni all Llywodraeth Cymru gytuno i hyn.
35. Mae Llywodraeth Cymru'n gweithio gyda Llywodraeth yr Alban i gynnig gwelliannau i'r Bil a fydd yn mynd i'r afael â'n pryderon. Caiff y rhain eu cyhoeddi er mwyn llywio'r ddadl ar y Bil yn y Cynulliad, yn San Steffan ac yn ehangach. Rwyf yn gobeithio gosod memorandwm atodol maes o law, i adlewyrchu'r gwelliannau y bydd Senedd y DU'n cytuno â hwy, sy'n

hanfodol os yw Llywodraeth Cymru am allu bod mewn sefyllfa i argymhell bod cydsyniad deddfwriaethol yn cael ei roi.

Y goblygiadau ariannol

36. Er nad oes unrhyw oblygiadau ariannol uniongyrchol i Lywodraeth Cymru na'r Cynulliad yn deillio o'r pwerau o dan y Bil, bydd goblygiadau ariannol sylweddol i Gymru yn sgil ymadael â'r UE, a hynny yn ei effaith economaidd gyffredinol ac mewn meysydd ariannu sy'n deillio o'r UE, fel y nodir yn *Diogelu Dyfodol Cymru*.

Casgliad

37. Mae'r memorandwm hwn yn nodi barn Llywodraeth Cymru am y gofyniad ar gyfer cydsyniad deddfwriaethol y Cynulliad mewn perthynas â Bil yr UE (Ymadael), ac yn cadarnhau na fyddwn mewn sefyllfa i argymhell cydsynio oni bai bod y Bil yn cael ei ddiwygio i fynd i'r afael â'n pryderon.

**Y Gwir Anrhydeddus Carwyn Jones AC
Prif Weinidog Cymru
Medi 2017**

Atodiad A Cymalau sy'n gofyn am gydsyniad deddfwriaethol y Cynulliad

Cymal/ Amserlen	Effaith
1	yn diddymu Deddf y Cymunedau Ewropeaidd 1972 ar y diwrnod ymadael
2	yn darparu bod deddfwriaeth ddomestig bresennol sy'n gweithredu rhwymedigaethau cyfraith yr UE yn aros ar y llyfr statud domestig ar ôl i'r DU ymadael â'r UE
3	yn trosi 'deddfwriaeth uniongyrchol yr UE' yn ddeddfwriaeth ddomestig adeg ymadael â'r UE er mwyn i ddeddfwriaeth yr UE, lle bo'n briodol, barhau i gael effaith yn sgil ymadael
4	yn sicrhau bod unrhyw rai o hawliau a rhwymedigaethau'r UE sy'n weddill nad ydynt yn dod o fewn cymalau 2 a 3 yn parhau i gael eu cydnabod ac i fod ar gael mewn cyfraith ddomestig ar ôl ymadael
5	yn nodi rhai eithriadau i arbed ac ymgorffori cyfraith yr UE y darperir ar eu cyfer gan gymalau 2-4, gan gynnwys na fydd y Siarter Hawliau Sylfaenol yn rhan o gyfraith ddomestig ar y diwrnod ymadael neu ar ôl hynny.
6	yn nodi sut y caiff cyfraith gadwedig yr UE ei darllen a'i dehongli ar y diwrnod ymadael ac ar ôl hynny
7	yn rhoi'r pŵer i Weinidogion y Goron wneud rheoliadau sy'n diwygio diffygion yng nghyfraith gadwedig yr UE er mwyn iddi barhau i weithredu'n effeithiol ar ôl ymadael
8	yn rhoi'r pŵer i Weinidogion y Goron wneud darpariaeth mewn rheoliadau ar gyfer cydymffurfio parhaus â rhwymedigaethau rhwngwladol y DU.
9	yn rhoi pwerau i Weinidogion y Goron wneud rheoliadau i roi cytundeb ymadael ar waith
10 ac Atodlen 2	yn darparu pwerau i'r gweinyddiaethau datganoledig (gan gynnwys Gweinidogion Cymru) sy'n cyfateb i'r rhai a roddir i Weinidogion y Goron, fel y'u nodir yn Atodlen 2
11 ac Atodlen 3	yn disodli'r gofyniad presennol na chaiff y Cynulliad ddeddfu ond mewn ffordd sy'n gydnaws â chyfraith yr UE, â darpariaeth newydd a fydd yn golygu y bydd y tu allan i gymhwysedd y Cynulliad i addasu cyfraith gadwedig yr UE mewn ffordd na fyddai wedi bod yn gydnaws â chyfraith yr UE yn union cyn ymadael. Gall eithriadau i'r prawf hwn gael eu rhagnodi gan Orchymyn yn y Cyfrin Gyngor, sy'n gorfol cael eu cymeradwyo gan ddau Dŷ'r Senedd a chan y Cynulliad
12 ac Atodlen 4	yn rhoi effaith i Atodlen 4 sy'n darparu pwerau mewn cysylltiad â ffioedd a thaliadau, ac sy'n darparu y caiff awdurdodau datganoledig dynnu gwariant i baratoi ar gyfer gwneud offerynnau statudol o dan y Bil
13 ac Atodlen 5	yn gwneud darpariaeth ar gyfer cyhoeddi deddfwriaeth gadwedig yr UE gan Argraffydd y Frenhines

16 ac Atodlen 7	yn rhoi effaith i Atodlen 7 ar sut y mae'r pwerau i wneud rheoliadau yn y Bil yn ymarferadwy
17	Pŵer i wneud darpariaeth ganlyniadol

Atodiad B Pwerau dirprwyedig: darpariaethau sy'n gofyn am weithdrefnau penderfyniad cadarnhaol

Mae Atodlen 7 yn rhestru cyfres o ddarpariaethau, y bydd eu cynnwys mewn offeryn statudol yn peri bod yr OS hwnnw yn ddarostyngedig i'r weithdrefn penderfyniad cadarnhaol yn y ddeddfwrfa berthnasol/deddwrfeidd perthnasol.

Yn achos rheoliadau sy'n ymdrin â diffygion sy'n deillio o ymadael, y darpariaethau yw'r rhai:

- (a) sy'n sefydlu awdurdod cyhoeddus yn y Deyrnas Unedig,
- (b) sy'n darparu bod unrhyw un o swyddogaethau endid neu awdurdod cyhoeddus yr UE mewn aelod-wladwriaeth yn ymarferadwy yn lle hynny gan awdurdod cyhoeddus yn y Deyrnas Unedig a sefydlir gan reoliadau o dan adran 7, 8 neu 9 neu Atodlen 2,
- (c) yn darparu bod unrhyw un o swyddogaethau endid neu awdurdod cyhoeddus mewn aelod-wladwriaeth ar gyfer gwneud offeryn o natur ddeddfwriaethol yn ymarferadwy yn lle hynny gan awdurdod cyhoeddus yn y Deyrnas Unedig,
- (d) yn gorfodi, neu'n ymwneud fel arall, â ffi mewn perthynas â swyddogaeth sy'n ymarferadwy gan awdurdod cyhoeddus yn y Deyrnas Unedig,
- (e) yn creu, neu'n ehangu cwmpas, trosedd, neu
- (f) yn creu neu'n diwygio pŵer i ddeddfu.

Yn achos rheoliadau sy'n galluogi cydymffurfio parhaus â rhwymedigaethau rhyngwladol y DU, y darpariaethau yw'r rhai:

- (a) sy'n sefydlu awdurdod cyhoeddus yn y Deyrnas Unedig,
- (b) sy'n darparu bod unrhyw un o swyddogaethau endid neu awdurdod cyhoeddus yr UE mewn aelod-wladwriaeth yn ymarferadwy yn lle hynny gan awdurdod cyhoeddus yn y Deyrnas Unedig a sefydlir gan reoliadau o dan adran 7, 8 neu 9 neu Atodlen 2,
- (c) yn darparu bod unrhyw un o swyddogaethau endid neu awdurdod cyhoeddus mewn aelod-wladwriaeth ar gyfer gwneud offeryn o natur ddeddfwriaethol yn ymarferadwy yn lle hynny gan awdurdod cyhoeddus yn y Deyrnas Unedig,
- (d) yn gorfodi, neu'n ymwneud fel arall, â ffi neu dâl mewn perthynas â swyddogaeth sy'n ymarferadwy gan awdurdod cyhoeddus yn y Deyrnas Unedig,
- (e) yn creu, neu'n ehangu cwmpas, trosedd, neu
- (f) yn creu neu'n diwygio pŵer i ddeddfu.

Yn achos rheoliadau i roi'r cytundeb ymadael ar waith, y darpariaethau yw'r rhai:

- (a) sy'n sefydlu awdurdod cyhoeddus yn y Deyrnas Unedig,
- (b) sy'n darparu bod unrhyw un o swyddogaethau endid neu awdurdod cyhoeddus yr UE mewn aelod-wladwriaeth yn ymarferadwy yn lle hynny gan awdurdod cyhoeddus yn y Deyrnas Unedig a sefydlir gan reoliadau o dan adran 7, 8 neu 9 neu Atodlen 2,

- (c) yn darparu bod unrhyw un o swyddogaethau endid neu awdurdod cyhoeddus mewn aelod-wladwriaeth ar gyfer gwneud offeryn o natur ddeddfwriaethol yn ymarferadwy yn lle hynny gan awdurdod cyhoeddus yn y Deyrnas Unedig,
- (d) yn gorfodi, neu'n ymwneud fel arall, â ffi mewn perthynas â swyddogaeth sy'n ymarferadwy gan awdurdod cyhoeddus yn y Deyrnas Unedig,
- (e) yn creu, neu'n ehangu cwmpas, trosedd,
- (f) yn creu neu'n diwygio pŵer i ddeddfu, neu
- (g) sy'n diwygio'r Ddeddf hon.

Mae unrhyw OS sy'n cynnwys unrhyw rai o'r darpariaethau a restrir yn ddarostyngedig i'r weithdrefn penderfyniad negyddol.

Mae cyfngiadau ar y ddogfen hon

Mae cyfngiadau ar y ddogfen hon

Eitem 9

Yn rhinwedd paragraff(au) vi o Reol Sefydlog 17.42

Mae cyfngiadau ar y ddogfen hon



Elin Jones AC, Llywydd

Cynulliad Cenedlaethol Cymru

Elin Jones AM, Presiding Officer

National Assembly for Wales

Huw Irranca-Davies AC

Cadeirydd

Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol

Cynulliad Cenedlaethol Cymru

Bae Caerdydd

CF99 1NA

Eich cyf:

Ein cyf: EJ/HG

26 Hydref 2017

Annwyl Huw

Diwygio'r Cynulliad: anghymhwysedd

Yn fy llythyr ar 18 Awst, amlinellais y gwaith y mae Comisiwn y Cynulliad yn arwain arno ar ran y Cynulliad i ystyried sut y byddai'r pwerau yn Neddf Cymru 2017 sy'n ymwneud â threfniadau etholiadol a sefydliadol y Cynulliad o bosib yn cael eu harfer. Edrychaf ymlaen at gael eich barn ar unrhyw ddiwygiadau deddfwriaethol sy'n ofynnol o ran difenwi, dirmyg y llys a braint y Cynulliad yn ei bryd.

Fel rhan o'r gwaith hwn, rhoddwyd ystyriaeth ofalus i ymchwiliad y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol yn ystod y Pedwerydd Cynulliad i anghymhwysedd person rhag bod yn Aelod o'r Cynulliad yn 2014. Mae argymhellion y Pwyllgor yn cynnwys nifer sy'n galw am newid deddfwriaethol (gweler yr Atodiad i'r llythyr hwn). Ar y pryd, nid oedd y materion hyn o fewn cymhwysedd y Cynulliad. Fodd bynnag, gallai datganoli pwerau dros drefniadau etholiadol y Cynulliad o fis Ebrill 2018, a datblygu deddfwriaeth Diwygio'r Cynulliad, fod yn gyfle i roi argymhellion y Pwyllgor ar waith.

Byddwn yn croesawu barn eich Pwyllgor ar sut y dylid datblygu argymhellion eich rhagflaenwyr, ac a oes unrhyw faterion eraill sy'n ymwneud ag anghymhwysedd y dylid eu hystyried fel rhan o ddatblygiad Bil Diwygio'r Cynulliad.

Cynulliad Cenedlaethol Cymru

Bae Caerdydd, Caerdydd, CF99 1NA

Llywydd@cynulliad.cymru

www.cynulliad.cymru

0300 200 7403

National Assembly for Wales

Cardiff Bay, Cardiff, CF99 1NA

Llywydd@assembly.wales

Tudalen y pecyn 122

0300 200 7403



Elin Jones AC, Llywydd

Cynulliad Cenedlaethol Cymru

Elin Jones AM, Presiding Officer

National Assembly for Wales

Rwy'n ymwybodol iawn o faich gwaith sylweddol eich Pwyllgor a'r angen i chi gydbwys blaenorai ethau amrywiol. Am y rheswm yma, ysgrifennaf atoch mewn da bryd er mwyn i chi gael y cyfle gorau posibl i ddylanwadu ar ddatblygiad y deddfwriaeth.

Byddai'n ddefnyddiol derbyn eich sylwadau ar unrhyw faterion y gallai fod angen newid deddfwriaethol arnynt fel rhan o'r rhaglen ddiwygio erbyn diwedd 2017.

Yn gywir

Elin Jones AC
Llywydd



Elin Jones AC, Llywydd

Cynulliad Cenedlaethol Cymru

Elin Jones AM, Presiding Officer

National Assembly for Wales

**Atodiad: Argymhellion perthnasol ar anghymhwysiad a wnaed gan Bwyllgor
Materion Cyfansoddiadol a Deddfwriaethol y Pedwerydd Cynulliad**

Argymhelliad 2 - rydym yn argymhell bod Llywodraeth y DU yn cyflwyno deddfwriaeth berthnasol i ddiwygio Deddf Llywodraeth Cymru 2006 er mwyn i'r broses anghymhwys o swydd gyhoeddus benodol ddod i rym adeg tyngu'r llw teyrngarwch neu gymryd y cadarnhad o deyrngarwch fel Aelod Cynulliad. Ni ddylai'r newid hwn fod yn berthnasol i nifer bach iawn o swyddi - fel y nodir yn adran 16 o Ddeddf 2006 neu drwy orchymyn - lle y byddai bod yn ymgeisydd, er enghraift, yn arwain at wrthdaro rhwng buddiannau neu ymddangos fel petai'n tanseilio didueddrwydd.

Argymhelliad 3 - rydym yn argymhell bod Llywodraeth y DU yn cyflwyno deddfwriaeth briodol i gael gwared â'r darpariaethau perthnasol yng Ngorchymyn Cynulliad Cenedlaethol Cymru (Cynrychiolaeth y Bobl) 2007 sy'n ei gwneud yn ofynnol i ymgeiswyr, wrth dderbyn enwebiad, ddatgan nad ydynt, hyd eithaf eu gwybodaeth a'u cred, yn dal swydd sy'n eu hanghymhwys.

Argymhelliad 5 - rydym yn argymhell bod Llywodraeth y DU yn diwygio adran 16 o Ddeddf Llywodraeth Cymru 2006 i sicrhau bod unrhyw anghymwysiadau ynnddi yn cael eu nodi'n llawn yn hytrach na thrwy gyfeirio at ddeddfwriaeth arall a bod yr holl anghymwysiadau a bennir ynnddi yn dod yn weithredol adeg enwebu.

Argymhelliad 6 - rydym yn argymhell bod Llywodraeth y DU yn diwygio adran 16(1) o Ddeddf Llywodraeth Cymru 2006 i dynnu'r Archwilydd Cyffredinol ac Ombwdsmon Gwasanaethau Cyhoeddus Cymru, er mwyn gallu'u cynnwys mewn gorchymyn anghymhwys priodol gyda swyddi eraill.

Argymhelliad 7 - rydym yn argymhell bod Llywodraeth y DU yn diwygio adran 16(4) o Ddeddf Llywodraeth Cymru 2006 fel y dylai person sy'n dal swydd arglwydd raglaw, rhaglaw neu uchel siryf gael ei anghymhwys rhag bod yn Aelod Cynulliad.

Argymhelliad 21 - rydym yn argymhell bod Llywodraeth y DU yn gwahardd yr arfer o sefyll fel Aelod Cynulliad ac fel Aelod o Dŷ'r Arglwyddi, ond na ddylai'r gwaharddiad fod yn berthnasol i unrhyw un sydd ar hyn o bryd yn gwasanaethu fel aelod o'r ddau sefydliad.

Elin Jones AC
Y Llywydd

4 Hydref 2017

Annwyl Llywydd

DIWYGIO'R CYNULLIAD: ANGHYMHWYSO, DIFENWI, DIRMYG LLYS A BRAINT Y CYNULLIAD

Diolch am eich llythyr dyddiedig 18 Awst 2017; fe'i trafodwyd gennym yn ein cyfarfod ar 25 Medi 2017.

Mae gennym raglen waith brysur ar gyfer tymor yr hydref; byddwn yn canolbwytio ar graffu ar ddeddfwriaeth, cwblhau ein hymchwiliad i Lais Cryfach, a chraffu ar Fil UE (Ymadael) Llywodraeth y DU. Serch hynny, fel cam cyntaf, rydym wedi gofyn am rywfaint o gyngor ar y materion a godwyd gennych gyda'r bwriad o'u hystyried yn ddiweddarach yn y tymor.

Ysgrifennwn eto pan fyddwn ni wedi trafod y cyngor hwnnw ac ar ôl i'n rhaglen waith ar gyfer craffu ar yn Bil Ymadael ddod yn fwy eglur yng ngoleuni hynt y Bil trwy Senedd y DU.

Yn gywir

Huw Irranca-Davies

Huw Irranca-Davies
Cadeirydd

Croesewir gohebiaeth yn Gymraeg neu Saesneg.
We welcome correspondence in Welsh or English.





Elin Jones AC, Llywydd

Cynulliad Cenedlaethol Cymru

Elin Jones AM, Presiding Officer

National Assembly for Wales

Huw Irranca-Davies AC

Cadeirydd

Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol

Cynulliad Cenedleathol Cymru

Bae Caerdydd

CF99 1NA

Eich cyf:

Ein cyf: EJ/HG

18 Awst 2017

Annwyl Huw

Diwygio'r Cynulliad: anghymhwys, difenwi, dirmyg llys a braint y Cynulliad

Fel y gwyddoch, mae Deddf Cymru 2017 yn rhoi pwerau i'r Cynulliad bennu ei drefniadau mewnol, gweithredol ac etholiadol ei hun. Mae'r Comisiwn yn arwain gwaith i archwilio sut y gellid defnyddio'r pwerau hyn i sicrhau bod y sefydliad hwn yn ddeddfwrfa gryfach, fwy hygrych, cynhwysol a blaengar sy'n darparu'n effeithiol ar gyfer pobl Cymru.

Yn gynharach eleni, cyhoeddais fod y Comisiwn yn bwriadu cyflwyno deddfwriaeth yn 2018 i newid enw'r Cynulliad. Rwyf hefyd wedi sefydlu Panel Arbenigol i ystyried materion sy'n ymwneud â maint a threfniadau etholiadol y Cynulliad. Ar ôl i'r Panel gyflwyno ei adroddiad, bydd y Comisiwn yn ystyried cwmpas llawn y rhaglen ddiwygio a'r cynigion deddfwriaethol yr ydym yn bwriadu eu cyflwyno.

Fel rhan o'r gwaith cwmpasu hwn, mae'r Comisiwn hefyd yn ystyried a oes angen diwygio unrhyw un o adrannau Deddf Llywodraeth Cymru 2006 sy'n ymwneud â threfniadau mewnol y Cynulliad y bydd Deddf Cymru 2017 yn dod â hwy o fewn cymhwysedd deddfwriaethol y Cynulliad. Mae hyn yn cynnwys darpariaethau sy'n rhan o gylch gwaith eich Pwyllgor, ac y byddwn yn croesawu eich sylwadau arnynt.

Anghymhwys

Mae adrannau 16 i 19 o Ddeddf Llywodraeth Cymru yn gwneud darpariaeth mewn perthynas ag anghymhwys rhag bod yn aelod o'r Cynulliad. Fel rhan o'r gwaith

Croesewir gohebiaeth yn Gymraeg neu Saesneg / We welcome correspondence in Welsh or English

Cynulliad Cenedlaethol Cymru

Bae Caerdydd, Caerdydd, CF99 1NA

Llywydd@cynulliad.cymru

www.cynulliad.cymru

0300 200 7403

National Assembly for Wales

Cardiff Bay, Cardiff, CF99 1NA

Llywydd@assembly.wales

Tudalen y pecyn 126

0300 200 7403



Elin Jones AC, Llywydd

Cynulliad Cenedlaethol Cymru

Elin Jones AM, Presiding Officer

National Assembly for Wales

cwmpasu, mae fy swyddogion yn rhoi ystyriaeth ofalus i'r argymhellion a wnaed yn adroddiad 2014 y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol yn y Pedwerydd Cynulliad ar anghymhwysedd. Byddaf yn ysgrifennu ymhellach yn yr hydref i geisio barn eich Pwyllgor ar y materion hyn.

Difenwi, dirmyg llys a braint y Cynulliad

Mae adrannau 42 a 43 o Ddeddf Llywodraeth Cymru yn darparu amddiffyniadau i Aelodau'r Cynulliad rhag trafodion yn eu herbyn ar sail difenwi ac, mewn rhai amgylchiadau, dirmyg llys. Mae'r amddiffyniad a gynigir i'r Aelodau'n gulach na'r hyn a gynigir gan yr egwyddor o faint seneddol sy'n gweithredu yn San Steffan, ond yn ehangach na'r amddiffyniad statudol yn yr Alban a Gogledd Iwerddon.

Byddwch yn ymwybodol nad yw braint y Cynulliad yn fater a gedwir o dan Ddeddf Cymru 2017. Felly, mewn egwyddor gallai'r Cynulliad roi breintiau newydd i'w hun, yn amodol ar y materion eraill a gedwir yn ôl a'r profion cymhwysedd a allai fod yn berthnasol.

Byddwn yn croesawu sylwadau'r Pwyllgor ar y canlynol:

- y darpariaethau yn adrannau 42 a 43, yn enwedig a fyddai unrhyw newidiadau deddfwriaethol yn ddymunol fel rhan o waith diwygio'r Comisiwn;
- a fyddai unrhyw ddiwygiadau eraill i freintiau'r Cynulliad yn ddymunol, ac, os felly, a allai deddfwriaeth ddiwygio'r Cynulliad fod yn gyfrwng deddfwriaethol priodol.

Er mwyn sicrhau y gall sylwadau eich Pwyllgor lywio'r gwaith o ddatblygu'r deddfwriaeth, byddai'n ddefnyddiol derbyn eich sylwadau ar unrhyw faterion a allai fod angen newid deddfwriaethol arnynt fel rhan o'r rhaglen ddiwygio erbyn diwedd 2017.

Yn gywir

Elin Jones AC
Llywydd

Eitem 10

Yn rhinwedd paragraff(au) vi o Reol Sefydlog 17.42

Mae cyfngiadau ar y ddogfen hon