

# Agenda – Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol

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Lleoliad: I gael rhagor o wybodaeth cysylltwch a:  
Ystafell Bwyllgora 1 – y Senedd Gareth Williams  
Dyddiad: Dydd Llun, 12 Chwefror 2018 Clerc y Pwyllgor  
Amser: 15.00 0300 200 6362  
[SeneddMCD@cynulliad.cymru](mailto:SeneddMCD@cynulliad.cymru)

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## 1 Cyflwyniad, ymddiheuriadau, dirprwyon a datgan buddiannau

## 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)–06–18 – Papur 1 – Offerynnau statudol sydd ag adroddiadau clir  
Offerynnau'r Penderfyniad Negyddol

### 2.1 SL(5)181 – Rheoliadau Cyfrifon ac Archwilio (Cymru) (Diwygio) 2018

### 2.2 SL(5)182 – Rheoliadau Casglu a Rheoli Trethi (Trefniadau Talu'n Ôl) (Cymru) 2018

## 3 Papurau i'w nodi

### 3.1 Bil yr Undeb Ewropeaidd (Ymadael): Llythyr gan y Prif Weinidog at Ysgrifennydd Gwladol Cymru

(Tudalennau 3 – 4)

CLA(5)–06–18 – Papur 2 – Llythyr gan y Prif Weinidog at Ysgrifennydd  
Gwladol Cymru

### 3.2 Bil yr Undeb Ewropeaidd (Ymadael): Llythyr gan Ysgrifennydd Gwladol Cymru at y Llywydd ynghylch

(Tudalennau 5 – 9)



CLA(5)-06-18 – Papur 3 – Llythyr gan Ysgrifennydd Gwladol Cymru at y Llywydd ynghylch, 16 Ionawr 2018

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

**5 Hynt Bil yr UE (Ymadael)**

(Tudalennau 10 – 15)

CLA (5)-06-18 – Papur 4 – Hynt Bil yr UE (Ymadael)

**6 Y pwerau ym Mil yr UE (Ymadael) i wneud is-ddeddfwriaeth:  
Adroddiad Drafft**

(Tudalennau 16 – 46)

CLA(5)-06-18 – Papur 5 – Adroddiad Drafft

CLA(5)-06-18 – Papur 6 – Ateb drafft i Ysgrifennydd Gwladol Cymru

CLA(5)-06-18 – Papur 7 – Cyngor Cyfreithiol

**7 Bil Iechyd y Cyhoedd (Isafbris am Alcohol) (Cymru): Adroddiad  
Drafft**

(Tudalennau 47 – 72)

CLA(5)-06-18 – Papur 8 – Adroddiad drafft

CLA(5)-06-18 – Papur 9 – nodyn cyngor cyfreithiol

**Dyddiad y cyfarfod nesaf**

26 Chwefror 2018

# Offerynnau Statudol sydd ag Adroddiadau Clir Eitem 2 12 Chwefror 2018

## SL(5)181 – Rheoliadau Cyfrifon ac Archwilio (Cymru) (Diwygio) 2018

### Gweithdrefn: Negyddol

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Gwneir y Rheoliadau hyn o dan adrannau 39 a 58(2) o Ddeddf Archwilio Cyhoeddus (Cymru) 2004 ("Deddf 2004") ac maent yn diwygio Rheoliadau Cyfrifon ac Archwilio (Cymru) 2014 ("Rheoliadau 2014").

Mae Rheoliadau 2014 yn gwneud darpariaeth mewn perthynas â chyfrifon ac archwilio cyrff llywodraeth leol yng Nghymru y mae'n ofynnol archwilio eu cyfrifon yn unol â Rhan 2 o Ddeddf 2004.

O dan Rheoliadau 2014, rhaid i gyrff perthnasol mwy gyhoeddi hysbysiadau penodol mewn papurau newydd lleol. Mae'r Rheoliadau hyn yn dileu'r gofyniad hwnnw ac yn ei le yn rhoi gofyniad i arddangos hysbysiad mewn o leiaf un lle amlwg yn ardal y corff.

Mae rheoliad 4 yn dileu'r gofyniad i gynghorau sir neu gynghorau bwrdeistref sirol gynnwys, yn eu datganiad o gyfrifon, y cyfrifon ar gyfer cronfeydd pensiwn a weinyddir yn unol â Rheoliadau Cynllun Pensiwn Llywodraeth Leol 2013.

O dan Rheoliadau 2014, rhaid i gyrff llywodraeth leol baratoi eu datganiad o gyfrifon erbyn 30 Mehefin yn dilyn y flwyddyn y mae'r datganiad yn ymwneud â hi a'i gyhoeddi erbyn 30 Medi y flwyddyn honno. Mae rheoliadau 5 ac 8 yn newid yr amserlen i gyrff llywodraeth leol baratoi a chyhoeddi eu datganiad o gyfrifon.

**Deddf wreiddiol:** Deddf Archwilio Cyhoeddus (Cymru) 2004

**Fe'u gwnaed ar:** 22 Ionawr 2018

**Fe'u gosodwyd ar:** 29 Ionawr 2018

**Dyddiad dod i rym:** 1 Ebrill 2018



# SL(5)182 – Rheoliadau Casglu a Rheoli Trethi (Trefniadau Talu'n Ôl) (Cymru)

2018

## Gweithdrefn: Negyddol

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Mae'r Rheoliadau hyn yn disgrifio'r darpariaethau y mae'n rhaid eu cynnwys mewn trefniadau talu'n ôl a wneir gan berson sy'n gwneud hawliad o dan adran 63 (hawlio rhyddhad rhag treth a ordalwyd) o Ddeddf Casglu a Rheoli Trethi (Cymru) 2016. Yn ogystal, mae rheoliad 6 yn disgrifio'r cofnodion y mae'n rhaid i'r hawlydd eu cadw mewn perthynas â'r trefniadau talu'n ôl, ac mae rheoliad 8 yn gwneud darpariaethau mewn cysylltiad â chosbau (cosbau sy'n ymwneud â chadw cofnodion a threfniadau talu'n ôl).

**Deddf wreiddiol:** Deddf Casglu a Rheoli Trethi (Cymru) 2016

**Fe'u gwnaed ar:** 24 Ionawr 2018

**Fe'u gosodwyd ar:** 29 Ionawr 2018

**Dyddiad dod i rym:** 1 Ebrill 2018





Ein cyf/Our ref: MA-L/FM/0044/18

Rt Hon Alun Cairns MP  
Secretary of State for Wales  
Gwydyr House  
London  
SW1A 2NP

5<sup>th</sup> February 2018

Dear Alun

I am writing in response to your letter of 16 January, in respect of the European Union (Withdrawal) Bill.

I was very disappointed that there were no agreed amendments to Clause 11 during Commons consideration, but I note your commitment to bring forward amendments in the House of Lords. It is of course essential that these amendments are agreed with the Welsh and Scottish Governments, and I know that discussions at official level are continuing.

I also note the Government amendments to clauses 7 and 10. I welcome the replacement of the requirement for consent of UK Ministers with a requirement for consultation in relation to the powers in clause 7, although I note that the same amendment has not been made in clauses 8 and 9, and I am not clear about the reasoning for the retention of these restrictions. (I am in any event aware of the House of Lords Constitution Committee's recommendation that clause 9 be omitted from the Bill). I also welcome the amendments enabling Welsh Ministers to modify directly applicable EU law in areas of devolved competence, although I also note they are based on an assumption that Clause 11 will continue in its current form, which will not be acceptable to the Welsh Government or to the Assembly; the official level discussions must produce a better solution.

I have considered the specific questions in your letter in respect of the Committee stage amendments of the Bill. In respect of the statutory requirement to produce explanatory material alongside SIs made under the relevant powers in Schedule 2 of the Bill, the information envisaged to be included in the statements is material that we would expect to provide in any event. I therefore have no strong view as to whether such a requirement should be placed on the face of the Bill; but I am aware that the Constitution Committee has made further recommendations about the content of supportive explanatory material. If the UK Government is minded to accept these, I will need to consider the Welsh position afresh. I would be grateful to be kept informed of your developing thinking in respect of that

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir 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 corresponding in Welsh will not lead to a delay in responding.

recommendation, and in respect of the applicability of the requirements to SIs made under the joint procedure.

In respect of the requirement to submit negative resolution SIs to a 'sifting' committee, I consider that this is properly a matter for the National Assembly for Wales to determine, as is the applicability of this requirement to SIs made under the joint procedure.

In respect of the "made affirmative" procedure, our view is that in principle this should be available to Welsh Ministers and the Assembly, to match the flexibility available to UK Ministers.

Finally, our officials have also been discussing the correction of deficiencies in the Government of Wales Act 2006. I welcome the commitment to use Orders in Council to make correcting amendments which fall outside competence. I have considered the various means by which the small number of deficiencies which are within our competence might be corrected, and I believe the best solution in this case would be for the corrections to be made by the Withdrawal Bill. I have asked my officials to work with yours to develop the necessary amendments.

I am copying this to the Presiding Officer, the Chair of the Assembly's External Affairs and Additional Legislation Committee, the Chair of the Assembly's Constitutional and Legislative Affairs Committee and to the Chair of the Welsh Affairs Committee in Parliament.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Carwyn Jones', written in a cursive style.

**CARWYN JONES**



Rt Hon Alun Cairns MP  
Secretary of State for Wales  
Ysgrifennydd Gwladol Cymru

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Elin Jones AM  
Presiding Officer  
National Assembly for Wales  
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16 January 2018

## EUROPEAN UNION (WITHDRAWAL) BILL

Ahead of Commons Report stage for the European Union (Withdrawal) Bill today and tomorrow, I am writing to provide you with an update on amendments made to the Bill at Committee and to highlight amendments that the Government has tabled for Report stage consideration.

You will be aware of our continuing commitment to improve clause 11 of the Bill; whilst it has not been possible to bring forward an amendment at Commons Report, we have reaffirmed our commitment to amend this provision in the House of Lords and discussions continue between the UK Government and the devolved administrations to enable us to do so.

### Committee stage amendments

As I noted in my letter of 10 December, amendments at Committee stage modified the scrutiny procedures for SIs made using powers in the Bill. The first of these amendments concerned the explanatory memoranda produced to accompany regulations made using powers under the Bill. It places requirements on UK Government Ministers to include information in those memoranda.

The second amendment modified Schedule 7 to require Ministers of the Crown to lay Statutory Instruments (which they are proposing to make under the negative procedure using the three principal powers in the Bill) before the Commons for consideration by a committee. You will also wish to note that the Government has tabled consequential amendments relating to these matters ahead of Report stage of the Bill.

These amendments do not place requirements on the Welsh Ministers and do not apply to the Assembly. Nonetheless I have asked my officials to discuss these provisions with yours to ascertain the Welsh Government's and the Assembly Commission's views on these and I understand that these conversations are

progressing well. I am interested in your views on whether these provisions should apply to Assembly scrutiny of Welsh Ministers' use of powers in the Bill. I attach a detailed list of questions that we have asked the Welsh Government at Annex A and would also welcome any views you may have.

### **Clause 10 amendments**

We have listened to the arguments put forward by the Welsh Government and the Scottish Government on the powers in Clause 10 and have brought forward two amendments for Report stage.

The first amendment would change the requirement for the devolved administrations to seek the consent of the UK Government in exercising the deficiencies power to a consult requirement. This is in line with the amendment published by the Welsh and Scottish Governments. The second Government amendment would provide that, where a framework is not required in a given area, the devolved administrations should be able to use the powers in the Bill to correct deficiencies in direct retained EU law in that area.

We recognise the importance of working with the devolved administrations to ensure the Bill works for all parts of the UK and these amendments demonstrate our willingness to make improvements to it. We are also continuing discussions with the devolved administrations on how we can best manage the task of preparing the statute book for exit day. My colleagues and I continue to be grateful for the constructive engagement of the Welsh Government on these issues.

### **Clause 7 amendments**

We have tabled amendments to Clause 7 to make absolutely clear the scope of the power in this clause given speculation on the ways it could be used. These amendments ensure the correcting power can still make all the changes required to deliver a functioning statute book.

We have tabled amendments which restrict the scope of the power to correct deficiencies in retained EU law by making the list of deficiencies in clause 7(2) exhaustive rather than illustrative. This means that the correcting power can be used only if deficiencies arise in the circumstances listed.

To ensure the scope of the power matches the range of deficiencies identified there are two further amendments:

- Firstly, a 'sweeper' provision to enable deficiencies similar to those listed to be treated in the same way as those listed.. For example, where 'Member States' public authorities' are referred to the 'sweeper' provision will mean that EEA-EFTA public authorities could also be included.
- Secondly, providing a power for UK Ministers to add to the deficiencies list through an SI requiring the approval of both Houses of Parliament.



These amendments do not place requirements on Welsh Ministers. However, they will apply to corrections made by Welsh Ministers using the powers conferred by Clause 10 and Schedule 2. I have asked my officials to discuss these provisions with yours.

This list of deficiencies applies across the UK. The UK Government believes it is important that there is consistency between jurisdictions in the UK, so any additional types of deficiencies would also apply to devolved ministers' powers. We would expect to consult with colleagues in the devolved administrations where we identify additional deficiencies before adding new types of deficiency as this would affect devolved ministers' powers.

The UK Government would consider closely any suggestions for additional categories of deficiencies from the devolved administrations. We would expect to accept any proposals the devolved administrations make to ensure devolved ministers are able to make the appropriate changes to prepare their laws for exit day.

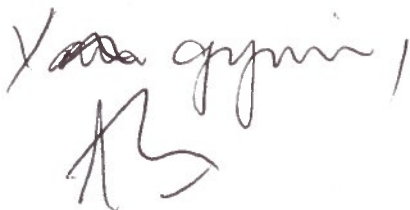
### **Rights of challenge based on the general principles of EU law**

Throughout Committee Stage we listened carefully to the views of MPs across the House, including those who called for greater legal certainty as we leave the EU.

Therefore, we have brought forward amendments to clarify the position regarding rights of challenge under the general principles of EU law. These amendments will, in some cases, allow a legal challenge to be brought for up to three months after exit day on the basis of incompatibility with the general principles of EU law.

Any challenge must relate to a cause of action that occurred before exit day and may be made against either administrative action or domestic legislation other than Acts of Parliament. The effect of this amendment will allow courts, tribunals and other public authorities to disapply or quash the offending enactment or conduct.

I am writing in similar terms to the Presiding Officer and I am copying this letter to the Chair of the Assembly's External Affairs and Additional Legislation Committee, the Chair of the Assembly's Constitutional and Legislative Affairs Committee and to the Chair of the Welsh Affairs Committee in Parliament.



**Rt Hon Alun Cairns MP**  
Secretary of State for Wales  
Ysgrifennydd Gwladol Cymru

## Annex A

The amendments described in the attached letter do not, largely, have any effects on the devolved administrations. If the devolved administrations would like similar provisions to be made for them in the Bill, this would be possible and the UK Government would expect to make these changes at committee stage in the House of Lords. We would therefore need your decisions in principle by Second Reading in the House of Lords to allow time to work up mutually acceptable drafting.

We expect the Bill to enter the House of Lords this week and Lords Second Reading is scheduled for 30 and 31 January, with committee stage likely to commence in mid-late February. This annex therefore sets out a list of questions that we believe need to be answered quickly in order to proceed with any amendments to bring the devolved administrations and devolved legislatures within the scope of the provisions. Officials in DExEU will be happy to further discuss any of these with your officials if that would be helpful to your decision making process.

### *Explanatory Material*

- Would you like devolved authorities to be statutorily bound to produce explanatory material alongside SIs made under the relevant powers in schedule 2 of the Bill?

*If so:*

- Should this explanatory material relate to the changes being made by the SI?
- Should this explanatory material relate to the relevant equalities duties?
- Should this requirement only apply to SIs made under the powers in Schedule 2 parallel to those in clauses 7(1), 8 and 9?

### *Sifting*

- Would you like devolved authorities to be required to submit negative SIs for a committee of the relevant legislature to consider the appropriateness of the negative procedure?

*If so:*

- Should this only apply to the SIs made under the powers in schedule 2 parallel to those in clauses 7(1), 8 and 9?
- Should the other provisions of relating to a sifting committee (e.g. timing, non-binding, remedies) parallel those applying in the UK House of Commons?

### *Joint procedure*

- Currently the sifting procedure and the requirement to produce explanatory material do not apply to SIs made via the joint procedure - do you have any views on this approach?

## Other outstanding technical matters

### *The “made affirmative” procedure*

In the Bill as introduced we included a “made affirmative procedure” which could be used by UK ministers in certain urgent cases where there was not sufficient time to go through the normal draft affirmative procedure before the instrument needed to be in force (see paragraphs 4 and 13 of Schedule 7 to the Bill). This procedure would involve making an instrument which will cease to have effect one month after the instrument is made unless the instrument is debated and approved within one month of being made.

As this was an unusual legislative procedure we did not apply it to the powers conferred on any of the devolved administrations on introduction, but instead sought views from each administration on whether they thought the procedure would be useful and appropriate in the context of their legislature.

- Would you like the “made affirmative” procedure to be available for powers exercised by Scottish Ministers?

### *Defined terms and the Interpretation and Legislative Reform (Scotland) Act 2010:*

In the Bill as introduced the only amendments we made to the defined terms in the Interpretation and Legislative Reform (Scotland) Act 2010 were to preserve the defined terms from the European Communities Act. However in the Interpretation Act 1978 we introduced several new defined terms related to withdrawal that the UK Government thought would be useful in relation to its future legislation - these include the following new terms added by para 11(e) of Schedule 8 of the EU (Withdrawal Bill):

- “retained EU law”
- “retained direct EU legislation”
- “retained EU obligation”
- “exit day”.

The Interpretation Act was also amended to alter the definition of “enactment” so that going forward its meaning would include retained direct EU legislation.

We did not include these in ILRA on introduction as we thought it was a matter for the Scottish Government as to whether these new definitions should be included and we wrote to offer to include any of these new definitions in ILRA if you thought it would be suitable to include them

- Would you like any of these new defined terms (or the new meaning of “enactment”) to be included in the amendments to ILRA?
- Are there any other issues relating to EU-exit and interpretation legislation that you think it would be useful to address in the European Union (Withdrawal) Bill?

# Eitem 5

Yn rhinwedd paragraff(au) vi o Reol Sefydlog 17.42

Mae cyfyngiadau ar y ddogfen hon

# Eitem 6

Yn rhinwedd paragraff(au) vi o Reol Sefydlog 17.42

Mae cyfyngiadau ar y ddogfen hon

Yn rhinwedd paragraff(au) vi o Reol Sefydlog 17.42

Mae cyfyngiadau ar y ddogfen hon

Yn rhinwedd paragraff(au) vi o Reol Sefydlog 17.42

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