

# Agenda – Y Pwyllgor Materion Cyfansoddiadol a Ddeddfwriaethol

Lleoliad:	I gael rhagor o wybodaeth cysylltwch a:
Ystafell Bwyllgora 1 – Y Senedd	Gareth Williams
Dyddiad: Dydd Llun, 11 Mehefin 2018	Clerc y Pwyllgor
Amser: 14.30	0300 200 6362
	<a href="mailto:SeneddMCD@cynulliad.cymru">SeneddMCD@cynulliad.cymru</a>

## 1 Cyflwyniad, ymddiheuriadau, dirprwyon a datgan buddiannau

## 2 Sesiwn dystiolaeth: Y Pwerau ym Mil yr UE (Ymadael) i wneud is-deddfwriaeth – materion gweithredol

(Tudalennau 1 – 18)

Julie James AC, Arweinydd y Tŷ a'r Prif Chwip;

William Whitely, Llywodraeth Cymru;

Owen Davies, Llywodraeth Cymru

**CLA(5)-16-18 – Papur 1 – Llythyr at Arweinydd y Tŷ a'r Prif Chwip, 25 Mai 2018**

**CLA(5)-16-18 – Papur 2 – Llythyr gan yr Athro Thomas Watkin**

**CLA(5)-16-18 – Papur 3 – Llythyr gan Ysgrifennydd Gwladol Cymru, 3 Mehefin 2018**

**CLA(5)-16-18 – Papur 4 – Llythyr gan y Llywydd, 5 Mehefin 2018**

**CLA(5)-16-18 – Papur briffio**

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

(Tudalennau 19 – 20)

**CLA(5)-16-18 – Papur 5 – Offerynnau statudol sydd ag adroddiadau clir Offerynnau'r Penderfyniad Negyddol**



**3.1 SL(5)219 – Rheoliadau Trafford yr M4 (Ffyrdd Ymadael tua'r Dwyrain a'r Gorllewin wrth Gyffordd 33 (Capel Llanilltern) Caerdydd) (Terfyn Cyflymder 40 MYA) 2018**

**3.2 SL(5)224 – Gorchymyn Crynoadau Anifeiliaid (Ffioedd) (Cymru) 2018**

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

Offerynnau Cyfansawdd y Weithdrefn Penderfyniad Negyddol

**4.1 SL(5)220 – Rheoliadau Pysgota Môr (Diwygiadau Amrywiol) 2018**

(Tudalennau 21 – 33)

CLA(5)-16-18 – Papur 6 – Adroddiad

CLA(5)-16-18 – Papur 7 – Rheoliadau

CLA(5)-16-18 – Papur 8 – Memorandwm Esboniadol

Offerynnau'r Penderfyniad Negyddol

**4.2 SL(5)221 – Rheoliadau Cyflenwi Dŵr (Ansawdd Dŵr) 2018**

(Tudalennau 34 – 96)

CLA(5)-16-18 – Papur 9 – Adroddiad

CLA(5)-16-18 – Papur 10 – Rheoliadau

CLA(5)-16-18 – Papur 11 – Memorandwm Esboniadol

Offerynnau'r Weithdrefn Penderfyniad Cadarnhaol

**4.3 SL(5)217 – Rheoliadau Diogelu'r Amgylchedd (Microbelenni) (Cymru) 2018**

(Tudalennau 97 – 142)

CLA(5)-16-18 – Papur 12 – Adroddiad

CLA(5)-16-18 – Papur 13 – Rheoliadau

CLA(5)-16-18 – Papur 14 – Memorandwm Esboniadol

**5 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 ymadawiad y DU â'r UE**

**5.1 SL(5)222 – Rheoliadau lechyd Anifeiliaid (Ffioedd Amrywiol) (Cymru) 2018**

(Tudalennau 143 – 144)

**CLA(5)-16-18 – Papur 15 – Adroddiad**

**5.2 SL(5)223 – Rheoliadau Sgil-gynhyrchion Anifeiliaid a Phasbortau Anifeiliaid Anwes (Ffioedd) (Cymru) 2018**

(Tudalen 145)

**CLA(5)-16-18 – Papur 16 – Adroddiad**

**6 Is-ddeddfwriaeth nad yw'n ddarostyngedig i weithdrefn**

**6.1 SL(5)218 – Gorchymyn Moch (Cofnodion, Adnabod a Symud) (Cymru)**

**(Diwygio) 2018**

(Tudalennau 146 – 150)

**CLA(5)-16-18 – Papur 17 – Gorchymyn**

**CLA(5)-16-18 – Papur 18 – Llythyr gan Ysgrifennydd y Cabinet dros Ynni, Cynllunio a Materion Gwledig**

**7 Papurau i'w nodi**

**7.1 Gohebiaeth mewn perthynas â Bil yr UE (Ymadael)**

(Tudalen 151)

**CLA(5)-16-18 – Papur 19 – Llythyr gan Mark Drakeford, 24 Mai 2018**

**7.2 Llywodraethiant yn y DU ar ôl Brexit – cysylltiadau rhynglywodraethol**

(Tudalennau 152 – 154)

**CLA(5)-16-18 – Papur 20 – Llythyr gan Mark Drakeford, 4 Mehefin 2018**

**CLA(5)-16-18 – Papur 21 – Llythyr gan y Cadeirydd at Mark Drakeford, 25 Mai 2018**

### **7.3 Trafod Is-ddeddfwriaeth ac eithrio Offerynnau Statudol**

(Tudalennau 155 – 156)

**CLA(5)-16-18 – Papur 22 – Llythyr gan Arweinydd y Tŷ a'r Prif Chwip**

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

**9 Trafod y dystiolaeth: Y Pwerau ym Mil yr UE (Ymadael) i wneud is-ddeddfwriaeth – materion gweithredol**

**10 Bil yr UE (Ymadael): Y wybodaeth ddiweddaraf**

(Tudalennau 157 – 165)

**CLA(5)-16-18 – Papur 23 – Bil yr UE (Ymadael): Y wybodaeth ddiweddaraf**

**CLA(5)-16-18 – Papur 24 – Ymrwymiadau Llywodraeth Cymru o ran Ymadael a'r UE**

**Dyddiad y cyfarfod nesaf**

**18 Mehefin 2018**

Julie James AC  
Arweinydd y Tŷ a'r Prif Chwip

25 Mai 2018

Annwyl Julie

**Craffu ar reoliadau a wnaed o dan Fil yr Undeb Ewropeaidd (Ymadael) - materion gweithredol**

Byddwch yn ymwybodol bod y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol, ers sawl mis, wedi chwarae rhan weithredol yn y broses o drafod materion cyfansoddiadol sy'n gysylltiedig â phenderfyniad y DU ymadael â'r Undeb Ewropeaidd a'r broses o graffu ar Fil yr Undeb Ewropeaidd (Ymadael) ("y Bil").

Ym mis Chwefror, cyhoeddodd y Pwyllgor ei adroddiad ar **craffu ar reoliadau a wnaed o dan Fil yr Undeb Ewropeaidd (Ymadael)**. Yn yr adroddiad hwnnw, gwnaethom nifer o argymhellion ynglŷn â'r broses sifftio a fydd yn berthnasol i reoliadau a wneir o dan y Bil, a gwnaethom ymrwymiad hefyd i ddychwelyd at faterion mwy gweithredol sy'n ymwneud â chraffu ar y rheoliadau hynny. Ar y mater hwnnw, hoffwn ddiolch yn fawr i chi am dderbyn ein gwahoddiad i ddod i gyfarfod y Pwyllgor ar 11 Mehefin. Bydd hyn yn rhoi cyfle inni drafod y materion gweithredol hyn ymhellach.

Rydym wedi cadw golwg ar ddatblygiadau yn ymwneud â'r Bil yn Nhŷ'r Arglwyddi, ac rydym yn ymwybodol bod nifer o welliannau wedi'u pasio yn y Cyfnod Adrodd sydd â goblygiadau o ran y trefniadau craffu sy'n bodoli yn y Cynulliad Cenedlaethol. Mae'r cytundeb rhwng Llywodraeth Cymru a Llywodraeth y DU ar 24 Ebrill mewn perthynas â Bil yr Undeb Ewropeaidd (Ymadael) a sefydlu fframweithiau cyffredin hefyd yn cynnwys materion sy'n haeddu ein sylw. Yn ein hadroddiad ar **Femorandwm Cydsyniad Deddfwriaethol Atodol (Memorandum Rhif 2) Llywodraeth Cymru ar Fil yr Undeb Ewropeaidd (Ymadael)**, gwnaethom ailddatgan ein hymrwymiad i roi ystyriaeth fanwl bellach i'r gwelliannau diweddaraf a gafwyd i'r Bil, ac i unrhyw



oblygiadau gweithredol cyfatebol sy'n ymwneud â'r gwaith o graffu ar reoliadau a wneir o dan y Bil.

Yn dilyn y trafodaethau a gafwyd yn ein cyfarfod ar 21 Mai, a chyn i chi fynychu ein cyfarfod fis nesaf, hoffwn dynnu eich sylw at y materion a ganlyn. Ar hyn o bryd, rydym o'r farn y bydd angen trafod y materion hyn ar 11 Mehefin:

- yr amcangyfrifon presennol o ran nifer a chymhlethdod yr offerynnau y bydd eu hangen er mwyn cywiro diffygion yn y gyfraith sy'n deillio o'r UE;
- yr angen am gynllun ar gyfer edrych tua'r dyfodol / rheoli;
- y broses sifftio ar gyfer rheoliadau a wneir o dan gymalau 9, 11, Atodlen 2 a 4;
- craffu ar offerynnau cyfansawdd;
- y prosesau hysbysu a ddefnyddir pan fo Gweinidogion y DU yn gwneud rheoliadau o dan gymal 22;
- y broses gydsynio a ddefnyddir pan fo Gweinidogion y DU yn gwneud rheoliadau o dan gymal 15 (cadw cyfyngiadau'r UE mewn deddfwriaeth datganoli ac ati) ac Atodlen 3.

Rwy'n gobeithio y bydd y wybodaeth hon yn ddefnyddiol. Edrychaf ymlaen at eich ymddangosiad gerbron y Pwyllgor ar 11 Mehefin.

Anfonir copi o'r llythyr hwn at y Llywydd, yn rhinwedd ei rôl fel Cadeirydd y Pwyllgor Busnes.

Yn gywir,



**Mick Antoniw**

Cadeirydd

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.



**Mick Antoniw, AM,  
Chair,  
Constitutional and Legislative Affairs Committee,  
National Assembly for Wales.**

21 May 2018

Dear Mick Antoniw,

**SCRUTINY OF REGULATIONS MADE UNDER THE EUROPEAN UNION  
(WITHDRAWAL) BILL – OPERATIONAL MATTERS**

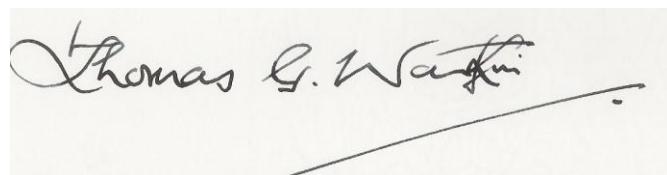
Thank you very much for your letter of 17 May inviting me to contribute to your consideration of the operational matters that relate to the scrutiny of regulations to be made under the provisions of the EU (Withdrawal) Bill, with particular reference to the amendments made by the House of Lords during the latest stages of the bill's passage.

As always, I shall be happy to contribute as best I can. On this occasion, there is however a difficulty in that I am committed to attending and contributing to some events over the next few weeks which will make it difficult for me to reply properly much before the middle of the week commencing 4 June. I realise that this is less than a week before your meeting with the Leader of the House, Julie James AM, and that ideally you would wish an earlier response. Nevertheless, I shall try to respond fully by that time if that is acceptable to you.

In case it may be of use in the meantime, there are some concerns with the proposals contained in the amendments which I think need to be addressed. I must emphasize that I have not as yet had the opportunity to study the Lords' amendments thoroughly and that what follows in the attached Appendix are first thoughts based on what I have managed to read thus far, and what I have heard and read discussed in the media. With that *caveat*, I hope the points raised will be of some use until I am able to submit a more reasoned reply.

With my thanks and best wishes,

Yours sincerely,

A handwritten signature in black ink, appearing to read "Thomas G. Watkin". It is written in a cursive style with a horizontal line underneath the name.

**Thomas Glyn Watkin**

## APPENDIX

1. I remain concerned that, in redistributing functions currently exercised by EU institutions, regulations made by Ministers of the Crown may allocate functions, relating to matters which are devolved, to public authorities which are not devolved Welsh authorities. If that is done, will the allocation remain valid when the five-year sunset period comes to an end? If it does, the Assembly will not be able to modify or remove such functions without Minister of the Crown consent, i.e., competence will in truth be lost. The same problem would arise if the allocation was to a UK government department, or if the function was made jointly exercisable by the Welsh Ministers and the Secretary of State.
2. When the sunset period has ended, will the Secretary of State's intervention powers remain in place regarding any changes which the Assembly is able to make within its competence to amend what the UK government has done by regulations in the meantime?
3. Is the Welsh Government putting in place mechanisms at Westminster to oppose the making of regulations to which the Assembly has not consented? Do they intend to mobilise a coalition of opposition parties to defeat such moves in the Commons given the UK Labour leader's comments on a continuing 'power grab'?
4. Where does the convention that the Lords do not frustrate the will of the democratically elected chamber rest where the Commons is overturning the will of a democratically elected devolved legislature on an issue which is devolved? There appears to be uncharted constitutional territory here. The matter would become particularly important if a UK general election returned a majority government before the two-year sunset period for making regulations had expired, thus making it unlikely that intervention in the Commons could succeed..
5. Is there a danger that the mechanism introduced to allow UK Ministers to ask Parliament to override the Assembly's wishes regarding legislative consent in this instance may form a precedent for how the Sewel Convention may be operated in the future? In other words, is the proposed procedure a Trojan horse? The answer to point 4 above becomes even more significant in that event.
6. Is, or should there be, a difference as a matter of convention between the consequences in Parliament or the Lords of the Assembly's not agreeing to consent and refusing consent?
7. Under the principles operating behind the 'English Votes for English Laws' procedures, should there be a similar procedure to allow Welsh MPs a distinct role in votes on regulations affecting laws which do not relate otherwise than in relation to Wales?

**Thomas G. Watkin**  
*21 May 2018*

Mick Antoniw AM  
Chair  
Constitutional and Legislative Affairs Committee  
National Assembly for Wales  
Cardiff Bay  
Cardiff  
CF99 1NA

Ref: 52SOS 18

3 June 2018

*Dear Mick,*

Thank you for your letter of 11 May regarding the application of amendments to the European Union (Withdrawal) Bill ("the Bill") in relation to the sifting committee of the National Assembly for Wales.

You are right to point to the different arrangements in the Assembly as compared to Westminster. These differences mean that it is not appropriate to define the length of time committees in the Assembly are given to carry out a sift in the same terms as Parliamentary committees. Following consultation with the Welsh Government we determined that a 14-day period, discounting days on which the Assembly is dissolved or in recess for a period of more than four days, would be an appropriate time period to carry out a sift.

We have endeavoured to provide a broadly similar timescale for sifting to take place in the Assembly as in Parliament. I recognise your concerns however that in some circumstances the Assembly may have a shorter time in which to sift. It is of course open to the Assembly to modify the procedures set out in the Bill (following enactment) or extend the statutory time period for sifting.

With respect to Lord Lisvane's amendment to the Bill, the Government is giving careful consideration to its response to the amendment in light of the debate at the Bill's Lords Report stage. We will work with the Welsh Government and the Assembly Commission on any implications for Wales.

The new Devolution Guidance Note (DGN 18) *Parliamentary and Assembly Primary Legislation Affecting Wales* describes how officials should interact with the new reserved powers model, which came into force on 1 April. As such it has replaced DGNs 9 and 17 which describe the previous settlement. In preparing the new guidance my department worked extensively with officials across Whitehall and consulted officials in the Welsh Government and the Assembly Commission.

We recognise in the new guidance that there are some instances in parliamentary Acts relating to the UK's exit from the EU where Statutory Instruments in devolved areas made in Parliament do not require the Assembly's consent. However, the guidance makes clear that these are exceptions to the rule, and ordinarily the UK Government needs to seek Assembly consent for any SI it is bringing forward in a devolved area (through a Statutory Instrument Consent Motion (SICM)).

Finally, I can confirm that the UK Government intends to provide guidance to departments on the establishment of common frameworks and the Intergovernmental Agreement. The guidance will be published as soon as possible after the Bill gains Royal Assent. It will however be internal guidance for UK Government officials, and as such a public consultation on its content is not being undertaken.

I am copying this letter to Chloe Smith MP, Minister for the Constitution, Elin Jones AM, Presiding Officer to the National Assembly for Wales, the Rt Hon Carwyn Jones AM, First Minister, and Julie James AM, Leader of the House and Chief Whip.



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

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

Eich cyf:  
Ein cyf: EJ/CW

5 Mehefin 2018

Annwyl Mick

Yn dilyn y llythyr oddi wrth Ysgrifennydd Gwladol Cymru ar 3 Mehefin ynglŷn â Bil yr Undeb Ewropeaidd (Ymadael) a materion cysylltiedig, roeddwn yn awyddus i egluro mewnbwn Comisiwn y Cynulliad ac unrhyw fwriad i'r perwyl hynny.

Nododd yr ysgrifennydd Gwladol yn ei lythyr bod ei adran wedi ymgynghori gyda swyddogion Comisiwn y Cynulliad ar Ganllaw Datganoli 18. Noder bod y trafodaethau yma wedi eu seilio ar ddealltwriaeth y byddai angen diwygiadau pellach i Ganllaw Datganoli 18 yn hwyrach yn y flwyddyn er mwyn rhoi ystyriaeth i ymadael a'r UE.

Rwy'n awdurdodi swyddogion Comisiwn y Cynulliad i weithio ar sail gyfrinachol er mwyn cyngori rhanddeiliaid, gan gynnwys Swyddfa Cymru, ar faterion technegol sy'n berthnasol i'r setliad datganoli; a hynny yn yr ysbryd o gynnig arbenigedd a chymorth gyda'r amcan o fagu dealltwriaeth gyffredin. Dyw hyn ddim yn awgrymu unrhyw gymeradwyaeth gwleidyddol neu swyddogol tuag at y Canllaw Datganoli neu unrhyw ran ohono.

Yn gywir



Elin Jones AC  
Llywydd

Croesewir gohebiaeth yn Gymraeg neu Saesneg / We welcome correspondence in Welsh or English  
**Cynulliad Cenedlaethol Cymru**

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**National Assembly for Wales**

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Tudalen y pecyn 7  
0300 200 7403

Mae cyfngiadau ar y ddogfen hon

## Offerynnau Statudol sydd ag Adroddiadau Clir 11 Mehefin 2018

**SL(5)219 – Rheoliadau Traffordd yr M4 (Ffyrdd Ymadael tua'r Dwyrain a thua'r Gorllewin wrth Gyffordd 33 (Capel Llanilltern), Caerdydd) (Terfyn Cyflymder 40 MYA) 2018**

### Gweithdrefn: Negyddol

Mae'r Rheoliadau hyn yn gosod terfyn cyflymder uchaf o 40 milltir yr awr (yn lle'r terfyn cyflymder cyffredinol o 70 milltir yr awr a osodir ar draffyrdd gan Reoliadau Traffig Traffyrdd (Terfyn Cyflymder) 1974 (O.S. 1974/502)) ar y darnau o ffyrdd ymadael traffordd yr M4 a bennir yn yr Atodlen i'r Rheoliadau hyn

**Rhiant-Ddeddf:** Ddeddf Rheoleiddio Traffig Ffyrdd 1984(

**Fe'u gwnaed ar:** 17 Mai 2018

**Fe'u gosodwyd ar:** 25 Mai 2018

**Yn dod i rym ar:** 18 Mehefin 2018

**SL(5)224 – Gorchymyn Crynoadau Anifeiliaid (Ffioedd) (Cymru) 2018**

### Gweithdrefn: Negyddol

Mae'r Gorchymyn hwn yn nodi'r ffioedd sy'n daladwy i Weinidogion Cymru ym maes iechyd anifeiliaid yn ymwneud â thrwyddedu rhai crynoadau anifeiliaid yng Nghymru. Y ffioedd a bennwyd yw 50% o'r gost lawn o adennill y costau a ysgwyddodd Gweinidogion Cymru rhwng 30 Mehefin 2018 a 30 Mehefin 2019, a 100% o'r gost lawn wedi hynny.

**Rhiant-Ddeddf:** Ddeddf Iechyd Anifeiliaid 1981

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



Fe'u gosodwyd ar: 30 Mai 2018

Yn dod i rym ar: 30 Mehefin 2018



## SL(5)220 – Rheoliadau Pysgota Môr (Diwygiadau Amrywiol) 2018 (Saesneg yn unig)

### Cefndir a Diben

Mae'r Rheoliadau hyn yn diwygio Gorchymyn Pysgota Môr (Pysgota Anghyfreithlon, Heb ei Gofnodi a Heb ei Reoleiddio) 2009 (*Saesneg yn unig*) a Rheoliadau Pysgota Môr (Pwyntiau ar gyfer Meistri Cychod Pysgota) 2014 (*Saesneg yn unig*). Maent yn gweithredu darpariaethau Erthygl 38 o Reoliad y Cyngor (EC) Rhif 1005/2008, sy'n sefydlu system y Gymuned i atal, rhwystro a dileu achosion o bysgota anghyfreithlon, heb ei adrodd a heb ei rheoleiddio.

### Y weithdrefn

Penderfyniad negyddol, cyfansawdd.

### Materion technegol: craffu

Nodir un pwynt i gyflwyno adroddiad arno o dan Reol Sefydlog 21.2 mewn perthynas â'r offeryn hwn.

#### **1. Rheol Sefydlog 21.2(ix) – nad yw'r offeryn wedi'i wneud yn Gymraeg ac yn Saesneg**

Mae'r Rheoliadau hyn wedi cael eu gwneud fel offeryn cyfansawdd, sy'n golygu bod y Rheoliadau hyn: (a) wedi cael eu gwneud gan Weinidogion Cymru a'r Ysgrifennydd Gwladol, a (b) wedi cael eu gosod gerbron Cynulliad Cenedlaethol Cymru a Senedd y DU.

Mae'r Memorandwm Esboniadol i'r Rheoliadau yn datgan, oherwydd natur gyfansawdd y Rheoliadau, nad oedd yn rhesymol ymarferol i'r Rheoliadau gael eu gwneud yn Gymraeg a Saesneg.

### Rhinweddau: craffu

Nodwyd tri phwynt i gyflwyno adroddiad arnynt o dan Reol Sefydlog 21.3 mewn perthynas â'r offeryn hwn.

#### **1. Rheol Sefydlog 21.3(ii) – mae'r offeryn o bwysigrwydd gwleidyddol neu gyfreithiol neu mae'n codi materion polisi cyhoeddus sy'n debygol o fod o ddiddordeb i'r Cynulliad**

Mae cyfraith yr UE yn ei gwneud yn ofynnol i Aelod-wladwriaethau orfodi rhai gweithgareddau pysgota môr sydd wedi'u gwahardd, fel mewnflio pysgod a ddaliwyd gan long pysgota o drydedd wlad nad yw'n cydweithredu. Ym mis Mawrth 2014, am y tro cyntaf, cyhoeddodd Cyngor yr Undeb Ewropeaidd restr o wledydd nad ydynt wedi cydweithio â'r UE mewn perthynas â physgota môr anghyfreithlon, heb ei gofnodi a heb ei reoleiddio. Y gwledydd ar y rhestr yw Belize, Teyrnas Cambodia a Gweriniaeth Gini.

Nodwyd nad oedd y gwledydd hyn yn cydweithredu ym mis Mawrth 2014. Nid yw'n amlwg pam ei bod wedi cymryd tan fis Mai 2018 i wneud y Rheoliadau hyn i orfodi gweithgareddau sydd wedi'u gwahardd yn erbyn y gwledydd hyn nad ydynt yn cydweithredu.



## **2. Rheol Sefydlog 21.3(ii) – mae'r offeryn o bwysigrwydd gwleidyddol neu gyfreithiol neu mae'n codi materion polisi cyhoeddus sy'n debygol o fod o ddiddordeb i'r Cynulliad**

Mae cymhwys o'r Rheoliadau hyn yn dibynnau ar ddiffiniadau fel "ardaloedd o fewn terfynau'r môr tiriogaethol cyfagos i Loegr" a "rhan o'r môr o fewn terfynau pysgodfeydd Prydain sydd i'w drin fel cyfagos i Gymru" ac ati.

Er mwyn gweld beth yw union ystyr yr ardaloedd hyn, mae angen edrych ar sawl darn o ddeddfwriaeth a phlotio nifer fawr o gyfesurynnau.

Rydym yn argymhell y dylid cynnwys mapiau yn y Memoranda Esboniadol yn y dyfodol, er mwyn rhoi crynodeb sydyn o'r ardaloedd môr perthnasol.

## **3. Rheol Sefydlog 21.3(ii) – mae'r offeryn o bwysigrwydd gwleidyddol neu gyfreithiol neu mae'n codi materion polisi cyhoeddus sy'n debygol o fod o ddiddordeb i'r Cynulliad**

Cododd rhai o'r newidiadau a wnaed gan y Rheoliadau hyn o'r **pwyntiau adrodd technegol y cododd y Pwyllgor hwn ym mis Ionawr 2015**. Er ein bod yn croesawu'r newidiadau hynny sy'n cael eu gwneud (mewn perthynas â Chymru, Lloegr, Gogledd Iwerddon ac, yn rhannol, yr Alban), rydym yn nodi ei bod wedi cymryd bron tair blynedd a hanner i wneud y newidiadau.

### **Y goblygiadau yn sgil gadael yr Undeb Ewropeaidd**

Mae'r Rheoliadau hyn yn gweithredu ac yn gorfodi rhwymedigaethau'r UE mewn perthynas â physgota môr, ac felly bydd y Rheoliadau hyn yn ffurfio rhan o gyfraith yr UE a ddargedwir ar ôl y diwrnod ymadael.

Mae'r Cytundeb Rhynglywodraethol ar Fil yr Undeb Ewropeaidd (Ymadael) a Sefydlu Fframweithiau Cyffredin yn nodi bod "rheoli a chefnogi pysgodfeydd" yn faes polisi sy'n debygol o fod yn ddarostyngedig i reoliadau cymal 15 o dan Fil yr UE (Ymadael). Felly, mae'r gyfraith sy'n dod o dan y Rheoliadau hyn yn debygol o fod yn faes o gyfraith yr UE sy'n cael ei rewi tra bod fframweithiau cyffredin yn cael eu rhoi ar waith.

### **Ymateb y Llywodraeth**

Mae angen ymateb y Llywodraeth i'r pwyntiau craffu technegol a rhinweddau sy'n codi yn yr adroddiad hwn.

#### **Cynghorwyr Cyfreithiol**

#### **Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol**

**1 Mehefin 2018**



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STATUTORY INSTRUMENTS

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**2018 No. 643****SEA FISHERIES****The Sea Fishing (Miscellaneous Amendments) Regulations  
2018**

<i>Made</i>	- - - - -	<i>22nd May 2018</i>
<i>Laid before Parliament</i>		<i>25th May 2018</i>
<i>Laid before the National Assembly for Wales</i>		<i>25th May 2018</i>
<i>Coming into force</i>	- - -	<i>18th June 2018</i>

The Secretary of State, and the Welsh Ministers in relation to Wales, the Welsh zone and Welsh fishing boats beyond the seaward limits of the Welsh zone(a), make these Regulations in exercise of the powers conferred by section 30(2) of the Fisheries Act 1981(b), which are now vested in them(c).

- (a) The Welsh zone has the meaning given by section 158(1) of the Government of Wales Act 2006 (c. 32), as amended by section 43(1) and (2) of the Marine and Coastal Access Act 2009 (c. 23). The boundaries of the Welsh zone are specified in S.I. 2010/760. The boundary between the sea adjacent to Wales and that adjacent to England is described by article 6 of and Schedule 3 to the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672). By virtue of section 162 of and paragraph 26 of Schedule 11 to the 2006 Act, S.I. 1999/672 continues to have effect. “Welsh fishing boats” has the meaning given in section 53(4) of the Wales Act 2017 (c. 4).
- (b) 1981 c. 29 (“the 1981 Act”). See section 30(3) for the definition of “the Ministers” (as modified in relation to Scotland by section 30(5)).
- (c) The function of the Ministers under section 30(2) of the 1981 Act in relation to Wales was transferred to the National Assembly for Wales and then transferred from that body to the Welsh Ministers: see article 2(a) of, and Schedule 1 to, the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672) and paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (c. 32). The function was transferred to the Welsh Ministers by article 4(1) (e) of the Welsh Zone (Boundaries and Transfer of Functions) Order 2010 (S.I. 2010/760) insofar as it was exercisable in relation to the Welsh zone. The function was further transferred, on a concurrent basis, in relation to Welsh fishing boats beyond the seaward limit of the Welsh zone by section 59A of and paragraph 2(1) of Schedule 3A to the Government of Wales Act 2006. The function under section 30(2) of the 1981 Act exercisable in relation to British fishing boats (other than Scottish ones) within the Scottish zone, and Scottish fishing boats outside that zone but within British fishery limits, remains exercisable by the Ministers despite being transferred to the Scottish Ministers under section 53(1) of the Scotland Act 1998 (c. 46): see article 3(1) of, and Schedule 1 to, the Scotland Act 1998 (Concurrent Functions) Order 1999 (S.I. 1999/1592). The function under section 30(2) exercisable in relation to the Northern Ireland zone and Northern Ireland fishing boats outside that zone remains exercisable by the Ministers despite being transferred to the Department of Agriculture and Rural Development in Northern Ireland under article 3(2) of, and paragraph 3 of Schedule 2 to, the Sea Fisheries (Northern Ireland) Order 2002 (S.I. 2002/790): see paragraph 3(2) of Schedule 2 to that Order. Any remaining functions of the Secretaries of State concerned with sea fishing in Scotland and Wales under section 30(2) of the 1981 Act were transferred to the Minister of Agriculture, Fisheries and Food: see article 2(1) of the Transfer of Functions (Agriculture and Fisheries) Order 2000 (S.I. 2000/1812). The function of that Minister and the Secretary of State concerned with sea fishing in Northern Ireland acting jointly under section 30(2) was transferred to the Secretary of State for Environment, Food and Rural Affairs and the Secretary of State concerned with sea fishing in Northern Ireland acting jointly: see article 2(5) of the Ministry of Agriculture, Fisheries and Food (Dissolution) Order 2002 (S.I. 2002/794). The function of the Secretary of State for Environment, Food and Rural Affairs and the Secretary of State concerned with sea fishing in Northern Ireland was transferred to the Secretary of State by article 3(1)(d) of the Transfer of Functions (Sea Fisheries) Order 2012 (S.I. 2012/2747). Import and export control is a matter reserved to the United Kingdom Government under section 30 of and section C5 of Part 2 of Schedule 5 to the Scotland Act 1998 (c. 46) and under section 4(1) of and part 20 of Schedule 3 to the Northern Ireland Act 1998 (c. 47).

The Secretary of State, and the Welsh Ministers in relation to Wales and the Welsh zone, also make these Regulations in exercise of the powers conferred by section 2(2) of, and paragraph 1A of Schedule 2 to, the European Communities Act 1972 (“the 1972 Act”)(**a**).

The Secretary of State and the Welsh Ministers are each designated for the purposes of section 2(2) of the 1972 Act in relation to the common agricultural policy of the European Union(**b**).

These Regulations make provision for a purpose mentioned in section 2(2) of the 1972 Act and it appears to the Secretary of State and the Welsh Ministers that it is expedient for any reference in these Regulations to Council Regulation (EC) No. 1224/2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy (**c**) to be construed as a reference to that Regulation as amended from time to time.

### **Citation, commencement, extent and interpretation**

- 1.—(1) These Regulations may be cited as the Sea Fishing (Miscellaneous Amendments) Regulations 2018 and come into force on 18th June 2018.
- (2) Subject to paragraphs (3) and (4), they extend to England and Wales only.
- (3) The following regulations also extend to Scotland—
  - (a) this regulation;
  - (b) regulations 2 to 5, so far as they relate to article 9(6A)(e) and (12)(a) of the 2009 Order (as inserted by regulation 5); and
  - (c) regulations 9 and 10, and regulation 8 so far as it relates to those regulations.
- (4) The following regulations also extend to Northern Ireland—
  - (a) this regulation;
  - (b) regulations 2 to 5, so far as they relate to article 9(6A)(e) and (12)(b) of the 2009 Order (as inserted by regulation 5); and
  - (c) regulations 8 to 11.
- (5) In these Regulations, “the 2009 Order” means the Sea Fishing (Illegal, Unreported and Unregulated Fishing) Order 2009(**d**).

### **Amendment of the 2009 Order**

2. The 2009 Order is amended in accordance with regulations 3 to 7.

- (a) 1972 c. 68; section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c. 51) and section 3(3) of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 (c. 7). Paragraph 1A of Schedule 2 was inserted by section 28 of the Legislative and Regulatory Reform Act 2006 and was amended by section 3(3) of and Part 1 of the Schedule to the European Union (Amendment) Act 2008, and S.I. 2007/1388. The function of the former Minister of Agriculture, Fisheries and Food of making regulations under section 2(2) was transferred to the Secretary of State by S.I. 2002/794. Under section 57(1) of the Scotland Act 1998 (c. 46), despite the transfer to Scottish Ministers of functions in relation to implementing obligations under EU law in relation to devolved matters, the Secretary of State retains power to exercise such functions as regards Scotland. The Secretary of State’s power, as a Minister so designated, to make regulations which extend to Northern Ireland is confirmed by S.I. 2000/2812.
- (b) The Secretary of State is designated in relation to the common agricultural policy by S.I. 1972/1811 and the Welsh Ministers by S.I. 2010/2690. The designation in relation to the common agricultural policy extends to the common fisheries policy: under Article 38(1) of the Treaty on the Functioning of the European Union, the EU’s common agricultural policy includes its common fisheries policy (OJ No. C 326, 26.10.2012, p. 62). Article 5(3)(a) of S.I. 2010/2690 provides that the designation of the Welsh Ministers for the purposes of section 2(2) of the European Communities Act 1972 in relation to the common agricultural policy applies in relation to the Welsh zone.
- (c) OJ No. L 343, 22.12.2009, p. 1, as last amended by Regulation (EU) No. 2015/812 of the European Parliament and of the Council (OJ No. L 133, 29.5.2015, p. 1).
- (d) S.I. 2009/3391, to which there is an amendment not relevant to these Regulations.

## **Amendment of article 2**

**3.** For article 2 (application) substitute—

### **“Extent and application**

**2.**—(1) Subject to paragraphs (2) and (3), this Order extends to England and Wales only, except for the following provisions which also extend to Scotland and Northern Ireland—

- (a) articles 1 to 3; and
- (b) article 9(6A)(e).

(2) Article 9(12)(a) also extends to Scotland.

(3) Article 9(12)(b) also extends to Northern Ireland.

(4) Subject to paragraph (5), this Order applies—

- (a) in England and Wales and the Welsh zone;
- (b) in relation to English fishing boats and Welsh fishing boats, wherever they are; and
- (c) in relation to other fishing boats which are within the Exclusive Economic Zone<sup>(a)</sup> but not in—
  - (i) the Scottish zone; or
  - (ii) the Northern Ireland zone.

(5) Article 9(6A)(e) applies to offences committed—

- (a) in England, in relation to English fishing boats;
- (b) in Wales, in relation to Welsh fishing boats;
- (c) in Scotland, in relation to Scottish fishing boats; and
- (d) in Northern Ireland, in relation to Northern Ireland fishing boats.”.

## **Amendment of article 3**

**4.** In article 3 (interpretation)—

(a) for the definition of “England” substitute—

““England” includes the area within the seaward limits of the territorial sea adjacent to England but does not include any area in the Welsh zone, the Scottish zone or the Northern Ireland zone;”;

(b) after the definition of “England” insert—

““English fishing boat” means a fishing boat which is—

- (a) registered at a port in England, under section 8 of the Merchant Shipping Act 1995<sup>(b)</sup>; or
- (b) owned wholly by persons qualified to own British ships for the purposes of Part 2 of the Merchant Shipping Act 1995, other than a Welsh fishing boat, a Northern Ireland fishing boat or a Scottish fishing boat;”;

(c) after the definition of “local authority” insert—

““Northern Ireland” has the meaning given in section 98(1) of the Northern Ireland Act 1998<sup>(c)</sup>;

““Northern Ireland fishing boat” means a fishing boat which is registered at a port in Northern Ireland, under section 8 of the Merchant Shipping Act 1995;

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<sup>(a)</sup> The Exclusive Economic Zone was designated in S.I. 2013/3161.

<sup>(b)</sup> 1995 c. 21.

<sup>(c)</sup> 1998 c. 47.

- “Northern Ireland zone” has the meaning given in section 98(1) of the Northern Ireland Act 1998;”;
- (d) after the definition of “port health authority” insert—  
““Scotland” has the meaning given in section 126(1) of the Scotland Act 1998(a);  
“Scottish fishing boat” means a fishing boat which is registered at a port in Scotland, under section 8 of the Merchant Shipping Act 1995;  
“Scottish zone” has the meaning given in section 126(1) of the Scotland Act 1998;”; and
- (e) after the definition of “Wales” insert—  
““Welsh fishing boat” means a fishing boat which is registered at a port in Wales, under section 8 of the Merchant Shipping Act 1995;  
“Welsh zone” has the meaning given in section 158(1) of the Government of Wales Act 2006(b)”.

### **Amendment of article 9**

**5.—(1)** Article 9 (offences) is amended as follows.

**(2)** For paragraph (4) substitute—

“(4) It is an offence for a person to engage in fishing for a stock in any area where, under the conservation and management measures (within the meaning of the Council Regulation) applicable in that area, such fishing is subject to a moratorium or is prohibited.”.

**(3)** After paragraph (6) insert—

“(6A) In relation to a non-cooperating third country listed on a list established under Article 33 of the Council Regulation, it is an offence for a person—

- (a) to import fishery products caught by a fishing vessel flying the flag of the third country unless the products are from stock or species to which the listing does not apply;
- (b) to purchase a fishing vessel flying the flag of the third country;
- (c) to reflag a fishing vessel flying the flag of a member State so that it flies the flag of the third country;
- (d) to enter into a charter agreement with the third country in relation to a fishing vessel flying its flag;
- (e) to export a Community fishing vessel to the third country;
- (f) to enter into an agreement for a fishing vessel flying the flag of a member State to use the fishing possibilities of the third country; or
- (g) to participate in joint fishing operations with a fishing vessel flying the flag of the third country.”.

**(4)** After paragraph (11) insert—

“(12) Paragraph (6A)(e) is an “equivalent provision” for the purposes of—

- (a) the Sea Fishing (Illegal, Unreported and Unregulated Fishing) (Scotland) Order 2013(c); and
- (b) the Sea Fishing (Illegal, Unreported and Unregulated Fishing) Order (Northern Ireland) 2018(d).”.

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(a) 1998 c. 46.  
(b) 2006 c. 32. The definition of “Welsh zone” was inserted by section 43(1) and (2) of the Marine and Coastal Access Act 2009 (c. 23).  
(c) S.S.I. 2013/189.  
(d) S.R. 2018 (N.I.) No. 106.

## Omission of article 11

**6.** Omit article 11 (recovery of fines).

## Amendment of article 21

**7.**—(1) Article 21 (admissibility of documents in evidence) is amended as follows.

(2) In paragraph (2)—

- (a) in sub-paragraph (a), for “kept under Article 6 or 17(2)” substitute “referred to in Article 14”;
- (b) in sub-paragraph (b), for “a declaration submitted under Article 8(1), 9, 12, 17(2) or 28f” substitute “a landing declaration referred to in Article 23”;
- (c) in sub-paragraph (c), for “submitted under Article 9” substitute “referred to in Articles 62 and 64”;
- (d) in sub-paragraph (d), for “document drawn up under Article 13” substitute “transport document referred to in Article 68”;
- (e) in sub-paragraph (e), for “Article 3(7)” substitute “Article 9(7)”; and
- (f) after sub-paragraph (e) insert—
  - “(f) a transhipment declaration referred to in Article 21 of the Control Regulation;
  - (g) a take-over declaration referred to in Article 66 of the Control Regulation.”.

(3) In paragraph (3), for “Article 3(1)” substitute “Article 9(1)”.

(4) In paragraph (6), for “Council Regulation (EEC) No 2847/93 establishing a control system applicable to the common fisheries policy” substitute “Council Regulation (EC) No. 1224/2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy”**(a)**.

## Amendment of the Sea Fishing (Points for Masters of Fishing Boats) Regulations 2014

**8.** The Sea Fishing (Points for Masters of Fishing Boats) Regulations 2014**(b)** are amended in accordance with regulations 9 to 11.

## Amendment of regulation 1

**9.** In regulation 1(2) (extent), after “8(5)” insert “, 8(6)”.

## Amendment of regulation 8

**10.** In regulation 8 (allocation of points in respect of convictions and administrative sanctions in other member States and third countries), after paragraph (5) insert—

“(6) If the allocation of points under this regulation triggers a suspension or disqualification under regulation 10 or under a corresponding Scottish enactment, the Marine Management Organisation must ensure that the start date of the suspension or disqualification is at least one calendar day after it is included in the register.”.

## Amendment of regulation 10

**11.**—(1) Regulation 10 (suspension and disqualification) is amended as follows.

(2) In paragraph (4)(b), for “if” substitute “if later, in a case where”.

(3) After paragraph (5) insert—

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**(a)** OJ No. L 343, 22.12.2009, p. 1, as last amended by Regulation (EU) No. 2015/812 of the European Parliament and of the Council (OJ No. L 133, 29.5.2015, p. 1).

**(b)** S.I. 2014/3345.

“(5A) If a master is already suspended from mastering a vessel when the master accumulates points triggering a further suspension period under this regulation, the further suspension period starts on the expiry of the existing suspension period.”.

*George Eustice*  
Minister of State

22nd May 2018

Department for Environment, Food and Rural Affairs

*Lesley Griffiths*

Cabinet Secretary for Energy, Planning and Rural Affairs,  
one of the Welsh Ministers

22nd May 2018

## **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations amend the Sea Fishing (Illegal, Unreported and Unregulated Fishing) Order 2009 (S.I. 2009/3391) (“the 2009 Order”) and the Sea Fishing (Points for Masters of Fishing Boats) Regulations 2014 (S.I. 2014/3345) (“the 2014 Regulations”). They implement provisions of Article 38 of Council Regulation (EC) No. 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing (OJ No. L 286, 29.10.2008, p. 1) and of Article 92(6) of Council Regulation (EC) No. 1224/2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy (OJ No. L 343, 22.12.2009, p. 1).

Regulation 3 substitutes new extent and application provisions for article 2 of the 2009 Order.

Regulation 4 amends article 3 of the 2009 Order in relation to various definitions.

Regulation 5 amends article 9 of the 2009 Order to clarify the provisions of Article 9(4) and to extend the offence provisions relating to non-cooperating third countries listed under Article 33 of Council Regulation (EC) No. 1005/2008, implementing Article 38 of that Regulation.

Regulation 6 revokes article 11 of the 2009 Order regarding recovery of fines.

Regulation 7 amends article 21 of the 2009 Order to update references to an EU instrument and to add transhipment declarations and takeover declarations to the list of documents admissible in evidence in any proceedings in respect of an offence under the 2009 Order.

Regulations 8 to 11 amend provisions in regulations 1, 8 and 10 of the 2014 Regulations relating to the start date of a suspension period or the disqualification of a master under those Regulations.

An impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen.

**Explanatory Memorandum to Sea Fish (Marketing Standards) (England and Wales and Northern Ireland) Regulations 2018**

This Explanatory Memorandum has been prepared by the Environment, Planning and Rural Affairs 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

**Cabinet Secretary's Declaration**

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Sea Fisheries (Miscellaneous Amendments) Regulations 2018

Lesley Griffiths  
Cabinet Secretary for Energy, Planning and Rural Affairs.

DATE: 22 May 2018

## **1. Description**

The Sea Fisheries (Miscellaneous Amendments) Regulations 2018 (“the Regulations”) amend the Sea Fishing (Illegal, Unreported and Unregulated Fishing) Order 2009 (S.I. 2009/3391) (“the 2009 Order”) and the Sea Fishing (Points for Masters of Fishing Boats) Regulations 2014 (“the 2014 Regulations”).

The Regulations amend the 2009 Order to update the extent and application of the 2009 Order and insert the necessary additional definitions to clarify Article 9(4) of that Order. They also extend the offence provisions relating to non-cooperating third countries (implementing Article 38 of Council Regulation (EC) No. 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing). The Regulations also omit Article 11 of the 2009 Order (which dealt with the recovery of fines) as it is now redundant (the relevant enforcement powers are now set out in Part 8 of the Marine and Coastal Access Act 2009) and update the relevant references to EU legislation found in Article 21 of the 2009 Order.

In relation to the 2014 Regulations, Council Regulation (EC) No 1224/2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy (“the Control Regulation”) requires Member States to establish a ‘penalty points’ system whereby masters of fishing vessels are assigned an appropriate number of points as a result of serious fisheries offences. The Regulations amend the 2014 Regulations to improve clarity regarding when a suspension or disqualification of a vessel master is to commence.

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

The Regulations are made on a composite basis to maintain the clarity, accessibility and transparency of the statute book for those required to comply with its provisions. As this composite instrument is subject to approval by the National Assembly for Wales and by the UK Parliament, it is not considered reasonably practicable for this instrument to be made or laid bilingually.

The Regulations are made subject to the negative procedure.

These Regulations are made under section 2(2) of the European Communities Act 1972 and section 30(2) of the Fisheries Act 1981. Instruments made under section 30(2) of the 1981 Act are subject to negative procedure (by virtue of section 30(4) of the 1981 Act). There is a choice of procedure in relation to instruments made under section 2(2) of the European Communities Act 1972. There were no factors indicating the use of affirmative procedure for these Regulations and bearing in mind both the powers in section 30(2) of the 1981 Act carries negative procedure and the two instruments being amended were made following negative procedure, it is proposed the Regulations are also made subject to the negative procedure. The amendments to the 2014 Regulations are made in response to a technical report issued by the Committee at the time of their making.

### **3. Legislative background**

The Welsh Ministers make the Regulations in relation to Wales pursuant to powers in section 30(2) of the Fisheries Act 1981 and section 2(2) European Communities Act 1972.

For the purposes of section 2(2) of the 1972 Act, the Welsh Ministers are designated in relation to the Common Agricultural Policy and, therefore, the Common Fisheries Policy, by virtue of article 3(1) of the European Communities (Designation) (No 5) Order 2010 (SI 2010/760) in relation to Wales and the Welsh zone.

The Welsh Ministers are able to exercise powers under section 30(2) of the Fisheries Act 1981 in relation to Wales, the Welsh zone and Welsh fishing boats beyond that zone. Functions under section 30 of the 1981 Act were transferred to the National Assembly for Wales and then to the Welsh Ministers by the National Assembly for Wales (Transfer of Functions) Order 1999 (SI 1999/672) and paragraph 30 of Schedule 11 to the Government of Wales Act 2006. Those functions were further transferred to the Welsh Ministers in relation to the Welsh zone by the Welsh Zone (Boundaries and Transfer of Functions) Order 2010 (SI 2010/760) and in relation to Welsh Fishing Boats beyond that zone by section 59A of and paragraph 2(1) of Schedule 3A to the Government of Wales Act 2006.

Council Regulation (EC) No. 1005/2008 (“the IUU Regulation”) establishes a Community system to prevent, deter and eliminate IUU fishing. Provisions in the IUU Regulation allow the European Council to list fishing vessels engaged in IUU fishing (“listed IUU vessels”) and countries which it considers are not cooperating in the fight against IUU fishing (“non-cooperating third countries”). Article 37 of the IUU Regulation sets out the measures that apply in relation to listed IUU vessels. Article 38 sets out the measures that apply in relation to non-cooperating third countries.

The 2009 IUU Order made provision for the enforcement of the IUU Regulation and Article 9 created offence provisions in respect of listed IUU vessels, implementing provisions of Article 37 of the IUU Regulation.

In 2014 Council Implementing Decision 2014/170/EU established the first list of non-cooperating third countries pursuant to the IUU Regulation.

This instrument implements the provisions of Article 38 of the IUU Regulation by extending the offence provisions in Article 9 of the 2009 IUU Order so that they relate to non-cooperating third countries.

This instrument also amends the 2014 Points for Masters Regulations. These 2014 Regulations set up a system for the allocation of points to masters of England, Wales and Northern Ireland fishing boats who have committed serious infringements of EU fisheries law in accordance with Council Regulation (EC) No. 1224/2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy. The 2014 Regulations provide for the setting up and maintenance of a register that details the points allocated to convicted masters and/or any disqualification that arises from them.

During the making of the 2014 Regulations the Assembly's Constitutional and Legislative Affairs Committee issued a technical report regarding the clarity of when a suspension or disqualification of a vessel master (pursuant to the other provisions of those 2014 Regulations) is to commence. These Regulations make the amendments necessary to provide that clarity.

#### **4. Purpose & intended effect of the legislation**

In 2014, the European Commission published, for the first time, a list of non-cooperating third countries and the 2009 IUU Order needs to be amended to take account of this list and to ensure that we can fully implement and enforce these measures and meet our obligations under the EU IUU Regulation. Failure to do so could leave the United Kingdom open to infringement proceedings as well as reputational damage arising from criticism from other member states and the wider Non-Governmental Organisation community.

The amendments to the 2009 IUU Order include amendments which extend the offence provisions in the 2009 IUU Order relating to non-cooperating third countries to implement the measures set out in Article 38 of the IUU Regulation. The extended offences are as follows:

1. importing fishery products caught by a fishing vessel flying the flag of a listed non-cooperating third country unless the products are from stock or species to which the listing does not apply,
2. purchasing a fishing vessel flying the flag of a listed non-cooperating country,
3. reflagging a fishing vessel flying the flag of a member state so that it flies the flag of a listed non-cooperating third country,
4. entering into a charter agreement in relation to a fishing vessel flying the flag of a listed non-cooperating third country,
5. exporting a community fishing vessel to a listed non-cooperating third country,
6. entering into an agreement for a fishing vessel flying the flag of a member state to use the fishing possibilities of the listed non-cooperating third country,
7. participating in joint fishing operations with a fishing vessel flying the flag of the listed non-cooperating third country.

The offences will be incorporated into those offences already listed in article 9 of the 2009 IUU Order.

The SI makes additional amendments to the 2009 Order, for the purposes of clarification and to update references to applicable EU instruments. It also revokes a provision in the 2009 IUU Order regarding recovery of fines, because there are now

enforcement powers, including provisions for forfeiture, set out in Part 8 of the Marine and Coastal Access Act 2009

This SI also amends the 2014 Points for Masters of Fishing Boats Regulations. These amendments have been made following a technical report of the Constitutional and Legislative Affairs Committee, upon the making of the 2014 Regulations, in relation to concerns about a lack of clarity regarding the start date of any suspension period or the disqualification of a master. This SI makes the necessary changes to the 2014 Regulations to improve clarity on this point.

## **5. Consultation**

The measures in this Statutory Instrument do not require consultation as the intention is to make technical amendments to the 2009 Order and the 2014 Regulations in order to enable those instruments to reflect their original intention.

There are no plans to issue guidance. This is a simple measure the principal purpose of which is to extend offences to third countries identified as non-cooperating under the Illegal, Unreported and Unregulated fishing (IUU) legislation and to provide clarity with regard to the commencement of suspension periods and disqualification under the Points for Masters Regulations.

## **6. Regulatory Impact Assessment (RIA)**

An RIA has not been completed for these Regulations. The Regulations are not expected to impose an additional cost on the public or voluntary sectors in Wales. Similarly, the Regulations are not expected to impose an additional cost on fisheries businesses which comply with the law, however, costs may be incurred by businesses which choose to operate outside of the law

Failure to introduce these Regulations risks infraction proceedings against the UK by the EU and the associated costs.

# Eitem 4.2

## SL(5)221 - Rheoliadau Cyflenwi Dŵr (Ansawdd Dŵr) (Diwygio) 2018

### Cefndir a Diben

Bydd y Rheoliadau hyn yn dirymu ac yn disodli Rheoliadau Cyflenwi Dŵr (Ansawdd Dŵr) 2010. Mae'r Rheoliadau'n trosi'r gofynion ychwanegol a bennir gan Gyfarwyddeb y Comisiwn (UE) 2015/1787, sy'n cyd-fynd ag egwyddorion Sefydliad Iechyd y Byd ar gyfer samplu a dadansoddi cyflenwad dŵr yfed yn seiliedig ar risg, sy'n adlewyrchu cynnydd gwyddonol a thechnegol wrth warchod iechyd y cyhoedd.

Mae'r Rheoliadau'n ymwneud yn bennaf ag ansawdd y dŵr a gyflenwir gan ymgymmerwyr dŵr y mae eu hardaloedd yn gyfan gwbl neu'n bennaf yng Nghymru (a thrwyddedion cyflenwi dŵr sy'n defnyddio systemau cyflenwi ymgymmerwyr o'r fath) ar gyfer yfed, golchi, coginio a pharatoi bwyd, ac ar gyfer cynhyrchu bwyd, a chyda threfniadau ar gyfer cyhoeddi gwybodaeth am ansawdd dŵr.

### Y weithdrefn

Negyddol.

### Materion technegol: craffu

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

1. Mae'r Rheoliadau hyn wedi'u gwneud yn Saesneg yn unig. Mae'r memorandwm esboniadol yn dweud y byddant yn gymwys i weithrediad cwmnïau dŵr sy'n darparu dŵr yfed yn gyfan gwbl neu'n bennaf yng Nghymru. Fodd bynnag, maent hefyd yn gymwys mewn rhannau o Loegr ac felly fe'u gosodir ar yr un pryd yn Senedd y DU a Chynulliad Cenedlaethol Cymru fel sy'n ofynnol gan adran 59(4) o Ddeddf Llywodraeth Cymru 2006. Ni phennir unrhyw reswm yn y memorandwm esboniadol pam mae'r rheoliadau hyn wedi'u gwneud yn Saesneg yn unig.

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

### Rhinweddau: craffu

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

1. Mae'r Rheoliadau hyn yn trosi'n uniongyrchol ofynion Cyfarwyddeb y Cyngor 98/83/EC (y Gyfarwyddeb Dŵr Yfed (DWD)) fel y'i diwygiwyd gan Gyfarwyddeb y Comisiwn (UE) 2015/1787. Y dyddiad cau ar gyfer trosi Cyfarwyddeb 2015 oedd 27 Hydref 2017. Ni chyrhaeddwyd y terfyn amser hwn a gosodwyd y rheoliadau hyn tua 8 mis ar ôl y terfyn amser hwn. Ym mhennod 2 o'r



memorandwm esboniadol mae Llywodraeth Cymru yn rhoi'r eglurhad a ganlyn am yr oedi o ran gweithredu:

*"The regulations impact on water undertakers who have responsibilities in both England and Wales. Following engagement with the water companies, officials agreed to align the Welsh set of Regulations with the English Regulations; to ensure water companies were not working to two different sets of Regulations with differing requirements, which would impact on their operational efficiency and removes duplication of work within the affected water undertakers. Officials therefore agreed to work to Defra's timeline to ensure that any changes made to the English Regulations were also included in the Welsh Regulations.*

*Defra's timeline has been delayed due to a number of circumstances including delays in their consultation process. If the Welsh Regulations were laid before the final amendments to the English Regulations were made, the regulations would once again differ in specifics for no policy reason. This would not be in the interests of the water undertakers impacted by these Regulations. Defra accept that the delay in laying these regulations is due to the English timeline slipping."*

(Rheol Sefydlog 21.3 (iv) ei fod yn rhoi deddfwriaeth yr Undeb Ewropeaidd ar waith yn amhriodol.)

## Y goblygiadau yn sgil gadael yr Undeb Ewropeaidd

Gwneir y Rheoliadau hyn yn rhannol o dan adran 2(2) o Ddeddf y Cymunedau Ewropeaidd 1972. Mae'r Rheoliadau hyn yn codi o rywymedigaethau'r UE o dan Gyfarwyddeb Comisiwn yr UE 2015/1787 mewn perthynas ag ansawdd y dŵr a fwriedir at ddibenion domestig neu i'w ddefnyddio wrth gynhyrchu bwyd. Bydd y Rheoliadau hyn yn ffurfio rhan o gyfraith yr UE a ddargedwir ar ôl y diwrnod ymadael.

## Ymateb y Llywodraeth

Mae angen ymateb gan y Llywodraeth.

### Cyngorwyr Cyfreithiol

### Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol

6 Mehefin 2018



National Assembly for Wales

Constitutional and Legislative Affairs Committee

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WELSH STATUTORY INSTRUMENTS

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**2018 No. 647 (W. 121)**

**WATER, ENGLAND AND WALES**

**The Water Supply (Water Quality) Regulations 2018**

<i>Made</i>	- - - - -	22 May 2018
<i>Laid before the National Assembly for Wales</i>		25 May 2018
<i>Laid before Parliament</i>		30 May 2018
<i>Coming into force</i>	- - -	15 June 2018

The Welsh Ministers are designated(1) for the purposes of section 2(2) of the European Communities Act 1972(2) in relation to the quality of water intended for domestic purposes or for use in a food production undertaking.

The Welsh Ministers make these Regulations in exercise of the powers conferred upon them by section 2(2) of the European Communities Act 1972 and sections 67, 69, 77(3) and (4) and 213(2) of the Water Industry Act 1991(3).

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- (1) S.I. 2004/3328, as amended by S.I. 2005/850, S.I. 2007/1349, S.I. 2008/301, S.I. 2012/1759 and S.I. 2014/1362. The functions conferred on the National Assembly for Wales by means of that Order are now exercisable by the Welsh Ministers by virtue of section 162 of and paragraphs 28 and 30 of Schedule 11 to the Government of Wales Act 2006 (c. 32).
- (2) 1972 c. 68; section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c. 51) and by Part 1 of the Schedule to the European Union (Amendment) Act 2008 (c.7).
- (3) 1991 c. 56. The functions of the Secretary of State under section 67 were transferred to the National Assembly for Wales (“the Assembly”) (a) for the making of regulations concerning water supplied using the supply system of a water undertaker, in relation to the supply system of any water undertaker whose area is wholly or mainly in Wales and (b) for the making of regulations concerning water supplied other than using the supply system of a water undertaker, in relation to Wales, by article 2 of, and Schedule 1 to, the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672) (“the 1999 Order”); the functions of the Secretary of State under section 69 were, in relation to any water undertaker whose area is wholly or mainly in Wales and any licensed water supplier so far as relating to licensed activities using the supply system of any such water undertaker transferred to the Assembly by the same provisions of the Order; the functions of the Secretary of State under section 77 were transferred to the Assembly in relation to Wales by the same provisions of the 1999 Order; the functions of the Secretary of State under section 213 were exercisable by the Assembly to the same extent as the powers to which that section applies were made exercisable by the Assembly by virtue of the same provision of the 1999 Order: see the entry in Schedule 1 to the 1999 Order. References in Schedule 1 to the 1999 Order to specific sections of the Act are treated by section 100(6) of the Water Act 2003 (“the 2003 Act”) as referring to those sections as amended by the 2003 Act. References to “licensed water suppliers” or the singular term in Schedule 1 to the 1999 Order now read “water supply licensees” or the singular term following the amendments in paragraph 127 of Schedule 7 to the Water Act 2014 (“the 2014 Act”); there are other amending instruments but none are relevant. By virtue of section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006, the functions conferred on the Assembly are now exercisable by the Welsh Ministers. Section 69 of the Act was amended by paragraph 19 of Schedule 8 , and Part 3 of Schedule 9 , to the 2003 Act, and paragraph 68 of Schedule 7 to the 2014 Act. Section 213 of the Act was amended by paragraph 28 of Schedule 1 to the Competition and Service (Utilities) Act 1992 (c. 43) and by section 56 of, and paragraph 119(4) of Schedule 7 to the 2014 Act.

## PART 1

### General

#### Title, commencement and application

1.—(1) The title of these Regulations is the Water Supply (Water Quality) Regulations 2018 and they come into force on 15 June 2018.

(2) Parts 1 to 9 and 11 of these Regulations apply in relation to the supply of water by every—

- (a) water undertaker(1) whose area is wholly or mainly in Wales; and
- (b) water supply licensee(2) so far as relating to licensed activities using the supply system of any water undertaker whose area is wholly or mainly in Wales.

(3) Part 10 of these Regulations applies to local authorities in Wales, as regards the discharge of functions under that Part, in relation to every—

- (a) water undertaker whose area is wholly in Wales;
- (b) water undertaker whose area is partly in Wales and partly in England, but only in respect of the part in Wales; and
- (c) water supply licensee so far as relating to licensed activities using the supply system situated in Wales of any water undertaker.

#### Interpretation

2.—(1) In these Regulations—

“the 2010 Regulations” means the Water Supply (Water Quality) Regulations 2010(3);

“the Act” means the Water Industry Act 1991;

“appropriate local authority”, in relation to—

- (a) a departure authorised under regulation 22,
- (b) an application for any such authorisation, or
- (c) an event specified in regulation 35(6),

means a local authority(4) whose area contains any part of the water supply zone to which the authorisation relates or, in the case of an application, would relate if a departure were authorised in the terms sought, or whose area is affected or is likely to be affected by the event;

“blending point” means a point at which water originating from two or more sources and treated for the purposes of their supply for regulation 4(1) purposes are combined under conditions that are designed to secure that, after such combination, the requirements of regulation 4(2) are met;

“Chapter III” means Chapter III (quality and sufficiency of supplies) of Part III (water supply) of the Act;

“consumer” means a person to whom water is supplied for regulation 4(1) purposes by a relevant supplier in the discharge of its duties under Chapter III;

“disinfection” means a process of water treatment to remove or render harmless to human health, every pathogenic micro-organism and pathogenic parasite that would otherwise be present in the water; and “disinfected” shall be construed accordingly;

“*E.coli*” means *Escherichia coli*;

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(1) See section 6 of the Act for the meaning of “water undertaker”.

(2) See sections 17A and 219(1) of the Act for the meaning of “water supply licensee”. Section 17A was substituted by section 1 of the Water Act 2014. Section 219(1) was amended by section 56 of, and paragraph 120(2)(f) of Schedule 7 to, the Water Act 2014; there are other amendments but none are relevant.

(3) S.I. 2010/994 (W. 99); as amended by S.I. 2011/14 (W. 7), S.I. 2013/235, S.I. 2013/1387, S.I. 2016/410 (W. 128), S.I. 2017/506 and S.I. 2017/1041 (W. 270).

(4) See section 219 of the Act (as amended by paragraph 2(2) of Schedule 11 to the Local Government (Wales) Act 1994 (c. 19)) for the meaning of “local authority”.

“groundwater” means water contained in underground strata, and section 221(3) of the Water Resources Act 1991 (general interpretation) (1) will have effect for the purpose of this definition as it has effect for the purpose of construing references in that Act to water contained in underground strata;

“Group A parameter” means a parameter specified in column 2 of Table 1 in Schedule 3;

“Group B parameter” means a parameter specified in column 2 of Table 2 or, as the case may be, Table 3 in Schedule 3;

“indicative dose” means the committed effective dose for 1 year of ingestion resulting from all the radionuclides whose presence has been detected in a supply of water intended for human consumption, of natural and artificial origin, excluding tritium, potassium-40, radon and short-lived radon decay products;

“indicator parameter” means a parameter listed in Schedule 2;

“monitoring of a group A parameter” has the meaning given in regulation 5(1);

“monitoring of a group B parameter” has the meaning given in regulation 5(3);

“NTU” means Nephelometric Turbidity Unit;

“parameter” means a property, element, organism or substance listed in the second column of Table A or Table B in Schedule 1 to these Regulations, or in Schedule 2, as read, where appropriate, with the notes to Schedule 2 and those Tables;

“pesticides and related products” means any of the following, and includes their relevant metabolites, degradation and reaction products—

- (a) any organic insecticide;
- (b) any organic herbicide;
- (c) any organic fungicide;
- (d) any organic nematocide;
- (e) any organic acaricide;
- (f) any organic algicide;
- (g) any organic rodenticide;
- (h) any organic slimicide; and
- (i) any product related to any of (a) to (h) (including any growth regulator);

“parametric value” and “prescribed concentration or value”, in relation to any parameter, means the maximum or minimum concentration or value specified in relation to that parameter in Table A or Table B in Schedule 1 as measured by reference to the unit of measurement so specified and as read, where appropriate, with the notes to those Tables;

“Public Health England” means the executive agency of that name of the Department of Health and Social Care;

“Public Health Wales National Health Service Trust” means a National Health Service Trust within the meaning of the National Health Service (Wales) Act 2006(2) if, and in so far as, it has the function of providing services in relation to public health in Wales(3);

“radioactive parameters” means the following indicator parameters listed in Schedule 2—

- (a) indicative dose (item 8);
- (b) radon (item 9);
- (c) tritium (item 12);

“regulation 4(1) purposes”, in relation to the supply of water, means a supply—

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(1) 1991 c.57.

(2) 2006 c.42.

(3) See S.I. 2009/2058 (W. 177) which established the NHS trust called the Public Health Wales National Health Service Trust or Ymddiriedolaeth Gwasanaeth Iechyd Gwladol Iechyd Cyhoeddus Cymru.

- (a) for such domestic purposes as consist in or include, cooking, drinking, food preparation or washing; or
  - (b) for any of those domestic purposes, to premises in which food is produced(1);
- “relevant supplier” means a water undertaker or water supply licensee;
- “retail licensee” means a person who is the holder of a water supply licence with a restricted retail authorisation within the meaning of Schedule 2A to the Act(2);
- “sampling point”—
- (a) in relation to water supplied from a distribution network, means a point, being a consumer’s tap, that is selected for the purposes of Part 4 of these Regulations;
  - (b) in relation to water supplied from a tanker, means the point at which the water emerges from the tanker;
- “specification”, in relation to an indicator parameter, means the concentration, value or state, shown as applicable to that parameter in Schedule 2 as measured by reference to the unit of measurement so shown;
- “state”, in relation to an indicator parameter, means the state specified in relation to that parameter in Schedule 2 as measured by reference to the unit of measurement so specified;
- “suitably accredited body” means the Welsh Ministers or a person acting on behalf of the Welsh Ministers;
- “supplementary licensee” means a person who is the holder of a water supply licence with a supplementary authorisation within the meaning of Schedule 2A to the Act;
- “supply point” means a blending point, service reservoir, treatment works or other point, not being a sampling point, which the Welsh Ministers authorise under regulation 8 for the purposes of regulation 6;
- “supply system” is to be construed in accordance with section 17B(5) of the Act (section 17A: supplementary)(3);
- “water of a relevant description” means water supplied by a relevant supplier which uses a supply system for the purposes of supplying water to consumers, being a supply system into which the water undertaker or supplementary licensee introduces water;
- “water supply zone”, in relation to a water undertaker and a year, means an area designated for that year by the water undertaker in accordance with regulation 3; and
- “year” means a calendar year.

(2) In these Regulations a reference to an application or notice includes a reference to that application or notice in electronic form.

(3) In these Regulations, a “monitoring programme” is the identification and collection of data on any substance or organism identified during a risk assessment to confirm compliance with the prescribed concentrations set out in Schedule 1, and—

- (a) must consist of—
  - (i) collection and analysis of discrete water samples;
  - (ii) measurements recorded by a continuous monitoring process; or
  - (iii) a combination of both of the methods described in paragraph (i) and (ii) at the frequency required in Schedule 3 or at a frequency notified to the water undertaker or supplementary licensee; and
- (b) may also consist of—
  - (i) inspections of records of the functionality and maintenance of status of equipment; and

(1) See section 93(1) of the Act for the meaning of “food production purposes”.

(2) Schedule 2A was inserted by paragraph 1 of Schedule 1 to the Water Act 2014.

(3) Section 17B was inserted by paragraph 2 of Schedule 4 to the Water Act 2003. Section 17B was amended by section 2 of, and paragraph 6 of Schedule 5 and paragraph 10 of Schedule 7 to, the Water Act 2014.

(ii) inspections of the catchment area, water abstraction, treatment, storage and distribution infrastructure.

(4) Subject to paragraph (4), references in these Regulations to a service reservoir are references to any structure in which a reserve of water that has been treated with a view to complying with the requirements of regulation 4 is contained and stored for the sole purpose of meeting a variable demand for the supply of water.

(5) Where references in these Regulations to a service reservoir would, but for this paragraph, include references to a structure comprising more than one compartment—

- (a) each compartment which has its own water inlet and water outlet and is not connected hydraulically to any other compartment will be treated as a single service reservoir;
- (b) the compartments that are connected hydraulically will be treated as a single service reservoir; and
- (c) unless all of the compartments are connected hydraulically, the structure as a whole will not be treated as a service reservoir.

## PART 2

### Water Supply Zones

#### Water supply zones

3.—(1) Before the beginning of each year in which it intends to supply water, a water undertaker must designate the names and areas within its area of supply that are to be its water supply zones for that year.

(2) A water supply zone may not comprise an area whose population immediately before the beginning of the year in question is estimated by the water undertaker to exceed 100,000.

(3) The water quality within a water supply zone must be approximately uniform.

(4) A water undertaker may not vary a designation under paragraph (1) after the beginning of the year in relation to which the designation has effect.

## PART 3

### Wholesomeness

#### Wholesomeness

4.—(1) Subject to paragraphs (4) and (5), water supplied to premises that is intended for human consumption including—

- (a) for such domestic purposes as consist in or include, cooking, drinking, food preparation or washing, or
- (b) for food production purposes,

is to be regarded as wholesome for the purposes of Chapter III, as it applies to the supply of water for those purposes, if the requirements of paragraph (2) are satisfied.

(2) The requirements of this paragraph are—

- (a) that the water does not contain—
  - (i) any micro-organism (other than a parameter listed in Schedule 1) or parasite, or
  - (ii) any substance (other than a parameter listed in Schedule 1),  
at a concentration or value which would constitute a potential danger to human health;
- (b) that the water does not contain any substance (whether or not a parameter) at a concentration or value which, in conjunction with any other substance it contains (whether or not a parameter) would constitute a potential danger to human health;

- (c) that the water does not contain concentrations or values of the parameters listed in Tables A and B in Schedule 1 in excess of or, as the case may be, less than, the prescribed concentrations or values; and
  - (d) that the water satisfies the formula “[nitrate]/50 + [nitrite]/3 < 1”, where the square brackets signify the concentrations in mg/l for nitrate ( $\text{NO}_3$ ) and nitrite ( $\text{NO}_2$ ).
- (3) The point at which the requirements of paragraph (2), in so far as they relate to the parameters set out in Part 1 of Table A and in Table B in Schedule 1 are to be complied with is—
- (a) in the case of water supplied from a tanker, the point at which the water emerges from the tanker;
  - (b) in the case of water supplied in bottles or containers, the point at which the water first emerges from any bottle or container collected from a local distribution point;
  - (c) in the case of water used in a food production undertaking, the point at which it is used in the undertaking; and
  - (d) in any other case, the consumer’s tap.
- (4) Water supplied for regulation 4(1) purposes will not be regarded as wholesome for the purposes of Chapter III if, on transfer from a treatment works for supply for those purposes—
- (a) it contains a concentration of the coliform bacteria or *E coli* parameter (items 1 and 2 in Part 2 of Table A in Schedule 1) in excess of the prescribed concentrations; or
  - (b) it contains a concentration of nitrite in excess of 0.1 mg  $\text{NO}_2$ /l.
- (5) Subject to paragraph (6), water supplied for regulation 4(1) purposes will not be regarded as wholesome for the purposes of Chapter III if, on transfer from a service reservoir for supply for those purposes, it contains a concentration of the coliform bacteria or *E coli* parameter in excess of the prescribed concentrations.
- (6) Water transferred from a service reservoir for supply for regulation 4(1) purposes is to be regarded as unwholesome if more than 5% of samples taken in a year exceed the prescribed concentration for the coliform bacteria parameter.

## PART 4

### Monitoring of Water Supplies

#### Interpretation and application of Part 4

- 5.—(1) In this Part “monitoring of a Group A parameter” means monitoring of a Group A parameter for the purpose of obtaining information at regular intervals—
- (a) as to the organoleptic and microbiological quality of water;
  - (b) where relevant, as to the effectiveness of drinking water treatment, particularly for the purposes of disinfection, for the purposes referred to in paragraph (2); and
  - (c) as regards indicator parameters, whether water supplied for regulation 4(1) purposes meets the specifications for those parameters.
- (2) The purpose of monitoring of a Group A parameter is to determine whether the presence of such a parameter in water supplied for regulation 4(1) purposes satisfies the provisions of Part 3 or, if a departure has been authorised under Part 7 in relation to that supply, the provisions of Part 3 as read with the terms of that departure.
- (3) In this Part, “monitoring of a Group B parameter” means monitoring of a Group B parameter for the purpose of obtaining information from which it may be established whether water supplied for regulation 4(1) purposes—
- (a) satisfies the provisions of Part 3 or, if a departure has been authorised under Part 7 in relation to that supply, the provisions of Part 3 as read with the terms of that departure;
  - (b) meets the specifications for indicator parameters; and

- (c) in respect of other parameters identified as relevant by the Welsh Ministers under regulation 9, meets the specifications for those parameters.
- (4) This Part applies to water supplied for regulation 4(1) purposes by a relevant supplier in the performance of its duties under Chapter III.
- (5) Regulations 6 to 10 apply to a supplementary licensee in relation to samples taken from supply points as they apply to a water undertaker, but only in so far as the supplementary licensee is introducing water into a water supply zone in which the water undertaker takes samples under this Part (to the extent authorised by or under regulation 8) from supply points.

### **Monitoring: general provisions**

**6.**—(1) Paragraph (2) applies for the purpose of determining whether water to which this Part applies satisfies the provisions of Part 3 or, if a departure has been authorised under Part 7 in relation to that supply, those provisions as read with the terms of that authorisation.

(2) A water undertaker must take or cause to be taken, and analyse or cause to be analysed, not less than the number of samples of the water within each of the water supply zones which it supplies specified in, or in accordance with the provisions of, this Part and Schedule 3.

(3) Except in a case to which paragraph (4) applies, the parameters listed in Tables A and B in Schedule 1 and the indicator parameters must be subject to—

- (a) monitoring of a Group A parameter if the parameter is one listed in column 2 of Table 1 in Schedule 3, and the circumstances specified in column 3 of that Table apply; and
- (b) monitoring of a Group B parameter in any other case.

(4) Where the distribution of water in any part of a water supply zone is by tanker and is (or is likely to be) an intermittent short-term supply, samples of water from each tanker from which the water is distributed must be taken—

- (a) at the commencement of the distribution from that tanker; and
- (b) every 48 hours thereafter until the distribution is discontinued.

(5) Of the samples taken in accordance with paragraph (3) in relation to each distribution—

- (a) the first sample must be analysed for compliance with the following parameters—
  - (i) *E. coli* (item 2 in Part 2 of Table A in Schedule 1); and
  - (ii) conductivity (item 6 in Schedule 2); and
- (b) the second and any subsequent samples must be analysed for compliance with those and every other parameter.

(6) For the purposes of the application of paragraph (3)(b) to the aluminium, iron and manganese parameters (items 1, 9 and 10 in Table 1 in Schedule 3, a supply which consists of both groundwater and surface water will be deemed to be a supply which consists only of surface water.

(7) Compliance samples for chemical parameters, including copper, lead and nickel must take the form of a random daytime sample of one litre volume taken at a consumer's tap without prior flushing.

(8) A water undertaker must monitor each water supply zone within its area of supply for the radioactive parameters contained in Schedule 2 in accordance with paragraphs (9) to (16).

(9) As regards the indicative dose parameter—

- (a) monitoring must be carried out where an artificial source of radionuclides or elevated natural radioactivity is present and it cannot be shown on the basis of other representative monitoring programmes or other investigations that the level of indicative dose is below the value specified in Schedule 2;
- (b) where monitoring for natural radionuclide levels is required, the Welsh Ministers must define the frequency of the monitoring of either gross alpha activity, gross beta activity or individual natural radionuclides, depending on the screening strategy adopted in accordance with Schedule 4;
- (c) where the monitoring frequency defined in accordance with sub-paragraph (b) requires one sample per year for naturally occurring radioactivity, a further sample must be taken where any change

occurs in relation to the supply that is likely to influence the concentrations of radionuclides in water supplied for regulation 4(1) purposes;

- (d) in the case of naturally occurring radionuclides where the results of the monitoring referred to in sub-paragraph (b) show that the concentration of radionuclides in the supply is stable, the minimum sampling and analysis frequencies are to be decided by the Welsh Ministers and confirmed by notice to the water undertaker, taking into account the risk to human health;
- (e) a water undertaker may use a screening strategy for gross alpha, gross beta activity or individual radionuclides and, in the event that there is any exceedance of the value specified in Schedule 2, it must carry out an analysis of the specific radionuclides in accordance with Schedule 4.

(10) As regards the radon parameter—

- (a) a water undertaker must ensure that a representative survey is carried out in accordance with paragraph (11) to determine the likelihood of a supply failing the parametric value for radon specified in Schedule 2; and
- (b) monitoring must be carried out where there is reason to believe, on the basis of the results of the representative surveys or other reliable information, that the parametric value for radon might be exceeded.

(11) A representative survey must be designed in such a way—

- (a) as to be capable of determining the scale and nature of likely exposures to radon in water intended for human consumption originating from different types of groundwater sources and wells in different geological areas; and
- (b) that the underlying parameters, in particular the geology and hydrology of the area, radioactivity of rock or soil, and well type, can be identified and used to direct further action to areas of likely high exposure.

(12) As regards the tritium parameter—

- (a) monitoring must be carried out where an anthropogenic source of tritium or other artificial radionuclides is present within the catchment area and it cannot be shown on the basis of other surveillance programmes or investigations that the level of tritium is below the parametric value specified in Schedule 2; and
- (b) if the concentration of tritium exceeds its parametric value, an investigation of the presence of other artificial radionuclides must be carried out.

(13) Where a parametric value is exceeded in a particular sample, the Welsh Ministers must define the extent of re-sampling necessary to ensure that the measured values are representative of an average activity concentration for a full year.

(14) The Welsh Ministers may notify a water undertaker which supplies water to a water supply zone that a radioactive parameter need not be monitored if the Welsh Ministers are satisfied that, for the period specified in the notice, the water supplied to that zone for regulation 4(1) purposes—

- (a) gives rise to a calculated indicative dose that is below the parametric value specified in Schedule 2;
- (b) contains levels of radon that are below the parametric value specified in Schedule 2;
- (c) contains levels of tritium that are below the parametric value specified in Schedule 2.

(15) Where paragraph (14) applies, the Welsh Ministers must communicate the grounds for the notification to the European Commission with the necessary documentation supporting the decision (including the findings of any surveys, monitoring or investigations carried out).

(16) The Welsh Ministers must by notice in writing withdraw a notice under paragraph (14)—

- (a) given in relation to the indicative dose parameter, if the Welsh Ministers believe that water supplied to the zone in question for regulation 4(1) purposes gives rise to a calculated indicative dose that is likely to exceed the parametric value specified in Schedule 2;
- (b) given in relation to the radon parameter, if the Welsh Ministers believe that water supplied to the zone in question for regulation 4(1) purposes contains levels of radon that are likely to exceed the parametric value specified in Schedule 2;

(c) given in relation to the tritium parameter, if the Welsh Ministers believe that water supplied to the zone in question for regulation 4(1) purposes contains levels of tritium that are likely to exceed the parametric value specified in Schedule 2.

(17) A water undertaker which receives a notice under paragraph (16) must monitor or cause to be monitored the indicative dose parameter or, as the case may be, the radon or tritium parameter, in accordance with Tables 8 to 13 (as applicable) in Schedule 3.

### **Sampling points**

**7.** Except in relation to water supplied from a tanker, sampling points in respect of every parameter, other than a parameter for which samples are taken from a supply point authorised by or under regulation 8, must be selected at random unless, by notice in writing to a water undertaker (whether or not on the application of the water undertaker), the Welsh Ministers otherwise determine.

### **Authorisation of supply points**

**8.—(1)** For those parameters specified as item 6 in column 1 of Table 1, and items 1 to 11 and 14 to 21 in column 1 of Table 3, in Schedule 3, samples may be taken from —

- (a) any blending point;
- (b) the water leaving any service reservoir which receives water from a treatment works before its supply to any consumer; and
- (c) the water leaving any treatment works.

(2) If the Welsh Ministers are satisfied that analysis of those samples will produce data which are unlikely to differ in any material respect from the data that would be produced from analysis within the sampling points, the Welsh Ministers may authorise the use for the purposes of regulation 6 of those samples taken for a water supply zone from a blending point, a service reservoir of that description or a treatment works.

(3) In respect of any water supply zone, the taking of samples from a supply point is not authorised by paragraph (2) where a supplementary licensee introduces water into the water supply zone unless the water quality within the water supply zone remains approximately uniform.

(4) Subject to paragraph (6), the Welsh Ministers may, in relation to any parameter not covered by an authorisation under paragraph (2), on the written application of a water undertaker or on the joint written application of a water undertaker and supplementary licensee, authorise the use for the purposes of regulation 6 of samples taken for a water supply zone otherwise than from a sampling point.

(5) An authorisation under paragraph (4) may extend to all samples in relation to that parameter or to such number or proportion of those samples as is specified in the authorisation.

(6) The Welsh Ministers must not grant an authorisation under paragraph (4) unless they are satisfied that analysis of samples taken from a point other than a sampling point will produce data in respect of the parameter in question which are unlikely to differ in any material respect from the data that would be produced in respect of that parameter from analysis of samples obtained from sampling points.

(7) Subject to paragraph (8), the Welsh Ministers may at any time modify or revoke an authorisation under paragraph (4).

(8) Unless it appears to the Welsh Ministers that the immediate modification or revocation of an authorisation under paragraph (4) is required in the interests of public health, they must not modify or revoke such an authorisation without giving to the water undertaker to which the authorisation relates at least 6 weeks' notice of their intention to modify or revoke.

(9) A water undertaker must notify the Welsh Ministers as soon as it has reasonable grounds for believing that an analysis of samples taken for a water supply zone from a point other than a sampling point would produce data in respect of the parameter in question which would differ in a material respect from the data produced by an analysis of samples taken from any of the sampling points within that zone.

(10) On being notified under paragraph (9) and without the need for prior notice to the water undertaker, the Welsh Ministers must revoke the authorisation.

## Number of samples

- 9.**—(1) In each year a water undertaker must take or cause to be taken from its sampling points, or to the extent authorised under regulation 8, from its supply points, the standard number of samples for analysis of residual disinfectant and each parameter listed in—
- (a) column (2) of Table 1 in Schedule 3 (Group A parameters);
  - (b) column (2) of Table 2 in Schedule 3 (Group B1 parameters);
  - (c) column (2) of Table 3 in Schedule 3 (Group B2 parameters);
  - (d) column (2) of Table 4 in Schedule 3 (Group A1 parameters);
  - (e) column (2) of Table 5 in Schedule 3 (Group A2 parameters);
  - (f) column (2) of Table 6 in Schedule 3 (Group A3 parameters); and
  - (g) column (2) of Table 7 in Schedule 3 (Group A4 parameters).
- (2) In respect of any parameter not referred to in paragraph (1), the Welsh Ministers may specify—
- (a) the number of samples which a water undertaker must take or cause to be taken from its sampling points in each year; and
  - (b) its prescribed concentration or value.
- (3) Samples required to be taken by this regulation must—
- (a) be taken at regular intervals;
  - (b) in respect of sampling for chemical parameters in the distribution network other than sampling at a consumer's tap, be taken, and handled in accordance with ISO 5667-5 entitled “*Water quality. Sampling. Guidance on treatment of drinking water from treatment works and piped distribution systems.*”(1); and
  - (c) in respect of microbiological parameters in the distribution network and at a consumer's tap, be taken and handled in accordance with European Standard EN ISO 19458, entitled “*Water Quality – Sampling for microbiological analysis*”(2), using sampling purpose A in the distribution network and sampling purpose B at a consumer's tap.
- (4) Subject to paragraph (5) the Welsh Ministers may, in respect of any supplies of water by a water undertaker to a water supply zone, treatment works, supply point or a service reservoir, give the water undertaker written notice of any variation of—
- (a) the parameters subject to sampling (by the omission or addition of parameters); and
  - (b) the number of samples which the undertaker must take in the period specified in the notice.
- (5) Paragraph (4) does not apply in relation to *E.coli*.
- (6) The Welsh Ministers may give a notice under paragraph (4)—
- (a) on the Welsh Ministers' own motion; or
  - (b) where paragraph (8) applies, upon application by a water undertaker.
- (7) A notice under paragraph (4)—
- (a) must specify which parameters are subject to variation;
  - (b) must specify the extent of any variation from the standard number of samples required to be taken under paragraph (1) or from the number of samples required to be taken under paragraph (2);
  - (c) may require a risk assessment to be undertaken;
  - (d) may be revoked or varied by the Welsh Ministers.
- (8) This paragraph applies where—
- (a) a risk assessment complying with this regulation has been undertaken;

(1) This standard was approved by the International Organization for Standardization (ISO) on 15 April 2006. Under reference BS ISO 5667-5:2006 it is published as a UK standard by the British Standards Institution (ISBN 0 580 47140 3).

(2) This standard was approved by the European Committee for Standardization (CEN) on 1 July 2006. Under reference BS EN ISO 19458:2006, it is published as a UK standard by the British Standards Institution (ISBN 0 5804 49136 6).

- (b) the results of the risk assessment described in sub-paragraph (a) are considered, and that risk assessment indicates that no factor can be reasonably anticipated to be likely to cause deterioration of the quality of the water;
- (c) in the case where the water undertaker seeks to cease monitoring a particular parameter, the results from samples taken in respect of the parameter collected at regular intervals over a period of at least 3 years are all at less than 30% of the parametric value of the parameter; and
- (d) in the case where the water undertaker seeks to reduce the frequency of monitoring in respect of a particular parameter, the results from samples taken in respect of that parameter collected at regular intervals over a period of at least 3 years are all at less than 60% of the parametric value of the parameter.

(9) The Welsh Ministers must by further written notice withdraw a notice under paragraph (4) if the Welsh Ministers believe that any parameter in the water supply to which the notice relates contravenes the prescribed concentration or value or is likely to do so.

(10) A water undertaker given notice under paragraph (4) must institute a monitoring programme which must be kept under annual review.

(11) A risk assessment complies with this regulation where—

- (a) it meets the principles of European standard EN 15975-2 entitled “*Security of drinking water supply - Guidelines for risk and crisis management - Part 2: Risk management*”(1) or of other equivalent standards accepted at international level;
- (b) it is subject to a system of quality control which is checked from time to time by a suitably accredited body; and
- (c) it takes into account the results of monitoring conducted under the second paragraph of Article 7(1) and Article 8 of Directive 2000/60/EC of the European Parliament and of the Council establishing a framework for Community action in the field of water policy(2).

(12) In this regulation “the standard number” means the number of samples specified in Part 2 or Part 3 of Schedule 3 in respect of a parameter specified in Part 1 of that Schedule.

### **Sampling: further provisions**

**10.**—(1) Paragraph (2) applies as soon as a relevant supplier has reasonable grounds for believing that any element, organism or substance, other than a residual disinfectant or a parameter (whether alone or in combination with any parameter or any other element, organism or substance) may cause the supply within any of the water supply zones which it supplies to be a supply which does not satisfy—

- (a) the provisions of Part 3; or
- (b) if a departure has been authorised under Part 7, those provisions as read with the terms of that authorisation.

(2) Where this paragraph applies, the relevant supplier must take or cause to be taken sufficient samples from water within that zone (whether from a service reservoir, a treatment works or otherwise) in respect of any element, organism or substances, in order to establish whether that water is wholesome.

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(1) This standard was approved by the European Committee for Standardization (CEN) on 5 July 2013. Under reference BS EN 15975-2:2013, it is published as a UK standard by the British Standards Institution (ISBN 978 0 580 84737 0).

(2) O.J. No L 327, 22.12.2000, p 1, as last amended by Commission Directive 2014/101/EU (OJ No L 311, 31.10.2014, p 32).

## PART 5

### Monitoring – Additional Provisions

#### **Sampling for particular substances and parameters**

**11.**—(1) For the purposes of establishing the quality of water to be supplied to any of its water supply zones, a water undertaker must take, or cause to be taken, and analyse, or cause to be analysed, not less than the number of samples specified in this Part.

(2) For the purposes of establishing the quality of water to be supplied in any supply system into which a supplementary licensee introduces water, a supplementary licensee must take, or cause to be taken, and analyse, or cause to be analysed, not less than the number of samples specified in this Part.

#### **Sampling at treatment works**

**12.**—(1) Subject to paragraph (3), in each year every water undertaker or supplementary licensee must take, or cause to be taken, from the point at which water leaves each treatment works which it uses to supply water to water supply zones, the standard number of samples for analysis—

- (a) for determining the concentration of residual disinfectant;
- (b) for determining whether, in relation to the colony counts and turbidity parameters, water leaving treatment works meets the specifications for those parameters set out in Schedule 2; and
- (c) for testing for compliance with the prescribed concentrations or values in respect of the coliform bacteria, *E coli*, and nitrite parameters for water leaving treatment works.

(2) Samples required to be taken by this regulation must be taken at regular intervals.

(3) Where a particular treatment works is in use for part only of a year, the minimum number of samples to be taken from that works in that year must bear to the standard number or, as the case may be, the number specified in a current notice given by the Welsh Ministers under regulation 9 which departs from the standard number, the same proportion as the number of days in that year in which the treatment works have been in use bears to 365.

(4) In this regulation, “the standard number” has the same meaning as in regulation 9.

#### **Sampling at service reservoirs**

**13.**—(1) Every water undertaker or supplementary licensee must take, or cause to be taken, from each of its service reservoirs in each week in which the reservoir is in use or as directed by notification by the Welsh Ministers under regulation 9(4), one sample for analysis—

- (a) for testing for compliance with the prescribed concentrations or values in respect of the parameters *E coli* and coliform bacteria;
- (b) for determining the concentration of residual disinfectant; and
- (c) for determining whether the specification in relation to the colony counts parameter is met.

#### **Sampling: new sources**

**14.**—(1) This regulation applies in relation to—

- (a) any source which has not previously been used for the supply of water by a water undertaker or supplementary licensee; and
- (b) any source which has been so used but not so used for a period of 6 months preceding the date on which the water undertaker or supplementary licensee proposes to supply water from it.

(2) Every water undertaker or supplementary licensee must take, or cause to be taken, in accordance with paragraph (3) and (4), such samples of that water as will enable it to establish —

- (a) whether water can be supplied from that source without contravening section 68(1) of the Act (duties of water undertakers and licensed water suppliers with respect to water quality)(1); and
  - (b) the treatment necessary to ensure that section 68(1) of the Act is complied with in relation to the supply of that water.
- (3) The samples must be taken or caused to be taken—
- (a) before the water undertaker or supplementary licensee supplies water from a source mentioned in paragraph (1)(a);
  - (b) as soon as is reasonably practicable after the water undertaker or supplementary licensee has begun to supply water from a source mentioned in paragraph (1)(b).
- (4) Samples must be taken—
- (a) in the case of a source mentioned in paragraph (1)(a), in respect of—
    - (i) the parameters listed in Schedules 1 and 2; and
    - (ii) any other element, organism or substance which, in the opinion of the water undertaker or supplementary licensee proposing to use the source, may cause the supply to contravene section 68(1) of the Act;
  - (b) in the case of a source mentioned in paragraph (1)(b), in respect of—
    - (i) the parameters listed in Table A in Schedule 1;
    - (ii) the conductivity, hydrogen ion and turbidity parameters; and
    - (iii) any other parameter as regards which the water undertaker or supplementary licensee proposing to use the source is of the opinion that its concentration or value is likely to have altered since the last occasion on which water from that source was analysed.
- (5) Unless the conditions in paragraph (6) are satisfied, a water undertaker or supplementary licensee must not supply water from a source mentioned in paragraph (1)(a) for regulation 4(1) purposes until 1 month has passed following the day on which the water undertaker or supplementary licensee complied with regulation 28(1) with respect to that source.
- (6) The conditions are that the water undertaker or supplementary licensee—
- (a) must supply water from the source as a matter of urgency in order to prevent an unexpected interruption in piped supply to consumers; and
  - (b) before the supply is made, has carried out a risk assessment under regulation 27 specifically with respect to the source.
- (7) For the purposes of paragraph (6)(b), regulation 27 will apply to supplies made as a matter of urgency as if “treatment works” includes a source from which untreated water is supplied.

### **Collection and analysis of samples**

**15.**—(1) Every water undertaker or supplementary licensee must secure, so far as reasonably practicable, that when it takes, handles, transports, stores or analyses any sample required to be taken for the purposes of Part 4 or this Part, or causes any such sample to be taken, handled, transported, stored or analysed, it complies with the appropriate requirements.

(2) In this regulation, “the appropriate requirements” means such of the following requirements as are applicable—

- (a) the sample is representative of the quality of the water at the time of sampling;
- (b) the person taking a sample is subject to a system of quality control to an appropriate standard;
- (c) the sample is not contaminated when being taken;
- (d) the sample is kept at such a temperature and in such conditions as secure that there is no material alteration of the concentration or value for the measurement or observation of which the sample is intended;

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(1) Section 68(1) was amended by paragraph 18 of Schedule 8 to the Water Act 2003.

- (e) the sample is analysed, whether at the time and place it is taken or as soon as reasonably practicable after it has been taken—
    - (i) by or under the supervision of a person who is competent to perform that task; and
    - (ii) with the use of such equipment as is suitable for the purpose;
  - (f) the collection and transportation of samples, or measurements recorded by continuous monitoring shall be subject to a system of quality control to an appropriate standard checked from time to time by a suitably accredited body.
- (3) Every water undertaker or wholesale licensee must secure that a suitably accredited body from time to time checks its compliance with the appropriate requirements.
- (4) Additionally, any person involved in seeking to discharge the obligation described in paragraph (1) must ensure that—
- (a) the methods of analysis used by that person for the purposes of monitoring and demonstrating compliance with this Part are validated and documented in accordance with European standard EN ISO/IEC 17025 entitled “*General requirements for the competence of testing and calibration laboratories*”<sup>(1)</sup> or other equivalent standards accepted at international level; and
  - (b) that person applies quality management system practices in accordance with European standard EN ISO/IEC 17025 or other equivalent standards accepted at international level.
- (5) Every water undertaker or supplementary licensee must maintain such records as are sufficient to enable it to establish, in relation to each sample taken for the purposes of Part 4 or this Part, that such of the appropriate requirements as are applicable to that sample have been satisfied.
- (6) Subject to paragraph (7), for the purpose of establishing, within acceptable limits of deviation and detection, whether the sample contains concentrations or values which contravene the prescribed concentrations or values, or exceed the specifications for indicator parameters—
- (a) the method of analysis specified in column 2 of Table A1 in Schedule 5 must be used for the parameter specified in relation to that method in column 1;
  - (b) the method of analysis in respect of the parameters listed in column 1 of Table A3 in Schedule 5 must be capable of measuring concentrations equal to the parametric value with a limit of quantification of 30% or less and an uncertainty of measurement as specified in column 2 of that Table and the result must be expressed—
    - (i) using at least the same number of significant figures as the parametric value; and
    - (ii) in the same units laid down in these Regulations; and
  - (c) the method of analysis used for the odour and taste parameters (items 5 and 7 in Part 2 of Table B in Schedule 1) must be capable, at the time of use, of measuring values equal to the parametric value with a precision or uncertainty of measurement of 1 dilution number at 25°C.
- (7) The Welsh Ministers may, on the application of any person, authorise a method of analysis other than that specified in paragraph (6)(a) (“the prescribed method”).
- (8) An application for the purposes of paragraph (7) must be made in writing and must be accompanied by—
- (a) a description of the method of analysis; and
  - (b) the results of the tests carried out to demonstrate the reliability of that method and its equivalence to the prescribed method.
- (9) The Welsh Ministers must not authorise the use of the method proposed in an application under paragraph (7) unless they are satisfied that the results obtained by the use of that method are at least as reliable as those produced by the use of the prescribed method.
- (10) An authorisation under paragraph (7) may be subject to such conditions as the Welsh Ministers consider appropriate.

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<sup>(1)</sup> This standard was approved by the European Committee for Standardization (CEN) on 10 November 2017. Under reference BS EN ISO/IEC 17025:2017, it is published as a UK standard by the British Standards Institution (ISBN 0 580 46330 3).

(11) The Welsh Ministers may at any time, by notice in writing served on the water undertaker or supplementary licensee to which an authorisation under paragraph (7) has been given, revoke the authorisation, but any such notice must be served no later than 3 months before the date on which the revocation is stated to take effect.

### **Collection and analysis of samples: transitional provision**

**16.**—(1) Before 23:59 on 31 December 2019 a water undertaker or supplementary licensee may, in respect of any parameter specified in column 1 of Table A2 in Schedule 5, apply the method of analysis in paragraph (2) in place of the method of analysis in regulation 15(6)(b).

(2) For the purpose of establishing, within acceptable limits of deviation and detection, whether the sample contains concentrations or values which contravene the prescribed concentrations or values, or exceed the specifications for indicator parameters the method of analysis used for a parameter specified in column 1 of Table A2 in Schedule 5 must be capable, at the time of use—

- (a) of measuring concentrations and values equal to the parametric value with the trueness and precision specified in relation to that parameter in columns 2 and 3 of that Table; and
- (b) of detecting the parameter at the limit of detection specified in relation to that parameter in column 4 of that Table.

(3) For the purposes of paragraph (3)—

“limit of detection” is to be calculated as—

- (a) three times the standard deviation within a batch of a natural sample containing a low concentration of the parameter; or
- (b) five times the standard deviation within a batch of a blank sample;

“precision” is to be calculated as a measure of random error and may be expressed as the standard deviation (within and between batches) of the spread of results from the mean. A precision measurement of twice the relative standard deviation is acceptable. The term “precision” is further specified in international standard ISO 5725 entitled “Accuracy (trueness and precision) of measurement methods and results”<sup>(1)</sup> as amended by the technical corrigendum entitled “Accuracy (trueness and precision) of measurement methods and results - Part 1: General Principles and Definitions TECHNICAL CORRIGENDUM 1”<sup>(2)</sup>;

“trueness” is to be calculated as a measure of systematic error, which is the difference between the mean value of the large number of repeated measurements and the true value. The term “trueness” is further specified in international standard ISO 5725 entitled “Accuracy (trueness and precision) of measurement methods and results”, as amended by the technical corrigendum entitled “Accuracy (trueness and precision) of measurement methods and results - Part 1: General Principles and Definitions TECHNICAL CORRIGENDUM 1”.

## PART 6

### Drinking Water Protected Areas

#### **Drinking water abstraction points: monitoring sites**

**17.**—(1) Every water undertaker or supplementary licensee must identify every point from which it abstracts water for supply for regulation 4(1) purposes.

(2) At every abstraction point, the relevant water undertaker or supplementary licensee must take, or cause to be taken, such samples, and analyse, or cause to be analysed, those samples for such properties, organisms and substances as it considers necessary in order to comply with regulations 26 to 28.

(1) This standard has been approved by the International Organization for Standardization (ISO). Under reference BS ISO 5725-1 to BS ISO 5725-6, these are published as UK standards by the British Standards Institution.

(2) ISO 5725-1:1994/Cor 1:1998 published on 2 May 1998.

(3) In relation to any abstraction point, the Welsh Ministers may, by notice served on the relevant water undertaker or supplementary licensee, require the relevant water undertaker or supplementary licensee—

- (a) to take, or cause to be taken, such numbers of samples of water per year as may be specified; and
- (b) to analyse, or cause to be analysed, those samples for such concentrations or values of such properties, organisms and substances, and at such frequencies, as may be specified.

(4) The Welsh Ministers may, by notice served on the relevant water undertaker or supplementary licensee, revoke or amend a notice served under paragraph (3).

(5) Every analysis required under—

- (a) paragraph (2), in relation to every body of surface water which provides more than 100 cubic metres of water per day as an average, must be carried out at no less than the following frequencies—
  - (i) 4 per year, where the population served by the body of surface water is less than 10,000 people;
  - (ii) 8 per year, where the population so served is 10,000 to 30,000 people; and
  - (iii) 12 per year, where the population so served is greater than 30,000 people; and
- (b) paragraphs (2) and (3) must be in accordance with such relevant standards as may be specified by the Welsh Ministers by notice served on the water undertaker or supplementary licensee.

(6) For the purposes of—

- (a) paragraphs (2) and (3)—  
“abstraction point” means an abstraction point identified under paragraph (1); and  
“relevant water undertaker or supplementary licensee” means the water undertaker or supplementary licensee which identified the abstraction point;
- (b) paragraph (3), “specified” means specified in the notice served under that paragraph; and
- (c) paragraph (5), “body of surface water” has the meaning given in Directive 2000/60/EC of the European Parliament and of the Council establishing a framework for Community action in the field of water policy.

## PART 7

### Investigations, Authorisation of Departures and Remedial Action

#### Investigations: Schedule 1 parameters

18.—(1) A water undertaker or supplementary licensee must immediately take such steps as are necessary to identify the matters specified in paragraph (2) where it has reason to believe that water of a relevant description—

- (a) fails, or is likely to fail, to satisfy a requirement of regulation 4(2);
- (b) is to be regarded as unwholesome by virtue of regulation 4(4); or
- (c) if regulation 4(6) were ignored, would be regarded as unwholesome by virtue of regulation 4(5).

(2) The matters referred to in paragraph (1) are—

- (a) the cause and extent of the failure or, as the case may be, the apprehended failure;
- (b) the Schedule 1 parameters in respect of which the prescribed concentration or value has not been, or is unlikely to be, achieved; and
- (c) in relation to each parameter so identified, whether the failure, or apprehended failure, to achieve the prescribed concentration or value is attributable—
  - (i) to the domestic distribution system;
  - (ii) to the maintenance of that system; or
  - (iii) to neither of those matters.

(3) Where a departure has been authorised under this Part—

- (a) paragraph (1) will apply only in respect of the Schedule 1 parameters (if any) that are not specified in the authorisation; and
  - (b) every water undertaker or supplementary licensee which has reason to believe that water of a relevant description fails, or is likely to fail, to satisfy the concentration or value required by the authorisation in relation to any Schedule 1 parameter, must immediately take such steps as are necessary to identify the matters specified in paragraph (4).
- (4) The matters referred to in paragraph (3) are—
- (a) the cause and extent of the failure or, as the case may be, the apprehended failure;
  - (b) the Schedule 1 parameters in respect of which the required concentration or value has not been, or is unlikely to be, achieved; and
  - (c) in relation to each parameter so identified, whether the failure, or apprehended failure, to achieve that concentration or value is attributable
    - (i) to the domestic distribution system;
    - (ii) to the maintenance of that system; or
    - (iii) to neither of those matters.
- (5) As soon as possible after the matters specified in paragraph (2) or (4), as the case may be, have been identified, the water undertaker or supplementary licensee must—
- (a) notify the Welsh Ministers—
    - (i) of those matters;
    - (ii) whether it is its opinion that, in relation to each parameter identified in accordance with paragraph (2)(b) or (4)(b), a failure in respect of that parameter is likely to recur;
    - (iii) of the action (if any) taken by it in relation to a failure which is attributable to the domestic distribution system or the maintenance of that system; and
  - (b) send a copy of that notice to any other relevant supplier which uses the supply system for the purposes of supplying water to consumers who are likely to be affected by the failure.
- (6) Where the water undertaker or supplementary licensee has identified a failure attributable to the domestic distribution system or to the maintenance of such a system, it must, at the same time as notification is given under paragraph (5)—
- (a) by notice in writing—
    - (i) to those of its consumers who are likely to be affected by the failure; and
    - (ii) to any other relevant supplier which uses the supply system for the purposes of supplying water to consumers who are likely to be affected by the failure, inform them of the nature of the failure and provide details of the steps (if any) that, in its opinion, it is necessary or desirable for those consumers to take in the interests of their health; and
  - (b) send a copy of that notice to the Welsh Ministers and to each appropriate local authority.
- (7) A relevant supplier which receives a notice under paragraph (6)(a)(ii) must immediately send or cause to be sent a copy of that notice to those of its consumers who are likely to be affected by the failure.
- (8) A water undertaker or supplementary licensee which has complied with the requirements of paragraphs (5) and (6) need not, in respect of the same failure or apprehended failure, comply with the requirements of regulation 35(6)(a)(iv).
- (9) Where such a failure as is mentioned in paragraph (1) relates to the copper or lead parameter, the relevant supplier must, as soon as reasonably practicable after the occurrence, modify or replace such of its pipes and their associated fittings as it knows or has reason to believe have the potential for contributing to copper or lead in the water supplied to the premises, so as to eliminate that potential (whether or not the presence of copper or lead in those pipes contributed to the failure).

## Investigations: indicator parameters

**19.**—(1) Where a water undertaker or supplementary licensee has reason to believe that water of a relevant description does not meet the specifications for indicator parameters set out in Schedule 2, it must immediately take such steps as are necessary to identify—

- (a) whether water of a relevant description does or does not meet the specifications;
- (b) the indicator parameters in respect of which the specifications are not met;
- (c) if the specification for the coliform bacteria or colony counts parameter (items 4 and 5 in Schedule 2) is not met, whether the inability to meet that specification is attributable—
  - (i) to the domestic distribution system;
  - (ii) to the maintenance of that system; or
  - (iii) to neither of those matters;
- (d) if the specification for the tritium parameter is not met, whether the inability to meet the specification is attributable to artificial radionuclides.

(2) As soon as possible after the matters specified in paragraph (1) have been identified, the water undertaker or supplementary licensee must—

- (a) notify the Welsh Ministers—
  - (i) of those matters;
  - (ii) whether it is its opinion that, in relation to each parameter identified in accordance with paragraph (1)(b), a recurrence of the inability to meet the specification in respect of that parameter is likely; and
- (b) send a copy of that notice to any other relevant supplier which uses the supply system for the purposes of supplying water to consumers who are likely to be affected by the failure.

(3) Where, in a case to which paragraph (1)(c) applies, the inability to meet the specification has been identified as attributable to the domestic distribution system or to the maintenance of that system, the water undertaker or supplementary licensee must, at the same time as notification is given under paragraph (2)—

- (a) by notice in writing—
  - (i) to those of its consumers who are likely to be affected by the failure; and
  - (ii) to any other relevant supplier which uses the supply system for the purposes of supplying water to consumers who are likely to be affected by the failure, inform them of the nature of the failure and provide details of the steps (if any) that, in its opinion, it is necessary or desirable for those consumers to take in the interests of their health; and
- (b) send a copy of that notice to the Welsh Ministers and to each appropriate local authority.

(4) A relevant supplier which receives a notice under paragraph (3)(a)(ii) must immediately send or cause to be sent a copy of that notice to those of its consumers who are likely to be affected by the failure.

## Action by the Welsh Ministers

**20.**—(1) Where—

- (a) a notification given in accordance with paragraph (6) of regulation 18 in the circumstances mentioned in paragraph (1) of that regulation (including that paragraph as read with paragraph (4)(a) of that regulation) discloses—
  - (i) a failure in respect of a parameter specified in Table B in Schedule 1, and
  - (ii) that the failure is not attributable to the domestic distribution system or the maintenance of that system, and
- (b) it appears to the Welsh Ministers that the failure is not trivial and is likely to recur, the Welsh Ministers may, by notice in writing to any relevant supplier which uses the supply system for the purposes of supplying water to consumers in respect of which the notification was given, require that relevant supplier to seek a departure in accordance with regulation 22.

(2) The exercise by the Welsh Ministers of the power conferred by paragraph (1) will not preclude the exercise by the Welsh Ministers of the power conferred by section 18 of the Act (orders for securing compliance with certain provisions)(1).

(3) Where—

- (a) a notification given in accordance with regulation 18(5) in the circumstances mentioned in regulation 18(3)(b) discloses—
  - (i) a failure in relation to any parameter specified in Table B in Schedule 1, and
  - (ii) that the failure is not attributable to the domestic distribution system or the maintenance of that system, and
- (b) it appears to the Welsh Ministers that the failure in respect of that parameter is not trivial and is likely to recur,

the Welsh Ministers must consider whether to vary the terms of an authorisation under regulation 22.

(4) Where—

- (a) a notification given in accordance with regulation 19(2) discloses an inability to meet the specification applicable to an indicator parameter, and
- (b) the Welsh Ministers consider that the inability poses a potential danger to human health,

the Welsh Ministers must, by notice in writing to any relevant supplier which uses the supply system for the purposes of supplying water to consumers in respect of which the notification was given, require that relevant supplier to take such steps as may be determined by the Welsh Ministers and specified in the notice.

(5) A relevant supplier to whom a notice under paragraph (4) has been given must take the steps specified in the notice

### **Failure attributable to domestic distribution system where water is supplied to the public**

**21.**—(1) Paragraph (3) applies where the Welsh Ministers consider that the failure (or, in the case of regulation 18, apprehended failure) disclosed by a notification under regulation 18(5) or regulation 19(2)—

- (a) is attributable to the domestic distribution system, or the maintenance of that system, in premises where water supplied for regulation 4(1) purposes is made available for use by the members of the public, including schools within the meaning of the Education Act 1996(2), hospitals and restaurants;
- (b) is not trivial and is likely to recur; and
- (c) in the case of a notification given under regulation 19(2), poses a potential danger to human health.

(2) References in this regulation to “failure” are references to a failure or apprehended failure of the type referred to in paragraph (1).

(3) Subject to paragraph (7), the Welsh Ministers must as soon as possible, serve a notice in writing on—

- (a) the water undertaker that supplies water to the premises, or
- (b) the water undertaker whose supply system is used for the purpose of a water supply licensee making a supply of water to the premises,

requiring it to exercise the power conferred by section 75(2) of the Act (power to prevent damage and to take steps to prevent contamination, waste etc.)(3) in respect of the failure.

(4) The provisions of section 75(2) to (12) of the Act apply in relation to the exercise of the power in section 75(2) in pursuance of a notice served under paragraph (3), subject to the modifications in paragraph (5).

(5) Those modifications are—

(1) Section 18 was amended by sections 36(2) and 49(2) of, and paragraph 4 of Schedule 8 to, the Water Act 2003, and by paragraph 26 of Schedule 7 to the Water Act 2014.

(2) 1996 c.56.

(3) Section 75 was amended by paragraph 24 of Schedule 8 to the Water Act 2003 and paragraph 72 of Schedule 7 to the Water Act 2014.

- (a) subsections (2)(b) and (4) are to be read as if any reference to “damage, contamination, waste, misuse or undue consumption” were a reference to the failure.
- (b) subsection (9) is to be read as if for the words from “the water undertaker shall have power” to the end of paragraph (b) there were substituted—  
“the water undertaker—
  - (a) must take those steps itself; and
  - (b) subject to subsection (10) may recover any expenses reasonably incurred by the undertaker in taking those steps from the person on whom the notice was served.
- (6) Where the water undertaker exercises the power in section 75(2) of the Act pursuant to a notice served by the Welsh Ministers under paragraph (3) it must inform by notice in writing any of its other consumers who are likely to be affected, of the steps it has taken, and that notice must include a copy of any notice that it has served.
- (7) Where the Welsh Ministers consider that the failure (or any aspect of it) is attributable to factors arising from the further distribution by a person other than a water undertaker or water supply licensee of water supplied by a water undertaker or water supply licensee, the Welsh Ministers—
  - (a) must not serve a notice under paragraph (3) in respect of that failure or aspect of it; and
  - (b) if the Welsh Ministers consider that the local authority needs information or assistance from the water undertaker or water supply licensee in order to be able to carry out its duties under regulation 17 (provision of information) or 18 (investigation) of the Private Water Supplies (Wales) Regulations 2017<sup>(1)</sup>, the Welsh Ministers must serve a notice on the water undertaker or water supply licensee requiring it to provide such information or assistance to the local authority as is specified in the notice.
- (8) The water undertaker or water supply licensee on which a notice under this regulation has been served must take the steps specified in the notice as soon as possible.

#### **Authorisation of temporary supply of water that is not wholesome**

- 22.**—(1) Subject to paragraph (2), the Welsh Ministers may, upon the written application of a relevant supplier, authorise in accordance with regulation 23 a departure from the provisions of Part 3 of these Regulations in so far as they relate to—
- (a) a parameter specified in Table B in Schedule 1; and
  - (b) the supply of water by a relevant supplier in any of the water supply zones which it uses for the purposes of supplying water to consumers.
- (2) The Welsh Ministers must not authorise a departure under paragraph (1) unless they are satisfied—
- (a) that the authorisation is necessary to maintain in that zone a supply of water for regulation 4(1) purposes;
  - (b) that a supply of water for those purposes cannot be maintained in that zone by any other reasonable means; and
  - (c) that the supply of water in accordance with the authorisation does not constitute a potential danger to human health.
- (3) Every water undertaker or supplementary licensee must provide with its application—
- (a) a statement—
    - (i) of the grounds on which the authorisation is sought;
    - (ii) of the water supply zone in respect of which the authorisation is sought;
    - (iii) of the parameters in respect of which the prescribed concentration or value cannot be met;

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(1) S.I. 2017/1041 (W. 270).

- (iv) in respect of each parameter to which paragraph (iii) applies, of the results of the analysis of the samples taken in the water supply zone in question during the 12 months immediately preceding the first day on which the prescribed concentration or value could not be met;
- (v) in respect of each parameter to which paragraph (iii) applies, of the results of the analysis of the samples (if any) taken in the water supply zone in question between the first day on which the prescribed concentration or value could not be met and the date of the application;
- (vi) of the average daily quantity of water supplied to that zone or, if that quantity cannot readily be ascertained, of the average daily quantity of water supplied from the treatment works that supplies water to that zone;
- (vii) of the estimated population of that zone;
- (viii) as to whether, if a departure were authorised in the terms sought, any relevant food-production undertaking would be affected;
- (ix) of the period for which the authorisation is sought; and
- (x) of the reasons why the supply cannot be maintained by other reasonable means;
- (b) a scheme for monitoring the quality of water supplied in the zone during the period for which the authorisation is sought; and
- (c) a summary of the steps that it proposes to take, either alone or together with other relevant suppliers, in order to secure that the supply fully satisfies the requirements of Part 3, including—
  - (i) a timetable for the work;
  - (ii) an estimate of the cost of the work; and
  - (iii) provisions for reviewing the progress of the work and for reporting the result of the review to the Welsh Ministers.

(4) At the same time as it makes an application for an authorisation under paragraph (1), the water undertaker or supplementary licensee must serve a copy of the application and of the statement, scheme and summary referred to in paragraph (3) on—

- (a) every appropriate local authority;
- (b) the Public Health Wales National Health Service Trust;
- (c) where the water supply zone is wholly or partly in England, Public Health England; and
- (d) the Council.<sup>(1)</sup>

(5) A body on whom documents have been served in accordance with paragraph (4) may make representations to the Welsh Ministers in connection with the application; and any such representations must be made not later than the end of the period of 30 days beginning with the date on which the application for the authorisation is made.

### **Authorisations: terms and conditions**

**23.**—(1) Subject to paragraph (2), a departure may be authorised under regulation 22 for such period as is in the Welsh Ministers' opinion reasonably required for securing a supply of water for regulation 4(1) purposes that fully satisfies the requirements of Part 3 ("the departure period").

- (2) No departure period may exceed 3 years.
- (3) Subject to paragraph (4), an authorisation under regulation 22—
  - (a) must specify—
    - (i) the grounds on which it is granted;
    - (ii) every water supply zone in respect of which it is granted;
    - (iii) the extent to which a departure from the prescribed concentration or value of any parameter is authorised;

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(1) See section 219(1) of the Act (as amended by section 56 of, and paragraph 27(7)(b) of Schedule 7 to, the Water Act 2014) which defines "the Council" as the Consumer Council for Water.

- (iv) in respect of each parameter to which paragraph (iii) applies, the results of the analysis of the samples taken in each water supply zone in question during the 12 months immediately preceding the first day on which the prescribed concentration or value could not be met;
  - (v) in respect of each parameter to which paragraph (iii) applies, the results of the analysis of the samples (if any) taken in each water supply zone in question between the first day on which the prescribed concentration or value could not be met and the date of the application;
  - (vi) the average daily quantity of water supplied from each of those zones or, if that quantity cannot readily be ascertained, the average daily quantity of water supplied from the treatment works that supplies water to that zone;
  - (vii) the estimated population of each of those zones;
  - (viii) whether or not any relevant food-production undertaking would be affected; and
  - (ix) the departure period;
- (b) must require the implementation of a scheme for monitoring the quality of water supplied in each of those zones during the departure period (which may be, but need not be, the scheme submitted in accordance with regulation 22(3)(b));
- (c) must require the carrying out of the steps which, in its opinion, are reasonably required in order to secure that the supply fully satisfies the requirements of Part 3 (whether or not the steps are those proposed in the summary submitted in accordance with regulation 22(3)(c));
- (d) must specify, in relation to those steps—
- (i) the timetable for the work;
  - (ii) an estimate of the cost of the work; and
  - (iii) provisions for reviewing the progress of the work and for reporting to it the result of the review; and
- (e) must require a relevant supplier to provide to the relevant population advice as to the measures (if any) that it would be advisable for them to take in the interests of their health for the whole or any part of the departure period.

(4) In paragraph (3)(e), “relevant population” means the population within the water supply zones to which the authorisation applies and, in particular, those groups of that population for which the supply of water in accordance with the authorisation could present a special risk.

(5) Where paragraph (6) applies, the particulars to be specified in the authorisation are those required by paragraph (3)(a)(iii) and (ix), and paragraph (3)(b) to (e) does not apply.

(6) This paragraph applies where the Welsh Ministers are of the opinion that—

- (a) the extent of the contravention of the requirements of Part 3 as respects any parameter is trivial; and
- (b) the prescribed concentration or value as respects that parameter is likely to be achieved within the period of 30 days beginning with the day on which the prescribed concentration or value in respect of that parameter was contravened.

(7) Where it appears to the Welsh Ministers that a supply of water that fully satisfies the requirements of Part 3 cannot be restored by the end of the departure period, they may authorise a further departure.

(8) Paragraphs (1) to (6) will apply to a further departure authorised under paragraph (7) as they apply to a departure authorised under regulation 22.

(9) Where it appears to the Welsh Ministers that a supply of water that fully satisfies the requirements of Part 3 cannot be restored by the end of the departure period relevant to an authorisation under paragraph (5), they may, in accordance with Article 9(2) of Council Directive 98/83/EEC on the quality of water for human consumption(1), authorise a third departure.

(10) Paragraph (3) applies to a third departure authorised under paragraph (9) as it applies to a departure authorised under regulation 22, but with the substitution for the words “Subject to paragraph (5)” of the words “Subject to any direction of the European Commission”.

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(1) OJ No L 330, 5.12.1998, p 32, as last amended by Commission Directive (EU) 2015/1787 (OJ No L 260, 7.10.2015, p 6).

- (11) An authorisation under regulation 22 or this regulation may be limited to water supplied—
- (a) from particular sources or classes of source;
  - (b) to particular water supply zones or to zones of particular descriptions.

### **Publicity for authorisations**

**24.**—(1) As soon as reasonably practicable after a departure has been authorised under regulation 22 or 23, the specified relevant suppliers must—

- (a) separately publish, by making accessible, free of charge, on their websites via a hyperlink maintained on their respective homepages for at least 14 days—
    - (i) except in a case to which paragraph (4) of regulation 23 applies, a notice containing a statement of the matters specified in paragraph (3)(a)(ii), (iii), (viii) and (ix) of that regulation; and
    - (ii) in a case to which paragraph (4) of regulation 23 applies, a notice containing a statement of the matters specified in paragraph (3)(a)(ii), (iii) and (ix) of that regulation; and
  - (b) jointly give such other public notice of the authorisation and of its terms and conditions as the Welsh Ministers may, by notice served on the specified relevant suppliers, reasonably require.
- (2) In this regulation “specified relevant suppliers” means relevant suppliers—
- (a) who use the same water supply zone for the purposes of supplying water to consumers; and
  - (b) for the purposes of that supply, rely on an authorised departure relating to the same facts.

### **Revocation and modification of authorisations**

**25.**—(1) Subject to paragraphs (2) and (4), the Welsh Ministers may at any time modify or revoke an authorisation under regulation 22.

(2) Subject to paragraph (3) the Welsh Ministers must not revoke or modify an authorisation under regulation 22 without giving at least 6 months' notice in writing of their intention to do so to—

- (a) the relevant supplier to which the authorisation relates;
- (b) any other relevant supplier which, for the purposes of supplying water to consumers, uses the water supply zone in respect of which the authorised departure has been given;
- (c) every appropriate local authority;
- (d) the Public Health Wales National Health Service Trust;
- (e) where the authorisation relates to a water supply zone which is wholly or partly in England, Public Health England ; and
- (f) the Council.

(3) The Welsh Ministers may revoke or vary an authorisation under regulation 22 without notice if it appears to the Welsh Ministers that immediate revocation or modification is required in the interests of public health.

(4) A relevant supplier on whose application a departure has been authorised under this Part must notify the Welsh Ministers as soon as the circumstances which gave rise to the application cease to exist; and the Welsh Ministers will thereupon revoke the authorisation without the need for prior notice.

## **PART 8**

### **Water Treatment**

#### **Disinfection and other treatment arrangements**

**26.**—(1) Unless the conditions in paragraph (5) are satisfied, before supplying water for regulation 4(1) purposes, a water undertaker or supplementary licensee must—

- (a) disinfect the water; and

- (b) where necessary, subject the water to sufficient preliminary treatment to prepare it for disinfection.
- (2) A water undertaker or supplementary licensee must—
- (a) design, operate and maintain the disinfection process so as to keep the presence of disinfection by-products as low as possible without compromising the effectiveness of the disinfection; and
  - (b) verify the effectiveness of the disinfection process.
- (3) Paragraph (4) applies when any property, organism or substance is present in a water source at a level that may constitute a potential danger to human health.
- (4) Unless the conditions in paragraph (5) are satisfied, before supplying water for regulation 4(1) purposes using water from any source, a water undertaker or supplementary licensee must design and continuously operate an adequate treatment process for water from the source.
- (5) The conditions are that the water undertaker or supplementary licensee—
- (a) must supply water from the treatment works as a matter of urgency in order to prevent an unexpected interruption in piped supply to customers; and
  - (b) before the supply is made, has taken all necessary steps to inform consumers that the water is not disinfected or adequately treated.
- (6) For the purposes of this regulation—
- (a) “adequate treatment process” means a process of blending or purification treatment which—
    - (i) Removes; or
    - (ii) renders harmless the value or concentration of, any property of, organism or substance in, water, so that supplies do not constitute a potential danger to human health;
  - (b) “sufficient preliminary treatment” means the treatment necessary—
    - (i) to remove, or to reduce the value or concentration of, any property or substance which would interfere with disinfection; and
    - (ii) to reduce turbidity to less than one NTU; and
  - (c) water is supplied for regulation 4(1) purposes when it leaves a treatment works.

## Risk assessment

- 27.**—(1) This regulation applies to every treatment works and supply system from which water is supplied for regulation 4(1) purposes.
- (2) Every water undertaker or supplementary licensee must carry out a risk assessment of each of its treatment works and connected supply system in order to establish whether there is a significant risk of supplying water from those works or supply system that would constitute a potential danger to human health or is likely to be unwholesome.
- (3) Every water undertaker or supplementary licensee must keep its risk assessments under continuous review.
- (4) The Welsh Ministers may by notice served on a water undertaker or supplementary licensee, require a risk assessment or review to be carried out by a date specified in the notice.
- (5) Where a water undertaker or supplementary licensee becomes aware of any factors which make it likely that a risk assessment under this regulation would establish that there is a significant risk of supplying water that would constitute a potential danger to human health, or that is likely to be unwholesome, it must serve a notice on the Welsh Ministers specifying the relevant factors.

## Procedure following risk assessment and prohibition of supply

- 28.**—(1) As soon as reasonably practicable after a water undertaker or supplementary licensee has carried out a risk assessment or review of such assessment under regulation 27, it must submit to the Welsh Ministers a report of the assessment or review.
- (2) The report must contain—
- (a) a description of the methods used to carry out the assessment or review;

- (b) where the assessment or review establishes that there is no significant risk of supplying water that could constitute a potential danger to human health or could be unwholesome, a statement confirming this; and
  - (c) where the assessment or review establishes that measures have been taken to remove a significant risk of supplying water that could constitute a potential danger to human health or could be unwholesome—
    - (i) monitoring data which verifies this; and
    - (ii) details of those measures.
- (3) Where the assessment or review establishes that there is a significant risk of supplying water that could constitute a potential danger to human health or could be unwholesome, the report must—
- (a) contain a full explanation including details of every property, organism or substance that has been identified as contributing to the risk; and
  - (b) specify the measures that the water undertaker or supplementary licensee—
    - (i) has made operational as at the date of the report; and
    - (ii) intends to make operational, to mitigate the risk.
- (4) Where the Welsh Ministers have received a report which states that there is or has been a significant risk of supplying water that could constitute a potential danger to human health or could be unwholesome, they may, by notice served on the water undertaker or supplementary licensee, require the water undertaker or supplementary licensee—
- (a) to maintain such specified measures for such period of time as the Welsh Ministers consider appropriate to mitigate the risk;
  - (b) to review, revise or make operational such specified measures by such date as the Welsh Ministers consider appropriate to mitigate the risk;
  - (c) to audit whether the measures have been effective by such means as may be specified;
  - (d) not to supply water for regulation 4(1) purposes from specified treatment works or supply systems, or not to so supply unless specified conditions are satisfied; and
  - (e) to give the Welsh Ministers such information as they may require to monitor progress towards mitigation of that risk.
- (5) In paragraph (4), “specified” means specified in the notice served under that paragraph.
- (6) The Welsh Ministers may, by notice served on the relevant water undertaker or supplementary licensee, revoke or amend a notice served under paragraph (4).

### **Water treatment to minimise contamination from pipes**

- 29.**—(1) Paragraph (2) applies where there is a risk (“the prescribed risk”) that water supplied by a relevant supplier would, for the reason mentioned in paragraph (3), after leaving the relevant supplier’s pipes—
- (a) contain a concentration of copper in excess of 2 mg/litre; or
  - (b) contain a concentration of lead in excess of 10 µg/litre.
- (2) Every water undertaker or supplementary licensee which introduces water into the supply system used by the relevant supplier must, subject to paragraph (4), treat the water in such a way as will, in its opinion, eliminate the prescribed risk or reduce it to a minimum.
- (3) The reason referred to in paragraph (1) is the presence in the water of a concentration of copper or lead which is attributable to the fact that copper or lead is the major component of such a pipe as is mentioned in section 68(3)(a)(**1**) of the Act, or its associated fittings.
- (4) Paragraph (1) will not require a water undertaker or supplementary licensee to treat water—
- (a) if the treatment is unlikely to achieve a significant reduction in the concentration of copper or lead; or

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(1) Section 68(3) was amended by paragraph 18(5) of Schedule 8 to the Water Act 2003.

- (b) if treatment is not reasonably practicable.

### **Replacement of lead pipes**

- 30.**—(1) The relevant supplier must modify or replace its part of a pipe where a relevant supplier—
- (a) has received from the owner of premises to which water is so supplied notice in writing—
    - (i) of the owner's intention to replace so much of the pipe as belongs to him; and
    - (ii) of his desire that the relevant supplier replaces the remainder of the pipe; and
  - (b) has reason to believe that water supplied by it for regulation 4(1) purposes from a pipe to which paragraph (2) applies contains, at the consumer's tap, a concentration of lead which exceeds 10 µg/l.
- (2) This paragraph applies to a pipe—
- (a) of which the major component is lead;
  - (b) which is subject to water pressure from a water main or would be so subject but for the closing of some valve; and
  - (c) of which part belongs to a relevant supplier and of which the remainder belongs to the owner of any premises to which the relevant supplier supplies water for regulation 4(1) purposes.

### **Application and introduction of substances and products**

- 31.**—(1) Subject to paragraph (2), a water undertaker or supplementary licensee must not apply any substance or product to, or introduce any substance or product into, water which is to be supplied for regulation 4(1) purposes unless one of the requirements of paragraph (4) is satisfied.
- (2) A substance or product which, at the time of its application or introduction—
- (a) bears an appropriate CE marking in accordance with the Constructions Products Regulation, or
  - (b) conforms to an appropriate British Standard or some other appropriate standard of an EEA state or Turkey which provides an equivalent level of protection and performance,
- may be applied or introduced, notwithstanding that none of the requirements of paragraph (4) are satisfied.
- (3) Paragraph (2) applies only if such an application or introduction complies with—
- (a) such conditions of use restricting the dosing concentration as are for the time being in force in relation to such substances and products pursuant to a determination of the Welsh Ministers by an instrument in writing;
  - (b) such other requirements, within the meaning of the Technical Standards Directive, in relation to such substances and products, as have been communicated to the European Commission in the form of a draft technical regulation in accordance with Article 8 of that Directive, and whose adoption by a Member State has also been communicated to the European Commission.
- (4) The requirements of this paragraph are—
- (a) that the Welsh Ministers have for the time being approved the application or introduction of that substance or product and it is applied or introduced in accordance with any conditions attaching to that approval;
  - (b) that the Welsh Ministers are satisfied that the substance or product either alone or in combination with any other substance or product in the water is unlikely to affect adversely the quality of the water supplied; and
  - (c) that the substance or product is to be applied or introduced solely for the purposes of testing or research, and the water undertaker or supplementary licensee has given to the Welsh Ministers not less than 3 months' notice in writing of its intention so to apply or introduce the substance or product.
- (5) An application for such an approval as is mentioned in paragraph (4)(a) may be made by any person.

(6) If the Welsh Ministers decide to issue an approval under paragraph (4)(a), they may include in the approval such conditions as it considers appropriate and, subject to paragraph (10), may at any time revoke or vary any approval it has previously given.

(7) Where substances or products are applied or introduced in any case in which the requirement mentioned in paragraph (4)(c) is satisfied, their application or introduction will be discontinued within 12 months of the date on which they were first applied or introduced or, if the Welsh Ministers by notice given in writing to the water undertaker or supplementary licensee so directs, within such other period (whether longer or shorter) as may be specified in the notice.

(8) The Welsh Ministers may, by notice given in writing to any water undertaker or supplementary licensee, prohibit the water undertaker or supplementary licensee from applying to, or introducing into, water intended to be supplied for regulation 4(1) purposes any substance or product which the water undertaker or supplementary licensee would otherwise be authorised to apply or introduce by virtue of—

- (a) paragraphs (1) and (4)(b) or (c); or
- (b) paragraph (2).

(9) A prohibition under paragraph (8) may be without limitation as to time or for such period as is specified in the notice.

(10) Subject to paragraph (11) the Welsh Ministers may—

- (a) revoke by an instrument in writing any approval given by it under paragraph (4)(a);
- (b) modify any such approval by an instrument in writing by including conditions or varying existing conditions;
- (c) give any such notice as is mentioned in paragraph (8);

(11) Unless the Welsh Ministers are satisfied that it is necessary to do so in the interests of public health without notice, the Welsh Ministers must not do any of those things without giving all such persons as are, in the opinion of the Welsh Ministers, likely to be affected by the revocation or modification of the approval or by the giving of the notice at least 6 months' notice in writing of its intention.

(12) Notwithstanding paragraph (11), the Welsh Ministers must give immediate notice to all persons likely to be affected by the revocation or variation of an instrument mentioned in paragraph (10)(a) or (b).

(13) At least once in each year, the Welsh Ministers must issue a list of all the substances and products, with particulars of the action taken, in relation to which—

- (a) an approval under paragraph (4)(a) has been granted or refused;
- (b) such an approval has been revoked or modified; and
- (c) a notice has been given under paragraph (8).

(14) The Welsh Ministers may—

- (a) by notice served on the person who makes an application for approval under paragraph (4)(a), require the person to pay the Welsh Ministers a charge which reflects the administrative expenses incurred or likely to be incurred by the Welsh Ministers in connection with the application; and
- (b) in determining the amount of any such charge, adopt such methods and principles for its calculation as appear to the Welsh Ministers to be appropriate.

(15) In this regulation—

- (a) “EEA state” means—
  - (i) a Member State of the EU; or
  - (ii) any other State that is a party to the EEA agreement;
- (b) “EEA agreement” means the agreement on the European Economic Area signed at Oporto on 2 May 1992, together with the Protocol adjusting that Agreement signed at Brussels on 17 March 1993, as modified or supplemented from time to time;

- (c) “the Construction Products Regulation” means Regulation (EU) No 305/2011 of the European Parliament and of the Council laying down harmonised conditions for the marketing of construction products(1);
- (d) “the Technical Standards Directive” means Directive (EU) 2015/1535 of the European Parliament and of the Council laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services(2).

## Use of processes

**32.**—(1) The Welsh Ministers may at any time by notice in writing given to a water undertaker or supplementary licensee require the water undertaker or supplementary licensee to make an application to it for approval of the use of any process; and may prohibit the water undertaker or supplementary licensee for such period as may be specified in the notice from using any such process in connection with the supply by the water undertaker or supplementary licensee of water for regulation 4(1) purposes.

(2) The Welsh Ministers may refuse the application or impose on any approval given for the purposes of this regulation such conditions as they think fit and, subject to paragraph (3), may at any time by notice in writing to the water undertaker or supplementary licensee revoke an approval so given or modify or revoke any condition imposed by virtue of this paragraph.

(3) Subject to paragraph (4), unless the Welsh Ministers have given to the water undertaker or supplementary licensee at least 6 months’ notice in writing of the Welsh Ministers’ intention to revoke, vary or prohibit, as the case may be, the Welsh Ministers must not—

- (a) revoke any approval given for the purposes of this regulation;
- (b) modify any condition imposed by virtue of paragraph (2); or
- (c) prohibit a water undertaker or supplementary licensee from using any process.

(4) Paragraph (3) does not apply in any case in which the Welsh Ministers are of the opinion that the immediate revocation, modification or prohibition is necessary in the interests of public health.

(5) Regulation 31(13) applies for the purposes of this regulation as if—

- (a) for the reference to a substance or product there were substituted a reference to a process; and
- (b) for the reference to paragraph (4)(a) and paragraph (8) there were substituted a reference to this regulation and paragraph (1) of this regulation respectively.

## Offences

**33.**—(1) A water undertaker or supplementary licensee which contravenes regulation 26(1) or (4) or the terms of a notice served under regulation 28(4)(d) will be guilty of an offence and liable on summary conviction, or on conviction on indictment, to a fine.

(2) In any proceedings against a water undertaker or supplementary licensee for an offence under paragraph (1), it will be a defence for that water undertaker or supplementary licensee to show that it took all reasonable steps and exercised all due diligence to avoid the commission of the offence.

(3) A water undertaker or supplementary licensee which—

- (a) applies or introduces any substance or product in contravention of regulation 31(1) or a notice given under regulation 31(8), or
- (b) uses any process in contravention of a prohibition imposed under regulation 32(1) or without complying with a condition imposed by virtue of regulation 32(2),

will be guilty of an offence and liable on summary conviction, or on conviction on indictment, to a fine.

(4) If any person, in furnishing any information or making any application under regulation 31 or 32, makes any statement which he or she knows to be false in a material particular, or recklessly makes any

(1) OJ No L 88, 4.4.2011, p 5, as last amended by Commission Delegated Regulation (EU) No 574/2014 (OJ No L 159, 28.5.2014, p 41).

(2) OJ No L 241, 17.9.2015, p 1.

statement which is false in a material particular, that person is guilty of an offence and liable on summary conviction, or on conviction on indictment, to a fine.

(5) Proceedings for an offence under paragraph (4) will not be instituted except by or with the consent of the Welsh Ministers or the Director of Public Prosecutions.

## PART 9

### Records and Information

#### **Maintenance of records**

**34.**—(1) Every water undertaker or supplementary licensee must, in respect of each of the water supply zones which it uses for the purposes of supplying water to consumers, prepare and maintain a record containing—

- (a) the name of the zone;
- (b) the name of every water treatment works, service reservoir and other supply point from which water is supplied to premises within the zone;
- (c) an estimate of the population of the zone;
- (d) particulars of any departure authorised under Part 7 of these Regulations which applies to water supplied in the zone;
- (e) particulars of the action taken or required to be taken by the water undertaker or supplementary licensee to comply with—
  - (i) any enforcement order made under section 18 of the Act;
  - (ii) any departure authorised under Part 7; and
  - (iii) any notice under regulation 20(4);
- (f) particulars of the result of any analysis of samples taken in accordance with Part 4 of these Regulations or any of regulations 11 to 13, 17 and 28;
- (g) the results of any electronic monitoring where this is carried out in accordance with these Regulations;
- (h) particulars of all consumer contacts in relation to the discharge of duties under these Regulations; and
  - (i) such other particulars as the water undertaker or supplementary licensee may determine.

(2) A retail licensee must, in respect of each of the water supply zones which it uses for the purposes of supplying water to consumers, prepare and maintain a record containing—

- (a) the name of the water supply zone;
- (b) particulars of any departure authorised under Part 7 of these Regulations which applies to water supplied in the zone;
- (c) particulars of the action taken or required to be taken by the retail licensee to comply with—
  - (i) any enforcement order made under section 18 of the Act;
  - (ii) any departure authorised under Part 7; and
  - (iii) any notice under regulation 20(4);
- (d) particulars of all consumer contacts in relation to the discharge of duties under these Regulations; and
  - (e) such other particulars as the retail licensee may determine.

(3) A water undertaker or supplementary licensee must make entries in the record—

- (a) in respect of the matters mentioned in paragraph (1)(a) to (d) and (e)(ii) as soon as reasonably practicable and no later than 3 months after the day on which it first introduces water into a supply system for the purposes of supplying water to consumers;

- (b) in respect of the matters mentioned in paragraph (1)(e)(i) and (iii) within 28 days of the date of the order and notice respectively; and
  - (c) relating to the results of the analysis of samples within 28 days of the day on which the result is first known to the water undertaker or supplementary licensee.
- (4) A retail licensee must make—
- (a) initial entries in the record in respect of the matters mentioned in paragraph (2)(a), (b) and (c)(ii) no later than 3 months after the day on which it first uses a supply system for the purposes of supplying water to consumers; and
  - (b) entries in respect of the matters mentioned in paragraph (2)(c)(i) and (iii) within 28 days of the date of the order and notice respectively.
- (5) Without prejudice to paragraph (3), the relevant supplier must at least once in each year review and bring up to date the record required to be kept by paragraph (1) or paragraph (2) (as the case may be).
- (6) Nothing in this regulation will require a relevant supplier to retain a record—
- (a) of information mentioned in any of sub-paragraphs (a), (b) and (f) of paragraph (1) or in paragraph (2)(a) at any time more than 30 years after the date on which the information was first entered in the record;
  - (b) of information mentioned in any other sub-paragraph of paragraph (1) or paragraph (2) at any time more than 5 years after the date on which the information was first entered in the record.

## Provision of information

**35.**—(1) Any person may request a relevant supplier to send to the person making the request a copy of any record maintained by the relevant supplier under regulation 34 and the relevant supplier must, within 7 days of the receipt of the request, send a copy of the record requested to the person who requested it.

- (2) A relevant supplier must comply with a request under paragraph (1)—
- (a) in the case of a request relating to a water supply zone, free of charge if the person receives a supply of water in the zone; or
  - (b) in any other case, on payment of such reasonable charge as the relevant supplier may determine.
- (3) Paragraph (1) does not oblige a relevant supplier to comply with a request which is vexatious.
- (4) Where a relevant supplier has previously complied with a request which was made by any person, paragraph (1) does not oblige it to comply with a subsequent identical or substantially similar request from that person unless a reasonable interval has elapsed between compliance with the previous request and the making of the subsequent request.
- (5) A water undertaker must include in, or append to, at least one of the accounts sent to each customer in any year a statement informing customers of their rights under paragraph (1).
- (6) As soon as possible after an event which, by reason of its effect or likely effect on the water supplied by a relevant supplier, gives rise or is likely to give rise to a significant risk to human health the relevant supplier must notify—
- (a) in every case—
    - (i) every appropriate local authority;
    - (ii) the Public Health Wales National Health Service Trust;
    - (iii) the Council; and
    - (iv) the Welsh Ministers; and
  - (b) in any case where the event gives rise or is likely to give rise to a significant risk to human health in England—
    - (i) Public Health England; and
    - (ii) the Secretary of State.

(7) Where a person has received a notification under paragraph (6), that person may require the relevant supplier to provide such further information relating to the event and its consequences as that person may reasonably require.

## PART 10

### Functions of Local Authorities in Relation to Water Quality

#### Application and interpretation of this Part

**36.**—(1) This Part applies to the performance by a local authority of their duty under section 77(1) of the Act (general functions of local authorities in relation to water quality) insofar as that duty relates to water supplies which are not private supplies.

(2) In this Part “specified relevant supplier”, in relation to a local authority, means—

- (a) a water undertaker any of whose water supply zones include an area which is situated within the area of that authority; or
- (b) a water supply licensee which uses any such water supply zones for the purposes of supplying water to consumers.

#### Duties of local authorities: supplementary provision

**37.**—(1) In performing their duty under section 77(1) of the Act, a local authority—

- (a) must make such arrangements with the specified relevant supplier as will secure that the authority is notified as mentioned in regulation 35(6)(a)(i); and
- (b) may take, or cause to be taken, and analyse, or cause to be analysed, by a person designated by them in writing, such samples of the water supplied to premises in their area as they may reasonably require.

(2) Regulation 15 applies to samples taken by virtue of paragraph (1) as it applies to samples taken for the purposes of Parts 4 and 5 of these Regulations, but regulation 15(1) is to be read as if for the words “water undertaker or supplementary licensee” there were to be substituted “local authority”.

## PART 11

### Enforcement

#### Contraventions by relevant suppliers

**38.** Any duty or requirement imposed by Parts 4 to 9 of these Regulations on a relevant supplier will be enforceable under section 18 of the Act by the Welsh Ministers or the Authority<sup>(1)</sup>, whether or not the duty or requirement constitutes an offence.

## PART 12

### Miscellaneous

#### Transitional provisions

**39.**—(1) On the coming into force of these Regulations—

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<sup>(1)</sup> See section 219(1) of the Act (as amended by section 101 of, and paragraph 27 of Schedule 7 to, the Water Act 2003) which defines “the Authority” as the Water Services Regulation Authority.

- (a) a notice given under regulation 6A(3) of the 2010 Regulations which had effect immediately before the coming into force of these Regulations is taken to be a notice given under regulation 6(13) of these Regulations;
  - (b) an authorisation under regulation 8(1) or (3) of the 2010 Regulations is taken to be an authorisation given under regulation 8(2) or (4) respectively of these Regulations;
  - (c) an authorisation given under regulation 16(7) of the 2010 Regulations which had effect immediately before the coming into force of these Regulations is taken to be an authorisation under regulation 15(7) of these Regulations;
  - (d) a notice given under regulation 17(3), (4) or (5)(b) of the 2010 Regulations which had effect immediately before the coming into force of these Regulations is taken to be a notice given under regulation 17(3), (4) or (5)(b) respectively of these Regulations;
  - (e) a notice given under regulation 20(1) or (4) of the 2010 Regulations which had effect immediately before the coming into force of these Regulations is taken to be a notice given under regulation 20(1) or (4) respectively of these Regulations;
  - (f) a notice given under regulation 21(3) of the 2010 Regulations which had effect immediately before the coming into force of these Regulations is taken to be a notice given under regulation 21(3) of these Regulations;
  - (g) an authorisation given under regulation 22(1) of the 2010 Regulations which had effect immediately before the coming into force of these Regulations is taken to be an authorisation given under regulation 22(1) of these Regulations;
  - (h) any further authorisations given under regulation 23(5) and (7) of the 2010 Regulations which had effect immediately before the coming into force of these Regulations are taken to be further authorisations given under regulation 23(7) and (9) respectively of these Regulations;
  - (i) a notice given under regulation 28(5) of the 2010 Regulations which had effect immediately before the coming into force of these Regulations is taken to be a notice given under regulation 27(4) of these Regulations;
  - (j) a notice given under regulation 29(4) of the 2010 Regulations which had effect immediately before the coming into force of these Regulations is taken to be a notice given under regulation 28(4) of these Regulations;
  - (k) an approval given under regulation 31(4)(a) of the 2010 Regulations which had effect immediately before the coming into force of these Regulations is taken to be an approval given under regulation 31(4)(a) of these Regulations;
  - (l) a notice given under regulation 31(7) or (8) of the 2010 Regulations which had effect immediately before the coming into force of these Regulations is taken to be a notice given under regulation 31(7) or (8) respectively of these Regulations;
  - (m) a notice given under regulation 32(1) of the 2010 Regulations which had effect immediately before the coming into force of these Regulations is taken to be a notice given under regulation 32(1) of these Regulations; and
  - (n) an approval or notice given under regulation 32(2) of the 2010 Regulations which had effect immediately before the coming into force of these Regulations is taken to be an approval or notice respectively given under regulation 32(2) of these Regulations.
- (2) Any variation from the standard number under the 2010 Regulations, as defined in regulation 9 of those Regulations, as in force immediately before the coming into force of these Regulations is to cease upon the coming into force of these Regulations.
- (3) Table A2 in Schedule 5 remains in force until 23:59 on 31 December 2019 following which it is revoked for all purposes.
- (4) Regulation 16 remains in force until 23:59 on 31 December 2019 following which it is revoked for all purposes.

### **Amendments and revocations**

**40.—(1)** The Regulations specified in Table 1 in Schedule 6 are amended in accordance with the provisions of that Table.

(2) The Regulations specified in Table 2 in Schedule 6 are revoked to the extent specified in that Table.

Lesley Griffiths

Cabinet Secretary for Energy, Planning and Rural Affairs,  
one of the Welsh Ministers

22 May 2018

**SCHEDULE 1** Regulations 2, 4, 6, 14, 15, 18, 20 and 22  
**PRESCRIBED CONCENTRATIONS AND VALUES**

**Table A Microbiological Parameters****Part 1: Directive requirements**

<b>Item</b>	<b>Parameters</b>	<b>Concentration or Value (maximum)</b>	<b>Units of Measurement</b>	<b>Point of compliance</b>
1	Enterococci	0	number/100 ml	Consumers' taps
2	<i>E.coli</i>	0	number/100 ml	Consumers' taps

**Part 2: National requirements**

1	Coliform bacteria	0	number/100 ml	Service reservoirs <sup>1</sup> and water treatment works
2	<i>E. coli</i>	0	number/100 ml	Service reservoirs and water treatment works

Note:

- (1) Compliance required as to 95% of samples from each service reservoir (regulation 4(6)).

**Table B Chemical Parameters****Part 1: National requirements**

<b>Item</b>	<b>Parameters</b>	<b>Concentration or Value (maximum)</b>	<b>Units of Measurement</b>	<b>Point of compliance</b>
1	Acrylamide	0.10	µg/l	<sup>1</sup>
2	Antimony	5.0	µgSb/l	Consumers' taps
3	Arsenic	10	µgAs/l	Consumers' taps
4	Benzene	1.0	µg/l	Consumers' taps
5	Benzo(a)pyrene	0.010	µg/l	Consumers' taps
6	Boron	1.0	mgB/l	Consumers' taps
7	Bromate	10	µBrO <sub>3</sub> /l	Consumers' taps
8	Cadmium	5.0	µgCd/l	Consumers' taps
9	Chromium	50	µgCr/l	Consumers' taps
10	Copper	2.0	mgCu/l	Consumers' taps
11	Cyanide	50	µgCN/l	Consumers' taps
12	1, 2 dichloroethane	3.0	µg/l	Consumers' taps
13	Epichlorohydrin	0.10	µg/l	<sup>1</sup>
14	Fluoride	1.5	mgF/l	Consumers' taps
15	Lead	10	µgPb/l	Consumers' taps
16	Mercury	1.0	µgPb/l	Consumers' taps
17	Nickel	20	µgNi/l	Consumers' taps
18	Nitrate <sup>2</sup>	50	mgNO <sub>3</sub> /l	Consumers' taps
19	Nitrite <sup>2</sup>	0.50	mgNO <sub>2</sub> /l	Consumers' taps

		0.10		Treatment Works
20	Pesticides <sup>3,4</sup>	0.030	µg/l	Consumers' taps
	Aldrin			
	Dieldrin			
	Heptachlor			
	Heptachlor epoxide			
	other pesticides	0.10	µg/l	Consumers' taps
21	Pesticides: Total <sup>5</sup>	0.50	µg/l	Consumers' taps
22	Polycyclic aromatic hydrocarbons <sup>6</sup>	0.10	µg/l	Consumers' taps
23	Selenium	10	µgSe/l	Consumers' taps
24	Tetrachloroethene and Trichloroethene <sup>7</sup>	10	µg/l	Consumers' taps
25	Trihalomethanes: Total <sup>8</sup>	100	µg/l	Consumers' taps
26	Vinyl chloride	0.50	µg/l	1

## Notes:

(1) The parametric value refers to the residual monomer concentration in the water as calculated according to specifications of the maximum release from the corresponding polymer in contact with the water. This is controlled by product specification.

(2) See also regulation 4(2)(d).

(3) See the definition of "pesticides and related products" in regulation 2.

(4) The parametric value applies to each individual pesticide.

(5) "Pesticides: Total" means the sum of the concentrations of the individual pesticides detected and quantified in the monitoring procedure.

(6) The specified compounds are:

benzo(b)fluoranthene  
benzo(k)fluoranthene  
benzo(ghi)perylene  
indeno(1,2,3-cd)pyrene.

The parametric value applies to the sum of the concentrations of the individual compounds detected and quantified in the monitoring process.

(7) The parametric value applies to the sum of the concentrations of the individual compounds detected and quantified in the monitoring process.

(8) The specified compounds are:

chloroform  
bromoform  
dibromochloromethane  
bromodichloromethane.

The parametric value applies to the sum of the concentrations of the individual compounds detected and quantified in the monitoring process.

**Part 2: National requirements**

Item	Parameters	Concentration or Value (maximum)	Units of Measurement	Point of compliance
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**unless otherwise stated)**

1	Aluminium	200	µgAl/l	Consumers' taps
2	Colour	20	mg/l Pt/Co	Consumers' taps
3	Iron	200	µgFe/l	Consumers' taps
4	Manganese	50	µgMn/l	Consumers' taps
5	Odour	Acceptable to consumers and no abnormal change		Consumers' taps
6	Sodium	200	mgNa/l	Consumers' taps
7	Taste	Acceptable to consumers and no abnormal change	...	Consumers' taps
8	Tetrachloromethane	3	µg/l	Consumers' taps
9	Turbidity	4	NTU	Consumers' taps

## SCHEDULE 2 Regulations 2, 6, 12, 15 and 19

### INDICATOR PARAMETERS

<b>Item Parameters</b>	<b>Specification</b>	<b>Concentration or Value (maximum unless otherwise stated) or State</b>	<b>Units of Measurement</b>	<b>Point of compliance</b>
1	Ammonium	0.50	µgAl/l	Consumers' taps
2	Chloride 1	250	mgCl/l	Supply point 5
3	Clostridium perfringens (including spores)	0	Number/100 ml	Supply point 5
4	Coliform bacteria	0	Number/100 ml	Consumers' taps
5	Colony counts	No abnormal change	Number/1 ml at 22°C	Consumers' taps, service reservoirs and treatment works
6	Conductivity 1	2500	µS/cm at 20°C	Supply point 5
7	Hydrogen ion	9.5 6.5 (minimum)	pHvalue	Consumers' taps
8	Indicative dose 2	0.10	mSv	Supply point 5
	(a) gross alpha	0.1	Bq/l	Supply point 5
	(b) gross beta	1	Bq/l	Supply point 5
9	Radon c	100	Bq/l	Supply point
10	Sulphate 1	250	mgSO4/l	Supply point 5
11	Total organic carbon (TOC)	No abnormal change	mgC/l	Supply point
12	Tritium (for radioactivity) 4	100	Bq/l	Supply point
13	Turbidity	1	NTU	Treatment works

Notes:

- (1) The water should not be aggressive.
- (2) Where treatment to reduce the level of radionuclides in water intended for human consumption has been taken, monitoring must be carried out to ensure the continued efficacy of the treatment.
- (3) Remedial action may be taken by the Welsh Ministers on radiological protection grounds without further consideration and deemed to be justified where radon concentrates exceed 1,000 Bq/l.
- (4) If tritium concentration exceeds its parametric value, an investigation (which may include analysis) of the presence of artificial radionuclides is required.
- (5) May be monitored from samples of water leaving treatment works or other supply point, as no significant change during distribution.

## SCHEDULE 3 Regulations 2, 6, 8 and 9

### MONITORING

#### Part 1

##### Group A and Group B Parameters

**Table 1**

**Group A parameters and circumstances for monitoring**

<i>Item number (1)</i>	<i>Parameter (2)</i>	<i>Circumstances (3)</i>
1	Aluminium	Where used as a water treatment chemical or where the water originates from, or is influenced by, surface waters
2	Ammonium	Where chloramination is practised
3	Coliform bacteria	In all circumstances
4	Colony counts 22 ° C	In all circumstances
5	Colour	In all circumstances
6	Conductivity(1)	In all circumstances
7	<i>E. coli</i>	In all circumstances
8	Hydrogen ion	In all circumstances
9	Iron	Where used as a water treatment chemical or where the water originates from, or is influenced by, surface waters
10	Manganese	Where the water originates from, or is influenced by, surface waters
11	Nitrate	Where chloramination is practised
12	Nitrite	Where chloramination is practised
13	Odour	In all circumstances
14	Residual disinfectant	In all circumstances
15	Taste	In all circumstances
16	Turbidity	In all circumstances

Note:

- (1) Sampling for this parameter in water supply zones may be substituted by sampling at supply points.

**Table 2**

**Group B1 parameters and circumstances for monitoring to be used for sampling in water supply zones (or supply points)**

<i>Item number</i>	<i>Parameter (2)</i>	<i>Circumstances</i>
1	Aluminium	Where— (i) not used as a water treatment chemical; or (ii) the water neither originates from, nor is influenced by, surface waters.
2	Ammonium	Where chloramination is not practised
3	Antimony	In all circumstances
4	Arsenic	In all circumstances
5	Benzene (1)	In all circumstances
6	Benzo(a)pyrene	In all circumstances
7	Boron (1)	In all circumstances
8	Bromate (2)	In all circumstances
9	Cadmium	In all circumstances
10	Chloride (1)	In all circumstances
11	Chromium	In all circumstances
12	<i>Clostridium perfringens</i> (including spores)	In all circumstances
13	Copper	In all circumstances
14	Cyanide (1)	In all circumstances
15	1, 2 dichloroethane (1)	In all circumstances
16	Enterococci	In all circumstances
17	Fluoride (1)	In all circumstances
18	Gross alpha (1) (3) (4)	In all circumstances
19	Gross beta (1) (3) (4)	In all circumstances
20	Iron	Where— (i) not used as a flocculant; or (ii) the water neither originates from, nor is influenced by, surface waters.
21	Lead	In all circumstances
22	Manganese	Where the water neither originates from, nor is influenced by, surface waters.
23	Mercury (1)	In all circumstances
24	Nickel	In all circumstances
25	Nitrate	Where chloramination is not practised.
26	Nitrite	Where chloramination is not practised.
27	Pesticides and related products (1)	In all circumstances
28	Polycyclic aromatic hydrocarbon	In all circumstances
29	Radon (1) (4)	In all circumstances
30	Selenium	In all circumstances
31	Sodium	In all circumstances
32	Sulphate (1)	In all circumstances
33	Tetrachloroethene (1)	In all circumstances
34	Tetrachloromethane (1)	In all circumstances

35	Total organic carbon (1) Trichloroethene Trihalomethanes: Total	In all circumstances
36	Tritium (1) (4)	In all circumstances

Notes:

(1) Sampling for these parameters may be within water supply zones (Group B1) or at supply points (Group B2).

(2) Monitoring of this parameter in water supply zones is required only where sodium hypochlorite is added after water has left the treatment works. In other circumstances, monitoring is required at supply points, see Group B2.

(3) To monitor for indicative dose.

(4) In the event that a single sample is taken in a year, a further sample must be taken if there is any change in relation to that supply that could affect the concentration of radionuclides in the water supply.

**Table 3**

**Group B2 parameters and circumstances for monitoring to be used for sampling at works or supply points**

<i>Item number</i>	<i>Parameter (2)</i>	<i>Circumstances</i>
1	Benzene (1)	In all circumstances
2	Boron (1)	In all circumstances
3	Bromate (2)	In all circumstances
4	Chloride (1)	In all circumstances
5	<i>Clostridium perfringens</i> (including spores)	In all circumstances
6	Cyanide (1)	In all circumstances
7	1, 2 dichloroethane (1)	In all circumstances
8	Fluoride (1)	In all circumstances
9	Gross alpha (1) (3) (4)	In all circumstances
10	Gross beta (1) (3) (4)	In all circumstances
11	Indicative dose	In all circumstances
12	Mercury (1)	In all circumstances
13	Nitrite	When chloramination is not practised.
14	Pesticides and related products (1)	In all circumstances
15	Radon (1) (4)	In all circumstances
16	Sulphate (1)	In all circumstances
17	Tetrachloroethene (1)	In all circumstances
18	Tetrachloromethane (1)	In all circumstances
19	Total organic carbon (1)	
20	Trichloroethene	In all circumstances
21	Tritium (1) (4)	In all circumstances

Notes:

(1) Sampling for these parameters may be within water supply zones (Group B1) or at supply points (Group B2).

(2) Monitoring is required at supply points where sodium hypochlorite is not added after water has left the treatment works. In other circumstances, see Group B1.

(3) To monitor for indicative dose.

(4) In the event that a single sample is taken in a year, a further sample must be taken if there is any change in relation to that supply that could affect the concentration of radionuclides in the water supply.

**Table 4****Group A1 parameters**

<i>Item number</i>	<i>Parameter</i>
1	Coliform bacteria
2	<i>E. coli</i>
3	Residual disinfectant

**Table 5****Group A2 parameters**

<i>Item number</i>	<i>Parameter</i>
1	Coliform bacteria
2	Colony counts 22° C
3	<i>E.coli</i>
4	Nitrite
5	Residual disinfectant
6	Turbidity

**Table 6****Group A3 parameters**

<i>Item number</i>	<i>Parameter</i>
1	Conductivity

**Table 7****Group A4 parameters**

<i>Item number</i>	<i>Parameter</i>
1	Aluminium
2	Ammonium
3	Colony counts 22° C
4	Colour
5	Conductivity
6	Hydrogen ion
7	Iron
8	Manganese
9	Nitrate
10	Nitrite
11	Odour
12	Taste
13	Turbidity

**PART 2**

## Annual sampling frequencies: water supply zones

**Table 8**

**Annual sampling frequencies for Group A4 parameters: water supply zones**

Note:

This table and each table which follows it in this Part set out the annual sampling frequencies for all the substances and parameters comprising each of the groups to which they correspond, those groups having been outlined in Part 1 of this Schedule. These are determined for each water supply zone according to its estimated population (as specified in column one of each table in this Part). The number of samples to be taken is the standard number specified in column 2, unless a notice varying this number has been given under regulation 9.

<i>Estimated population of water supply zone</i>	<i>Standard sampling frequency per year</i>
<100	2
100-4,999	4
5,000—9,999	12
10,000-29,999	24
30,000-49,999	36
50,000-79,999	52
80,000-100,000	76

**Table 9****Annual sampling frequencies for Group B1 parameters: water supply zones**

<i>Estimated population of water supply zone</i>	<i>Standard sampling frequency per year</i>
<100	1
100-4,999	4
5,000-100,000	8

**Table 10****Annual sampling frequencies for Group A1: water supply zones**

<i>Estimated population of water supply zone</i>	<i>Standard sampling frequency per year</i>
<100	4
≥100	12 per 5,000 population

Note:

For the purposes of this Table, where the population is not an exact multiple of 5,000, the population figure must be rounded up to the nearest multiple of 5,000.

**PART 3****Annual sampling frequencies: treatment works and supply points****Table 11****Annual sampling frequencies for Group A2 parameters: treatment works or supply points**

Note: This table and each table which follows it in this Part set out the annual sampling frequencies for all the substances and parameters comprising each of the groups to which they correspond at treatment works or supply points, those groups having been outlined in Part 1 of this Schedule. The frequencies are determined according to the volume of water supplied at each

treatment works or supply point. The number of samples to be taken is the standard number specified in column 2, unless a notice varying this number has been issued under regulation 9.

<i>Volume of water supplied m<sup>3</sup>/day</i>	<i>Standard sampling frequency per year</i>
<20	4
20-1,999	52
2,000-5,999	104
6,000-11,999	208
≥12,000	365

**Table 12****Annual sampling frequencies for Group A3 parameters: treatment works or supply points**

<i>Volume of water supplied m<sup>3</sup>/day</i>	<i>Standard sampling frequency per year</i>
<20	2
20-999	4
1,000-1999	12
2,000-5,999	24
6,000-9,999	36
10,000-15,999	52
16,000-32,999	104
33,000-49,999	156
50,000-67,999	208
68,000-84,999	260
85,000-101,999	312
102,000-119,999	365
120,000-241,999	730
242,000-484,999	1,460
485,000-728,999	2,190

**Table 13****Annual sampling frequencies for Group B2 parameters: treatment works or supply points**

<i>Volume of water supplied m<sup>3</sup>/day</i>	<i>Standard sampling frequency per year</i>
<20	1
20-999	4
1,000-49,999	8
50,000-89,999	12
90,000-299,999	24
300,000-649,999	36
≥650,000	48

## SCHEDULE 4 Regulation 6

Monitoring for indicative dose and analytical performance characteristics

### Monitoring for compliance with the indicative dose

- 1.—(1) A water undertaker may use reliable screening strategies to indicate the presence of radioactivity in water intended for human consumption.

- (2) The strategies may include screening for—
- certain radionuclides or individual radionuclide; or
  - gross alpha activity or gross beta activity (where appropriate gross beta activity may be replaced by residual beta activity after subtraction of the K-40 activity concentration).

### **Screening for certain radionuclides, or screening for an individual radionuclide**

**2.**—(1) If one of the activity concentrations exceeds 20% of the corresponding derived value or the tritium concentration exceeds its parametric value listed in Schedule 2 an analysis of additional radionuclides is required.

(2) In deciding which radionuclides are required to be measured for each supply, a water undertaker must take into account all relevant information about likely sources of radioactivity.

### **Screening strategies for gross alpha activity and gross beta activity**

**3.**—(1) A water undertaker may use a screening strategy for gross alpha and gross beta to monitor for the parametric indicator value for indicative dose.

(2) Subject to sub-paragraph (3) the recommended screening values are—

- 0,1Bq/l for gross alpha activity; and
- 1,0Bq/l for gross beta activity(1).

(3) If the gross alpha activity exceeds 0,1Bq/l or the gross beta activity exceeds 1,0Bq/l, analysis for specific radionuclides is required.

(4) The Welsh Ministers may set alternative screening levels for gross alpha activity and gross beta activity where it can be demonstrated by the water undertaker that the alternative levels are in compliance with an indicative dose of 0,1 mSv.

(5) The radionuclides to be measured must be based on all relevant information about likely sources of radioactivity.

### **Calculation of the indicative dose**

**4.**—(1) The indicative dose must be calculated from—

- the measured radionuclide concentrations and the dose coefficients referred to as “standard values and relationships” in Article 13, and recommended for the estimation of doses from internal exposure in the definition of “standard values and relationships” in Article 4(96), of Council Directive 2013/59/Euratom laying down basic safety standards for protection against the dangers arising from exposure to ionising radiation(2);or
- more recent information recognised by the Welsh Ministers, on the basis of the annual intake of water (730 l for adults).

(2) Where the following formula is satisfied, it can be assumed that the indicative dose is less than the parametric value of 0,1 mSv and no further investigation is required—

$$\sum_{i=1}^n \frac{C_i (\text{obs})}{C_i (\text{der})} \leq 1$$

where—

“ $C_i(\text{obs})$ ” means observed concentration of radionuclide I;

“ $C_i(\text{der})$ ” means derived concentration of radionuclide i;

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(1) Where appropriate, gross beta activity may be replaced by residual beta activity after subtraction of the K-40 activity concentration.

(2) OJ No L 13, 17.1.2014, p.1. For the estimation of doses from internal exposure, Article 4(96) refers to chapter 1 of ICRP (International Commission on Radiological Protection) Publication 119. See Table F.1 in Annex F. A copy of ICRP Publication 119 can be obtained from the ICRP website ([www.icrp.org](http://www.icrp.org)) or from the Welsh Government Water Branch, Welsh Government, Cathays Park, Cardiff, CF10 3NQ.

“n” means number of radionuclides detected.

**Table 1****Derived concentrations for radioactivity in water intended for human consumption**

This table includes values for the most common natural and artificial radionuclides: these are precise values, calculated for a dose of 0.1 mSy, an annual intake of 730 litres and using the dose coefficients referred to as “standard values and relationships” in Article 13, and recommended for the estimation of doses from internal exposure in the definition of “standard values and relationships” in Article 4(96), of Council Directive 2013/59/Euratom. Derived concentrations for other radionuclides can be calculated on the same basis, and values can be updated on the basis of more recent information recognised by the Welsh Ministers.

<b>Origin</b>	<b>Nuclide</b>	<b>Derived concentration</b>
Natural	U-238 a	3,0 Bq/l
	U-234 a	2,8 Bq/l
	Ra-226	0,5 Bq/l
	Ra-228	Ra-228
	Pb-210	0,2 Bq/l
	Po-210	0,1 Bq/l
Artificial	C-14	240 Bq/l
	Sr-90	4,9 Bq/l
	Pu-239/Pu-240	0,6 Bq/l
	Am-241	0,7 Bq/l
	Co-60	40 Bq/l
	Cs-134	7,2 Bq/l
	Cs-137	11 Bq/l
	I-131	6,2 Bq/l

a This table allows only for the radiological properties of uranium, not for its chemical toxicity.

**Performance characteristics and methods of analysis**

For the following parameters and radionuclides, the method of analysis used must, as a minimum, be capable of measuring activity concentrations with a limit of detection specified below:

<b>Parameters and radionuclides</b>	<b>Limit of detection (Notes 1,2)</b>	<b>Notes</b>
Tritium	10 Bq/l	Note 3
Radon	10 Bq/l	Note 3
gross alpha	0,04 Bq/l	Note 4
gross beta	0,4 Bq/l	Note 4
U-238	0,02 Bq/l	
U-234	0,02 Bq/l	
Ra-226	0,04 Bq/l	
Ra-228	0,02 Bq/l	Note 5
Pb-210	0,02 Bq/l	
Po-210	0,01 Bq/l	
C-14	20 Bq/l	
Sr-90	0,4 Bq/l	
Pu-239/Pu-240	0,04 Bq/l	
Am-241	0,06 Bq/l	
Co-60	0,5 Bq/l	
Cs-134	0,5 Bq/l	
Cs-137	0,5 Bq/l	
I-131	0,5 Bq/l	

Notes:

(3) The limit of detection must be calculated according to the ISO standard 11929: Determination of the characteristic limits (decision threshold, detection limit, and limits of confidence interval) for measurements of ionising radiation – Fundamentals and application, with probabilities of errors of 1st and 2nd kind of 0,05 each.

(4) Measurement uncertainties must be calculated and reported as complete standard uncertainties, or as expanded uncertainties with an expansion factor of 1,96 according the ISO Guide for the Expression of Uncertainty in Measurement.

(5) The limit of detection for tritium and for radon is 10% of its parametric value of 100 Bq/1.

(6) The limit of detection for gross alpha activity and gross beta activities are 40% of the screening values of 0,1 and 1,0 Bq/1 respectively.

(7) This limit of detection applies only to initial screening for indicative dose for a new water source; if initial checking indicates that it is not plausible that Ra-228 exceeds 20% of the derived concentration, the limit of detection may be increased to 0,08 Bq/1 for routine Ra-228 nuclide specific measurements, until a subsequent re-check is required.

## SCHEDULE 5 Regulations 15 and 16

### ANALYTICAL METHODOLOGY

**Table A1**

**Parameters for which, subject to Regulation 15(7), methods of analysis are specified**

<b>(1)</b> <b>Parameter</b>	<b>(2)</b> <b>Method of analysis</b>
E. coli and coliform bacteria	EN ISO 9308-1(1) or EN ISO 9308-2(2)
Enterococci	EN ISO 7899-2(3)
Pseudomonas aeruginosa	EN ISO 16266(4)
Enumeration of culturable microorganisms – colony count 22°C	EN ISO 6222(5)
Enumeration of culturable microorganisms – colony count 36°C	EN ISO 6222
<i>Clostridium perfringens</i> including spores	EN ISO 14189(6)

**Table A2**

- (1) This standard entitled “*Water quality - Enumeration of Escherichia coli and coliform bacteria - Part 1: Membrane filtration method for waters with low bacterial background flora (ISO 9308-1:2014)*” was approved by the European Committee for Standardization (CEN) on 18 January 2017. Under reference BS EN ISO 9308-1:2014+A1:2017, it is published as a UK standard by the British Standards Institution (ISBN 978 0 580 92379 1).
- (2) This standard entitled “*Water quality - Enumeration of Escherichia coli and coliform bacteria - Part 2: Most probable number method (ISO 9308-2:2012)*” was approved by the European Committee for Standardization (CEN) on 11 April 2014. Under reference BS EN ISO 9308-2:2014, it is published as a UK standard by the British Standards Institution (ISBN 978 0 580 84023 4).
- (3) This standard entitled “*Water quality - Detection and enumeration of intestinal enterococci - Part 2: Membrane filtration method (ISO 7899-2:2000)*” was approved by the European Committee for Standardization (CEN) on 11 April 2014. Under reference BS EN ISO 7899-2:2000, it is published as a UK standard by the British Standards Institution (ISBN 0 580 34953 5).
- (4) This standard entitled “*Water quality - Detection and enumeration of Pseudomonas aeruginosa - Method by membrane filtration (ISO 16266:2006)*” was approved by the European Committee for Standardization (CEN) on 11 January 2008. Under reference BS EN ISO 16266:2008, it is published as a UK standard by the British Standards Institution (ISBN 978 0 580 59736 7).
- (5) This standard entitled “*Water quality - Enumeration of culturable micro-organisms - Colony count by inoculation in a nutrient agar culture medium (ISO 6222:1999)*” was approved by the European Committee for Standardization (CEN) on 16 March 1999. Under reference BS EN ISO 6222:1999, it is published as a UK standard by the British Standards Institution (ISBN 0 580 32495 8).
- (6) This standard entitled “*Water quality - Enumeration of Clostridium perfringens - Method using membrane filtration (ISO 14189:2013)*” was approved by the European Committee for Standardization (CEN) on 15 July 2016. Under reference BS EN ISO 14189:2016, it is published as a UK standard by the British Standards Institution (ISBN 978 0 580 92184 1).

**Parameters in relation to which methods of analysis must satisfy prescribed characteristics**

(1) <b>Parameters</b>	(2) <b>Trueness % of prescribed concentration or value or specification</b>	(3) <b>Precision % of prescribed concentration or value or specification</b>	(4) <b>Limit of detection % of prescribed concentration or value or specification</b>
Aluminium	10	10	10
Ammonium	10	10	10
Antimony	25	25	25
Arsenic	10	10	10
Benzene	25	25	25
Benzo(a)pyrene	25	25	25
Boron	10	10	10
Bromate	25	25	25
Cadmium	10	10	10
Chloride	10	10	10
Chromium	10	10	10
Colour	10	10	10
Conductivity	10	10	10
Copper	10	10	10
Cyanide <sup>1</sup>	10	10	10
1,2-dichloroethane	25	25	10
Fluoride	10	10	10
Hydrogen ion concentration pH (expressed in pH units)	0.2	0.2	
Iron	10	10	10
Lead	10	10	10
Manganese	10	10	10
Mercury	20	10	20
Nickel	10	10	10
Nitrate	10	10	10
Nitrite	10	10	10
Pesticides and related products <sup>2</sup>	25	25	25
Polycyclic aromatic hydrocarbons <sup>3</sup>	25	25	25
Selenium	10	10	10
Sodium	10	10	10
Sulphate	10	10	10
Tetrachloromethane	20	25	10
Trichloroethene <sup>4</sup>	25	25	10
Trihalomethanes:	25	25	10
Total <sup>3</sup>			
Turbidity <sup>5</sup>	10	10	10
Turbidity <sup>6</sup>	25	25	25

Notes:

- (1) The method of analysis should determine total cyanide in all forms.
- (2) The performance characteristics apply to each individual pesticide and will depend on the pesticide concerned.

(3) The performance characteristics apply to the individual substances specified at 25% of the parametric value in Part 1 of Table B in Schedule 1.

(4) The performance characteristics apply to the individual substances specified at 50% of the parametric value in Part 1 of Table B in Schedule 1.

(5) The performance characteristics apply to the prescribed value of 4NTU.

(6) The performance characteristics apply to the specification of 1NTU for water leaving treatment works.

### Table A3

#### Minimum performance characteristic “uncertainty of measurement”

The uncertainty of measurement laid down in this table must not be used as an additional tolerance to the parametric values set out in Schedules 1 and 2.

<i>(1) Parameter</i>	<i>(2) Uncertainty of measurement % of the parametric value (except for pH)<sup>1</sup></i>
Aluminium	25
Ammonium	40
Antimony	40
Arsenic	30
Benzene	40
Benzo(a)pyrene <sup>2</sup>	50
Boron	25
Bromate	40
Cadmium	25
Chloride	15
Chromium	30
Colour	20
Conductivity	20
Copper	25
Cyanide <sup>3</sup>	30
1,2-dichloroethane	40
Fluoride	20
Hydrogen ion concentration pH (expressed in pH units)	0.2
Iron	30
Lead	25
Manganese	30
Mercury	30
Nickel	25
Nitrate	15
Nitrite	20
Oxidisability <sup>4</sup>	50
Pesticides <sup>5</sup>	30
Polycyclic aromatic hydrocarbons <sup>6</sup>	50
Selenium	40
Sodium	15
Sulphate	15
Tetrachloroethene <sup>6</sup>	30
Tetrachloromethane	30
Trichloroethene <sup>7</sup>	40
Trihalomethanes: total <sup>6</sup>	40

Total organic carbon <sup>8</sup>	30
Turbidity <sup>9</sup>	30

Notes:

(1) “Uncertainty of measurement” is a non-negative parameter characterising the dispersion of the quantity values being attributed to a measurement, based on the information used. The performance criterion for measurement uncertainty ( $k = 2$ ) is at least the percentage of the parametric value stated in the table. If the value of uncertainty of measurement cannot be met, the best available technique must be selected (up to 60 % of the parametric value).

(2) The method determines total cyanide in all forms.

(3) Reference method: European standard EN ISO 8467 entitled “*Water quality - Determination of permanganate index (ISO 8467)*”(1).

(4) The performance characteristics for individual pesticides are given as an indication. Values for the uncertainty of measurement as low as 30% can be achieved for several pesticides, higher values up to 80% may be allowed for a number of pesticides.

(5) The performance characteristics apply to individual substances, specified at 25% of the parametric value in Part 1 of Table B in Schedule 1.

(6) The performance characteristics apply to individual substances, specified at 50 % of the parametric value in Part 1 of Table B in Schedule 1.

(7) The uncertainty of measurement must be estimated at the level of 3 mg/l of the total organic carbon (TOC) in accordance with European standard EN 1484 entitled “*Water analysis - Guidelines for the determination of total organic carbon and dissolved organic carbon*”(2) and dissolved organic carbon (DOC) shall be used.

(8) The uncertainty of measurement must be estimated at the level of 1,0 NTU in accordance with European standard EN ISO 7027-1 entitled “*Water quality - Determination of turbidity - Part 1: Quantitative methods (ISO 7027-1)*”(3).

## SCHEDULE 6 Regulation 40

### Amendments and revocations

**Table 1**

<b>(1) Regulations to be amended</b>	<b>(2) Reference</b>	<b>(3) Provision to be amended</b>	<b>(4) Amendments</b>
The Water Quality and Supply (Fees) (Undertakers Wholly or Mainly in Wales) Order 2016	S.I. 2016/843 (W. 213)	The Schedule	In the English language text, in each place it occurs, for “Water Supply (Water Quality) Regulations 2010” substitute “Water Supply (Water Quality) Regulations 2018” In the Welsh language text, in each place it occurs for “Rheoliadau

- (1) This standard was approved by the European Committee for Standardization (CEN) on 3 November 1994. Under reference EN ISO 8467:1995, it is published as a UK standard by the British Standards Institution (ISBN 0 580 23435 5).
- (2) This standard was approved by the European Committee for Standardization (CEN) on 6 April 1997. Under reference BS EN 1484:1997, it is published as a UK standard by the British Standards Institution (ISBN 0 580 28372 0).
- (3) This standard was approved by the European Committee for Standardization (CEN) on 15 April 2016. Under reference BS EN ISO 7027-1:2016, it is published as a UK standard by the British Standards Institution (ISBN 978 0 580 81961 2).

Cyflenwi Dŵr (Ansawdd Dŵr) 2010” substitute Rheoliadau Cyflenwi Dŵr (Ansawdd Dŵr) 2018”

**Table 2**

<b>(1) Regulations revoked</b>	<b>(2) Reference</b>	<b>(3) Extent of revocation</b>
The 2010 Regulations	S.I. 2010/994 (W. 99)	The whole Regulations
The National Treatment Agency (Abolition) and the Health and Social Care Act 2012 (Consequential, Transitional and Savings Provisions) Order 2013(1)	S.I. 2013/235	Paragraph 152 of Schedule 2
The Construction Products Regulations 2013	S.I. 2013/1387	Paragraph 7 of Schedule 5
The Private Water Supplies (Wales) Regulations 2017	S.I. 2017/1041 (W. 270)	Regulation 25
The Water Act 2014 (Consequential Amendments etc.) Order 2017	S.I. 2017/506	Article 28

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(1) There are amendments not relevant to these Regulations.

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations supplement Chapter III (Water Supply) of the Water Industry Act 1991 (“the 1991 Act”) and revoke and replace the Water Supply (Water Quality) Regulations 2010. They are primarily concerned with the quality of water supplied by water undertakers whose areas are wholly or mainly in Wales (and water supply licensees using the supply systems of such undertakers) for drinking, washing, cooking and food preparation, and for food production, and with arrangements for the publication of information about water quality.

The Regulations implement Council Directive 98/83/EC (OJ No L 330, 5.12.98, p. 32) (“the 1998 Directive”), on the quality of water intended for human consumption and their purpose is to protect human health from the adverse effects of any contamination of water intended for human consumption by ensuring that it is wholesome and clean. They also transpose the requirements of Council Directive 2013/51/Euratom laying down requirements for the protection of the health of the general public with regard to radioactive substances in water intended for human consumption (OJ No L 296, 7.11.2013, p 12).

Part 1 of the Regulations (regulations 1 and 2) contains preliminary provisions and defines terms that are used in the Regulations.

Part 2 (regulation 3) requires water undertakers to identify annually the areas (“water supply zones”) that are to be relevant for a particular year for the purposes of the application of provisions of the Regulations. A water supply zone may not comprise an area in which the estimated population exceeds 100,000. Water undertakers may not alter the boundaries of water supply zones during the year.

Part 3 (regulation 4) prescribes standards of wholesomeness in respect of water that is supplied for human consumption by water undertakers, including for domestic purposes including cooking, drinking food preparation or washing, or for food production purposes. These various purposes are referred to in the Regulations as “regulation 4(1) purposes”. In particular, regulation 4 provides that water is to be regarded as wholesome if it contains concentrations or values in respect of various properties, elements, organisms and substances that do not contravene prescribed maximum and, in some cases, minimum concentrations or values.

Part 4 (regulations 5 to 10) provides for the monitoring of water supplies. Regulation 5 defines two monitoring regimes; “monitoring of a Group A parameter” and “monitoring of a Group B parameter”. Regulation 6 sets out general monitoring provisions relating to the parameters set out in Schedules 1 (prescribed concentrations and values) and 2 (indicator parameters). Regulation 6 imposes requirements for the monitoring of indicative dose, radon and tritium (“radioactive parameters”) and introduces the additional monitoring provisions for the indicative dose parameter in Schedule 4 (Monitoring for indicative doses and analytical performance characteristics). Regulation 6 also makes provision for monitoring supplies from tankers. Regulation 7 requires water undertakers to select at random the points at which samples are to be taken for the purposes of monitoring (referred to as “sampling points”). Regulation 8 provides that the Welsh Ministers may authorise the taking of samples from points other than sampling points. Regulation 9 deals with the number of samples to be taken. These are specified in Schedule 3 (Monitoring). Regulation 10 requires samples to be taken where water undertakers have reason to believe that the quality of the water within their water supply zone has been adversely affected by the presence of certain elements, organisms or substances.

Part 5 (regulations 11 to 16) contains additional provisions relating to sampling. Regulations 12 and 13 require samples to be taken in respect of particular organisms and substances, at treatment works and at reservoirs which store treated water. Regulation 14 requires samples to be taken before water is supplied from new sources and from sources which have not recently been used. Regulation 15 prescribes requirements relating to the taking, handling, storage, transport and analysis of samples. Regulation 16 provides an alternative method of analysis to that in regulation 15(6)(b) that may be used by a water undertaker or supplementary licensee before 23:59 on 31 December 2019.

Part 6 (regulation 17) requires water undertakers and supplementary licensees to identify every point from which they abstract water for supply for regulation 4(1) purposes and to take samples from those points to comply with regulations 26 to 28. This implements Article 8(1) and (2) of Directive 2000/60/EC of the European Parliament and of the Council establishing a framework for Community action in the field of water policy (OJ No L 327, 22.12.2000, p 1).

Part 7 (regulations 18 to 25) requires water undertakers and supplementary licensees to investigate the cause of any failure, or apprehended failure, of any parameters set out in Schedule 1 or any indicator parameters set out in Schedule 2 and to notify the Welsh Ministers. Where the failure is attributable to a domestic distribution system or the maintenance of that system, notification must be provided to the consumers of the affected water supply and to any other relevant supplier. Regulations 20 provides for actions that may be taken by the Welsh Ministers upon receipt of a notification under regulation 18 or 19. Where a failure relates to a parameter in Table B in Schedule 1, and certain other conditions are met, the Welsh Ministers may require the supplier to apply for an authorisation for a departure from the requirements of Part 3 of the Regulations. The circumstances in which authorisations may be granted and the conditions to which they are subject are set out in regulations 22 and 23. Provision is made in regulation 24 for publicising authorisations. Regulation 25 provides for the revocation and variation of authorisations.

Part 8 (regulations 26 to 33) deals with the treatment of water and regulates the substances, processes and products that may be used by water undertakers in connection with the supply of water. Regulation 26 imposes requirements relating to the disinfection of water and imposes additional requirements for the treatment of surface water. Regulation 27 provides for the carrying out of risk assessments and subsequent reviews. Regulation 28 requires water undertakers and supplementary licensees to submit reports of risk assessments and reviews to the Welsh Ministers. Paragraph (4) of regulation 28 sets out the steps that the Welsh Ministers may take on receipt of a report which states there is or has been a significant risk of supplying water that could constitute a potential danger to human health or could be unwholesome. Regulation 29 requires water undertakers and supplementary licensees to treat water to minimise the risk of copper and lead contamination from pipes. Regulation 30 sets out provisions relating to the replacement or modification of lead pipes. Regulation 31 specifies the circumstances in which water undertakers and supplementary licensees may apply or introduce substances or products into water supplied for regulation 4(1) purposes. Regulation 32 enables the Welsh Ministers to require that its approval be obtained to the use of processes in connection with the supply of water for regulation 4(1) purposes. Under regulation 33, contravention of specified requirements of regulations 26, 28, 31 and 32 are criminal offences, as is the making of false statements.

Part 9 (regulations 34 and 35) deals with the provision of information by water undertakers, supplementary licensees and retail licensees.

Part 10 (regulations 36 and 37) imposes requirements on local authorities in the performance of their duties in relation to the quality of water supplied by water undertakers or water supply licensees.

Part 11 (regulation 38) provides that contraventions by any relevant supplier of duties or requirements imposed by Parts 4 to 9 of the Regulations are to be enforceable under section 18 of the 1991 Act by the Welsh Ministers. This provision is additional to the criminal sanctions provided by regulation 33.

Part 12 (regulations 39 and 40) provides for transitional provisions, amendments and revocations (as set out in Schedule 6 (Amendments and revocations)).

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory impact assessment has been prepared as to the likely costs and benefits of complying with these Regulations. A copy can be obtained from the Welsh Government, Cathays Park, Cardiff, CF10 3NQ.

**Explanatory Memorandum to** The Water Supply (Water Quality) Regulations 2018.

This Explanatory Memorandum has been prepared by Economy, Skills and Natural Resources and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with:

Standing Order 27.1

**Cabinet Secretary/Minister's Declaration**

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The Water Supply (Water Quality) Wales Regulations I am satisfied that the benefits justify the likely costs.

Lesley Griffiths

Cabinet Secretary for Energy, Planning and Rural Affairs.

25 May 2018

## **1. Description**

Council Directive 98/83/EC (the Drinking Water Directive (DWD)) has been amended by Commission Directive (EU) 2015/1787 (Directive 2015/1787) to align with the World Health Organisation (WHO) principles for the risk based sampling and analysis of drinking water supply, reflecting scientific and technical progress in the protection of public health. To transpose the DWD.

The Water Supply (Water Quality) Regulations 2018 will revoke and replace the Water Supply (Water Quality) Regulations 2010 transposing the additional requirements of Council Directive 98/83/EC.

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

These Regulations apply to the operations of water companies providing drinking water operating wholly or mainly in Wales. As such they apply in parts of England and are laid simultaneously in Parliament and the National Assembly for Wales as required by section 59(4) of the Government of Wales Act 2006 (“GoWA 2006”).

Paragraph 3 of this Memorandum explains that these Regulations are made partly in reliance on section 2(2) of the European Communities Act 1972. By virtue of section 59(3) of GoWA 2006, the Welsh Ministers are to determine whether an instrument made in exercise of the section 2(2) powers is to be subject to the negative or affirmative procedure.

As these Regulations are directly transposing the requirements of the Directive, the Welsh Ministers have determined that these Regulations are to be subject to the negative resolution procedure.

The transposition deadline for the 2015 Directive was 27 October 2017, which has not been met.

The regulations impact on water undertakers who have responsibilities in both England and Wales. Following engagement with the water companies, officials agreed to align the Welsh set of Regulations with the English Regulations; to ensure water companies were not working to two different sets of Regulations with differing requirements, which would impact on their operational efficiency and removes duplication of work within the affected water undertakers. Officials therefore agreed to work to Defra’s timeline to ensure that any changes made to the English Regulations were also included in the Welsh Regulations.

Defra’s timeline has been delayed due to a number of circumstances including delays in their consultation process. If the Welsh Regulations were laid before the final amendments to the English Regulations were made, the regulations

would once again differ in specifics for no policy reason. This would not be in the interests of the water undertakers impacted by these Regulations. Defra accept that the delay in laying these regulations is due to the English timeline slipping.

### **3. Legislative background**

These Regulations are made by the Welsh Ministers in exercise of the powers conferred by—

- (i) section 2(2) of the European Communities Act 1972 (“the 1972 Act”), in relation to the Welsh Ministers’ designation in relation to the quality of water intended for domestic purpose or for use in a food production undertaking; and
- (ii) sections 67, 69, 77(3) & (4) and 213 of the Water Industry Act 1991 (“the 1991 Act”).

Section 2(2) of the 1972 Act provides that Ministers may be designated to make provision for the purpose of implementing EU obligations, or for the purpose of dealing with matters arising out of or related to any such obligation. Section 59(1) of GoWA 2006 provides that section 2(2) may be used to designate the Welsh Ministers. The Welsh Ministers are designated for the purposes of section 2(2) of the 1972 Act in relation to the quality of water intended for domestic purposes or for use in food production undertaking. The National Assembly for Wales was originally designated by means of The European Communities (Designation)(No 7) Order 2002 and those functions are now exercisable by the Welsh Ministers by virtue of section 162 of, and paragraphs 28 and 30 of Schedule 11 to GoWA 2006.

The relevant functions of the Secretary of State under the 1991 Act were transferred to the National Assembly for Wales by virtue of the National Assembly for Wales (Transfer of Functions) Order 1999 as follows—

- Functions under section 67 were transferred for
  - a) the making of regulations concerning water supplied using the supply system of a water undertaker, in relation to the supply system of any water undertaker whose area is wholly or mainly in Wales; and
  - b) the making of regulations concerning water supplied other than using the supply system of a water undertaker, in relation to Wales, by article 2 of, and Schedule 1 to the National Assembly for Wales (Transfer of Functions) Order 1999;
- Functions under sections 69 and 77 were transferred in full;
- Functions under section 213 were transferred to the Assembly to the same extent as the powers, duties and other provisions to which that section applies were exercisable by the Assembly.

The functions conferred on the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999 are now exercisable by the Welsh Ministers by virtue of section 162 of, and paragraphs 28 and 30 of Schedule 11 to, GoWA 2006.

As outlined above, the Regulations are subject to the negative procedure, and are required to be laid before both the National Assembly for Wales and Parliament by virtue of section 59(4) of GoWA 2006 and paragraph 2(2) of Schedule 2 of the 1972 Act, due to the fact the Regulations will relate to cross border bodies.

#### **4. Purpose & intended effect of the legislation**

This instrument applies to England and Wales.

The policy objectives of these regulations are to:

- Update legislation to be aligned with the updates of the latest World Health Organisation (WHO) principles for the sampling and analysis of public drinking water supplies;
- Make other technical and drafting improvements to the legislation, following stakeholder engagement on the Water Supply (Water Quality) Regulations 2010, which will provide clarity on existing requirements;
- Transpose Commission Directive (EU) 2015/1787 that amends Annexes II and III of the DWD.

The objective of the Regulations is to include new EU requirement for the risk based sampling and analysis of drinking water supply, reflecting scientific and technical progress in the protection of public health

This will enable water undertakers and the Welsh Ministers to make informed and valid decisions for the reduction or cessation of sampling, enabling resources to be focused on higher risk supplies whilst ensuring public health protection is not compromised.

Following stakeholder engagement on the 2010 regulations and subsequent amendments to the 2010 Drinking Water Regulations, other improvements have been made to the Regulations which provide clarity on existing requirements making it more readily understood by the water industry.

The 2010 Regulations have been consolidated into new regulations to transpose the latest amendments to the DWD, rather than amending regulations being issued. This approach provides for a more accessible regime than transposing the DWD through further amendments to the 2010 Regulations, and also allows the wider clarifications to the Regulations to be addressed.

Implementation of the Directive by administrative or non-regulatory means, such as guidance or a code of practice, would not transpose the Directive into national law and would not achieve the controls and measures needed to monitor and enforce the Directive's standards and other wholesomeness requirements.

The Water Supply (Water Quality) Regulations 2018 clarify the regulatory requirements in respect of the aspects relating to public water supplies provided by water undertakers operating wholly or mainly in Wales, and water supply licensees using the supply system of such undertakers. As such, they apply to Wales and those parts of England supplied by such undertakers or licensees. Separate regulations are made in Scotland, Northern Ireland and for undertakers of licensees whose supply area is wholly or mainly in England.

The Council of the European Union adopted the amendments to Annexes II and III of the DWD on 6th October 2015.

Annexes II and III to the DWD lay down the minimum requirements of the monitoring programmes for all water intended for human consumption and the specifications for the method of analysis of different parameters.

Annex II to the DWD grants a certain degree of flexibility in performing the audit monitoring (group B parameters) and check monitoring (group A parameters), allowing for less frequent sampling under certain circumstances. The specific conditions to perform the monitoring of parameters at appropriate frequencies and the range of monitoring techniques need to be clarified in the light of scientific progress.

Since 2004, the World Health Organisation has developed the water safety plan approach which is based on risk assessment and risk management principles, laid down in its Guidelines for Drinking Water Quality<sup>1</sup>. Those Guidelines, together with standard EN 15975-2 concerning security of drinking water supply, are internationally recognised principles on which the production, distribution, monitoring and analysis of parameters in drinking water is based. Annex II of the Drinking Water Directive is therefore aligned to the latest updates of those principles, and our regulations will also need to reflect this alignment.

## **5. Consultation**

The Regulations are a direct transposition of an EU Directive. The Directive requirements are very specific and do not give the Welsh Government discretion on how they can amend the regulations in terms of what the stakeholders must do. Due to these limitations a public consultation exercise has not been carried out, however officials have actively engaged with the water undertakers operating wholly or mainly in Wales, who will be impacted by changes to these regulations throughout their development to ensure that they are fit for purpose.

## **PART 2 – REGULATORY IMPACT ASSESSMENT**

### **Introduction**

Defra and the Drinking Water Inspectorate (DWI) have prepared a Regulatory Impact Assessment on an England and Wales basis, this can be accessed via the following link:

[https://consult.defra.gov.uk/water-quality/drinking-water-regulations-2017/supporting\\_documents/Public%20Regulations%20Consultation%20Document.pdf](https://consult.defra.gov.uk/water-quality/drinking-water-regulations-2017/supporting_documents/Public%20Regulations%20Consultation%20Document.pdf)

The European Union Drinking Water Directive (Council Directive 98/83/EC) concerns water intended for human consumption and sets out the standards and requirements for drinking water. This Directive is currently transposed into National Regulations and enforced in respect of public water supplies in England and Wales through The Water Supply (Water Quality) Regulations 2010 (as amended) for Wales and the Water Supply (Water Quality) Regulations 2016 (for England).

Directive 2015/1787 updates the monitoring programme in the Drinking Water Directive (DWD) which sets a minimum frequency of sampling and analysis but also introduces a new risk assessment approach. Comprehensive monitoring and analysis incurs significant costs, especially where a large number of parameters need to be considered. Risk assessed flexible monitoring frequencies present potential cost-saving opportunities and reduces the collection of data that provides little or no information on the quality of drinking water but also protects public health by targeting high risk supplies.

For a water company to qualify for a monitoring variation the risk assessment implemented will need to be certified against the criteria set by the United Kingdom Accreditation Service (UKAS). This may require water companies to review and improve their risk approach to achieve certification, however, introducing a risk assessment will provide more effective use of water companies' resources whilst maintaining confidence in the quality of the water.

Directive 2015/1787 also introduces a change to the method of analysis of different chemical and indicator parameters. Laboratories will require guidance on the method to ensure a consistent approach and an appropriate amount of time will need to be provided for them to adapt to the new approach.

Once the Directive is transposed, Member States may extend the use of the current method of analysis (which uses 'trueness', 'precision' and 'limit of detection') until 31 December 2019. This is to provide laboratories with sufficient time to adapt to the proposed changes to the approach to 'uncertainty of measurement' (UoM) under the amendments for Annex III.

## Options

The RIA presents the following three options:

- Option 0: Do Nothing (i.e. do not transpose the EU Directive);
- Option 1: Transpose Directive 2015/1787 in full with no further amendments; and

Option 2: Transpose Directive 2015/1787, also incorporating corrections to wording and clarification amendments to The Water Supply (Water Quality) Regulations 2016.

## **Costs and benefits**

The following is a summary of the costs and benefits identified in the England and Wales RIA.

### **Option 0: Do nothing**

#### **Costs**

This is counter to UK preferred policy and would be a missed opportunity to update our drinking water legislation in the light of scientific and technical progress.

Failure to transpose by the deadline set in Directive 2015/1787 of 27 October 2017 would also be in breach of our obligations under EU law, thus giving rise to some risk that the Commission will bring infringement proceedings for non-transposition and the associated costs.

#### **Benefits**

There are no additional benefits identified with this option.

### **Option 1 Transpose Directive 2015/1787 with no further amendments:**

#### **Costs**

##### **Drinking Water Inspectorate**

The England and Wales RIA identifies transitional costs to the DWI of £350,000 to cover the costs of making changes to the database containing water sample data, establishing the Risk Assessment certification scheme and for the development of the policy and guidance. The same cost would be incurred whether the Regulations are introduced in England and Wales or on an England only basis.

##### **Water companies**

DWI was commissioned to calculate the costs and benefits of each option to the water industry. Due to the cross border nature of the water companies, the analysis covers the costs to the industry in both England and Wales.

There will be an initial cost to water companies to establish the new risk assessment (RA) process of £1.6m over three years (includes application, administration, improvement work, laboratory charges) and an additional cost of £1.6m spread over the 10-year appraisal period to maintain the system (including increased E.coli sampling annually and certification renewal after 5 years).

The public drinking water supply in England and Wales is provided by water undertakers. Of the 26 incumbent water supply companies in England and Wales, 5 companies serve customers in Wales but only 2 would generally be regarded as Welsh businesses. On this basis, it is anticipated that only a relatively small proportion of the water industry costs identified above would fall to Welsh businesses.

## **Benefits**

This would meet the main objective of updating legislation to be aligned with the latest WHO principles for the sampling and analysis of public drinking water supply

The quality of public drinking water is monitored by water companies in order to protect public health and safeguard the welfare of individual consumers. The economic case for this intervention is based partly on the positive externalities (benefits for the general population) of preventing water-borne illness reaching any individual. In addition there is the equity or 'merit good' consideration that every individual deserves to receive wholesome water as a basic necessity and right, whether or not they are in a position to appreciate what it involves and demand it from their supplier. Water companies provide assurance to water consumers about the safety of water supplied to them both in their own home and in other commercial or public premises. Particular characteristics or parameters of the supply are monitored, for example specified bacteria and metals within the water that are potentially harmful in high concentrations.

The revised Annex II of the DWD establishes the criteria under which risk assessed decisions are made which will enhance confidence in the protection of public health through further assurance for the quality of public water supplies. In providing for a consistent approach, it will also enhance confidence at national level in the robust nature of the risk assessments being undertaken.

There are potential cost-savings to the water industry reflecting reduced water sampling requirements. It is estimated implementing the new RA process will reduce the number of samples from 911,085 to 102,265 per annum (based on 2015 figures). Based on the Drinking Water Inspectorates (DWI) charges to water companies this would save the industry £444,840 by year 3. There would also be a potential saving in analytical costs (due to reduced sampling) which is estimated to be £900,000 by year 3. As with the costs identified above, the majority of these savings would be expected to fall to businesses in England (due to the relative number of businesses).

Each of the water companies supplying properties in Wales is also responsible for supplying some properties in England. Introducing these Regulations in parallel to those in England avoids a situation whereby the water companies have to adhere to two separate systems.

## **Option 2: Transpose Directive 2015/1787, also incorporating corrections to wording and clarification amendments**

## **Costs**

The costs for this option are expected to be the same as those for Option 1.

## **Benefits**

The benefits identified under Option 1 will also apply to this option.

In addition, taking the opportunity to clarify some of the existing regulatory provisions would be beneficial for the practical application of the Regulations and would reduce uncertainty amongst the industry. The changes include:

- Improvements to definitions where current definitions have been determined as ambiguous through consultation and review;
- Changes to terminology to align with the DWD; and
- Where requirements are conditional, that the conditions are clear and mutually exclusive.

## **Summary and preferred option with description of implementation plan**

Option 2 is the Welsh Government's preferred option as we support the principle of the proposals made under Directive 2015/1787 in allowing for a risk assessed approach to monitoring and analysis and changing the performance characteristics of certain parameters via the UoM methodology. This will provide for more effective and proportionate monitoring and analysis with water companies able to focus their efforts in maintaining the quality of public drinking water supply. At the same time, other amendments to the Regulations will provide clarity on existing requirements making it more readily understood by the water industry.

## Competition Assessment

The competition filter test	
Question	Answer yes or no
<b>Q1:</b> In the market(s) affected by the new regulation, does any firm have more than 10% market share?	Yes (see below)
<b>Q2:</b> In the market(s) affected by the new regulation, does any firm have more than 20% market share?	
<b>Q3:</b> In the market(s) affected by the new regulation, do the largest three firms together have at least 50% market share?	
<b>Q4:</b> Would the costs of the regulation affect some firms substantially more than others?	Yes (see below)
<b>Q5:</b> Is the regulation likely to affect the market structure, changing the number or size of businesses/organisation?	No
<b>Q6:</b> Would the regulation lead to higher set-up costs for new or potential suppliers that existing suppliers do not have to meet?	No
<b>Q7:</b> Would the regulation lead to higher ongoing costs for new or potential suppliers that existing suppliers do not have to meet?	No
<b>Q8:</b> Is the sector characterised by rapid technological change?	No
<b>Q9:</b> Would the regulation restrict the ability of suppliers to choose the price, quality, range or location of their products?	No

Q1-3: Drinking water in England and Wales is supplied by private water companies that operate in de facto local monopolies due to the economies of scale in water collection, treatment and distribution. The industry is regulated by Ofwat who are responsible for ensuring consumers are protected.

Q4: The Regulations may have a differential impact depending upon firm size. Smaller firms may incur a higher cost to secure certification of their Risk Assessment methodology.

## SL(5)217 - Rheoliadau Diogelu'r Amgylchedd (Microbelenni) (Cymru) 2018

### Cefndir a Diben

Mae'r Rheoliadau drafft yn gwahardd defnyddio microbelenni fel cynhwysyn wrth weithgynhyrchu cynhyrchion gofal personol i'w rinsio i ffwrdd ac yn gwahardd gwerthu unrhyw gynhyrchion o'r fath sy'n cynnwys microbelenni. Mae torri'r gwaharddiad hwn yn drosedd. Mae'r rheoliadau hefyd yn cyflwyno cyfundrefn sancsiynau sifil i alluogi'r rheoleiddiwr i osod ystod o sancsiynau sifil. Daw'r gwaharddiad i rym ar 30 Mehefin 2018.

### Y weithdrefn

Cadarnhaol

### Materion technegol: craffu

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

### Rhinweddau: craffu

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

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

1. Mae'r Memorandwm Esboniadol i'r rheoliadau drafft hyn yn nodi mai pwrpas y ddeddfwriaeth yw gwahardd gweithgynhyrchu a chyflenwi cynhyrchion gofal personol i'w rinsio i ffwrdd sy'n cynnwys microbelenni plastig y mae tystiolaeth yn dangos eu bod yn achosi llygredd a niwed i'r amgylchedd morol.
2. Ystyr "microbelen" yw unrhyw ronyn plastig solet sy'n annhoddadwy mewn dŵr sy'n 5mm neu lai o faint mewn unrhyw fesuriad.



3.Bydd y gwaharddiad yn cwmpasu pob cynyrrch gofal personol i'w rinsio i ffwrdd sy'n cynnwys microbelenni plastig, fel y'i diffinnir yn rheoliad 2. Mae'r Memorandwm Esboniadol yn nodi bod cynhyrchion gofal personol i'w rinsio i ffwrdd yn cynnwys, ond nid ydynt yn gyfyngedig i: gynhyrchion a weithgynhyrchir at ddiben eu rhoi ar y corff, y croen, y dwylo, yr ewinedd, yr wyneb, y gwallt a cheudod y geg, gan gynnwys at ddiben diblisgo, glanhau, goleuo neu liwio, meddalu croen neu wallt, diarogli neu bersawru, yn ogystal â chynhyrchion baddon a chanddynt nodweddion ofal personol a chynhyrchion deintyddol.

4.Mae'r Memorandwm Esboniadol yn nodi mai nod y gwaharddiad yw:-

- Atal niwed pellach i anifeiliaid morol a lleihau lefel y plastigion sy'n mynd i'n moroedd.
- Diogelu'r amgylchedd morol a lleihau risg a difrifoldeb yr effeithiau anadferadwy posibl ar ddiogelwch bwyd ac ar iechyd dynol.
- Parhau i annog ymdrechion gwirfoddol presennol ac arfaethedig y diwydiant i gael gwared ar ficrobelenni.
- Meithrin hyder defnyddwyr mewn cynhyrchion na fyddant yn achosi llygredd morol.
- Gosod esiampl i wledydd eraill ac annog i'r ddeddfwriaeth gael ei mabwysiadu yn ehangach.

5.Bydd y Rheoliadau'n rhan o waharddiad ledled y DU. Mae Senedd y DU eisoes wedi cymeradwyo deddfwriaeth gyffelyb. Yn ddiweddgar, mae Llywodraeth yr Alban wedi gosod rheoliadau tebyg.

### Cyfarwyddeb Safonau Technegol

6.Er mwyn atal creu rhwystrau newydd i fasnachu o fewn yr Undeb Ewropeaidd, mae **Cyfarwyddeb 2015/1535/UE** yn ei gwneud yn ofynnol i Aelod-wladwriaethau hysbysu'r Comisiwn yngylch unrhyw reoliad technegol drafft cyn ei fabwysiadu.

7.Hysbyswyd y Comisiwn yngylch y rheoliadau drafft ar 29 Ionawr 2018.



8.Mae tudalen 14 y Memorandwm Esboniadol yn nodi:-

*"The Commission provided a response to the TSD notification and noted they have requested the European Chemicals Agency (ECHA), in accordance with Article 69 (1) of the REACH Regulation to prepare an Annex XV dossier in view of a possible restriction concerning the use of synthetic water-insoluble polymers of 5mm or less in any dimension (i.e. micro plastic particles) which are intentionally added to products of any kind. ECHA entered the relevant intention into the Registry of Intentions on 17 January 2018.*

*The Commission note if the UK authorities proceed to adopt the notified drafts, the Commission expects them to consider the adopted national measures as provisional and to take into account the final outcome of the ongoing REACH procedures".*

9.Mae erthygl 5(2) o Gyfarwyddeb 2015/1535/UE yn ei gwneud yn ofynnol i awdurdodau hysbysu ystyried sylwadau'r Comisiwn Ewropeaidd cyn belled ag y bo modd.

10.Gan nad yw'n gwbl glir o'r Memorandwm Esboniadol a oedd y wybodaeth a ddarparwyd yn cynrychioli sylwadau'r Comisiwn Ewropeaidd yn eu crynswth, mae Cynghorwyr Cyfreithiol y Cynulliad wedi ceisio eglurhad pellach.

11.Ni all Llywodraeth Cymru rannu ymateb y Comisiwn, ond mae wedi cadarnhau y cydymffurfwyd â'r holl rwymedigaethau o dan gyfraith Ewropeaidd wrth ddrafftio Rheoliadau 2018, a bod y weithdrefn gyfyngu barhaus o dan *Rheoliadau Cofrestru, Gwerthuso, Awdurdodi a Chyfyngu ar Gemegolion (Rheoliadau REACH) 1907/2006* yn cael ei monitro.

12.Mae'r Pwyllgor yn nodi y gallai fod angen i Lywodraeth Cymru wneud newidiadau i ddeddfwriaeth a wneir gan Weinidogion Cymru yn dibynnu ar ganlyniad gweithdrefn gyfyngu REACH ac unrhyw gytundeb terfynol o ran Brexit.

## Y goblygiadau yn sgil gadael yr Undeb Ewropeaidd

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



## Ymateb y Llywodraeth

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Nid oes angen ymateb gan y Llywodraeth.

### Cynghorwyr Cyfreithiol

### Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol

25 Mai 2018



*Rheoliadau Drafft a osodwyd gerbron Cynulliad Cenedlaethol Cymru o dan adran 62(3) o Ddeddf Gorfodaeth Reoleiddiol a Sancsiynau 2008, i'w cymeradwyo drwy benderfyniad gan Gynulliad Cenedlaethol Cymru.*

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## 2018 Rhif (Cy.)

### DIOGELU'R AMGYLCHEDD, CYMRU

#### Rheoliadau Diogelu'r Amgylchedd (Microbelenni) (Cymru) 2018

##### NODYN ESBONIADOL

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

Mae'r Rheoliadau hyn yn gwahardd defnyddio microbelenni fel cynhwysyn wrth weithgynhyrchu cynhyrchion gofal personol i'w rinsio i ffwrdd ac yn gwahardd gwerthu unrhyw gynhyrchion o'r fath sy'n cynnwys microbelenni (rheoliad 3). Mae torri'r gwaharddiad hwn yn drosedd (rheoliad 3). Mae diffiniadau o "microbelen" a "cynnrych gofal personol i'w rinsio i ffwrdd" wedi eu cynnwys yn rheoliad 2. Bydd y gwaharddiad ar weithgynhyrchu a gwerthu unrhyw gynhyrchion o'r fath yn dod i rym ar 30 Mehefin 2018.

Mae cyfundrefn sancsiynau sifil yn cael ei chyflwyno hefyd i alluogi'r rheoleiddiwr i osod ystod o sancsiynau sifil (rheoliad 7 a'r Atodlen). Mae'r rhain yn cynnwys cosbau ariannol amrywiadwy, hysbysiadau cydymffurfio a hysbysiadau stop. Caiff y rheoleiddiwr hefyd dderbyn ymgymeriadau gorfodaeth. Mae'r Rheoliadau yn gwneud darpariaeth ar gyfer y weithdrefn sy'n ymwneud â'r sancsiynau hyn a'r mecanweithiau apelio sydd ar gael. Mae methu â chydymffurfio â hysbysiad stop yn drosedd (paragraff 16 o'r Atodlen). Mae'r holl apelau sy'n ymwneud â sancsiynau sifil i'w cyflwyno i'r Tribiwnlys Haen Gyntaf.

Mae rheoliad 8 yn rhoi pwerau i swyddogion gorfodaeth gynnal ymchwiliadau at ddiben awdurdodedig (fel y'i diffinnir yn rheoliad 2).

Mae rheoliad 9 yn rhoi pwerau mynediad i swyddogion gorfodaeth i gynnal ymchwiliad at ddiben awdurdodedig (fel y'i diffinnir yn rheoliad 2).

Mae rheoliad 10 yn creu troseddau sy'n gysylltiedig â phwerau swyddogion gorfodaeth yn rheoliadau 8 a 9.

Mae rheoliad 11 yn darparu ar gyfer cyhoeddi gwybodaeth yngylch camau gorfodaeth a gymerir gan y rheoleiddiwr, ac mae rheoliadau 12 a 13 yn darparu bod rhaid llunio canllawiau sy'n ymwneud â defnyddio sancsiynaif sifil ac ymgynghori arnynt, ac yn pennu'r wybodaeth sydd i'w chynnwys mewn canllawiau o'r fath.

Mae rheoliad 14 yn cynnwys darpariaeth ar gyfer adolygu'r Rheoliadau.

Mae rheoleiddwyr yn gallu adennill costau gorfodaeth (paragraff 27 o'r Atodlen) yn achos cosbau ariannol amrywiadwy, hysbysiadau cydymffurfio a hysbysiadau stop.

Hysbyswyd y Comisiwn Ewropeaidd am y Rheoliadau hyn ar ffurf ddrafft yn unol â Chyfarwyddeb (EU) 2015/1535 Senedd Ewrop a'r Cyngor dyddiedig 9 Medi 2015 a oedd yn gosod gweithdrefn ar gyfer darparu gwybodaeth ym maes rheoliadau technegol a rheolau sy'n ymwneud â gwasanaethau'r Gymdeithas Wybodaeth (OJ Rhif L 241, 17.9.2015, t. 1).

Ystyriwyd Cod Ymarfer Gweinidogion Cymru ar gynnal Asesiadau Effaith Rheoleiddiol mewn perthynas â'r Rheoliadau hyn. O ganlyniad, lluniwyd asesiad rheoleiddiol o'r costau a'r manteision sy'n debygol o ddeillio o gydymffurfio â'r Rheoliadau hyn yng Nghymru. Gellir cael copi oddi wrth: Llywodraeth Cymru, Parc Cathays, Caerdydd, CF10 3NQ.

*Rheoliadau Drafft a osodwyd gerbron Cynulliad Cenedlaethol Cymru o dan adran 62(3) o Ddeddf Gorfodaeth Reoleiddiol a Sancsiynau 2008, i'w cymeradwyo drwy benderfyniad gan Gynulliad Cenedlaethol Cymru.*

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## 2018 Rhif (Cy.)

### DIOGELU'R AMGYLCHEDD, CYMRU

#### Rheoliadau Diogelu'r Amgylchedd (Microbelenni) (Cymru) 2018

*Gwnaed*

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*Yn dod i rym*

*30 Mehefin 2018*

Mae Gweinidogion Cymru—

- (a) wedi cyhoeddi hysbysiad yn y London Gazette a'r Western Mail fel sy'n ofynnol gan adran 140(6)(b) o Ddeddf Diogelu'r Amgylchedd 1990<sup>(1)</sup> ("Deddf 1990") ac wedi ystyried y sylwadau a gyflwynwyd yn unol â'r hysbysiad hwnnw;
- (b) wedi ymgynghori yn unol ag adrannau 59 a 60 o Ddeddf Gorfodaeth Reoleiddiol a Sancsiynau 2008<sup>(2)</sup> ("Deddf 2008") ac wedi eu bodloni (yn unol ag adran 66 o'r Ddeddf honno) y bydd awdurdodau lleol (sef y rheoleiddiwr at ddiben y Rheoliadau hyn) yn gweithredu yn unol â'r egwyddorion y cyfeirir atynt yn adran 5(2) o'r Ddeddf honno wrth arfer pŵer a roddir gan y Rheoliadau hyn;
- (c) yn ystyried ei bod yn briodol i wneud y Rheoliadau hyn at ddiben atal y sylwedd neu'r eitemau a bennir ynddynt rhag achosi llygredd amgylcheddol a niwed i iechyd anifeiliaid.

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(1) 1990 p. 43.

(2) 2008 p. 13. At ddibenion y Rheoliadau hyn, mae i "y rheoleiddiwr" yr ystyr a roddir gan reoliad 2, yn hytrach na'r ystyr a roddir i "the regulator" gan adran 37 o Ddeddf 2008.

Yn unol ag adran 62(3) o Ddeddf 2008, gosodwyd drafft o'r Rheoliadau hyn gerbron Cynulliad Cenedlaethol Cymru ac fe'u cymeradwywyd ganddo drwy benderfyniad.

Mae Gweinidogion Cymru yn gwneud y Rheoliadau hyn drwy arfer y pwerau a roddir gan adran 140(1)(b) ac (c), (3)(c) a (d), a (9) o Ddeddf 1990<sup>(1)</sup> ac adrannau 36, 42, 46, 48, 49, 50, 52 i 55 a 62(2) o Ddeddf 2008<sup>(2)</sup>.

## RHAN 1

### Cyflwyniad

#### **Enwi, cychwyn, rhychwantu a chymhwysyo**

1.—(1) Enw'r Rheoliadau hyn yw Rheoliadau Diogelu'r Amgylchedd (Microbelenni) (Cymru) 2018.

(2) Daw'r Rheoliadau hyn i rym ar 30 Mehefin 2018.

(3) Mae'r Rheoliadau hyn yn rhychwantu Cymru a Lloegr, ond maent yn gymwys o ran Cymru yn unig.

#### **Dehongli**

##### **2. Yn y Rheoliadau hyn—**

ystyr “cyflenwi” (“*supply*”), mewn perthynas â chynnrych gofal personol i’w rinsio i ffwrdd, yw cyflenwi drwy ei werthu neu ei gyflwyno fel gwobr neu rodd hyrwyddo yng nghwrs busnes;

ystyr “cynnyrch gofal personol i’w rinsio i ffwrdd” (“*rinse-off personal care product*”) yw unrhyw sylwedd, neu gymysgedd o sylweddau, a weithgynhyrchir at ddiben ei roi ar unrhyw ran berthnasol o'r corff dynol yn ystod unrhyw driniaeth gofal personol, drwy broses roi sy'n golygu bod angen gwaredu'r cynnyrch (neu unrhyw weddillion o'r cynnyrch) mewn ffordd brydlon a phenodol wrth gwblhau'r driniaeth drwy ei olchi neu ei rinsio â dŵr, yn hytrach na gadael iddo dreulio neu olchi i ffwrdd, neu gael ei amsugno neu ei ddiosg gydag amser;

ac at y diben hwn—

(1) Diwygiwyd adran 140(3)(c) gan O.S. 1999/1108. Yn rhinwedd erthygl 2 o O.S. 1999/672 ac Atodlen 1 iddo, ac adran 162 o Ddeddf Llywodraeth Cymru 2006 a pharagraff 30 o Atodlen 11 iddi, yn ddarostyngedig i eithriadau penodol, mae'r pwerau o dan adran 140 bellach yn arferadwy gan Weinidogion Cymru o ran Cymru.

(2) Diwygiwyd adran 36(2) gan adran 21(1) a (2)(f) o Ddeddf Menter 2016; diwygiwyd adran 42(6) gan O.S. 2015/664; diwygiwyd adran 49(1) gan O.S. 2015/664.

- (a) ystyr “triniaeth gofal personol” (“*personal care treatment*”) yw unrhyw broses o lanhau, diogelu neu bersawru rhan berthnasol o’r corff dynol, cynnal neu adfer cyflwr y rhan honno neu newid ei golwg; a
- (b) “rhan berthnasol o’r corff dynol” (“*relevant human body part*”) yw—
  - (i) unrhyw ran allanol o’r corff dynol (gan gynnwys unrhyw ran o’r epidermis, y system gwaltt a blew, yr ewinedd neu’r gwefusau);
  - (ii) y dannedd; neu
  - (iii) pilenni mwcaidd ceudod y geg;

Mae i “Cymru” yr ystyr a roddir i “Wales” o dan adran 158 o Ddeddf Llywodraeth Cymru 2006;

ystyr “diben awdurdodedig” (“*authorised purpose*”) yw at ddiben penderfynu pa un a yw trosedd o dan reoliad 3(1) neu 3(2) wedi ei chyflawni neu’n cael ei chyflawni, neu at ddiben penderfynu pa un a yw unrhyw ofyniad hysbysiad cydymffurfio, hysbysiad stop neu ymgymeriad gorfodaeth o dan y Rheoliadau hyn wedi ei dorri neu’n cael ei dorri ai peidio;

mae i “hysbysiad cydymffurfio” (“*compliance notice*”) yr ystyr a roddir gan baragraff 1(1)(b) o’r Atodlen;

mae i “hysbysiad stop” (“*stop notice*”) yr ystyr a roddir gan baragraff 9(2) o’r Atodlen;

ystyr “microbelen” (“*microbead*”) yw unrhyw ronyn plastig solet sy’n annhoddadwy mewn dŵr sy’n 5mm neu lai o faint mewn unrhyw fesuriad;

ystyr “plastig” (“*plastic*”) yw sylwedd polymerig synthetig y gellir ei fowldio, ei allwthio neu ei drin yn ffisegol i lunio ffurfliau solet amrywiol ac sy’n cadw ei siâp gwneuthuredig terfynol wrth ei ddefnyddio at ei ddefnyddiau bwriadedig;

ystyr “y rheoleiddiwr” (“*the regulator*”), at ddibenion gorfodi trosedd o dan reoliad 3(1), 3(2) neu 10(1), mewn perthynas ag unrhyw fan lle y gweithgynhyrchir cynnyrch gofal personol i’w rinsio i ffwrdd neu y cyflenwir y cynnyrch hwnnw, yw’r awdurdod lleol sy’n gyfrifol am yr ardal y mae’r man hwnnw ynnddi;

ac at y diben hwn ystyr “awdurdod lleol” (“*local authority*”) yw cyngor sir neu gyngor bwrdeistref sirol a gyfansoddwyd o dan adran 21 o Ddeddf Llywodraeth Leol 1972;

mae i “ymgymeriad gorfodaeth” (“*enforcement undertaking*”) yr ystyr a roddir gan baragraff 17 o’r Atodlen; ac

mae i “ymgymeriad trydydd parti” (“*third party undertaking*”) yr ystyr a roddir gan baragraff 3(1) o’r Atodlen.

## RHAN 2

### Troseddau

#### Troseddau

**3.**—(1) Mae person sy'n defnyddio microbelenni fel cynhwysyn wrth weithgynhyrchu unrhyw gynnyrch gofal personol i'w rinsio i ffwrdd yn euog o drosedd.

(2) Mae person sy'n cyflenwi neu'n cynnig cyflenwi unrhyw gynnyrch gofal personol i'w rinsio i ffwrdd sy'n cynnwys microbelenni yn euog o drosedd.

(3) Mae person sy'n euog o drosedd o dan baragraff (1) neu (2) yn agored, o'i euogfarnu'n ddiannod, i ddirwy.

#### Amddiffyniad o ddiwydrwydd dyladwy i gyflenwyr

**4.**—(1) Yn ddarostyngedig i baragraffau (2) a (4), mewn achos am drosedd o dan reoliad 3(2), mae'n amddiffyniad i berson ("P") ddangos bod P wedi cymryd pob cam rhesymol ac wedi arfer pob diwydrwydd dyladwy i osgoi cyflawni'r drosedd.

(2) Ni chaniateir i P ddibynnau ar amddiffyniad o dan baragraff (1) sy'n cynnwys honiad trydydd parti oni bai bod P wedi—

- (a) cyflwyno hysbysiad yn unol â pharagraff (3); neu
- (b) cael caniatâd y llys.

(3) Rhaid i'r hysbysiad—

- (a) rhoi unrhyw wybodaeth sydd ym mediant P sy'n enwi'r person, neu sydd o gymorth o ran cael gwybod pwy oedd y person—
  - (i) a gyflawnodd y weithred neu ddiffyg; neu
  - (ii) a gyflenwodd yr wybodaeth yr oedd P yn dibynnau arni; a
- (b) cael ei gyflwyno i'r person sy'n dwyn yr achos nid llai na 7 diwrnod clir cyn gwrandawiad yr achos.

(4) Ni chaniateir i P ddibynnau ar amddiffyniad o dan baragraff (1) sy'n cynnwys honiad y cyflawnwyd y drosedd o ganlyniad i ddibynnau ar wybodaeth a gyflenwyd gan berson arall, oni bai ei bod yn rhesymol i P ddibynnau ar yr wybodaeth, gan roi sylw penodol i—

- (a) y camau a gymerwyd gan P, a'r rheini y gellid yn rhesymol bod wedi eu cymryd, at ddiben gwirhau'r wybodaeth; a
- (b) pa un a oedd gan P unrhyw reswm i beidio â chredu'r wybodaeth.

(5) Yn y rheoliad hwn, ystyr "honiad trydydd parti" yw honiad y cyflawnwyd y drosedd o ganlyniad i—

- (a) gweithred neu ddiffyg person arall; neu
- (b) dibynnu ar wybodaeth a gyflenwyd gan berson arall.

### **Y terfyn amser ar gyfer erlyn troseddau**

**5.**—(1) Caniateir i unrhyw wybodaeth sy'n ymwneud â throsedd o dan reoliad 3 neu 10 y gellir ei rhoi ar brawf gan lys ynaden gael ei rhoi ar brawf os caiff ei gosod o fewn 12 mis ar ôl y dyddiad y daw'r erlynydd i wybod am dystiolaeth sy'n ddigonol ym marn yr erlynydd i gyflawnhau'r achos.

(2) Ni chaniateir dwyn unrhyw achos fwy na thair blynedd ar ôl cyflawni'r drosedd.

## RHAN 3

### Gorfodaeth a Sancsiynau Sifil

#### **Gorfodaeth**

**6.**—(1) Caiff y rheoleiddiwr awdurdodi unrhyw berson i arfer, at ddiben awdurdodedig ac yn unol â thelerau'r awdurdodiad, unrhyw un neu ragor o'r pwerau a bennir yn rheoliadau 8 a 9, os ymddengys i'r rheoleiddiwr bod y person hwnnw yn addas i'w arfer neu i'w harfer.

(2) Rhaid i awdurdodiad o dan baragraff (1) fod yn ysgrifenedig.

(3) Yn y Rhan hon, ystyr "swyddog gorfodaeth" yw person a awdurdodir o dan baragraff (1).

#### **Sancsiynau sifil**

**7.** Mae'r Atodlen (sancsiynau sifil) yn cael effaith at ddiben gorfodi trosedd o dan reoliad 3(1), 3(2) neu 10(1).

#### **Pwerau Swyddog Gorfodaeth**

**8.**—(1) Y pwerau y caniateir awdurdodi swyddog gorfodaeth i'w harfer yw—

- (a) cynnal yr archwiliadau a'r ymchwiliadau hynny a all fod yn angenheidiol o dan unrhyw amgylchiadau;
- (b) ei gwneud yn ofynnol i unrhyw berson y mae gan swyddog gorfodaeth sail resymol i greded y gall roi unrhyw wybodaeth sy'n berthnasol i unrhyw archwiliad neu ymchwiliad o dan baragraff (a) uchod i ateb (yn absenoldeb personau ac eithrio person a enwebir gan y person hwnnw i fod yn bresennol ac unrhyw bersonau y caiff y person awdurdodedig ganiatáu iddynt fod yn bresennol) y

cwestiynau hynny y mae'r swyddog gorfodaeth yn meddwl ei bod yn addas i'w gofyn ac i lofnodi datganiad o wirionedd ei atebion; ac

- (c) ei gwneud yn ofynnol i ddangos unrhyw gofnodion y mae'n angenrheidiol i'r swyddog gorfodaeth eu gweld at ddibenion archwiliad neu ymchwiliad o dan baragraff (a) uchod, ac i weld unrhyw gofnod yn y cofnodion a chymryd copiau ohono neu ohonynt, neu pan fo'r wybodaeth honno wedi ei chofnodi ar ffurf gyfrifiadurol, ei gwneud yn ofynnol i gyflwyno detholiadau o'r cofnodion hynny.

(2) Nid oes dim yn yr adran hon yn gorfodi unrhyw berson i ddangos dogfen y byddai gan y person hwnnw hawl ar sail braint broffesiynol gyfreithiol i atal ei dangos o gael gorchymyn datgelu mewn achos yn yr Uchel Lys.

#### Pwerau mynediad ac archwilio etc.

9.—(1) Y pwerau y caniateir awdurdodi swyddog gorfodaeth i'w harfer yw—

- (a) mynd ar unrhyw adeg resymol i unrhyw fangre (ac eithrio mangre a ddefnyddir yn gyfan gwbl neu'n bennaf fel annedd) y mae gan y swyddog gorfodaeth reswm i gredu ei bod yn angenrheidiol i fynd iddi at ddiben awdurdodedig;
- (b) pan fydd yn mynd i unrhyw fangre o dan is-baragraff (a)—  
(i) mynd yng nghwmni swyddog gorfodaeth arall; a  
(ii) dod ag unrhyw gyfarpar neu ddeunyddiau sy'n ofynnol at y diben awdurdodedig o dan sylw;
- (c) wrth fynd i unrhyw fangre o dan is-baragraff (a)—  
(i) arfer y pwerau yn rheoliad 8(2); a  
(ii) cymryd unrhyw fesuriadau, tynnu unrhyw ffotograffau a gwneud unrhyw recordiadau y mae'r swyddog gorfodaeth yn ystyried eu bod yn angenrheidiol at ddiben unrhyw archwiliad neu ymchwiliad o'r fath.
- (d) o ran unrhyw fangreodd y mae gan swyddog gorfodaeth y pŵer i fynd iddynt o dan is-baragraff (a), roi cyfarwyddyd bod rhaid gadael y mangreodd hynny neu unrhyw ran ohonynt, neu unrhyw beth ynddynt, heb ymyrryd â hwy (pa un ai'n gyffredinol neu o ran agweddu penodol) am gyhyd ag sy'n rhesymol angenrheidiol at ddiben archwiliad neu ymchwiliad o dan is-baragraff (c);

- (e) cymryd unrhyw samplau, neu beri i samplau gael eu cymryd, o unrhyw eitemau neu sylweddau a geir mewn neu ar unrhyw fangre y mae gan swyddog gorfodaeth y pŵer i fynd iddi o dan is-baragraff (a), a pheri i unrhyw eitemau neu sylweddau o'r fath gael eu dadansoddi neu eu profi;
- (f) yn achos unrhyw sampl o'r fath, cymryd mediant ohoni a'i chadw am gyhyd ag sy'n angenrheidiol at yr holl ddibenion a ganlyn, neu unrhyw un neu ragor ohonynt—
  - (i) ei harchwilio, a chynnal unrhyw broses neu brofion arni, neu beri iddi gael ei harchwilio;
  - (ii) sicrhau nad ymyrrir â'r sampl cyn cwblhau'r archwiliad;
  - (iii) sicrhau ei bod ar gael i'w defnyddio fel tystiolaeth mewn unrhyw achos am drosedd o dan y Rheoliadau hyn.

(2) Ac eithrio mewn achos brys, pan fo swyddog gorfodaeth yn bwriadu mynd i unrhyw fangre a—

- (a) bod mynediad wedi ei wrthod neu fod y swyddog gorfodaeth yn dirnad ar sail resymol bod mynediad yn debygol o gael ei wrthod, a
- (b) bod y swyddog gorfodaeth yn dirnad ar sail resymol y gall y defnydd o rym rhesymol fod yn angenrheidiol i gael mynediad,

ni chaniateir mynd i'r mangreodd hynny yn rhinwedd paragraff (1)(a) ond o dan awdurdod gwarant.

(3) Nid oes dim ym mharagraff (1)(c)(iii) yn gorfodi unrhyw berson i ddangos dogfen y byddai gan y person hwnnw hawl ar sail braint broffesiynol gyfreithiol i atal ei dangos o gael gorchymyn datgelu mewn achos yn y Llys Sirol neu yn yr Uchel Lys.

(4) Ni chaiff swyddog gorfodaeth arfer y pwerau ym mharagraff (1) ond ar sail cred resymol bod trosedd o dan reoliad 3 wedi ei chyflawni neu'n cael ei chyflawni.

(5) Rhaid i swyddog gorfodaeth sy'n ceisio arfer pŵer o dan baragraff (1) ddangos tystiolaeth o bwy ydyw a thystiolaeth o'i awdurdod os gofynnir iddo gan berson sy'n, neu yr ymddengys ei fod yn—

- (a) cyflenwr cynnyrch gofal personol i'w rinsio i ffwrdd neu gyflogai cyflenwr o'r fath;
- (b) gweithgynhyrchwr cynnyrch gofal personol i'w rinsio i ffwrdd neu gyflogai gweithgynhyrchwr o'r fath; neu
- (c) perchenog neu feddianydd unrhyw fangre y mae'r swyddog gorfodaeth yn ceisio arfer y pŵer o dan sylw ynddi.

## **Troseddau**

**10.**—(1) Mae person yn cyflawni trosedd os yw'r person hwnnw, wrth ymateb i bwerau a arferir o dan reoliadau 8 a 9—

- (a) yn methu â chyflenwi i swyddog gorfodaeth unrhyw wybodaeth, ddogfennau neu gofnodion y gofynnir amdanynt;
- (b) yn rhoi gwybodaeth anwir neu gamarweiniol i swyddog gorfodaeth; neu
- (c) yn rhwystro swyddog gorfodaeth yn fwriadol.

(2) Mae person sy'n euog o drosedd o dan baragraff (1) yn agored, o'i euogfarnu'n ddiannod, i ddirwy.

## **Cyhoeddi camau gorfodaeth**

**11.**—(1) Pa fo'r rheoleiddiwr yn gosod sancsiwn sifil o dan y Rheoliadau hyn mewn perthynas â throsedd o dan reoliad 3 neu 10, rhaid i'r rheoleiddiwr o bryd i'w gilydd gyhoeddi—

- (a) yr achosion y gosodwyd y sancsiwn sifil ynddynt;
- (b) pan fo'r sancsiwn sifil yn gosb ariannol amrywiadwy neu'n hysbysiad cydymffurfio, yr achosion y derbyniwyd ymgymeriad trydydd parti ynddynt; ac
- (c) yr achosion yr ymrwymwyd i ymgymeriad gorfodaeth ynddynt.

(2) Ym mharagraff (1)(a), nid yw'r cyfeiriad at achosion y gosodwyd sancsiwn sifil ynddynt yn cynnwys achosion pan fo'r sancsiwn wedi ei osod ond wedi ei wrthdroi ar apêl.

(3) Nid yw'r rheoliad hwn yn gymwys mewn achosion pan fo'r rheoleiddiwr yn ystyried y byddai cyhoeddi yn amhriodol.

## RHAN 4

### Canllawiau

#### **Canllawiau**

**12.**—(1) Rhaid i'r rheoleiddiwr gyhoeddi canllawiau ar ei ddefnydd o sancsiynau sifil o dan y Rheoliadau hyn mewn perthynas â throsedd o dan reoliad 3 neu 10.

(2) Yn achos canllawiau sy'n ymwneud â chosb ariannol amrywiadwy, hysbysiad cydymffurfio neu hysbysiad stop, rhaid i'r canllawiau gynnwys yr wybodaeth berthnasol a nodir ym mharagraff (3).

(3) Yr wybodaeth berthnasol y cyfeirir ati ym mharagraff (2) yw gwybodaeth yngylch—

- (a) o dan ba amgylchiadau y mae'r gofyniad yn debygol o gael ei osod;
- (b) o dan ba amgylchiadau na chaniateir ei osod;

- (c) hawliau i gyflwyno sylwadau a hawliau i apelio; a
- (d) yn achos cosb ariannol amrywiadwy, y materion y mae'r rheoleiddiwr yn debygol o'u hystyried wrth bennu swm y gosb (gan gynnwys unrhyw ddisgowntiau am adrodd yn wirfoddol am beidio â chydymffurfio gan unrhyw berson amdano'i hun).

(4) Rhaid i'r rheoleiddiwr ddiwygio'r canllawiau pan fo'n briodol.

(5) Rhaid i'r rheoleiddiwr ymgynghori â'r personau hynny y mae'n ystyried eu bod yn briodol cyn cyhoeddi unrhyw ganllawiau neu ganllawiau diwygiedig o dan y rheoliad hwn.

(6) Rhaid i'r rheoleiddiwr roi sylw i'r canllawiau neu'r canllawiau diwygiedig wrth arfer ei swyddogaethau.

### **Canllawiau ychwanegol**

**13.**—(1) Rhaid i ganllawiau o dan adran 64 o Ddeddf 2008 sy'n ymwneud â defnyddio cosbau am beidio â chydymffurfio a chostau adenill gorfodaeth (yn ogystal â'r materion a bennir yn adran 64(2)) bennu—

- (a) o dan ba amgylchiadau na chaniateir eu gosod;
- (b) materion i roi sylw iddynt wrth bennu'r swm o dan sylw; a
- (c) hawliau i apelio.

(2) Yn y rheoliad hwn, mae i "cosb am beidio â chydymffurfio" yr ystyr a roddir gan baragraff 24(1) o'r Atodlen.

## RHAN 5

### Adolygiad

#### **Adolygiad**

**14.**—(1) Rhaid i Weinidogion Cymru—

- (a) cyn gynted ag y bo'n rhesymol ymarferol ar ôl diwedd y cyfnod o dair blynedd o'r dyddiad y daw'r Rheoliadau hyn i rym, gynnal adolygiad o weithrediad y darpariaethau yn Rhan 3 (Gorfodaeth a Sancsiynau Sifil) a'r Atodlen;
- (b) o bryd i'w gilydd gynnal adolygiad o'r ddarpariaeth reoleiddiol a geir yn y Rheoliadau hyn (gan gynnwys Rhan 3 a'r Atodlen); ac

- (c) cyhoeddi adroddiad sy'n nodi casgliadau unrhyw adolygiad.
- (2) Yn achos adolygiad o dan baragraff (1)(a)—
- (a) mae adran 67 o Ddeddf 2008 yn ei gwneud yn ofynnol i'r adolygiad ystyried yn benodol pa un a yw'r ddarpariaeth wedi cyflawni ei hamcanion mewn modd effeithlon ac effeithiol ai peidio;
  - (b) rhaid i Weinidogion Cymru, wrth gynnal yr adolygiad, ymgynghori â'r personau hynny y mae Gweinidogion Cymru yn ystyried eu bod yn briodol; ac
  - (c) rhaid i Weinidogion Cymru osod copi o'r adroddiad a gyhoeddir o dan baragraff (1)(c) gerbron Cynlliad Cenedlaethol Cymru.

Gweinidog yr Amgylchedd o dan awdurdod  
Ysgrifennydd y Cabinet dros Ynni, Cynllunio a  
Materion Gwledig, un o Weinidogion Cymru.

Dyddiad

## YR ATODLEN

Rheoliadau 2, 7, 13(2) a 14(1)

### Sancsiynau Sifil

#### RHAN 1

##### Cosbau Ariannol Amrywiadwy a Hysbysiadau Cydymffurfio

###### **Gosod cosb ariannol amrywiadwy neu hysbysiad cydymffurfio**

1.—(1) Mewn perthynas â throsedd o dan reoliad 3(1), 3(2) neu 10(1) caiff y rheoleiddiwr drwy hysbysiad osod—

- (a) gofyniad i dalu cosb ariannol i'r rheoleiddiwr o'r swm hwnnw y caiff y rheoleiddiwr ei bennu ("cosb ariannol amrywiadwy"); neu
- (b) gofyniad i gymryd y camau hynny y caiff y rheoleiddiwr eu pennu, o fewn y cyfnod hwnnw y caiff y rheoleiddiwr ei bennu, er mwyn sicrhau nad yw'r drosedd yn parhau neu nad yw'n digwydd eto ("hysbysiad cydymffurfio").

(2) Cyn gwneud hynny rhaid i'r rheoleiddiwr fod wedi ei fodloni y tu hwnt i amheuaeth resymol bod y person wedi cyflawni'r drosedd.

(3) Ni chaniateir gosod gofyniad o dan is-baragraff (1)(a) neu (b) ar berson ar fwy nag un achlysur mewn perthynas â'r un weithred neu anweithred.

(4) Ni chaiff cosb ariannol amrywiadwy am y troseddau sydd wedi eu cynnwys yn rheoliad 3 neu 10(1)(a) fod yn fwy na'r swm lleiaf o 10% o drosiant blynnyddol y busnes neu £5000.

(5) Ni chaiff cosb ariannol amrywiadwy am y troseddau sydd wedi eu cynnwys yn rheoliad 10(1)(b) neu 10(1)(c) fod yn fwy na'r swm lleiaf o 10% o drosiant blynnyddol y busnes neu £20,000.

(6) Cyn cyflwyno hysbysiad sy'n ymwneud â chosb ariannol amrywiadwy i berson, caiff y rheoleiddiwr ei gwneud yn ofynnol i'r person ddarparu'r wybodaeth honno sy'n rhesymol at ddiben cadarnhau swm unrhyw fudd ariannol sy'n deillio o ganlyniad i'r drosedd honno.

## **Hysbysiad o fwriad**

**2.**—(1) Pan fo'r rheoleiddiwr yn bwriadu cyflwyno cosb ariannol amrywiadwy neu hysbysiad cydymffurfio i berson, rhaid i'r rheoleiddiwr gyflwyno i'r person hwnnw hysbysiad o'r hyn a fwriedir ("hysbysiad o fwriad").

(2) Rhaid i'r hysbysiad o fwriad gynnwys—

- (a) y seiliau dros yr hysbysiad cydymffurfio arfaethedig neu'r gosb ariannol amrywiadwy arfaethedig;
- (b) gofynion yr hysbysiad cydymffurfio arfaethedig ac, yn achos cosb, y swm sydd i'w dalu; ac
- (c) gwybodaeth ynghylch—
  - (i) yr hawl i gyflwyno sylwadau a gwrthwynebiadau o fewn 28 o ddiwrnodau sy'n dechrau â'r diwrnod y cafwyd yr hysbysiad o fwriad;
  - (ii) o dan ba amgylchiadau na chaiff y rheoleiddiwr osod y gosb ariannol amrywiadwy neu'r hysbysiad cydymffurfio.

(3) Caiff person y cyflwynir hysbysiad o fwriad iddo, o fewn 28 o ddiwrnodau sy'n dechrau â'r diwrnod y cafwyd yr hysbysiad, gyflwyno sylwadau a gwrthwynebiadau i'r rheoleiddiwr mewn perthynas â'r bwriad i osod cosb ariannol amrywiadwy neu hysbysiad cydymffurfio.

## **Ymgymeriadau trydydd parti**

**3.**—(1) Caiff person y cyflwynir hysbysiad o fwriad iddo gynnig ymgymeriad o ran cam gweithredu i'w gymryd gan y person hwnnw (gan gynnwys talu swm o arian) er budd unrhyw drydydd parti yr effeithir arno gan y drosedd ("ymgymeriad trydydd parti").

(2) Caiff y rheoleiddiwr dderbyn neu wrthod unrhyw ymgymeriad trydydd parti o'r fath.

## **Hysbysiad terfynol**

**4.**—(1) Ar ôl diwedd y cyfnod ar gyfer cyflwyno sylwadau a gwrthwynebiadau, rhaid i'r rheoleiddiwr benderfynu pa un ai i—

- (a) gosod y gofynion yn yr hysbysiad o fwriad, gydag addasiadau neu hebddynt; neu
- (b) gosod unrhyw ofyniad arall y mae gan y rheoleiddiwr bŵer i'w osod o dan y Rhan hon.

(2) Pan fo'r rheoleiddiwr yn penderfynu gosod gofyniad, rhaid i'r hysbysiad sy'n ei osod (yr "hysbysiad terfynol") gydymffurfio â pharagraff 5, yn

achos cosb ariannol amrywiadwy, neu baragraff 6, yn achos hysbysiad cydymffurfio.

(3) Ni chaiff y rheoleiddiwr osod hysbysiad terfynol ar berson pan fo'r rheoleiddiwr wedi ei fodloni na fyddai'r person, oherwydd unrhyw amddiffyniad, yn agored i gael ei euogfarnu o'r drosedd y mae'r hysbysiad yn ymwneud ag ef.

(4) Rhaid i'r rheoleiddiwr roi sylw i unrhyw ymgymmeriad trydydd parti a dderbynir ganddo wrth benderfynu—

- (a) pa un ai i gyflwyno hysbysiad terfynol ai peidio; a
- (b) swm unrhyw gosb ariannol amrywiadwy a osodir ganddo.

#### **Cynnwys hysbysiad terfynol: cosb ariannol amrywiadwy**

**5.** Rhaid i hysbysiad terfynol am gosb ariannol amrywiadwy gynnwys gwybodaeth ynghylch—

- (a) y seiliau dros osod y gosb;
- (b) y swm sydd i'w dalu;
- (c) sut y gellir talu;
- (d) o fewn pa gyfnod y mae'n rhaid talu, ni chaiff y cyfnod hwnnw fod yn llai na 28 o ddiwrnodau;
- (e) hawliau i apelio, ac
- (f) canlyniadau methu â chydymffurfio â'r hysbysiad.

#### **Cynnwys hysbysiad terfynol: hysbysiad cydymffurfio**

**6.** Rhaid i hysbysiad terfynol sy'n ymwneud â hysbysiad cydymffurfio gynnwys gwybodaeth ynghylch—

- (a) y seiliau dros osod yr hysbysiad;
- (b) pa gamau cydymffurfio sy'n ofynnol ac o fewn pa gyfnod y mae'n rhaid eu cwblhau;
- (c) hawliau i apelio; a
- (d) canlyniadau methu â chydymffurfio â'r hysbysiad.

#### **Apelau yn erbyn hysbysiad terfynol**

**7.—(1)** Caiff y person sy'n cael yr hysbysiad terfynol apelio yn ei erbyn.

(2) Y seiliau ar gyfer apelio yw—

- (a) bod y penderfyniad yn seiliedig ar wall ffeithiol;
- (b) bod y penderfyniad yn anghywir mewn cyfraith;

- (c) yn achos cosb ariannol amrywiadwy, bod swm y gosb yn afresymol;
- (d) yn achos hysbysiad cydymffurfio, bod natur y gofyniad yn afresymol;
- (e) bod y penderfyniad yn afresymol am unrhyw reswm arall;
- (f) unrhyw reswm arall.

### **Achosion troseddol**

**8.—(1)** Os—

- (a) cyflwynir cosb ariannol amrywiadwy neu hysbysiad cydymffurfio i unrhyw berson, neu
- (b) derbynir ymgymeriad trydydd parti oddi wrth unrhyw berson,

ni chaiff y person hwnnw ar unrhyw adeg gael ei euogfarnu o'r drosedd mewn cysylltiad â'r weithred neu anweithred sy'n arwain at y gosb ariannol amrywiadwy, yr hysbysiad cydymffurfio neu'r ymgymeriad trydydd parti ac eithrio mewn achos y cyfeirir ato yn is-baragraff (2).

(2) Mae'r achos y cyfeirir ato yn is-baragraff (1) yn achos—

- (a) pan fo hysbysiad cydymffurfio yn cael ei osod ar berson neu ymgymeriad trydydd parti yn cael ei dderbyn oddi wrth berson;
- (b) pan na fo cosb ariannol amrywiadwy yn cael ei gosod ar y person hwnnw; ac
- (c) pan fo'r person hwnnw yn methu â chydymffurfio â'r hysbysiad cydymffurfio neu'r ymgymeriad trydydd parti.

## RHAN 2

### Hysbysiadau Stop

#### **Hysbysiadau stop**

**9.—(1)** Caiff y rheoleiddiwr gyflwyno hysbysiad stop i unrhyw berson mewn achos sydd o fewn is-baragraff (3) neu (4).

(2) "Hysbysiad stop" yw hysbysiad sy'n gwahardd person rhag ymgymryd â gweithgarwch a bennir yn yr hysbysiad hyd nes bod y person wedi cymryd y camau a bennir yn yr hysbysiad.

(3) Mae achos sydd o fewn yr is-baragraff hwn yn achos pan fo'r rheoleiddiwr yn credu yn rhesymol—

- (a) bod y person yn ymgymryd â'r gweithgarwch;
- (b) bod y gweithgarwch, fel yr ymgymrir ag ef gan y person hwnnw, yn achosi niwed i'r amgylchedd (gan gynnwys iechyd anifeiliaid),

- neu'n peri risg sylweddol o achosi niwed o'r fath; ac
- (c) bod y gweithgarwch, fel yr ymgwymerir ag ef gan y person hwnnw, yn cynnwys cyflawni trosedd o dan reoliad 3(1) neu (2), neu'n debygol o gynnwys cyflawni trosedd o'r fath.

(4) Mae achos sydd o fewn yr is-baragraff hwn yn achos pan fo'r rheoleiddiwr yn credu yn rhesymol—

- (a) bod y person yn debygol o ymgymryd â'r gweithgarwch;
- (b) y bydd y gweithgarwch, fel y mae'n debygol y bydd y person hwnnw yn ymgymryd ag ef, yn achosi niwed i'r amgylchedd (gan gynnwys iechyd anifeiliaid), neu y bydd yn peri risg sylweddol o achosi niwed o'r fath; ac
- (c) y bydd y gweithgarwch, fel y mae'n debygol y bydd y person hwnnw yn ymgymryd ag ef, yn cynnwys cyflawni trosedd o dan reoliad 3(1) neu (2), neu'n debygol o gynnwys cyflawni trosedd o'r fath.

(5) Rhaid i'r camau y cyfeirir atynt yn is-baragraff (2) fod yn gamau i ddileu neu leihau'r niwed neu'r risg o niwed i'r amgylchedd (gan gynnwys iechyd anifeiliaid).

### Cynnwys hysbysiad stop

**10.** Rhaid i hysbysiad stop gynnwys gwybodaeth ynghylch—

- (a) y seiliau dros gyflwyno'r hysbysiad;
- (b) y camau y mae'n rhaid i'r person eu cymryd i gydymffurfio â'r hysbysiad stop;
- (c) hawliau i apelio; a
- (d) canlyniadau peidio â chydymffurfio.

### Apelau yn erbyn hysbysiadau stop

**11.—(1)** Caiff y person y cyflwynir hysbysiad stop iddo apelio yn erbyn y penderfyniad i'w gyflwyno.

(2) Y seiliau ar gyfer apelio yw—

- (a) bod y penderfyniad yn seiliedig ar wall ffeithiol;
- (b) bod y penderfyniad yn anghywir mewn cyfraith;
- (c) bod y penderfyniad yn afresymol;
- (d) bod unrhyw gam a bennir yn yr hysbysiad yn afresymol;
- (e) nad yw'r person wedi cyflawni'r drosedd ac na fyddai wedi ei chyflawni pe na bai'r hysbysiad stop wedi ei gyflwyno;
- (f) na fyddai'r person, oherwydd unrhyw amddiffyniad, wedi bod yn agored i gael ei

euogfarnu o'r drosedd pe na bai'r hysbysiad  
stop wedi ei gyflwyno;

- (g) unrhyw reswm arall.

### **Tystysgrifau gwblhau**

**12.**—(1) Pan fo'r rheoleiddiwr, ar ôl cyflwyno hysbysiad stop, wedi ei fodloni bod y person wedi cymryd y camau a bennir yn yr hysbysiad, rhaid i'r rheoleiddiwr ddyroddi tystysgrif i'r perwyl hwnnw ("tystysgrif gwblhau").

(2) Mae'r hysbysiad stop yn peidio â chael effaith pan ddyroddir tystysgrif gwblhau.

(3) Caiff y person y cyflwynir hysbysiad stop iddo wneud cais am dystysgrif gwblhau ar unrhyw adeg.

(4) Rhaid i'r rheoleiddiwr benderfynu pa un ai i ddyroddi tystysgrif gwblhau, a chyflwyno hysbysiad ysgrifenedig am y penderfyniad i'r ceisydd, o fewn 14 o ddiwrnodau o gael cais o'r fath.

### **Apelau yn erbyn penderfyniad i beidio â dyroddi tystysgrif gwblhau**

**13.** Caiff y person y cyflwynwyd yr hysbysiad stop iddo apelio yn erbyn penderfyniad i beidio â dyroddi tystysgrif gwblhau ar y seiliau bod y penderfyniad—

- (a) yn seiliedig ar wall ffeithiol;
- (b) yn anghywir mewn cyfraith;
- (c) yn annheg neu'n afresymol;
- (d) yn anghywir am unrhyw reswm arall.

### **Digollediad**

**14.** Rhaid i'r rheoleiddiwr ddigolledu person am y golled a ddioddefir o ganlyniad i gyflwyno hysbysiad stop neu wrthod dyroddi tystysgrif gwblhau os—

- (a) caiff hysbysiad stop ei dynnu yn ôl neu ei ddiwygio wedi hynny gan y rheoleiddiwr am fod y penderfyniad i'w gyflwyno yn afresymol neu am fod unrhyw gam a bennwyd yn yr hysbysiad yn afresymol;
- (b) yw'r person yn apelio'n llwyddiannus yn erbyn yr hysbysiad stop a bod y Tribiwnlys Haen Gyntaf yn dyfarnu bod cyflwyno'r hysbysiad yn afresymol; neu
- (c) yw'r person yn apelio'n llwyddiannus yn erbyn y penderfyniad i wrthod dyroddi tystysgrif gwblhau a bod y Tribiwnlys Haen Gyntaf yn dyfarnu bod y gwrthodiad hwnnw yn afresymol.

## **Apêl yn erbyn penderfyniad digollediad**

**15.** Caiff person apelio yn erbyn penderfyniad i beidio â dyfarnu digollediad neu apelio yn erbyn swm y digollediad—

- (a) ar y seiliau bod penderfyniad y rheoleiddiwr yn afresymol;
- (b) ar y seiliau bod y swm a gynigiwyd yn seiliedig ar ffeithiau anghywir;
- (c) am unrhyw reswm arall.

## **Tro sedd**

**16.—(1)** Pan na fo person y cyflwynir hysbysiad stop iddo yn cydymffurfio â'r hysbysiad o fewn y terfyn amser a bennir yn yr hysbysiad, mae'r person yn euog o drosedd ac yn agored—

- (a) o'i euogfarnu'n ddiannod, i ddirwy neu gyfnod o garchar na fydd yn hwy na 12 mis, neu'r ddau; neu
- (b) o'i euogfarnu ar ddiriad, i gyfnod o garchar na fydd yn hwy na dwy flynedd, neu ddirwy, neu'r ddau.

(2) Mewn perthynas â thro sedd a gyflawnir cyn i adran 154(1) o Ddeddf Cyflawnder Troseddol 2003 ddod i rym, mae'r cyfeiriad yn is-baragraff (1)(a) at 12 mis i'w ddarllen fel cyfeiriad at chwe mis.

## **RHAN 3**

### **Ymgynneriadau Gorfodaeth**

#### **Ymgynneriadau gorfodaeth**

**17.—(1)** Caiff y rheoleiddiwr dderbyn ymgynneriad ysgrifenedig (sef "ymgynneriad gorfodaeth") a roddir gan berson mewn achos pan fo gan y rheoleiddiwr seiliau rhesymol dros amau bod y person wedi cyflawni tro sedd o dan reoliad 3(1) neu (2).

(2) At ddibenion y Rhan hon, mae "ymgynneriad gorfodaeth" yn ymgynneriad ysgrifenedig i gymryd y camau hynny a bennir yn yr ymgynneriad o fewn y cyfnod hwnnw a bennir.

#### **Cynnwys ymgynneriad gorfodaeth**

**18.—(1)** Rhaid i ymgynneriad gorfodaeth bennu—

- (a) cam gweithredu i sicrhau nad yw'r drosedd yn digwydd eto;
- (b) cam gweithredu (gan gynnwys talu swm o arian) er budd unrhyw berson y mae'r drosedd yn effeithio arno; neu

(c) cam gweithredu a fydd yn sicrhau budd amgylcheddol sy'n cyfateb i adfer yr hyn a ddifrodyd neu a ddinistriwyd gan gyflawni'r drosedd, neu'r hyn sy'n debygol o fod wedi ei ddifrodi neu ei ddinistrio gan gyflawni'r drosedd.

(2) Rhaid iddo bennu o fewn pa gyfnod y mae'n rhaid cwblhau'r cam gweithredu.

(3) Rhaid iddo gynnwys—

- (a) datganiad y gwneir yr ymgynneriad yn unol â'r Atodlen hon;
- (b) telerau'r ymgynneriad; ac
- (c) gwybodaeth yngylch sut a phryd yr ystyrir bod y person sy'n rhoi'r ymgynneriad hwnnw wedi cyflawni'r ymgynneriad.

(4) Caniateir amrywio'r ymgynneriad gorfodaeth, neu ymestyn y cyfnod y mae'n rhaid cwblhau'r cam gweithredu o'i fewn, os yw'r ddau barti yn cytuno i hynny yn ysgrifenedig.

### **Derbyn ymgynneriad gorfodaeth**

**19.** Os yw'r rheoleiddiwr wedi derbyn ymgynneriad gorfodaeth, yna, oni bai bod y person y derbynir yr ymgynneriad oddi wrtho wedi methu â chydymffurfio â'r ymgynneriad neu unrhyw ran ohono—

- (a) ni chaniateir euogfarnu'r person hwnnw ar unrhyw adeg o'r drosedd mewn cysylltiad â'r weithred neu anweithred y mae'r ymgynneriad yn ymwneud ag ef; a
- (b) ni chaiff y rheoleiddiwr osod cosb ariannol amrywiadwy, hysbysiad cydymffurfio neu hysbysiad stop ar y person hwnnw mewn cysylltiad â'r weithred neu anweithred honno.

### **Cyflawni ymgynneriad gorfodaeth**

**20.—(1)** Os yw'r rheoleiddiwr wedi ei fodloni y cydymffurfiwyd ag ymgynneriad gorfodaeth, rhaid iddo ddyroddi dystysgrif i'r perwyl hwnnw.

(2) Caiff y rheoleiddiwr ei gwneud yn ofynnol i'r person sydd wedi rhoi'r ymgynneriad ddarparu gwybodaeth sy'n ddigonol i benderfynu y cydymffurfiwyd â'r ymgynneriad.

(3) Caiff y person a roddodd yr ymgynneriad wneud cais ar unrhyw adeg am dystysgrif o'r fath.

(4) Rhaid i'r rheoleiddiwr benderfynu pa un ai i ddyroddi dystysgrif o'r fath, a rhoi hysbysiad ysgrifenedig am y penderfyniad i'r ceisydd, o fewn 14 o ddiwrnodau o gael cais o'r fath.

## **Apelau yn erbyn penderfyniad i beidio â dyroddi tystysgrif**

**21.** Caiff y person y cyflwynir yr hysbysiad iddo apelio yn erbyn penderfyniad i beidio â dyroddi tystysgrif ar y seiliau bod y penderfyniad—

- (a) yn seiliedig ar wall ffeithiol;
- (b) yn anghywir mewn cyfraith;
- (c) yn annheg neu'n afresymol;
- (d) yn anghywir am unrhyw reswm arall.

## **Gwybodaeth anghywir, gamarweiniol neu anghyflawn**

**22.**—(1) Mae person sydd wedi rhoi gwybodaeth anghywir, gamarweiniol neu anghyflawn mewn perthynas ag ymgymeriad gorfodaeth i'w ystyried fel pe na bai wedi cydymffurfio â'r ymgymeriad hwnnw.

(2) Caiff y rheoleiddiwr drwy hysbysiad ysgrifenedig ddirymu tystysgrif a ddyroddwyd o dan baragraff 20 os y'i dyroddwyd ar sail gwybodaeth anghywir, gamarweiniol neu anghyflawn.

## **Peidio â chydymffurfio ag ymrwymiad gorfodaeth**

**23.**—(1) Os na chydymffurfir ag ymgymeriad gorfodaeth, caiff y rheoleiddiwr naill ai—

- (a) cyflwyno cosb ariannol amrywiadwy, hysbysiad cydymffurfio, cosb am beidio â chydymffurfio neu hysbysiad stop; neu
- (b) dwyn achos troseddol.

(2) Os yw person wedi cydymffurfio yn rhannol ond nid yn llwyr ag ymgymeriad gorfodaeth, rhaid ystyried y cydymffurfio rhannol hwnnw wrth osod unrhyw sancsiwn troseddol neu sancsiwn arall ar y person.

(3) Caniateir cychwyn achos troseddol am drosedd y gellir ei rhoi ar brawf yn ddiannod y mae ymgymeriad gorfodaeth yn ymwneud â hi ar unrhyw adeg hyd at chwe mis o'r dyddiad y mae'r rheoleiddiwr yn hysbysu'r person y mae'n ofynnol iddo gydymffurfio â'r ymgymeriad hwnnw am fethiant y person hwnnw i wneud hynny.

## **RHAN 4**

### **Cosbau am beidio â chydymffurfio**

#### **Cosbau am beidio â chydymffurfio**

**24.**—(1) Os yw person yn methu â chydymffurfio â hysbysiad cydymffurfio neu ymgymeriad trydydd parti, caiff y rheoleiddiwr gyflwyno hysbysiad i'r person hwnnw yn gosod cosb ariannol (sef "cosb am beidio â chydymffurfio") mewn cysylltiad â'r un

drosedd, ni waeth pa un a osodwyd cosb ariannol amrywiadwy hefyd mewn cysylltiad â'r drosedd honno ai peidio.

(2) Rhaid i'r rheoleiddiwr bennu swm y gosb, a rhaid i'r swm hwnnw fod yn ganran o gostau cyflawni gweddill gofynion yr hysbysiad cydymffurfio neu'r ymgymmeriad trydydd parti.

(3) Rhaid i'r rheoleiddiwr bennu'r ganran gan roi sylw i holl amgylchiadau'r achos, a chaiff y ganran honno, os yw'n briodol, fod yn 100%.

(4) Rhaid i'r hysbysiad hefyd gynnwys gwybodaeth ynghylch—

- (a) y seiliau dros osod y gosb am beidio â chydymffurfio;
- (b) y swm sydd i'w dalu;
- (c) sut y mae'n rhaid talu;
- (d) o fewn pa gyfnod y mae'n rhaid talu. Ni chaiff y cyfnod hwnnw fod yn llai na 28 o ddiwrnodau;
- (e) yr hawl i apelio;
- (f) canlyniadau methu â thalu o fewn y cyfnod penodedig; ac
- (g) o dan ba amgylchiadau y caiff y rheoleiddiwr leihau swm y gosb.

(5) Os cydymffurfir â gofynion yr hysbysiad cydymffurfio neu os cyflawnir ymgymmeriad trydydd parti cyn y terfyn amser a osodir ar gyfer talu'r gosb am beidio â chydymffurfio, nid yw'r gosb yn daladwy.

#### **Apelau yn erbyn cosbau am beidio â chydymffurfio**

**25.**—(1) Caiff y person y cyflwynir iddo'r hysbysiad sy'n gosod y gosb am beidio â chydymffurfio apelio yn ei erbyn.

(2) Y seiliau ar gyfer apelio yw—

- (a) bod y penderfyniad i gyflwyno'r hysbysiad yn seiliedig ar wall ffeithiol;
- (b) bod y penderfyniad yn anghywir mewn cyfraith;
- (c) bod y penderfyniad yn annheg neu'n afresymol am unrhyw reswm arall;
- (d) bod swm y gosb yn afresymol;
- (e) unrhyw reswm arall.

## RHAN 5

### Gweinyddu ac Apelau

#### Tynnu hysbysiad yn ôl neu ddiwygio hysbysiad

**26.** Caiff y rheoleiddiwr ar unrhyw adeg yn ysgrifenedig—

- (a) tynnu yn ôl hysbysiad sy'n gosod cosb ariannol amrywiadwy neu hysbysiad sy'n gosod cosb am beidio â chydymffurfio, neu leihau'r swm a bennir yn yr hysbysiad; neu
- (b) tynnu yn ôl hysbysiad cydymffurfio neu hysbysiad stop, neu ddiwygio'r camau a bennir, er mwyn lleihau faint o waith sy'n angenrheidiol i gydymffurfio â'r hysbysiad.

#### Hysbysiadau adennill cost gorfodaeth

**27.**—(1) Caiff y rheoleiddiwr gyflwyno hysbysiad (sef “hysbysiad adennill cost gorfodaeth”) i berson y cyflwynwyd hysbysiad perthnasol iddo sy'n ei gwneud yn ofynnol i'r person hwnnw dalu'r costau yr aed iddynt gan y rheoleiddiwr mewn perthynas â gosod y gofyniad a osodwyd gan yr hysbysiad perthnasol hyd at yr adeg y'i gosodwyd.

(2) Yn is-baragraff (1), ystyr “hysbysiad perthnasol” yw hysbysiad cosb ariannol amrywiadwy, hysbysiad cydymffurfio neu hysbysiad stop.

(3) Mae “costau” yn cynnwys yn benodol—

- (a) costau ymchwilio;
- (b) costau gweinyddu;
- (c) costau cael cyngor arbenigol (gan gynnwys cyngor cyfreithiol).

(4) Rhaid i'r hysbysiad adennill cost gorfodaeth bennu—

- (a) sut y mae'n rhaid talu;
- (b) y swm y mae'n ofynnol ei dalu ac o fewn pa gyfnod y mae'n rhaid talu. Ni chaiff y cyfnod hwnnw fod yn llai na 28 o ddiwrnodau;
- (c) y seiliau dros osod yr hysbysiad;
- (d) yr hawl i apelio; ac
- (e) canlyniadau methu â chydymffurfio â'r hysbysiad o fewn y cyfnod penodedig.

(5) Caiff y person y cyflwynir yr hysbysiad iddo ei gwneud yn ofynnol i'r rheoleiddiwr ddarparu dadansoddiad manwl o'r swm.

(6) Nid yw'r person y mae'n ofynnol iddo dalu costau yn atebol i dalu unrhyw gostau y mae'r person hwnnw'n dangos yr aed iddynt yn ddiangen.

**Apelau yn erbyn hysbysiadau adenmill cost gorfodaeth**

**28.** Caiff y person y mae'n ofynnol iddo dalu costau apelio—

- (a) yn erbyn penderfyniad y rheoleiddiwr i osod y gofyniad i dalu costau;
- (b) yn erbyn penderfyniad y rheoleiddiwr o ran swm y costau hynny;
- (c) am unrhyw reswm arall.

**Y pŵer i adenmill taliadau**

**29.** Caiff y rheoleiddiwr adenmill unrhyw gosb ariannol amrywiadwy neu gosb am beidio â chydymffurfio a osodir o dan yr Atodlen hon fel pe bai'n daladwy o dan orchymyn llys.

**Apelau: darpariaethau cyffredinol**

**30.—(1)** Mae apêl o dan baragraff 7, 11, 13, 15, 21, 25 neu 28 o'r Atodlen hon yn apêl i'r Tribiwnlys Haen Gyntaf.

(2) Mae pob hysbysiad (ac eithrio hysbysiadau stop) wedi ei atal dros dro wrth aros i'r apêl gael ei phenderfynu neu ei thynnu yn ôl.

(3) Caiff y Tribiwnlys Haen Gyntaf, mewn perthynas â gosod gofyniad neu gyflwyno hysbysiad o dan yr Atodlen hon—

- (a) tynnu'r gofyniad neu'r hysbysiad yn ôl;
- (b) cadarnhau'r gofyniad neu'r hysbysiad;
- (c) amrywio'r gofyniad neu'r hysbysiad;
- (d) cymryd y camau hynny y gallai'r rheoleiddiwr fod wedi eu cymryd mewn perthynas â'r weithred neu'r anweithred sy'n arwain at y gofyniad neu'r hysbysiad; neu
- (e) anfon y penderfyniad o ran pa un ai i gadarnhau'r gofyniad neu'r hysbysiad ai peidio, neu unrhyw fater sy'n ymwneud â'r penderfyniad hwnnw, at y rheoleiddiwr.

## **Memorandwm Esboniadol i Reoliadau Diogelu'r Amgylchedd (Microbelenni) (Cymru) 2018**

Paratowyd y Memorandwm Esboniadol hwn gan Adran yr Economi, Sgiliau a Chyfoeth Naturiol ac fe'i gosodir gerbron Cynulliad Cenedlaethol Cymru ar y cyd â'r is-ddeddfwriaeth uchod ac yn unol â Rheol Sefydlog 27.1

### **Datganiad Ysgrifennydd y Cabinet/y Gweinidog**

Yn fy marn i, mae'r Memorandwm Esboniadol hwn yn rhoi darlun teg a rhesymol o effaith ddisgwylledig Rheoliadau Diogelu'r Amgylchedd (Microbelenni) (Cymru) 2018.

Rwy'n fodlon bod y manteision yn cyfiawnhau'r costau tebygol.

HANNAH BLYTHYN  
GWEINIDOG YR AMGYLCHEDD  
18 Mai 2018

## **1. Disgrifiad**

Mae Rheoliadau Diogelu'r Amgylchedd (Microbelenni) (Cymru) 2018 (Rheoliadau 2018) yn gwahardd gweithgynhyrchu a gwerthu cynhyrchion gofal personol i'w rinsio i ffwrdd sy'n cynnwys microbelenni plastig. Bydd hyn yn lleihau'r plastig sy'n cael ei ryddhau i'r môr ac yn lleihau'r niwed y mae'r math hwn o ficroplastigion yn ei achosi i organebau morol.

## **2. Materion sydd o ddiddordeb arbennig i'r Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol**

Nid oes dim.

## **3. Cefndir deddfwriaethol**

Gwneir Rheoliadau 2018 o dan Adran 140 o Ddeddf Diogelu'r Amgylchedd 1990. Mae Adran 140(1) (b) ac (c) o Ddeddf Diogelu'r Amgylchedd 1990 yn datgan y caiff yr Ysgrifennydd Gwladol wahardd cyflenwi a defnyddio sylwedd penodedig er mwyn ei atal rhag llygru'r amgylchedd a niweidio iechyd pobl, anifeiliaid a phlanhigion.

O dan Erthygl 2 o Orchymyn Cynulliad Cenedlaethol Cymru (Trosglwyddo Swyddogaethau) 1999 (OS 1999/672) ac Atodlen 1 iddo, trosglwyddwyd y swyddogaethau sy'n arferadwy o dan adran 140 o Ddeddf Diogelu'r Amgylchedd 1990 i Gynulliad Cenedlaethol Cymru. Trosglwyddwyd y swyddogaethau hynny i Weinidogion Cymru yn rhinwedd adran 162 a pharagraff 30 o Atodlen 11 i Ddeddf Llywodraeth Cymru 2006.

Mae sancsiynau sifil ar gael i Weinidogion Cymru yn rhinwedd adran 140 (9) o Ddeddf Diogelu'r Amgylchedd 1990 ac adran 62(1) a pharagraff 1 o Atodlen 7 i Ddeddf Gorfodi Rheoleiddiol a Chosbau 2008.

Mae'r pŵer yn ddarostyngedig i'r gofynion i ymgynghori o dan adrannau 59(3) a 60(1) o Ddeddf Gorfodi Rheoleiddiol a Chosbau 2008. Yn ogystal, mae'r pŵer yn ddarostyngedig i ofynion adran 42 o Ddeddf Gorfodi Rheoleiddiol a Chosbau 2008 ac adran 140 o Ddeddf Diogelu'r Amgylchedd 1990 fel y'i diwygiwyd gan baragraff 16(2) o Atodlen 3(2) i Reoliadau Cymorth Cyfreithiol, Dedfrydu a Chosbi Troseddwyr 2012 (Dirwyon yn dilyn Euogfarn Ddiannod) 2015/664.

Yn unol ag Adran 59(3) o Ddeddf Gorfodi Rheoleiddiol a Chosbau 2008, ymgynghorodd Gweinidogion Cymru â'r Ysgrifennydd Gwladol ym Mawrth 2018, cyn gwneud Gorchymyn o dan Ran 3 o Ddeddf Gorfodi Rheoleiddiol a Chosbau 2008.

Yn unol â'r gofynion yngylch ymgynghori yn adran 60(1)(a) o Ddeddf Gorfodi Rheoleiddiol a Chosbau 2008, ymgynghorodd Gweinidogion Cymru ag Awdurdodau Lleol Cymru ym Mawrth 2018 yn rhinwedd eu rôl fel rheoleiddiwr.

Yn unol ag adran 140(6)(b) o Ddeddf Diogelu'r Amgylchedd 1990, gosodwyd hysbysiadau yn y *London Gazette* a'r *Western Mail* yn Ebrill 2018 i roi gwybod i'r cyhoedd am Reoliadau arfaethedig 2018 ac i wahodd y cyhoedd i roi sylwadau i Weinidogion Cymru.

Mae'r offeryn yn weithdrefn gadarnhaol ac yn amodol ar gymeradwyaeth y Cynulliad.

#### **4. Diben y ddeddfwriaeth a'r effaith y bwriedir iddi ei chael**

Diben y ddeddfwriaeth hon yw gwahardd gweithgynhyrchu a chyflenwi cynhyrchion gofal personol i'w rinsio i ffwrdd sy'n cynnwys microbelenni plastig y mae tystiolaeth i ddangos y gallant lygru a niweidio'r amgylchedd morol.

Ystyr microbelen yw gronyn plastig solet sy'n annhoddadwy mewn dŵr sy'n 5mm neu lai o faint mewn unrhyw fesuriad. Ychwanegir y rhain yn fwriadol at amrywiaeth o gynhyrchion gofal personol i'w rinsio i ffwrdd ac maent wedi cael eu defnyddio am flynyddoedd lawer.

Bydd y gwaharddiad yn cynnwys yr holl gynhyrchion gofal personol i'w rinsio i ffwrdd sy'n cynnwys microbelenni plastig, fel y'u diffinnir yn y Rheoliadau. Mae cynhyrchion gofal personol i'w rinsio i ffwrdd yn cynnwys y canlynol, ond heb eu cyfyngu i hynny: cynhyrchion a gynlluniwyd i'w defnyddio ar y corff, y croen, y dwylo, y traed, yr ewinedd, yr wyneb, y gwallt a cheudod y geg, gan gynnwys cynhyrchion sgrwbio, glanhau, goleuo neu liwio, llyfnhau'r croen neu'r gwallt, tynnu blew, diarogli neu bersawru, yn ogystal â chynhyrchion â nodweddion gofal personol i'r bath, a chynhyrchion deintyddol.

Bwriedir bod y gwaharddiad yn gwneud y canlynol:

1. Atal niwed pellach i anifeiliaid y môr a lleihau twf y llwyth sbwriel môr cyffredinol.
2. Amddiffyn yr amgylchedd morol a lleihau risg a difrifoldeb effeithiau diwrthdro posibl ar ddiogelwch bwyd ac iechyd dynol.
3. Parhau i annog ymdrechion gwirfoddol presennol y diwydiant a'r ymdrechion a gynllunnir ganddo i gael gwared ar ficrobelenni.
4. Meithrin hyder defnyddwyr na fydd cynhyrchion yn llygru'r môr.
5. Gosod esiampl i wledydd eraill ac annog mwy ohonynt i fabwysiadu deddfwriaeth.

Nid oes gweithgynhyrchwyr gennym yng Nghymru sy'n defnyddio microbelenni yn eu cynhyrchion. Trwy weithredu'r gwaharddiad ar weithgynhyrchu a gwerthu, byddwn yn cynorthwyo busnesau i addasu i'r newidiadau gan olygu y bydd y baich ychwanegol ar y diwydiant mor fach â phosibl.

## **Cyd-destun**

Mae Llywodraeth Cymru wedi ymrwymo i lunio polisiau mewn modd integredig sy'n darparu fframwaith ar gyfer arfordir a moroedd glân, iach, diogel, cynhyrchiol a biolegol amrywiol. Bydd hyn yn gymorth i ni gyflawni ein huchelgais o wella iechyd a lles pobl Cymru fel y disgrifiwyd yn y ddogfen 'Ffyniant i Bawb', a sicrhau defnydd mwy cynaliadwy o'n moroedd ar yr un pryd.

Mae sbwriel yn broblem fawr iawn yn ein moroedd a'n cefnforoedd. Mae Llywodraeth Cymru wedi ymrwymo i gymryd camau cadarnhaol i leihau swmp y plastig sy'n cyrraedd ein cefnforoedd.

Mae Llywodraeth Cymru eisoes yn gwneud llawer i leihau gwastraff plastig a'i ailgylchu trwy'i strategaeth 'Tuag at Ddyfodol Diwastraff'. Mae Cymru'n arwain yn y DU o ran ailgylchu ac yn ôl astudiaeth annibynnol, mae'r wlad yn yr ail safle yn Ewrop ac yn y trydydd safle ar lefel fyd-eang. Rydym yn ailgylchu 75% o'r poteli plastig a gesglir o gartrefi, o gymharu â'r DU gyfan sy'n ailgylchu 57%. Mae Llywodraeth Cymru hefyd wedi comisiynu astudiaeth i ystyried ffyrdd pellach o ailgylchu mwy a lleihau'r sbwriel a deflir sy'n cynnwys pecynnau bwyd a diod allweddol.

Yn ddiweddar, ffurfiodd Llywodraeth Cymru Bartneriaeth Moroedd Glân lle y mae rhanddeiliaid yn gweithio i ddatblygu a chyflawni cynllun gweithredu Cymru ynghylch sbwriel môr. Mae egwyddorion y bartneriaeth yn cynnwys y canlynol:

1. Cydweithio â phartneriaid yn y DU ac ar draws y byd i greu sylfaen gref o dystiolaeth ynghylch gweithredu effeithiol,
2. Hoelio'r sylw ar gamau ataliol a fydd yn mynd at wraidd y broblem,
3. Cynnwys cymunedau daearyddol, cymunedau o ddiddordeb a defnyddwyr yr amgylchedd morol yn y gwaith o ddatblygu datrysiau a'u rhoi ar waith,
4. Gweithredu mewn dull integredig er mwyn cyflawni'r canlyniadau economaidd, cymdeithasol ac amgylcheddol mwyaf,
5. Monitro effaith ymyriadau penodedig o ran cyflawni gwelliannau hirdymor.

Mae'r camau cadarnhaol a gymerir i leihau'r microbelenni niweidiol sy'n cael eu gollwng i'r môr yn cefnogi nodau Cyfarwyddeb Fframwaith y Strategaeth Forol<sup>1</sup>. Y Gyfarwyddeb hon sy'n pennu'r fframwaith (a gyflawnir trwy Strategaeth Forol y DU) ar gyfer rheoli ein moroedd mewn dull cynaliadwy ac mae'n cyfrannu at wireddu ein nod o sicrhau Statws Amgylcheddol Da i'n moroedd. Bydd y gwaharddiad hwn yn gyfraniad cadarnhaol o ran diogelu'r amgylchedd morol.

Roedd Rhan Un o Strategaeth Forol y Du<sup>2</sup> yn nodi rhai o'r problemau sy'n deillio o sbwriel môr ym mhob rhan o foroedd y DU lle y gwneir arolygon

<sup>1</sup> <http://gov.wales/topics/environmentcountryside/marineandfisheries/marine-fisheries-policy/directives/marine-strategy-framework-directive/?skip=1&lang=cy>

<sup>2</sup> <https://www.gov.uk/government/publications/marine-strategy-part-one-uk-initial-assessment-and-good-environmental-status>

systematig o ddwysedd sbwriel ar draethau. Ar ben hynny, mae tystiolaeth gynyddol y gall y sbwriel sy'n cranni yn ein dyfroedd niweidio ecosystemau morol ac effeithio ar gymunedau arfordirol. Gall anifeiliaid y môr lyncu eitemau llai, fel gronynnau microblastig, gan niweidio eu hiechyd.

Mae Rhan Tri o Strategaeth Forol y DU<sup>3</sup> yn disgrifio casgliad cynhwysfawr o gamau a chynlluniau i fynd i'r afael â sbwriel môr. Mae'r camau hyn yn cynnwys Cynllun Gweithredu Rhanbarthol OSPAR ar sbwriel môr<sup>4</sup>. Ers 2014, bu'r DU yn gweithio gyda gwledydd cyfagos ac yn ymgysylltu â'r diwydiant cynhyrchion cosmetig i hyrwyddo cynllun gwirfoddol i raddol ddileu'r defnydd o ficroplastigion mewn cynhyrchion cosmetig a gofal personol.

O ganlyniad i'r gwaith hwn, argymhellodd Cosmetics Europe, sef Cymdeithas Fasnach y diwydiant cynhyrchion cosmetig yn Ewrop, gynllun gwirfoddol yn Hydref 2015 i raddol ddileu'r defnydd o ficrobelenni a ychwanegir at ddibenion glanhau a sgrwbio. Gwnaeth llawer o gwmnïau cynhyrchion cosmetig bach a mawr ymrwymiad cyhoeddus i wneud hynny.

Ym mis Awst 2016, cyhoeddwyd adroddiad ymchwiliad Pwyllgor Archwilio'r Amgylchedd Llywodraeth y DU i effaith microplastigion ar yr amgylchedd. Roedd hwn yn cynnwys argymhell cyflwyno deddfwriaeth i wahardd defnyddio microbelenni mewn cynhyrchion cosmetig a gofal personol.

### **Tystiolaeth**

Yn 2016, cyhoeddwyd canlyniadau astudiaeth bum mlynedd o effaith microplastigion ar yr amgylchedd morol<sup>5</sup>. Dangosai'r astudiaeth, a gynhaliwyd gan Brifysgol Plymouth, fod microplastigion sy'n cael eu llyncu gan organebau morol yn gallu achosi niwed yn uniongyrchol neu drwy gludo halogion cemegol eraill i systemau organebau morol. Roedd y canfyddiadau hyn yn ategu'r corff cynyddol o dystiolaeth yngylch y niwed y mae llyncu microplastigion yn ei achosi i organebau morol.

Mae microbelenni yn ffynhonnell llygredd môr y gellir ei hosgoi. Yn y DU, amcangyfrifir bod hyd at 680 tunnell o ficrobelenni plastig yn cael eu defnyddio mewn cynhyrchion gofal personol bob blwyddyn a bod biliynau o'r microbelenni hyn yn cael eu golchi i'n systemau draenio ac yn mynd i'n moroedd. Mae microbelenni'n cranni yn y môr am nad ydynt yn bioddiraddio ac oherwydd y gred eu bod yn amhosibl i'w hadennill unwaith y byddant wedi eu rhyddhau.

Mae dewisiadau addas ac economaidd ymarferol yn lle microbelenni plastig yn y diwydiant cynhyrchion cosmetig, gan gynnwys silica, halen a chnewyll hadau mât. Mae tystiolaeth wyddonol yn awgrymu nad yw'r dewisiadau amgen hyn yn cael effaith negyddol ar yr amgylchedd<sup>6</sup>.

<sup>3</sup> <https://www.gov.uk/government/publications/marine-strategy-part-three-uk-programme-of-measures>

<sup>4</sup> <https://www.ospar.org/documents?v=34422>

<sup>5</sup> <http://randd.defra.gov.uk/Default.aspx?Menu=Menu&Module=More&Location=None&ProjectID=17683&FromSearch=Y&Publisher=1&SearchText=5416&SortString=ProjectCode&SortOrder=Asc&Paging=10#Description>

<sup>6</sup> <http://ec.europa.eu/environment/marine/good-environmental-status/descriptor-10/pdf/MSFD%20Measures%20to%20Combat%20Marine%20Litter.pdf>

Ceir rhagor o wybodaeth ynghylch pam y dylai microbelenni mewn cynhyrchion cosmetig, sy'n ffynhonnell llygredd môr y gellir ei hosgoi, gael eu lleihau hyd at yr eithaf yn Rhan Dau o'r Memorandwm Esboniadol hwn – sef yr Asesiad o'r Effaith Rheoleiddiol.

### ***Budd y cyhoedd***

O ganlyniad i ddealltwriaeth ac ymwybyddiaeth helaethach o ficrobelenni a'r niwed y maent yn ei achosi i'r amgylchedd morol, mae gan y cyhoedd ddiddordeb sylweddol mewn lleihau sbwriel môr a'r llygredd y mae microplastigion a microbelenni yn ei achosi yn y cefnforoedd, a chyflwynir deisebau cyhoeddus ynghylch sbwriel môr, er enghraifft, y ddeiseb a lansiwyd gan Greenpeace yn Ionawr 2016, yn galw ar Lywodraeth y DU i wahardd defnyddio microbelenni mewn cynhyrchion cosmetig. Roedd mwy na 385,000 o bobl wedi llofnodi'r ddeiseb hon.

Bu'r gweithredu gwirfoddol gan y diwydiant, ynghyd â phwysau cynyddol gan ddefnyddwyr, yn llwyddiannus i'r graddau bod mwy na 70% o gynhyrchwyr eisoes wedi cael gwared ar ficrobelenni o'u cynyrrch. Fodd bynnag, bydd cyflwyno gwaharddiad deddfwriaethol yn sicrhau cysondeb o ran deall ystyr "microbelen" ac yn sicrhau, o ganlyniad, na fydd microbelenni yn yr holl gynhyrchion perthnasol.

### ***Cefnogaeth ryngwladol***

Penderfynodd Gweinidogion Cymru a'u Gweinidogion cyfatebol ledled y DU lunio deddfwriaeth i gyflwyno gwaharddiad cenedlaethol ar weithgynhyrchu a gwerthu cynhyrchion gofal personol i'w rinsio i ffwrdd sy'n cynnwys microbelenni, a pharhau i ymgysylltu â gwledydd eraill i gefnogi datblygu gwaharddiadau tebyg ar y llwyfan rhyngwladol.

Ar lefel fydd-eang, mae cefnogaeth helaeth i wahardd microbelenni plastig ac mae llawer o wledydd, fel Canada, Unol Daleithiau America, Awstralia, Taiwan, De Corea, Seland Newydd, yr Eidal ac India, wedi rhoi deddfwriaeth ar waith yn barod neu wrthi'n gweithredu gwaharddiad. Mae Gweinidogion y Llywodraeth yn Awstria, Gwlad Belg, Sweden, Lwcsembwrg a'r Iseldiroedd hefyd wedi galw am wahardd defnyddio microbelenni ar draws yr Undeb Ewropeaidd.

Cynhaliodd Comisiwn yr UE ymgynghoriad cyhoeddus ynghylch dewisiadau polisi i leihau'r microplastigion sy'n mynd i'r môr a gwelwyd bod y cyhoedd o blaids gwahardd defnyddio microbelenni mewn cynhyrchion cosmetig<sup>7</sup>. Mae Ffrainc a Sweden ill dwy wedi cyflwyno gwaharddiad ar gynhyrchion cosmetig i'w rinsio i ffwrdd sy'n cynnwys microplastigion yn 2018. Nododd Gwlad Belg fod ganddi gynllun drafft gwirfoddol i raddol ddileu'r defnydd o ficroplastigion yn yr holl gynhyrchion i ddefnyddwyr erbyn 2019.

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<sup>7</sup> [https://ec.europa.eu/info/consultations/public-consultation-investigating-options-reducing-releases-environment-microplastics\\_en](https://ec.europa.eu/info/consultations/public-consultation-investigating-options-reducing-releases-environment-microplastics_en)

Bu Llywodraeth Cymru'n cydweithio â holl weinyddiaethau'r DU i fabwysiadu dull gweithredu cyffredin yng nghyswllt y gwaharddiad hwn, trwy gyd-ddatblygu cynigion ymgyngori ar lefel y DU a defnyddio dull gweithredu cyson, lle'r oedd hynny'n briodol i Gymru, yn Rheoliadau Cymru 2018.

### ***Ystyried yr effaith ar fusnes a masnach***

Amcangyfrifir bod rhyw 300 o weithgynhyrchwyr cynhyrchion cosmetig yn y DU. Fodd bynnag, mae Cymdeithas Cynhyrchion Cosmetig, Cynhyrchion Ymolchi a Phersawr y DU wedi dweud nad yw busnesau gweithgynhyrchu yng Nghymru yn defnyddio microbelenni plastig yn eu cynhyrchion. Mae'r mwyafrif o fusnesau yng Nghymru yn fach ac yn tueddu i ddelio mewn cynnrych organig ac o waith crefftwyr.

Felly, ni ddisgwylir y bydd Rheoliadau 2018 yn effeithio ar weithgynhyrchwyr yng Nghymru. Fodd bynnag, mae angen y gwaharddiad ar weithgynhyrchu er mwyn sicrhau bod yr amodau yr un fath i bawb yn y diwydiant.

Mae'r diwydiant cynhyrchion cosmetig ehangach yn y DU eisoes wedi cymryd camau gwirfoddol i gael gwared ar ficobelenni plastig o gynhyrchion cosmetig a gofal personol ac ni ddefnyddir microbelenni bellach ym mhrosesau gweithgynhyrchu mwy na 72% o'r gweithgynhyrchwyr yn y DU. Yn ogystal, fel y nodwyd uchod, mae nifer o wledydd eraill yn mabwysiadu gwaharddiadau tebyg ac mae cefnogaeth helaeth ymhlið y cyhoedd i raddol ddileu'r defnydd o ficobelenni plastig mewn cynhyrchion cosmetig a gofal personol.

O ran eu tarddiad, mae 78% o'r cynhyrchion harddwch a fewnforir yn dod o wledydd eraill yr Undeb Ewropeaidd neu o Ogledd America. Mae'r Unol Daleithiau ar hyn o bryd yn cyflwyno gwaharddiad ar ficobelenni<sup>8</sup>, ac mae rhai gwledydd yn Ewrop yn ymchwilio i'r posibilrwydd o wahardd microbelenni. Ar ben hynny, mae datganiadau gan y diwydiant<sup>9</sup> ynghylch graddol ddileu microbelenni yn cyfeirio'n gyffredinol at eu dileu ar lefel fydd-eang. Mae hyn yn awgrymu bod y gwaharddiad yn debygol o effeithio ar ganran fach iawn o fewnforion.

Gyda'r camau sydd ar waith eisoes gan y diwydiant a'r ffaith nad oes gweithgynhyrchwyr yng Nghymru, byddai'r effaith ar fusnesau ac adwerthwyr yng Nghymru yn fach iawn iawn gan y bydd y stoc nad yw'n cydymffurfio yn lleihau yn naturiol wrth i'r cyflenwad ddod i ben. Mae manylion llawn yr effaith ar fusnes a masnach wedi'u cynnwys yn yr Asesiad o'r Effaith.

### **Amseriad y gwaharddiad a'r ddeddfwriaeth sy'n dod i rym**

Gwnaed y cyhoeddiad cyntaf ynghylch y gwaharddiad arfaethedig yn y DU ym Medi 2016 a lansiwyd yr ymgyngchoriad ledled y DU yn Rhagfyr 2016. Lansiodd Llywodraeth Cymru ymgyngchoriad pellach yn Hydref 2017 gan ddweud y byddai'r gwaharddiad ar weithgynhyrchu a gwerthu cynhyrchion gofal personol

<sup>8</sup> <https://www.congress.gov/114/plaws/plubl114/PLAW-114publ114.pdf>

<sup>9</sup> <https://www.beatthemicrobead.org/en/industry>

i'w rinsio i ffwrdd sy'n cynnwys microbelenni plastig yn dod i rym ar 30 Mehefin 2018 os mai hynny oedd y penderfyniad yn y pen draw ar ôl ystyried yr holl ymatebion ymgynghori.

Roedd dogfennau'r ymgynghoriad cyhoeddus a gyhoeddwyd gan Lywodraeth Cymru yn Hydref 2017 yn annog busnesau i baratoi ac i addasu eu gweithrediadau busnes yn barod ar gyfer y gwaharddiad arfaethedig, os mai hynny oedd y penderfyniad ar ôl ystyried yr holl ymatebion ymgynghori. Ar ben hynny, ar adeg cyflwyno'r gwaharddiad yng Nghymru, bydd busnesau sy'n gwerthu cynhyrchion yng Nghymru wedi cael mwy na blwyddyn i baratoi ar ei gyfer. Yn ychwanegol, mae'r diwydiant cynhyrchion cosmetig eisoes wedi cymryd camau gwirfoddol helaeth i raddol ddileu'r defnydd o ficrobelenni yn y DU, fodd bynnag, deallwn y gall fod cyfanwerthwyr ac adwerthwyr sy'n cyflenwi ac yn cadw cynhyrchion o'r math hwn.

Yn ychwanegol, rhoddwyd sylw sylweddol i'r gwaharddiad ar ficrobelenni yn y cyfryngau ac mae Llywodraeth Cymru yn hyderus y bydd adwerthwyr yn ymwybodol bod y gwaharddiad yn dod i rym ac y bydd yr effaith ar fusnesau yn cael ei lleihau hyd at yr eithaf.

Cyn gynted ag y daw'r gwaharddiad i rym, cynorthwyir busnesau â chanllawiau a fydd yn canolbwytio ar alluogi busnesau i gydymffurfio â'r gyfraith ac atal niwed i'r amgylchedd morol. Bydd y canllawiau hyn yn gymorth i weithgynhyrchwyr, cyflenwyr, adwerthwyr a'r cyhoedd ddeall y gwaharddiad a'r cynhyrchion a gwmpesir ganddo, a'r gyfundrefn orfodi a sancsiynau sifil.

### **Gorfodaeth**

Gorfodir Rheoliadau 2018 gan Awdurdodau Lleol Cymru yn unol â'r canllawiau a gyhoeddwyd.

Prif nodau'r cynigion gorfodaeth yw galluogi pobl i gydymffurfio ac atal niwed i'r amgylchedd morol.

Cyn gynted ag y bydd y gwaharddiad mewn grym, bydd y sawl sy'n gweithgynhyrchu, yn gwerthu neu'n cynnig cyflenwi cynhyrchion cosmetig neu ofal personol i'w rinsio i ffwrdd sy'n cynnwys microbelenni plastig yng Nghymru yn cyflawni trosedd. Bydd rhai troseddau cysylltiedig hefyd, er enghraifft, bydd peidio â chydymffurfio â hysbysiad stop neu beidio â darparu gwybodaeth benodol ymhen cyfnod rhesymol ar ôl derbyn cais ysgrifenedig i wneud hynny yn drosedd.

Mae Rheoliadau 2018 yn cyflwyno cyfundrefn orfodaeth sy'n cynnwys sancsiynau sifil ac yn darparu cymysgedd o hysbysiadau gorfodi a chosbau ariannol. Bydd sancsiynau sifil yn caniatáu i'r rheoleiddiwr wahaniaethu rhwng y rhai sy'n ceisio cydymffurfio a'r rhai sy'n anwybyddu'r gyfraith. Bydd yr hyblygrwydd hwn yn fod i'r rheoleiddiwr osod amrywiaeth o sancsiynau yn dibynnu ar amgylchiadau'r drosedd.

Mae Rheoliadau 2018 yn darparu'r arfau gorfodi canlynol i'w defnyddio gan reoleiddwyr o ganlyniad i beidio â chydymffurfio:

**Ymgynheriadau gorfodaeth:** Mae'r rhain yn galluogi unigolyn, y mae gan reoleiddiwr sail resymol i gredu ei fod wedi cyflawni trosedd, i roi ymgynheriad (addewid) i'r rheoleiddiwr y bydd yn cymryd un neu ragor o'r camau cywiol a ddisgrifiwyd yn yr ymgynheriad.

**Ymgynheriadau trydydd parti:** Mae'r rhain yn fod i unigolyn a dderbyniodd hysbysiad o fwriad rheoleiddiwr i roi cosb ariannol amrywiadwy iddo ymrwymo, er enghraifft, i gymryd camau er budd trydydd parti yr effeithiwyd arno/arnynt trwy beidio â chydymffurfio.

**Cosb ariannol amrywiadwy:** Gofyniad i dalu cosb ariannol y pennwyd ei swm gan y rheoleiddiwr i adlewyrchu amgylchiadau'r drosedd.

**Hysbysiad cydymffurfio:** Gofyniad i gymryd camau penodedig cyn pen y cyfnod a bennwyd er mwyn sicrhau na fydd trosedd yn parhau nac yn digwydd eto.

**Hysbysiad o fwriad:** Hysbysiad o'r camau y cynigir eu cymryd; caiff ei roi cyn gosod cosb ariannol amrywiadwy neu cyn rhoi hysbysiad cydymffurfio.

**Hysbysiad terfynol:** Hysbysiad terfynol o'r camau y cynigir eu cymryd.

**Hysbysiad stop:** Gofyniad bod unigolyn yn rhoi'r gorau i wneud y gweithgaredd a ddisgrifir yn yr hysbysiad hyd nes y bydd wedi cymryd camau i'w (g-)alluogi i gydymffurfio unwaith eto.

**Cosb am beidio â chydymffurfio:** Bydd peidio â chydymffurfio ag ymgynheriad neu hysbysiad cydymffurfio yn arwain at gosb am beidio â chydymffurfio.

**Hysbysiad adennill costau gorfodaeth:** Hysbysiad sy'n rhoi manylion yr ad-daliad y bydd y rheoleiddiwr yn gofyn amdano am waith ymchwilio a gweinyddu.

### Cosbau Ariannol Amrywiadwy

Lle y cyflawnwyd trosedd, bydd swyddogion gorfodaeth yn gallu gosod cosb ariannol amrywiadwy. Y canlynol yw'r paramedrau y bydd y rheoleiddiwr yn eu hystyried wrth bennu cosb gymesur:

- maint y busnes;
- graddau'r drosedd;
- yr effaith ar yr amgylchedd;
- faint o fudd ariannol a gafwyd yn sgil y drosedd; a
- materion perthnasol eraill.

Ystyrir y cosbau ariannol amrywiadwy fesul achos unigol ond cyhoeddir cyfarwyddyd a fydd yn ganllawiau i'r rheoleiddiwr wrth iddo bennu lefel y gosb a osodir, hyd at y swm cosb uchaf.

- Cosb am beidio â chydymffurfio - dim mwy na 10% o drosiant blynnyddol y busnes neu £5,000, pa un bynnag yw'r lleiaf.
- Peidio â darparu gwybodaeth neu ddogfennau at ddiben penderfynu a gyflawnwyd neu a gyflawnir troseddau penodol, neu a gydymffurfiwyd neu a gydymffurfir â gofynion hysbysiad cydymffurfio, hysbysiad stop neu ymgynneriad gorfodaeth; – y gosb fwyaf fydd 10% o drosiant blynnyddol y busnes neu £20,000, pa un bynnag yw'r lleiaf.

Oni fydd busnesau'n cydymffurfio â hysbysiad stop neu hysbysiad cydymffurfio (lle na roddir cosb ariannol amrywiadwy i unigolyn hefyd) bydd gan y rheoleiddiwr y pŵer i ddwyn achos troseddol yn eu herbyn.

Y gosb i'r sawl a geir yn euog o beidio â chydymffurfio â hysbysiad cydymffurfio fydd dirwy a bennir gan y Llys Ynadon.

Y gosb i'r sawl sy'n peidio â chydymffurfio â hysbysiad stop fydd hyd at ddeuddeng mis o garchar neu ddirwy a bennir gan y Llys Ynadon.

Dim ond yn niffyg unrhyw beth arall y rhoddir hysbysiadau cydymffurfio a hysbysiadau stop, sef pan fydd pob dull arall wedi methu neu pan fernir bod y gwaharddiad wedi'i dorri'n fwriadol neu ar raddfa helaeth.

Roedd yr Asesiad o'r Effaith ar Gyfiawnder a gynhaliwyd yn dangos y byddai'r effaith ar y system gyfiawnder yn fach iawn iawn.

Bydd pob apêl yn ymwneud â sancsiynau sifil yn apêl i'r Tribiwnlys Haen Gyntaf.

### **Asesiadau eraill o'r effaith**

Cynhaliwyd yr asesiadau canlynol o'r effaith hefyd, gan dangos y byddai'r effaith ar y system gyfiawnder yn fach iawn neu'n ddim: Hawliau Plant, Cydraddoldeb a Hawliau Dynol, Preifatrwydd, Cystadleuaeth, Prawfesur Gwledig a'r Gymraeg.

### **Cyfraith yr Undeb Ewropeaidd**

Fel y nodwyd uchod, diben drafftio Rheoliadau 2018 yw lleihau twf sbwriel môr a diogelu'r amgylchedd morol. Disgrifiwyd uchod effaith ddifrifol microbelenni ar yr amgylchedd, a'r amgylchedd morol yn benodol. Mae hyn yn cynnwys canlyniad astudiaeth bum mlynedd yn 2016 a nododd y niwed y mae llyncu microplastigion yn ei wneud i organebau morol, ac a gydnabu eu bod yn ffynhonnell llygredd môr y gellir ei hosgoi. Bernir felly fod y rhesymau amgylcheddol y dibynnwyd arnynt wrth Iunio Rheoliadau 2018 yn ddigonol ac

yn ddilys i gyfiawnhau gwahardd defnyddio microbelenni fel cynhwysyn wrth weithgynhyrchu cynhyrchion gofal personol i'w rinsio i ffwrdd, a gwahardd gwerthu'r cynhyrchion hynny.

Wrth ddatblygu Rheoliadau 2018, gweithiodd Llywodraeth Cymru gyda Gweinyddiaethau eraill y DU i ystyried sut y gellid taclo effaith microplastigion ar yr amgylchedd morol, ac ymgysylltodd â sefydliadau academaidd a'r diwydiant cynhyrchion cosmetig i geisio nodi'r camau y gellid eu mabwysiadu er mwyn rhoi sylw i'r mater hwn. O ganlyniad i'r ymgysylltu hwn, ystyriwyd mai gwahardd gweithgynhyrchu a gwerthu cynhyrchion gofal personol i'w rinsio i ffwrdd sy'n cynnwys microbelenni oedd y dull mwyaf cymesur a rhesymol o gyflawni'r nod o leihau sbwriel môr ym mhob rhan o foroedd y DU, ac yn ardal forol Cymru yn arbennig. Barnwyd na fyddai camau llai yn cyflawni'r nodau a geisiwyd, a bod y polisi a fabwysiadwyd hefyd yn adlewyrchu'r dull gweithredu a ddilynid mewn nifer o wledydd ledled y byd, fel y nodwyd uchod.

Mae'r polisi wedi ennyn cefnogaeth y cyhoedd, a gwelir tystiolaeth o hynny yn yr adborth ymgynghori ar lefel Cymru a'r DU. Cynhaliwyd proses ymgynghori eang ac amserol i gasglu barn y cyhoedd, a'r rhai yr oedd y gwaharddiad yn debygol o effeithio arnynt, yng Nghymru ac yn y DU, fel y disgrifir isod. Yn arbennig, roedd dogfennau'r ymgynghoriad cyhoeddus a gyhoeddwyd gan Lywodraeth Cymru yn Hydref 2017 yn annog busnesau i baratoi ac i addasu eu gweithrediadau busnes yn barod ar gyfer y gwaharddiad arfaethedig (os mai hynny oedd y penderfyniad yn y pen draw ar ôl ystyried yr holl ymatebion ymgynghori).

Yn ogystal, ac fel y nodwyd uchod, derbyniodd y gwaharddiad gefnogaeth y diwydiant cynhyrchion cosmetig. Yn Hydref 2015, cefnogodd Cosmetics Europe, sef Cymdeithas Fasnach y diwydiant cynhyrchion cosmetig yn Ewrop, gynllun gwirfoddol i raddol ddileu'r arfer o ddefnyddio microbelenni at ddibenion glanhau a sgrwbio. Yn ychwanegol, mae llawer o gwmniau cynhyrchion cosmetig bach a mawr wedi gwneud ymrwymiad cyhoeddus i raddol ddileu'r defnydd o ficrobelenni yn yr un modd. Mae Llywodraeth Cymru o'r farn felly fod y cynllun gwirfoddol i roi'r gorau yn raddol i weithgynhyrchu'r cynhyrchion hyn, ynghyd ag ymwybyddiaeth sylweddol o'r gwaharddiad ymysg y cyhoedd yn golygu bod busnesau y gallai'r cynigion hyn yng Nghymru effeithio arnynt wedi cael digon o amser i addasu i'r newidiadau yn y gyfraith.

Cred Llywodraeth Cymru felly fod y mesurau a fabwysiadwyd yn Rheoliadau 2018 yn gymesur a bod y budd o gyflawni'r nodau o ran lleihau twf sbwriel môr, diogelu'r amgylchedd morol a gweithio tuag at sicrhau Statws Amgylcheddol Da i'n moroedd trwy wahardd gweithgynhyrchu a gwerthu cynhyrchion gofal personol sy'n cynnwys microbelenni, yn gorbwys o pob effaith negyddol posibl a all godi o ganlyniad i'r cyfyngiadau a orfodir gan Reoliadau 2018.

### **Casgliad**

Cynllunnir yr ymyriad i ddiogelu'r amgylchedd morol rhag llygru pellach, i roi hyder i ddefnyddwyr na fydd y cynhyrchion y byddant yn eu prynu yn niweidio'r amgylchedd, ac i gynorthwyo'r diwydiant cynhyrchion cosmetig trwy sicrhau bod yr amodau yr un fath i bawb, gan sicrhau amserlen addas ar gyfer

gweithredu a lleihau hyd yr eithaf yr effaith ar y diwydiant. Bydd yn gosod esiampl hefyd i wledydd eraill ac yn annog mwy ohonynt i fabwysiadu deddfwriaeth.

## RHAN 2 – ASESIAD O'R EFFAITH REOLEIDDIOL

Cynhaliwyd Asesiad o'r Effaith Reoleiddiol ar gynigion y DU, sydd yn Atodiad 1 (bellach mae wedi cael ei ddiweddararu ar gyfer Rheoliadau cyfatebol Lloegr a, gan mai hon yw'r fersiwn ddiweddaraf (sy'n nodi asesiad y DU), mae'n cael ei defnyddio i ddibenion Rheoliadau Cymru. Cynhaliwyd y dadansoddiad yn yr Asesiad o'r Effaith Reoleiddiol yn Atodiad 1 ar lefel y DU). Mae'r canlynol yn grynodeb o'r effaith debygol yng Nghymru.

### ***Yr effaith ar gyrrff gorfodi***

Bydd yr effaith ar y sector cyhoeddus yn golygu baich rheoleiddiol ychwanegol bach iawn iawn yng nghyswllt gorfodi'r gwaharddiad, fel y disgrifiwyd yn yr Offeryn Statudol. Bydd awdurdodau lleol yn gyfrifol am sicrhau bod busnesau yn cydymffurfio â'r gwaharddiad ar weithgynhyrchu a gwerthu cynhyrchion gofal personol i'w rinsio i ffwrdd sy'n cynnwys microbelenni plastig. Rhagwelir y bydd baich adnoddau ychwanegol bach o ran amser ychwanegol ar gyfer swyddogion Awdurdodau Lleol a gweinyddu sancsiynau lle y bydd hynny'n briodol. Mae goblygiadau ariannol y gwaharddiad hwn ar gyfer Cymru yn ymwneud â gorfodaeth yn bennaf. Cyfrifwyd y costau i Gymru o'r Asesiad o'r Effaith ar y DU, a hynny ar sail pro rata. Y gost amcangyfrifedig o orfodi'r gwaharddiad ar gyfer y 22 Awdurdod Lleol yng Nghymru yw £0-£13,824 dros ddeng mlynedd. Mae manylion y costau fel a ganlyn:

Crynodeb o'r costau gorfodi (pro-rata ar gyfer Cymru o gostau asesu'r DU)

	<u>Amcangyfrif isel</u>	<u>Yr amcangyfrif gorau</u>	<u>Amcangyfrif uchel</u>
Cost ymgyfarwyddo (blwyddyn 1) – Costau untrō	£0	£4,400	£11,000
Cost flynyddol (blynnyddoedd 1-3)	£0	£76 (£228 dros 3 blynedd)	£764 (£2,292 dros 3 blynedd)
Cost flynyddol (blynnyddoedd 4-10)	£0	£76 (£532 dros 7 blynedd)	£76 (£532 dros 7 blynedd)

O gofio camau gweithredu gwirfoddol presennol y diwydiant, disgwylir y bydd y nifer sy'n peidio â chydymffurfio yn isel ac felly bydd y baich ychwanegol ar Awdurdodau Lleol yn fach iawn. Ni fydd y problemau posibl o ran peidio â chydymffurfio yn para'n hir gan y bydd y cyflenwad yn dod i ben wrth i gwmniâu roi'r gorau i weithgynhyrchu stoc nad yw'n cydymffurfio.

### ***Yr effaith ar fusnesau***

Mae'r ddeddfwriaeth yn berthnasol i weithgareddau busnesau yn y sector cynhyrchion ymolchi a chynhyrchion cosmetig.

Mae'n anodd gwybod i ba raddau y mae busnesau bach yn defnyddio microbelenni, ond nodwyd yn yr ymgysylltiad â Chymdeithas Cynhyrchion Cosmetig, Cynhyrchion Ymolchi a Phersawr y DU nad oes yr un busnes gweithgynhyrchu yng Nghymru yn defnyddio microbelenni yn ei gynhyrchion. O ganlyniad, ni ddisgwylir y bydd Rheoliadau 2018 yn cael unrhyw effaith ar weithgynhyrchwyr yng Nghymru.

O ran busnesau sy'n gwerthu cynhyrchion, mae Llywodraeth Cymru wedi cynnal ymgyngoriad helaeth, a rhoddwyd cyhoeddusrwydd helaeth i'r cynigion i gyflwyno gwaharddiad ledled y DU. Mae adwerthwyr wedi cael mwy na blwyddyn i addasu i gynigion y gwaharddiad a byddant yn cael canllawiau i'w helpu hefyd ar ôl gweithredu'r gwaharddiad ar 30 Mehefin 2018. Ystyrrir y bydd yr effaith ar adwerthwyr yng Nghymru yn fach iawn iawn. Ceir rhagor o fanylion yn adran 4 uchod.

### ***Buddion***

Disgwylir y bydd gwahardd microbelenni yn cael effaith gadarnhaol ar yr amgylchedd morol. Mae organebau morol yn wynebu straen o ffynonellau eraill gan gynnwys mathau eraill o lygredd yn y gorfennol ac asideiddio'r cefnforoedd. Mae'r straen ychwanegol y sgil microbelenni yn cynyddu'r risg gyffredinol sy'n wynebu ecosistemau morol.

Mae'r Asesiad o'r Effaith ar y DU yn nodi'r buddion y mae gwahardd microbelenni plastig yn debygol o'u cynnig i fusnesau ac i'r amgylchedd, ond ni ellid meintioli'r buddion hyn ac ni ddarparwyd rhagor o dystiolaeth ychwaith yn ystod ymgyngoriadau Cymru na'r DU. Fodd bynnag, disgwylir y byddant o leiaf mor uchel â chostau cymedrol y mesur.

### ***Monitro ac adolygu***

Adolygir Rheoliadau 2018 yn rheolaidd. Disgrifir y rhwymedigaethau yn rheoliad 14 ac mae'r rhain yn cynnwys (i) adolygu gweithrediad y darpariaethau yn Rhan 3 (Gorfodaeth a Sancsiynau Sifil) a'r Atodlen o fewn tair blynedd i'r dyddiad y daw Rheoliadau 2018 i rym, yn unol â gofynion adran 67 o Ddeddf Gorfodi Rheoleiddiol a Chosbau 2008. Bydd Gweinidogion Cymru yn rhoi copi o'r adroddiad a fydd yn nodi casgliadau'r adolygiad gerbron Cynulliad Cenedlaethol Cymru.

## **5. Ymgynggori**

### ***20 Rhagfyr 2016 – 28 Chwefror 2017 – ymgyngoriad ledled y DU a gynhaliwyd ar y cyd gan bedair Llywodraeth y DU - 12 wythnos***

Roedd yr ymgyngoriad ar gael i'r cyhoedd ar wefan:

<https://consult.defra.gov.uk/marine/microbead-ban-proposals/>

Cyflwynodd yr ymgyngoriad gynigion i wahardd gweithgynhyrchu a gwerthu cynhyrchion cosmetig a gofal personol sy'n cynnwys microbelenni yn y DU (gan

gynnwys ym mhob gweinyddiaeth ddatganoledig). Esboniwyd y byddai'r gwaharddiad yn berthnasol i ficrobelenni solet sy'n llai na 5mm o faint mewn unrhyw fesuriad ac sy'n gynhwysion mewn cynhyrchion cosmetig a gofal personol i'w rinsio i ffwrdd. Pennwyd amserlenni ar gyfer cyflwyno'r gwaharddiad yn y DU a nodwyd y byddai'r gweinyddiaethau datganoledig yn cyflwyno'r gwaharddiad yn unol â'u prosesau deddfwriaethol.

Gofynnodd yr ymgynghoriad am sylwadau ynghylch y cynigion, gan gynnwys cwestiynau penodol ynghylch cwmpas; eithriadau posibl; amserlenni; monitro cydymffurfiaeth a gorfodaeth; y costau i'r diwydiant, yr effaith ar fewnforion a'r risgiau amgylcheddol sy'n gysylltiedig â defnyddio deunyddiau eraill yn lle microbelenni plastig. Eglurwyd hefyd fod modd i'r rhai a oedd â diddordeb yn y mater roi sylwadau ar y ddeddfwriaeth yn ystod y cyfnod hysbysu, cyn iddi gael ei gwneud.

Lluniwyd y cynigion ar gyfer gwaharddiad ledled y DU yn dilyn ymgysylltu sylweddol rhwng pedair gweinyddiaeth y DU a rhanddeiliaid allweddol gan gynnwys cwmnïau cynhyrchion cosmetig, cyrff anllywodraethol a'r rheiny sydd ag arbenigedd penodol mewn llygredd môr.

**16 Hydref 2017 tan 8 Ionawr 2018 – ymgynghoriad cyhoeddus  
Llywodraeth Cymru – 12 wythnos**

Cynhaliodd Llywodraeth Cymru ymgynghoriad cyhoeddus pellach ynghylch manylion ehangach gorfodi a gweithredu'r gwaharddiad yng Nghymru yn benodol.

Roedd yr ymgynghoriad hwn ar gael i'r cyhoedd ar wefan:

<https://consultations.gov.wales/consultations/banning-manufacture-and-sale-cosmetics-and-personal-care-products-containing-plastic>.

Gofynnodd yr ymgynghoriad nifer o gwestiynau yn ymwneud â'r cynigion ar gyfer cyfundrefn sancsiynau sifil a fyddai'n cynwys cymysgedd o hysbysiadau cydymffurfio a chosbau ariannol amrywiadwy i'w gorfodi gan wasanaethau safonau masnach awdurdodau lleol. Yn ogystal, profwyd lefel y cosbau ariannol amrywiadwy.

Derbyniodd Llywodraeth Cymru 62 o ymatebion a chefnogaeth helaeth i'r cynigion gorfodaeth a gweithredu. Mae crynodeb o'r ymatebion i'w gael yma:  
<https://consultations.gov.wales/consultations/banning-manufacture-and-sale-cosmetics-and-personal-care-products-containing-plastic>

**29 Ionawr 2018 – Rhoi hysbysiadau i Sefydliad Masnach y Byd ac i'r Undeb Ewropeaidd yn unol â'r Gyfarwyddeb Safonau Technegol**

Hysbyswyd yr Undeb Ewropeaidd ynghylch yr offeryn statudol drafft yn unol â'r Gyfarwyddeb Safonau Technegol, a hysbyswyd Sefydliad Masnach y Byd hefyd o dan y Cytundeb ynghylch Rhwystrau Technegol i Fasnach.

Rhoddodd DEFRA yr hysbysiadau hyn, ynghyd â'r hysbysiad o dan Ddeddf Diogelu'r Amgylchedd, cyn i'r fersiwn ddrafft o Reoliadau Llywodraeth Cymru 2018 gael ei chwblhau yn derfynol. Yn dilyn y sylwadau a ddaeth i law yn ystod cyfnod hysbysiadau DEFRA, newidiwyd y diffiniad o blastig yn Rheoliadau drafft Llywodraeth Cymru 2018. Mae'r diffiniad diwygiedig wedi'i gynnwys yn Rheoliadau Llywodraeth Cymru er mwyn sicrhau dull gweithredu cyson ledled y DU.

Yn Rheoliadau 2018, diffinnir ystyr "plastig" fel sylwedd polymerig synthetig y gellir ei fowldio, ei allwthio neu ei drin yn ffisegol i lunio ffuriau solet amrywiol, ac sy'n cadw ei siâp gwneuthuredig terfynol wrth gael ei ddefnyddio i'w ddibenion bwriadedig.

Ymatebodd y Comisiwn i hysbysiad y Gyfarwyddeb Safonau Technegol gan nodi ei fod wedi gwneud cais i'r Asiantaeth Cemegion Ewropeaidd (ECHA), yn unol ag Erthygl 69(1) o'r Rheoliad REACH, baratoi coflen Atodiad XV o ystyried cyfyngiad posibl yn ymwneud â'r defnydd o bolymerau synthetig nad ydynt yn toddi mewn dŵr, ac sy'n 5 mm neu'n llai o ran maint (h.y. gronynnau microplastig), sy'n cael eu hychwanegu'n fwriadol at unrhyw fath o gynhyrchion. Ychwanegodd yr ECHA y bwriad perthnasol at y Gofrestr o Fwriadau ar 17 Ionawr 2018.

Os bydd awdurdodau'r DU yn mynd ati i fabwysiadu'r drafftiau a hysbyswyd, noda'r Comisiwn ei fod yn disgwyl i'r DU ystyried y mesurau cenedlaethol a fabwysiadwyd yn rhai dros dro, ac y dylai ystyried canlyniad terfynol gweithdrefn gyfyngiadau barhaus REACH.

Nodwyd y sylwadau hyn, ac fe'u hystyrir pan fydd y canlyniad terfynol ar gael.

### ***Mawrth 2018 – gofynion ymgynghori o dan Ddeddf Gorfodi Rheoleiddiol a Chosbau 2008***

- Ymgynghorwyd ag Awdurdodau Lleol Cymru yn unol ag adran 60(1)(a) o Ddeddf Gorfodi Rheoleiddiol a Chosbau 2008 yn rhinwedd eu rôl fel rheoleiddiwr.

Daeth ymatebion i law gan dri Awdurdod Lleol. Roedd yr ymatebion yn cefnogi'r gwaharddiad, gan nodi y byddai'r dull o orfodi yn cael ei lywio'n bennaf gan wybodaeth.

- Yn unol â dyletswydd Gweinidogion Cymru o dan adran 59(3) o Ddeddf Gorfodi Rheoleiddiol a Chosbau 2008, ysgrifennodd y Gweinidog dros yr Amgylchedd at yr Ysgrifennydd Gwladol i ymgynghori ynghylch gwneud Gorchymyn o dan Ran 3 o Ddeddf Gorfodi Rheoleiddiol a Chosbau 2008.

Ni chafwyd yr un ymateb gan yr Ysgrifennydd Gwladol.

### **3 Ebrill 2018 – Gofynion cyhoeddi o dan Ddeddf Diogelu'r Amgylchedd 1990**

Cyhoeddodd Llywodraeth Cymru hysbysiadau yn y Western Mail a'r London Gazette, yn unol â gofynion Deddf Diogelu'r Amgylchedd 1990 i roi gwybod i'r cyhoedd am Reoliadau arfaethedig 2018 ac i wahodd y cyhoedd i roi sylwadau i Weinidogion Cymru.

Cyhoeddwyd yr hysbysiad hefyd trwy ddolen ar wefan <http://gov.wales/>, trwy neges e-bost at y rheiny a oedd wedi ymateb i ymgynghoriadau cyhoeddus Cymru a'r DU ac at rwydwaith rhanddeiliaid morol ehangach Llywodraeth Cymru. Roedd gan y cyhoedd fis i roi eu sylwadau i Weinidogion Cymru.

Ni chafwyd yr un sylw o ganlyniad i gyhoeddi Rheoliadau drafft 2018.

#### ***Crynodeb o'r ymgynghoriadau a'r canlyniadau***

Canlyniad ymgynghoriadau Cymru a'r DU oedd bod cefnogaeth gref iawn i'r gwaharddiad.

Disgrifiai ymgynghoriad Cymru y gyfundrefn orfodaeth a'r amserlen weithredu arfaethedig. Yn yr ymgynghoriad, nodwyd ein bwriad i'r gwaharddiad ar weithgynhyrchu a gwerthu cynhyrchion sy'n cynnwys microbelenni ddod i rym ar 30 Mehefin 2018. Awgrymodd yr ymgynghoriad mai adrannau Safonau Masnach Awdurdodau Lleol fyddai'r rheoleiddiwr mwyaf priodol i orfodi'r gwaharddiad trwy amrywiaeth o sancsiynau sifil a chosbau ariannol amrywiadwy. Roedd 95% o'r ymatebwyr yn cytuno bod y gyfundrefn orfodi yn rhesymol ac yn gymesur. Roedd yr ymatebwyr yn cefnogi lefelau'r cosbau ariannol amrywiadwy yn gyffredinol. Awgrymodd rhai ymatebwyr y dylai'r cosbau fod yn uwch.

Mae lefel uchaf y cosbau yn gyson â'r cosbau yn Rheoliadau Codi Tâl am Fagiau Siopa Untro (Cymru) 2010. Ystyriwn fod defnyddio cosbau tebyg yn briodol oherwydd y bydd y gwaharddiad ar ficobelenni yn berthnasol i ystod debyg o fusnesau o feintiau gwahanol. Ystyrir bod swm y gosb amrywiadwy uchaf yn ddigon uchel i atal busnesau bach a chanolig eu maint, ac rydym o'r farn y bydd y cyfuniad o gosb ariannol a chyhoeddi hysbysiadau gorfodi a allai effeithio ar enw da'r busnes yn atal busnesau mwy.

## **Atodiad 1 – dolen i'r Asesiad o'r Effaith ar y DU a luniwyd ar gyfer ymgynghoriad y DU**

Cynhaliwyd Astudiaeth o'r Effaith Reoleiddiol ar gynigion y DU. Bellach mae wedi cael ei ddiweddar ar gyfer Rheoliadau cyfatebol Lloegr a, gan mai hon yw'r fersiwn ddiweddaraf, mae'n cael ei defnyddio i ddibenion Rheoliadau Llywodraeth Cymru. Cynhaliwyd y dadansoddiad yn yr Asesiad o'r Effaith Reoleiddiol yn Atodiad 1 ar lefel y DU.

Gellir gweld yr Asesiad o'r Effaith Reoleiddiol trwy ddilyn y ddolen ganlynol:

<http://www.legislation.gov.uk/uksi/2017/1312/impacts>

## SL(5)222 – Rheoliadau Iechyd Anifeiliaid (Ffioedd Amrywiol) (Cymru) 2018

### Cefndir a Diben

Mae'r Rheoliadau hyn yn pennu'r ffioedd sy'n daladwy i Weinidogion Cymru (a gasglwyd ar eu rhan gan yr Asiantaeth Iechyd Anifeiliaid a Phlanhigion ym maes iechyd anifeiliaid ac yn disodli'r ffioedd presennol a nodir yn Rheoliadau Iechyd Anifeiliaid (Ffioedd Amrywiol) (Cymru) 2013.

Mae'r Rheoliadau yn darparu ar gyfer ffioedd i fod yn daladwy mewn perthynas â:

- gweithgareddau o dan Reoliad (EC) Rhif 2160/2003 ar reoli salmonella ac asiantau milheintiol penodedig eraill sy'n ymledu drwy fwyd (Rheoliad 4);
- cymeradwyaeth at ddibenion y cynllun iechyd dofednod a sefydlwyd o dan Gyfarwyddeb y Cyngor 2009/158/ EC ar gyflyrau iechyd anifeiliaid o ran masnachu ac mewnfyrion o drydydd gwledydd dofednod ac wyau deor a Rheoliadau'r Fasnach mewn Anifeiliaid a Chynhyrchion Perthynol (Cymru) 2011 (Rheoliad 5);
- cymeradwyaethau at ddibenion cael semen buchol yn unol â Rheoliadau Semen Buchol (Cymru) 2008 (Rheoliad 6);
- cymeradwyaeth at ddibenion cael semen moch yn unol â Rheoliadau Ffrwythloni Moch yn Artiffisial (Cymru a Lloegr) 1964 a Rheoliadau Ffrwythloni Moch yn Artiffisial (EEC) 1992 (Rheoliad 7);
- cymeradwyaethau at ddibenion casglu, cynhyrchu a throsglwyddo embryonau buchol yn unol â Rheoliadau Embryo Buchol (Casglu, Cynhyrchu a Throsglwyddo) 1995 (Rheoliad 8); ac
- arolygu llwythi anifeiliaid byw mewn arolygfeydd ffin yn unol â Rheoliadau'r Fasnach mewn Anifeiliaid a Chynhyrchion Perthynol (Cymru) 2011 (Rheoliad 9).

Mae'r lefelau ffioedd y darperir ar eu cyfer yn y Rheoliadau yn adlewyrchu adennill costau ffioedd yn llawn ac mae rhai o'r ffioedd wedi cynyddu o'r ffioedd presennol.

### 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.

## Rhinweddau: craffu

Ni nodir 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

Gwneir y Rheoliadau hyn o dan adrannau 2(2) o Ddeddf y Cymunedau Ewropeaidd 1972. Mae Rheoliadau 4 a 5 yn codi o rwymedigaethau'r UE o dan Reoliad yr UE 2160/2003 a Chyfarwyddeb y Cyngor 2009/158/EC yn y drefn honno. Mae'r Rheoliadau eraill y cyfeirir atynt yn y Rheoliadau hyn (gweler adrann Cefndir a Diben yr adroddiad hwn) hefyd yn deillio o rwymedigaethau'r UE. Felly, bydd y Rheoliadau hyn yn rhan o gyfraith yr UE a gedwir ar ôl diwrnod gadael yr UE.

Mae'r Cytundeb Rhynglywodraethol ar Fil yr Undeb Ewropeaidd (Ymadael) a Sefydlu Fframweithiau Cyffredin yn nodi bod "iechyd ac olrhain anifeiliaid" yn faes polisi sy'n debygol o fod yn ddarostyngedig i reoliadau cymal 15 o dan Fil yr UE (Ymadael). Felly, mae'r gyfraith sy'n perthyn i'r Rheoliadau hyn yn debygol o fod yn faes o gyfraith yr UE sy'n cael ei rewi tra bod fframweithiau cyffredin yn cael eu rhoi ar waith.

## Ymateb y Llywodraeth

Nid oes angen ymateb y llywodraeth.

### Cynghorwyr Cyfreithiol

### Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol

7 Mehefin 2018



## SL(5)223 - Rheoliadau Sgil-gynhyrchion Anifeiliaid a Phasbortau Anifeiliaid Anwes (Ffioedd) (Cymru) 2018

### Cefndir a diben

Mae'r Rheoliadau hyn yn nodi'r ffioedd sy'n daladwy i Weinidogion Cymru ym maes iechyd anifeiliaid. Mae'r ffioedd yn daladwy gan weithredwyr sefydliadau a gweithfeydd y mae'n ofynnol eu cymeradwyo a'u harolygu o dan Reoliad yr UE rhif 1069/2009, sy'n gosod rheolau iechyd yn ymwneud â sgil-gynhyrchion anifeiliaid, a chynhyrchion sy'n dod o anifeiliaid, na fwriedir i bobl eu bwyta.

### Y weithdrefn

Negyddol.

### Materion technegol: craffu

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

### Rhinweddau: craffu

Ni nodir 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

Gwneir y Rheoliadau hyn o dan adrannau 2(2) o Ddeddf y Cymunedau Ewropeaidd 1972. Mae'r Rheoliadau hyn yn codi o rywymedigaethau'r UE o dan Reoliad UE rhif 1069/2009 mewn perthynas â rheolau iechyd yn ymwneud â sgil-gynhyrchion anifeiliaid a chynhyrchion sy'n dod o anifeiliaid ac, felly, bydd y Rheoliadau hyn yn ffurio rhan o gyfraith yr UE a ddargedwir ar ôl i'r DUadael yr UE.

Mae'r Cytundeb Rhynglywodraethol ar Fil yr Undeb Ewropeaidd (Ymadael) a Sefydlu Fframweithiau Cyffredin yn nodi bod "iechyd anifeiliaid a'r gallu i olrhain anifeiliaid" yn faes polisi sy'n debygol o fod yn ddarostyngedig i reoliadau cymal 15 o dan Fil yr UE (Ymadael). Felly, mae'r gyfraith sy'n dod o dan y Rheoliadau hyn yn debygol o fod yn un o'r meysydd hynny yng nghyfraith yr UE a gaiff eu rhewi tra bydd fframweithiau cyffredin yn cael eu rhoi ar waith.

### Ymateb y Llywodraeth

Nid oes angen ymateb y llywodraeth.

#### Cynghorwyr Cyfreithiol

#### Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol

#### 4 Mehefin 2018



# Item 6.1

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OFFERYNNAU STATUDOL  
CYMRU

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**2018 Rhif 632 (Cy. 118)**

**ANIFEILIAID, CYMRU**

**IECHYD ANIFEILIAID**

Gorchymyn Moch (Cofnodion,  
Adnabod a Symud) (Cymru)  
(Diwygio) 2018

**NODYN ESBONIADOL**

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

Mae'r Gorchymyn hwn, sy'n gymwys o ran Cymru,  
yn diwygio Gorchymyn Moch (Cofnodion, Adnabod a  
Symud) (Cymru) 2011 (O.S. 2011/2830) (Cy. 303).

Mae'n dileu'r diffiniadau o MLCSL (Meat and  
Livestock Commercial Services Limited) a BPEX (i  
bob pwrrpas Gweithrediaeth Moch Prydain) o erthygl 2  
ac yn mewnosod diffiniad newydd o AHDB (y Bwrdd  
Datblygu Amaethyddiaeth a Garddwriaeth). Caiff pob  
cyfeiriad dilynol at MLCSL a BPEX eu disodli gan  
AHDB.

Ystyriwyd Cod Ymarfer Gweinidogion Cymru ar  
gynnal Asesiadau Effaith Rheoleiddiol mewn  
perthynas â'r Gorchymyn hwn. O ganlyniad,  
ystyriwyd nad oedd yn angenrheidiol cynnal asesiad  
effaith rheoleiddiol o'r costau a'r manteision sy'n  
debygol o ddeillio o gydymffurfio â'r Gorchymyn hwn  
gan fod y diwygiadau yn rhai technegol eu natur.

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OFFER Y NNAU STATUDOL  
CYMRU

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**2018 Rhif 632 (Cy. 118)**

**ANIFEILIAID, CYMRU**

**IECHYD ANIFEILIAID**

Gorchymyn Moch (Cofnodion,  
Adnabod a Symud) (Cymru)  
(Diwygio) 2018

*Gwnaed*                                   *22 Mai 2018*

*Yn dod i rym*                           *30 Mehefin 2018*

Mae Gweinidogion Cymru, y mae'r pwerau a roddir gan adrannau 1 ac 8(1) o Ddeddf Iechyd Anifeiliaid 1981 bellach wedi'u breinio ynddynt<sup>(1)</sup> yn gwneud y Gorchymyn a ganlyn drwy arfer y pwerau hynny:

**Enwi, cymhwys o a chychwyn**

1.—(1) Enw'r Gorchymyn hwn yw Gorchymyn Moch (Cofnodion, Adnabod a Symud) (Cymru) (Diwygio) 2018.

(2) Mae'r Gorchymyn hwn yn gymwys o ran Cymru.

(3) Daw'r Gorchymyn hwn i rym ar 30 Mehefin 2018.

**Diwygio Gorchymyn Moch (Cofnodion, Adnabod a Symud) (Cymru) 2011**

2.—(1) Mae Gorchymyn Moch (Cofnodion, Adnabod a Symud) (Cymru) 2011<sup>(2)</sup> wedi ei ddiwygio fel a ganlyn.

(2) Yn erthygl 2 (dehongli)—

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(1) 1981 p. 22. Trosglwyddwyd swyddogaethau'r Gweinidogion, "the Ministers", i'r graddau y maent yn arferadwy o ran Cymru, i Gynulliad Cenedlaethol Cymru yn rhinwedd O.S. 1999/672. Trosglwyddwyd swyddogaethau un o Weinidogion y Goron, i'r graddau y maent yn arferadwy o ran Cymru, i Gynulliad Cenedlaethol Cymru yn rhinwedd O.S. 2004/3044. Mae adran 162 o Ddeddf Llywodraeth Cymru 2006 (p. 32), ac Atodlen 11 iddi, yn breinio'r swyddogaethau hyn yng Ngweinidogion Cymru.

(2) O.S. 2011/2830 (Cy. 303).

- (a) hepgorer y diffiniad o “BPEX”;
- (b) hepgorer y diffiniad o “MLCSL”; ac
- (c) yn y lle priodol mewnosoder—  
“ystyr “AHDB” (“AHDB”) yw y Bwrdd  
Datblygu Amaethyddiaeth a Garddwriaeth;”

(3) Ym mhob man lle y mae'n ymddangos, yn lle  
“BPEX” rhodder “AHDB”.

(4) Ym mhob man lle y mae'n ymddangos, yn lle  
“MLCSL” rhodder “AHDB”.

*Lesley Griffiths*

Ysgrifennydd y Cabinet dros Ynni, Cynllunio a  
Materion Gwledig, un o Weinidogion Cymru  
22 Mai 2018



Lesley Griffiths AC/AM

Ysgrifennydd y Cabinet dros Ynni, Cynllunio a Materion Gwledig  
Cabinet Secretary for Energy, Planning and Rural Affairs



Llywodraeth Cymru  
Welsh Government

Ein cyf/Our ref MA/L/LG/0273/18

Mike Hedges AC,  
Cadeirydd y Pwyllgor Newid Hinsawdd, Amgylchedd a  
Materion Gwledig  
Cynulliad Cenedlaethol Cymru

23 May 2018

*Anwyl Mike*

Rwy'n amgáu copi o Gorchymyn Moch (Cofnodion, Adnabod a Symud) (Cymru) (Diwygio) 2018 er gwybodaeth. Yn dilyn gwerthiant Meat and Livestock Commercial Services Limited (MLCSL) gan AHDB, mae'r Gorchymyn yn gwneud newidiadau a fydd yn caniatáu i symudiadau moch barhau i gael eu hadrodd yn gywir

Mae Deddf lechyd Anifeiliaid 1981 yn mynnu bod gorchymynion a wneir o dan adrannau 1 ac 8 (1) yn cael eu gwneud gan Offeryn Statudol, ond nid ydynt yn ddarostyngedig i unrhyw weithdrefn ddeddfwriaethol. Mae hyn yn golygu nad oes gofyniad i osod yr Offeryn Statudol o flaen Cynulliad Cenedlaethol Cymru.

*Xn gywir  
Lesley*

**Lesley Griffiths AC/AM**

Ysgrifennydd y Cabinet dros Ynni, Cynllunio a Materion Gwledig  
Cabinet Secretary for Energy, Planning and Rural Affairs

Cc: Mick Antoniw AC, Cadeirydd y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol

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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.

**Tudalen y pecyn 150**

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.

Mick Antoniw  
Cadeirydd,  
Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol

24 Mai 2018

Annwyl Gadeirydd,

Fel y gwyddoch, cyhoeddais ddatganiad ysgrifenedig heddiw i'r aelodau ynglŷn â'r Fforwm Gweinidogion newydd ar y berthynas rhwng y Deyrnas Unedig a'r Undeb Ewropeaidd yn y dyfodol.

Gan adeiladu ar drafodaethau cychwynnol Cyd-bwyllgor y Gweinidogion (Negodiadau'r Undeb Ewropeaidd) bydd y fforwm newydd yn rhoi'r cyfle i'r gweinyddiaethau datganoledig gyfrannu i'r broses o ddatblygu safbwyt negodi ar gyfer y DU.

Bydd rhai o Weinidogion Llywodraeth Cymru yn mynchu'r cyfarfodydd, ynghyd â rhai o Weinidogion Llywodraeth yr Alban a swyddogion o wasanaeth sifil Gogledd Iwerddon, a bydd y cyfarfodydd yn bwydo trafodaethau Cyd-bwyllgor y Gweinidogion (Negodiadau'r UE). Mae'r Prif Weinidog wedi gofyn i Rebecca Evans, yr Ysgrifennydd Tai ac Adfywio, fod yn Weinidog arweiniol ar gyfer y Fforwm Gweinidogion newydd, gan gydweithio â mi fel cynrychiolydd Llywodraeth Cymru ar y Gyd-bwyllgor y Gweinidogion yn barod.

Cynhelir cyfarfod cyntaf Fforwm y Gweinidogion yng Nghaeredin yn ddiweddarach heddiw, a bydd y Gweinidog Tai ac Adfywio yn bresennol, a bydd Llywodraeth Cymru yn diweddu aelodau ar ddatblygiadau a gwaith y Fforwm.

Rydym yn disgwyl y bydd y fforwm yn cyfarfod yn rheolaidd. Gan fod pethau'n symud yn gyflym o ran y materion y bydd y fforwm yn ymdrin â nhw, ac o gofio natur gyfrinachol y trafodaethau, gallai fod yn fuddiol pe bai fy swyddogion yn gweithio gyda chlerc eich pwylgor i sefydlu'r ffordd orau o roi'r wybodaeth ddiweddaraf i chi ac aelodau'r pwylgor, gan barchu cyfrinachedd y trafodaethau yr un pryd.



**Mark Drakeford AM/AC**  
Ysgrifennydd y Cabinet dros Gyllid  
Cabinet Secretary for Finance

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[Correspondence.Mark.Drakeford@gov.wales](mailto:Correspondence.Mark.Drakeford@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.

# Eitem 7.2

Mark Drakeford AM/AC

Ysgrifennydd y Cabinet dros Gyllid

Cabinet Secretary for Finance



Llywodraeth Cymru  
Welsh Government

Eich cyf/Your ref

Ein cyf/Our ref

Mick Antoniw AC

Cadeirydd, Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol

Cynulliad Cenedlaethol Cymru

Bae Caerdydd

CF99 1NA

Annwyl Mick

4 Mehefin 2018

## Llywodraethiant yn y DU ar ôl Brexit – cysylltiadau rhynglywodraethol

Diolch am eich llythyr dyddiedig 25 Mai. Byddwn yn falch i ddod i gyfarfod i drafod datblygu cytundeb ar gysylltiadau rhynglywodraethol, fel yr argymhellwyd gan eich pwylgor, ac i ystyried y trefniadau y gellid bod angen eu datblygu o ganlyniad i'r Cytundeb Rhynglywodraethol ar Fil yr Undeb Ewropeaidd (Ymadael). Bydd fy swyddogion yn cysylltu â chi i drefnu cyfarfod.

Yn gywir,

A handwritten signature in black ink that reads "Mark".

**Mark Drakeford AM/AC**

Ysgrifennydd y Cabinet dros Gyllid

Cabinet Secretary for Finance

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Caerdydd • Cardiff  
CF99 1NA

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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.

**Tudalen y pecyn 152**

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Mark Drakeford AC  
Ysgrifennydd y Cabinet dros Gyllid

25 Mai 2018

Annwyl Mark

### Llywodraethiant yn y DU ar ôl Brexit – cysylltiadau rhynglywodraethol

Diolch eto am ddod i gyfarfodydd y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol ar 23 a 30 Ebrill. Roedd y ddwy sesiwn yn addysgiadol, ac roedd y trafodaethau yn gymorth inni wrth inni baratoi ein hadroddiad ar Femorandwm Cydsyniad Deddfwriaethol Atodol (Memorandwm Rhif 2) Llywodraeth Cymru ar Fil yr Undeb Ewropeaidd (Ymadael).

Byddwch yn cofio ein bod wedi trafod cysylltiadau rhynglywodraethol yn y dyfodol ac adroddiad y Pwyllgor ar Llywodraethiant yn y DU ar ôl Brexit yn ystod y ddau gyfarfod. Nododd Argymhelliaid 9 ein hadroddiad:

Rydym yn argymhell bod Llywodraeth Cymru yn ymrwymo i gytundeb cysylltiadau rhynglywodraethol gyda'r Pwyllgor hwn er mwyn cefnogi gwaith craffu ar weithgaredd Llywodraeth Cymru yn y maes hwn.

Yn ystod y ddadl a gafwyd ar yr adroddiad yn y Cyfarfod Llawn ar 28 Chwefror, dywedodd y Cwnsler Cyffredinol fod Llywodraeth Cymru yn hapus i drafod cynnwys cytundeb ar gysylltiadau rhynglywodraethol â ni. Dywedodd hefyd y byddai Llywodraeth Cymru, wrth wneud hynny, yn dymuno ystyried y cytundeb rhwng Senedd yr Alban a Llywodraeth yr Alban.

Yn ein cyfarfod ar 30 Ebrill, gwnaethoch ailddatgan parodrwydd Llywodraeth Cymru i weithio gyda'r Pwyllgor hwn wrth ddatblygu'r trefniadau y bydd eu hangen ar ran y ddeddfwrfa i oruchwyllo'r camau a fydd yn deillio o'r cytundeb rhynglywodraethol ar Fil yr Undeb Ewropeaidd (Ymadael) a sefydlu fframweithiau cyffredin.



Fel cam cyntaf yn y broses hon, credaf y byddai o gymorth pe bawn yn cwrdd er mwyn trafod sut y gallwn gymryd y gwaith hwn yn ei flaen. Byddwn yn ddiolchgar pe galles i roi gwybod i mi pryd y byddai hyn yn gyfleus.

Rwy'n anfon copi o'r llythyr hwn at y Llywydd, y Prif Weinidog, y Cwnsler Cyffredinol, Cadeirydd y Pwyllgor Materion Allanol a Deddfwriaeth Ychwanegol a Chadeirydd y Pwyllgor Newid Hinsawdd, Amgylchedd a Materion Gwledig.

Yn gywir,



**Mick Antoniw**

Cadeirydd

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.



Tudalen y pecyn 154

Ein cyf: MA/L/JJ/029918

Mick Antoniw, AC  
Cadeirydd  
Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol  
Cynulliad Cenedlaethol Cymru  
Bae Caerdydd  
CF99 1NA  
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24 Mai 2018

Annwyl Mick

Diolch am eich llythyr dyddiedig 8 Mai 2018 yn holi am ddull Llywodraeth Cymru o fynd ati i osod is-ddeddfwriaeth nad ydyw ar ffurf offeryn statudol, a darparu Memoranda Esboniadol.

Fel yn achos offerynnau statudol, mae ein dull o benderfynu a ddylai eitem o is-ddeddfwriaeth nad ydyw ar ffurf offeryn statudol gael ei gosod ai peidio yn cael ei lywio gan y weithdrefn a nodir yn y Ddeddf neu'r Mesur y mae'n deillio ohoni. Os oes gofyn gosod yr eitem o is-ddeddfwriaeth, byddwn yn dilyn gofynion Rheolau Sefydlog Cynulliad Cenedlaethol Cymru, yn unol â'i ddiffiniad o is-ddeddfwriaeth.

Yn benodol, byddwn yn ystyried a yw Rheol Sefydlog 27.14 yn berthnasol. Mae hon yn cymhwys darpariaethau Rheol Sefydlog 27 i adroddiad, canllawiau, cod ymarfer neu ddogfen arall y mae gofyn ei gosod gerbron y Cynulliad **ac** sydd hefyd yn destun unrhyw fath o weithdrefn gan y Cynulliad sy'n cyfateb i weithdrefn o fath cadarnhaol neu negyddol. Lle bo darpariaethau Rheol Sefydlog 27 yn gymwys i eitemau o'r fath, mae'r rhain yn cynnwys y gofyniad yn Rheol Sefydlog 27.1 i osod memorandwm esboniadol ar y cyd â'r is-ddeddfwriaeth (yn yr un modd ag y darperir memorandwm esboniadol ar gyfer offeryn statudol sy'n destun gweithdrefn o fath cadarnhaol neu negyddol).

Os oes un o weithdrefnau'r Cynulliad ynghlwm wrth is-ddeddfwriaeth nad yw'n offeryn statudol, bydd yn cael ei gosod o dan Reol Sefydlog 27. Os nad oes gweithdrefn ynghlwm wrthi, bydd yn cael ei gosod o dan Reol Sefydlog 15.1(i). Mae gennym drefniant hirsefydlog â'ch pwyllgor lle'r ydym yn rhoi gwybod ichi er cwrteisi pan wneir offerynnau statudol penodol nad oes raid eu gosod, yn enwedig gorchmynion cychwyn, a phan osodir eitemau penodol o is-ddeddfwriaeth nad ydynt ar ffurf offerynnau statudol, yn enwedig os gosodir yr eitem honno o dan Reol Sefydlog 27.

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Roedd eich llythyr yn cyfeirio at bedair eitem yn arbennig, pob un ohonynt yn ymwneud â'r diwydiant dŵr. Roedd gweithdrefn o fath negyddol ynghlwm wrth y ddwy eitem *Datganiad o Amcanion a Blaenoraiethau Strategol ar gyfer Ofwat a gyhoeddwyd o dan adran 2B o Ddeddf y Diwydiant Dŵr 1991 a Canllawiau i Ofwat ar Godi Tâl am Ffioedd Datblygwyr, Ffioedd Swmpgyflenwadau a Ffioedd Mynediad*. Yn yr achosion hyn roedd Rheol Sefydlog 27.14 yn gymwys a dylai memorandwm esboniadol fod wedi cael ei osod ar y cyd â hwy. Dylem hefyd fod wedi tynnu eich sylw atynt er cwteisi. O ran y ddau gyfarwyddyd, gan nad oedd un o weithdrefnau'r Cynulliad ynghlwm wrthynt, nid oedd Rheol Sefydlog 27.14 yn gymwys ac felly nid oedd angen memorandwm esboniadol.

Fel y mae eich llythyr yn nodi, nid yw'n hawdd bob amser penderfynu a yw eitem yn bodloni'r diffiniad o is-ddeddfwriaeth a nodir yn y Rheolau Sefydlog. Yn achos y ddwy eitem a nodwyd gennych, lle dylai Rheol Sefydlog 27.14 fod wedi cael ei chymhwys, penderfynwyd yn anghywir nad oeddent yn bodloni'r diffiniad o is-ddeddfwriaeth. Amryfusedd gweinyddol ar ein rhan oedd yn gyfrifol am hyn, ac ymddiheurwn am hynny. Rwyf, wrth gwrs, yn hapus i edrych eto ar ein gweithdrefnau mewnol er mwyn osgoi amryfusedd o'r fath yn y dyfodol.

Gobeithio bod yr wybodaeth hon yn helpu i egluro'r sefyllfa.

Rwy'n anfon copi o'r llythyr at Gadeirydd y Pwyllgor Newid Hinsawdd, Amgylchedd a Materion Gwledig ac at y Cwnsler Cyffredinol.

Yn gywir



**Julie James AC/AM**  
Arweinydd y Tŷ a'r Prif Chwip  
Leader of the House and Chief Whip

Mae cyfyngiadau ar y ddogfen hon

Mae cyfngiadau ar y ddogfen hon