Agenda – Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol

Lleoliad:
Ystafell Bwyllgora 1 – Y Senedd
Dyddiad: Dydd Llun, 25 Mawrth 2019
Amser: 13.00

I gael rhagor o wybodaeth cysylltwch a:
Gareth Williams
Clerc y Pwyllgor
0300 200 6362
SeneddMCD@cynulliad.cymru

1 Cyflwyniad, ymddiheuriadau, dirprwyon a datgan buddiannau

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

(Tudalennau 1 – 4)

CLA(5)-11-19 – Papur 1 – Offerynnau statudol sydd ag adroddiadau clir

Offerynnau'r Weithdrefn Penderfyniad Negyddol

2.1 **SL(5)383 – Rheoliadau'r Dreth Gyngor (Darpariaethau Ychwanegol ar gyfer Diystyriadau Disgownt) (Diwygio) (Cymru) 2019**

2.2 **SL(5)397 – Rheoliadau Gwasanaethau Maethu Awdurdodau Lleol (Cymru) (Diwygio) 2019**

2.3 **SL(5)400 – The Civil Enforcement Of Parking Contraventions (County Of Monmouthshire) Designation Order 2019**

2.4 **SL(5)401 – The Civil Enforcement of Parking Contraventions (County Borough of Caerphilly) Designation Order 2019**

Offerynnau'r Weithdrefn Penderfyniad Negyddol

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

3.1 SL(5)382 – Rheoliadau Cynllunio Gwlad a Thref (Diwygiadau Amrywiol) (Cymru) (Ymadael â'r UE) 2019

(Tudalennau 5 – 24)

CLA(5)-11-19 – Papur 2 – Adroddiad

CLA(5)-11-19 – Papur 3 – Rheoliadau

CLA(5)-11-19 – Papur 4 – Memorandwm Esboniadol

3.2 SL(5)384 – Gorchymyn y Dreth Gyngor (Anheddau Esempt) (Diwygio) (Cymru) 2019

(Tudalennau 25 – 38)

CLA(5)-11-19 – Papur 5 – Adroddiad

CLA(5)-11-19 – Papur 6 – Gorchymyn

CLA(5)-11-19 – Papur 7 – Memorandwm Esboniadol

3.3 SL(5)385 – Rheoliadau Llifogydd a Dŵr (Diwygio) (Cymru a Lloegr) (Ymadael â'r UE) 2019

(Tudalennau 39 – 62)

CLA(5)-11-19 – Papur 8 – Adroddiad

CLA(5)-11-19 – Papur 9 – Rheoliadau

CLA(5)-11-19 – Papur 10 – Memorandwm Esboniadol

3.4 SL(5)388 – Rheoliadau Iechyd Planhigion (Ffioedd) (Coedwigaeth) (Cymru) 2019

(Tudalennau 63 – 77)

CLA(5)-11-19 – Papur 11 – Adroddiad

CLA(5)-11-19 – Papur 12 – Rheoliadau

CLA(5)-11-19 – Papur 13 – Memorandwm Esboniadol

3.5 **SL(5)389 – Rheoliadau Deunyddiau Atgenhedlol y Goedwig (Prydain Fawr) (Diwygio) (Cymru) 2019**

(Tudalennau 78 – 98)

CLA(5)-11-19 – Papur 14 – Adroddiad

CLA(5)-11-19 – Papur 15 – Rheoliadau

CLA(5)-11-19 – Papur 16 – Memorandwm Esboniadol

3.6 **SL(5)390 – Gorchymyn Iechyd Planhigion (Coedwigaeth) (Diwygio) (Cymru) 2019**

(Tudalennau 99 – 138)

CLA(5)-11-19 – Papur 17 – Adroddiad

CLA(5)-11-19 – Papur 18 – Gorchymyn

CLA(5)-11-19 – Papur 19 – Memorandwm Esboniadol

3.7 **SL(5)394 – Gorchymyn Cyflogau Amaethyddol (Cymru) 2019**

(Tudalennau 139 – 224)

CLA(5)-11-19 – Papur 20 – Adroddiad

CLA(5)-11-19 – Papur 21 – Gorchymyn

CLA(5)-11-19 – Papur 22 – Memorandwm Esboniadol

3.8 **SL(5)405 – Gorchymyn Pysgota Môr (Hysbysiadau Cosb) (Cymru) (Diwygio) 2019**

(Tudalennau 225 – 235)

CLA(5)-11-19 – Papur 23 – Adroddiad

CLA(5)-11-19 – Papur 24 – Gorchymyn

CLA(5)-11-19 – Papur 25 – Memorandwm Esboniadol

CLA(5)-11-19 – Papur 26 – Llythyr gan y Gweinidog Cyllid a'r Trefnydd – 20 Mawrth 2019

Offerynnau Cyfansawdd Penderfyniad Negyddol

3.9 **SL(5)393 – Gorchymyn Rhywogaethau Goresgynnol Estron (Gorfodi a Thrwyddedu) 2019**

(Tudalennau 236 – 296)

CLA(5)-11-19 – Papur 28 – Adroddiad

CLA(5)-11-19 – Papur 29 – Gorchymyn

CLA(5)-11-19 – Papur 30 – Memorandwm Esboniadol

Offerynnau'r Weithdrefn Penderfyniad Cadarnhaol

3.10 **SL(5)395 – Rheoliadau Deddf Anghenion Dysgu Ychwanegol a'r Tribiwnlys Addysg (Cymru) 2018 (Darpariaethau Atodol) 2019**

(Tudalennau 297 – 306)

CLA(5)-11-19 – Papur 30 – Adroddiad

CLA(5)-11-19 – Papur 31 – Rheoliadau

CLA(5)-11-19 – Papur 32 – Memorandwm Esboniadol

3.11 **SL(5)396 – Rheoliadau Cymwysterau Cymru (Cosbau Ariannol) (Penderfynu ar Drosiant) 2019**

(Tudalennau 307 – 332)

CLA(5)-11-19 – Papur 33 – Adroddiad

CLA(5)-11-19 – Papur 34 – Rheoliadau

CLA(5)-11-19 – Papur 35 – Adroddiad

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

4.1 **SL(5)386 – Rheoliadau Materion Gwledig, yr Amgylchedd, Pysgodfeydd a Bwyd (Diwygiadau a Dirymiadau Amrywiol) (Cymru) 2019**

(Tudalennau 333 – 334)

CLA(5)-11-19 – Papur 36 – Adroddiad

5 Offerynnau sy'n cynnwys materion i gyflwyno adroddiad arnynt i'r Cynulliad o dan Reol Sefydlog 21.2 neu 21.3 – trafodwyd yn flaenorol

5.1 **SL(5)362 – Rheoliadau Organeddau a Addaswyd yn Enetig (Eu Gollwng yn Fwriadol a'u Symud ar draws Ffin) (Diwygiadau Amrywiol) (Cymru) (Ymadael â'r UE) 2019**

(Tudalennau 335 – 344)

CLA(5)-11-19 – Papur 37 – Adroddiad

CLA(5)-11-19 – Papur 38 – Ymateb y Llywodraeth (i dilyn)

5.2 **SL(5)372 – Rheoliadau'r Gwasanaeth Iechyd Gwladol (Cynllun Esgeuluster Clinigol) (Cymru) 2019**

(Tudalennau 345 – 348)

CLA(5)-11-19 – Papur 39 – Adroddiad

6 Datganiadau ysgrifenedig o dan Reol Sefydlog 30C

6.1 **WS-30C(5)125 – Rheoliadau Rheoliad (EC) rhif 1370/2007 (Rhwymedigaethau Gwasanaeth Cyhoeddus mewn Trafnidiaeth) (Diwygio) (Ymadael â'r UE) 2019**

(Tudalennau 349 – 355)

CLA(5)-11-19 – Papur 40 – Datganiad

CLA(5)-11-19 – Papur 41 – Sylwebaeth

CLA(5)-11-19 – Papur 42 – Sylwebaeth

7 Papurau i'w nodi

7.1 **Llythyr gan y Prif Weinidog at Gadeirydd y Pwyllgor Materion Allanol a Deddfwriaeth Ychwanegol**

(Tudalen 356)

CLA(5)-10-19 – Papur 43 – Llythyr gan y Prif Weinidog, 20 Mawrth 2019

7.2 **Llythyr gan Gadeirydd y Pwyllgor Cydraddoldeb, Llywodraeth Leol a Chymuneadau at y Llywydd**

(Tudalen 357)

CLA(5)-11-19 – Papur 44 – Llythyr gan Gadeirydd y Pwyllgor Cydraddoldeb, Llywodraeth Leol a Chymuneadau at y Llywydd

7.3 Llythyr gan y Cwnsler Cyffredinol a'r Gweinidog Brexit: Rheoliadau Cymorth Gwaladol (Ymadael â'r UE) 2019

(Tudalennau 358 - 359)

CLA(5)-11-19 – Papur 45 – Llythyr gan y Cwnsler Cyffredinol a'r Gweinidog Brexi

7.4 Llythyr ga y Gweinidog Cyllid a'r Trefnydd: Rheoliadau Maeth (Diwygio etc.) (Ymadael â'r UE) 2019.

(Tudalen 360)

CLA(5)-11-19 – Papur 46 – Llythyr ga y Gweinidog Cyllid a'r Trefnydd, 21 Mawrth 2019

8 Bil Senedd ac Etholiadau (Cymru): Sesiwn dystiolaeth 2

13.30 (Tudalennau 361 - 377)

Yr Athro Laura McAllister, Cadeirydd y Grŵp Panel Arbenigol

CLA(5)-11-19 – Papur briffio

9 Bil Senedd ac Etholiadau (Cymru): Sesiwn dystiolaeth 3

14.15 (Tudalennau 378 - 384)

Keith Bush QC

CLA(5)-11-19 – Papur 47 – Tystiolaeth ysgrifenedig

10 Bil Senedd ac Etholiadau (Cymru): Sesiwn dystiolaeth 4

15.00

Yr Athro Roger Awan-Scully, Canolfan Llywodraethiant Cymru

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

12 Bil Senedd ac Etholiadau (Cymru): Trafod y Dystiolaeth

Offerynnau Statudol sydd ag Adroddiadau Clir
25 Mawrth 2019

SL(5)383 – Rheoliadau'r Dreth Gyngor (Darpariaethau Ychwanegol ar gyfer Diystyriadau Disgownt) (Diwygio) (Cymru) 2019

Gweithdrefn: Negyddol

Mae pobl benodol yn cael eu diystyru wrth benderfynu pa un a yw annedd yn ddarostyngedig i ddisgownt ar swm y dreth gyngor sy'n daladwy. Mae'r dosbarthau o bobl sy'n cael eu diystyru wedi eu nodi yn Atodlen 1 i'r Ddeddf a Rheoliadau 1992, a Rheoliadau'r Dreth Gyngor (Darpariaethau Ychwanegol ar gyfer Diystyriadau Disgownt) 1992 (O.S. 1992/552) ("Rheoliadau 1992").

Mae'r Rheoliadau hyn yn diwygio Rheoliadau 1992, i ychwanegu ymadawyr gofal cymwys i'r categori o bobl sydd i'w diystyru at ddibenion cyfrifo'r dreth gyngor.

Mae rheoliad 2 o'r Rheoliadau hyn yn mewnosod rheoliad 4 a 5 newydd i Reoliadau 1992 (ac yn diwygio'r rheoliad 3 presennol fel ei fod yn gymwys i Loegr yn unig). Mae'r darpariaethau newydd yn rhagnodi'r dosbarthau o bobl sy'n cael eu diystyru wrth benderfynu pa un a yw annedd yng Nghymru yn ddarostyngedig i ddisgownt. Mae dosbarthau A – F yn defnyddio'r un disgrifiadau ac amodau ag a ddefnyddir yn y dosbarthau cyfatebol yn Lloegr, ac mae dosbarth G newydd (ymadawyr gofal sy'n iau na 25 oed) wedi'i ychwanegu sydd ond yn berthnasol i anheddau yng Nghymru.

Rhiant-Ddeddf: Ddeddf Cyllid Llywodraeth Leol 1992

Fe'u gwnaed ar: 04 Mawrth 2019

Fe'u gosodwyd ar: 05 Mawrth 2019

Yn dod i rym ar: 01 Ebrill 2019

SL(5)397 – Rheoliadau Gwasanaethau Maethu Awdurdodau Lleol (Cymru) (Diwygio) 2019

Gweithdrefn: Negyddol

Mae'r Rheoliadau hyn yn diwygio Rheoliadau Gwasanaethau Maethu Awdurdodau Lleol (Cymru) 2018 (O.S. 2018/1339 (Cy. 261)) ("Rheoliadau 2018").

Mae rheoliad 2(a) yn diwygio rheoliad 7 o Reoliadau 2018 er mwyn caniatáu i ddarparwr awdurdod lleol benodi swyddog o awdurdod lleol arall i fod yn gyfrifol am reoli'r gwasanaeth maethu.

Mae rheoliad 2(b) yn gwneud diwygiad i destun Cymraeg rheoliad 10 o Reoliadau 2018, i sicrhau cyfwerthedd â'r testun Saesneg.

Mae rheoliad 2(c) yn gwneud diwygiad i destun Saesneg rheoliad 11 o Reoliadau 2018, i sicrhau cyfwerthedd â'r testun Cymraeg.

Mae rheoliad 2(d) yn diwygio rheoliad 26 o Reoliadau 2018 i bennu bod y cyfeiriad yn y rheoliad hwnnw at iechyd a datblygiad yn cael ei newid i iechyd a datblygiad corfforol, meddyliol ac emosiynol.

Mae rheoliad 2(e) yn diwygio rheoliad 29 o Reoliadau 2018 fel mai 1 Ebrill 2022 sy'n cael ei roi fel y dyddiad na chaiff darparwyr awdurdodau lleol gyflogi person i reoli'r gwasanaeth maethu awdurdod lleol ohono oni bai bod y person hwnnw wedi ei gofrestru fel rheolwr gofal cymdeithasol â Gofal Cymdeithasol Cymru.

Mae'r newidiadau a wneir yn rheoliadau 2(b) ac (c) yn ymateb i bwyntiau adrodd a nodwyd gan y Pwyllgor hwn yn ei adroddiad ar Reoliadau 2018.

Rhiant-Ddeddf: Ddeddf Gwasanaethau Cymdeithasol a Llesiant (Cymru) 2014

Fe'u gwnaed ar: 12 Mawrth 2019

Fe'u gosodwyd ar: 13 Mawrth 2019

Yn dod i rym ar: 29 Ebrill 2019

SL(5)400 – Gorchymyn Dynodi Gorfodi Sifil Ar Dramgwyddau Parcio (Sir Fynwy) 2019

Gweithdrefn: Negyddol

Mae'r Gorchymyn hwn yn dynodi'r ardal a ddisgrifir yn yr Atodlen i'r Gorchymyn hwn yn ardal gorfodi sifil ar dramgwyddau parcio ac yn ardal gorfodi arbennig at ddibenion Rhan 6 o Ddeddf Rheoli Traffig 2004. Mae'r Gorchymyn hwn yn galluogi Cyngor Sir Fynwy i orfodi'r gyfraith ar dramgwyddau parcio o fewn yr ardal a ddisgrifir yn yr Atodlen i'r Gorchymyn hwn drwy gyfundrefn cyfraith sifil, yn hytrach na gorfodi'r gyfraith gan yr heddlu neu wardeiniaid traffig yng nghyd-destun y gyfraith droseddol.

Rhiant-Ddeddf: Ddeddf Rheoli Traffig 2004

Fe'u gwnaed ar: 13 Mawrth 2019

Fe'u gosodwyd ar: 14 Mawrth 2019

Yn dod i rym ar: 08 Ebrill 2019

SL(5)401 – Gorchymyn Dynodi Gorfodi Sifil ar Dramgwyddau Parcio (Bwrdeistref Sirol Caerffili) 2019

Gweithdrefn: Negyddol

Mae'r Gorchymyn hwn yn dynodi'r ardal a ddisgrifir yn yr Atodlen i'r Gorchymyn hwn yn ardal gorfodi sifil ar dramgwyddau parcio ac yn ardal gorfodi arbennig at ddibenion Rhan 6 o Ddeddf Rheoli Traffig 2004. Mae'r Gorchymyn hwn yn galluogi Cyngor Bwrdeistref Sirol Caerffili i orfodi'r gyfraith ar dramgwyddau parcio o fewn yr ardal a ddisgrifir yn yr Atodlen i'r Gorchymyn hwn drwy gyfundrefn cyfraith sifil, yn hytrach na gorfodi'r gyfraith gan yr heddlu neu wardeiniaid traffig yng nghyd-destun y gyfraith droseddol.

Rhiant-Ddeddf: Ddeddf Rheoli Traffig 2004

Fe'u gwnaed ar: 13 Mawrth 2019

Fe'u gosodwyd ar: 14 Mawrth 2019

Yn dod i rym ar: 08 Ebrill 2019

SL(5)382 – The Town and Country Planning (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019

Background and Purpose

These Regulations make amendments to four statutory instruments related to town and country planning:

- The Town and Country Planning (Control of Advertisements) Regulations 1992 (S.I.1992/666) (the "1992 Regulations");
- The Town and Country Planning (Local Development Plan) (Wales) Regulations 2005 (S.I. 2005/2839);
- The Town and Country Planning (Development Management Procedure) (Wales) Order 2012 (S.I. 2012/801);
- The Planning (Hazardous Substances) (Wales) Regulations 2015 (S.I 2015/1597).

Regulation 6 contains transitional provision in relation to the 1992 Regulations.

These Regulations have been made to address failures of retained EU law to operate effectively and other deficiencies in retained EU law arising from the withdrawal of the United Kingdom from the European Union.

Procedure

Negative.

Technical Scrutiny

Four points are identified for reporting under Standing Order 21.2 in respect of this instrument.

1. Standing Order 21.2(v) that for any particular reason its form or meaning needs further explanation.

Amendments to the 1992 Regulations are being made in consequence of changes being made by the Railway (Licensing of Railway Undertakings) (Amendment etc) (EU Exit) Regulations 2019 (the "2019 Regulations") to The Railway (Licensing of Railway Undertakings) Regulations 2005. However, the 2019 Regulations are an affirmative instrument, laid before the UK Parliament on 28th January 2019, but not yet made. As such, the amendments rely on the draft as laid on that date. It is unclear what will happen if the 2019 Regulations are not made as laid in time for exit day. The Explanatory Memorandum accompanying these Regulations does not explain what will happen if the 2019 Regulations are not made as expected.

2. Standing Order 21.2(v) that for any particular reason its form or meaning needs further explanation.

Regulation 5 amends The Planning (Hazardous Substances) (Wales) Regulations 2015, and in places makes unspecific references to retained EU law which implements certain EU Directives, but does not

specify the relevant legislation explicitly. Regulation 5(5) inserts into the definition of "relevant plan or programme" the wording "any provision of retained EU law which implemented". This refers to the implementation of Article 13 of Directive 2012/18/EU of the European Parliament and the Council on the control of major-accident hazards involving dangerous substances. Similar wording regarding "any provision of retained EU law which implemented the EIA Directive" is included in Regulation 6. The definition of EIA Directive is inserted by regulation 5(b) of these Regulations (and refers to Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment, as it had effect immediately before exit day). It would be helpful if references to "any provision of retained EU law…" were more specific, to assist the reader in understanding which provisions of retained EU law will be applicable, even if there needed to be an additional catch all including, for example, "and any other provision of retained EU law…".

3. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements.

The subject heading of the Regulations should include "TOWN AND COUNTRY PLANNING, WALES" in addition to "EXITING THE EUROPEAN UNION, WALES", to indicate the area of law to which the instrument relates.

4. Standing Order 21.2(vii) that there appear to be inconsistencies between the meaning of the English and Welsh texts.

The English text at regulations 5(2)(a) and (b) and 6(3) does not include corresponding Welsh terms for the relevant definitions. The Welsh text includes corresponding English terms in the appropriate place.

Merits Scrutiny

Two points is identified for reporting under Standing Order 21.3 in respect of this instrument.

1. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly.

The laid printed version of the Regulations were incorrectly stated to be made by Hannah Blythyn, who is described in the laid version as "Minister for Housing and Local Government, one of the Welsh Ministers". This is incorrect, as Hannah Blythyn is the Deputy Minister. We understand that the Regulations were correctly made and signed by the Minister, Julie James. However, an administrative error has resulted in the wrong name being included on the printed, registered copy, laid before the Assembly.

2. Standing Order 21.3(ii) - that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly

A draft of these Regulations was laid before the Assembly for sifting in accordance with paragraph 4 of Schedule 7 to the European Union (Withdrawal) Act 2018. The Committee agreed that the negative procedure was the appropriate procedure for these Regulations.

Implications arising from exiting the European Union

These Regulations are made in exercise of the powers in the European Union (Withdrawal) Act 2018 to address failures of EU law to operate effectively and other deficiencies in EU law arising from the UK's withdrawal from the European Union.

Government Response

A government response is required.

Legal Advisers
Constitutional and Legislative Affairs Committee
20 March 2019

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2019 Rhif 456 (Cy. 109)

YMADAEL Â'R UNDEB EWROPEAIDD, CYMRU

Rheoliadau Cynllunio Gwlad a Thref (Diwygiadau Amrywiol) (Cymru) (Ymadael â'r UE) 2019

NODYN ESBONIADOL

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

Mae'r Rheoliadau hyn wedi eu gwneud drwy arfer y pwerau a roddir gan baragraff 1(1) o Atodlen 2 a pharagraff 21 o Atodlen 7 i, Ddeddf yr Undeb Ewropeaidd (Ymadael) 2018 (p.16) er mwyn ymdrin ag unrhyw fethiant yng nghyfraith yr UE a ddargedwir i weithredu'n effeithiol a diffygion eraill yng nghyfraith yr UE a ddargedwir sy'n deillio o ymadawiad y Deyrnas Unedig â'r Undeb Ewropeaidd.

Mae'r Rheoliadau hyn yn diwygio—

(a) Rheoliadau Cynllunio Gwlad a Thref (Rheoli Hysbysebion) 1992;

(b) Rheoliadau Cynllunio Gwlad a Thref (Cynlluniau Datblygu Lleol) (Cymru) 2005;

(c) Gorchymyn Cynllunio Gwlad a Thref (Gweithdrefn Rheoli Datblygu) (Cymru) 2012; a

(d) Rheoliadau Cynllunio (Sylweddau Peryglus) (Cymru) 2015.

Mae rheoliad 6 yn cynnwys darpariaeth drosiannol mewn perthynas â Rheoliadau Cynllunio Gwlad a Thref (Rheoli Hysbysebion) 1992.

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

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O F F E R Y N N A U S T A T U D O L
C Y M R U

2019 Rhif 456 (Cy. 109)

YMADAEL Â'R UNDEB EWROPEAIDD, CYMRU

Rheoliadau Cynllunio Gwlad a Thref (Diwygiadau Amrywiol) (Cymru) (Ymadael â'r UE) 2019

Gofynion sifftio wedi eu bodloni *18 Chwefror 2019*

Gwnaed *4 Mawrth 2019*

Gosodwyd gerbron Cynulliad Cenedlaethol Cymru *6 Mawrth 2019*

Yn dod i rym yn unol â rheoliad 1

Mae Gweinidogion Cymru yn gwneud y Rheoliadau hyn drwy arfer y pwerau a roddir gan baragraff 1(1) o Atodlen 2 a pharagraff 21 o Atodlen 7 i, Ddeddf yr Undeb Ewropeaidd (Ymadael) 2018(**1**).

Mae gofynion paragraff 4(2) o Atodlen 7 i'r Ddeddf honno (mewn perthynas â gweithdrefn graffu briodol Cynulliad Cenedlaethol Cymru ar gyfer y Rheoliadau hyn) wedi eu bodloni.

Enwi a chychwyn

1. Enw'r Rheoliadau hyn yw Rheoliadau Cynllunio Gwlad a Thref (Diwygiadau Amrywiol) (Cymru) (Ymadael â'r UE) 2019 a deuant i rym ar y diwrnod ymadael.

(**1**) 2018 p. 16.

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Rheoliadau Cynllunio Gwlad a Thref (Rheoli Hysbysebion) 1992

2. Yn rheoliad 2(1) o Reoliadau Cynllunio Gwlad a Thref (Rheoli Hysbysebion) 1992(**1**)—

(a) hepgorer y diffiniad o "EEA State";

(b) yn y diffiniad o "statutory undertaker"—

(i) yn lle'r geiriau "European licence" rhodder "railway undertaking licence";

(ii) hepgorer y geiriau o "or pursuant" hyd at "a single European railway area (recast)".

Rheoliadau Cynllunio Gwlad a Thref (Cynlluniau Datblygu Lleol) (Cymru) 2005

3. Yn rheoliad 13(1) o Reoliadau Cynllunio Gwlad a Thref (Cynlluniau Datblygu Lleol) (Cymru) 2005(**2**)—

(a) yn is-baragraff (c) hepgorer "drwy fynd ar drywydd yr amcanion hynny drwy'r rheolaethau a ddisgrifir yn Erthygl 13 o Gyfarwyddeb 2012/18/EU";

(b) yn lle is-baragraff (iii) o baragraff (ch) rhodder—

"(iii) yn achos sefydliadau sy'n bodoli eisoes, i hwyluso ac annog gweithredwyr i gymryd pob mesur angenrheidiol i atal damweiniau mawr ac i gyfyngu ar eu canlyniadau ar gyfer iechyd dynol a'r amgylchedd."

Gorchymyn Cynllunio Gwlad a Thref (Gweithdrefn Rheoli Datblygu) (Cymru) 2012

4. Yn Atodlen 4 o Orchymyn Cynllunio Gwlad a Thref (Gweithdrefn Rheoli Datblygu) (Cymru) 2012(**3**)—

(a) yn y tabl, ym mharagraff (w), yn y golofn sy'n dwyn y pennawd "Disgrifiad o'r Datblygiad" yn is-baragraff (ii) yn lle'r geiriau o "sydd o fewn cwmpas" hyd at "2012/18/EU" rhodder "a fyddai'n ei gwneud yn ofynnol hysbysu amdano o dan reoliad 6(6) o Reoliadau Rheoli Peryglon Damweiniau Mawr 2015(**4**)";

(**1**) O.S. 1992/666, fel y'i diwygiwyd gan O.S. 2005/3050, 2016/645. Mae offerynnau diwygio eraill ond nid yw'r un ohonynt yn berthnasol.

(**2**) O.S. 2005/2839 (Cy.203) fel y'i diwygiwyd gan O.S. 2015/1597. Mae diwygiadau eraill ond nid yw'r un ohonynt yn berthnasol.

(**3**) O.S. 2012/801 (Cy.110) fel y'i diwygiwyd gan O.S. 2016/59.

(**4**) O.S. 2015/483, y mae diwygiadau iddo ond nid yw'r un ohonynt yn berthnasol.

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(b) o dan y pennawd Dehongli'r Tabl, yn lle paragraff (m)(i) rhodder—

"(i) mae i'r ymadroddion "damwain fawr" a "sefydliad" fel y maent yn ymddangos yn y paragraff hwnnw yr un ystyron yn eu trefn â "*major accident*" ac "*establishment*" yn rheoliad 2 o Reoliadau Rheoli Peryglon Damweiniau Mawr 2015."

Rheoliadau Cynllunio (Sylweddau Peryglus) (Cymru) 2015

5.—(1) Mae Rheoliadau Cynllunio (Sylweddau Peryglus) (Cymru) 2015(**1**) wedi eu diwygio fel a ganlyn.

(1) Yn rheoliad 2(1)—

(a) yn y diffiniad o "y Gyfarwyddeb" ar ôl "sylweddau peryglus" mewnosoder "fel y cafodd effaith yn union cyn y diwrnod ymadael";

(b) mewnosoder y diffiniadau canlynol yn y mannau priodol—

"mae i "damwain fawr" yr ystyr a roddir i "*major accident*" yn Erthygl 3(13) o'r Gyfarwyddeb fel y cafodd effaith yn union cyn y diwrnod ymadael;";

"ystyr "y Gyfarwyddeb AEA" ("*the EIA Directive*") yw Cyfarwyddeb 2011/92/EU Senedd Ewrop a'r Cyngor dyddiedig 13 Rhagfyr 2011 ar yr asesiad o effeithiau prosiectau cyhoeddus a phreifat penodol ar yr amgylchedd fel y cafodd effaith yn union cyn y diwrnod ymadael;".

(2) Yn rheoliad 6(1)(a)—

(a) Ym mharagraff (ii) yn lle'r geiriau o "neu ymgyngoriadau" hyd at ddiwedd y paragraff rhodder "(y mae i "asesiad effaith amgylcheddol cenedlaethol neu drawsffiniol" yr un ystyr â "*national or transboundary environmental impact assessment*" mewn unrhyw ddarpariaeth yng nghyfraith yr UE a ddargedwir a oedd yn gweithredu'r Gyfarwyddeb AEA)";

(b) ar ôl paragraff (ii) mewnosoder—

"(iia) pan fo'n gymwys, y ffaith bod y prosiect y mae'r cynnig yn ymwneud ag ef yn un y mae'n ofynnol i'r awdurdod COMAH

(**1**) O.S. 2015/1597 (Cy.196), y mae diwygiadau iddo ond nid yw'r un ohonynt yn berthnasol.

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cymwys ymgynghori ag unrhyw wlad yn unol â Rheoliad 20 o Reoliadau Rheoli Peryglon Damweiniau Difrifol 2015(**1**);".

(3) Yn rheoliad 10(3)(a)—

(a) ym mharagraff (ii) yn lle'r geiriau o "neu ymgyngoriadau" hyd at ddiwedd y paragraff rhodder "(y mae i "asesiad effaith amgylcheddol cenedlaethol neu drawsffiniol" yr un ystyr â "*national or transboundary environmental impact assessment*" mewn unrhyw ddarpariaeth yng nghyfraith yr UE a ddargedwir a oedd yn gweithredu'r Gyfarwyddeb AEA)";

(b) ar ôl paragraff (ii) mewnosoder—

"(iia) pan fo'n gymwys, y ffaith bod y prosiect y mae'r cynnig yn ymwneud ag ef yn un y mae'n ofynnol i'r awdurdod COMAH cymwys ymgynghori ag unrhyw wlad yn unol â Rheoliad 20 o Reoliadau Rheoli Peryglon Damweiniau Difrifol 2015;".

(4) Yn rheoliad 26, ar ddiwedd paragraff (1)(b) mewnosoder "(gan ddarllen y cyfeiriad yn is-baragraff (c) o'r Erthygl honno at Erthygl 5 fel cyfeiriad at reoliad 5 o Reoliadau Rheoli Peryglon Damweiniau Mawr 2015)".

(5) Yn rheoliad 27(4) yn y diffiniad o "cynllun neu raglen berthnasol" yn y ddau is-baragraff (a) a (b), ar ôl "yn unol ag" mewnosoder "unrhyw ddarpariaeth yng nghyfraith yr UE a ddargedwir a oedd yn gweithredu".

(6) Yn rheoliad 28(2)(a)—

(a) ym mharagraff (ii) yn lle'r geiriau o "neu ymgyngoriadau" hyd at ddiwedd y paragraff rhodder "(y mae i "asesiad effaith amgylcheddol cenedlaethol neu drawsffiniol" yr un ystyr â "*national or transboundary environmental impact assessment*" mewn unrhyw ddarpariaeth yng nghyfraith yr UE a ddargedwir a oedd yn gweithredu'r Gyfarwyddeb AEA)";

(b) ar ôl paragraff (ii) mewnosoder—

"(iia) pan fo'n gymwys, y ffaith bod y prosiect y mae'r cynnig yn ymwneud ag ef yn un y mae'n ofynnol i'r awdurdod COMAH cymwys ymgynghori ag unrhyw

(**1**) O.S. 2015/483 fel y'i diwygiwyd gan O.S. 2018/1370. Mae offerynnau diwygio eraill ond nid yw'r un ohonynt yn berthnasol.

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wlad yn unol â Rheoliad 20 o Reoliadau Rheoli Peryglon Damweiniau Difrifol 2015;".

Darpariaeth Drosiannol

6.—(1) Am y cyfnod o 2 flynedd gan ddechrau ar y diwrnod ymadael, mae unrhyw gyfeiriad yn rheoliad 2 o Reoliadau Cynllunio Gwlad a Thref (Rheoli Hysbysebion) 1992 at "railway undertaking licence" (trwydded ymgymeriad rheilffordd) yn unol â Rheoliadau 2005 yn cynnwys cyfeiriad at drwydded Ewropeaidd berthnasol.

(1) Mae unrhyw weithred neu anweithred—

(a) mewn perthynas â thrwydded Ewropeaidd berthnasol, neu drwy ddibynnu arni, a

(b) sy'n cael effaith yn union cyn y diwrnod ymadael,

(2) yn parhau i gael effaith ar neu ar ôl y diwrnod ymadael.

(3) At ddibenion y rheoliad hwn—

(4) mae i "DDdRhC" yr un ystyr ag "*SNRP*" yn Rheoliadau 2005(**1**);

(5) ystyr "Rheoliadau 2005" ("*the 2005 Regulations*") yw Rheoliadau Rheilffyrdd (Trwyddedu Ymgymeriadau Rheilffyrdd) 2005(**2**);

(6) mae i "trwydded Ewropeaidd" yr un ystyr â "*European licence*" yn rheoliad 2(1) o Reoliadau 2005 (fel y'u haddaswyd gan reoliad 35 o Reoliadau Rheilffyrdd (Trwyddedu Ymgymeriadau Rheilffyrdd) (Diwygio etc) (Ymadael â'r UE) 2019(**3**);

(7) ystyr "trwydded Ewropeaidd berthnasol" ("*relevant European licence*") yw trwydded Ewropeaidd, y mae gan ei deiliad DDdRhC dilys nad yw wedi ei atal dros dro na'i ddirymu.

Hannah Blythyn
Gweinidog Tai a Llywodraeth Leol, un o Weinidogion Cymru.
4 Mawrth 2019

(**1**) Mae Rheoliad 2 o Reoliadau 2005 yn darparu mai ystyr "SNRP" yw datganiad o ddarpariaethau rheoleiddiol cenedlaethol, a ddyroddir yn unol â rheoliad 10 o'r Rheoliadau hynny.
(**2**) O.S. 2005/3050, y mae diwygiadau iddo ond nid yw'r un ohonynt yn berthnasol.
(**3**) O.S. 2019/xxx.

Explanatory Memorandum to The Town and Country Planning (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019

This Explanatory Memorandum has been prepared by the Planning Directorate of the Welsh Government and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Town and Country Planning (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019.

I have made the statements required by the European Union (Withdrawal) Act 2018. These statements can be found in Part 2 of the annex to this Memorandum.

Julie James AM
Minister for Housing and Local Government
6 March 2019

PART 1

1. Description

1.1. This instrument makes amendments to four statutory instruments related to Town and Country Planning:

- The Town and Country Planning (Control of Advertisements) Regulations 1992;
- The Town and Country Planning (Local Development Plan) (Wales) Regulations 2005;
- The Town and Country Planning (Development Management Procedure) (Wales) Order 2012; and
- The Planning (Hazardous Substances) (Wales) Regulations 2015.

1.2. These amendments are to ensure that the statute book remains operable following the UK's exit from the EU and will address deficiencies in domestic legislation arising from EU Exit.

1.3. This instrument comes into force on "exit day", which section 20(1) of the European Union (Withdrawal) Act 2018 defines as 29 March 2019 at 11.00pm.

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

2.1 This instrument is being made using the power conferred by paragraph 1(1) of Schedule 2 and paragraph 21 of Schedule 7 to the European Union (Withdrawal) Act 2018 ("the 2018 Act").

2.2 As set out in the Ministerial statement in Annex 2 of this Explanatory Memorandum it is proposed that the instrument be subject to the negative procedure. The instrument makes minor and technical changes and as such should be subject to annulment.

2.3 The CLA Committee considered a draft of these regulations on 18 February 2019, and agreed that the negative procedure is appropriate for these regulations. A copy of the published CLA report can be accessed via the following link: http://www.assembly.wales/laid%20documents/cr-ld12192/cr-ld12192-e.pdf

3. Legislative background

3.1 This instrument is being made using the power conferred by paragraph 1(1) of Schedule 2 and paragraph 21 of Schedule 7 to the 2018 Act in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the United Kingdom from the European Union. In accordance with the requirements of that Act the Minister has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.

4. Purpose and intended effect of the legislation

What did any relevant EU law do before exit day?

4.1 Directive 1995/18/EC on the licensing of railway undertakings (as amended by Directive 2001/13/EC and Directive 2004/49/EC) and Directive 2012/34/EU of the European Parliament and of the Council establishing a single European railway area (recast). The Railway (Licensing of Railway Undertakings) Regulations 2005 ("the 2005 Regulations") transposed these directives into domestic law. The main effect of the 2005 Regulations was to create the "European licence". Any operator established in Great Britain could be granted a European licence, subject to the Office of Railway Regulation being satisfied that the applicant met certain conditions regarding their professional competence, financial fitness and insurance cover. Once granted, the licence was valid for the holder to provide train services in any EEA Member State. This was within the context of a long term European programme to establish a "single European Railway Area" within which train operators would have equal access to infrastructure and competition, and be subject to common safety and operating rules. The Directives mentioned above were introduced for this purpose.

4.2 Directive 2012/18/EU of the European Parliament and of the Council of 4 July 2012 on the control of major-accident hazards involving dangerous substances, amending and subsequently repealing Council Directive 96/82/EC seeks to prevent major accidents involving chemical storage and to limit their consequences for human health and the environment. The Directive, commonly known as the Seveso Directive has three strands, the first of which is to ensure on site safety controls are in place to prevent major accidents occurring. The second aspect of the Directive is to ensure emergency plans are prepared to respond to accidents if they happen. Thirdly, the Directive requires member states to use its land use planning policies and controls to keep development sufficiently away from establishments, so if an accident were to occur, the deaths, injuries, damage to buildings and to the environment are minimised. This third strand is a devolved matter which is transposed by a number of town and country planning statutory instruments.

4.3 Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment (the "EIA Directive"), as amended by Directive 2014/52/EU, applies to a wide range of public and private projects, which are listed in Annexes I and II of the Directive. The EIA Directive sets out a formal process intended to ensure decisions on large, complex projects are taken with the full knowledge of their possible environmental effects. Those projects which fall within a project category in Annex 1 to the EIA Directive automatically require Environmental Impact Assessment (EIA). Whether projects listed in Annex 2 require EIA is dealt with on a case by case basis. This

screening process considers whether the project is likely to have significant effects on the environment and if so, it must be subject to EIA. The EIA Directive is transposed by separate regulations for each sector. Most EIAs in Wales are for projects consented through the town and country planning system.

Why is it being changed?

4.4 This instrument uses powers conferred by the 2018 Act to make the necessary changes to the domestic legislation to ensure that the Welsh legislation relating to Town and Country Planning listed in paragraph 1.1 of this memorandum will continue to operate effectively after the UK has left the EU.

<u>The Town and Country Planning (Control of Advertisements) Regulations 1992</u>

4.5 The Town and Country Planning (Control of Advertisements) Regulations 1992 ("the 1992 Regulations") grants a 'statutory undertaker' deemed consent to display advertisements wholly for the purpose of announcement or direction in relation to any its functions. The definition of a 'statutory undertaker' set out in the 1992 Regulations includes persons who hold a licence to operate railway assets and includes a holder of a 'European Licence'. The definition of "statutory undertaker" in regulation 2(1) of the 1992 is amended in so far as it applies to railway operators. The amendment replaces the term "European Licence" with the term "railway undertaking licence" and removes redundant references to the EU.

This amendment is made in consequence of changes made by The Railway (Licensing of Railway Undertakings) (Amendment etc) (EU Exit) Regulations 2019 ("The 2019 Regulations") to the 2005 Regulations. The 2019 Regulations are an affirmative instrument which was laid before Parliament on 28th January 2019; they have not yet been made. The amendments rely on the draft as laid on that date.

4.7 The Town and Country Planning (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019 also contain a transitional provision. For the period of 2 years beginning with exit day, the reference in the Town and Country Planning (Control of Advertisements) regulations 1992 to a railway undertaking licence granted pursuant to the 2005 Regulations (found in the definition of "statutory undertaker") will include a reference to a relevant European licence.

<u>The Town and Country Planning (Local Development Plan) (Wales) Regulations 2005</u>

4.8 Article 13 of the Seveso Directive (2012/18/EU) requires land use polices to include the objectives of preventing major accidents and limiting the consequences of such accidents for human health and the

environment. In Wales, Local Development Plans are required to include such objectives by Regulation 13 of The Town and Country Planning (Local Development Plan) (Wales) Regulations 2005. Regulation 13(c) refers to controls described in Article 13 of the Directive, which duplicates the requirements of the paragraph, so the draft regulation omits this clause. Regulation 13(d) refers to technical measures set out in Article 5 of the Directive. The draft regulations substitute the reference to duties in Article 5 of the Seveso Directive to those set out in Regulation 5 of the Control of Major Accident Hazards Regulations 2015/583 stating clearly what is expected to be included within Local Development Plan policies, ensuring the clause remains operable.

The Town and Country Planning (Development Management Procedure) (Wales) Order 2012

4.9 The Seveso Directive also applies to the development management stage of the planning system. In Schedule 4 of The Town and Country Planning (Development Management Procedure) (Wales) Order 2012 is a list of statutory consultees to be informed of certain planning applications if they contain specified development characteristics. Paragraph (w) specifies developments which either include establishments storing hazardous substances or developments proposed in the vicinity of such establishments. It refers to Article 11 of Directive 2012/18/EU to describe establishments undergoing modification where the level of risk is increased. To ensure ongoing operability, this is amended to refer to the Control of Major Accident Hazards Regulations 2015 ("the COMAH Regulations"), which specifically transposes the Article and provides a clear definition of the developments to be notified to the statutory consultees. Similarly in the interpretation for this paragraph, definitions in the Regulations refer to the COMAH Regulations rather than the Directive.

The Planning (Hazardous Substances) (Wales) Regulations 2015

4.10 The 2015 Regulations set out the requirements for the operators of establishments to obtain consent before storing hazardous substances. They contain a number of references to the Seveso Directive which need to be amended to remain operable, particularly in respect of cases where transboundary consultation is being undertaken. The amending regulations provide that national and transboundary environmental impact assessments have the meaning in any retained EU law which implements the EIA Directive. The effect of this is that the definition of these terms depend on retained EU law, rather than the EIA Directive itself. References to consultations between Member States in accordance with Article 14(3) of the Directive is amended to refer to consultations between countries which the COMAH competent authority is required to undertake as per Regulation 20 of the COMAH Regulations (as amended by the Health and Safety (Amendment) (EU Exit) Regulations 2018/1370).

They also contain a number of references to the EIA Directive as the required assessment process before consent is granted is similar, both in terms of process and purpose. The references to the EIA Directive are glossed so that any references to that Directive in the 2015 Regulations refer to that Directive as it had effect immediately before Exit Day. This will mean that the 2015 Regs will continue to work based on the version of the Directive that is in force on Exit Day, but will not take into account any future amendments to that Directive.

4.11 The deficiencies which are subject to correction do not constitute policy changes – they are minor, technical amendments to ensure the legislation is operable once the UK leaves the EU through amending and removing legislative references that will become defunct.

What will it now do?

4.12 The instrument will address deficiencies in domestic legislation arising from the withdrawal of the UK from the EU, and ensures that advertisement consent and land use planning for hazardous substances continue to operate on EU exit to protect public health and the environment.

5. Consultation

5.1 No public consultation was undertaken. The purpose of the instrument is solely to enable the current legislative and policy framework to remain operable by the withdrawal of the United Kingdom from the European Union.

6. Regulatory Impact Assessment (RIA)

6.1 An RIA has not been conducted as these are minor technical changes necessary as a result of the UK's withdrawal from the EU. A public consultation was not required because no policy changes are being made via this statutory instrument. As this instrument relates to maintaining existing legislation after EU Exit there is no, or no significant, impact on business, charities or voluntary bodies. There is no, or no significant, impact on the public sector.

Annex
Statements under the European Union (Withdrawal) Act 2018

Part 1
Table of Statements under the 2018 Act

This table sets out the statements that may be required of the Welsh Ministers under the 2018 Act. The table also sets out those statements that may be required of Ministers of the Crown under the 2018 Act, which the Welsh Ministers have committed to also provide when required. The required statements can be found in Part 2 of this annex.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(7) and 4(3), Schedule 7 *Paragraph 3(7) (anticipated to be a requirement on Welsh Ministers in Standing Orders)*	The Welsh Ministers exercising powers in Part 1 of Schedule 2 to make a Negative SI Paragraph 3(7) applies to Ministers of the Crown, but Welsh Ministers have committed to make the same statement	A statement to explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation of the CLA Committee (as sifting committee)
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have	A statement to explain the good reasons for making the instrument and that what is being done is a reasonable course of action.

		committed to make the same statement when exercising powers in Schedule 2	
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement to explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them. A statement that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement to explain the instrument, identify the relevant law before exit day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g. whether minor or technical changes only are intended to the EU retained law.
Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement setting out the 'good reasons' for creating a criminal offence, and the penalty attached.
Sub-delegation	Paragraph 30, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and paragraph 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority.	A statement to explain why it is appropriate to create such a sub-delegated power.

		Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2 or paragraph 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority	
Urgency	Sub-paragraph (2) and (8) of paragraph 7, Schedule 7	Welsh Ministers exercising powers in Part 1 of Schedule 2 but using the urgent procedure in paragraph 7 of Schedule 7	A statement that the Welsh Ministers are of the opinion that it is necessary to make the SI using the urgent procedure and the reasons for that opinion.

Part 2

Statements required when using enabling powers under the European Union (Withdrawal) 2018 Act

1. Sifting statement(s)

The Minister for Housing and Local Government, Julie James, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view The Town and Country Planning (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019 should be subject to annulment in pursuance of a resolution of the National Assembly for Wales (i.e. the negative procedure)”. This is the case because the changes being made are technical in nature and make no substantive changes to how The Town and Country Planning (Control of Advertisements) Regulations 1992, The Town and Country Planning (Local Development Plan) (Wales) Regulations 2005, The Town and Country Planning (Development Management Procedure) (Wales) Order 2012 and The Planning (Hazardous Substances) (Wales) Regulations 2015 operate.

2. Appropriateness statement

The Minister for Housing and Local Government, Julie James, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view The Town and Country Planning (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019 do no more than is appropriate. This is the case because all the changes being made are solely in order to address deficiencies arising from EU exit.”

3. Good reasons

The Minister for Housing and Local Government, Julie James, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action”. This is because the provisions ensure that protections provided by The Town and Country Planning (Control of Advertisements) Regulations 1992, The Town and Country Planning (Local Development Plan) (Wales) Regulations 2005, The Town and Country Planning (Development Management Procedure) (Wales) Order 2012 and The Planning (Hazardous Substances) (Wales) Regulations 2015 continue to be operable after the UK leaves the European Union.

4. Equalities

4.1 The Minister for Housing and Local Government, Julie James, has made the following statement(s):

"The instrument does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts.

4.2 The Minister for Housing and Local Government, Julie James, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In relation to the instrument, I, Julie James, have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010."

4.3 Little or no impact on equalities is expected.

5. Explanations

5.1 The explanations statement has been made in paragraph 4 (Purpose & intended effect of the legislation) of the main body of this explanatory memorandum.

6. Criminal offences

Not applicable/required.

7. Legislative sub-delegation

Not applicable/required.

8. Urgency

Not applicable/required.

SL(5)384 - Gorchymyn y Dreth Gyngor (Anheddau Esempt) (Diwygio) (Cymru) 2019

Cefndir a Diben

Mae'r Gorchymyn hwn yn diwygio Gorchymyn y Dreth Gyngor (Anheddau Esempt) 1992 (O.S. 1992/558) ("Gorchymyn 1992").

Nid yw'r dreth gyngor yn daladwy mewn perthynas ag anheddau esempt (adran 4 o Ddeddf Cyllid Llywodraeth Leol 1992 (p. 14)). Mae dosbarthau o anheddau esempt wedi eu rhagnodi yng Ngorchymyn 1992.

Mae'r Gorchymyn hwn yn mewnosod Dosbarth X newydd yng Ngorchymyn 1992. Mae hyn yn esemptio anheddau yng Nghymru—

- sydd wedi eu meddiannu gan un neu ragor o bobl sy'n ymadael â gofal, a
- lle y mae pob preswyliwr naill ai'n berson sy'n ymadael â gofal, neu'n berson perthnasol o fewn y diffiniad yn Nosbarth N o Orchymyn 1992 (myfyrwyr etc.), neu'n berson sydd â nam meddyliol difrifol.

Mae'r Gorchymyn hwn yn diffinio'r term "care leaver" gan gyfeirio at berson ifanc categori 3, fel y'i diffinnir yn Neddf Gwasanaethau Cymdeithasol a Llesiant (Cymru) 2014 (dccc 4).

Gweithdrefn

Negyddol.

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(v) - bod angen eglurhad pellach ynglŷn â'i ffurf neu ei ystyr am unrhyw reswm penodol

Rydym yn cwestiynu a allai'r Gorchymyn achosi dryswch o ran oedran y sawl sy'n ymadael â gofal fel y'i diffinnir yn y Gorchymyn. Mewn perthynas ag oedran, mae'r Gorchymyn yn diffinio "care leaver" fel person "aged 24 or under".

Byddem yn ddiolchgar am eglurhad ynghylch yr ystod oedran y bwriedir i'r Gorchymyn hwn fod yn berthnasol iddi a beth yw ystyr "aged 24 or under". A yw'n cynnwys person sy'n 24 oed a 364 diwrnod? Rydym yn tybio ei fod, ond mae ein pryder yn deillio o'r ffaith bod deddfwriaeth arall yn defnyddio iaith fwy penodol wrth gyfeirio at ystod oedran.

Er enghraifft, mae Deddf Gwasanaethau Cymdeithasol a Llesiant (Cymru) 2014 yn diffinio plentyn fel "person dan 18 oed" ac mae'n diffinio person ifanc categori 6 fel person "sydd heb gyrraedd 21 oed eto." Yn ein barn ni, mae pob un o'r rhain yn fwy manwl na dweud "aged 24 or under", a gallai dweud "under 25" yn lle hynny osgoi unrhyw ddryswch (yn enwedig gan fod y Memorandwm Esboniadol yn gwneud sawl

cyfeiriad at bersonau dan 25 oed). Fodd bynnag, rydym yn cydnabod bod Deddf Gwasanaethau Cymdeithasol a Llesiant (Cymru) 2014 hefyd yn defnyddio iaith fel plentyn “sy’n 16 neu’n 17 oed”.

Nodwn fod yr un materion yn codi mewn offeryn cysylltiedig arall, felly rydym yn ei godi yn y Gorchymyn hwn ar ran y ddau offeryn.

Rhinweddau: craffu

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

Y goblygiadau yn sgil gadael yr Undeb Ewropeaidd

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

Ymateb y Llywodraeth

Mae angen ymateb gan y Llywodraeth.

Cynghorwyr Cyfreithiol
Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol
20 Mawrth 2019

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CYMRU

2019 Rhif 432 (Cy. 101)

Y DRETH GYNGOR, CYMRU

Gorchymyn y Dreth Gyngor (Anheddau Esempt) (Diwygio) (Cymru) 2019

NODYN ESBONIADOL

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

Mae'r Gorchymyn hwn yn diwygio Gorchymyn y Dreth Gyngor (Anheddau Esempt) 1992 (O.S. 1992/558) ("Gorchymyn 1992").

Nid yw'r dreth gyngor yn daladwy mewn perthynas ag anheddau esempt (adran 4 o Ddeddf Cyllid Llywodraeth Leol 1992 (p. 14)). Mae dosbarthau o anheddau esempt wedi eu rhagnodi yng Ngorchymyn 1992.

Mae'r Gorchymyn hwn yn mewnosod Dosbarth X newydd yng Ngorchymyn 1992. Mae hyn yn esemptio anheddau yng Nghymru—

- sydd wedi eu meddiannu gan un neu ragor o bobl sy'n ymadael â gofal, a
- lle y mae pob preswyliwr naill ai'n berson sy'n ymadael â gofal, neu'n berson perthnasol o fewn y diffiniad yn Nosbarth N o Orchymyn 1992 (myfyrwyr etc.), neu'n berson sydd â nam meddyliol difrifol.

Mae'r Gorchymyn hwn yn diffinio'r term "care leaver" gan gyfeirio at berson ifanc categori 3, fel y'i diffinnir yn Neddf Gwasanaethau Cymdeithasol a Llesiant (Cymru) 2014 (dccc 4).

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

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OFFERYNNAU STATUDOL CYMRU

2019 Rhif 432 (Cy. 101)

Y DRETH GYNGOR, CYMRU

Gorchymyn y Dreth Gyngor (Anheddau Esempt) (Diwygio) (Cymru) 2019

Gwnaed *4 Mawrth 2019*

Gosodwyd gerbron Cynulliad Cenedlaethol Cymru *6 Mawrth 2019*

Yn dod i rym *1 Ebrill 2019*

Mae Gweinidogion Cymru yn gwneud y Gorchymyn a ganlyn drwy arfer y pŵer a roddwyd i'r Ysgrifennydd Gwladol gan adran 4 o Ddeddf Cyllid Llywodraeth Leol 1992(**1**) ac a freiniwyd bellach ynddynt hwy(**2**).

Enwi, cychwyn a chymhwyso

1.—(1) Enw'r Gorchymyn hwn yw Gorchymyn y Dreth Gyngor (Anheddau Esempt) (Diwygio) (Cymru) 2019.

(2) Daw'r Gorchymyn hwn i rym ar 1 Ebrill 2019.

(3) Mae'r Gorchymyn hwn yn gymwys o ran Cymru.

Diwygio Gorchymyn y Dreth Gyngor (Anheddau Esempt) 1992

2.—(1) Mae Gorchymyn y Dreth Gyngor (Anheddau Esempt) 1992(**3**) wedi ei ddiwygio fel a ganlyn.

(**1**) 1992 p. 14.

(**2**) Trosglwyddwyd swyddogaethau'r Ysgrifennydd Gwladol, i'r graddau yr oeddent yn arferadwy o ran Cymru, i Gynulliad Cenedlaethol Cymru gan erthygl 2 o Orchymyn Cynulliad Cenedlaethol Cymru (Trosglwyddo Swyddogaethau) 1999 (O.S. 1999/672), ac Atodlen 1 iddo. Trosglwyddwyd y swyddogaethau hynny wedi hynny i Weinidogion Cymru yn rhinwedd paragraff 30 o Atodlen 11 i Ddeddf Llywodraeth Cymru 2006 (p. 32).

(**3**) O.S. 1992/558; yr offerynnau diwygio perthnasol yw O.S. 1992/2941, 1993/150, 1994/539, 1995/619, 1997/74, 1997/656, 1998/291, 1999/536, 2000/1025 (Cy. 61), 2004/2921 (Cy. 260) a 2005/3302 (Cy. 256).

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(2) Yn erthygl 3, ar y diwedd mewnosoder—

"Class X: (1) a dwelling in Wales—

(a) which is occupied by one or more care leavers; and

(b) where every resident is either a care leaver, a relevant person, or a severely mentally impaired person.

(2) For the purposes of paragraph (1)—

(a) "care leaver" means a person who is—

(i) aged 24 or under; and

(ii) a category 3 young person as defined by section 104 of the Social Services and Well-being (Wales) Act 2014(**1**);

(b) "relevant person" has the meaning given by paragraph 2(a) of Class N; and

(c) "severely mentally impaired" has the meaning given in paragraph 2 of Schedule 1 to the Act;"

Rebecca Evans
Y Gweinidog Cyllid a'r Trefnydd, un o Weinidogion Cymru
4 Mawrth 2019

(**1**) 2014 dccc 4.

Explanatory Memorandum to The Council Tax (Exempt Dwellings) (Amendment) (Wales) Order 2019 and The Council Tax (Additional Provisions for Discount Disregards) (Amendment) (Wales) Regulations 2019

This Explanatory Memorandum has been prepared by Local Government Strategic Finance Division and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The Council Tax (Exempt Dwellings) (Amendment) (Wales) Order 2019 and The Council Tax (Additional Provisions for Discount Disregards) (Amendment) (Wales) Regulations 2019. I am satisfied that the benefits justify the likely costs.

Rebecca Evans AM
Minister for Finance and Trefnydd
6 March 2019

PART 1

Description

1. The Council Tax (Additional Provisions for Discount Disregards) (Amendment) (Wales) Regulations 2019 add eligible care leavers to the categories of people to be disregarded for the purposes of calculating council tax.

2. The Council Tax (Exempt Dwellings) (Amendment) (Wales) Order 2019 adds dwellings occupied by care leavers to the categories of dwellings to be treated as being exempt from council tax.

3. Together, the Order and Regulations will have the effect of reducing the council tax liability for eligible care leavers to nil.

4. While it is legally imprecise to refer to people as being 'exempt' from council tax – a term which applies only to properties – the Explanatory Memorandum and Regulatory Impact Assessment uses this term to describe the effect of both pieces of legislation.

Matters of special interest to the Constitutional and Legislative Affairs Committee

5. None.

Legislative background

6. Two pieces of secondary legislation need to be amended to exclude care leavers from being liable for council tax, one to exempt dwellings occupied by care leavers, and one to require that care leavers are not included (disregarded) in the determination of the number of liable adults in a household.

7. The power to prescribe certain dwellings as being exempt from council tax is contained in section 4 of the Local Government Finance Act 1992. The Council Tax (Exempt Dwellings) Order 1992 (SI 1992/558), made under section 4, applies to England and Wales and exempts over 20 categories of dwellings from council tax. Since devolution, the Order has been amended separately in respect of Wales.

8. The powers to prescribe additional categories of people to be disregarded for the purposes of determining a discount on the amount of council tax payable are contained in section 11(5) and paragraph 11 of Schedule 1 to the Local Government Finance Act 1992. The Council Tax (Additional Provisions for Discount Disregards) Regulations 1992 (SI 1992/552) prescribe additional categories of disregards. They also apply on an England and Wales basis and have been amended separately since devolution. The powers would be used so as to ensure that if a care leaver lives with a person who would otherwise be entitled to a single adult

discount on their council tax bill, the bill would be calculated as if the care leaver did not live at the premises. In other words, the person living with the care leaver would still be entitled to the single adult discount. There are several categories of person disregarded for the purpose of a council tax discount, for example students and care workers.

9. The amendment of both pieces of legislation is subject to the negative procedure.

10. The powers conferred on the Secretary of State in relation to the above transferred to the National Assembly for Wales under the National Assembly for Wales (Transfer of Functions) Order 1999. These powers were subsequently transferred to the Welsh Ministers by virtue of section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006.

Purpose and intended effect of the legislation

11. The purpose of these amendments is to ensure that, from 1 April 2019, eligible care leavers will be 'exempt' from paying council tax from their 18th to twenty-fifth birthday.

12. The amendments will complement the wider work being undertaken by Welsh Government to "work with local government to review council tax to make it fairer" as outlined in *Taking Wales Forward*.

13. Local authorities have discretionary powers to offer reductions on council tax bills and some have used these powers to exempt care leavers from liability. The legislative change responds to a proposal from local government to rectify inconsistencies in practice by replacing the discretionary relief made available by some authorities to some care leavers with a statutory requirement to provide an exemption.

Age range

14. The exemption will apply from the age of 18 on the basis that this is the age at which care leavers could become liable for council tax.

15. The exemption will end on a care leaver's 25th birthday. The duties of local authorities to care leavers already apply to individuals up to the age of 21 or, if in education or training, up to the end of the agreed programme for those aged 25 or under. The Welsh Government has also funded local authorities to extend personal adviser provision until the age of 25. The exemption is therefore consistent with, and will complement, existing local authority support for care leavers.

16. The exemption is intended to support the transition of young care leavers into adulthood. The age range is considered to provide adequate time for care leavers to form an understanding of financial management and take ownership of their affairs, without encouraging dependency.

Definition

17. "Care leaver" means a person who is—
    aged 24 or under; and
    a Category 3 young person where "Category 3 young person" has the meaning given in section 104 of the Social Services and Well-being (Wales) Act 2014.

18. There are various definitions of care leaver in use. The agreed definition is based on a Category 3 young person as defined in the Social Services and Well-being (Wales) Act 2014. This is substantially the definition which was proposed in the consultation and is one which is familiar to local authorities.

19. Using this definition means that, short term, pre-planned placements will be excluded when determining if an individual is a Category 3 young person. A young person who has lived with their parents for six months or more after being looked after will not fall within Category 3. Young people who left care under a Special Guardianship Order – a Category 4 young person – would not be included.

Evidence requirement

20. As local authorities have existing and efficient systems for establishing evidence of a care leaver's status, and to ensure that local authorities have the flexibility to adopt pragmatic solutions in complex cases, the legislation does not specify acceptable forms of evidence.

Exemption for dwellings occupied by care leavers living with other relevant persons

21. Dwellings occupied by a combination of care leavers and other relevant persons should be exempt. For example, dwellings occupied by a mix of care leavers and students would be exempt.

Consultation

22. Following a period during which the Welsh Government worked with local authorities to support the use of their discretionary powers to exempt care leavers, local government suggested the arrangements should be placed on a statutory basis. A six-week consultation ran from 7 November 2018 to 19 December 2018 on proposals to introduce a council tax exemption for care leavers. The consultation was published on the Welsh Government website and social media, and emailed to key contacts. It was drawn to the attention of a wide audience of key stakeholders including local authorities, debt advice organisations and citizens.

23. During the six weeks that the consultation was open, 69 responses were received. Ten questions were asked and comments invited.

- 91% of respondents agreed with the proposal to exempt care leavers from paying council tax.
- 83% agreed that the exemption should apply from the age of 18.
- 80% agreed that the exemption should apply until the age of 25.
- 77% agreed with the definition 'young people who have been looked after for at least 13 weeks since the age of 14, and were in care on their 16th birthday'.
- 85% agreed that the exemption should apply to care leavers living in Wales who had been looked after in other parts of the UK.
- 94% agreed that local authorities should be responsible for establishing or seeking evidence of individual's care leaver status.

24. In response to the question 'How do you think local authorities should respond to existing council tax debt which has already been accrued by qualifying care leavers?', the most common response was that any existing debt accrued by care leavers should be wiped out.

25. In response to the question 'How should the Welsh Government and local authorities ensure all eligible care leavers are identified, and ensure maximum take-up of the exemption?', most respondents highlighted the importance of communication between social services and revenues officers at local authority level.

26. In response to the question 'Are there any other practical considerations that you think should be dealt with in guidance?', the role of the personal advisor and leaving care teams was a common response.

27. The consultation invited respondents to provide any other comments. The most common response was the need for additional support to be available for care leavers, including financial education, support in finding work, assistance with applying for the exemption, and social interaction.

28. A summary of the consultation responses is available at: https://beta.gov.wales/council-tax-exemptions-care-leavers

Regulatory Impact Assessment

29. The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these amendments.

30. A Regulatory Impact Assessment has been conducted and is included in Part 2 of this document.

PART 2 – REGULATORY IMPACT ASSESSMENT

31. This Regulatory Impact Assessment presents two options in relation to the introduction of council tax exemptions for care leavers from 1 April 2019. All costs and benefits quantified in this Regulatory Impact Assessment are based on information and data available to the Welsh Government leading up to publication.

32. Two options have been considered in the development of the amendment to the regulations. The options considered were:

Option 1	Do nothing, continue with the current arrangements where local authorities may choose to implement their own discretionary schemes.
Option 2	Introduce legislation by 1 April 2019 to exempt eligible care leavers from council tax.

Option 1: *Do nothing; continue with the current arrangements where local authorities may choose to implement their own discretionary schemes.*

33. Option 1 would not require any legislative changes. Local authorities may, at their discretion, continue to administer and implement schemes to exempt care leavers within their authority from council tax.

Costs to Welsh Government

34. Option 1 would result in the continuation of the current practice and there would be no additional costs to the Welsh Government.

Costs to local authorities

35. The cost to the average local authority of administering discretionary relief to care leavers is estimated to be £10,000 a year. Local authorities choosing to provide discretionary relief would continue to incur this cost.

Benefits

36. There would be no change in practice and no legislative changes would be required.

Disadvantages

37. In *Taking Wales Forward* and *Prosperity for All*, the Welsh Government committed to reviewing council tax to make it fairer. It is unlikely that doing nothing, Option 1, would contribute towards the policy objective.

38. Current practice amongst local authorities is inconsistent. Not all local authorities choose to provide discretionary relief to care leavers. Of those that do, the eligibility criteria in use vary.

39. Care leavers are widely recognised as being particularly vulnerable and Option 1 would do nothing to support them.

Option 1 Summary

40. Doing nothing would retain existing arrangements and would not result in any additional costs to the Welsh Government. Local authorities would continue to bear the cost of administering any discretionary relief. The option would not further the Welsh Government's policy objective to make council tax in Wales fairer. It is therefore not the preferred option.

Option 2: Introduce legislation by 1 April 2019 to exempt eligible care leavers from Council tax.

41. Option 2 would involve introducing legislation to 'exempt' eligible care leavers from council tax from 1 April 2019.

Costs to Welsh Government

42. The Welsh Government may contribute to the costs to local authorities of making software changes to their systems. This is estimated to be less than £1,000 per authority.

43. There would be a negligible impact on the council tax tax-base.

Costs to local authorities

44. The cost of the exemption would be borne by local authorities for the 2019-20 financial year. The net cost would be comparable with administering discretionary relief and is estimated to be around £10,000 for an average sized authority.

Benefits

45. Option 2 is supported by local authorities. The introduction of this legislation responds to a request from local government to place the current provision of discretionary relief on a statutory basis.

46. Option 2 would ensure consistency in the council tax support available to care leavers in Wales between the ages of 18 and 25.

Disadvantages

47. Currently, a local authority may choose to adopt a broader definition of a care leaver than this legislation has opted for, or extend support beyond their 25th birthday. Local authorities would continue to have the power to provide discretionary relief to those not included in the definition, or according to a broader definition.

48. The cost of the exemption would be borne by local authorities in the 2019-20 financial year. As noted, this would be comparable with the cost of administering discretionary relief, although not all local authorities in Wales have opted to provide care leavers with discretionary relief. In these cases, the costs would be additional. However, there should be offsetting savings in other local services as a result of care leavers being more financially secure and authorities not having to administer means-tested reductions for care leavers.

Option 2 Summary

49. Option 2 requires legislative change. This involves some additional administrative cost to local authorities and the Welsh Government but this would be negligible. This option would provide consistent support to care leavers aged 18 to 25 and in doing so, support the Welsh Government's objective to make council tax in Wales fairer. It is therefore the preferred option.

Analysis of other effects and impacts

Promoting Economic Opportunity for All (Tackling Poverty)

50. Care leavers are more likely to be affected by council tax arrears than their peers. *The Wolf at the Door: How council tax debt collection is harming children* (2015) and *The Cost of Being Care Free: The impact of poor financial education and removal of support on care leavers* (2016) both highlight that care leavers are a particularly vulnerable group for council tax debt and that the transition into independent accommodation and living is challenging. The amendments will ensure care leavers are not liable for council tax before their 25th birthday.

UNCRC

51. This measure will apply to young persons over the age of 18. No particular impact on the rights of children under 18 has been identified.

Welsh language

52. No effect on the opportunities to use the Welsh language or on the equal treatment of the language has been identified.

Equalities

53. Section 149(1) of the Equality Act 2010 requires the Welsh Ministers to have regard, in the exercise of their functions, the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the 2010 Act; advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; foster good relations between persons who share a relevant protected characteristic and person who do not share it.

54. For the purposes of section 149, the protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

"Care leaver" is defined to only include those who are under the age of 25, so those who are over 25 will not benefit from the exemption. Therefore this policy treats people differently on the basis of age.

This policy does not negatively impact care leavers who are over 25 as they will remain in the same position as they are currently, while those under 25 will be in a better position (as they will no longer be liable for council tax).

This policy will help to meet the specific needs of care leavers who are under 25 in supporting them on their transition into adulthood and independent living, which are not shared to the same extent by those over 25. This policy is considered to advance equality of opportunity.

55. There is not expected to be a negative impact on equalities as a result of the amendments.

Well-being of Future Generations (Wales) Act 2015

56. Introducing council tax exemptions for care leavers will help to contribute towards the wellbeing goal of a more equal Wales.

Impact on voluntary sector

57. No negative impact on voluntary sector organisations has been identified. Parts of the voluntary sector provide advice and support to care leavers on council tax debt issues and the amendments will remove the need to advise care leavers on this aspect of their finances.

Competition Assessment

58. The amendments concern the administration of council tax and have no impact on business or competition. Therefore no competition assessment has been carried out.

Post implementation review

59. The Welsh Government will monitor the impact of the introduction of council tax exemptions for care leavers through engagement with local authorities and other stakeholders.

SL(5)385 – Rheoliadau Llifogydd a Dŵr (Diwygio) (Cymru a Lloegr) (Ymadael â'r UE) 2019

Cefndir a Diben

Mae Rheoliadau Llifogydd a Dŵr (Diwygio) (Cymru a Lloegr) (Ymadael â'r UE) 2019 ("y Rheoliadau hyn") wedi eu gwneud drwy arfer y pwerau a roddir gan baragraff 1(1) o Atodlen 2 i Ddeddf yr Undeb Ewropeaidd (Ymadael) 2018 er mwyn ymdrin ag unrhyw fethiant yng nghyfraith yr UE a ddargedwir i weithredu'n effeithiol a diffygion eraill mewn cyfraith yr UE a ddargedwir sy'n deillio o ymadawiad y Deyrnas Unedig â'r Undeb Ewropeaidd.

Mae'r Rheoliadau hyn yn gwneud diwygiadau i is-ddeddfwriaeth ym maes diogelwch amgylcheddol, dŵr a llifogydd.

Gweithdrefn

Negyddol.

Craffu ar faterion technegol

Nodir y pwynt a ganlyn i gyflwyno adroddiad arno o dan Reol Sefydlog 21.2 mewn perthynas â'r offeryn hwn:

1. **Rheol Sefydlog 21.2(vi) – ei bod yn ymddangos bod gwaith drafftio'r offeryn neu'r drafft yn ddiffygiol neu ei fod yn methu â bodloni gofynion statudol**

Mae rheoliad 5(3)(a) o'r Rheoliadau hyn yn diwygio rheoliad 11(2)(b) o Reoliadau Atal Llygredd Nitradau (Cymru) 2013 i ddileu cyfeiriad at ddeddfwriaeth yr UE, a rhoi cyfeiriadau at ddeddfwriaeth ddomestig yn lle. Fodd bynnag, mae'r diwygiad yn methu ag ystyried geiriad a fewnosodwyd i reoliad 11(2)(b) o'r Rheoliadau gan Reoliadau yr Amgylchedd, Cynllunio a Materion Gwledig (Diwygiadau Amrywiol) (Cymru) 2018. Felly, unwaith y daw'r Rheoliadau hyn i rym, byddai rheoliad 11(2)(b) o Reoliadau 2013 yn darllen *"[…] darpariaethau Rheoliadau Cyflenwadau Dŵr Preifat (Cymru) 2017 a Rheoliadau Cyflenwad Dŵr (Ansawdd Dŵr) 2018, fel y'u diwygiwyd ddiwethaf gan Gyfarwyddeb y Comisiwn (UE) 2015/1787."* Byddai'r datganiad hwn yn anghywir, ac felly mae'n ddiffygiol.

Rhinweddau: craffu

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

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

Gosodwyd drafft o'r Rheoliadau hyn gerbron y Cynulliad ar gyfer sifftio yn unol â pharagraff 4 o Atodlen 7 i Ddeddf yr Undeb Ewropeaidd (Ymadael) 2018. Cytunodd y Pwyllgor mai'r weithdrefn negyddol oedd y weithdrefn briodol ar gyfer y Rheoliadau hyn.

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

I'r graddau y mae'r Rheoliadau hyn yn gwneud diwygiadau i Reoliadau Cyflenwad Dŵr (Ansawdd Dŵr) 2018, mae'r Rheoliadau hyn yn gymwys o ran cyflenwi dŵr gan ymgymerwyr dŵr sy'n gweithredu'n gyfan gwbl neu'n bennaf yng Nghymru (ac i gyflenwadau gan drwyddedigion cyflenwi dŵr gan ddefnyddio systemau cyflenwi ymgymerwr o'r fath). O'r herwydd, maent yn berthnasol yn y rhannau o Loegr y mae'r ymgymerwyr dŵr a'r trwyddedigion hynny yn gweithredu ynddynt. Felly, er mai Gweinidogion Cymru yn unig sy'n gwneud y Rheoliadau, adlewyrchir y ffordd y cânt eu cymhwyso'n rhannol i Loegr yn nheitl yr offeryn.

Goblygiadau sy'n deillio o adael yr Undeb Ewropeaidd

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

Ymateb y Llywodraeth

Nodir y pwynt craffu technegol mewn perthynas â'r OS hwn. Gwneir offeryn diwygio.

Cynghorwyr Cyfreithiol
Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol
14 Mawrth 2019

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2019 Rhif 460 (Cy. 110)

YMADAEL Â'R UNDEB EWROPEAIDD, CYMRU A LLOEGR

AMAETHYDDIAETH, CYMRU

DIOGELU'R ARFORDIR, CYMRU

DIOGELU'R AMGYLCHEDD, CYMRU

RHEOLI PERYGL LLIFOGYDD, CYMRU

DŴR, CYMRU A LLOEGR

Rheoliadau Llifogydd a Dŵr (Diwygio) (Cymru a Lloegr) (Ymadael â'r UE) 2019

NODYN ESBONIADOL

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

Mae'r Rheoliadau hyn wedi eu gwneud drwy arfer y pwerau a roddir ym mharagraff 1(1) o Atodlen 2 i Ddeddf yr Undeb Ewropeaidd (Ymadael) 2018 (p. 16), er mwyn ymdrin ag unrhyw fethiant yng nghyfraith yr UE a ddargedwir i weithredu'n effeithiol a diffygion eraill yng nghyfraith yr UE a ddargedwir sy'n deillio o ymadawiad y Deyrnas Unedig â'r Undeb Ewropeaidd.

Mae'r Rheoliadau hyn yn diwygio is-ddeddfwriaeth ym maes diogelu'r amgylchedd, dŵr a llifogydd.

Ystyriwyd Cod Ymarfer Gweinidogion Cymru ar gynnal Asesiadau Effaith Rheoleiddiol mewn perthynas â'r Rheoliadau hyn. O ganlyniad, ystyriwyd nad oedd yn angenrheidiol cynnal asesiad effaith

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rheoleiddiol o'r costau a'r manteision sy'n debygol o ddeillio o gydymffurfio â'r Rheoliadau hyn.

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OFFERYNNAU STATUDOL CYMRU

2019 Rhif 460 (Cy. 110)

YMADAEL Â'R UNDEB EWROPEAIDD, CYMRU A LLOEGR

AMAETHYDDIAETH, CYMRU

DIOGELU'R ARFORDIR, CYMRU

DIOGELU'R AMGYLCHEDD, CYMRU

RHEOLI PERYGL LLIFOGYDD, CYMRU

DŴR, CYMRU A LLOEGR

Rheoliadau Llifogydd a Dŵr (Diwygio) (Cymru a Lloegr) (Ymadael â'r UE) 2019

Gofynion sifftio wedi eu bodloni *21 Ionawr 2019*

Gwnaed *5 Mawrth 2019*

Gosodwyd gerbron Cynulliad Cenedlaethol Cymru *6 Mawrth 2019*

Yn dod i rym yn unol â rheoliad 1(1)

Mae Gweinidogion Cymru yn gwneud y Rheoliadau hyn drwy arfer y pwerau a roddir gan baragraff 1(1) o Atodlen 2 i Ddeddf yr Undeb Ewropeaidd (Ymadael) 2018(**1**).

(**1**) 2018 p. 16.

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Mae gofynion paragraff 4(2) o Atodlen 7 i'r Ddeddf honno (sy'n ymwneud â gweithdrefn graffu briodol Cynulliad Cenedlaethol Cymru ar gyfer y Rheoliadau hyn) wedi eu bodloni.

Enwi, cychwyn a chymhwyso

1.—(1) Enw'r Rheoliadau hyn yw Rheoliadau Llifogydd a Dŵr (Diwygio) (Cymru a Lloegr) (Ymadael â'r UE) 2019 a deuant i rym ar y diwrnod ymadael.

(2) Mae i ddiwygiad a wneir gan y Rheoliadau hyn yr un rhychwant a chymhwysiad â'r ddarpariaeth sy'n cael ei diwygio.

Diwygio Rheoliadau Tir Halogedig (Cymru) 2006

2. Yn rheoliad 3 o Reoliadau Tir Halogedig (Cymru) 2006(**1**)—

(a) ailrifer y paragraff presennol yn baragraff (1) o'r rheoliad hwnnw;

(b) yn is-baragraff (b)(ii) o baragraff (1) (fel y'i hailrifwyd), yn lle'r geiriau o "ardaloedd gwarchodedig" hyd at y diwedd (ond nid y "neu" terfynol), rhodder "ardaloedd gwarchodedig dyfroedd pysgod cregyn neu ddyfroedd ymdrochi, nid yw'r dyfroedd hynny yn bodloni'r amcanion amgylcheddol sy'n gymwys iddynt fel y nodir yn y cynllun rheoli basn afon perthnasol o dan Ran 6 o Reoliadau'r Amgylchedd Dŵr (Y Gyfarwyddeb Fframwaith Dŵr) (Cymru a Lloegr) 2017(**2**)".

(c) ar ôl paragraff (1) (fel y'i hailrifwyd), mewnosoder—

"(2) Yn y rheoliad hwn—

(a) mae i "dŵr ymdrochi" yr un ystyr ag a roddir i "bathing water" yn Rheoliadau Dyfroedd Ymdrochi 2013(**3**);

(b) ystyr "ardal warchodedig dyfroedd pysgod cregyn" yw crynofa ddŵr a ddynodir o dan reoliad 9 o Reoliadau'r Amgylchedd Dŵr (Y Gyfarwyddeb Fframwaith Dŵr) (Cymru a Lloegr) 2017."

(**1**) O.S. 2006/2989 (Cy. 278), a ddiwygiwyd gan O.S. 2012/283 (Cy. 47). Mae offerynnau diwygio eraill ond nid oes yr un ohonynt yn berthnasol.

(**2**) O.S. 2017/407.

(**3**) O.S. 2013/1675, a ddiwygiwyd gan O.S. 2018/575. Mae offerynnau diwygio eraill ond nid oes yr un ohonynt yn berthnasol.

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Diwygio Rheoliadau Adnoddau Dŵr (Rheoli Llygredd) (Silwair, Slyri ac Olew Tanwydd Amaethyddol) (Cymru) 2010

3. Yn rheoliad 2(3) o Reoliadau Adnoddau Dŵr (Rheoli Llygredd) (Silwair, Slyri ac Olew Tanwydd Amaethyddol) (Cymru) 2010(**1**), hepgorer y geiriau o "ac sy'n cael ei chydnabod" hyd at y diwedd.

Gorchymyn Llifogydd ac Erydu Arfordirol Atodol (Cymru) 2011

4. Yn erthygl 3 o Orchymyn Llifogydd ac Erydu Arfordirol Atodol (Cymru) 2011(**2**)—

(a) ym mharagraff (3), yn lle "alluogi'r Deyrnas Unedig i gydymffurfio â'i rhwymedigaethau o dan y canlynol" rhodder "alluogi cydymffurfiaeth â'r ddeddfwriaeth(**3**) a weithredai";

(b) yn lle paragraff (4)(a) rhodder—

"(a) mae i "amcanion amgylcheddol" yr un ystyr ag a roddir i "environmental objectives" yn Rheoliadau'r Amgylchedd Dŵr (Y Gyfarwyddeb Fframwaith Dŵr) (Cymru a Lloegr) 2017;".

Diwygio Rheoliadau Atal Llygredd Nitradau (Cymru) 2013

5.—(1) Mae Rheoliadau Atal Llygredd Nitradau (Cymru) 2013(**4**) wedi eu diwygio fel a ganlyn.

(2) Yn rheoliad 6—

(a) ailrifer y paragraff presennol yn baragraff (1) o'r rheoliad hwnnw;

(b) ar ôl paragraff (1) (fel y'i hailrifwyd), mewnosoder—

"(2) Ym mharagraff (1), yn y diffiniad o "rhanddirymiad" ("*derogation*") mae'r cyfeiriad at baragraff 2(b) o Atodiad 3 i Gyfarwyddeb y

(**1**) O.S. 2010/1493 (Cy. 136), y mae diwygiadau iddo nad ydynt yn berthnasol i'r Rheoliadau hyn.

(**2**) O.S. 2011/2829 (Cy. 302), yr offerynnau diwygio perthnasol yw O.S. 2013/755 (Cy. 90) a 2018/1216 (Cy. 249).

(**3**) Mae'r ddeddfwriaeth a weithredai'r Gyfarwyddeb Cynefinoedd yn cynnwys O.S. 2017/1012. Mae'r ddeddfwriaeth a weithredai'r Gyfarwyddeb Adar Gwyllt yn cynnwys Deddf Bywyd Gwyllt a Chefn Gwlad 1981 (p. 69) ac O.S. 2017/1012. Mae'r ddeddfwriaeth a weithredai'r Gyfarwyddeb Fframwaith Dŵr yn cynnwys O.S. 2003/3245, 2004/99 a 2017/407.

(**4**) O.S. 2013/2506 (Cy. 245), yr offerynnau diwygio perthnasol yw O.S. 2015/2020 (Cy. 308) a 2018/1216 (Cy. 249).

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Cyngor 91/676/EEC(**1**) i'w ddarllen fel pe bai'r trydydd is-baragraff wedi ei hepgor.

(3) At ddibenion y Rheoliadau hyn, mae cyfeiriad at Gyfarwyddeb yr UE i'w ddarllen fel pe bai unrhyw gyfeiriad yn y Gyfarwyddeb honno at aelod-wladwriaeth mewn darpariaeth sy'n gosod rhwymedigaeth ar aelod-wladwriaeth, neu sy'n rhoi disgresiwn iddi, yn gyfeiriad at yr awdurdod a oedd, yn union cyn y diwrnod ymadael, yn gyfrifol am gydymffurfiaeth â'r rhwymedigaeth honno, neu am arfer y disgresiwn hwnnw, yng Nghymru.

(4) Ym mharagraff (3), ystyr yr "awdurdod" yw Corff Adnoddau Naturiol Cymru neu Weinidogion Cymru."

(3) Yn rheoliad 11—

(a) ym mharagraff (2)(b), yn lle "Cyfarwyddeb y Cyngor 98/83/EC ar ansawdd dŵr a fwriedir ar gyfer ei yfed gan bobl", rhodder "Reoliadau Cyflenwadau Dŵr Preifat (Cymru) 2017(**2**) a Rheoliadau Cyflenwi Dŵr (Ansawdd Dŵr) 2018(**3**)";

(b) ar ôl paragraff (3) mewnosoder—

"(4) Ym mharagraff (3)(a), mae'r cyfeiriad at Atodiad 1 i Gyfarwyddeb y Cyngor 91/676/EEC i'w ddarllen fel pe bai—

(a) pob cyfeiriad ynddo at Erthygl 5 o'r Gyfarwyddeb honno yn gyfeiriadau at reoliadau 12, 13 a 14 i 46 o'r Rheoliadau hyn;

(b) ym mhwynt A, paragraff 1, "a concentration of nitrates greater than 50mg/l" wedi ei roi yn lle'r geiriau o "more than" hyd at "Directive 75/440/EEC"."

(4) Yn rheoliad 47, ar ôl paragraff (3) mewnosoder—

"(4) Fel rhan o'r adolygiad a gynhelir o dan y rheoliad hwn, rhaid i Weinidogion Cymru adolygu sefyllfa gyffredinol rhanddirymiadau a roddir o dan reoliad 13A yn erbyn—

(a) meini prawf gwrthrychol, gan gynnwys—

(i) presenoldeb, mewn parthau perygl nitradau dynodedig—

(aa) tymhorau tyfu hir,

(**1**) OJ Rhif L 375, 31.12.1991, t.1, fel y'i diwygiwyd ddiwethaf gan Reoliad (EC) Rhif 1137/2008 (OJ Rhif L 311, 21.11.2008, t. 1).

(**2**) O.S. 2017/1041 (Cy. 270), a ddiwygiwyd gan O.S. 2018/647 (Cy. 121).

(**3**) O.S. 2018/647 (Cy. 121).

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(bb) cnydau sy'n amsugno lefel uchel o nitrogen, a

(cc) priddoedd sydd â gallu eithriadol o uchel i ddadnitreiddio, a

(ii) y dŵr glaw net mewn parthau perygl nitradau dynodedig;

(b) yr amcanion a ganlyn—

(i) lleihau llygredd dŵr a achosir neu a ysgogir gan nitradau o ffynonellau amaethyddol, a

(ii) atal llygredd pellach o'r fath."

(5) Ar ôl rheoliad 48, mewnosoder—

"Adroddiad gweithredu

48A.—(1) Rhaid i Weinidogion Cymru lunio adroddiad ar weithredu'r Rheoliadau hyn ar gyfer pob cyfnod perthnasol.

(2) Rhaid i adroddiad o dan baragraff (1) gynnwys—

(a) manylion unrhyw gamau a gymerwyd i hybu arfer amaethyddol da;

(b) y map a adneuwyd o dan reoliad 7(2), gyda datganiad sy'n rhoi manylion natur unrhyw ddiwygiadau i'r parth perygl nitradau dynodedig ers diwedd y cyfnod adrodd blaenorol, a'r rhesymau dros y diwygiadau hynny;

(c) crynodeb o'r canlyniadau monitro o dan reoliad 11;

(d) crynodeb o'r adolygiad diweddaraf a gynhaliwyd o dan reoliad 47.

(3) Rhaid cyhoeddi unrhyw adroddiad o dan baragraff (1)—

(a) mewn unrhyw fodd y mae Gweinidogion Cymru yn ystyried ei fod yn briodol;

(b) erbyn diwrnod olaf y cyfnod o chwe mis sy'n dechrau â'r diwrnod y daw'r cyfnod perthnasol i ben.

(4) Yn y rheoliad hwn, ystyr "cyfnod perthnasol" yw'r cyfnod o bedair blynedd sy'n dechrau ag 1 Ionawr 2016 a phob cyfnod dilynol o bedair blynedd."

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Diwygio Rheoliadau Cyflenwadau Dŵr Preifat (Cymru) 2017

6.—(1) Mae Rheoliadau Cyflenwadau Dŵr Preifat (Cymru) 2017(**1**) wedi eu diwygio fel a ganlyn.

(2) Yn rheoliad 2—

(a) ailrifer y paragraff presennol yn baragraff (1) o'r rheoliad hwnnw;

(b) ar ôl paragraff (1) (fel y'i hailrifwyd), mewnosoder—

"(2) Yn y Rheoliadau hyn, mae cyfeiriad at Gyfarwyddeb yr UE neu Gyfarwyddeb Euratom i'w ddarllen fel pe bai unrhyw gyfeiriad yn y Gyfarwyddeb honno at aelod-wladwriaeth mewn darpariaeth sy'n gosod rhwymedigaeth ar aelod-wladwriaeth, neu sy'n rhoi disgresiwn iddi, yn gyfeiriad naill ai at Weinidogion Cymru neu at yr awdurdod lleol gan ddibynnu ar ba un oedd, yn union cyn y diwrnod ymadael, yn gyfrifol am gydymffurfiaeth â'r rhwymedigaeth honno, neu am arfer y disgresiwn hwnnw, o ran Cymru."

(3) Yn rheoliad 6, ar ôl paragraff (5) mewnosoder—

"(6) At ddibenion paragraff (4)(c), mae cyfeiriad at Erthyglau 7(1) ac 8 o Gyfarwyddeb 2000/60/EC(**2**) i'w ddarllen yn unol â'r addasiadau a ganlyn—

(a) fel pe bai unrhyw gyfeiriad at Atodiad 5 o'r Gyfarwyddeb honno yn gyfeiriad at yr Atodiad hwnnw fel y'i diwygiwyd gan Ran 1 o Atodlen 5 i Reoliadau'r Amgylchedd Dŵr (Y Gyfarwyddeb Fframwaith Dŵr) (Cymru a Lloegr) 2017(**3**);

(b) yn Erthygl 8, fel pe bai—

(i) ym mharagraff 1, y mewnoliad olaf wedi ei hepgor;

(ii) ym mharagraff 2, y frawddeg gyntaf wedi ei hepgor;

(iii) paragraff 3 wedi ei hepgor."

(4) Yn lle rheoliad 12(6), rhodder —

"(6) Rhaid i Weinidogion Cymru gyhoeddi, mewn unrhyw fodd y maent yn ystyried ei fod yn briodol, sail unrhyw benderfyniad o dan baragraff (3) a'r ddogfennaeth a ddarperir o dan baragraff (5) sy'n ategu'r penderfyniad."

(**1**) O.S. 2017/1041 (Cy. 270), y mae diwygiadau iddo nad ydynt yn berthnasol i'r Rheoliadau hyn.

(**2**) O.J. Rhif L 327, 22.12.2000, t. 1, fel y'i diwygiwyd ddiwethaf gan Gyfarwyddeb y Comisiwn 2014/101/EU (OJ Rhif L 311, 31.10.2014, t.32).

(**3**) O.S. 2017/407, a ddiwygiwyd gan O.S. 2018/942.

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(5) Ar ôl rheoliad 23, mewnosoder—

"Cyflwyno Adroddiad

23A.—(1) Rhaid i Weinidogion Cymru lunio a chyhoeddi adroddiad ar ansawdd dŵr a fwriedir ar gyfer ei yfed gan bobl, gyda'r nod o hysbysu defnyddwyr.

(2) Rhaid i adroddiad o dan baragraff (1)—

(a) cael ei gyhoeddi mewn unrhyw fodd y mae Gweinidogion Cymru yn ystyried ei fod yn briodol;

(b) cynnwys, o leiaf, wybodaeth am yr holl gyflenwadau dŵr unigol sy'n—

(i) mwy na 1,000m³ y diwrnod ar gyfartaledd, neu

(ii) gwasanaethu mwy na 5,000 o bersonau;

(c) cwmpasu cyfnod o dair blwyddyn galendr.

(3) Rhaid i'r adroddiad cyntaf o dan y rheoliad hwn gwmpasu'r blynyddoedd 2017, 2018 a 2019 a rhaid iddo gael ei gyhoeddi erbyn 31 Rhagfyr 2021.

(4) Rhaid i adroddiadau dilynol o dan y rheoliad hwn gael eu cyhoeddi fesul ysbeidiau nad ydynt yn fwy na thair blynedd.

(5) Rhaid i unrhyw adroddiad a gyhoeddir o dan baragraff (1) hefyd fod ar gael ar wefan yr Arolygiaeth Dŵr Yfed."

Diwygio Rheoliadau Cyflenwi Dŵr (Ansawdd Dŵr) 2018

7.—(1) Mae Rheoliadau Cyflenwi Dŵr (Ansawdd Dŵr) 2018(**1**) wedi eu diwygio fel a ganlyn.

(2) Yn rheoliad 2, ar ôl paragraff (5) mewnosoder—

"(6) In these Regulations, a reference to an EU or Euratom Directive is to be read as if any reference in that Directive to a member State in a provision imposing an obligation on, or providing a discretion to, a member State were to either the Welsh Ministers or local authority depending on which, immediately before exit day, was responsible for compliance with that obligation, or exercise of that discretion, in respect of England or Wales.".

(3) Yn rheoliad 6(15), yn lle "communicate the grounds for the notification to the European Commission" rhodder "publish, in such manner as the

(**1**) O.S. 2018/647 (Cy. 121).

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Welsh Ministers consider appropriate, the grounds for the notification".

(4) Yn rheoliad 9, ar ôl paragraff (12) mewnosoder—

"(13) For the purposes of paragraph (11)(c), a reference to Articles 7(1) and 8 of Directive 2000/60/EC is to be read with the following modifications—

(a) as if any reference to Annex 5 of that Directive were a reference to that Annex as modified by Part 1 of Schedule 5 to the Water Environment (Water Framework Directive) (England and Wales) Regulations 2017(**1**);

(b) in Article 8, as if—

(i) in paragraph 1, the final indent were omitted;

(ii) in paragraph 2, the first sentence were omitted;

(iii) paragraph 3 were omitted."

(5) Yn rheoliad 23—

(a) ym mharagraff (7) yn lle "further departure" rhodder "further two departures";

(b) hepgorer paragraffau (9) a (10).

(6) Yn rheoliad 31—

(a) hepgorer paragraff 2(a);

(b) ym mharagraff (2)(b), hepgorer "of an EEA state or Turkey";

(c) hepgorer paragraff (3)(b);

(d) hepgorer paragraff (15).

(7) Yn rheoliad 39(1)(h), hepgorer "and (9) respectively".

(8) Ar ôl rheoliad 39 mewnosoder—

"Reporting

39A.—(1) The Welsh Ministers must publish a report on the quality of water intended for human consumption, with the objective of informing consumers.

(2) A report under paragraph (1) must—

(a) be published in such manner as the Welsh Ministers consider appropriate;

(b) include, as a minimum, information on all individual supplies of water that—

(i) exceed 1,000m³ a day as an average, or

(**1**) O.S. 2017/407, a ddiwygiwyd gan O.S. 2018/942.

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(ii) serve more than 5,000 persons;

(c) cover a period of three calendar years.

(4) The first report under this regulation must cover the years 2017, 2018 and 2019 and be published by 31st December 2021.

(5) Subsequent reports under this regulation must be published at intervals not exceeding three years.

(6) Any report published under paragraph (1) must also be made available on the Drinking Water Inspectorate's website."

Lesley Griffiths
Gweinidog yr Amgylchedd, Ynni a Materion Gwledig, un o Weinidogion Cymru

5 Mawrth 2019

Explanatory Memorandum to The Flood and Water (Amendments) (England and Wales) (EU Exit) Regulations 2019

This Explanatory Memorandum is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The Flood and Water (Amendments) (England and Wales) (EU Exit) Regulations 2019.
I have made the statements required by the European Union (Withdrawal) Act 2018. These statements can be found in Part 2 of the annex to this memorandum.

Lesley Griffiths
Minister for Environment, Energy and Rural Affairs
6 March 2019

PART 1

1. Description

The Flood and Water (Amendments) (England and Wales) (EU Exit) Regulations 2019 ensure floods and water legislation will continue to be operable in Wales after the UK leaves the EU. The instrument addresses failures of retained EU law to operate effectively and other deficiencies in retained EU law arising from the UK's withdrawal from the EU. The purpose of the instrument is to preserve and protect existing policy, it will not introduce any new policy.

This instrument comes into force on "exit day", which section 20(1) of the European Union (Withdrawal) Act 2018 defines as 29 March 2019 at 11.00pm.

The instrument makes amendments to the following enactments—

- the Contaminated Land (Wales) Regulations 2006;
- the Water Resources (Control of Pollution) (Silage, Slurry and Agriculture Fuel Oil) (Wales) Regulations 2010;
- the Incidental Flooding and Coastal Erosion (Wales) Order 2011;
- the Nitrate Pollution Prevention (Wales) Regulations 2013;
- the Private Water Supplies (Wales) Regulations 2017;
- the Water Supply (Water Quality) Regulations 2018.

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

This instrument is made using the power conferred by paragraph 1(1) of Schedule 2 to the European Union (Withdrawal) Act 2018 ("the 2018 Act").

As set out in the Ministerial statement in Annex 2 of this Explanatory Memorandum it is proposed that the instrument be subject to the negative procedure. The instrument makes minor and technical changes and as such should be subject to annulment.

To the extent these Regulations make amendments to the Water Supply (Water Quality) Regulations 2018, these Regulations apply in relation to the supply of water by water undertakers operating wholly or mainly in Wales (and to supplies by water supply licensees using the supply systems of such an undertaker). As such they apply in the parts of England to which those water undertakers and licensees operate. Therefore, although the Regulations are made solely by the Welsh Ministers, the application in part to England is reflected in the title of the instrument.

The Constitutional and Legislative Affairs Committee considered a draft of this instrument for sifting on 21 January 2018. The Committee agreed with the WG's recommendation that the instrument follows the negative resolution procedure. A link to the report is attached:
http://www.assembly.wales/laid%20documents/cr-ld12060/cr-ld12060-e.pdf

3. Legislative background

This instrument is being made using the power conferred by paragraph 1(1) of Schedule 2 to the 2018 Act in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the United Kingdom from the European Union. In accordance with the requirements of that Act the Minister has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.

4. Purpose and intended effect of the legislation

What did any relevant EU law do before exit day?

These Regulations make amendments to secondary legislation in the field of water and flood.

The function of the EU law in this area is to protect and improve the water environment from various sources of pollution e.g. from agriculture and urban sources; it is also about protecting human health by preventing contamination of drinking water and bathing waters.

They amend the regulations implementing the Nitrates Directive in Wales (the Nitrate Pollution Prevention (Wales) Regulations 2013), which aims to prevent nitrates from agricultural sources polluting ground and surface waters and by promoting the use of good farming practices.

They also amend the regulations that implement Council Directive 98/83/EC on the quality of water intended for human consumption in relation to private water supplies and 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 (the Private Water Supplies (Wales) Regulations 2017 and the Water Supply (Water Quality) Regulations 2018).

The Regulations make amendments to the Contaminated Land (Wales) Regulations 2006 and the Incidental Flooding and Coastal Erosion (Wales) Order 2011; both of which contain incidental references to EU Directives such as the Water Framework Directive, the Habitats Directive and the Wild Birds Directive. These Directives are either already fully transposed into domestic law or are to be appropriately amended by other statutory instruments made under the 2018 Act.

The Water Resources (Control of Pollution) (Silage, Slurry and Agriculture Fuel Oil) (Wales) Regulations 2010 contain a requirement for certain storage tanks to conform with relevant British Standards, or equivalent standards in other specified states in line with EU requirements.

Why is it being changed?

This instrument makes several minor and technical amendments to deficiencies in the existing legislation described above and some other pieces of domestic

legislation to ensure the legislation works effectively after exit. Some of the changes are described in the following paragraphs.

Where there was a reference in an EU Directive to a Member State reporting to the EU Commission this is being replaced by including a requirement in the domestic legislation that such an environmental report is to be made publicly available; for example the new regulations 23A and 39A in the Private Water Supplies (Wales) Regulations 2017 and the Water Supply (Water Quality) Regulations 2018 (respectively) replace reporting obligations currently found in Council Directive 98/83/EC on the quality of water intended for human consumption in relation to private water supplies.

References to the Welsh Ministers acting in compliance with EU law by reference to an EU Directive, are amended so they can be read with appropriate modifications. Similarly, for cross-references in domestic legislation to UK obligations as a Member State in EU Directives, such obligations will fall away as we will no longer be a Member State and these are instead to be read as an obligation on the appropriate Minister or regulator responsible for complying with that obligation before exit day.

Cross-references in domestic legislation to provisions in EU Directives where the UK, as a Member State, engages in EU wide exercises and processes, including obligations to collaborate with other Member States have been removed. This change has been made as we will no longer be mandated by, or have a mechanism to take part in EU procedures and processes.

Amendments to remove cross-references to provisions in Directives requiring Member States to inform the EU Commission of certain actions, for instance informing the EU Commission under the Nitrates Directive where the UK grants a derogation under the Nitrate Pollution Prevention Regulations 2015. It would no longer be appropriate to inform the EU Commission as to the grant of that derogation after EU exit. Instead provision is inserted for the Welsh Ministers to review the overall position of those derogations as part of the four yearly review under those regulations.

The amendment to the Water Resources (Control of Pollution) (Silage, Slurry and Agriculture Fuel Oil) (Wales) Regulations 2010 will prevent the UK from being in potential breach of the Most Favoured Nation principle of the WTO Rules in a no-deal EU exit scenario.

What will it now do?

The instrument will ensure that the EU derived law in this area will operate effectively in Wales after we leave the EU. By making the proposed instrument, we will be maintaining the existing policy regime, thereby providing businesses, environmental NGOs and the public with maximum certainty as the UK leaves the EU.

5. Consultation

No public consultation was undertaken. The purpose of the instrument is solely to enable the current legislative and policy framework to remain operable by the withdrawal of the United Kingdom from the European Union.

6. Regulatory Impact Assessment (RIA)

An RIA has not been conducted as these are minor technical changes necessary as a result of the UK's withdrawal from the EU. A public consultation was not required because no policy changes are being made via this statutory instrument. As this instrument relates to maintaining existing legislation after EU Exit there is no, or no significant, impact on business, charities or voluntary bodies. There is no, or no significant, impact on the public sector.

Annex
Statements under the European Union (Withdrawal) Act 2018

Part 1
Table of Statements under the 2018 Act

This table sets out the statements that may be required of the Welsh Ministers under the 2018 Act. The table also sets out those statements that may be required of Ministers of the Crown under the 2018 Act, which the Welsh Ministers have committed to also provide when required. The required statements can be found in Part 2 of this annex.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(7) and 4(3), Schedule 7 *Paragraph 3(7) (anticipated to be a requirement on Welsh Ministers in Standing Orders)*	The Welsh Ministers exercising powers in Part 1 of Schedule 2 to make a Negative SI Paragraph 3(7) applies to Ministers of the Crown, but Welsh Ministers have committed to make the same statement	A statement to explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation of the CLA Committee (as sifting committee)
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same	A statement that the SI does no more than is appropriate.

		statement when exercising powers in Schedule 2	
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement to explain the good reasons for making the instrument and that what is being done is a reasonable course of action.
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement to explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them. A statement that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have	A statement to explain the instrument, identify the relevant law before exit day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g. whether minor or

		committed to make the same statement when exercising powers in Schedule 2	technical changes only are intended to the EU retained law.
Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement setting out the 'good reasons' for creating a criminal offence, and the penalty attached.
Sub-delegation	Paragraph 30, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and paragraph 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2 or paragraph 1 of Schedule 4 to	A statement to explain why it is appropriate to create such a sub-delegated power.

		create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority	
Urgency	Sub-paragraph (2) and (8) of paragraph 7, Schedule 7	Welsh Ministers exercising powers in Part 1 of Schedule 2 but using the urgent procedure in paragraph 7 of Schedule 7	A statement that the Welsh Ministers are of the opinion that it is necessary to make the SI using the urgent procedure and the reasons for that opinion.

Part 2

Statements required when using enabling powers under the European Union (Withdrawal) 2018 Act

1. Sifting statement(s)

The Minister for Environment, Energy and Rural Affairs, Lesley Griffiths, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Flood and Water (Amendments) (England and Wales) (EU Exit) Regulations 2019 should be subject to annulment in pursuance of a resolution of the National Assembly for Wales (i.e. the negative procedure)”. This is the case because the changes being made are technical in nature and make no substantive changes.

1. Appropriateness statement

The Minister for Environment, Energy and Rural Affairs, Lesley Griffiths, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Flood and Water (Amendments) (England and Wales) (EU Exit) Regulations 2019 does no more than is appropriate. This is the case because all the changes being made are solely in order to address deficiencies arising from EU exit.”

2. Good reasons

The Minister for Environment, Energy and Rural Affairs, Lesley Griffiths, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action”. This is because the provisions ensure that protections provided by the Flood and Water (Amendments) (England and Wales) (EU Exit) Regulations 2019 continue to be operable after the UK leaves the European Union.

3. Equalities

The Minister for Environment, Energy and Rural Affairs, Lesley Griffiths, has made the following statement(s):

“The instrument does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts.

The Minister for Environment, Energy and Rural Affairs, Lesley Griffiths, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to the instrument, I, Lesley Griffiths, have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010.”

Little or no impact on equalities is expected.

4. Explanations

The explanations statement has been made in paragraph 4 (Purpose & intended effect of the legislation) of the main body of this explanatory memorandum.

5. Criminal offences

Not applicable/required.

6. Legislative sub-delegation

Not applicable/required.

7. Urgency

Not applicable/required.

SL(5)388 - Rheoliadau Iechyd Planhigion (Ffioedd) (Coedwigaeth) (Cymru) 2019

Cefndir a Diben

Mae'r Rheoliadau hyn yn cynyddu ffioedd penodol sy'n daladwy i Weinidogion Cymru am amrywiol drwyddedau, arolygiadau, gwiriadau a gwaith sy'n ymwneud ag iechyd planhigion. Maent yn diddymu'r gyfundrefn ffioedd bresennol ar gyfer y ffioedd hynny sydd i'w cynyddu.

Gweithdrefn

Negyddol.

Craffu ar faterion technegol

Ni nodwyd unrhyw bwyntiau i gyflwyno adroddiad arnynt o dan Reol Sefydlog 21.2.

Rhinweddau: craffu

Nodir y pwynt a ganlyn i gyflwyno adroddiad arno o dan Reol Sefydlog 21.3 mewn perthynas â'r offeryn hwn:

Rheol Sefydlog 21.3(i) – ei fod yn codi tâl ar Gronfa Gyfunol Cymru neu ei fod yn cynnwys darpariaethau sy'n ei gwneud yn ofynnol i daliadau gael eu gwneud i'r Gronfa honno neu i unrhyw ran o'r llywodraeth neu awdurdod lleol neu gyhoeddus er mwyn cydnabod unrhyw drwydded, cydsyniad neu unrhyw wasanaethau sydd i'w rhoi, neu ei fod yn rhagnodi swm unrhyw dâl neu daliad o'r fath

Mae'r Rheoliadau hyn yn cynyddu ffioedd sydd i'w talu i Weinidogion Cymru yn yr amgylchiadau a ddisgrifir uchod.

Goblygiadau sy'n deillio o adael yr Undeb Ewropeaidd

Ar ôl i'r DU adael yr Undeb Ewropeaidd, bydd yr offeryn hwn yn dod yn rhan o gyfraith yr UE ar ddargedwir.

Ymateb y Llywodraeth

Nid oes angen ymateb gan y Llywodraeth.

Cynghorwyr Cyfreithiol
Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol
19 Mawrth 2019

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OFFERYNNAU STATUDOL
CYMRU

2019 Rhif 497 (Cy. 114)

IECHYD PLANHIGION, CYMRU

Rheoliadau Iechyd Planhigion (Ffioedd) (Coedwigaeth) (Cymru) 2019

NODYN ESBONIADOL

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

Mae'r Rheoliadau hyn yn dirymu ac yn disodli Rheoliadau Iechyd Planhigion (Ffioedd) (Coedwigaeth) 2006 (O.S. 2006/2697) o ran Cymru.

Mae'r Rheoliadau hyn yn gweithredu Erthygl 13d o Gyfarwyddeb y Cyngor 2000/29/EC ar fesurau gwarchod yn erbyn cyflwyno i'r Gymuned organeddau sy'n niweidiol i blanhigion neu gynhyrchion planhigion ac yn erbyn eu lledaenu o fewn y Gymuned (OJ Rhif L 169, 10.7.2000, t. 1). Mae Erthygl 13d yn ei gwneud yn ofynnol i Aelod-wladwriaethau gasglu ffioedd am wiriadau dogfennol, gwiriadau adnabod a gwiriadau iechyd planhigion a gynhelir ar lwythi penodol o bren, cynhyrchion pren a rhisgl wedi ei wahanu sy'n deillio o wledydd y tu allan i'r Undeb Ewropeaidd ("llwythi a reolir").

Mae rheoliad 3 yn ei gwneud yn ofynnol i'r ffioedd a ganlyn gael eu talu i Weinidogion Cymru—

(a) y ffioedd a bennir yn Atodlen 1 am arolygiadau mewn cysylltiad ag awdurdodiad i ddyroddi pasbortau planhigion o dan erthygl 28 o Orchymyn Iechyd Planhigion (Coedwigaeth) 2005 (O.S. 2005/2517) ("y Prif Orchymyn");

(b) y ffioedd a bennir yn Atodlen 2 mewn cysylltiad â thrwyddedau y mae erthygl 38 neu 39 o'r Prif Orchymyn yn gymwys iddynt;

(c) y ffioedd a bennir yn Atodlen 3 a rheoliad 3(5) am wiriadau iechyd planhigion ar lwythi a reolir;

(d) y ffioedd a bennir yn Atodlen 4 am wiriadau dogfennol a gwiriadau adnabod ar lwythi a reolir;

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(e) y ffioedd a bennir yn Atodlen 5 am gynnal neu am fonitro gwaith adfer gan arolygydd o dan y Prif Orchymyn mewn cysylltiad â llwythi a reolir.

Mae'r Rheoliadau hyn yn cysoni'r ffioedd â'r rhai ar gyfer gweddill Prydain Fawr. Mae'r newidiadau fel a ganlyn—

(a) mae'r ffioedd am wiriadau iechyd planhigion yn codi o £26 i £31.20 am bob llwyth (ac o £0.20 i £0.25 am bob m^3 ychwanegol sy'n fwy na $100m^3$ mewn perthynas â llwyth o bren ac eithrio pren ar ffurf naddion, sglodion neu flawd llif);

(b) mae'r ffioedd cyfradd is mewn perthynas â gwiriadau iechyd planhigion ar lwythi o *Acer saccharum* o Ganada ac Unol Daleithiau America wedi eu diddymu. O dan y weithdrefn y darperir ar ei chyfer yn Erthyglau 13a(2) a 18(2) o Gyfarwyddeb y Cyngor 2000/29/EC, nid yw'r llwythi hyn bellach yn destun gwiriadau iechyd planhigion lefel is ac felly nid ydynt yn gymwys bellach ar gyfer ffioedd cyfradd is;

(c) mae'r ffioedd am wiriadau dogfennol yn codi o £6 i £7.20 am bob llwyth ac am wiriadau adnabod yn codi o £6 i £7.20 ac, ar gyfer swmplwythi o $100m^3$ neu fwy, o £12 i £14.40, am bob llwyth.

Fel arall, mae'r ffioedd yn aros yr un fath ag yn Rheoliadau Iechyd Planhigion (Ffioedd) (Coedwigaeth) 2006.

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

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OFFERYNNAU STATUDOL CYMRU

2019 Rhif 497 (Cy. 114)

IECHYD PLANHIGION, CYMRU

Rheoliadau Iechyd Planhigion (Ffioedd) (Coedwigaeth) (Cymru) 2019

Gwnaed *5 Mawrth 2019*

Gosodwyd gerbron Cynulliad Cenedlaethol Cymru *7 Mawrth 2019*

Yn dod i rym *28 Mawrth 2019*

Mae Gweinidogion Cymru wedi eu dynodi(**1**) at ddibenion adran 2(2) o Ddeddf y Cymunedau Ewropeaidd 1972(**2**) mewn perthynas â pholisi amaethyddol cyffredin yr Undeb Ewropeaidd ac yn gwneud y Rheoliadau hyn drwy arfer y pwerau a roddir iddynt gan yr adran honno.

Enwi, cymhwyso a chychwyn

1.—(1) Enw'r Rheoliadau hyn yw Rheoliadau Iechyd Planhigion (Ffioedd) (Coedwigaeth) (Cymru) 2019.

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

(3) Daw'r Rheoliadau hyn i rym ar 28 Mawrth 2019.

(**1**) O.S. 2010/2690. O dan adran 1(2) o Ddeddf Iechyd Planhigion 1967 (p. 8), fel y'i diwygiwyd gan erthygl 4(1) o Orchymyn Corff Adnoddau Naturiol Cymru (Swyddogaethau) 2013 (O.S. 2013/755), a pharagraff 43 o Atodlen 2 iddo, Gweinidogion Cymru yw'r awdurdod cymwys ar gyfer Cymru o ran gwarchod coed fforestydd a phren rhag ymosodiadau gan blâu.

(**2**) 1972 p. 68: diwygiwyd adran 2(2) gan adran 27(1)(a) o Ddeddf Diwygio Deddfwriaethol a Rheoleiddiol 2006 (p. 51) a chan Ran 1 o Ddeddf yr Undeb Ewropeaidd (Diwygio) 2008 (p. 7).

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Dehongli

2.—(1) Yn y Rheoliadau hyn—

ystyr "awdurdodiad pasbort planhigion" ("*plant passport authority*") yw awdurdodiad i ddyroddi pasbortau planhigion a roddir gan Weinidogion Cymru o dan erthygl 28 o'r Gorchymyn;

ystyr "y Gorchymyn" ("*the Order*") yw Gorchymyn Iechyd Planhigion (Coedwigaeth) 2005(**1**);

ystyr "gwaith adfer" ("*remedial work*") yw unrhyw gamau a gymerir gan berson at ddibenion cydymffurfio â hysbysiad adfer, neu gan arolygydd o dan erthygl 32(1) o'r Gorchymyn;

mae i "gwiriad adnabod" yr ystyr a roddir i "identity check" gan Erthygl 13a(1)(b)(ii) o'r Gyfarwyddeb;

mae i "gwiriad dogfennol" yr ystyr a roddir i "documentary check" gan Erthygl 13a(1)(b)(i) o'r Gyfarwyddeb;

mae i "gwiriad iechyd planhigion" yr ystyr a roddir i "plant health check" gan Erthygl 13a(1)(b)(iii) o'r Gyfarwyddeb;

ystyr "y Gyfarwyddeb" ("*the Directive*") yw Cyfarwyddeb y Cyngor 2000/29/EC ar fesurau gwarchod yn erbyn cyflwyno i'r Gymuned organeddau sy'n niweidiol i blanhigion neu gynhyrchion planhigion ac yn erbyn eu lledaenu o fewn y Gymuned(**2**);

ystyr "hysbysiad adfer" ("*remedial notice*") yw hysbysiad a roddir o dan erthygl 31(1) neu (4) neu 33(3) o'r Gorchymyn;

ystyr "llwyth a reolir" ("*controlled consignment*") yw llwyth o fewn yr ystyr a roddir i "consignment" yn Erthygl 2(1)(p) o'r Gyfarwyddeb, neu lwyth y mae gan arolygydd amheuaeth resymol ei fod yn lwyth o'r fath, o unrhyw un neu ragor o'r deunyddiau perthnasol a ganlyn y mae Rhan 2 o'r Gorchymyn yn gymwys iddynt—

(a) rhisgl wedi ei wahanu o fath a restrir yn Atodlen 5, Rhan A, paragraff 3 neu Ran B, paragraff 3 i'r Gorchymyn; neu

(b) pren o fath a restrir yn Atodlen 5, Rhan A, paragraff 4 neu Ran B, paragraff 1 i'r

(**1**) O.S. 2005/2517; yr offerynnau diwygio perthnasol yw O.S. 2009/594, 2012/2707, 2013/755, 2013/2691 a 2014/2420 fel y'u cymhwysir yng Nghymru gan 2015/1723.

(**2**) OJ Rhif L 169, 10.7.2000, t. 1, fel y'i diwygiwyd ddiwethaf gan Reoliad Gweithredu'r Comisiwn (EU) 2017/1920 (OJ Rhif L 271, 20.10.2017, t. 34).

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Gorchymyn, ac eithrio deunydd pecynnu pren a ddefnyddir mewn gwirionedd wrth gludo gwrthrychau o bob math;

mae i "man arolygu a gymeradwywyd" yr ystyr a roddir i "approved place of inspection" yn erthygl 3 o'r Gorchymyn; ac

ystyr "trwydded" ("*licence*") yw trwydded i gynnal unrhyw weithgaredd y mae erthygl 38 neu 39 o'r Gorchymyn yn gymwys iddo.

(2) Mae i eiriau ac ymadroddion nad ydynt wedi eu diffinio yn y Rheoliadau hyn ac y mae'r ymadroddion Saesneg cyfatebol yn ymddangos yn y Gorchymyn yr un ystyr yn y Rheoliadau hyn ag sydd gan yr ymadroddion Saesneg cyfatebol yn y Gorchymyn.

Ffioedd

3.—(1) Mae ffioedd sy'n daladwy o dan y rheoliad hwn yn daladwy i Weinidogion Cymru.

(2) Mae'r ffi sy'n daladwy am arolygiad a gweithgareddau cysylltiedig mewn cysylltiad â rhoi, amrywio neu atal dros dro awdurdodiad pasbort planhigion neu er mwyn monitro cydymffurfedd â'r awdurdodiad hwnnw wedi ei phennu yn Atodlen 1.

(3) Mae'r ffi sy'n daladwy mewn cysylltiad â chais am drwydded (gan gynnwys cais i estyn neu amrywio trwydded), am arolygiad a gweithgareddau cysylltiedig mewn cysylltiad â chais am drwydded neu er mwyn monitro cydymffurfedd â thelerau ac amodau trwydded wedi ei phennu yn Atodlen 2.

(4) Rhaid i fewnforiwr llwyth a reolir dalu—

(a) yn achos gwiriad iechyd planhigion mewn cysylltiad â'r llwyth, y ffi a bennir ar gyfer y math perthnasol o lwyth yn eitem 1 neu 2 o'r tabl yn Atodlen 3;

(b) yn achos gwiriad dogfennol mewn cysylltiad â'r llwyth, y ffi a bennir yn eitem 1 o'r tabl yn Atodlen 4;

(c) yn achos gwiriad adnabod mewn cysylltiad â'r llwyth, y ffi a bennir yn eitem 2 o'r tabl yn Atodlen 4.

(5) Pan fo gwiriad iechyd planhigion, ar gais mewnforiwr llwyth a reolir, yn cael ei gynnal ar y llwyth mewn man arolygu a gymeradwywyd, rhaid i'r mewnforiwr dalu'r ffi o £30 ar gyfer pob ymweliad a wneir gan arolygydd wrth gynnal y gwiriad iechyd planhigion yn y man arolygu a gymeradwywyd, yn ychwanegol at y ffi sy'n daladwy o dan baragraff (4)(a).

(6) Rhaid i'r person y cyflwynir hysbysiad adfer iddo neu y rhoddir hysbysiad iddo o dan erthygl 32(1)

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o'r Gorchymyn dalu'r ffi a bennir yn Atodlen 5 ar gyfer cynnal neu fonitro gwaith adfer a gweithgareddau cysylltiedig gan arolygydd mewn cysylltiad â llwyth a reolir.

Dirymiadau

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

(a) Rheoliadau Iechyd Planhigion (Ffioedd) (Coedwigaeth) 2006(**1**);

(b) Rheoliadau Iechyd Planhigion (Ffioedd) (Coedwigaeth) (Diwygio) 2008(**2**);

(c) Rheoliadau Iechyd Planhigion (Ffioedd) (Coedwigaeth) (Diwygio) 2009(**3**);

(d) Rheoliadau Iechyd Planhigion (Ffioedd) (Coedwigaeth) (Diwygio) 2010(**4**).

Lesley Griffiths
Gweinidog yr Amgylchedd, Ynni a Materion Gwledig, un o Weinidogion Cymru
5 Mawrth 2019

(**1**) O.S. 2006/2697, fel y'i diwygiwyd gan O.S. 2008/702, 2009/2956, 2010/2001, 2013/755.
(**2**) O.S. 2008/702.
(**3**) O.S. 2009/2956.
(**4**) O.S. 2010/2001.

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ATODLEN 1 Rheoliad 3(2)

FFIOEDD AM AROLYGIADAU MEWN CYSYLLTIAD AG AWDURDODIAD PASBORT PLANHIGION

Math o arolygiad	***Ffi***
Arolygiad a gweithgareddau cysylltiedig (gan gynnwys amser teithio ac amser swyddfa) mewn cysylltiad â rhoi, amrywio neu atal dros dro awdurdodiad pasbort planhigion neu er mwyn monitro cydymffurfedd â'r awdurdodiad hwnnw—	
(a) hyd at a chan gynnwys yr awr gyntaf;	£37
(b) wedi hynny, am bob 15 munud ychwanegol neu ran o'r cyfnod hwnnw	£9.25

ATODLEN 2 Rheoliad 3(3)

FFIOEDD MEWN CYSYLLTIAD Â THRWYDDEDAU

Eitem	***Math o gais neu arolygiad***	***Ffi***
1	Cais am drwydded	£305
2	Cais i estyn neu amrywio trwydded gyda newidiadau sy'n ei gwneud yn ofynnol cynnal asesiad gwyddonol neu dechnegol	£100
3	Cais i estyn trwydded heb unrhyw newidiadau neu i estyn neu amrywio trwydded gyda newidiadau nad ydynt yn ei gwneud yn ofynnol cynnal asesiad gwyddonol neu dechnegol	£12
4	Arolygiad a gweithgareddau cysylltiedig (gan gynnwys amser teithio ac amser swyddfa) mewn cysylltiad ag eitem 1, 2 neu 3 neu er mwyn monitro cydymffurfedd â thelerau ac amodau trwydded—	
	(a) hyd at a chan gynnwys yr awr gyntaf;	£37
	(b) wedi hynny, am bob 15 munud ychwanegol neu ran o'r cyfnod hwnnw	£9.25

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ATODLEN 3 Rheoliad 3(4)(a)

FFIOEDD AM WIRIADAU IECHYD PLANHIGION

Eitem	***Disgrifiad o'r deunydd perthnasol mewn llwyth sy'n destun gwiriad iechyd planhigion***	***Uned***	***Ffi***
1	Rhisgl wedi ei wahanu, naddion coed, sglodion coed neu flawd llif	Am bob llwyth - hyd at 25000kg - am bob 1000kg ychwanegol neu ran ohono	 £31.20 £0.49 Hyd at uchafswm y ffi o £98 y llwyth
2	Pren (ac eithrio pren ar ffurf rhisgl wedi ei wahanu, naddion coed, sglodion coed neu flawd llif)	Am bob llwyth - hyd at 25000kg - am bob 1000kg ychwanegol neu ran ohono	 £31.20 £0.25

ATODLEN 4 Rheoliad 3(4)(b) ac (c)

FFIOEDD AM WIRIADAU DOGFENNOL A GWIRIADAU ADNABOD

Eitem	*Math o wiriad*	*Uned*	*Ffi*
1	Gwiriad dogfennol	Am bob llwyth	£7.20
2	Gwiriad adnabod	Am bob llwyth - am bob llwyth o hyd at 30m³ sy'n ffurfio rhan o'r llwyth a gynhwysir mewn un tryc, wagen reilffordd neu gynhwysydd cyffelyb - am bob swmplwyth o lai na 100m³ - am bob swmplwyth o 100m³ neu fwy	 £7.20 £7.20 £14.40

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ATODLEN 5 Rheoliad 3(6)

FFIOEDD AM GYNNAL NEU AM FONITRO GWAITH ADFER

Gwaith adfer	***Ffi***
Cynnal neu fonitro gwaith adfer a gweithgareddau cysylltiedig (gan gynnwys amser teithio ac amser swyddfa) gan arolygydd mewn cysylltiad â llwyth a reolir—	
(a) hyd at a chan gynnwys yr awr gyntaf;	£37
(b) wedi hynny, am bob 15 munud ychwanegol neu ran o'r cyfnod hwnnw	£9.25

Explanatory Memorandum to the Plant Health (Fees) (Forestry) (Wales) Regulations 2019.

This Explanatory Memorandum has been prepared by the Economy, Skills and Natural Resources Department of the Welsh Government and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Plant Health (Fees) (Forestry) (Wales) Regulations 2019. I am satisfied that the benefits justify the likely costs.

Lesley Griffiths
Minister for Environment, Energy and Rural Affairs
7 March 2019

PART 1

1. Description

These Regulations increase the fees to be charged relating to the documentary, identity and plant health checks of wood, wood products and isolated bark coming into Wales from third countries (and consolidates the Plant Health (Fees) (Forestry) Regulations 2006). These fees are set out in Schedules 3, 3A and 4 to the Regulations and are being increased so that they enable full cost recovery for the checks, bringing Welsh fees in line with those charged in England and Scotland. These Regulations also make an adjustment to the fees to reflect changes in inspection levels that apply to imports of wood of maple from Canada and the United States of America.

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

Section 2(2) of the European Communities Act 1972 offers a choice between negative and affirmative procedures. The negative procedure will be used in this case as the discretion of the Welsh Ministers is limited over the content of the SI because it is giving effect to EU provisions and we are not amending primary legislation.

3. Legislative background

The Plant Health Directive establishes the EU plant health regime. It contains measures to be taken in order to prevent the introduction into, and spread within, the EU of serious pests and diseases of plants and plant produce. The Plant Health Directive (Articles 13a and 13d) requires the National Plant Protection Organisation to carry out certain checks on imported plants and plant products, including certain types of wood and wood products, and to charge fees for those inspections. In most cases, it requires inspections to be carried out on all imports of controlled material.

The Plant Health (Fees) (Forestry) (Wales) Regulations 2019 are being made pursuant to powers in the European Communities Act 1972.

The Welsh Ministers are designated for the purposes of section 2(2) of the European Communities Act 1972 in relation to the common agricultural policy of the European Union (S.I. 2010/2690)

Section 2(2) of the European Communities Act 1972 provides discretion as to which procedure to use. As we are obliged to implement EU law and we are not amending primary legislation, these Regulations are being made under the negative resolution procedure.

4. Purpose and intended effect of the legislation

To enable cost effective implementation of plant health regime to forestry by bringing the Welsh Fees regime into line with the fees in England and Scotland and revoking other Orders as required.

These Regulations will apply to Wales only. These Regulations would have a direct financial impact on future importers of material covered by the Regulations using Welsh entry points. However, the Forestry Commission has confirmed that there have been no controlled timber inspections performed in Welsh ports in recent years and there have been no registered forestry trader inspections which would have resulted in plant health fees being applied. The regulation will bring Welsh fees in line with those charged in England and Scotland correcting the current disparity.

The reduced rate fees in relation to plant health checks on consignments of *Acer saccharum* from Canada and the United States of America are removed. Under the procedure provided for in Articles 13a(2) and 18(2) of Council Directive 2000/29/EC, these consignments are no longer subject to reduced levels of plant health checks and are therefore no longer eligible for reduced rate fees;

5. Consultation

No consultation has been conducted due to the lack of importers to Wales in recent years.

PART 2 – REGULATORY IMPACT ASSESSMENT

6. Options

Option 1: keep the status quo
No increase would be made to the fees charged in Wales. Welsh fees would remain out of step with those in England and Scotland.

Option 2: make the legislation
These Regulations would bring the fees in Wales in line with the rest of Great Britain. The changes are as follows—

(a) the fees for plant health checks increase from £26 to £31.20 per consignment (and from £0.20 to £0.25 for each additional m^3 in excess of $100m^3$ in relation to a consignment of wood other than wood in the form of shavings, chips or sawdust);

(b) the reduced rate fees in relation to plant health checks on consignments of *Acer saccharum* from Canada and the United States of America are removed. N.B. Under the procedure provided for in Articles 13a(2) and 18(2) of Council Directive 2000/29/EC, these consignments are no longer subject to reduced levels of plant health checks and are therefore no longer eligible for reduced rate fees;

(c) the fees for documentary checks increase from £6 to £7.20 per consignment and for identity checks from £6 to £7.20 and, for bulk loads of 100m^3 or more, from £12 to £14.40, per consignment.

Other than those stated above the fees remain the same as in the Plant Health (Fees) (Forestry) Regulations 2006.

7. Costs and benefits

Option 1 Cost/Benefit analysis:
The Forestry Commission has confirmed that there have been no controlled timber inspections performed in Welsh ports in recent years and there have been no registered forestry trader inspections which would have resulted in plant health fees being applied. In the event that any importers decide to use Wales in the future then they would be charged fees at the current rate for the required plant health checks rather than the higher fees imposed when importing through England or Scotland.

The current situation creates a disparity between Wales and the rest of Great Britain. This could result in Wales being seen as a more attractive importing destination in the future due to lower fees for plant health checks in comparison with England and Wales with consequently a higher number of inspections being required.

The Forestry Commissioners currently deliver a range of functions on a cross-border basis within Great Britain. The Scottish Parliament has recently approved the Forestry and Land (Scotland) Act 2018 which brings to an end the functions of the Forestry Commission as a cross-border public body. This means that from 1st April 2019 the part of the Forestry Commission which delivered those cross-border functions will be wound up and new arrangements are required to secure the continued delivery of these functions. These will be set out in a Memorandum of Understanding (MoU) between Welsh Ministers, Defra Ministers, Scottish Ministers and the Forestry Commissioners.

One of the Functions covered by the MoU relates to Plant Health and Forest Reproductive Materials and covers the inspections referred to in this proposed Regulation. It is important that the Welsh legislation referred to in this Policy Instruction is updated to bring the fees in Wales in line with England and Scotland before the new arrangements under the MoU come into effect to ensure parity across GB in the delivery of the functions.

Option 2 Cost/Benefit Analysis
This option will mean that any notional future importers of the material covered by the Regulation would be charged higher fees when importing to Wales than is currently the case, the amounts of the increases are as set out above. However, the Forestry Commission has confirmed that there have in fact been no controlled timber inspections performed in Welsh ports in recent years.

There is no increase in costs to the Welsh Ministers through Option 2. The proposed Regulation will support environmental good practice by strengthening the plant health and biosecurity measures in place in Wales by closing the

current “opportunity” created by the lower fees for importing of restricted materials and ensuring parity with the rest of GB.

Summary
Option 2 has been selected in order to bring Welsh fees into line with those charged in the rest of GB. This brings parity across the GB marketplace and supports a joined-up approach across the 3 Nations of GB to strengthen the implementation of plant health and biosecurity measures.

8. Consultation

Not applicable

9. Competition Assessment

This regulation would have a direct financial impact on future importers of material covered by the regulation using Welsh entry points. However, the Forestry Commission has confirmed that there have been no controlled timber inspections performed in Welsh ports in recent years and there have been no registered forestry trader inspections which would have resulted in plant health fees being applied. The regulation will bring Welsh fees in line with those charged in England and Scotland correcting the current disparity.

10. Post implementation review

The Welsh Government has a seat on the Cross-Border Plant Health Steering Group where plant health inspections and fees are discussed at a GB-level. This will provide the forum for the Welsh Government to review the effectiveness of this legislation.

Eitem 3.5

SL(5)389 – The Forest Reproductive Material (Great Britain) (Amendment) (Wales) Regulations 2019

Background and Purpose

These Regulations amend the Forest Reproductive Material (Great Britain) Regulations 2002 (S.I. 2002/3026) in relation to Wales. The 2002 Regulations were made to implement European legislation on a Great Britain basis (specifically Council Directive 1999/105/EC of 22nd December 1999 on the marketing of forest reproductive material). The 2002 Regulations have since been amended, including in 2014 in respect of England and Scotland only (these amendments were made by the Forest Reproductive Material (Great Britain) (Amendment) (England and Scotland) Regulations 2014). As such, the amendments made by these Regulations are necessary to bring Welsh legislation up to date with EU law obligations, and to make provision in line with the law in England and Scotland.

The amendments set out the revised requirements which apply in Wales in relation to forest reproductive material produced in countries outside the European Union, and implements Council Decision 2008/971/EC on the equivalence of forest reproductive material produced in third countries, as amended. These Regulations also implement in full the derogation permitted by Commission Decision 2008/989/EC authorising member States (in accordance with Council Directive 1999/105/EC) to take decisions on the equivalence of the guarantees afforded by forest reproductive material to be imported from certain third countries.

Regulation 3(1)(b) provides for the references to Council Decision 2008/971/EC in the 2002 Regulations to be read as references to that instrument as amended from time to time.

Procedure

Negative.

Technical Scrutiny

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.

Merits Scrutiny

One points is identified for reporting under Standing Order 21.3 in respect of this instrument.

Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly.

These Regulations amend the 2002 Regulations, which are Great Britain Regulations. The amendments made by these Regulations apply only in relation to Wales. Amendments have previously been made in respect of England and Scotland, in 2014. The Explanatory Memorandum does not explain why there has been a delay of almost five years between amendments being made in respect of England and Scotland in 2014, and amendments being made in respect of Wales by these Regulations.

Implications arising from exiting the European Union

These Regulations are made in exercise of the powers in section 2(2) of, and paragraph 1A of Schedule 2 to, the European Communities Act 1972. As such, they will form part of retained EU law on exit day. These Regulations come into force on 28 March 2019, the day before exit day.

The provision made by these Regulations will be further amended on exit day by The Plant Health (Forestry) (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019.

Government Response

A government response is required.

Legal Advisers
Constitutional and Legislative Affairs Committee
20 March 2019

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OFFERYNNAU STATUDOL
CYMRU

2019 Rhif 496 (Cy. 113)

HADAU, CYMRU

Rheoliadau Deunyddiau Atgenhedlol y Goedwig (Prydain Fawr) (Diwygio) (Cymru) 2019

NODYN ESBONIADOL

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

Mae'r Rheoliadau hyn yn diwygio Rheoliadau Deunyddiau Atgenhedlol y Goedwig (Prydain Fawr) 2002 (O.S. 2002/3026) ("y Prif Reoliadau") o ran Cymru.

Mae'r diwygiadau yn nodi'r gofynion diwygiedig sy'n gymwys yng Nghymru mewn perthynas â deunyddiau atgenhedlol y goedwig a gynhyrchir mewn gwledydd y tu allan i'r Undeb Ewropeaidd ac—

(a) yn gweithredu Penderfyniad y Cyngor 2008/971/EC ar gyfwerthedd deunyddiau atgenhedlol y goedwig a gynhyrchir mewn trydydd gwledydd (OJ Rhif L 345, 23.12.2008, t. 83), fel y'i diwygiwyd gan Benderfyniad Rhif 1104/2012/EU Senedd Ewrop a'r Cyngor (OJ Rhif L 328, 28.11.2012, t. 1); a

(b) yn gweithredu'n llawn y rhanddirymiad a ganiateir gan Benderfyniad y Comisiwn 2008/989/EC sy'n awdurdodi Aelod-wladwriaethau, yn unol â Chyfarwyddeb y Cyngor 1999/105/EC, i wneud penderfyniadau ynghylch cyfwerthedd y gwarantau a ddarperir gan ddeunyddiau atgenhedlol y goedwig sydd i'w mewnforio o drydydd gwledydd penodol (OJ L 352, 31.12.2008, t. 55).

Mae rheoliad 3(1)(b) yn darparu bod y cyfeiriadau at Benderfyniad y Cyngor 2008/971/EC yn y Prif Reoliadau i'w darllen fel cyfeiriadau at yr offeryn hwnnw fel y'i diwygir o bryd i'w gilydd.

Ystyriwyd Cod Ymarfer Gweinidogion Cymru ar gynnal Asesiadau Effaith Rheoleiddiol mewn perthynas â'r Rheoliadau hyn. O ganlyniad, ystyriwyd

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nad oedd yn angenrheidiol cynnal asesiad effaith rheoleiddiol o'r costau a'r manteision sy'n debygol o ddeillio o gydymffurfio â'r Rheoliadau hyn.

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O F F E R Y N N A U S T A T U D O L
C Y M R U

2019 Rhif 496 (Cy. 113)

HADAU, CYMRU

Rheoliadau Deunyddiau Atgenhedlol y Goedwig (Prydain Fawr) (Diwygio) (Cymru) 2019

Gwnaed	*5 Mawrth 2019*
Gosodwyd gerbron Cynulliad Cenedlaethol Cymru	*7 Mawrth 2019*
Yn dod i rym	*28 Mawrth 2019*

Mae Gweinidogion Cymru wedi eu dynodi(**1**) at ddibenion adran 2(2) o Ddeddf y Cymunedau Ewropeaidd 1972(**2**) mewn perthynas â pholisi amaethyddol cyffredin yr Undeb Ewropeaidd.

Mae Gweinidogion Cymru yn gwneud y Rheoliadau hyn drwy arfer y pwerau a roddir iddynt gan adran 2(2) o Ddeddf y Cymunedau Ewropeaidd 1972, a pharagraff 1A o Atodlen 2 iddi(**3**).

Mae'r Rheoliadau hyn yn gwneud darpariaeth at ddiben a grybwyllir yn adran 2(2) o Ddeddf y Cymunedau Ewropeaidd 1972 ac mae'n ymddangos i Weinidogion Cymru ei bod yn hwylus i gyfeiriadau at yr offeryn gan yr Undeb Ewropeaidd a grybwyllir yn rheoliad 3(1)(b) gael eu dehongli fel cyfeiriadau at yr offeryn hwnnw fel y'i diwygir o bryd i'w gilydd.

(**1**) O.S. 2010/2690.

(**2**) 1972 p. 68. Diwygiwyd adran 2(2) gan adran 27(1)(a) o Ddeddf Diwygio Deddfwriaethol a Rheoleiddiol 2006 (p. 51), a chan adran 3(3) o Ddeddf yr Undeb Ewropeaidd (Diwygio) 2008 (p. 7), a Rhan 1 o'r Atodlen iddi.

(**3**) Mewnosodwyd paragraff 1A o Atodlen 2 gan adran 28 o Ddeddf Diwygio Deddfwriaethol a Rheoleiddiol 2006 (p. 51) ac fe'i diwygiwyd gan adran 3(3) o Ddeddf yr Undeb Ewropeaidd (Diwygio) 2008 (p. 7), a Rhan 1 o'r Atodlen iddi, ac O.S. 2007/1388.

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Enwi, cymhwyso a chychwyn

1.—(1) Enw'r Rheoliadau hyn yw Rheoliadau Deunyddiau Atgenhedlol y Goedwig (Prydain Fawr) (Diwygio) (Cymru) 2019.

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

(3) Daw'r Rheoliadau hyn i rym ar 28 Mawrth 2019.

Diwygio Rheoliadau Deunyddiau Atgenhedlol y Goedwig (Prydain Fawr) 2002

2. Mae Rheoliadau Deunyddiau Atgenhedlol y Goedwig (Prydain Fawr) 2002(**1**) wedi eu diwygio fel a ganlyn.

Rheoliad 2 (dehongli)

3.—(1) Yn rheoliad 2(2)(**2**)—

(a) yn lle'r diffiniad o "approved basic material" rhodder—

> ""approved basic material" in relation to basic material approved by an appropriate authority means basic material which is approved in accordance with regulation 7;";

(b) ar ôl y diffiniad o "contact details" mewnosoder—

> ""Council Decision 2008/971/EC" means Council Decision 2008/971/EC on the equivalence of forest reproductive material produced in third countries(**3**), as amended from time to time;";

(c) ar ôl y diffiniad o "EC classification" mewnosoder—

> ""EU-approved third countries" are Canada, Norway, Serbia, Switzerland, Turkey and the United States of America;";

(**1**) O.S. 2002//3026, a ddiwygiwyd gan O.S. 2006/2530, 2011/1043, 2013/755 (Cy. 90). Trosglwyddwyd swyddogaethau'r Comisiynwyr Coedwigaeth, o ran Cymru, i Weinidogion Cymru ac fe'u rhoddir iddynt fel "awdurdod priodol"; mewnosodwyd y diffiniad o "the appropriate authority" gan baragraffau 137 a 138(2)(a) o Atodlen 4 i Orchymyn Corff Adnoddau Naturiol Cymru (Swyddogaethau) 2013 (O.S. 2013/755 (Cy. 90)). Mae diwygiadau eraill, ond nid yw'r un ohonynt yn berthnasol.

(**2**) Amnewidiwyd y diffiniad o "Master Certificate" gan reoliad 3(a) o O.S. 2006/2530, ac fe'i diwygiwyd gan baragraffau 137 a 138 o Atodlen 4 i O.S. 2013/755 (Cy. 90). Amnewidiwyd y diffiniad o "official body" gan reoliad 3(b) o O.S. 2006/2530. Mewnosodwyd y diffiniad o "official certificate" gan reoliad 3(c) o O.S. 2006/2530, ac fe'i diwygiwyd gan baragraffau 137 a 138 o Atodlen 4 i O.S. 2013/755 (Cy. 90). Mae diwygiadau eraill i reoliad 2(2), ond nid yw'r un ohonynt yn berthnasol.

(**3**) OJ Rhif L 345, 23.12.2008, t. 83, a ddiwygiwyd gan OJ Rhif L 328, 28.11.2012, t. 1 ac OJ Rhif L 158, 10.6.2013, t. 1.

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(d) yn lle'r diffiniad o "Master Certificate" rhodder—

""Master Certificate" means—

(a) in the case of forest reproductive material collected or otherwise derived from basic material which is located in a relevant territory, a Master Certificate issued in accordance with regulation 13;

(b) in the case of forest reproductive material collected or otherwise derived from basic material which is located in Northern Ireland, a Master Certificate issued by the official body for Northern Ireland in accordance with Article 12 of the Directive;

(c) in the case of forest reproductive material collected or otherwise derived from basic material which is located in another member State, a Master Certificate issued by an official body of that member State in accordance with Article 12 of the Directive;

(d) in the case of forest reproductive material produced in an EU-approved third country, a Master Certificate issued by the appropriate authority in accordance with regulation 25(5) and (6) or a Master Certificate issued by a relevant official body in accordance with Article 4 of Council Decision 2008/971/EC;

(e) in the case of forest reproductive material produced in a permitted third country, a Master Certificate issued by the appropriate authority in accordance with regulation 25(5), a Master Certificate issued in relation to the material by an official body of a member State or an official certificate within the meaning of paragraph 8 of Schedule 13;";

(e) yn lle'r diffiniad o "official body" rhodder—

""official body"—

(a) in relation to a member State has the meaning given in Article 2(k) of the Directive;

(b) in relation to an EU-approved third country means the competent authority for the relevant country, as listed in Annex I to Council Decision 2008/971/EC;

(c) in relation to a permitted third country means the authority or body which is

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officially responsible in that country for the approval and control of forest reproductive material produced by the country;";

(f) hepgorer y diffiniad o "official certificate";

(g) ar ôl y diffiniad o "part of plants" mewnosoder—

""permitted third countries" are Belarus, Bosnia and Herzegovina, the former Yugoslav Republic of Macedonia and New Zealand;";

(h) yn lle'r diffiniad o "plant passport" rhodder—

""plant passport" has the meaning given in the Plant Health (Forestry) Order 2005(**1**);";

(i) yn y diffiniad o "unit of approval", ar ôl "unit of approval" mewnosoder ", except in regulation 14(1)".

(2) Ar ôl rheoliad 2(4) mewnosoder—

"(4A) Other terms in these Regulations that appear in the Directive of Council Decision 2008/971/EC have the same meaning in these Regulations as they have in the Directive or that Decision."

Rheoliad 14 (adnabod a gwahanu deunyddiau atgenhedlol y goedwig wrth eu cynhyrchu)

4.—(1) Yn rheoliad 14(1)(f), yn lle paragraff (i) rhodder—

"(i) the reference number given to the approved basic material from which the forest reproductive material is derived; or".

(2) Ar ôl rheoliad 14(3)(**2**) mewnosoder—

"(4) In this regulation—

(a) "reference number" means—

(i) in the case of basic material approved by an appropriate authority in accordance with regulation 7, the reference number given to the material in the National Register;

(ii) in the case of basic material approved by any other official body of a member State, the reference number given to the material in the register drawn up

(**1**) O.S. 2005/2517; mae offerynnau diwygio ond nid yw'r un ohonynt yn berthnasol.

(**2**) Diwygiwyd rheoliad 14(3) gan baragraffau 137 a 146 o Atodlen 4 i O.S. 2013/755 (Cy. 90). Mae diwygiadau eraill i reoliad 2(2) ond nid yw'r un ohonynt yn berthnasol.

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and maintained by the official body in accordance with Article 10 of the Directive;

(iii) in the case of approved basic material from which reproductive material produced in an EU-approved third country or a permitted third country has been derived, the reference number given to the material in the national register of basic material approved for forest reproductive material drawn up and maintained by the official body of that country;

(b) "unit of approval"—

(i) in the case of forest reproductive material derived from basic material approved by an appropriate authority, has the meaning given in regulation 7(5);

(ii) in the case of forest reproductive material derived from basic material approved by another official body, means the unit of basic material from which the forest reproductive material is derived, as recorded in the national register of basic material approved for forest reproductive material drawn up and maintained by the official body."

Rheoliad 17 (deunyddiau atgenhedlol y goedwig y caniateir eu marchnata)

5. Yn lle paragraff (1) o reoliad 17(**1**) rhodder—

"(1) Subject to regulations 18 and 31, no person shall market forest reproductive material in Wales unless—

(a) in the case of forest reproductive material produced in a relevant territory—

(i) its collection and production meet the requirements of regulations 10 to 12 and 14 and 15;

(ii) it has been certified in accordance with regulation 13; and

(iii) it falls into one of the categories described in regulation 4(1),

(**1**) Diwygiwyd rheoliad 17(1) gan reoliad 5 o O.S. 2006/2530, a pharagraffau 137 a 148 o Atodlen 4 i O.S. 2013/755 (Cy. 90).

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subject as the case may be to the application of regulation 7(2) and (3);

(b) in the case of forest reproductive material produced in Northern Ireland or another member State, it was accompanied on its entry into Wales by the supplier's label or document required by Article 14 of the Directive;

(c) in the case of forest reproductive material produced in an EU-approved third country and imported from a third country into Wales, a Master Certificate has been issued by the appropriate authority in relation to the material in accordance with regulation 25(5) and (6);

(d) in the case of any other forest reproductive material produced in an EU-approved third country—

(i) a Master Certificate has been issued in relation to the material in accordance with Article 4 of Decision 2008/971/EC; and

(ii) the forest reproductive material was accompanied on its entry into Wales by the supplier's label or document required by Article 14 of the Directive;

(e) in the case of forest reproductive material produced in a permitted third country and imported from a third country into Wales, it has met the requirements as to entry into Wales set out in regulation 25;

(f) in the case of any other forest reproductive material produced in a permitted third country—

(i) a Master Certificate has been issued in relation to the material by an official body of a member State; and

(ii) the forest reproductive material was accompanied on its entry into Wales by the supplier's label or document required by Article 14 of the Directive;

(g) it is marked and labelled in compliance with paragraphs (2) to (7), regulation 14 and regulation 19 as read with regulation 20 in the case of seeds; and

(h) it meets the requirements of paragraphs (8) to (12)."

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Rheoliad 18 (trwyddedau)

6. Yn lle rheoliad 18(**1**) rhodder—

"**18.—**(1) The appropriate authority may authorise a registered supplier by licence to—

(a) market forest reproductive material in Wales which would otherwise be prohibited under regulation 17(1);

(b) import into Wales forest reproductive material which would otherwise be prohibited under regulation 25.

(2) The licence shall be in writing and may be granted—

(a) subject to conditions;

(b) for a definite or an indefinite period.

(3) The appropriate authority may only give an authorisation under paragraph (1)(a) or (1)(b)—

(a) if the forest reproductive material is to be marketed for use in tests, for scientific purposes or for generic conservation purposes;

(b) if the forest reproductive material consists of seed units which are clearly shown not to be intended for forestry purposes; or

(c) in exercise of a derogation permitted by the Directive.

(4) The appropriate authority may also give an authorisation under paragraph (1)(a) if the forest reproductive material is to be marketed for use in selection work.

(5) If the appropriate authority decline to give an authorisation under paragraph (1), they shall give the applicant their reasons for doing so in writing."

Rheoliad 19 (labelu a phecynnu lotiau ar gyfer marchnata)

7. Yn rheoliad 19—

(a) ym mharagraff (3), yn lle "sub-paragraph (2)(b)" rhodder "paragraph (2)(b) or, in the case of material produced in an EU-approved third country, the requirements of paragraph (2)(d)";

(b) ym mharagraff (4), yn lle "sub-paragraphs" rhodder "paragraph".

(**1**) Diwygiwyd rheoliad 18 gan baragraffau 137 a 149 o Atodlen 4 i O.S. 2013/755 (Cy. 90).

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Rheoliad 25 (gwahardd mewnforion o ddeunyddiau atgenhedlol y goedwig o drydydd gwledydd)

8. Yn lle rheoliad 25(**1**) rhodder—

"Prohibition against imports of forest reproductive material into Wales from third countries

25.—(1) No person may import forest reproductive material into Wales from a third country for the purpose of marketing it unless—

(a) it has been produced in an EU-approved third country or permitted third country;

(b) it is permitted material; and

(c) the requirements set out in Schedule 13 are met on entry.

(2) A person intending to import permitted material into Wales from an EU-approved third country or a permitted third country shall notify the appropriate authority of the arrival of the material at least three days before the intended date of its arrival into Wales.

(3) The notification to the appropriate authority shall be—

(a) in writing;

(b) contain the following details in relation to the material—

(i) its anticipated point of entry into Wales; and

(ii) its anticipated date and time of arrival into Wales

(4) After the permitted material has been imported into Wales, the owner of the permitted material may apply to the appropriate authority for a Master Certificate in relation to the material.

(5) If the appropriate authority is satisfied that the requirements set out in Schedule 13 have been met in relation to the permitted material, the appropriate authority shall issue a Master Certificate for the material to its owner.

(6) In the case of permitted material from an EU-approved third country, a Master Certificate issued under paragraph (5) shall—

(a) be based on the OECD Certificate of Provenance; and

(**1**) Amnewidiwyd rheoliad 25 gan reoliad 9 o O.S. 2006/2530, ac fe'i diwygiwyd gan baragraffau 137 a 155 o Atodlen 4 i O.S. 2013/755 (Cy. 90).

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(b) indicate that the material has been imported under an equivalence regime.

(7) In this regulation—

"OECD Certificate of Provenance" has the meaning given in paragraph 2 of Schedule 13;

"permitted material" has the meaning given in paragraph 2 of Schedule 13."

Rheoliad 32 (apelau)

9. Yn rheoliad 32(1)(g)(**1**), hepgorer "to market forest reproductive material".

Atodlen 13

10. Yn lle Atodlen 13 rhodder—

"Schedule 13 Regulation 25

PART 1

Forest reproductive material imported into Wales from third countries

Scope of Schedule

1. This Schedule applies to consignments of forest reproductive material produced in an EU-approved third country or a permitted third country.

Interpretation

2. In this Schedule—

"OECD Certificate of Provenance" means a certificate of provenance issued in accordance with the rules of the OECD Scheme;

"OECD label" means a label issued in accordance with the rules of the OECD Scheme;

"the OECD Scheme" means the OECD Scheme for the Certification of Forest Reproductive Material Moving in International Trade adopted by Decision C(2007)69 of the Council of the Organisation for Economic Co-operation

(**1**) Diwygiwyd rheoliad 32(1) gan baragraffau 137 a 158 o Atodlen 4 i O.S. 2013/755 (Cy. 90).

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and Development, as last amended by Decision C(2013)30 of that Council(**1**);

"permitted material" means—

(a) in the case of forest reproductive material produced in an EU-approved third country, forest reproductive material which—

(i) is in the form of seeds or planting stock;

(ii) is of a species or artificial hybrid listed in Schedule 1;

(iii) has been certified as "source-identified", "selected" or "qualified" by the relevant official body in accordance with the rules of the OECD Scheme;

(iv) where it is in the form of seeds, it has been certified as derived from approved basic material by the relevant official body; and

(v) where it is in the form of planting stock, it has been produced in a nursery registered with, or under the official supervision of, the relevant official body;

(b) in the case of forest reproductive material produced in a permitted third country, forest reproductive material which—

(i) is of the species listed in the second column of the table below opposite the reference to the country listed in the first column of the table;

(ii) has been certified as "source identified" by the relevant official body; and

(iii) is derived from a seed source or a stand.

Country of origin	*Species*
Belarus	*Picea abies* Karst.
Bosnia and Herzegovinia	*Pinus nigra* Arnold *Abies alba* Mill.
The former Yugoslav Republic of Macedonia	
New Zealand	*Pinus radiate* D.Don

(**1**) Ar gael oddi wrth OECD Secretariat, Trade and Agriculture Directorate, Agricultural Codes and Schemes (TAD/COD), 2, rue André-Pascal, 75775 Paris, Cedex 16, Ffrainc ac yn www.oecd.org.

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PART 2

Scope of Part 2

3. This Part applies to consignments of permitted material produced in an EU-approved third country.

General requirements

4.—(1) A consignment of permitted material shall be accompanied by—

(a) a copy of the OECD Certificate of Provenance issued in relation to the permitted material; or

(b) a document completed by the supplier of the consignment containing—

(i) all of the information contained in the OECD Certificate of Provenance; and

(ii) in relation to any seed lot, the information specified in paragraph 5.

(2) An OECD label shall be attached to each seed lot and to each consignment of planting stock.

Additional requirements applicable to seed lots

5.—(1) The OECD label attached to a seed lot and any supplier's document accompanying the seed lot shall contain the following additional information in relation to the seed lot, assessed, so far as is practical in all the circumstances, using internationally accepted techniques—

(a) the percentage by weight of pure seed, other seed and inert matter;

(b) the germination percentage of pure seed, or where the germination percentage is impossible or impractical to assess, the viability percentage assessed by reference to a method which shall be described;

(c) the weight of 1000 pure seeds;

(d) the number of germinable seeds per kilogram of the seed, or where the number of germinable seeds is impossible or impractical to assess, the number of viable seeds per kilogram; and

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(e) in the case of a seed lot of closely related species which does not reach a minimum species purity of 99%, the species purity.

(2) But the OECD label and supplier's document may omit the following information—

(a) any information mentioned in sub-paragraph (1)(a) to (e) which is yet to be ascertained by testing the seed using internationally accepted techniques;

(b) in the case of a seed lot containing seed which has been harvested from the current season's crop, any information mentioned in sub-paragraph (1)(b) or (d) which is not yet available;

(c) in the case of seed which is to be marketed in quantities no greater than those described for the species or artificial hybrid of the seed in Schedule 11, the information mentioned in sub-paragraph (1)(b) or (d).

(3) All seed shall be consigned in sealed packages which have been closed in accordance with the rules of the OECD Scheme.

Additional requirements applicable to seed or planting stock of the "qualified category"

6. In the case of forest reproductive material in the form of seed or planting stock of the "qualified category", the OECD label attached to a seed lot or to a consignment of planting stock shall state whether genetic modification has been used in the production of the basic material from which the forest reproductive material is derived.

PART 3

Scope of Part 3

7. This Part applies to consignments of permitted material produced in a permitted third country.

Requirements

8. A consignment of permitted material shall be accompanied by—

(a) an official certificate issued by the official body of the country in which the permitted material was produced which contains equivalent information

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to the information required to complete Schedule 6 and meets equivalent requirements to those specified in regulation 13(9) and (10); and

(b) a document provided by the supplier in the country of origin of the permitted material containing details of the permitted material in the consignment."
.

Lesley Griffiths
Gweinidog yr Amgylchedd, Ynni a Materion Gwledig, un o Weinidogion Cymru
5 Mawrth 2019

Explanatory Memorandum to the Forest Reproductive Material (Great Britain) (Amendment) (Wales) Regulations 2019

This Explanatory Memorandum has been prepared by the Economy, Skills and Natural Resources Department of the Welsh Government and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Forest Reproductive Material (Great Britain) (Amendment) (Wales) Regulations 2019.

Lesley Griffiths
Minister for Environment, Energy and Rural Affairs
7 March 2019

PART 1

1. Description

These Regulations amend the Forest Reproductive Material (Great Britain) Regulations 2002 (S.I. 2002/3026) ("the Principal Regulations") in relation to Wales.

The amendments implement EU decisions on the equivalence of forest reproductive material produced in countries outside the European Union and set out the revised requirements which apply in Wales.

These amendments are necessary to bring Welsh legislation in relation to plant health (forestry) up to date with our obligations under EU law and in line with the law in England and Scotland.

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

Section 2(2) of the European Communities Act 1972 offers a choice between negative and affirmative procedures. The negative procedure will be used in this case as the discretion of the Welsh Ministers is limited over the content of the SI because it is giving effect to EU provisions and we are not amending primary legislation.

3. Legislative background

Council Directive 1999/105/EC ("the Forest Reproductive Material Directive") (OJ No L 11, 15.1.2000, p17) establishes an EU-wide system for the marketing of forest reproductive material such as seed, cuttings and planting stock used for forestry purposes. It contains measures to be taken to ensure full traceability of the material.

The Forest Reproductive Material Directive is implemented in Great Britain, by the Principal Regulations. Similar but separate legislation operates in Northern Ireland. Since the Forest Reproductive Material Directive came into force, a series of EU decisions have been adopted under this Directive in relation to the importation of forest reproductive material from countries outside the EU.

These Regulations set out the revised requirements which apply in Wales in relation to forest reproductive material produced in countries outside the European Union and—

(a) implement Council Decision 2008/971/EC on the equivalence of forest reproductive material produced in third countries (OJ No L 345, 23.12.2008, p. 83), as amended by Decision No. 1104/2012/EU of the European Parliament and of the Council (OJ No L 328, 28.11.2012, p. 1); and

(b) implement in full the derogation permitted by Commission Decision 2008/989/EC authorising member States, in accordance with Council Directive 1999/105/EC, to take decisions on the equivalence of the guarantees afforded by forest reproductive material to be imported from certain third countries (OJ L 352, 31.12.2008, p. 55).

Regulation 3(1)(b) provides for the references to Council Decision 2008/971/EC in the Principal Regulations to be read as references to that instrument as amended from time to time.

The Forest Reproductive Material (Great Britain) (Amendment) (Wales) Regulations 2019 are being made pursuant to powers in the European Communities Act 1972. The Welsh Ministers are designated for the purposes of section 2(2) of the European Communities Act 1972 in relation to the common agricultural policy of the European Union (S.I. 2010/2690).

Section 2(2) of the European Communities Act 1972 provides discretion as to which procedure to use. As we are obliged to implement EU law and we are not amending primary legislation, these Regulations are being made under the negative resolution procedure.

4. Purpose and intended effect of the legislation

The Forest Reproductive Material Directive ensures that forest reproductive material produced in the EU is traceable through the collection and production process to registered sources of basic material (e.g. trees from which the seed is collected or cuttings taken). This allows those who buy forest reproductive material to have sufficient information about the material, such as provenance and origin.

Since 2005, various EU decisions have authorised the importation into the EU of certain forest reproductive material from listed countries outside the EU. Authorisation has aimed at ensuring that the imported material afforded equal guarantees to forest reproductive material produced in the EU in accordance with the Forest Reproductive Material Directive.

Council Decision 2008/971/EC, as amended, and Commission Decision 2008/989/EC currently set out the circumstances in which member States may permit the importation of forest reproductive material from countries outside the EU.

Council Decision 2008/971/EC, which was updated by Decision No. 1104/2012/EU, allows certain categories of forest reproductive material within a wide selection of species to be imported from listed countries provided that various requirements are met. The rules for the certification of this material in these countries, together with the conditions of importation are considered to provide equivalent guarantees to forest reproductive material produced in the EU.

Council Decision 2008/989/EC, on the other hand, authorises member States to take decisions in relation to the importation of a small range of reproductive material from a limited number of countries. It has been decided that this derogation should be implemented in full. The amendments made by this instrument will ensure that any such material which is imported into Wales will provide equivalent guarantees to those applicable to forest reproductive material produced in the EU. The Regulations also provide for references in the Principal Regulations to Council Decision 2008/971/EC to be read as amended from time to time.

Import levels of forest reproductive material from non-EU countries amounts to less than 1% of the total volume of imports of forest reproductive material into Wales. Therefore, adopting these provisions does not result in significant changes to current processes and procedures.

5. Consultation

No formal consultation was considered necessary due to the small number of businesses that import forest reproductive material from third countries outside the European Union.

6. Regulatory Impact Assessment (RIA)

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, it was not considered necessary to carry out a regulatory impact assessment as to the likely costs and benefits of complying with these Regulations.

With regard to the Government of Wales Act 2006 this legislation has no impact on the statutory duties (sections 77-79) or statutory partners (sections 72-75).

SL(5)390 – The Plant Health (Forestry) (Amendment) (Wales) Order 2019

Background and Purpose

This Order applies in relation to Wales certain provisions which have been made amending the Plant Health (Forestry) Order 2005 ("the 2005 Order") in relation to England and Scotland.

Those amending instruments implemented in relation to England and Scotland certain provisions including Commission Directive 2002/757/EC and Commission Implementing Decisions 2014/690/EU, 2015/789/EU, 2015/893/EU, 2012/535/EU, 2015/2416/EU and 2017/2014 and Decision No 1/2015 of the Joint Committee on Agriculture relating to the agreement between the European Community and the Swiss Confederation on trade in agricultural products (2017/169/EU).

In addition, it introduces a new provision to allow the disclosure of information for the purposes of the 2005 Order from HM Revenue and Customs (HMRC) to the Welsh Ministers.

It implements the specific control measures to prevent the introduction of the pest Xylella fastidiosa in Commission Implementing Decision (EU) 2017/2352.

Moreover, this Order implements measures which strengthen import and movement requirements for oak trees, to minimise the risk of further incursions of Thaumetopoea processionea (oak processionary moth (OPM)).

Procedure

Negative

Technical Scrutiny

Four points are identified for reporting under Standing Order 21.2 in respect of this instrument.

1. **Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements**

Article 6(a) of this Order amends article 21(1) of the 2005 Order to make reference to article 18(3) of the same Order. However, article 18(3) of the 2005 Order only applies in relation to England and Scotland, and it is therefore unclear as to why article 21(1) of the 2005 Order would refer to article 18(3) of the same Order in relation to Wales.

2. **Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements**

Article 7(b) of this Order inserts a new paragraph (1B) into article 40 of the 2005 Order in relation to Wales. However, it then applies the new paragraph (1B) in relation to England and Scotland, replacing the current paragraph (1B) that applies to them. Though this does not seem to have an adverse legal effect, as the instrument is limited in application to Wales, the paragraph appears to be unworkable.

3. **Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements**

Article 15(b) of this Order substitutes wording in Part A of Schedule 4 to the 2005 Order relating to item 10A, removing a reference to Decision (EU) 2015/2416. However, article 15(c) of this Order then substitutes item 10A in Part A of Schedule 4 to the 2005 Order in its entirety, while leaving in the reference to Decision (EU) 2015/2416. Therefore, articles 15(b) and (c) of this Order are contradictory.

4. **Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements**

Article 20(b) of this Order substitutes wording in paragraph 3(a)(ii) in Part B of Schedule 6 to the 2005 Order. However, the exact same wording already appears to be in force in relation to Wales. While this does not cause an adverse legal effect, the inclusion of article 20(b) appears to be unnecessary.

Merits Scrutiny

No points are identified for reporting under Standing Order 21.3 in respect of this instrument.

Implications arising from exiting the European Union

After the UK exits the European Union, this instrument will form part of retained EU law.

Government Response

A government response is required.

Legal Advisers
Constitutional and Legislative Affairs Committee
20 March 2019

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O F F E R Y N N A U S T A T U D O L
C Y M R U

2019 Rhif 498 (Cy. 115)

IECHYD PLANHIGION, CYMRU

Gorchymyn Iechyd Planhigion (Coedwigaeth) (Diwygio) (Cymru) 2019

NODYN ESBONIADOL

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

Mae'r Gorchymyn hwn yn cymhwyso o ran Cymru ddarpariaethau penodol sydd wedi eu gwneud ac sy'n diwygio Gorchymyn Iechyd Planhigion (Coedwigaeth) 2005 (O.S. 2005/2517) ("Gorchymyn 2005") o ran yr Alban a Lloegr. Cafodd y diwygiadau hynny eu gwneud gan Orchymyn Iechyd Planhigion (Coedwigaeth) (Diwygio) (Yr Alban a Lloegr) 2016 (O.S. 2016/1167) ("Gorchymyn 2016") a Gorchymyn Iechyd Planhigion (Coedwigaeth) (Diwygio) (Yr Alban a Lloegr) 2017 (O.S. 2017/1178) ("Gorchymyn 2017") a Gorchymyn Iechyd Planhigion (Coedwigaeth) (Diwygio) (Yr Alban a Lloegr) 2018 (O.S. 2018/1048) ("Gorchymyn 2018").

Rhoddodd y Gorchmynion hyn ddarpariaethau penodol ar waith o ran yr Alban a Lloegr, gan gynnwys Penderfyniad y Comisiwn 2002/757/EC a Phenderfyniadau Gweithredu'r Comisiwn 2014/690/EU, 2015/789/EU, 2015/893/EU, 2012/535/EU, 2015/2416/EU a 2017/204 a Phenderfyniad Rhif 1/2015 y Cyd-bwyllgor ar Amaethyddiaeth yn ymwneud â'r cytundeb rhwng y Gymuned Ewropeaidd a Chydffederasiwn y Swistir ynghylch masnachu cynhyrchion amaethyddol (2017/169/EU).

Yn ychwanegol, mae'n cyflwyno darpariaeth newydd i ganiatáu i wybodaeth gael ei datgelu gan Gyllid a Thollau EM (CThEM) i Weinidogion Cymru, a hynny at ddibenion Gorchymyn 2005.

Mae'n rhoi ar waith y mesurau rheoli penodol ym Mhenderfyniad Gweithredu'r Comisiwn (EU) 2017/2352 er mwyn atal y pla Xylella fastidiosa rhag cael ei gyflwyno.

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Ar ben hynny mae'r Gorchymyn hwn yn rhoi mesurau ar waith sy'n cryfhau gofynion ynglŷn â mewnforio a symud coed derw, er mwyn lleihau'r risg y ceir rhagor o Thaumetopoea processionea (gwyfyn ymdeithiwr y derw (GYD)).

Nid oes asesiad effaith rheoleiddiol llawn wedi ei lunio ar gyfer yr offeryn hwn gan na ragwelir unrhyw effaith ar y sector preifat na'r sector gwirfoddol.

Nid yw'r offeryn hwn yn ymwneud ag ymadael â'r Undeb Ewropeaidd nac yn ysgogi'r gofynion ynglŷn â datganiadau o dan Ddeddf yr Undeb Ewropeaidd (Ymadael) 2018.

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O F F E R Y N N A U S T A T U D O L
C Y M R U

2019 Rhif 498 (Cy. 115)

IECHYD PLANHIGION, CYMRU

Gorchymyn Iechyd Planhigion (Coedwigaeth) (Diwygio) (Cymru) 2019

Gwnaed *5 Mawrth 2019*

Gosodwyd gerbron Cynulliad Cenedlaethol Cymru *7 Mawrth 2019*

Yn dod i rym *28 Mawrth 2019*

Mae Gweinidogion Cymru, drwy arfer y pwerau a roddir gan adrannau 2 a 3(1) o Ddeddf Iechyd Planhigion 1967(**1**) a pharagraff 1A o Atodlen 2 i Ddeddf y Cymunedau Ewropeaidd 1972(**2**), yn gwneud y Gorchymyn a ganlyn.

Mae'r Gorchymyn hwn yn gwneud darpariaeth ar gyfer diben a grybwyllir yn adran 2(2) o Ddeddf y Cymunedau Ewropeaidd 1972(**3**) ac mae'n ymddangos i Weinidogion Cymru ei bod yn hwylus i gyfeiriadau at offerynnau'r Undeb Ewropeaidd a grybwyllir yn

(**1**) 1967 p. 8. Mae'r pwerau a roddir gan adrannau 2 a 3(1) yn cael eu rhoi i awdurdod cymwys ("competent authority"), a ddiffinnir yn adran 1(2) fel Gweinidogion Cymru, o ran Cymru. Diwygiwyd adran 1(2) gan baragraff 43 o Atodlen 2 i Orchymyn Corff Adnoddau Naturiol Cymru (Swyddogaethau) 2013 (O.S. 2013/755 (Cy. 90)). Diwygiwyd adran 2 gan baragraff 8(2)(a) o Atodlen 4 i Ddeddf y Cymunedau Ewropeaidd 1972 (p. 68), Rhan 1 o'r tabl ym mharagraff 12 o Atodlen 4 i Ddeddf Rheoli Tollau Tramor a Chartref 1979 (p. 2) ac O.S. 1990/2371 a 2011/1043. Diwygiwyd adrannau 2(1) a 3(1) gan baragraff 8 o Atodlen 4 i Ddeddf y Cymunedau Ewropeaidd 1972 (p. 68). Diwygiwyd adran 3(1) hefyd gan O.S. 2011/1043, erthygl 6.

(**2**) 1972 p. 68; mewnosodwyd paragraff 1A o Atodlen 2 gan adran 28 o Ddeddf Diwygio Deddfwriaethol a Rheoleiddiol 2006 (p. 51) ac fe'i diwygiwyd gan Ran 1 o'r Atodlen i Ddeddf yr Undeb Ewropeaidd (Diwygio) 2008 (p. 7) ac O.S. 2007/1388.

(**3**) Diwygiwyd adran 2(2) gan adran 27(1)(a) o Ddeddf Diwygio Deddfwriaethol a Rheoleiddiol 2006, a Rhan 1 o'r Atodlen i Ddeddf yr Undeb Ewropeaidd (Diwygio) 2008.

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erthygl 3(a)(ii) a (iii) gael eu dehongli fel cyfeiriadau at yr offerynnau hynny fel y'u diwygir o bryd i'w gilydd.

Enwi, cychwyn a chymhwyso

1.—(1) Enw'r Gorchymyn hwn yw Gorchymyn Iechyd Planhigion (Coedwigaeth) (Diwygio) (Cymru) 2019, a daw i rym ar 28 Mawrth 2019.

(2) Mae'r Gorchymyn hwn yn gymwys o ran Cymru.

Diwygio Gorchymyn Iechyd Planhigion (Coedwigaeth) 2005

2. Mae Gorchymyn Iechyd Planhigion (Coedwigaeth) 2005(**1**) wedi ei ddiwygio fel a ganlyn.

Erthygl 2 (dehongli cyffredinol)

3. Yn erthygl 2(**2**)—

(a) ym mharagraff (1)—

(i) yn y diffiniad o "associated controlled dunnage", yn lle "12A or 13" rhodder "12, 12A, 13 or 13C";

(ii) ar ôl y diffiniad o "debarked" mewnosoder—

""Decision 2002/757/EC" means Commission Decision 2002/757/EC on provisional emergency phytosanitary measures to prevent the introduction into and the spread within the Community of "*Phytophthora ramorum*"; Werres, De Cock & Man in 't Veld sp. nov., as amended from time to time(**3**);";

(iii) ar ôl y diffiniad o "Decision 2012/138/EU" mewnosoder—

""Decision 2012/535/EU" means Commission Implementing Decision 2012/535/EU on emergency measures to prevent the spread within the Union of "*Bursaphelenchus xylophilus* (Steiner et Buhrer) Nickle et al. (the pine wood nematode), as amended from time to time(**4**);

(**1**) O.S. 2005/2517. Offerynnau diwygio perthnasol yw O.S. 2006/2696, 2008/644, 2009/594, 2009/3020, 2011/1043, 2012/2707, 2013/755 (Cy. 90), 2013/2691, 2014/2420, 2015/1723 (Cy. 235), 2016/1167, 2017/1178 a 2018/1048.

(**2**) Cymhwyswyd y diffiniadau a fewnosodwyd neu a amnewidiwyd gan O.S. 2013/2691 ac O.S. 2014/240 at Gymru gan O.S. 2015/1723 (Cy. 235), erthygl 2 ac wedyn cafodd dirymiadau perthnasol eu gwneud gan O.S. 2015/1723 (Cy. 235), erthygl 3.

(**3**) OJ Rhif L 252, 20.9.2002, t. 37, fel y'i diwygiwyd ddiwethaf gan Benderfyniad Gweithredu'r Comisiwn (EU) 2016/1967 (OJ Rhif L 303, 20.11.2016, t. 21).

(**4**) OJ Rhif L 266, 2.10.2012, t. 42, fel y'i diwygiwyd ddiwethaf gan Benderfyniad Gweithredu'r Comisiwn (EU) 2018/618 (OJ Rhif L 102, 23.4.2018, t. 17).

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"Decision (EU) 2015/789" means Commission Implementing Decision (EU) 2015/789 as regards measures to prevent the introduction into and the spread within the Union of *Xylella fastidiosa* (Wells et al.), as amended from time to time(**1**);

"Decision (EU) 2015/893" means Commission Implementing Decision (EU) 2015/893 as regards measures to prevent the introduction into and the spread within the Union of *Anoplophora glabripennis* (Motschulsky), as amended from time to time(**2**);";

(iv) yn lle'r diffiniadau o "ISPM No. 4" ac "ISPM No. 15" rhodder—

""ISPM No. 4" means International Standard for Phytosanitary Measures No. 4 of November 1995 on the requirements for the establishment of pest-free areas, prepared by the Secretariat of the IPPC established by the Food and Agriculture Organisation of the United Nations(**3**);

"ISPM No. 10" means International Standard for Phytosanitary Measures No. 10 of October 1999 on requirements for the establishment of pest free places of production and pest free production sites, prepared by the Secretariat of the IPPC established by the Food and Agriculture Organisation of the United Nations(**4**);

"ISPM No. 15" means International Standard for Phytosanitary Measures No. 15 of March 2002 on the regulation of wood packaging material in international trade, prepared by the Secretariat of the IPPC established by the Food and Agriculture Organisation of the United Nations(**5**);";

(v) ar ôl y diffiniad o "official statement" mewnosoder—

""the OPM protected zone" means the area in Great Britain which is within the protected zone recognised for the United Kingdom in relation to *Thaumetopoea processionea* L.

(**1**) OJ Rhif L 125, 21.5.2015, t. 36, fel y'i diwygiwyd ddiwethaf gan Benderfyniad Gweithredu'r Comisiwn (EU) 2018/927 (OJ Rhif L 164, 29.6.2018, t. 49).

(**2**) OJ Rhif L 146, 11.6.2015, t. 16.

(**3**) Mae'r fersiwn ddiweddaraf a gyhoeddwyd ar gael yn: https://www.ippc.int/en/core-activities/standards-etting/ispms/#publications.

(**4**) Mae'r fersiwn ddiweddaraf a gyhoeddwyd ar gael yn: https://www.ippc.int/en/core-activities/standards-setting/ispms/#publications.

(**5**) Mae'r fersiwn ddiweddaraf a gyhoeddwyd ar gael yn: https://www.ippc.int/en/core-activities/standards-setting/ispms/#publications.

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and described in point 16 under heading (a) of Annex 1 to Regulation (EC) No 690/2008(**1**);";

(vi) yn lle'r atalnod llawn ar ddiwedd y diffiniad o "wood packaging material" rhodder—

";

"working day", in relation to notice requirements in articles 6(3)(b)(ii), 16(3) and 18(4) and the period for which material may be detained under article 14(1), means a period of twenty-four hours which is not a Saturday, Sunday, Christmas Day, Good Friday or a bank holiday under the Banking and Financial Dealings Act 1971 in England and Wales or in Scotland;";

(vii) ar ôl y diffiniad o "working day" mewnosoder—

""working hour" means a period of one hour during a working day.";

(b) ym mharagraff (3A), ar ôl "18(1)," mewnosoder "18(3),"; ac

(c) ar ôl paragraff (4) mewnosoder—

"(5) The requirements specified in any entry in column 3 of Part A, Part B or Part C of Schedule 4 are without prejudice to any other requirements specified in another entry in column 3 of that Part."

Erthygl 3 (dehongli Rhan 2)

4. Yn erthygl 3(**2**)**—**

(a) yn lle'r hanner colon ar ddiwedd y diffiniad o "industry certificate" rhodder atalnod llawn;

(b) yn y diffiniad o "Customs Code", yn lle'r geiriau o "Council" hyd at y diwedd rhodder "Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code(**3**)";

(c) yn y diffiniad o "customs document", yn lle "Article 4(16)(a) and (d) to (g)" rhodder "Article 5(16)(a) and (b)"; a

(d) hepgorer y diffiniadau o "working day" a "working hour".

(**1**) OJ Rhif L 193, 22.7.2008, t. 1, fel y'i diwygiwyd ddiwethaf gan Reoliad Gweithredu'r Comisiwn (EU) 2018/791 (OJ Rhif L 136, 1.6.2018, t. 1).
(**2**) Diwygiwyd erthygl 3 gan O.S. 2013/755 (Cy. 90).
(**3**) OJ Rhif L 269, 10.10.2013, t. 1, fel y'i diwygiwyd gan Reoliad (EU) 2016/2339 Senedd Ewrop a'r Cyngor (OJ Rhif L 354, 23.12.2016, t. 32).

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Erthygl 20 (gofynion ynglŷn â phasbortau planhigion)

5. Yn erthygl 20(**1**)—

(a) ym mharagraff (2)—

(i) ar ôl "within" mewnosoder "a protected zone in";

(ii) hepgorer "relevant territory as a";

(b) ym mharagraff (4)—

(i) ar ôl "within" mewnosoder "a protected zone in";

(ii) yn lle "the relevant territory in which the movement takes place as a" rhodder "that";

(c) hepgorer paragraff (8)(**2**); a

(d) ar ôl y paragraff (8) sydd wedi ei hepgor, mewnosoder—

"(9) In the case of any relevant material of a description specified in paragraph 1A of Part A of Schedules 6 and 7, the plant passport shall have been issued by a treatment facility authorised in accordance with Article 13 of Decision 2012/535/EU.

(10) In paragraphs (2) and (4), "protected zone in a relevant territory" means any part of a protected zone which is in a relevant territory."

Erthygl 21 (eithriadau rhag gwaharddiadau a gofynion penodol)

6. Yn erthygl 21(**3**)—

(a) ym mharagraff (1), yn lle "and (g)" rhodder ", (g) and (3)"; a

(b) ar ôl paragraff (2) mewnosoder—

"(2A) In the case of trees of host plants within the meaning of Article 1(b) of Decision (EU) 2015/789, the requirements in article 20(1) and (5) which would apply by virtue of paragraph 9 of Part A of Schedules 6 and 7 do not apply where the trees are being moved by a person acting for purposes outside the person's trade, business or profession and the person is acquiring them for personal use."

(**1**) Diwygiwyd erthygl 20 o ran Cymru gan O.S. 2013/755 (Cy. 90).

(**2**) Mewnosodwyd erthygl 20(8) yn wreiddiol gan O.S. 2013/2691 ac fe'i diwygiwyd gan O.S. 2014/2420 ac mae'n gymwys i Gymru yn rhinwedd O.S. 2015/1723 (Cy. 235), erthygl 2(l).

(**3**) Diwygiwyd erthygl 21 gan O.S. 2013/2691 a 2014/2420 a'i chymhwyso at Gymru gan O.S. 2015/1723 (Cy. 235), erthyglau 2(e) a 2(m).

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Erthygl 40 (hysbysu bod plâu coed penodol yn bresennol neu yr amheuir eu bod yn bresennol)

7. Yn erthygl 40(**1**)—

(a) ym mharagraff (1), yn lle "any tree pest to which this article applies" rhodder "any notifiable tree pest";

(b) ar ôl paragraff (1A), yn y testun sy'n gymwys i Gymru, mewnosoder—

"(1B) If the appropriate authority becomes aware of the presence or suspected presence of *Xylella fastidiosa* (Wells et al.) in any place or area in the relevant territory, the appropriate authority shall ensure that any person having under their control trees which may be infected by *Xylella fastidiosa* (Wells et al.) is immediately informed of—

(a) its presence or suspected presence;

(b) the possible consequences arising from its presence or suspected presence; and

(c) the measures to be taken as a result.",

a rhodder testun y paragraff (1B) newydd, uchod, yn lle paragraff (1B) o'r testun sy'n gymwys i'r Alban a Lloegr; ac

(c) ym mharagraff (2), yn lle "This article applies to" rhodder "In paragraph (1), "notifiable tree pest" means".

Erthygl 42A (pŵer i rannu gwybodaeth at ddibenion y Gorchymyn)

8. Ar ôl erthygl 42 mewnosoder—

"Power to share information for the purpose of the Order

42A.—(1) The Commissioners for Her Majesty's Revenue and Customs may disclose any information in their possession to the appropriate authority for the purposes of this Order.

(2) Paragraph (1) is without prejudice to any other power of the Commissioners for Her Majesty's Revenue and Customs to disclose information.

(3) No person, including a servant of the Crown, may disclose any information received from the Commissioners for Her Majesty's Revenue and Customs under paragraph (1) if—

(**1**) Diwygiwyd erthygl 40 gan O.S. 2006/2696, 2013/755 a 2014/2420, a'i chymhwyso at Gymru yn rhinwedd O.S. 2015/1723 (Cy. 235). Diwygiwyd erthygl 40 wedyn gan O.S. 2016/1167.

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(a) the information relates to a person whose identity is specified in the disclosure or can be deduced from the disclosure;

(b) the disclosure is for a purpose other than specified in paragraph (1); and

(c) the Commissioners for Her Majesty's Revenue and Customs have not given their prior consent to the disclosure."

Erthygl 43 (troseddau)

9. Yn erthygl 43(1)(a)(**1**)—

(a) ar ddiwedd paragraff (xiii), hepgorer "and";

(b) ar ddiwedd paragraff (xiv), mewnosoder "and"; ac

(c) ar ôl paragraff (xiv) mewnosoder—

"(xv) article 42A(3)."

Erthygl 44 (cosbi)

10. Yn lle erthygl 44 rhodder—

"**44.**—(1) A person guilty of an offence under this Order (other than an offence under article 43(1)(a)(xv)) is liable—

(a) on summary conviction in England or Wales, to a fine;

(b) on summary conviction in Scotland, to a fine not exceeding level 5 on the standard scale.

(2) A person guilty of an offence under article 43(1)(a)(xv) is liable—

(a) on summary conviction in England or Wales, to imprisonment for a term not exceeding three months, to a fine or to both;

(b) on summary conviction in Scotland, to imprisonment for a term not exceeding three months, to a fine not exceeding the statutory maximum or to both;

(c) on conviction on indictment, to imprisonment for a term not exceeding two years, to a fine or to both."

Atodlen 1 (plâu coed na chaniateir eu glanio na'u lledaenu ym Mhrydain Fawr)

11. Yn Atodlen 1(**2**)—

(**1**) Diwygiwyd erthygl 43 gan O.S. 2013/755 (Cy. 90).

(**2**) Gwnaed diwygiadau i Atodlen 1 gan O.S. 2006/2696, 2008/644, 2009/594 a 2014/2420 ac a gymhwyswyd at Gymru gan O.S. 2015/1723 (Cy. 235). Diwygiwyd Atodlen 1 wedyn gan O.S. 2016/1167 a 2017/1178.

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(a) o dan y pennawd "Insects, mites and nematodes"—

(i) ar ôl eitem 7 mewnosoder—

"7A.	*Saperda candida Fabricus*";

(ii) ar ôl eitem 10 mewnosoder—

"**Bacteria**

1.	*Xylella fastidiosa* (Wells et al.)";

(b) o dan y pennawd "Fungi", ar ôl eitem 10 mewnosoder—

"11.	*Phytophthora ramorum* Werres, De Cock & Man in 't Veld sp. Nov."; ac

(c) o dan y pennawd "Viruses and virus-like organisms", yn lle "*Elm phlöem necrosis mycoplasma*" rhodder "*Candidatus* Phytoplasma ulmi".

Atodlen 1A (plâu coed na chaniateir eu glanio na'u lledaenu mewn parth gwarchodedig sydd wedi ei gyfyngu o ran yr Alban a Lloegr i ran o'r ardal honno)

12. Yn lle Atodlen 1A(**1**) rhodder—

"SCHEDULE 1A

Articles 5(1A), 18(1A), 19(1), 20(8), 31(5), 32(2), 40(2), 41(2) and 42(2)

Tree pests which shall not be landed in or spread within a protected zone which is limited in relation to Great Britain to part of that area

(1) Tree pest	(2) Description of protected zone
Thaumetopoea processionea L., the Oak Processionary Moth	The OPM protected zone".

(**1**) Mewnosodwyd Atodlen 1A gan O.S. 2014/2420 (fel y'i cymhwyswyd at Gymru gan O.S. 2015/1723 (Cy. 235)).

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Atodlen 2 Rhan B (deunydd perthnasol na chaniateir ei lanio na'i symud ym Mhrydain Fawr (fel parth gwarchodedig) os yw'r deunydd hwnnw'n cario plâu coed neu wedi ei heintio â phlâu coed)

13. Yn Rhan B o Atodlen 2, ar ôl eitem 4, yn lle'r testun sy'n gymwys o ran Cymru, mewnosoder—

"5.	Great Britain	Trees, other than fruit or seeds, of Pinus L., intended for planting.	Thaumetopoea pityocampa Denis & Schiffermüller
6.	Great Britain	Trees, other than fruit or seeds, of Ulmus L., intended for planting	Candidatus Phytoplasma ulmi".

Atodlen 3 (deunydd perthnasol na chaniateir ei lanio ym Mhrydain Fawr os yw'r deunydd hwnnw'n tarddu o drydydd gwledydd penodol)

14. Yn Atodlen 3(**1**)—

(a) yn y cofnod yn nhrydedd golofn eitem 5, ar ôl "North America" mewnosoder ", other than the USA";

(b) ar ôl eitem 8 mewnosoder—

"9.	Susceptible bark within the meaning of Article 1(4) of Decision 2002/757/EC	The USA".

Atodlen 4 Rhan A (deunydd perthnasol, o drydydd gwledydd, na chaniateir ei lanio ym Mhrydain Fawr oni fodlonir gofynion arbennig)

15. Yn Rhan A o Atodlen 4(**2**)—

(a) yn eitem 8—

(i) yn y cofnod yn ail golofn y tabl, yn lle "12A or 13" rhodder "12, 12A, 13 or 13C";

(ii) yn y cofnod yn nhrydedd golofn y tabl, ym mharagraff (a), ar ôl "be" mewnosoder "made of debarked wood and";

(**1**) Diwygiwyd eitem 8 gan O.S. 2009/3020.

(**2**) Mewnosodwyd eitem 10A yn wreiddiol fel eitem 10a gan O.S. 2009/594 ac fe'i diwygiwyd gan O.S. 2014/2420. Diwygiwyd eitem 11 gan O.S. 2014/2420. Diwygiwyd eitem 13 gan O.S. 2014/2420. Mewnosodwyd eitem 16A gan O.S. 2014/2420. Mewnosodwyd eitem 19b gan O.S. 2012/2707. Mewnosodwyd eitem 24B yn wreiddiol fel eitem 24a gan O.S. 2006/2696 a'i ailrifo gan O.S. 2013/2691. Mewnosodwyd eitem 34 gan O.S. 2013/2691. Ceir diwygiadau eraill i Ran A o Atodlen 4, ond nid yw'r un yn berthnasol.

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(b) yn y cofnod yn nhrydedd golofn eitem 10A, yn lle "as referred to in Article 1 of Decision (EU) 2015/2416" rhodder "for the purposes of point 2.3 of Annex 4, Part A, Section 1 of the Directive";

(c) yn lle eitem 10A rhodder—

"**10A.**	Wood of *Fraxinus* L., *Juglans ailantifolia* Carr., *Juglans mandshurica* Maxim., *Ulmus davidiana* Planch. or *Pterocarya rhoifolia* Siebold & Zucc., other than in the form of: —chips, particles, sawdust, shavings, wood waste or scrap, obtained in whole or part from these trees, or —wood packaging material, except associated controlled dunnage, but including wood which has not kept its natural round surface, furniture or other objects made of untreated wood, originating in Canada, China, Democratic People's Republic of Korea, Japan, Mongolia, Republic of Korea, Russia, Taiwan or the USA	The wood shall be accompanied by an official statement that: (a) its bark and at least 2.5cm of the outer sapwood have been removed in a facility authorised and supervised by the national plant protection organisation; (b) the wood has undergone ionizing irradiation to achieve a minimum absorbed dose of 1 kGy throughout the wood; or (c) the wood originates in an area recognised as being free from *Agrilus planipennis* Fairmaire, as referred to in Article 1 of Decision (EU) 2015/2416, and which is mentioned on the phytosanitary certificate or phytosanitary certificate for re-export";

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(d) yn y cofnod yn ail golofn eitem 11, ar ôl "other than" mewnosoder "wood which complies with the requirements in paragraph (b) in the third column of item 13A or wood";

(e) yn lle'r cofnod yn ail golofn eitem 12 rhodder—

"Wood of Platanus L., other than in the form of:

— chips, particles, sawdust, shavings, wood waste or scrap, or

— wood packaging material, except associated controlled dunnage,

but including wood which has not kept its natural round surface, originating in Armenia, Switzerland or the USA";

(f) ar ôl eitem 13 mewnosoder—

"**13A.**	Susceptible wood within the meaning of Article 1(3) of Decision 2002/757/EC originating in the USA	The wood shall be accompanied by a phytosanitary certificate or phytosanitary certificate for re-export that: (a) it originates in an area in which non-European isolates of *Phytophthora ramoru*m Werres, De Cock & Man in 't Veld sp. nov. is known not to occur and which is mentioned under the heading "place of origin"; (b) it meets the requirements specified in point 2(b) of Annex 1 to Decision 2002/757/EC; or (c) in the case of sawn wood with or without residual bark attached, it has undergone kiln-drying in the manner specified in point 2(c) of Annex 1 to that Decision, and there shall be evidence by a mark "Kiln-dried" or "KD" or another internationally recognised mark put

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		on the wood or its packaging in accordance with current commercial usage
13B.	Specified wood within the meaning of Article 1(b) of Decision (EU) 2015/893, originating in any third country where *Anoplophora glabripennis* (Motschulsky) is known to be present	The wood shall be accompanied by a phytosanitary certificate or phytosanitary certificate for re-export which— (a) in the case of wood in the form of chips, particles, shavings, wood waste or scrap, includes: (i) an official statement under the heading "Additional Declaration" that it meets the requirements specified in point (2)(a), (b) or (c) of Section 1(B) of Annex II to Decision (EU) 2015/893; and (ii) where point (1)(a) of that Section applies, the name of the pest-free area under the heading "place of origin"; (b) in any other case, includes: (i) an official statement under the heading "Additional Declaration" that it meets the requirements specified in point (1)(a) of that Section and the name of the pest-free area under the heading "place of origin"; or (ii) an official statement under the heading "Additional Declaration" that it is debarked and has undergone heat treatment in the manner specified in point (1)(b) of that

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		Section, and there shall be evidence of that heat treatment by a mark "HT" put on the wood or on any wrapping in accordance with current usage";

(g) ar ôl eitem 13B mewnosoder—

" **13C**.	Wood of *Amelanchier* Medik., *Aronia* Medik., *Cotoneaster* Medik., *Crataegus* L., *Cydonia* Mill., *Malus* Mill., *Prunus* L., *Pyracantha* M. Roem, *Pyrus* L. or *Sorbus* L., other than in the form of: —chips, sawdust or shavings, obtained in whole or in part from these trees, or —wood packaging material, except associated controlled dunnage, but including wood which has not kept its natural round surface, originating in Canada or the USA	The wood must be accompanied by an official statement that: (a) it originates in an area free from *Saperda candida* Fabricius, established by the national plant protection organisation in the country of origin in accordance with ISPM No. 4, and which is mentioned on the phytosanitary certificate or the phytosanitary certificate for re-export under the heading "Additional Declaration"; (b) it has undergone an appropriate heat treatment to achieve a minimum temperature of 56˚C for a minimum duration of 30 continuous minutes throughout the entire profile of the wood, and which is indicated on the phytosanitary certificate or the phytosanitary certificate for re-export; or (c) it has undergone appropriate ionising radiation to achieve a minimum absorbed dose of 1 kGy throughout the wood, and which is indicated on the phytosanitary

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		certificate or the phytosanitary certificate for re-export”;

(h) ar ôl eitem 15 mewnosoder—

“ **15A**.	Wood in the form of chips obtained in whole or in part from *Amelanchier* Medik., *Aronia* Medik., *Cotoneaster* Medik., *Crataegus* L., *Cydonia* Mill., *Malus* Mill., *Prunus* L., *Pyracantha* M. Roem, *Pyrus* L. or *Sorbus* L., originating in Canada or the USA	The wood must be accompanied by an official statement that: (a) it originates in an area free from *Saperda candida* Fabricius, established by the national plant protection organisation in the country of origin in accordance with ISPM No. 4, which is mentioned on the phytosanitary certificate or the phytosanitary certificate for re-export under the heading “Additional Declaration”; (b) it has been processed into pieces of not more than 2.5 cm thickness and width; or (c) it has undergone an appropriate heat treatment to achieve a minimum temperature of 56˚C for a minimum duration of 30 continuous minutes throughout the entire profile of the chips, and which is indicated on the phytosanitary certificate or the phytosanitary certificate for re-export”;

(i) ar ôl eitem 16A mewnosoder—

“**17.**	Wood in the form of chips, particles,	The wood shall be accompanied by an

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	sawdust, shavings, wood waste or scrap obtained in whole or in part from *Fraxinus* L., *Juglans ailantifolia* Carr., *Juglans mandshurica* Maxim., *Ulmus davidiana* Planch. or *Pterocarya rhoifolia* Siebold & Zucc., originating in Canada, China, Democratic People's Republic of Korea, Japan, Mongolia, Republic of Korea, Russia, Taiwan or the USA	official statement that the wood originates in an area recognised as being free from *Agrilus planipennis* Fairmaire, for the purposes of point 2.4 of Annex 4, Part A, Section 1 of the Directive, and which is mentioned on the phytosanitary certificate or phytosanitary certificate for re-export
17A.	Isolated bark or objects made out of bark of *Fraxinus* L., *Juglans ailantifolia* Carr., *Juglans mandshurica* Maxim., *Ulmus davidiana* Planch. or *Pterocarya rhoifolia* Siebold & Zucc., originating in Canada, China, Democratic People's Republic of Korea, Japan, Mongolia, Republic of Korea, Russia, Taiwan or the USA	The bark shall be accompanied by an official statement that the bark originates in an area recognised as being free from *Agrilus planipennis* Fairmaire, for the purposes of point 2.5 of Annex 4, Part A, Section 1 of the Directive, and which is mentioned on the phytosanitary certificate or phytosanitary certificate for re-export";

(j) yn y cofnod yn nhrydedd golofn eitem 19b, yn lle "No 4" rhodder "No. 4";

(k) ar ôl eitem 19b mewnosoder—

" **19C.**	Trees, other than fruit or seeds, but including cut branches with or without foliage, of *Fraxinus* L., *Juglans ailantifolia* Carr., *Juglans mandshurica* Maxim., *Ulmus davidiana* Planch. or *Pterocarya rhoifolia* Siebold & Zucc., originating in Canada,	The trees shall be accompanied by an official statement that they originate in an area recognised as being free from *Agrilus planipennis* Fairmaire for the purposes of point 11.4 of Annex IV Part A Section I of the Directive, and which

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	China, Democratic People's Republic of Korea, Japan, Mongolia, Republic of Korea, Russia, Taiwan or the USA	is mentioned on the phytosanitary certificate or phytosanitary certificate for re-export";

(l) hepgorer eitem 24B;

(m) yn y cofnod yn nhrydedd golofn eitem 28, yn lle "Elm phlöem necrosis mycoplasm" rhodder "Candidatus Phytoplasma ulmi";

(n) ar ôl eitem 28 mewnosoder—

"**28A.**	Trees, other than scions, cuttings, plants in tissue culture, pollen or seeds, of Amelanchier Medik., Aronia Medik., Cotoneaster Medik., Crataegus L., Cydonia Mill., Malus Mill., Prunus L., Pyracantha M. Roem., Pyrus L. or Sorbus L., intended for planting, originating in Canada or the USA	The trees must be accompanied by an official statement that: (a) they have been grown throughout their life in an area free from Saperda candida Fabricius, established by the national plant protection organisation in the country of origin in accordance with ISPM No. 4, and which is mentioned on the phytosanitary certificate or the phytosanitary certificate for re-export under the heading "Additional Declaration"; or (b) they have been grown during a period of at least two years prior to export, or in the case of trees which are younger than two years, have been grown throughout their life, in a place of production established as free from Saperda candida Fabricius in accordance with ISPM No. 10: (i) which is registered and supervised by the national plant protection organisation in the

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		country of origin; (ii) which has been subjected annually to two official inspections for any signs of Saperda candida Fabricius carried out at appropriate times; (iii) where the trees have been grown in a site with complete physical protection against the introduction of Saperda candida Fabricius or with the application of appropriate preventive treatments and surrounded by a buffer zone with a width of at least 500 m in which the absence of Saperda candida Fabricius was confirmed by official surveys carried out annually at appropriate times; and immediately prior to export, the trees, and in particular their stems, have been subjected to a meticulous inspection for their presence of Saperda candida Fabricius, which included destructive sampling, where appropriate”;

(o) ar ôl eitem 34 mewnosoder—

“**35.**	Trees of susceptible plants within the meaning of Article 1(2) of Decision 2002/757/EC, other than trees of *Camellia* spp. L., *Rhododendron*	The trees shall be accompanied by a phytosanitary certificate or phytosanitary certificate for re-export which includes: (a) an official statement under the heading “Additional Declaration” that they: (i) meet the requirements

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	spp. L. or *Viburnum* spp. L., originating in the USA	specified in point 1a(a) or 1a(b) of Annex I to Decision 2002/757/EC; and (ii) have been inspected in accordance with point 1a of that Annex and found free from non-European isolates of *Phytophthora ramorum* Werres, De Cock & Man in 't Veld sp. nov.; and (b) where point 1a(a) of that Annex applies, the name of the area in which they originate under the heading "place of origin"
36.	Trees of specified plants within the meaning of Article 1(c) of Decision (EU) 2015/789 originating in any third country, other than a third country where *Xylella fastidiosa* (Wells et al.) is known to be present	The trees shall: (a) originate in a third country which has been notified to the European Commission by the relevant national plant protection organisation in accordance with Article 16(a) of Decision (EU) 2015/789; and (b) be accompanied by a phytosanitary certificate which includes an official statement under the heading "Additional Declaration" in accordance with Article 16(b) of that Decision
37.	Trees of specified plants within the meaning of Article 1(c) of Decision (EU) 2015/789 originating in any third country where *Xylella fastidiosa* (Wells et al.) is known to be present, other than those which have been grown for their entire	The trees shall be accompanied by a phytosanitary certificate which includes: (a) in the case of trees originating in an area which has been established as free from *Xylella fastidiosa* (Wells et al.) in accordance with ISPM No. 4 and has been notified to the European Commission by the relevant national plant protection organisation in accordance with Article 17(2)(a) of Decision (EU) 2015/789, the name of the area under the heading

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	production cycle *in vitro*	"place of origin"; or (b) in the case of trees which originate in an area where *Xylella fastidiosa* (Wells et al.) is known to be present: (i) an official statement under the heading "Additional Declaration" in accordance with Article 17(3) of that Decision; and (ii) the name of the site from which they originate under the heading "place of origin"
38.	Trees of specified plants within the meaning of Article 1(a) of Decision (EU) 2015/893 originating in any third country where *Anoplophora glabripennis* (Motschulsky) is known to be present	The trees shall be accompanied by a phytosanitary certificate or a phytosanitary certificate for re-export which includes: (a) an official statement under the heading "Additional Declaration" that they meet the requirements specified in point (1)(a), (b) or (c) of Section 1(A) of Annex II of Decision (EU) 2015/893; and (b) where point (1)(a) of that Section applies, the name of the pest-free area under the heading "place of origin"".

Atodlen 4 Rhan B (deunydd perthnasol, o ran arall o'r Undeb Ewropeaidd, na chaniateir ei lanio na'i symud ym Mhrydain Fawr oni fodlonir gofynion arbennig)

16. Yn Rhan B o Atodlen 4(**1**)—

(a) ar ôl eitem 1 mewnosoder—

"**1A.**	Susceptible wood	The wood shall:

(**1**) Diwygiwyd eitem 1 gan O.S. 2014/2420. Mewnosodwyd eitem 5B yn wreiddiol fel eitem 5a gan O.S. 2006/2696 a'i ailrifo gan O.S. 2013/2691. Mewnosodwyd eitem 9 gan O.S. 2012/2707. Ceir diwygiadau eraill i Ran B o Atodlen 4, ond nid yw'r un yn berthnasol.

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	within the meaning of Article 1(b) of Decision 2012/535/EU which originates in an area established in accordance with Article 5 of that Decision	(a) in the case of wood in the form of wood packaging material, meet the requirements specified in point 3 of Section 1 of Annex III to Decision 2012/535/EU; (b) in the case of wood in the form of beehives or bird nesting boxes— (i) meet the requirements specified in point 2(a) of that Section and either be accompanied by an official statement that it meets those requirements or be marked in accordance with Annex II to ISPM No. 15; and (ii) if it is not free from bark, meet the requirements specified in point 2(c) of that Section; or (c) in the case of any other wood which is not in the form of wood packaging material: (i) be accompanied by an official statement that it meets the requirements specified in point 2(a) of that Section; and (ii) if it is not free from bark, meet the requirements specified in point 2(c) of that Section
1B.	Specified wood within the meaning of Article 1(b) of Decision (EU) 2015/893 which originates in an area established in accordance with Article 7 of that Decision or specified wood	The wood shall: (a) in the case of wood in the form of chips, particles, shavings, wood waste or scrap, be accompanied by an official statement that it meets the requirements in point (2)(a) or (b) of Section 2(B) of Annex II to

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	within the meaning of that Article which retains all or part of its round surface and which does not originate in, but has been introduced into, such an area	Decision (EU) 2015/893; (b) in any other case, be accompanied by an official statement that it meets the requirements in points (1)(a) and (b) of that Section, and there shall be evidence of the appropriate heat treatment by a mark "HT" put on the wood or on any wrapping in accordance with current usage
1C.	Specified wood packaging material within the meaning of Article 1(c) of Decision (EU) 2015/893 which originates in an area demarcated in accordance with Article 7 of that Decision	The wood packaging material shall meet the requirements specified in points (a) and (b) of Section 2(C) of Annex II to Decision (EU) 2015/893
1D.	Susceptible bark within the meaning of Article 1(c) of Decision 2012/535/EU which originates in an area established in accordance with Article 5 of that Decision	The bark shall be accompanied by an official statement that it meets the requirements specified in point 2(a) of Section 1 of Annex III to Decision 2012/535/EU
1E.	Trees of susceptible plants within the meaning of Article 1(a) of Decision 2012/535/EU which originate in an area established in accordance with Article 5 of that Decision	The trees shall be accompanied by an official statement that they meet the requirements specified in points 1(a) to (c) of Section 1 of Annex III to Decision 2012/535/EU and shall meet the requirements specified in point 1(e) of that Section";

(b) hepgorer eitem 5B;

(c) yn y cofnod yn nhrydedd golofn eitem 9, yn lle "No 4" rhodder "No. 4"; a

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(d) ar ôl eitem 9 mewnosoder—

“ **9A.**	Trees of host plants within the meaning of Article 1(b) of Decision (EU) 2015/789 which have never been grown in an area established in accordance with Article 4 of that Decision, other than those which have been grown for their entire production cycle in vitro	The plants must be accompanied by an official statement that they meet the requirements specified in Article 9(8)(a) of Decision (EU) 2015/789
10.	Trees of specified plants within the meaning of Article 1(c) of Decision (EU) 2015/789 which have been grown for at least part of their life in an area established in accordance with Article 4 of that Decision, other than those which have been grown for their entire production cycle *in vitro*	The trees shall: (a) be accompanied by an official statement that they meet the requirements specified in Article 9(2) to (4) and (5) of Decision (EU) 2015/789; and (b) be transported in the manner specified in Article 9(6) of that Decision
11.	Trees of specified plants within the meaning of Article 1(a) of Decision (EU) 2015/893 which originate, or have been introduced into a place of production, in an area established in accordance with Article 7 of that Decision	The trees shall be accompanied by an official statement that: (a) in the case of trees which originate in an area established in accordance with Article 7 of Decision (EU) 2015/893, they have been grown during a period of at least two years prior to their movement, or in the case of trees which are younger than two years, throughout their life, in a place of production which meets the requirements specified in points (1)(a) and (b) of Section 2(A) of Annex II to that

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		Decision; and (b) they meet the requirements specified in point (1)(c) of that Section".

Atodlen 4 Rhan C (deunydd perthnasol, o drydedd wlad neu ran arall o'r Undeb Ewropeaidd, na chaniateir ei lanio na'i symud ym Mhrydain Fawr (fel parth gwarchodedig) oni fodlonir gofynion arbennig)

17. Yn Rhan C o Atodlen 4—

(a) ar ôl y pennawd mewnosoder—

"Interpretation of Part C

In this Part, in item 7E, "excluded zone" means the area in Great Britain which is not within the OPM protected zone."; a

(b) yn Rhan C o Atodlen 4, ar ôl eitem 7C mewnosoder—

" **7D**.	Trees, other than fruit or seeds, of Pinus L., intended for planting	The trees must be accompanied by an official statement that: (a) they have been grown throughout their life in places of production in countries in which Thaumetopoea pityocampa Denis & Schiffermüller is not known to occur; (b) they have been grown throughout their life in an area free from Thaumetopoea pityocampa Denis & Schiffermüller, established by the national plant protection organisation in accordance with ISPM No. 4; (c) they have been produced in nurseries which, along with their vicinity, have been found free from Thaumetopoea pityocampa Denis &

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		Schiffermüller on the basis of official inspections and official surveys carried out at appropriate times; or (d) they have been grown throughout their life in a site with complete physical protection against the introduction of Thaumetopoea pityocampa Denis & Schiffermüller and have been inspected at appropriate times and found to be free from that tree pest
7E.	Trees, other than fruit or seeds, of Quercus L., other than Quercus suber, intended for planting, whose girth at 1.2 m above the root collar is 8 cm or more, other than— —any such plants entering Great Britain via a point of entry in the excluded zone which are not in the course of their consignment to the OPM protected zone, or —any such plants originating in the excluded zone which do not move from the excluded zone into the OPM protected zone	The trees must be accompanied by an official statement that: (a) they have been grown throughout their life in places of production in countries in which Thaumetopoea processionea L. is not known to occur; (b) they have been grown throughout their life in a protected zone which is recognised as a protected zone for Thaumetopoea processionea L. or in an area free from Thaumetopoea processionea L., established by the national plant protection organisation in accordance with ISPM No. 4; (c) they have been produced in nurseries which, along with their vicinity, have been found free from Thaumetopoea processionea L. on the basis of official

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		inspections carried out as close as practically possible to their movement and official surveys of the nurseries and their vicinity have been carried out at appropriate times since the beginning of the last complete cycle of vegetation to detect larvae and other symptoms of Thaumetopoea processionea L.; or (d) they have been grown throughout their life in a site with complete physical protection against the introduction of Thaumetopoea processionea L. and have been inspected at appropriate times and found to be free from Thaumetopoea processionea L.”.

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Atodlen 5 Rhan A (deunydd perthnasol na chaniateir ei lanio ym Mhrydain Fawr onid yw tystysgrif ffytoiechydol yn mynd gydag ef)

18. Yn Rhan A o Atodlen 5(**1**)—

(a) ar ôl paragraff 1 mewnosoder—

"**1A**. Trees of susceptible plants within the meaning of Article 1(2) of Decision 2002/757/EC, other than trees of Camellia spp. L., Rhododendron spp. L. or Viburnum spp. L., originating in the USA.";

(b) ailrifer paragraffau 1a, 1b ac 1c yn baragraffau 1B, 1C ac 1D yn eu trefn;

(c) ym mharagraff 4(a)—

(i) ar ddiwedd paragraff (vi), hepgorer "or";

(ii) ar ddiwedd paragraff (vii), hepgorer "and" a mewnosoder "or";

(iii) ar ôl paragraff (vii) mewnosoder—

"(viii) Amelanchier Medik., Aronia Medik., Cotoneaster Medik., Crataegus L., Cydonia Mill., Malus Mill., Prunus L., Pyracantha M. Roem., Pyrus L. or Sorbus L., including wood which has not kept its natural round surface, other than sawdust or shavings, originating in Canada or the USA; and"; a

(d) ar ôl paragraff 4 mewnosoder—

"**4A**. Specified wood within the meaning of Article 1(3) of Decision 2002/757/EC, other than wood of Quercus L., originating in the USA.

4B. Specified wood within the meaning of Article 1(b) of Decision (EU) 2015/893 originating in any third country in which Anoplophora glabripennis (Motschulsky) is known to be present."

Atodlen 6 Rhan A (deunydd perthnasol, o ran arall o'r Undeb Ewropeaidd, na chaniateir ei lanio na'i symud ym Mhrydain Fawr onid yw pasbort planhigion yn mynd gydag ef)

19. Yn Rhan A o Atodlen 6(**2**)—

(**1**) Mewnosodwyd paragraff 1a gan O.S. 2008/644. Mewnosodwyd paragraffau 1b ac 1c gan O.S. 2012/2707. Diwygiwyd paragraff 4 gan O.S. 2009/594, 2013/2691 a 2014/2420. Ceir diwygiadau eraill i Ran A o Atodlen 5, ond nid yw'r un yn berthnasol.

(**2**) Diwygiwyd paragraff 2 gan O.S. 2006/2696 a 2008/644. Mewnosodwyd paragraff 3 gan O.S. 2006/2696. Mewnosodwyd paragraff 6 gan O.S. 2012/2707. Ceir diwygiadau eraill i Ran A o Atodlen 6, ond nid yw'r un yn berthnasol.

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(a) ar ôl paragraff 1 mewnosoder —

"**1A**. Susceptible wood or susceptible bark within the meaning of Article 1 of Decision 2012/535/EU, other than susceptible wood in the form of wood packaging material or susceptible wood in the form of beehives or bird nesting boxes which has been marked in accordance with Annex II to ISPM No. 15 by a person who has been authorised, in accordance with Article 14 of that Decision, to apply the mark to the material.

1B. Specified wood within the meaning of Article 1(b) of Decision (EU) 2015/893 which originates in an area established in accordance with Article 7 of that Decision, or specified wood within the meaning of that Article which retains all or part of its round surface and which does not originate in, but has been introduced into, such an area.";

(b) ym mharagraff 2—

(i) ar ôl "*Abies* Mill.," mewnosoder "*Castanea* Mill.,"; a

(ii) yn lle "or Tsuga Carr." rhodder "Quercus L., *Tsuga* Carr. or *Ulmus* L.";

(c) hepgorer paragraff 3; a

(d) ar ôl paragraff 6 mewnosoder—

"**7.** Trees of susceptible plants within the meaning of Article 1(2) of Decision 2002/757/EC, other than trees of *Camellia* spp. L., *Rhododendron* spp. L. or *Viburnum* spp. L., originating in the USA.

8. Trees of susceptible plants within the meaning of Article 1(a) of Decision 2012/535/EU which originate in an area established in accordance with Article 5 of that Decision.

9. Trees of specified plants within the meaning of Article 1(c) of Decision (EU) 2015/789 which have been grown for at least part of their life in an area established in accordance with Article 4 of that Decision or trees of host plants within the meaning of Article 1(b) of that Decision which have never been grown in such an area.

10. Trees of specified plants within the meaning of Article 1(a) of Decision (EU) 2015/893, which originate in a third country in which *Anoplophora glabripennis* (Motschulsky) is known to be present or which originate, or have been introduced into a place of production, in an area established in accordance with Article 7 of that Decision."

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Atodlen 6 Rhan B (deunydd perthnasol, o ran arall o'r Undeb Ewropeaidd, na chaniateir ei lanio na'i symud ym Mhrydain Fawr onid yw pasbort planhigion yn mynd gydag ef sy'n ddilys ar gyfer Prydain Fawr (fel parth gwarchodedig))

20. Yn Rhan B o Atodlen 6—

(a) ym mharagraff 2B, yn lle "or *Populus* L." rhodder ", *Populus* L., *Quercus* L., other than *Quercus* suber, or *Ulmus* L.";

(b) yn lle paragraff 3(a)(ii) rhodder—

"(ii) *Castanea* Mill., excluding wood which is bark-free; or".

Atodlen 7 Rhan A (deunydd perthnasol na chaniateir ei draddodi i ran arall o'r Undeb Ewropeaidd onid yw pasbort planhigion yn mynd gydag ef)

21. Yn Rhan A o Atodlen 7(**1**)—

(a) ar ôl paragraff 1 mewnosoder—

"**1A.** Susceptible wood or susceptible bark within the meaning of Article 1 of Decision 2012/535/EU, other than susceptible wood in the form of wood packaging material or susceptible wood in the form of beehives or bird nesting boxes which has been marked in accordance with Annex II to ISPM No. 15 by a person who has been authorised, in accordance with Article 14 of that Decision, to apply the mark to the material.

1B. Specified wood within the meaning of Article 1(b) of Decision (EU) 2015/893 which originates in an area established in accordance with Article 7 of that Decision, or specified wood within the meaning of that Article which retains all or part of its round surface and which does not originate in, but has been introduced into, such an area.";

(b) ym mharagraff 2—

(i) ar ôl "*Abies* Mill.," mewnosoder "*Castanea* Mill"; a

(ii) yn lle "or *Tsuga* Carr." rhodder "*Quercus* L., *Tsuga* Carr. or *Ulmus* L.";

(c) hepgorer paragraff 3;

(d) ar ôl paragraff 6 mewnosoder—

(**1**) Diwygiwyd Atodlen 7 gan O.S. 2011/1043. Diwygiwyd paragraff 2 gan O.S. 2006/2696 a 2008/644. Mewnosodwyd paragraff 3 gan O.S. 2006/2696. Mewnosodwyd paragraff 6 gan O.S. 2012/2707. Ceir diwygiadau eraill i Ran A o Atodlen 7, ond nid yw'r un yn berthnasol.

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"**7.** Trees of susceptible plants within the meaning of Article 1(2) of Decision 2002/757/EC, other than trees of *Camellia* spp. L., *Rhododendron* spp. L. or *Viburnum* spp. L., originating in the USA.

8. Trees of susceptible plants within the meaning of Article 1(a) of Decision 2012/535/EU which originate in an area established in accordance with Article 5 of that Decision.

9. Trees of specified plants within the meaning of Article 1(c) of Decision (EU) 2015/789 which have been grown for at least part of their life in an area established in accordance with Article 4 of that Decision or trees of host plants within the meaning of Article 1(b) of that Decision which have never been grown in such an area.

10. Trees of specified plants within the meaning of Article 1(a) of Decision (EU) 2015/893, which originate in a third country in which *Anoplophora glabripennis* (Motschulsky) is known to be present or which originate, or have been introduced into a place of production, in an area established in accordance with Article 7 of that Decision."

Atodlen 7 Rhan B (deunydd perthnasol na chaniateir ei draddodi i barth gwarchodedig mewn rhan arall o'r Undeb Ewropeaidd onid yw pasbort planhigion yn mynd gydag ef sy'n ddilys ar gyfer y parth gwarchodedig hwnnw)

22. Yn Rhan B o Atodlen 7, ym mharagraff 2B, yn lle "or *Populus* L." rhodder ", *Populus* L., *Quercus* L., other than *Quercus* suber, or *Ulmus* L.".

Atodlen 8 Rhan A (deunydd perthnasol sy'n tarddu o'r Swistir y caniateir ei lanio neu ei symud ym Mhrydain Fawr os yw pasbort planhigion y Swistir yn mynd gydag ef)

23. Yn Rhan A o Atodlen 8, hepgorer paragraff 1.

Atodlen 8 Rhan B (deunydd perthnasol a gafodd ei fewnforio i'r Swistir o drydedd wlad arall, pe bai caniatâd i'w lanio ym Mhrydain Fawr fel arfer pe bai tystysgrif ffytoiechydol yn mynd gydag ef, y caniateir i basbort planhigion y Swistir fynd gydag ef neu y caniateir ei lanio heb ddogfennaeth ffytoiechydol)

24. Yn Rhan B o Atodlen 8—

(a) ym mharagraff 2, ar ôl "Canada," mewnosoder "*Castanea* Mill.,";

(b) ar ôl paragraff 2 mewnosoder—

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"**2A.** Cut branches of—

(a) *Betula* L., with or without foliage;

(b) *Fraxinus* L., *Juglans ailantifolia* Carr., *Juglans mandshurica* Maxim., *Ulmus davidiana* Planch. or *Pterocarya rhoifolia* Siebold & Zucc., with or without foliage, originating in Canada, China, Democratic People's Republic of Korea, Japan, Mongolia, Republic of Korea, Russia, Taiwan or the USA.";

(c) yn lle paragraff 3 rhodder—

"**3.** Wood referred to in paragraph (a) or (b) of the definition of "wood" in article 2(1), where it—

(a) has been obtained in whole or in part from one of the following order, genera or species, except wood packaging material of a description specified in the second column of item 8 in Part A of Schedule 4—

(i) *Quercus* L., including wood which has not kept its natural round surface, originating in the USA, except wood in the form of casks, barrels, vats, tubs or other coopers' products or parts thereof, including staves and where there is documented evidence that the wood has been processed or manufactured using a heat treatment to achieve a minimum temperature of 176˚C for 20 minutes;

(ii) *Platanus* L., including wood which has not kept its natural round surface, originating in the USA or Armenia;

(iii) *Populus* L., including wood which has not kept its natural round surface, originating in any country of the American continent;

(iv) *Acer saccharum* Marsh., including wood which has not kept its natural round surface, originating in the USA or Canada;

(v) conifers (Coniferales), including wood which has not kept its natural round surface, originating in any country outside Europe, Kazakhstan, Russia or Turkey;

(vi) *Fraxinus* L., *Juglans ailantifolia* Carr., *Juglans mandshurica* Maxim, *Ulmus davidiana* Planch.

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or *Pterocarya rhoifolia* Siebold & Zucc., including wood which has not kept its natural round surface, originating in Canada, China, Democratic People's Republic of Korea, Japan, Mongolia, Republic of Korea, Russia, Taiwan or the USA;

(vii) Betula L., including wood which has not kept its natural round surface, originating in Canada or the USA; and

(b) meets one of the descriptions specified in point 6(b) of Appendix 1 to Part B of Annex 4 to the Agreement between the European Community and the Swiss Confederation on trade in agricultural products(**1**).";

(d) yn lle paragraff 6 rhodder—

"**6.** Isolated bark of—

(a) conifers (Coniferales), originating in any country outside Europe;

(b) *Acer saccharum* Marsh., *Populus* L. or *Quercus* L., other than *Quercus suber* L.;

(c) *Fraxinus* L., *Juglans ailantifolia* Carr., *Juglans mandshurica* Maxim., *Ulmus davidiana* Planch. or *Pterocarya rhoifolia* Siebold & Zucc., originating in Canada, China, Democratic People's Republic of Korea, Japan, Mongolia, Republic of Korea, Russia, Taiwan or the USA;

(d) *Betula* L., originating in Canada or the USA."

Dirymiadau a darpariaeth drosiannol

25.—(1) Mae'r Gorchmynion a ganlyn wedi eu dirymu—

(a) Gorchymyn Iechyd Planhigion (Coedwigaeth) (Phytophthora ramorum) (Prydain Fawr) 2004(**2**); a

(b) Gorchymyn Iechyd Planhigion (Coedwigaeth) (Phytophthora ramorum) (Prydain Fawr) (Diwygio) 2007(**3**).

(**1**) OJ Rhif L 114, 30.4.2002, t. 132, fel y'i diwygiwyd ddiwethaf gan Benderfyniad Rhif 1/2017 y Cyd-bwyllgor ar Amaethyddiaeth (OJ Rhif L 171, 4.7.2017, t. 185).
(**2**) O.S. 2004/3213.
(**3**) O.S. 2007/3450.

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(2) Mae unrhyw hysbysiad a ddyroddir neu drwydded, awdurdodiad neu gymeradwyaeth arall a roddir o dan Orchymyn Iechyd Planhigion (Coedwigaeth) (Phytophthora ramorum) (Prydain Fawr) 2004 neu at ddibenion y Gorchymyn hwnnw ac sy'n effeithiol pan ddaw'r Gorchymyn hwn i rym yn parhau mewn grym fel pe baent wedi eu dyroddi neu wedi eu rhoi o dan Orchymyn Iechyd Planhigion (Coedwigaeth) 2005 neu at ddibenion y Gorchymyn hwnnw.

Lesley Griffiths
Gweinidog yr Amgylchedd, Ynni a Materion Gwledig, un o Weinidogion Cymru
5 Mawrth 2019

Explanatory Memorandum to the Plant Health (Forestry) (Amendment) (Wales) Order 2019

This Explanatory Memorandum has been prepared by the Economy, Skills and Natural Resources Department of the Welsh Government and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Plant Health (Forestry) (Amendment) (Wales) Order 2019.

Lesley Griffiths
Minister for Environment, Energy and Rural Affairs
7 March 2019

PART 1

1. Description

This instrument amends the Plant Health (Forestry) Order 2005 (S.I. 2005/2517) ('the principal Order') which contains measures to prevent the introduction and spread of harmful tree pests and diseases.

It implements EU plant health legislation including Commission Decision 2002/757/EC, Commission Implementing Decisions 2014/690/EU, 2015/789/EU, 2015/893/EU, 2012/535/EU and 2015/2416/EU.

It implements Commission Implementing Directive 2017/1279, Commission Implementing Decision (EU) 2017/204, and Decision No 1/2015 of the Joint Committee on Agriculture relating to the agreement between the European Community and the Swiss Confederation on trade in agricultural products (2017/169/EU).

It also introduces a new provision to allow the disclosure of information for the purposes of the principal Order from HM Revenue and Customs (HMRC) to the Welsh Ministers.

Furthermore, it implements the specific control measures to prevent the introduction of the pest *Xylella fastidiosa* in Commission Implementing Decision (EU) 2017/2352 measures which strengthen import and movement requirements for oak trees, to minimise the risk of further incursions of *Thaumetopoea processionea* (oak processionary moth (OPM)).

These amendments have already been made in relation to England and Scotland.

This Order is necessary to ensure consistent plant health requirements within Great Britain and to maintain consistent biosecurity measures and additionally to ensure that European measures are implemented in order to update the lists of tree pests and infected material and to permit Welsh Ministers to apply the associated restrictions/prohibitions/ treatments.

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

None

3. Legislative background

The Plant Health (Forestry) (Amendment) (Wales) Order 2019 is being made pursuant to the powers in the Plant Health Act 1967. Section 1 of the Plant

Health Act 1967 provides that the Act has effect for the control of pests and diseases injurious to agricultural or horticultural crops and trees or bushes.

Section 2(1) of the 1967 Act provides that a competent authority may from time to time make such orders as it thinks expedient or called for by an EU obligation for preventing the introduction of pests into Great Britain. Section 3(1) provides a corresponding power in relation to the control of the spread of pests in Great Britain. The competent authority as regards the protection of forest trees and timber and for all other plants and plant material is, in relation to Wales, the Welsh Ministers.

Section 6 of the Plant Health Act 1967 provides that this instrument is subject to the negative procedure.

4. Purpose and intended effect of the legislation

The purpose of the Plant Heath (Forestry) Order 2005 ("the 2005 Order") is to prevent the introduction and spread of harmful plant pests and diseases. The 2005 Order has previously been amended on numerous occasions in order to implement EU law in this area, most recently in Wales by the Plant Health (Forestry) (Amendment) (Wales) Order 2015. The 2005 Order now requires a further amendment in Wales to achieve these broad objectives: -

(i) to apply consistent plant health requirements within Great Britain and to maintain consistent biosecurity measures

(ii) to ensure that European measures are implemented in order to update the lists of tree pests and infected material and to permit Welsh Ministers to apply the associated restrictions/prohibitions/ treatments.

This instrument aligns the law relating to plant health forestry in Wales with provisions in relation to England and Scotland.

This instrument implements Commission Decision 2002/757/EC and Commission Implementing Decisions 2014/690/EU, 2015/789/EU, 2015/893/EU, 2012/535/EU, 2015/2416/EU and 2017/204 and Decision No 1/2015 of the Joint Committee on Agriculture relating to the agreement between the European Community and the Swiss Confederation on trade in agricultural products (2017/169/EU).

In addition this Order introduces a new provision to allow the disclosure of information for the purposes of the principal Order from HM Revenue and Customs (HMRC) to the Welsh Ministers.

This Order implements the specific control measures to prevent the introduction of the pest *Xylella fastidiosa* in Commission Implementing Decision (EU) 2017/2352.

Furthermore the Order implements measures which strengthen import and movement requirements for oak trees, to minimise the risk of further incursions of *Thaumetopoea processionea* (oak processionary moth (OPM)).

In addition this Order consolidates the plant Health (Forestry) (*Phytophthora ramorum*) (Great Britain) Order 2004 (and the Plant Health (Forestry) (*Phytophthera ramorum*) (Great Britain) (Amendment) Order 2007 (revoked)) and revokes other legislation as required.

5. Consultation

No consultation was required. The changes implement EU legislation the detail of which had already been subject to negotiations with the Commission and other Member States.

6. Regulatory Impact Assessment (RIA)

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, it was not considered necessary to carry out a regulatory impact assessment as to the likely costs and benefits of complying with these Regulations.

With regard to the Government of Wales Act 2006 this legislation has no impact on the statutory duties (sections 77-79) or statutory partners (sections 72-75).

SL(5)394 – The Agricultural Wages (Wales) Order 2019

Background and Purpose

This Order is made by the Welsh Ministers pursuant to sections 3, 4(1) and 17 of the Agricultural Sector (Wales) Act 2014. It makes provision about the minimum rates of remuneration and other terms and conditions of employment for agricultural workers.

The Order revokes and replaces, subject to some changes and transitional provision, the Agricultural Wages (Wales) Order 2018 ("the **2018 Order**") and therefore increases the 2018 pay rates for agricultural workers.

Procedure

Negative.

Technical Scrutiny

Three points are identified for reporting under Standing Order 21.2 in respect of this instrument.

1. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation.

Article 15(1) confirms that, where in any week an employer provides an agricultural worker with a house for the whole of that week, the employer may deduct the sum of £1.50 from the agricultural worker's minimum wage for that week.

Article 15(2) confirms that, where in any week an employer provides an agricultural worker with "other accommodation", the employer may, subject to certain conditions, deduct the sum of £4.82 from the agricultural worker's minimum wage for each day in the week that the other accommodation is provided to the worker.

An agricultural worker's minimum wage is determined in accordance with Article 12 of, and Schedule 4 to, the Order, which sets out minimum hourly rates.

Articles 15(1) and (2) may be interpreted as permitting an employer to make:

a) deductions of £1.50 and £4.82 respectively from the hourly rate in accordance with which an agricultural worker's minimum wage in calculated; or

b) net deductions of £1.50 and £4.82 respectively,

for the relevant periods referred to, and in the circumstances described in, those provisions.

Article 15 replicates provision contained in the 2018 Order. During scrutiny of the 2018 Order, the Committee queried this drafting. In its response, the Welsh Government did not accept the points raised by the Committee. However, the Committee considers that the drafting of Article 15 in this Order should be reviewed in light of the clear scope for alternative interpretation of the permissible deductions.

2. Standing Order 21.2 (vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements.

Article 21(2) sets out the maximum numbers of weeks that an agricultural worker is entitled to agricultural sick pay in each period of entitlement. The relevant maximum number of weeks is determined by reference to the length of a worker's employment with the same employer. There are five fixed levels of entitlement set out in Article 21(2), which range between 13 and 26 weeks of entitlement.

The drafting of this provision employs an "at least [x] months but not more than [x] months" format to describe the length of employment to which each level of entitlement applies. For example, an agricultural worker is entitled to 16 weeks agricultural sick pay where the agricultural worker has been employed by the same employer for "at least 24 months but not more than 36 months" (per Article 21(2)(b)).

There appears to be an unintended consequence of this drafting approach in that, at set intervals during an employee's period of employment, being exactly 24, 36, 48 and 59 months respectively, two separate levels of entitlement could apply to that employee. For example, if an agricultural worker has been employed for exactly 24 months, then in accordance with the provisions of the Order, that worker could be regarded as being entitled to:

a) 13 weeks sick pay (on the basis of being employed for **not more than** 24 months per Article 21(2)(a)); and also,

b) 16 weeks sick pay (on the basis of being employed **at least** 24 months per Article 21(2)(b)).

3. Standing Order 21.2(vii) - that there appear to be inconsistencies between the meaning of its English and Welsh texts.

In Article 22(3)(a) of the Welsh language version of the Order, it appears that 'dwy rannu' should instead read 'drwy rannu'.

Merits Scrutiny

No points are identified for reporting under Standing Order 21.3 in respect of this instrument.

Implications arising from exiting the European Union

No points are identified for reporting under Standing Order 21.3 in respect of this instrument.

Government Response

A government response is required.

Legal Advisers
Constitutional and Legislative Affairs Committee
20 March 2019

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O F F E R Y N N A U S T A T U D O L
C Y M R U

2019 Rhif 511 (Cy. 118)

AMAETHYDDIAETH, CYMRU

Gorchymyn Cyflogau Amaethyddol (Cymru) 2019

NODYN ESBONIADOL

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

Yn ddarostyngedig i rai newidiadau ac un ddarpariaeth drosiannol, mae'r Gorchymyn hwn yn dirymu ac yn disodli Gorchymyn Cyflogau Amaethyddol (Cymru) 2018.

Mae Rhan 2 o'r Gorchymyn yn darparu bod gweithwyr amaethyddol i gael eu cyflogi yn ddarostyngedig i'r telerau a'r amodau sydd wedi eu nodi yn Rhannau 2 i 5 o'r Gorchymyn (erthygl 3) ac yn pennu'r graddau a'r categorïau gwahanol o weithiwr amaethyddol (erthyglau 5 i 11).

Mae Rhan 3 yn gwneud darpariaeth ynghylch y cyfraddau tâl isaf y mae'n rhaid eu talu i weithwyr amaethyddol (erthygl 12). Mae darpariaeth yn cael ei gwneud ar gyfer lwfans gwrthbwyso llety a all gael ei dynnu oddi ar dâl gweithiwr amaethyddol (erthygl 15). Mae darpariaeth yn cael ei gwneud hefyd ar gyfer lwfans cŵn, lwfans ar alwad, lwfans gwaith nos a grantiau geni a mabwysiadu nad ydynt yn ffurfio rhan o dâl gweithiwr amaethyddol (erthygl 16).

Mae Rhan 4 yn darparu bod gan weithiwr amaethyddol hawl i gael tâl salwch amaethyddol o dan yr amgylchiadau sydd wedi eu pennu (erthyglau 18 i 21). Mae darpariaeth yn cael ei gwneud ynghylch cyfrifo faint o dâl salwch amaethyddol y mae gan weithiwr amaethyddol hawl i'w gael (erthygl 22). Mae taliad tâl salwch statudol i gyfrif tuag at hawl gweithiwr amaethyddol i gael tâl salwch amaethyddol (erthygl 23).

Mae Rhan 5 yn gwneud darpariaeth ynghylch hawl gweithiwr amaethyddol i gael amser i ffwrdd. Mae darpariaeth yn cael ei gwneud ynghylch hawl gweithiwr amaethyddol i gael seibiannau gorffwys (erthygl 28). Mae darpariaeth yn cael ei gwneud hefyd sy'n pennu blwyddyn gwyliau blynyddol y gweithiwr amaethyddol ac ynghylch hawl gweithiwr

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amaethyddol i gael gwyliau blynyddol a thâl gwyliau ac ynghylch taliad yn lle gwyliau blynyddol (erthyglau 29 i 36). Mae darpariaeth ynghylch hawl gweithiwr amaethyddol i gael absenoldeb â thâl oherwydd profedigaeth yn cael ei gwneud yn erthyglau 39 i 41.

Mae Rhan 6 yn cynnwys dirymiad a darpariaeth drosiannol.

Mae'r Asesiad Effaith Rheoleiddiol sy'n gymwys i'r Gorchymyn hwn ar gael oddi wrth Lywodraeth Cymru, Parc Cathays, Caerdydd, CF10 3NQ ac ar wefan Llywodraeth Cymru yn www.llyw.cymru.

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O F F E R Y N N A U S T A T U D O L
C Y M R U

2019 Rhif 511 (Cy. 118)

AMAETHYDDIAETH, CYMRU

Gorchymyn Cyflogau Amaethyddol (Cymru) 2019

Gwnaed *6 Mawrth 2019*

Gosodwyd gerbron Cynulliad Cenedlaethol Cymru *8 Mawrth 2019*

Yn dod i rym *1 Ebrill 2019*

CYNNWYS

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RHAN 4

Yr hawl i gael tâl salwch amaethyddol

RHAN 5

Yr hawl i gael amser i ffwrdd

RHAN 6

Dirymu a darpariaeth drosiannol

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Mae Panel Cynghori ar Amaethyddiaeth Cymru, yn unol â'i swyddogaethau o dan erthygl 3(2)(b) o Orchymyn Panel Cynghori ar Amaethyddiaeth Cymru (Sefydlu) 2016(**1**), wedi llunio gorchymyn cyflogau amaethyddol ar ffurf ddrafft, wedi ymgynghori ar y gorchymyn ac wedi ei gyflwyno i Weinidogion Cymru i'w gymeradwyo ganddynt.

Mae Gweinidogion Cymru wedi cymeradwyo'r gorchymyn cyflogau amaethyddol drafft yn unol ag adran 4(1)(a) o Ddeddf Sector Amaethyddol (Cymru) 2014(**2**).

Mae Gweinidogion Cymru, drwy arfer y pwerau a roddir iddynt gan adrannau 3, 4(1) a 17 o Ddeddf Sector Amaethyddol (Cymru) 2014, yn gwneud y Gorchymyn a ganlyn.

RHAN 1

Rhagarweiniol

Enwi a chychwyn

1. Enw'r Gorchymyn hwn yw Gorchymyn Cyflogau Amaethyddol (Cymru) 2019 a daw i rym ar 1 Ebrill 2019.

Dehongli

2.—(1) Yn y Gorchymyn hwn—

ystyr "absenoldeb salwch" ("*sickness absence*") yw absenoldeb gweithiwr amaethyddol o'r gwaith oherwydd analluedd yn sgil—

(**1**) O.S. 2016/255 (Cy. 89).
(**2**) 2014 dccc 6.

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(a) unrhyw salwch a ddioddefir gan y gweithiwr amaethyddol;

(b) salwch neu analluedd a achosir am fod y gweithiwr amaethyddol yn feichiog neu a ddioddefir o ganlyniad i eni plentyn;

(c) anaf sy'n digwydd i'r gweithiwr amaethyddol yn ei le gwaith;

(d) anaf sy'n digwydd i'r gweithiwr amaethyddol wrth deithio yn ôl ac ymlaen i'w le gwaith;

(e) amser a dreulir gan y gweithiwr amaethyddol yn ymadfer ar ôl llawdriniaeth a achoswyd gan salwch; neu

(f) amser a dreulir gan y gweithiwr amaethyddol yn ymadfer ar ôl llawdriniaeth o ganlyniad i anaf a ddioddefwyd yn ei le gwaith neu anaf a ddioddefwyd wrth deithio yn ôl ac ymlaen i'w le gwaith,

ond nid yw'n cynnwys unrhyw anaf a ddioddefir gan y gweithiwr amaethyddol pan na fo yn ei le gwaith nac unrhyw anaf a ddioddefir pan na fo'r gweithiwr amaethyddol yn teithio yn ôl ac ymlaen i'w le gwaith;

ystyr "amser gweithio" ("*working time*") yw unrhyw gyfnod pryd y mae gweithiwr amaethyddol yn gweithio yng ngwasanaeth ei gyflogwr ac yn cyflawni ei weithgareddau neu ei ddyletswyddau yn unol â naill ai ei gontract gwasanaeth neu ei brentisiaeth ac mae'n cynnwys—

(a) unrhyw gyfnod pryd y mae gweithiwr amaethyddol yn derbyn hyfforddiant perthnasol;

(b) unrhyw gyfnod a dreulir gan weithiwr amaethyddol yn teithio at ddibenion ei gyflogaeth ond nad yw'n cynnwys amser a dreulir yn teithio rhwng ei gartref a'i le gwaith;

(c) unrhyw gyfnod y mae gweithiwr amaethyddol yn cael ei rwystro rhag cyflawni gweithgareddau neu ddyletswyddau yn unol â'i gontract gwasanaeth neu ei brentisiaeth oherwydd tywydd drwg; a

(d) unrhyw gyfnod ychwanegol y mae'r cyflogwr a'r gweithiwr amaethyddol yn cytuno ei fod i'w drin fel amser gweithio,

ac mae cyfeiriadau at "gwaith" ("*work*") i'w dehongli yn unol â hyn;

ystyr "ar alwad" ("*on-call*") yw trefniant ffurfiol rhwng y gweithiwr amaethyddol a'i gyflogwr pan fo gweithiwr amaethyddol nad yw yn y gwaith yn cytuno â'i gyflogwr y bydd modd cysylltu ag ef drwy gyfrwng y cytunir arno ac y gall gyrraedd y

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fan lle y gall fod yn ofynnol iddo weithio o fewn amser y cytunir arno;

ystyr "diwrnodau cymwys" ("*qualifying days*") yw diwrnodau pan fyddai'n ofynnol fel arfer i'r gweithiwr amaethyddol fod ar gael i weithio gan gynnwys diwrnodau pan oedd y gweithiwr amaethyddol—

(a) yn cymryd gwyliau blynyddol;

(b) yn cymryd absenoldeb oherwydd profedigaeth;

(c) yn cymryd absenoldeb mamolaeth, tadolaeth, rhiant a rennir neu fabwysiadu statudol; neu

(d) ar gyfnod o absenoldeb salwch;

ystyr "goramser" ("*overtime*") yw—

(a) mewn perthynas â gweithiwr amaethyddol a ddechreuodd ei gyflogaeth cyn 1 Hydref 2006, amser nad yw'n oramser gwarantedig y mae'r gweithiwr amaethyddol yn ei weithio—

(i) yn ychwanegol at ddiwrnod gwaith 8 awr;

(ii) yn ychwanegol at yr oriau gwaith y cytunwyd arnynt yn ei gontract gwasanaeth;

(iii) ar ŵyl gyhoeddus;

(iv) ar ddydd Sul; neu

(v) mewn unrhyw gyfnod sy'n cychwyn ar ddydd Sul ac yn parhau hyd y dydd Llun canlynol hyd at yr amser y byddai'r gweithiwr hwnnw yn cychwyn ei ddiwrnod gwaith fel arfer;

(b) mewn perthynas â phob gweithiwr amaethyddol arall, amser nad yw'n oramser gwarantedig y mae'r gweithiwr amaethyddol yn ei weithio—

(i) yn ychwanegol at ddiwrnod gwaith 8 awr;

(ii) yn ychwanegol at yr oriau gwaith y cytunwyd arnynt yn ei gontract gwasanaeth; neu

(iii) ar ŵyl gyhoeddus;

ystyr "goramser gwarantedig" ("*guaranteed overtime*") yw goramser y mae'n ofynnol i weithiwr amaethyddol ei weithio o dan naill ai ei gontract gwasanaeth neu ei brentisiaeth ac y mae cyflogwr y gweithiwr amaethyddol yn gwarantu taliad ar ei gyfer, p'un a oes gwaith i'r gweithiwr amaethyddol ei wneud neu beidio;

ystyr "grant geni a mabwysiadu" ("*birth and adoption grant*") yw taliad y mae gan weithiwr amaethyddol hawl i'w gael oddi wrth ei gyflogwr

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pan enir plentyn iddo neu pan fydd yn mabwysiadu plentyn ac mae'n daladwy—

(a) pan fo'r gweithiwr amaethyddol wedi rhoi copi i'w gyflogwr o Dystysgrif Geni'r plentyn neu ei Orchymyn Mabwysiadu (sy'n enwi'r gweithiwr fel rhiant y plentyn neu ei riant mabwysiadol) o fewn 3 mis ar ôl geni neu fabwysiadu'r plentyn; a

(b) o dan amgylchiadau pan fo'r ddau riant neu'r ddau riant mabwysiadol yn weithwyr amaethyddol gyda'r un cyflogwr, i'r ddau weithiwr amaethyddol;

ystyr "gwaith allbwn" ("*output work*") yw gwaith sydd, at ddibenion tâl, yn cael ei fesur yn ôl nifer y darnau a wneir neu a brosesir neu nifer y tasgau a gyflawnir gan weithiwr amaethyddol;

ystyr "gwaith nos" ("*night work*") yw gwaith (heblaw oriau goramser) a wneir gan weithiwr amaethyddol rhwng 7 p.m. un noson a 6 a.m. fore trannoeth, ond heb gynnwys y ddwy awr gyntaf o waith y mae gweithiwr amaethyddol yn ei wneud yn y cyfnod hwnnw;

ystyr "llety arall" ("*other accommodation*") yw unrhyw lety byw heblaw tŷ—

(a) sy'n addas i bobl fyw ynddo;

(b) sy'n ddiogel ac yn ddiddos;

(c) sy'n darparu gwely i'w ddefnyddio gan bob gweithiwr amaethyddol unigol yn unig; a

(d) sy'n darparu dŵr yfed glân, cyfleusterau glanweithdra addas a digonol a chyfleusterau ymolchi i weithwyr amaethyddol yn unol â rheoliadau 20 i 22 o Reoliadau Gweithleoedd (Iechyd, Diogelwch a Lles) 1992(**1**) fel pe bai'r llety'n weithle yr oedd rheoliadau 20 i 22 o'r Rheoliadau hynny'n gymwys iddo;

mae i "oedran ysgol gorfodol" yr ystyr a roddir i "*compulsory school age*" yn adran 8 o Ddeddf Addysg 1996(**2**);

mae "oriau" ("*hours*") yn cynnwys ffracsiwn o awr;

ystyr "oriau sylfaenol" ("*basic hours*") yw 39 awr o waith yr wythnos, heb gynnwys goramser, a weithir yn unol â naill ai contract gwasanaeth neu brentisiaeth gweithiwr amaethyddol;

ystyr "teithio" ("*travelling*") yw siwrnai drwy gyfrwng dull teithio neu siwrnai ar droed yn cynnwys—

(**1**) O.S. 1992/3004.
(**2**) 1996 p. 56. Diwygiwyd adran 8 gan adran 52 o Ddeddf Addysg 1997 (p. 44).

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(a) aros wrth fan ymadael i gychwyn siwrnai drwy gyfrwng dull teithio;

(b) aros wrth fan ymadael i siwrnai ailgychwyn naill ai drwy gyfrwng yr un dull teithio neu drwy gyfrwng un arall, ac eithrio unrhyw amser a dreulir gan y gweithiwr amaethyddol yn cymryd seibiant gorffwys; ac

(c) aros ar ddiwedd siwrnai i gyflawni dyletswyddau, neu i dderbyn hyfforddiant, ac eithrio unrhyw amser a dreulir gan y gweithiwr amaethyddol yn cymryd seibiant gorffwys;

ystyr "tŷ" ("*house*") yw tŷ annedd cyfan neu lety hunangynhwysol y mae'n ofynnol i'r gweithiwr amaethyddol fyw ynddo yn rhinwedd contract gwasanaeth y gweithiwr amaethyddol er mwyn cyflawni ei ddyletswyddau mewn modd priodol neu well ac mae'n cynnwys unrhyw ardd o fewn cwrtil y tŷ annedd neu'r llety hunangynhwysol hwnnw.

(2) Yn yr erthygl hon mae'r cyfeiriad at weithwyr amaethyddol a ddechreuodd eu cyflogaeth cyn 1 Hydref 2006 yn cynnwys gweithwyr amaethyddol—

(a) y mae telerau eu contract wedi bod yn destun unrhyw amrywiad ers hynny; neu

(b) sydd wedi eu cyflogi gan gyflogwr newydd ers hynny yn unol â Rheoliadau Trosglwyddo Ymgymeriadau (Diogelu Cyflogaeth) 2006(**1**).

(3) Mae cyfeiriadau yn y Gorchymyn hwn at gyfnod o gyflogaeth ddi-dor i'w dehongli fel cyfnod o gyflogaeth ddi-dor a gyfrifir yn unol ag adrannau 210 i 219 o Ddeddf Hawliau Cyflogaeth 1996(**2**).

RHAN 2

Gweithwyr amaethyddol

Telerau ac amodau cyflogaeth

3. Mae cyflogaeth gweithiwr amaethyddol yn ddarostyngedig i'r telerau a'r amodau a nodir yn y Rhan hon ac yn Rhannau 3, 4 a 5 o'r Gorchymyn hwn.

(**1**) O.S. 2006/246.

(**2**) 1996 p. 18. Diwygiwyd adran 211 gan Atodlen 8 i O.S. 2006/1031. Diwygiwyd adran 212 gan Atodlenni 4 a 9 i Ddeddf Cysylltiadau Cyflogaeth 1999 (p. 26). Diwygiwyd adran 215 gan Atodlen 7 i Ddeddf Cyfraniadau Nawdd Cymdeithasol (Trosglwyddo Swyddogaethau, etc.) 1999 (p. 2). Diwygiwyd adran 219 gan Atodlen 15 i Ddeddf Hawliau Cyflogaeth (Datrys Anghydfodau) 1998 (p. 8).

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Graddau a chategorïau gweithiwr amaethyddol

4. Rhaid i weithiwr amaethyddol gael ei gyflogi fel gweithiwr ar un o'r Graddau a bennir yn erthyglau 5 i 9 neu 10(1) neu fel prentis yn unol â'r darpariaethau yn erthygl 11.

Gradd 2

5. Rhaid i weithiwr amaethyddol—

(a) sy'n darparu tystiolaeth ddogfennol i gyflogwr fod ganddo—

(i) un o'r dyfarniadau neu'r tystysgrifau cymhwysedd a restrir yn y tablau yn Atodlen 1;

(ii) un Cymhwyster Galwedigaethol Cenedlaethol sy'n berthnasol i'w waith; neu

(iii) cymhwyster cyfatebol; neu

(b) y mae'n ofynnol iddo—

(i) gweithio heb oruchwyliaeth;

(ii) gweithio gydag anifeiliaid;

(iii) gweithio â pheiriannau pŵer; neu

(iv) gyrru tractor amaethyddol,

gael ei gyflogi fel gweithiwr ar Radd 2.

Gradd 3

6.—(1) Rhaid i weithiwr amaethyddol sydd wedi ei gyflogi mewn amaethyddiaeth am gyfnod agregedig o 2 flynedd o leiaf yn ystod y 5 mlynedd blaenorol ac—

(a) sy'n darparu tystiolaeth ddogfennol i gyflogwr fod ganddo—

(i) un o'r dyfarniadau neu'r tystysgrifau cymhwysedd a restrir yn y tablau yn Atodlen 2;

(ii) un Cymhwyster Galwedigaethol Cenedlaethol sy'n berthnasol i'w waith; neu

(iii) cymhwyster cyfatebol; neu

(b) sydd wedi ei ddynodi'n arweinydd tîm,

gael ei gyflogi fel gweithiwr ar Radd 3.

(2) At ddibenion yr erthygl hon, mae "arweinydd tîm" yn gyfrifol am arwain tîm o weithwyr amaethyddol ac am fonitro sut mae'r tîm yn cydymffurfio â chyfarwyddiadau a roddir gan neu ar ran eu cyflogwr ond nid yw'n gyfrifol am faterion disgyblu.

Gradd 4

7. Rhaid i weithiwr amaethyddol—

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(a) sy'n darparu tystiolaeth ddogfennol i gyflogwr fod ganddo gyfanswm o 8 cymhwyster sydd naill ai—

(i) yn ddyfarniadau neu dystysgrifau cymhwysedd a restrir yn y tablau yn Atodlen 1;

(ii) yn Gymwysterau Galwedigaethol Cenedlaethol sy'n berthnasol i'w waith; neu

(iii) yn gymwysterau cyfatebol; neu

(b) sy'n darparu tystiolaeth ddogfennol i gyflogwr fod ganddo 1 o'r dyfarniadau neu dystysgrifau cymhwysedd a restrir yn y tablau yn Atodlen 3 neu gymhwyster cyfatebol; ac

(c) sydd naill ai—

(i) wedi ei gyflogi mewn amaethyddiaeth am gyfnod agregedig o 2 flynedd o leiaf yn ystod y 5 mlynedd diwethaf; neu

(ii) wedi ei gyflogi'n ddi-dor am gyfnod o 12 mis neu ragor o leiaf gan yr un cyflogwr ers ennill y cymwysterau y cyfeirir atynt ym mharagraffau (a) a (b),

gael ei gyflogi fel gweithiwr ar Radd 4.

Gradd 5

8. Rhaid i weithiwr amaethyddol y mae'n ofynnol iddo ysgwyddo cyfrifoldeb o ddydd i ddydd—

(a) dros oruchwylio'r gwaith a gyflawnir ar ddaliad y cyflogwr;

(b) dros roi penderfyniadau rheoli ar waith; neu

(c) dros reoli staff,

gael ei gyflogi fel gweithiwr ar Radd 5.

Gradd 6

9. Rhaid i weithiwr amaethyddol y mae'n ofynnol iddo ysgwyddo cyfrifoldeb rheoli—

(a) dros ddaliad cyfan y cyflogwr;

(b) dros ran o ddaliad y cyflogwr a redir fel gweithrediad neu fusnes ar wahân; neu

(c) dros hurio a rheoli staff,

gael ei gyflogi fel gweithiwr ar Radd 6.

Datblygu Proffesiynol Parhaus

10.—(1) Rhaid i weithiwr amaethyddol na ellir ei gyflogi ar un o Raddau 2 i 6 yn unol â'r ddarpariaeth yn erthyglau 5 i 9 o'r Gorchymyn hwn ac nad yw'n brentis yn unol ag erthygl 11 gael ei gyflogi fel gweithiwr ar Radd 1.

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(2) Mae prentis sydd yn nhrydedd flwyddyn ac unrhyw flwyddyn olynol ei brentisiaeth i fod yn ddarostyngedig i'r cyfraddau tâl isaf ac unrhyw delerau ac amodau eraill yn y Gorchymyn hwn sy'n gymwys i weithwyr amaethyddol a gyflogir ar Radd 2.

(3) Rhaid i weithiwr amaethyddol—

(a) cadw tystiolaeth ddogfennol o gymwysterau a phrofiad a enillwyd ganddo sy'n berthnasol i'w gyflogaeth; a

(b) rhoi gwybod i'w gyflogwr os yw wedi ennill cymwysterau a phrofiad sy'n ei alluogi i gael ei gyflogi ar Radd wahanol.

Prentisiaid

11.—(1) Mae gweithiwr amaethyddol yn brentis sydd wedi ei gyflogi o dan brentisiaeth os yw'n cael ei gyflogi o dan naill ai contract prentisiaeth neu gytundeb prentisiaeth o fewn ystyr "apprenticeship agreement" yn adran 32 o Ddeddf Prentisiaethau, Sgiliau, Plant a Dysgu 2009(**1**), neu'n cael ei drin fel pe bai wedi ei gyflogi o dan gontract prentisiaeth;.

(2) Rhaid i weithiwr amaethyddol gael ei drin fel pe bai wedi ei gyflogi o dan gontract prentisiaeth os yw wedi ei gymryd ymlaen yng Nghymru o dan drefniadau Llywodraeth o'r enw Prentisiaethau Sylfaen, Prentisiaethau neu Brentisiaethau Uwch.

(3) Yn yr erthygl hon ystyr "trefniadau Llywodraeth" yw trefniadau a wnaed o dan adran 2 o Ddeddf Cyflogaeth a Hyfforddiant 1973(**2**) neu o dan adran 17B o Ddeddf Ceiswyr Gwaith 1995(**3**).

(**1**) 2009 p. 22.

(**2**) 1973 p. 50. Diwygiwyd adran 2 gan adran 25 o Ddeddf Cyflogaeth 1988 (p. 19) ac adran 47 o Ddeddf Diwygio Undebau Llafur a Hawliau Cyflogaeth 1993 (p. 19). Trosglwyddwyd swyddogaethau perthnasol yr Ysgrifennydd Gwladol, i'r graddau y maent yn arferadwy o ran Cymru, i Gynulliad Cenedlaethol Cymru gan Orchymyn Cynulliad Cenedlaethol Cymru (Trosglwyddo Swyddogaethau) 1999 (O.S. 1999/672). Trosglwyddwyd swyddogaethau Cynulliad Cenedlaethol Cymru i Weinidogion Cymru yn rhinwedd adran 162 o Ddeddf Llywodraeth Cymru 2006 (p. 32), a pharagraffau 30 a 32 o Atodlen 11 iddi.

(**3**) 1995 p. 18. Diddymwyd adran 17B gan adran 147 o Ddeddf Diwygio Lles 2012 (p. 5) a Rhan 4 o Atodlen 14 iddi. Mae'r diddymiad yn effeithiol at ddibenion penodol yn unol ag O.S. 2013/983, O.S. 2013/1511, O.S. 2013/2657, O.S. 2013/2846, O.S. 2014/209, O.S. 2014/1583, O.S. 2014/2321, O.S. 2014/3094, O.S. 2015/33, O.S. 2015/101, O.S. 2015/634, O.S. 2015/1537, O.S. 2015/1930, O.S. 2016/33 ac O.S. 2016/407.

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RHAN 3

Yr isafswm cyflog amaethyddol

Cyfraddau tâl isaf

12.—(1) Yn ddarostyngedig i weithrediad adran 1 o Ddeddf Isafswm Cyflog Cenedlaethol 1998(**1**), rhaid i weithwyr amaethyddol gael eu talu gan eu cyflogwr mewn cysylltiad â'u gwaith yn ôl cyfradd nad yw'n llai na'r isafswm cyflog amaethyddol.

(2) Yr isafswm cyflog amaethyddol yw'r gyfradd isaf fesul awr a bennir yn y Tabl yn Atodlen 4 fel y gyfradd sy'n gymwys i bob gradd o weithiwr amaethyddol ac i brentisiaid.

Cyfraddau tâl isaf am oramser

13. Rhaid i weithwyr amaethyddol gael eu talu gan eu cyflogwr mewn cysylltiad â goramser a weithir yn ôl cyfradd nad yw'n llai nag 1.5 gwaith yr isafswm cyflog amaethyddol a bennir yn erthygl 12 o'r Gorchymyn hwn ac Atodlen 4 iddo sy'n gymwys i'w radd neu i'w gategori.

Cyfraddau tâl isaf am waith allbwn

14. Rhaid i weithwyr amaethyddol gael eu talu gan eu cyflogwr mewn cysylltiad â gwaith allbwn yn ôl cyfradd nad yw'n llai na'r isafswm cyflog amaethyddol a bennir yn erthygl 12 o'r Gorchymyn hwn ac Atodlen 4 iddo sy'n gymwys i'w radd neu i'w gategori.

Lwfans gwrthbwyso llety

15.—(1) Pan fo cyflogwr, mewn unrhyw wythnos, yn darparu tŷ i weithiwr amaethyddol am y cyfan o'r wythnos honno, caiff y cyflogwr dynnu'r swm o £1.50 oddi ar isafswm cyflog y gweithiwr amaethyddol sy'n daladwy o dan erthygl 12 o'r Gorchymyn hwn ar gyfer yr wythnos honno.

(2) Yn ddarostyngedig i baragraffau (3) a (4), pan fo cyflogwr, mewn unrhyw wythnos, yn darparu llety arall i weithiwr amaethyddol, caiff y cyflogwr dynnu'r swm o £4.82 oddi ar isafswm cyflog y gweithiwr amaethyddol sy'n daladwy o dan erthygl 12 o'r Gorchymyn hwn am bob diwrnod yn yr wythnos y darperir y llety arall i'r gweithiwr.

(3) Dim ond pan fo'r gweithiwr amaethyddol wedi gweithio o leiaf 15 awr yn ystod yr wythnos honno y caniateir i'r didyniad ym mharagraff (2) gael ei wneud.

(**1**) 1998 p. 39.

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(4) Rhaid i unrhyw amser yn ystod yr wythnos honno pan fo'r gweithiwr amaethyddol ar wyliau blynyddol neu absenoldeb oherwydd profedigaeth gyfrif tuag at y 15 awr hynny.

Taliadau nad ydynt yn ffurfio rhan o dâl gweithiwr amaethyddol

16. Nid yw'r lwfansau a'r taliadau a ganlyn yn ffurfio rhan o dâl gweithiwr amaethyddol—

(a) lwfans cŵn o £8.17 y ci i'w dalu'n wythnosol pan fo'i gyflogwr yn ei gwneud yn ofynnol i weithiwr amaethyddol gadw un neu ragor o gŵn;

(b) lwfans ar alwad o swm sy'n cyfateb i ddwy waith y gyfradd goramser fesul awr a nodir yn erthygl 13 o'r Gorchymyn hwn;

(c) lwfans gwaith nos o £1.55 am bob awr o waith nos; a

(d) grant geni a mabwysiadu o £64.29 am bob plentyn.

Costau hyfforddi

17.—(1) Pan fo gweithiwr amaethyddol yn mynd ar gwrs hyfforddi gyda chytundeb ei gyflogwr ymlaen llaw, rhaid i'r cyflogwr dalu—

(a) unrhyw ffioedd am y cwrs; a

(b) unrhyw gostau teithio a llety a ysgwyddir gan y gweithiwr amaethyddol wrth fynd ar y cwrs.

(2) Bernir bod gweithiwr amaethyddol sydd wedi ei gyflogi'n ddi-dor ar Radd 1 gan yr un cyflogwr am ddim llai na 30 wythnos wedi cael cymeradwyaeth ei gyflogwr i ymgymryd â hyfforddiant gyda golwg ar sicrhau'r cymwysterau angenrheidiol y mae'n ofynnol i weithiwr Radd 2 feddu arnynt.

(3) Y cyflogwr sydd i dalu am unrhyw hyfforddiant y mae gweithiwr amaethyddol yn ymgymryd ag ef yn unol â pharagraff (2).

RHAN 4

Yr hawl i gael tâl salwch amaethyddol

Yr hawl i gael tâl salwch amaethyddol

18. Yn ddarostyngedig i'r darpariaethau yn y Rhan hon, mae gan weithiwr amaethyddol hawl i gael tâl salwch amaethyddol gan ei gyflogwr mewn cysylltiad â'i absenoldeb salwch.

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Amodau cymhwyso ar gyfer tâl salwch amaethyddol

19. Mae gweithiwr amaethyddol yn cymhwyso ar gyfer tâl salwch amaethyddol o dan y Gorchymyn hwn ar yr amod bod y gweithiwr amaethyddol—

(a) wedi cael ei gyflogi'n barhaus gan ei gyflogwr am gyfnod o 52 o wythnosau o leiaf cyn yr absenoldeb salwch;

(b) wedi hysbysu ei gyflogwr am yr absenoldeb salwch mewn ffordd a gytunwyd yn flaenorol gyda'i gyflogwr neu, yn niffyg unrhyw gytundeb o'r fath, drwy unrhyw ddull rhesymol;

(c) mewn amgylchiadau pan fo'r absenoldeb salwch wedi parhau am gyfnod o 8 diwrnod yn olynol neu ragor, wedi darparu tystysgrif i'w gyflogwr gan ymarferwr meddygol cofrestredig sy'n datgelu'r diagnosis ynghylch anhwylder meddygol y gweithiwr ac sy'n datgan mai'r anhwylder sydd wedi achosi absenoldeb salwch y gweithiwr amaethyddol.

Cyfnodau absenoldeb salwch

20. Rhaid i unrhyw 2 gyfnod o salwch sydd â chyfnod o ddim mwy na 14 diwrnod rhyngddynt gael eu trin fel un cyfnod o absenoldeb salwch.

Cyfyngiadau ar yr hawl i dâl salwch amaethyddol

21.—(1) Ni fydd tâl salwch amaethyddol yn daladwy am y 3 diwrnod cyntaf o absenoldeb salwch o dan amgylchiadau pan fo hyd yr absenoldeb salwch yn llai na 14 diwrnod.

(2) Yn ystod pob cyfnod hawl, uchafswm nifer yr wythnosau y mae gan weithiwr amaethyddol hawl i gael tâl salwch amaethyddol ar eu cyfer yw—

(a) 13 wythnos pan fo'r gweithiwr amaethyddol wedi ei gyflogi gan yr un cyflogwr am o leiaf 12 mis ond heb fod yn fwy na 24 mis;

(b) 16 wythnos pan fo'r gweithiwr amaethyddol wedi ei gyflogi gan yr un cyflogwr am o leiaf 24 mis ond heb fod yn fwy na 36 mis;

(c) 19 wythnos pan fo'r gweithiwr amaethyddol wedi ei gyflogi gan yr un cyflogwr am o leiaf 36 mis ond heb fod yn fwy na 48 mis;

(d) 22 wythnos pan fo'r gweithiwr amaethyddol wedi ei gyflogi gan yr un cyflogwr am o leiaf 48 mis ond heb fod yn fwy na 59 mis;

(e) 26 wythnos pan fo'r gweithiwr amaethyddol wedi ei gyflogi gan yr un cyflogwr am 59 mis neu fwy.

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(3) Pan fo gweithiwr amaethyddol yn gweithio oriau sylfaenol neu unrhyw oramser gwarantedig, pan fo hynny'n berthnasol, ar nifer penodedig o ddiwrnodau bob wythnos, cyfrifir uchafswm nifer y diwrnodau o dâl salwch amaethyddol y mae gan y gweithiwr amaethyddol hawl i'w cael drwy luosi uchafswm nifer yr wythnosau sy'n berthnasol i'r gweithiwr amaethyddol â nifer y diwrnodau cymwys a weithiwyd bob wythnos.

(4) Pan fo gweithiwr amaethyddol yn gweithio oriau sylfaenol neu unrhyw oramser gwarantedig, pan fo hynny'n berthnasol, ar nifer amrywiol o ddiwrnodau bob wythnos, cyfrifir uchafswm nifer y diwrnodau o dâl salwch amaethyddol y mae gan y gweithiwr amaethyddol hawl i'w cael drwy luosi uchafswm nifer yr wythnosau sy'n berthnasol i'r gweithiwr hwnnw â nifer y diwrnodau perthnasol.

(5) Cyfrifir nifer y diwrnodau perthnasol drwy rannu nifer y diwrnodau cymwys a weithiwyd yn ystod cyfnod o 12 mis yn arwain at gyfnod yr absenoldeb salwch â 52.

(6) Mae uchafswm hawl gweithiwr amaethyddol i gael tâl salwch amaethyddol yn gymwys pa faint bynnag o gyfnodau o absenoldeb salwch a geir yn ystod unrhyw gyfnod hawl.

(7) Yn ddarostyngedig i baragraff (8), yn yr erthygl hon, "cyfnod hawl" yw cyfnod sy'n dechrau â chychwyn absenoldeb salwch ac sy'n dod i ben 12 mis yn ddiweddarach.

(8) Os yw'r gweithiwr amaethyddol yn cael cyfnod o absenoldeb salwch sy'n cychwyn unrhyw bryd yn ystod y cyfnod hawl a ddisgrifir ym mharagraff (7), ond sy'n parhau tu hwnt i ddiwedd y cyfnod hawl hwnnw, rhaid estyn y cyfnod hawl fel y bo'n dod i ben â pha un bynnag o'r canlynol sy'n digwydd gyntaf—

(a) y dyddiad y mae absenoldeb salwch y gweithiwr amaethyddol yn dod i ben ac y mae'r gweithiwr amaethyddol yn dychwelyd i'r gwaith; neu

(b) y diwrnod y mae'r gweithiwr amaethyddol yn cyrraedd uchafswm yr hawl i gael tâl salwch amaethyddol sy'n gymwys i'r cyfnod o 12 mis y cyfeirir ato ym mharagraff (7) (pe na bai hwnnw wedi ei estyn).

Pennu swm tâl salwch amaethyddol

22.—(1) Mae tâl salwch amaethyddol yn daladwy yn ôl cyfradd sy'n cyfateb i'r gyfradd tâl isaf fesul awr a ragnodir yn erthygl 12 o'r Gorchymyn hwn ac Atodlen 4 iddo fel y gyfradd sy'n gymwys i'r radd honno neu'r categori hwnnw o weithiwr amaethyddol.

(2) Pennir swm y tâl salwch amaethyddol sy'n daladwy i weithiwr amaethyddol drwy gyfrifo nifer yr

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oriau contract dyddiol a fyddai wedi cael eu gweithio yn ystod cyfnod o absenoldeb salwch.

(3) Pennir nifer yr oriau contract dyddiol—

(a) o dan amgylchiadau pan fo gweithiwr amaethyddol yn gweithio nifer penodedig o oriau bob wythnos dwy rannu cyfanswm nifer yr oriau a weithiwyd yn ystod unrhyw wythnos â nifer y diwrnodau a weithiwyd yn yr wythnos honno;

(b) o dan amgylchiadau pan fo gweithiwr amaethyddol yn gweithio nifer amrywiol o oriau bob wythnos, drwy ddefnyddio'r fformwla—

$$\frac{QH \div 8}{DWEW}$$

pan fo, at ddibenion yr erthygl hon—

QH yn gyfanswm nifer yr oriau cymwys yn y cyfnod, a

DWEW yn nifer y diwrnodau a weithiwyd bob wythnos gan y gweithiwr amaethyddol o'u cymryd ar gyfartaledd yn ystod cyfnod o 8 wythnos yn union cyn i'r absenoldeb salwch gychwyn.

(4) Yn yr erthygl hon "oriau cymwys" yw oriau—

(a) pan fu'r gweithiwr amaethyddol yn gweithio oriau sylfaenol neu oramser gwarantedig;

(b) pan gymerodd y gweithiwr amaethyddol wyliau blynyddol neu absenoldeb oherwydd profedigaeth;

(c) pan gafodd y gweithiwr amaethyddol absenoldeb salwch a oedd yn gymwys ar gyfer tâl salwch amaethyddol o dan y Gorchymyn hwn; neu

(d) pan gafodd y gweithiwr amaethyddol absenoldeb salwch nad oedd yn gymwys ar gyfer tâl salwch amaethyddol o dan y Gorchymyn hwn; a

"diwrnodau cymwys" yw unrhyw ddiwrnodau o fewn y cyfnod y cafwyd ynddynt oriau cymwys mewn perthynas â'r gweithiwr amaethyddol.

(5) At ddibenion cyfrifiadau o dan yr erthygl hon, pan gyflogwyd gweithiwr amaethyddol gan ei gyflogwr am lai nag 8 wythnos, rhaid ystyried yr oriau cymwys a'r diwrnodau cymwys yn ystod y gwir nifer o wythnosau y cyflogwyd y gweithiwr amaethyddol gan ei gyflogwr.

Tâl salwch amaethyddol i gymryd tâl salwch statudol i ystyriaeth

23. Caniateir i swm sy'n hafal i unrhyw daliad tâl salwch statudol a wneir yn unol â Rhan XI o Ddeddf

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Cyfraniadau a Budd-daliadau Nawdd Cymdeithasol 1992(**1**) mewn cysylltiad â chyfnod absenoldeb salwch gweithiwr amaethyddol gael ei dynnu oddi ar dâl salwch amaethyddol y gweithiwr hwnnw.

Talu tâl salwch amaethyddol

24. Rhaid i dâl salwch amaethyddol gael ei dalu i'r gweithiwr amaethyddol ar ei ddiwrnod cyflog arferol yn unol â naill ai ei gontract gwasanaeth neu ei brentisiaeth.

Cyflogaeth yn dod i ben yn ystod absenoldeb salwch

25.—(1) Yn ddarostyngedig i baragraff (2), os terfynir naill ai contract gwasanaeth gweithiwr amaethyddol neu ei brentisiaeth yn ystod cyfnod o absenoldeb salwch neu os rhoddir hysbysiad i'r gweithiwr amaethyddol fod naill ai ei gontract gwasanaeth neu ei brentisiaeth i gael eu terfynu, mae unrhyw hawl sydd gan y gweithiwr amaethyddol i gael tâl salwch amaethyddol yn parhau ar ôl i'r contract hwnnw ddod i ben fel pe bai'r gweithiwr amaethyddol yn dal yn cael ei gyflogi gan ei gyflogwr, hyd nes i un o'r canlynol ddigwydd—

(a) bod absenoldeb salwch y gweithiwr amaethyddol yn dod i ben;

(b) bod y gweithiwr amaethyddol yn dechrau gweithio i gyflogwr arall; neu

(c) bod uchafswm yr hawl i gael tâl salwch amaethyddol yn unol ag erthygl 21 yn cael ei ddihysbyddu.

(2) Nid oes gan weithiwr amaethyddol y terfynwyd ei gontract hawl i gael unrhyw dâl salwch amaethyddol ar ôl diwedd ei gyflogaeth yn unol â pharagraff (1) os rhoddwyd hysbysiad i'r gweithiwr amaethyddol fod ei gyflogwr yn bwriadu terfynu ei gontract gwasanaeth neu ei brentisiaeth cyn i'r cyfnod o absenoldeb salwch gychwyn.

Gordalu tâl salwch amaethyddol

26.—(1) Yn ddarostyngedig i ddarpariaethau paragraff (2), os caiff gweithiwr amaethyddol sydd â hawl i gael tâl salwch amaethyddol o dan y Rhan hon daliad am fwy o dâl salwch amaethyddol na'i hawl, gall ei gyflogwr adennill gordaliad y tâl salwch amaethyddol hwnnw drwy ei dynnu oddi ar gyflog y gweithiwr amaethyddol hwnnw.

(2) Os tynnir gordaliad tâl salwch amaethyddol o dan y Gorchymyn hwn fel y'i crybwyllir ym mharagraff (1), rhaid i'r cyflogwr beidio â thynnu

(**1**) 1992 p. 4.

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mwy nag 20% o gyflog gros y gweithiwr amaethyddol oni bai bod hysbysiad wedi ei roi i derfynu'r gyflogaeth neu fod y gyflogaeth eisoes wedi ei therfynu pryd y caniateir i fwy nag 20% o gyflog gros y gweithiwr amaethyddol gael ei dynnu gan y cyflogwr oddi ar daliad cyflog olaf y gweithiwr.

Iawndal a adenillir yn sgil colli enillion

27.—(1) Mae'r erthygl hon yn gymwys i weithiwr amaethyddol y mae ei hawl i gael tâl salwch amaethyddol yn codi oherwydd gweithred neu anwaith person heblaw ei gyflogwr ac mae'r iawndal yn cael ei adennill gan y gweithiwr amaethyddol mewn cysylltiad â cholled enillion a ddioddefir yn ystod y cyfnod y cafodd y gweithiwr amaethyddol dâl salwch amaethyddol gan ei gyflogwr ar ei gyfer.

(2) Pan fo paragraff (1) yn gymwys—

(a) rhaid i'r gweithiwr amaethyddol roi gwybod ar unwaith i'w gyflogwr am yr holl amgylchiadau perthnasol ac am unrhyw hawliad ac am unrhyw iawndal a adenillwyd o dan unrhyw gyfaddawd, setliad neu ddyfarniad;

(b) rhaid i'r holl dâl salwch amaethyddol a dalwyd gan y cyflogwr i'r gweithiwr amaethyddol hwnnw mewn cysylltiad â'r absenoldeb salwch yr adenillir iawndal am golli enillion ar ei gyfer fod yn gyfystyr â benthyciad i'r gweithiwr; ac

(c) rhaid i'r gweithiwr amaethyddol ad-dalu i'w gyflogwr swm nad yw'n fwy na'r lleiaf o'r canlynol—

(i) swm yr iawndal a adenillwyd am golli enillion yn y cyfnod y talwyd tâl salwch amaethyddol ar ei gyfer; a

(ii) y symiau a roddwyd i'r gweithiwr amaethyddol gan ei gyflogwr o dan y Rhan hon ar ffurf tâl salwch amaethyddol.

RHAN 5

Yr hawl i gael amser i ffwrdd

Seibiannau gorffwys

28.—(1) Mae gan weithiwr amaethyddol sy'n 18 oed neu'n hŷn ac sydd â'i amser gweithio dyddiol yn fwy na 5 awr a hanner hawl i gael seibiant gorffwys.

(2) Mae'r seibiant gorffwys y darperir ar ei gyfer ym mharagraff (1) yn gyfnod di-dor o ddim llai na 30 munud ac mae gan y gweithiwr amaethyddol hawl i'w

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dreulio i ffwrdd o'i weithfan (os oes ganddo un) neu ei le gwaith arall.

(3) Yn ddarostyngedig i baragraff (4), nid yw'r darpariaethau ynglŷn â seibiannau gorffwys a bennir ym mharagraffau (1) a (2) yn gymwys i weithiwr amaethyddol—

(a) pan nad yw cyfnod ei amser gweithio yn cael ei fesur neu ei bennu ymlaen llaw oherwydd nodweddion penodol y gweithgaredd y mae'r gweithiwr amaethyddol yn ei gyflawni;

(b) pan fo gweithgareddau'r gweithiwr amaethyddol yn golygu bod angen parhad mewn gwasanaeth neu mewn cynhyrchu;

(c) pan geir ymchwydd gweithgarwch rhagweladwy;

(d) pan effeithir ar weithgareddau'r gweithiwr amaethyddol—

(i) gan ddigwyddiad oherwydd amgylchiadau anarferol nad ydynt yn rhagweladwy, y tu hwnt i reolaeth ei gyflogwr;

(ii) gan ddigwyddiadau eithriadol, nad oedd modd osgoi eu canlyniadau er i'r cyflogwr arfer pob gofal dyladwy; neu

(iii) gan ddamwain neu'r risg bod damwain ar fin digwydd; neu

(e) pan fo'r cyflogwr a'r gweithiwr amaethyddol yn cytuno i addasu paragraffau (1) a (2) neu i'w hatal rhag bod yn gymwys yn y modd ac i'r graddau a ganiateir gan neu o dan Reoliadau Amser Gwaith 1998(**1**).

(4) Pan fo paragraff (3) yn gymwys a bod ei gyflogwr yn ei gwneud yn ofynnol i'r gweithiwr amaethyddol weithio yn unol â hynny yn ystod cyfnod a fyddai fel arall yn seibiant gorffwys—

(a) rhaid i'r cyflogwr, oni bai bod is-baragraff (b) yn gymwys, ganiatáu i'r gweithiwr amaethyddol gymryd cyfnod cyfatebol o seibiant yn ei le; a

(b) mewn achosion eithriadol pan nad yw, am resymau gwrthrychol, yn bosibl caniatáu cyfnod gorffwys o'r fath, rhaid i gyflogwr y gweithiwr amaethyddol gynnig iddo unrhyw amddiffyniad sy'n briodol i warchod iechyd a diogelwch y gweithiwr amaethyddol.

(**1**) O.S. 1998/1833.

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Y flwyddyn gwyliau blynyddol

29. Y flwyddyn gwyliau blynyddol i bob gweithiwr amaethyddol yw'r cyfnod o 12 mis sy'n dechrau ar 1 Hydref ac sy'n dod i ben ar 30 Medi.

Swm gwyliau blynyddol gweithwyr amaethyddol a chanddynt ddiwrnodau gweithio penodedig a gyflogir drwy gydol y flwyddyn gwyliau

30.—(1) Mae gan weithiwr amaethyddol a gyflogir gan yr un cyflogwr drwy gydol y flwyddyn gwyliau blynyddol hawl i gael y swm gwyliau blynyddol a ragnodir yn y Tabl yn Atodlen 5.

(2) Pan fo gweithiwr amaethyddol yn gweithio ei oriau sylfaenol ac unrhyw oramser gwarantedig, pan fo hynny'n berthnasol, ar nifer penodedig o ddiwrnodau cymwys bob wythnos, nifer y diwrnodau a weithiwyd bob wythnos at ddibenion y Tabl yn Atodlen 5 yw'r nifer penodedig hwnnw o ddiwrnodau.

Swm gwyliau blynyddol gweithwyr amaethyddol a chanddynt ddiwrnodau gweithio amrywiol a gyflogir drwy gydol y flwyddyn gwyliau

31.—(1) Pan fo gweithiwr amaethyddol yn gweithio ei oriau sylfaenol ar nifer amrywiol o ddiwrnodau bob wythnos, cymerir mai nifer y diwrnodau a weithiwyd bob wythnos at ddibenion y Tabl yn Atodlen 5, yw cyfartaledd nifer y diwrnodau cymwys a weithiwyd bob wythnos yn ystod cyfnod o 12 wythnos yn union cyn i wyliau blynyddol y gweithiwr amaethyddol gychwyn a rhaid i'r nifer cyfartalog hwnnw o ddiwrnodau cymwys gael ei dalgrynnu i'r diwrnod cyfan agosaf, pan fo hynny'n briodol.

(2) Ar ddiwedd y flwyddyn gwyliau blynyddol rhaid i'r cyflogwr gyfrifo hawl wirioneddol y gweithiwr amaethyddol at ddibenion y Tabl yn Atodlen 5, ar sail nifer y diwrnodau cymwys a weithiwyd bob wythnos, wedi ei gymryd fel cyfartaledd nifer y diwrnodau cymwys a weithiwyd bob wythnos yn ystod y flwyddyn gwyliau blynyddol (h.y. dros gyfnod o 52 wythnos) a rhaid i nifer cyfartalog y diwrnodau cymwys gael ei dalgrynnu i'r diwrnod cyfan agosaf, pan fo hynny'n briodol.

(3) Os yw'r gweithiwr amaethyddol, ar ddiwedd y flwyddyn gwyliau blynyddol, wedi cronni hawl i wyliau ond heb eu cymryd, mae gan y gweithiwr amaethyddol hawl i ddwyn ymlaen unrhyw wyliau a gronnwyd ond nas cymerwyd i'r flwyddyn gwyliau blynyddol ganlynol yn unol ag erthygl 33(3) o'r Gorchymyn hwn neu caiff y gweithiwr amaethyddol a'r cyflogwr gytuno i daliad yn lle unrhyw wyliau a gronnwyd ond nas cymerwyd yn unol ag erthygl 36 o'r Gorchymyn hwn.

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(4) Os yw'r gweithiwr amaethyddol, ar ddiwedd y flwyddyn gwyliau blynyddol, wedi cymryd mwy o ddiwrnodau gwyliau nag yr oedd ganddo hawl iddynt o dan y Gorchymyn hwn, ar sail nifer cyfartalog y diwrnodau cymwys a weithiwyd bob wythnos (wedi ei gyfrifo yn unol â pharagraff (2)), mae gan y cyflogwr hawl i ddidynnu unrhyw dâl am ddiwrnodau gwyliau a gymerwyd uwchlaw hawl y gweithiwr amaethyddol neu, fel arall, ddidynnu'r diwrnodau gwyliau a gymerwyd uwchlaw hawl y gweithiwr amaethyddol o'i hawl ar gyfer y flwyddyn gwyliau blynyddol ganlynol (ar yr amod nad yw didyniad o'r fath yn arwain at fod y gweithiwr amaethyddol yn cael llai na'i hawl gwyliau blynyddol statudol o dan reoliadau 13 a 13A o Reoliadau Amser Gwaith 1998).

Swm gwyliau blynyddol gweithwyr amaethyddol a gyflogir am ran o'r flwyddyn gwyliau

32.—(1) Mae gan weithiwr amaethyddol a gyflogir gan yr un cyflogwr am ran o'r flwyddyn gwyliau blynyddol hawl i gronni gwyliau blynyddol yn ôl cyfradd o 1/52 o'r hawl i gael gwyliau blynyddol a bennir yn y Tabl yn Atodlen 5 am bob wythnos orffenedig o wasanaeth gyda'r un cyflogwr.

(2) Pan fo swm y gwyliau blynyddol a gronnwyd mewn achos penodol yn cynnwys ffracsiwn o ddiwrnod heblaw hanner diwrnod, mae'r ffracsiwn hwnnw—

(a) i'w dalgrynnu i lawr i'r diwrnod cyfan nesaf os yw'n llai na hanner diwrnod; a

(b) i'w dalgrynnu i fyny i'r diwrnod cyfan nesaf os yw'n fwy na hanner diwrnod.

Amseru gwyliau blynyddol

33.—(1) Caiff gweithiwr amaethyddol gymryd gwyliau blynyddol y mae ganddo hawl i'w cymryd o dan y Gorchymyn hwn unrhyw bryd o fewn y flwyddyn gwyliau blynyddol yn ddarostyngedig i gymeradwyaeth ei gyflogwr.

(2) Nid oes gan weithiwr amaethyddol hawl i gario unrhyw hawl gwyliau blynyddol nas cymerwyd ymlaen o'r naill flwyddyn gwyliau i'r flwyddyn gwyliau nesaf heb gymeradwyaeth ei gyflogwr.

(3) Pan fo cyflogwr wedi cytuno y caiff gweithiwr amaethyddol gario unrhyw hawl gwyliau blynyddol nas defnyddiwyd ymlaen, dim ond yn ystod y flwyddyn gwyliau y mae'n cael ei gario ymlaen iddi y caniateir i'r balans gael ei gymryd.

(4) Yn ystod y cyfnod o 1 Hydref hyd at 31 Mawrth mewn unrhyw flwyddyn gwyliau blynyddol caiff cyflogwr ei gwneud yn ofynnol i weithiwr amaethyddol gymryd hyd at 2 wythnos o'i hawl gwyliau blynyddol o dan y Gorchymyn hwn a chaiff

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gyfarwyddo i'r gweithiwr gymryd un o'r 2 wythnos hynny o wyliau blynyddol ar ddiwrnodau yn yr un wythnos.

(5) Yn ystod y cyfnod o 1 Ebrill hyd at 30 Medi mewn unrhyw flwyddyn gwyliau blynyddol, rhaid i gyflogwr ganiatáu i weithiwr amaethyddol gymryd 2 wythnos o hawl gwyliau blynyddol y gweithiwr o dan y Gorchymyn hwn mewn wythnosau olynol.

(6) At ddibenion yr erthygl hon, mae 1 wythnos o wyliau blynyddol gweithiwr amaethyddol yn cyfateb i nifer y diwrnodau a weithiwyd bob wythnos gan y gweithiwr amaethyddol fel y'i pennir yn unol ag erthyglau 30 a 31.

Tâl gwyliau

34.—(1) Mae gan weithiwr amaethyddol hawl i gael ei dalu mewn cysylltiad â phob diwrnod o wyliau blynyddol y mae'n ei gymryd.

(2) Mae swm y tâl gwyliau y mae gan weithiwr amaethyddol hawl i'w gael o dan baragraff (1) i'w bennu drwy rannu cyflog wythnosol y gweithiwr amaethyddol fel y'i pennir yn unol â pharagraff (3) neu, yn ôl y digwydd, paragraff (4), â nifer y diwrnodau cymwys a weithiwyd bob wythnos gan y gweithiwr amaethyddol hwnnw.

(3) Pan nad yw oriau gwaith arferol y gweithiwr amaethyddol o dan naill ai ei gontract gwasanaeth neu ei brentisiaeth yn amrywio (yn ddarostyngedig i baragraff (4)), swm cyflog wythnosol y gweithiwr amaethyddol at ddibenion paragraff (2) yw tâl wythnosol arferol y gweithiwr amaethyddol sy'n daladwy gan y cyflogwr.

(4) Pan fo oriau gwaith arferol y gweithiwr amaethyddol yn amrywio o wythnos i wythnos, neu pan fo gweithiwr amaethyddol sydd ag oriau gwaith arferol (fel ym mharagraff (3)) yn gweithio goramser yn ogystal â'r oriau hynny, cyfrifir swm tâl wythnosol arferol y gweithiwr amaethyddol at ddibenion paragraff (2) drwy adio swm tâl wythnosol arferol y gweithiwr amaethyddol ym mhob un o'r 12 wythnos yn union cyn cychwyn gwyliau blynyddol y gweithiwr a rhannu'r cyfanswm â 12.

(5) At ddibenion yr erthygl hon ystyr "tâl wythnosol arferol" yw—

(a) tâl sylfaenol y gweithiwr amaethyddol o dan ei gontract gwasanaeth neu ei brentisiaeth; a

(b) unrhyw dâl goramser ac unrhyw lwfans a delir yn gyson i'r gweithiwr amaethyddol.

(6) Pan fo gweithiwr amaethyddol wedi ei gyflogi gan ei gyflogwr am lai na 12 wythnos, rhaid ystyried wythnosau pan oedd tâl yn ddyledus i'r gweithiwr amaethyddol yn unig.

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(7) At ddibenion paragraff (2), mae nifer y diwrnodau cymwys a weithiwyd yn cael ei bennu yn unol â'r darpariaethau yn erthyglau 30 a 31 o'r Gorchymyn hwn.

(8) Rhaid i unrhyw dâl sy'n ddyledus i weithiwr amaethyddol o dan yr erthygl hon gael ei dalu heb fod yn hwyrach na diwrnod gwaith olaf y gweithiwr amaethyddol cyn i'r cyfnod o wyliau blynyddol y mae'r taliad yn ymwneud ag ef gychwyn.

Gwyliau cyhoeddus a gwyliau banc

35.—(1) Mae'r erthygl hon yn gymwys pan fo gŵyl gyhoeddus neu ŵyl banc yng Nghymru yn syrthio ar ddiwrnod pan fo'n ofynnol fel arfer i weithiwr amaethyddol weithio o dan naill ai ei gontract gwasanaeth neu ei brentisiaeth.

(2) Mae gan weithiwr amaethyddol y mae ei gyflogwr yn ei gwneud yn ofynnol iddo weithio ar yr ŵyl gyhoeddus neu'r ŵyl banc hawl i gael tâl nad yw'n llai na'r gyfradd goramser a bennir yn erthygl 13.

(3) Mae balans y gwyliau blynyddol sydd wedi eu cronni ar gyfer y flwyddyn gwyliau honno o dan y Gorchymyn hwn gan weithiwr amaethyddol nad yw ei gyflogwr yn ei gwneud yn ofynnol iddo weithio ar yr ŵyl gyhoeddus neu'r ŵyl banc i gael ei leihau o 1 diwrnod mewn cysylltiad â'r ŵyl gyhoeddus neu'r ŵyl banc nad yw'n ofynnol i'r gweithiwr amaethyddol weithio arni.

Taliad yn lle gwyliau blynyddol

36.—(1) Yn ddarostyngedig i'r amodau ym mharagraff (2), caiff gweithiwr amaethyddol a'i gyflogwr gytuno bod y gweithiwr amaethyddol i gael taliad yn lle diwrnod o hawl gwyliau blynyddol y gweithiwr amaethyddol.

(2) Yr amodau y cyfeirir atynt ym mharagraff (1) yw—

(a) bod uchafswm nifer y diwrnodau y caiff gweithiwr amaethyddol gael taliad yn lle gwyliau blynyddol ar eu cyfer yn ystod unrhyw flwyddyn gwyliau blynyddol wedi ei ragnodi yn y Tabl yn Atodlen 6;

(b) bod cofnod ysgrifenedig i'w gadw gan y cyflogwr ynglŷn ag unrhyw gytundeb y caiff gweithiwr amaethyddol daliad yn lle diwrnod o wyliau blynyddol am o leiaf 3 blynedd gan gychwyn ar ddiwedd y flwyddyn gwyliau honno;

(c) o dan amgylchiadau pan nad yw'r gweithiwr amaethyddol yn gweithio ar ddiwrnod fel y cytunir yn unol â pharagraff (1), bod y diwrnod hwnnw i barhau'n rhan o hawl gwyliau blynyddol y gweithiwr amaethyddol;

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(d) bod taliad yn lle gwyliau blynyddol i'w dalu ar gyfradd sy'n cynnwys y gyfradd goramser a bennir yn erthygl 13 yn ogystal â thâl gwyliau a gyfrifir yn unol ag erthygl 34 fel pe bai'r diwrnod y gwneir taliad yn lle gwyliau blynyddol yn ddiwrnod y mae'r gweithiwr amaethyddol yn cymryd gwyliau blynyddol.

Talu tâl gwyliau wrth derfynu cyflogaeth

37.—(1) Pan derfynir cyflogaeth gweithiwr amaethyddol ac nad yw'r gweithiwr amaethyddol wedi cymryd yr holl hawl gwyliau blynyddol sydd wedi cronni iddo ar ddyddiad terfynu'r gyflogaeth, mae gan y gweithiwr amaethyddol hawl yn unol â pharagraff (2) i gael taliad yn lle'r gwyliau blynyddol a gronnwyd ond nas cymerwyd.

(2) Mae swm y taliad sydd i'w dalu i'r gweithiwr amaethyddol yn lle pob diwrnod o'i wyliau blynyddol a gronnwyd ond nas cymerwyd ar ddyddiad terfynu'r gyflogaeth i'w gyfrifo yn unol ag erthygl 34 fel pe bai dyddiad terfynu'r gyflogaeth yn ddiwrnod cyntaf cyfnod o wyliau blynyddol y gweithiwr amaethyddol.

Adennill tâl gwyliau

38.—(1) Os terfynir cyflogaeth gweithiwr amaethyddol cyn diwedd y flwyddyn gwyliau blynyddol a bod y gweithiwr amaethyddol wedi cymryd mwy o wyliau blynyddol nag yr oedd ganddo hawl i'w cael o dan ddarpariaethau'r Gorchymyn hwn neu fel arall, mae gan ei gyflogwr hawl i adennill swm y tâl gwyliau a dalwyd i'r gweithiwr amaethyddol mewn cysylltiad â gwyliau blynyddol a gymerwyd uwchlaw ei hawl.

(2) Pan fo gan gyflogwr hawl o dan baragraff (1) i adennill tâl gwyliau oddi ar weithiwr amaethyddol, caiff y cyflogwr wneud hynny drwy ei dynnu oddi ar daliad cyflog olaf y gweithiwr amaethyddol.

Absenoldeb oherwydd profedigaeth

39.—(1) Mae gan weithiwr amaethyddol hawl i gael absenoldeb oherwydd profedigaeth â thâl o dan amgylchiadau pan fo'r brofedigaeth yn ymwneud â pherson yng Nghategori A neu Gategori B.

(2) At ddibenion paragraff (1), personau yng Nghategori A yw—

(a) rhiant i'r gweithiwr amaethyddol;

(b) mab neu ferch i'r gweithiwr amaethyddol;

(c) priod neu bartner sifil y gweithiwr amaethyddol; neu

(d) rhywun y mae'r gweithiwr amaethyddol yn byw gydag ef fel gŵr a gwraig heb fod yn gyfreithiol briod neu rywun y mae'r

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gweithiwr amaethyddol yn byw gydag ef fel pe baent mewn partneriaeth sifil.

(3) At ddibenion paragraff (1), personau yng Nghategori B yw—

(a) brawd neu chwaer i'r gweithiwr amaethyddol;

(b) nain neu daid i'r gweithiwr amaethyddol; neu

(c) ŵyr neu wyres i'r gweithiwr amaethyddol.

(4) At ddibenion paragraff (1) mae absenoldeb oherwydd profedigaeth yn ychwanegol at unrhyw hawliau eraill i gael absenoldeb o dan y Gorchymyn hwn.

Pennu swm absenoldeb oherwydd profedigaeth

40.—(1) Swm yr absenoldeb oherwydd profedigaeth y mae gan weithiwr amaethyddol hawl i'w gael yn sgil marwolaeth person yng Nghategori A yw—

(a) 4 diwrnod pan fo'r gweithiwr amaethyddol yn gweithio ei oriau sylfaenol ar 5 niwrnod neu fwy bob wythnos i'r un cyflogwr; neu

(b) pan fo'r gweithiwr amaethyddol yn gweithio ei oriau sylfaenol ar 4 diwrnod yr wythnos neu lai i'r un cyflogwr, nifer y diwrnodau a gyfrifir yn unol â pharagraff (2).

(2) Yn ddarostyngedig i baragraff (6), mae swm hawl gweithiwr amaethyddol i gael absenoldeb oherwydd profedigaeth yn sgil marwolaeth person yng Nghategori A i'w gyfrifo yn ôl y fformwla a ganlyn—

$$\frac{\text{DWEW} \times 4}{5}$$

(3) Swm yr absenoldeb oherwydd profedigaeth y mae gan weithiwr amaethyddol hawl i'w gael yn sgil marwolaeth person yng Nghategori B yw—

(a) 2 ddiwrnod pan fo'r gweithiwr amaethyddol yn gweithio ei oriau sylfaenol ar 5 niwrnod neu fwy bob wythnos i'r un cyflogwr; neu

(b) pan fo'r gweithiwr amaethyddol yn gweithio ei oriau sylfaenol ar 4 diwrnod yr wythnos neu lai i'r un cyflogwr, nifer y diwrnodau a gyfrifir yn unol â pharagraff (4).

(4) Yn ddarostyngedig i baragraff (6), pan fo'r erthygl hon yn gymwys mae swm hawl gweithiwr amaethyddol i gael absenoldeb oherwydd profedigaeth yn sgil marwolaeth person yng Nghategori B i'w gyfrifo yn ôl y fformwla a ganlyn—

$$\frac{\text{DWEW} \times 2}{5}$$

(5) At ddibenion y fformwla ym mharagraffau (2) a (4), DWEW yw nifer y diwrnodau a weithiwyd bob wythnos gan y gweithiwr amaethyddol wedi ei gyfrifo yn unol ag erthygl 30 neu 31 (fel y bo'n briodol).

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(6) Pan fo'r cyfrifiad ym mharagraff (2) neu (4) yn arwain at hawl i gael absenoldeb oherwydd profedigaeth o lai nag 1 diwrnod, mae'r hawl i'w thalgrynnu i fyny i un diwrnod cyfan.

(7) Mewn amgylchiadau pan fo mwy nag un gyflogaeth gan weithiwr amaethyddol (boed gyda'r un cyflogwr neu gyda chyflogwyr gwahanol), caniateir cymryd absenoldeb oherwydd profedigaeth â thâl mewn cysylltiad â mwy nag un gyflogaeth ond ni chaiff, mewn cysylltiad ag unrhyw un brofedigaeth, fod yn fwy nag uchafswm yr absenoldeb oherwydd profedigaeth a bennir ar gyfer un gyflogaeth yn yr erthygl hon.

Swm tâl absenoldeb oherwydd profedigaeth

41. Mae swm y tâl mewn cysylltiad ag absenoldeb oherwydd profedigaeth i'w bennu yn unol â'r darpariaethau yn erthygl 34 fel pe bai diwrnod cyntaf absenoldeb y gweithiwr amaethyddol oherwydd profedigaeth yn ddiwrnod cyntaf gwyliau blynyddol y gweithiwr hwnnw.

Absenoldeb di-dâl

42. Caiff gweithiwr amaethyddol gymryd cyfnod o absenoldeb di-dâl, gyda chydsyniad ei gyflogwr.

RHAN 6

Dirymu a darpariaeth drosiannol

Dirymu a darpariaeth drosiannol

43.—(1) Mae Gorchymyn Cyflogau Amaethyddol (Cymru) 2018(**1**) ("Gorchymyn 2018") wedi ei ddirymu.

(2) Mae gweithiwr amaethyddol a gyflogir fel gweithiwr ar Radd neu fel prentis, ac sy'n ddarostyngedig i'r telerau ac amodau a ragnodwyd yng Ngorchymyn 2018 neu unrhyw Orchmynion blaenorol, yn parhau i fod wedi ei gyflogi ar y Radd honno neu fel prentis ac mae, o'r dyddiad y daw'r Gorchymyn hwn i rym, yn ddarostyngedig i'r telerau ac amodau a ragnodir yn y Gorchymyn hwn.

(3) Yn yr erthygl hon ystyr "Gorchmynion blaenorol" yw Gorchymyn Cyflogau Amaethyddol (Cymru) 2017(**2**), Gorchymyn Cyflogau Amaethyddol (Cymru) 2016(**3**), Gorchymyn Cyflogau Amaethyddol (Cymru a Lloegr) 2012 a phob gorchymyn a ddirymwyd gan erthygl 70 o'r Gorchymyn hwnnw.

(**1**) O.S. 2018/433 (Cy.76).
(**2**) O.S. 2017/1058 (Cy.271).
(**3**) O.S. 2016/107 (Cy.53).

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Gweinidog yr Amgylchedd, Ynni a Materion
Gwledig, un o Weinidogion Cymru

6 Mawrth 2019

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ATODLEN 1

Erthyglau 5 a 7

DYFARNIADAU A THYSTYSGRIFAU CYMHWYSEDD GWEITHWYR GRADD 2

Tablau

Cod y Dyfarniad	Sefydliad Dyfarnu	Lefel	Teitl
600/7421/8	ABC	Lefel 1	Dyfarniad Lefel 1 mewn Sgiliau Cefn Gwlad Ymarferol
600/7388/3	ABC	Lefel 1	Dyfarniad Lefel 1 mewn Sgiliau Garddwriaeth Ymarferol
600/7423/1	ABC	Lefel 1	Tystysgrif Lefel 1 mewn Sgiliau Cefn Gwlad Ymarferol
600/7389/5	ABC	Lefel 1	Tystysgrif Lefel 1 mewn Sgiliau Garddwriaeth Ymarferol
600/7424/3	ABC	Lefel 1	Diploma Lefel 1 mewn Sgiliau Cefn Gwlad Ymarferol
500/9700/3	ABC	Lefel 1	Dyfarniad Lefel 1 mewn Sgiliau Cefn Gwlad Ymarferol
500/9854/8	ABC	Lefel 1	Dyfarniad Lefel 1 mewn Sgiliau Garddwriaeth Ymarferol
600/5890/0	NOCN	Lefel 1	Dyfarniad Lefel 1 mewn Garddwriaeth
600/5891/2	NOCN	Lefel 1	Tystysgrif Lefel 1 mewn Garddwriaeth
601/0156/8	NOCN	Lefel 1	Dyfarniad Lefel 1 mewn Astudiaethau Galwedigaethol (Garddwriaeth)
601/0157/X	NOCN	Lefel 1	Tystysgrif Lefel 1 mewn Astudiaethau Galwedigaethol (Garddwriaeth)
500/6256/6	City & Guilds	Lefel 1	Dyfarniad Lefel 1 yn Astudiaethau'r Tir
500/6713/8	City & Guilds	Lefel 1	Dyfarniad Lefel 1 mewn Amaethyddiaeth Seiliedig ar Waith
500/6708/4	City & Guilds	Lefel 1	Dyfarniad Lefel 1 mewn Garddwriaeth Seiliedig ar Waith
500/6712/6	City & Guilds	Lefel 1	Dyfarniad Lefel 1 mewn Gweithrediadau ar y Tir Seiliedig ar Waith
500/6257/8	City & Guilds	Lefel 1	Tystysgrif Lefel 1 yn Astudiaethau'r Tir
500/6752/7	City & Guilds	Lefel 1	Tystysgrif Lefel 1 mewn Amaethyddiaeth Seiliedig ar Waith
500/6659/6	City & Guilds	Lefel 1	Tystysgrif Lefel 1 mewn Garddwriaeth Seiliedig ar Waith
500/6660/2	City & Guilds	Lefel 1	Tystysgrif Lefel 1 mewn Gweithrediadau ar y Tir Seiliedig ar Waith
500/6268/2	City & Guilds	Lefel 1	Diploma Lefel 1 yn Astudiaethau'r Tir
500/6761/8	City & Guilds	Lefel 1	Diploma Lefel 1 mewn Amaethyddiaeth Seiliedig ar Waith

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500/6709/6	City & Guilds	Lefel 1	Diploma Lefel 1 mewn Garddwriaeth Seiliedig ar Waith
500/6711/4	City & Guilds	Lefel 1	Diploma Lefel 1 mewn Gweithrediadau ar y Tir Seiliedig ar Waith
600/5587/X	City & Guilds	Lefel 1	Dyfarniad Lefel 1 mewn Sgiliau Garddwriaeth Ymarferol
600/5611/3	City & Guilds	Lefel 1	Tystysgrif Lefel 1 mewn Sgiliau Garddwriaeth Ymarferol
600/5612/5	City & Guilds	Lefel 1	Diploma Lefel 1 mewn Sgiliau Garddwriaeth Ymarferol
500/9128/1	RHS	Lefel 1	Dyfarniad Lefel 1 mewn Garddwriaeth Ymarferol
601/0613/X	RHS	Lefel 1	Dyfarniad Rhagarweiniol Lefel 1 mewn Garddwriaeth Ymarferol
601/0554/9	RHS	Lefel 2	Tystysgrif Lefel 2 mewn Egwyddorion Tyfu, Lluosogi a Datblygu Planhigion
601/0355/3	RHS	Lefel 2	Tystysgrif Lefel 2 mewn Egwyddorion Garddwriaeth
500/9635/7	ABC	Lefel 2	Dyfarniad Lefel 2 mewn Sgiliau Garddwriaeth Ymarferol
501/1411/6	ABC	Lefel 2	Tystysgrif Lefel 2 mewn Coedyddiaeth
500/9633/3	ABC	Lefel 2	Tystysgrif Lefel 2 mewn Sgiliau Garddwriaeth Ymarferol
603/0159/4	NOCN	Lefel 2	Dyfarniad Lefel 2 i'r Gweithiwr Diogel
500/7689/9	City & Guilds	Lefel 2	Dyfarniad Lefel 2 mewn Gweithio'n Ddiogel mewn Amaethyddiaeth a Garddwriaeth Gynhyrchu
500/6938/X	City & Guilds	Lefel 2	Dyfarniad Lefel 2 mewn Amaethyddiaeth Seiliedig ar Waith
500/6871/9	City & Guilds	Lefel 2	Dyfarniad Lefel 2 mewn Garddwriaeth Seiliedig ar Waith
500/8584/0	City & Guilds	Lefel 2	Tystysgrif Lefel 2 mewn Amaethyddiaeth
500/8552/9	City & Guilds	Lefel 2	Tystysgrif Lefel 2 mewn Coedwigaeth a Choedyddiaeth
500/8577/3	City & Guilds	Lefel 2	Tystysgrif Lefel 2 mewn Garddwriaeth
500/0677/6	City & Guilds	Lefel 2	Tystysgrif Lefel 2 mewn Technoleg sy'n ymwneud â'r Tir
500/6939/1	City & Guilds	Lefel 2	Tystysgrif Lefel 2 mewn Amaethyddiaeth Seiliedig ar Waith
500/6816/7	City & Guilds	Lefel 2	Tystysgrif Lefel 2 mewn Garddwriaeth Seiliedig ar Waith
500/8590/6	City & Guilds	Lefel 2	Tystysgrif Estynedig Lefel 2 mewn Amaethyddiaeth
500/8587/6	City & Guilds	Lefel 2	Tystysgrif Estynedig Lefel 2 mewn Coedwigaeth a Choedyddiaeth
500/8582/7	City & Guilds	Lefel 2	Tystysgrif Estynedig Lefel 2 mewn Garddwriaeth
501/0683/1	City & Guilds	Lefel 2	Tystysgrif Estynedig Lefel 2 mewn Technoleg

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			sy'n ymwneud â'r Tir
600/4671/5	City & Guilds	Lefel 2	Dyfarniad Lefel 2 mewn Gyrru Tractor Amaethyddol a Gweithrediadau Perthynol
600/4883/9	City & Guilds	Lefel 2	Dyfarniad Lefel 2 mewn Gyrru Tractor Cryno a Gweithrediadau Perthynol
600/4957/1	City & Guilds	Lefel 2	Dyfarniad Lefel 2 mewn Trin Cerbydau Pob Tir i'w Reidio ag Un Goes Bob Ochr
600/4689/2	City & Guilds	Lefel 2	Dyfarniad Lefel 2 yn y Defnydd Diogel o Beiriannau Torri Gwair a Reolir gan Bobl ar Droed
600/4690/9	City & Guilds	Lefel 2	Dyfarniad Lefel 2 yn y Defnydd Diogel o Beiriannau Torri Gwair Hunanyredig i'w Reidio
600/4670/3	City & Guilds	Lefel 2	Dyfarniad Lefel 2 yn y Defnydd Diogel o Beiriannau Torri Gwair a Osodir ar Dractor
500/7693/0	City & Guilds NPTC	Lefel 2	Dyfarniad Lefel 2 mewn Cynnal a Chadw Peiriannau Amaethyddiaeth
500/7697/8	City & Guilds NPTC	Lefel 2	Dyfarniad Lefel 2 mewn Hwsmonaeth a Lles Sylfaenol
600/6303/8	City & Guilds NPTC	Lefel 2	Dyfarniad Lefel 2 mewn Tynnu Canghennau a Chwalu Corunau gan Ddefnyddio Llif Gadwyn
600/6160/1	City & Guilds NPTC	Lefel 2	Dyfarniad Lefel 2 mewn Cynnal a Chadw Llif Gadwyn
600/6161/3	City & Guilds NPTC	Lefel 2	Dyfarniad Lefel 2 mewn Cynnal a Chadw Llif Gadwyn a Thrawslifio
600/6428/6	City & Guilds NPTC	Lefel 2	Dyfarniad Lefel 2 mewn Trawslifio Coed gan Ddefnyddio Llif Gadwyn
600/6162/5	City & Guilds NPTC	Lefel 2	Dyfarniad Lefel 2 mewn Cwympo a Phrosesu Coed hyd at 380mm
600/6619/2	City & Guilds NPTC	Lefel 2	Dyfarniad Lefel 2 mewn Defnyddio Llif Gadwyn ar y Tir
500/7889/6	City & Guilds NPTC	Lefel 2	Dyfarniad Lefel 2 mewn Gyrru oddi ar y Ffordd
600/6417/1	City & Guilds NPTC	Lefel 2	Dyfarniad Lefel 2 yn y Defnydd Diogel o Dociwr Polyn â Modur
600/6435/3	City & Guilds NPTC	Lefel 2	Dyfarniad Lefel 2 mewn Cynorthwyo Cydweithwyr heb fod â'u Traed ar y Ddaear sy'n Gwneud Gwaith mewn perthynas â Choed
600/0803/9	City & Guilds NPTC	Lefel 2	Dyfarniad Lefel 2 mewn Cludo Anifeiliaid dros Bellter Hir ar y Ffordd – Cynorthwyydd
600/0307/8	City & Guilds NPTC	Lefel 2	Dyfarniad Lefel 2 mewn Cludo Anifeiliaid dros Bellter Hir ar y Ffordd – Gyrrwr
601/5141/9	City & Guilds NPTC	Lefel 2	Dyfarniad Lefel 2 yn y Defnydd Diogel o Blaleiddiaid gan Ddefnyddio Chwistrellwyr Bŵm Llorweddol Hunanyredig, Mowntiedig, Llusg
601/5142/0	City & Guilds NPTC	Lefel 2	Dyfarniad Lefel 2 yn y Defnydd Diogel o Blaleiddiaid gan Ddefnyddio Chwistrellwyr Bŵm Geometreg Cyfnewidiol neu Wasgaru

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601/5143/2	City & Guilds NPTC	Lefel 2	Dyfarniad Lefel 2 yn y Defnydd Diogel o Blaleiddiaid Pelennog neu Ronynnog gan Ddefnyddio Taenwyr Mowntiedig neu Lusg
601/5144/4	City & Guilds NPTC	Lefel 2	Dyfarniad Lefel 2 yn y Defnydd Diogel o Blaleiddiaid gan Ddefnyddio Offer wedi ei Fowntio ar Gwch
601/5145/6	City & Guilds NPTC	Lefel 2	Dyfarniad Lefel 2 yn y Defnydd Diogel o Blaleiddiaid gan Ddefnyddio Offer Llaw ar gyfer Cerddwyr
601/5146/8	City & Guilds NPTC	Lefel 2	Dyfarniad Lefel 2 yn y Defnydd Diogel o Blaleiddiaid o'r Awyr
601/5147/X	City & Guilds NPTC	Lefel 2	Dyfarniad Lefel 2 mewn Cymysgu a Throsglwyddo Plaleiddiaid yn Ddiogel
601/5148/1	City & Guilds NPTC	Lefel 2	Dyfarniad Lefel 2 yn y Defnydd Diogel o Blaleiddiaid ar ffurf Tarthau, Niwloedd a Mygau
601/5149/3	City & Guilds NPTC	Lefel 2	Dyfarniad Lefel 2 mewn Dipio Deunydd Planhigion mewn Plaleiddiaid yn Ddiogel
601/5150/X	City & Guilds NPTC	Lefel 2	Dyfarniad Lefel 2 mewn Trin Hadau â Phlaleiddiaid yn Ddiogel
601/5151/1	City & Guilds NPTC	Lefel 2	Dyfarniad Lefel 2 yn y Defnydd Diogel o Blaleiddiaid i Ddeunydd Planhigion yn ystod Proses Llif Parhaus
601/5153/3	City & Guilds NPTC	Lefel 2	Dyfarniad Lefel 2 mewn Defnyddio Hylifau Plaleiddiaid o dan yr Wyneb yn Ddiogel
601/5153/5	City & Guilds NPTC	Lefel 2	Dyfarniad Lefel 2 yn y Defnydd Diogel o Blaleiddiaid gan Ddefnyddio Offer Arbenigol
500/7692/9	City & Guilds NPTC	Lefel 2	Dyfarniad Lefel 2 yn y Defnydd Diogel o Ddip Defaid
601/8781/5	City & Guilds NPTC	Lefel 2	Tystysgrif Cymhwysedd Lefel 2 yn y Defnydd Diogel a Chyfrifol o Feddyginiaethau Milfeddygol
600/0306/6	City & Guilds NPTC	Lefel 2	Dyfarniad Lefel 2 mewn Cludo Anifeiliaid ar y Ffordd (Siwrneiau Byr)
600/6620/9	City & Guilds NPTC	Lefel 2	Dyfarniad Lefel 2 mewn Dringo Coed ac Achub
100/2000/7	City & Guilds NPTC	Lefel 2	Tystysgrif Cymhwysedd Lefel 2 yn y Defnydd Diogel o Lorri Ddadlwytho
100/2001/9	City & Guilds NPTC	Lefel 2	Tystysgrif Cymhwysedd Lefel 2 yn y Defnydd Diogel o Beiriannau Olwyn Garw
100/2103/5	City & Guilds NPTC	Lefel 2	Tystysgrif Cymhwysedd Lefel 2 yn y Defnydd Diogel o Beiriannau Offer
100/1733/1	City & Guilds NPTC	Lefel 2	Tystysgrif Cymhwysedd Lefel 2 yn y Defnydd Diogel o Gyfarpar Cynnal Glaswellt
601/2259/6	City & Guilds NPTC	Lefel 2	Dyfarniad Lefel 2 yn y Defnydd Diogel o Ffosffid Alwminiwm i Reoli Plâu Fertebraidd
600/6453/5	IMIAL	Lefel 2	Tystysgrif Lefel 2 mewn Technoleg sy'n ymwneud â'r Tir
600/6774/3	IMIAL	Lefel 2	Tystysgrif Estynedig Lefel 2 mewn Technoleg

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			sy'n ymwneud â'r Tir
501/1740/3	Lantra Awards	Lefel 2	Dyfarniad Lefel 2 mewn Cludo Anifeiliaid ar y Ffordd – Cynorthwyydd Siwrnai Hir
501/1739/7	Lantra Awards	Lefel 2	Dyfarniad Lefel 2 mewn Cludo Anifeiliaid ar y Ffordd – Gyrrwr Siwrnai Hir
501/1738/5	Lantra Awards	Lefel 2	Dyfarniad Lefel 2 mewn Cludo Anifeiliaid ar y Ffordd – Siwrnai Fer
600/5699/X	Lantra Awards	Lefel 2	Dyfarniad Lefel 2 mewn Cynnal a Chadw Llif Gadwyn
600/5701/4	Lantra Awards	Lefel 2	Dyfarniad Lefel 2 mewn Cynnal a Chadw Llif Gadwyn a Thrawslifio
600/5700/2	Lantra Awards	Lefel 2	Dyfarniad Lefel 2 mewn Trawslifio Coed gan Ddefnyddio Llif Gadwyn
600/5703/8	Lantra Awards	Lefel 2	Dyfarniad Lefel 2 mewn Cwympo a Phrosesu Coed hyd at 380mm
600/5717/8	Lantra Awards	Lefel 2	Dyfarniad Lefel 2 mewn Tynnu Canghennau a Malu Corunau gan Ddefnyddio Llif Gadwyn (QCF)
500/7449/0	Lantra Awards	Lefel 2	Dyfarniad Lefel 2 mewn Gweithio'n Ddiogel mewn Amaethyddiaeth a Garddwriaeth Gynhyrchu
600/5709/9	Lantra Awards	Lefel 2	Dyfarniad Lefel 2 mewn Cynorthwyo Cydweithwyr heb fod â'u Traed ar y Ddaear sy'n Gwneud Gwaith mewn perthynas â Choed
600/8391/8	Lantra Awards	Lefel 2	Dyfarniad Lefel 2 yn y Defnydd Diogel o Alwminiwm Ffosffid ar gyfer Plâu Fertebraidd
600/5708/7	Lantra Awards	Lefel 2	Dyfarniad Lefel 2 mewn Defnyddio Tociwr Polyn â Modur
600/6729/9	Lantra Awards	Lefel 2	Tystysgrif Lefel 2 mewn Gweithgareddau ar y Tir
601/5977/7	Lantra Awards	Lefel 2	Dyfarniad Lefel 2 yn y Defnydd Diogel o Blaleiddiaid
601/6562/5	Lantra Awards	Lefel 2	Dyfarniad Lefel 2 mewn Taenu Plaleiddiaid yn Ddiogel gan Ddefnyddio Offer Llaw (QCF)
601/6562/5X	Lantra Awards	Lefel 2	Dyfarniad Lefel 2 mewn Taenu Plaleiddiaid yn Ddiogel gan Ddefnyddio Offer Llaw (QCF) (heb Ddefnydd Diogel)
601/6565/0	Lantra Awards	Lefel 2	Dyfarniad Lefel 2 mewn Taenu Plaleiddiaid yn Ddiogel gan Ddefnyddio Offer Gronynnog (QCF)
601/6565/0X	Lantra Awards	Lefel 2	Dyfarniad Lefel 2 mewn Taenu Plaleiddiaid yn Ddiogel gan Ddefnyddio Offer Gronynnog (QCF) (heb Ddefnydd Diogel)
601/6563/7	Lantra Awards	Lefel 2	Dyfarniad Lefel 2 mewn Taenu Plaleiddiaid yn Ddiogel gan Ddefnyddio Chwistrellwyr Bŵm wedi eu Mowntio ar Gerbyd (QCF)
601/6563/7X	Lantra Awards	Lefel 2	Dyfarniad Lefel 2 mewn Taenu Plaleiddiaid yn Ddiogel gan Ddefnyddio Bŵm wedi ei Fowntio ar Gerbyd

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600/8391/8	Lantra Awards	Lefel 2	Dyfarniad Lefel 2 yn y Defnydd Diogel o Alwminiwm Ffosffid i Reoli Plâu Fertebraidd (QCF)
500/9933/4	Pearson BTEC	Lefel 2	Tystysgrif Lefel 2 mewn Amaethyddiaeth
500/9932/2	Pearson BTEC	Lefel 2	Tystysgrif Estynedig Lefel 2 mewn Amaethyddiaeth
501/0122/5	Pearson BTEC	Lefel 2	Tystysgrif Estynedig Lefel 2 mewn Garddwriaeth
600/4507/3	Pearson Edexcel	Lefel 2	Tystysgrif Lefel 2 mewn Garddwriaeth Seiliedig ar Waith
501/0207/2	RHS	Lefel 2	Tystysgrif Lefel 2 mewn Garddwriaeth Ymarferol
500/8295/4	RHS	Lefel 2	Tystysgrif Lefel 2 mewn Egwyddorion Cynllunio, Sefydlu a Chadw Gardd

Cymhwysedd (Rhifau)	**Teitl**
CU 5.2. (T5021690)	Sefydlu a chynnal perthynas waith effeithiol ag eraill (Lefel 2)
CU 9.2. (J5021449)	Cynllunio a chynnal cyflenwadau adnoddau ffisegol yn y lle gweithio (Lefel 3)

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ATODLEN 2 Erthygl 6

DYFARNIADAU A THYSTYSGRIFAU CYMHWYSEDD GWEITHWYR GRADD 3

Tablau

Cod y Dyfarniad	**Sefydliad Dyfarnu**	**Lefel**	**Teitl**
500/8575/X	City & Guilds	Lefel 2	Diploma mewn Amaethyddiaeth
500/8718/6	City & Guilds	Lefel 2	Diploma mewn Coedwigaeth a Choedyddiaeth
500/8576/1	City & Guilds	Lefel 2	Diploma mewn Garddwriaeth
501/0678/8	City & Guilds	Lefel 2	Diploma mewn Technoleg sy'n ymwneud â'r Tir
500/6231/1	City & Guilds	Lefel 2	Diploma mewn Amaethyddiaeth Seiliedig ar Waith
500/6205/0	City & Guilds	Lefel 2	Diploma mewn Garddwriaeth Seiliedig ar Waith
501/0302/7	City & Guilds	Lefel 2	Diploma mewn Gweithrediadau Peirianneg sy'n ymwneud â'r Tir Seiliedig ar Waith
600/7616/1	City & Guilds	Lefel 2	Diploma mewn Coed a Phren
601/2331/X	HABC	Lefel 2	Diploma mewn Garddwriaeth Seiliedig ar Waith
600/6775/5	IMIAL	Lefel 2	Diploma mewn Technoleg sy'n ymwneud â'r Tir
601/0608/6	IMIAL	Lefel 2	Diploma mewn Cyfarpar â Modur ar gyfer Gweithrediadau Peirianneg sy'n ymwneud â'r Tir Seiliedig ar Waith
600/5109/7	IMIAL	Lefel 2	Diploma mewn Gweithrediadau Peirianneg sy'n ymwneud â'r Tir Seiliedig ar Waith
500/9547/X	Pearson BTEC	Lefel 2	Diploma mewn Amaethyddiaeth
500/9934/6	Pearson BTEC	Lefel 2	Diploma mewn Garddwriaeth
600/3577/8	Pearson Edexcel	Lefel 2	Diploma mewn Gweithrediadau Peirianneg sy'n ymwneud â'r Tir Seiliedig ar Waith
601/0356/5	RHS	Lefel 2	Diploma mewn Egwyddorion ac

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			Arferion Garddwriaeth

Cymhwysedd (Rhifau)	Teitl
CU 5.2. (T5021690)	Sefydlu a chynnal perthynas waith effeithiol ag eraill (Lefel 2)
CU 9.2. (J5021449)	Cynllunio a chynnal cyflenwadau adnoddau ffisegol yn y lle gweithio (Lefel 3)

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ATODLEN 3 Erthygl 7

DYFARNIADAU A THYSTYSGRIFAU CYMHWYSEDD GWEITHWYR GRADD 4

Tablau

Cod y Dyfarniad	**Sefydliad Dyfarnu**	**Lefel**	**Teitl**
500/8487/2	City & Guilds	Lefel 3	Diploma mewn Amaethyddiaeth
500/8564/5	City & Guilds	Lefel 3	Diploma mewn Coedwigaeth a Choedyddiaeth
500/8384/3	City & Guilds	Lefel 3	Diploma mewn Garddwriaeth
501/0681/8	City & Guilds	Lefel 3	Diploma mewn Technoleg sy'n ymwneud â'r Tir
500/6224/4	City & Guilds	Lefel 3	Diploma mewn Amaethyddiaeth Seiliedig ar Waith
500/6255/4	City & Guilds	Lefel 3	Diploma mewn Garddwriaeth Seiliedig ar Waith
501/0399/4	City & Guilds	Lefel 3	Diploma mewn Gweithrediadau Peirianneg sy'n ymwneud â'r Tir Seiliedig ar Waith
500/8490/2	City & Guilds	Lefel 3	Diploma Estynedig mewn Amaethyddiaeth
500/8720/4	City & Guilds	Lefel 3	Diploma Estynedig mewn Coedwigaeth a Choedyddiaeth
500/8401/X	City & Guilds	Lefel 3	Diploma Estynedig mewn Garddwriaeth
501/0682/X	City & Guilds	Lefel 3	Diploma Estynedig mewn Technoleg sy'n ymwneud â'r Tir
500/8388/0	City & Guilds	Lefel 3	Diploma Atodol mewn Amaethyddiaeth
500/8724/1	City & Guilds	Lefel 3	Diploma Atodol mewn Coedwigaeth a Choedyddiaeth
500/8385/5	City & Guilds	Lefel 3	Diploma Atodol mewn Garddwriaeth
501/0694/6	City & Guilds	Lefel 3	Diploma Atodol mewn Technoleg sy'n ymwneud â'r Tir
600/6048/7	City & Guilds	Lefel 3	Diploma 90-Credyd mewn Amaethyddiaeth

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600/5946/1	City & Guilds	Lefel 3	Diploma 90-Credyd mewn Coedwigaeth a Choedyddiaeth
600/6115/7	City & Guilds	Lefel 3	Diploma 90-Credyd mewn Garddwriaeth
600/5945/X	City & Guilds	Lefel 3	Diploma 90-Credyd mewn Technoleg sy'n ymwneud â'r Tir
601/7448/1	City & Guilds	Lefel 3	Tystysgrif Dechnegol Uwch Lefel 3 mewn Amaethyddiaeth
601/7452/3	City & Guilds	Lefel 3	Diploma Dechnegol Uwch Lefel 3 mewn Amaethyddiaeth (540)
601/7451/1	City & Guilds	Lefel 3	Diploma Estynedig Dechnegol Uwch Lefel 3 mewn Amaethyddiaeth (720)
601/7459/6	City & Guilds	Lefel 3	Diploma Estynedig Dechnegol Uwch Lefel 3 mewn Amaethyddiaeth (1080)
601/7507/2	City & Guilds	Lefel 3	Tystysgrif Dechnegol Uwch Lefel 3 mewn Coedwigaeth a Choedyddiaeth
601/7517/5	City & Guilds	Lefel 3	Diploma Estynedig Dechnegol Uwch Lefel 3 mewn Coedwigaeth a Choedyddiaeth (1080)
601/7453/5	City & Guilds	Lefel 3	Tystysgrif Dechnegol Uwch Lefel 3 mewn Garddwriaeth
601/7456/0	City & Guilds	Lefel 3	Diploma Dechnegol Uwch Lefel 3 mewn Garddwriaeth (540)
601/7455/9	City & Guilds	Lefel 3	Diploma Estynedig Dechnegol Uwch Lefel 3 mewn Garddwriaeth (720)
601/7454/7	City & Guilds	Lefel 3	Diploma Estynedig Dechnegol Uwch Lefel 3 mewn Garddwriaeth (1080)
601/7463/8	City & Guilds	Lefel 3	Diploma Estynedig Dechnegol Uwch Lefel 3 mewn Peirianneg sy'n ymwneud â'r Tir (1080)
600/6970/3	City & Guilds	Lefel 3	Diploma mewn Coed a Phren Seiliedig ar Waith
600/7794/3	IMIAL	Lefel 3	Diploma mewn Technoleg sy'n ymwneud â'r Tir
600/7796/7	IMIAL	Lefel 3	Diploma Estynedig mewn Technoleg sy'n ymwneud â'r Tir
600/7795/5	IMIAL	Lefel 3	Diploma Atodol mewn Technoleg sy'n ymwneud â'r Tir
600/5128/0	IMIAL	Lefel 3	Diploma mewn Peirianneg sy'n ymwneud â'r Tir Seiliedig ar Waith

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500/8240/1	Pearson BTEC	Lefel 3	Diploma mewn Amaethyddiaeth
500/9449/X	Pearson BTEC	Lefel 3	Diploma mewn Coedwigaeth a Choedyddiaeth
500/8336/3	Pearson BTEC	Lefel 3	Diploma mewn Garddwriaeth
500/8301/6	Pearson BTEC	Lefel 3	Diploma Estynedig mewn Amaethyddiaeth
500/9448/8	Pearson BTEC	Lefel 3	Diploma Estynedig mewn Coedwigaeth a Choedyddiaeth
500/8266/8	Pearson BTEC	Lefel 3	Diploma Estynedig mewn Garddwriaeth
500/8242/5	Pearson BTEC	Lefel 3	Diploma Atodol mewn Amaethyddiaeth
500/9451/8	Pearson BTEC	Lefel 3	Diploma Atodol mewn Coedwigaeth a Choedyddiaeth
500/8351/X	Pearson BTEC	Lefel 3	Diploma Atodol mewn Garddwriaeth
600/3550/X	Pearson Edexcel	Lefel 3	Diploma mewn Peirianneg sy'n ymwneud â'r Tir Seiliedig ar Waith
601/7189/3	RHS	Lefel 3	Diploma mewn Egwyddorion ac Arferion Garddwriaeth
601/8097/3	RHS	Lefel 3	Diploma mewn Arferion Garddwriaeth
600/2788/5	City & Guilds	Lefel 4	Tystysgrif mewn Rheolaeth Amaethyddol Seiliedig ar Waith
600/2842/7	City & Guilds	Lefel 4	Diploma mewn Rheoli Busnes Amaethyddol Seiliedig ar Waith
600/2132/9	Pearson BTEC	Lefel 4	Diploma HNC mewn Garddwriaeth
601/5485/8	Agored Cymru	Lefel 4	Tystysgrif mewn Garddwriaeth Seiliedig ar Waith
601/5484/6	Agored Cymru	Lefel 4	Diploma mewn Garddwriaeth Seiliedig ar Waith
603/0320/7	RHS	Lefel 4	Diploma mewn Arferion Garddwriaeth

Cymhwysedd (Rhifau)	**Teitl**
CU 5.2. (T5021690)	Sefydlu a chynnal perthynas waith effeithiol ag eraill (Lefel 2)
CU 9.2. (J5021449)	Cynllunio a chynnal cyflenwadau adnoddau ffisegol yn y lle gweithio (Lefel 3)

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ATODLEN 4

Erthygl 12

CYFRADDAU TÂL ISAF

Tabl

Gradd neu gategori'r gweithwyr	**Cyfradd tâl isaf fesul awr**
Gweithiwr Gradd 1 o dan oedran ysgol gorfodol	£3.54
Gweithiwr Gradd 1 (16-24 oed)	£7.70
Gweithiwr Gradd 1 (25+ oed)	£8.21
Gweithiwr Gradd 2	£8.45
Gweithiwr Gradd 3	£8.70
Gweithiwr Gradd 4	£9.36
Gweithiwr Gradd 5	£9.88
Gweithiwr Gradd 6	£10.64
Prentis Blwyddyn 1	£4.00
Prentis Blwyddyn 2 (16-17 oed)	£4.29
Prentis Blwyddyn 2 (18-20 oed)	£6.15
Prentis Blwyddyn 2 (21-24 oed)	£7.70
Prentis Blwyddyn 2 (25+ oed)	£8.21

ATODLEN 5

Erthyglau 30 a 31

HAWLIAU GWYLIAU BLYNYDDOL

Tabl

Nifer y diwrnodau a weithir bob wythnos gan weithiwr amaethyddol	Mwy na 6	Mwy na 5 ond heb fod yn fwy na 6	Mwy na 4 ond heb fod yn fwy na 5	Mwy na 3 ond heb fod yn fwy na 4	Mwy na 2 ond heb fod yn fwy na 3	Mwy nag 1 ond heb fod yn fwy na 2	1 neu lai
Hawliau gwyliau blynyddol (diwrnodau)	38	35	31	25	20	13	7.5

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ATODLEN 6 Erthygl 36

TALIAD YN LLE GWYLIAU BLYNYDDOL

Tabl

Uchafswm nifer y diwrnodau gwyliau blynyddol y caniateir taliad yn eu lle							
Diwrnodau a weithir bob wythnos	Mwy na 6	Mwy na 5 ond heb fod yn fwy na 6	Mwy na 4 ond heb fod yn fwy na 5	Mwy na 3 ond heb fod yn fwy na 4	Mwy na 2 ond heb fod yn fwy na 3	Mwy nag 1 ond heb fod yn fwy na 2	1 neu lai
Uchafswm nifer y diwrnodau gwyliau blynyddol o dan y Gorchymyn hwn y caniateir taliad yn eu lle	10	7	3	2.5	2.5	1.5	1.5

Explanatory Memorandum to the Agricultural Wages (Wales) Order 2019

This Explanatory Memorandum has been prepared by the Department for Environment, Energy and Rural Affairs and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Agricultural Wages (Wales) Order 2019. I am satisfied the benefits justify the likely costs.

Lesley Griffiths AM
Minister for Environment, Energy and Rural Affairs
8 March 2019

1 Description

The Agricultural Wages (Wales) Order 2019 ("the 2019 Order") makes provision about the minimum rates of remuneration and other terms and conditions of employment for agricultural workers. The 2019 Order revokes and replaces the Agricultural Wages (Wales) Order 2018 ("the 2018 Order") with changes which include increases to the 2018 pay levels for agricultural workers.

The Agricultural Advisory Panel for Wales (the Panel) is an independent advisory body which was established under Section 2 (1) of the Agricultural Sector (Wales) Act 2014 (the 2014 Act) by the Agricultural Advisory Panel for Wales (Establishment) Order 2016 (the Panel Order) on 1 April 2016.

The Panel Order sets the number of Panel members at seven; two representatives from UNITE the Union, one representative from the Farmers' Union of Wales, one representative from National Farmers Union Cymru and three independent members, including an independent Chair. The independent members and Chair are selected via the Public Appointment process.

Article 3(2) of the Order sets out the Panel's functions. One of the key functions of the Panel is to review agricultural wages and prepare agricultural wages orders in draft, to consult upon them and subsequently submit them to the Welsh Ministers for approval. In accordance with Section 4(1) of the 2014 Act, the Welsh Ministers have the power to a) approve and make the order by Statutory Instrument, or b) refer the order back to the Panel for further consideration.

The Panel reviewed the level of minimum hourly rates and other agriculture related allowances and benefits prescribed in the 2018 Order and, in accordance with their functions, prepared the 2019 Order which increases minimum hourly rates for all Grades and categories of agricultural worker, certain allowances and benefits and makes two further policy changes to the definitions of 'apprentice' and 'qualifying days'.

The panel conducted a targeted consultation on the new proposed rates for the 2019 Order in the autumn of 2018.

The intention of the Panel is to have the new Order in force on 1 April, the same date the NLW and NMW increases take effect. The Panel's aim is to align the agricultural minimum wage (AMW) increase with NLW and NMW changes, avoiding employers and employees having to cope with a transitional period during which the NLW/NMW would override the AMW levels in Wales.

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

There are no matters of special interest.

3 Legislative background

The 2019 Order is made pursuant to sections 3, 4(1) and 17 of the 2014 Act.

Section 3(1) provides an agricultural wages order is an order making provision about the minimum rates of remuneration and other terms and conditions of employment for agricultural workers. Pursuant to section 3(2), an agricultural wages order may include provision specifying (among other things) the minimum rates of remuneration for agricultural workers.

Section 3(3) provides an agricultural wages order may specify different rates and make different provision for different descriptions of agricultural worker.

Section 4(1) stipulates the Welsh Ministers may, after receiving a draft agricultural wages order from the Panel, either approve and make the order or refer the order back to the Panel for further consideration and resubmission.

Section 17(1) provides that any power of the Welsh Ministers to make an order is exercisable by statutory instrument and includes power to make such incidental, consequential, supplemental, transitional, transitory or saving provision as the Welsh Ministers consider necessary or expedient for the purposes of the 2014 Act.

Pursuant to section 17(3) of the 2014 Act agricultural wages orders are subject to the negative procedure.

4 Purpose & intended effect of the legislation

The statutory AMW regime in Wales safeguards employment conditions and allowances unique to the agricultural sector. It recognises and rewards qualifications and experience through a six grade career structure and provides remuneration rates for each grade and category of worker.

Given the distinct nature of agricultural employment, including seasonality, dominance of casual employment and the use of on-farm accommodation, it is considered desirable to have a separate system of wage setting and employment provisions. This was previously managed by the Agricultural Wages Board (AWB) for England and Wales until its abolition (without reference to the Welsh Government) by the UK Government on 25 June 2013. The Panel carries out similar functions to the AWB by reviewing wages and other employment conditions of agricultural workers in Wales. In addition, the Panel's remit includes promoting skills and career development in the agricultural sector.

The structure of agricultural wages orders rewards qualifications and experience in agriculture through a six grade structure and provides remuneration rates for each grade and category of worker.

Grade 1 is seen as a transitional Grade. The statutory provisions allow Grade 1 workers to gain the necessary qualifications to move to Grade 2 following 30 weeks of continuous employment, at the expense of their employer. The differential between Grade 1 and Grade 2, and the subsequent higher grades, provides an incentive for the further up-skilling of the agricultural workforce and helps set clear career paths for all those employed in agriculture.

Agricultural wages orders contain provisions for apprentices who undertake training under government approved apprenticeship schemes. These provisions support succession, skills development and skills retention within the industry, all of which are considered crucial for the future success of agriculture in Wales. Attractive rates offered to apprentices can help the sector to become a viable and appealing career choice.

The 2019 Order ensures the Welsh agricultural sector operates in accordance with provisions that are in step with current economic conditions, including increased cost of living and changes to the national minimum wage (NMW) and national living wage levels (NLW).

The 2019 Order will replace the 2018 Order and increase the 2018 minimum pay levels for all categories and grades of agricultural workers in Wales. The Panel agreed an increase of 5% for Grade 1 workers (aged 25+) and a 4% increase for Grade 1 workers (16-24 years of age), Year 2 Apprentice (aged 18-20) and Year 2 Apprentice (aged 21-24). The rates of Grade 1 and Grade 2 were agreed in the context of the NMW/NLW increases. The Panel agreed increases of 2% for workers employed at other grades and for the allowances. The minimum hourly wage rates set for Grade 1 workers (aged 21+) and Year 2 Apprentice (18+) in AWO 2019 match the 2019 NMW/NLW rates and the minimum hourly wage rates for all other grades are above the 2019 NMW/NLW rates.

The Panel proposed the following increases for the Agricultural Wages (Wales) Order 2019.

Grade	2019 rates	2018 rates	% of increase
Grade 1 Worker of compulsory school age (13-16)	£3.54	£3.47	2%
Grade 1 Worker (16-24 years of age)	£7.70	£7.38	4%
Grade 1 Worker (aged 25+)	£8.21*	£7.83	5%
Grade 2 – Standard Worker	£8.45	£8.29	2%
Grade 3 – Lead Worker	£8.70	£8.54	2%

Grade 4 – Craft Grade	£9.36	£9.16	2%
Grade 5 – Supervisory Grade	£9.88	£9.70	2%
Grade 6 – Farm Management Grade	£10.64	£10.48	2%
Year 1 Apprentice	£4.00	£3.93	2%
Year 2 Apprentice (aged 16-17)	£4.29	£4.21	2%
Year 2 Apprentice (aged 18-20)	£6.15*	£5.90	4%
Year 2 Apprentice (aged 21-24)	£7.70*	£7.38	4%
Year 2 Apprentice (aged 25+)	£8.21*	£8.05	2%
Changes proposed for allowances -			
The dog allowance- per dog to be paid weekly where an agricultural worker is required by their employer to keep one or more dogs	£8.17	£8.02	2%
The night work allowance for each hour of night work	£1.55	£1.52	2%
The birth and adoption grant	£64.29	£63.09	2%

Agricultural wages orders provide a range of additional agriculture related allowances. Some of these are linked to the appropriate basic pay rates, such as overtime rates and on-call allowance. These provisions acknowledge the very seasonal nature of agricultural work in many agricultural sectors, for example many workers are required to work above their contracted hours during lambing or at harvest time. The 2019 Order will maintain overtime rates at 1.5 times above the applicable basic rates – this will apply to all workers and apprentices.

There are rate rises proposed for the Dog allowance: proposed rate £8.17 (2018 Order £8.02), the Night work allowance: proposed rate £1.55 per hour of night work (2018 Order £1.52) and the Birth and Adoption grant: proposed rate £64.29 for each child (2018 Order £63.09)

The Dog and Night Work Allowances recognise that workers often require a dog to assist them in carrying out their duties and that agricultural workers can be required to work at times outside the normal working day for example to assist in maintaining animal welfare standards.

The Dog allowance is paid weekly where an agricultural worker is required by their employer to keep one or more dogs. The Night work supplement is paid for each hour of night work and is applicable to work undertaken between 7pm in the evening of a given day and 6am the next morning and is payable on top

of the worker's applicable hourly rate. It does not apply for the first two hours of night work.

The Birth and Adoption grant is a payment that an agricultural worker is entitled to receive from their employer on the birth of their child or upon the adoption of a child. The grant is payable on production of the child's Birth certificate of Adoption Order.

5 Consultation

The Panel met to decide whether to propose changes to the 2019 wages order on 4 September 2018. Other proposed changes were:-

Definition of 'apprentice'

Changing the definition of 'apprentice' in article 11 of the draft Order by removing provision in article 11(1)(b) which defined apprentices as being aged 19or younger in the first year of their apprenticeship . Without this provision, an apprentice can be any age in the first year of their apprenticeship.

Article 11(1)(b) of the 2018 Order defined apprentices as being aged 19 or younger in the first year of their apprenticeship, the prescribed minimum hourly rates for year 2 apprentices aged 21 + were arguably ineffective. The Panel have described the proposed change as a clarification.

Definition of 'qualifying days'

The Panel also propose amending the definition of 'qualifying days' in article 2 of the Order. The amount of annual leave an agricultural worker is entitled to under the agricultural wages orders is calculated using days on which an agricultural worker would normally be required to be available for work. The proposed change ensures for the purpose of the calculation of annual leave, qualifying days include days on which the agricultural worker is taking annual leave, bereavement leave, statutory maternity, paternity or adoption leave or was on a period of sickness absence.

A targeted consultation on their proposals was conducted from 26 September – 26 October 2018. The proposals were emailed to an extensive list of people and organisations and were made available on the Agricultural Advisory Panel's page on the Welsh Government website. Copies of the consultation were also available on request.

Key stakeholders, including the farming unions, UNITE, agricultural colleges and organisations such as the NFU Cymru were included. Panel members were encouraged to share the proposals throughout their networks.

Three responses were received. There was overall support for the proposals but with suggestions to increase some individual wages rates to be in line with NMW/NLV. The Panel met to discuss the responses to the consultation on 29 October 2018 and decided to submit their proposals to Welsh Government.

6 Regulatory Impact Assessment of the Agricultural Wages (Wales) Order 2019

6.1 Proposed changes in AWO 2019

The Panel proposes to change the minimum hourly rates of pay as follows.

Grade or category of worker	2019 Order	Minimum hourly rate of pay	% above minimum wage
Grade 1 worker under compulsory school age	£3.54	£3.47	2%
Grade 1 worker (16 – 24 years of age)	£7.70 (aged 20 and under)	£7.38	4%
	£7.70 (aged 21-24)	£7.70	Same rate
Grade 1 worker (aged 25+)	£8.21	£8.21	Same rate
Grade 2 worker	£8.45	£8.29	2%
Grade 3 worker	£8.70	£8.54	2%
Grade 4 worker	£9.36	£9.16	2%
Grade 5 worker	£9.88	£9.70	2%
Grade 6 worker	£10.64	£10.48	2%
Year 1 Apprentice	£4.00	£3.93	2%
Year 2 Apprentice (aged 16-17)	£4.29	£4.21	2%
Year 2 Apprentice (aged 18-20)	£6.15	£6.15 (worker aged 18-20)	Same rate
Year 2 Apprentice (aged 21-24)	£7.70	£7.70 (worker aged 21-24)	Same rate
Year 2 Apprentice (aged 25+)	£8.21	£8.21 (worker aged 25+)	Same rate

Dog allowance: £8.17 (£8.02 in 2018)
Night work allowance: £1.55 (£1.52 in 2018) per hour of night work
Birth and adoption grant: £64.29 (£63.09 in 2018) for each child

6.2 Summary of Policy options

In this impact assessment, two policy options are considered, reflecting the baseline arrangements (defined below) and the recommendations negotiated by the Panel. Broad categories of costs and benefits are identified. Where sufficient data are available, costs and benefits are quantified for a 12-month period (until which point it is assumed that the new AWO Order will come into

effect)[1]. However, constrained by data availability, it is not possible to produce a fully quantified analysis of costs and benefits. Some of the costs and benefits are discussed qualitatively.

Option 1: Do Nothing. This is the baseline policy option to maintain the minimum wage rates for agricultural workers at 2018 levels in accordance with the provisions of the Agricultural Wages Order (Wales) 2018. In addition, the 2014 Act provides provisions that hourly wage rates cannot be below the statutory UK NMW/NLW. In the baseline scenario, the minimum wage rates are adjusted to the 2019 NMW/NLW rates where the rates in AWO 2018 would fall below the NMW/NLW from April 2019. The costs and benefits will be measured against this baseline policy option.

An important context to this baseline is that it maintains the long standing and well-known AMW regulatory regime (preserved by the 2014 Act) for relevant agricultural workers, which safeguards employment conditions and allowances unique to the agricultural sector. The AMW regime recognises and rewards qualifications and experience through a six-grade career structure and provides remuneration rates for each grade and category of worker. Having a separate system of wage setting and employment provisions was justified on the basis of the distinct nature of agricultural employment, including seasonality, dominance of casual employment and the use of on-farm accommodation. This system was previously managed by the Agricultural Wages Board (AWB) using Agricultural Wages Orders (AWO). The final wages order issued by the AWB in 2012 (prior to its abolition) was replaced by the interim AWO 2016, AWO 2017 and AWO 2018 to ensure that the agricultural sector in Wales operated under provisions would be in step with changes in economic conditions, until the Panel was set up and able to commence its work. The previous regulatory impact assessments suggested that the benefits of AWO 2016, AWO 2017 and AWO 2018 include:

- Assisting the effective functioning of the agricultural sector by supporting the existence of a well-trained and skilled workforce which in turn can increase productivity and efficiency.

- Ensuring wage progression for agricultural workers and supporting rural communities - which is an issue of importance within the context of the Welsh Government's Tackling Poverty agenda - through effects on household incomes and improving the skills base of agricultural workers.

- Support agricultural workers and apprentices to gain skills and qualifications, which can improve their job prospects in the future.

The AMW regime also sets rates for young workers under the age of 16 and apprentices as part of a minimum wage rate structure intended to support entry and development of an appropriately skilled workforce. Having attractive

[1] Cumulative effects across years arising from AWOs are not considered within this RIA.

minimum wage rates for these categories of workers can help encourage the younger generation to choose a career in agriculture.

Retaining these identified benefits of having an AMW regime is likely to be particularly important when skill shortage is a prevalent issue for the agriculture sector. More generally, as stated in the Agricultural Sector (Wales) Bill, the benefits of the AMW regime include:

- *It provides a structure to reward skill and experience and maintains a balanced and well-functioning sector in Wales.*

- *It recognises that the agricultural sector is different from other sectors and acknowledges the nature of seasonal work by having special provisions for flexible workers and safeguards the succession of skilled workers by specifying provisions for apprentices and trainees.*

- *It helps farmers and farm workers to specify the terms and conditions of their employment and avoid potential disputes and the need for lengthy negotiations with individuals.*

It is important to note that the baseline option represents a situation where the AMW regime exists. Therefore, the costs and benefits of policy alternatives relative to this baseline do not include the benefits or costs associated with the existence of the Agricultural Minimum Wage (AMW) regime. Instead, it is an assessment of additional costs and benefits of AWO 2019 relative to the AWO 2018 scenario which also takes account of the NMW/NLW changes from April 2019.

Option 2: Implementing New Order. This is the policy alternative, which would involve replacing the current Order (2018) with a new Order (2019). The new order includes all the recommendations from the Agricultural Advisory Panel for Wales. In particular, the new order includes the following key changes to the minimum rates for different categories of workers (see Table 1).

Table 1: Summary of proposed changes to the minimum wage rates by grade

Grade or category of worker	**AWO (2019)**	**AWO (2018)**	**% increase from baseline**	**% increase from 2018 rate**
Grade 1 worker under compulsory school age	£3.54	£3.47	2%	2%
Grade 1 worker over compulsory school age (16-24)	£7.70 (aged 20 and under)	£7.38	4%	4%
	£7.70 (aged 21-24)	£7.70	Same rate	4%
Grade 1 work (aged 25+)	£8.21	£7.83	Same rate	5%
Grade 2 worker	£8.45	£8.29	2%	2%
Grade 3 worker	£8.70	£8.54	2%	2%

Grade 4 worker	£9.36	£9.16	2%	2%
Grade 5 worker	£9.88	£9.70	2%	2%
Grade 6 worker	£10.64	£10.48	2%	2%
Year 1 Apprentice	£4.00	£3.93	2%	2%
Year 2 Apprentice (aged 16-17)	£4.29	£4.21	2%	2%
Year 2 Apprentice (aged 18-20)	£6.15	£5.90	Same rate	4%
Year 2 Apprentice (aged 21 -24)	£7.70	£7.38	Same rate	4%
Year 2 Apprentice (aged 25+)	£8.21	£8.05	Same rate	2%

These increases of 2-4% compare to average pay growth of 3.4% in the UK between November 2017 and November 2018 (the latest data available)[2]. The 12-month average Consumer Price Inflation (CPI) rate was 2.1% in December 2018 (Source: ONS https://www.ons.gov.uk/economy/inflationandpriceindices/bulletins/consumerpriceinflation/december2018). The increase in mean wages for farmers and farmer workers between year 2012 and 2016 was 4.4% (Source: Brookdale Consulting Report to the Welsh Government. Agriculture in Wales: Welsh Labour Market Information.)

The Panel considered a range of statistical information including published data on cost of living increases and the retail index as well as the projected rises to the NMW/NLW rates when discussing their recommendations for the Order.

- **Grade 1 worker under compulsory school age**

The minimum hourly wage rate for Grade 1 workers under compulsory school age will increase to by 2% (from £3.47) to £3.54 in the proposed AWO 2019. Young workers aged between 13 and 16 are only allowed to work part time, specifically 12 hours per week during term time and 25 hours per week during school holidays. However, as there is no data on the number of workers within this category, it is not possible to quantify the changes in total labour costs or earnings.

- **Grade 1 worker over compulsory school age (16-24)**

The hourly minimum wage rate for Grade 1 workers aged between 16 and 24 was £7.38 within AWO 2018. In the proposed AWO 2019, this will be set at £7.70. For Grade 1 workers aged 20 and under, the proposed rate represents 4% increase from the rate for 2018 and is above NMW/NLW 2019. For Grade 1 workers aged 21-24, this is the same rate as with the NMW/NLW 2019. There is no accurate data on the number of workers for this category. However, the number of farmer workers under the age of 25 was estimated to account for 33% of total number of the farmer workers in Wales (Source: Brookdale

[2] Average Weekly Earnings time series, ONS

Consulting Report to the Welsh Government. Agriculture in Wales: Future Labour Requirements for Welsh Agriculture 2017–2025.)

- **Grade 1 workers (aged 25+)**

For grade 1 workers aged over 25, the minimum hourly wage rate proposed in AWO 2019 matches the level of NMW from April 2019. Therefore, while the proposed minimum wage rate is higher than the AWO 2018 rate, it is not higher than the baseline for this group of workers

- **Grade 2-6 workers**

Compared to the minimum hourly wage rates in 2018 AWO, the proposed changes in the AWO (Wales) 2019 includes 2% increases in the minimum wage rate for Grade 2-6 workers.

Traditionally, the AWB maintained a pay differential between Grade 1 and 2 at around 10% in order to underline the transitional nature of Grade 1 (initial Grade) and encourage workers' entry to Grade 2 (standard Grade).

Within the proposal of AWO 2019, the proposed minimum wage rate for Grade 2 workers is 3% higher[3] than that for Grade 1 workers aged 25 and above. The difference becomes smaller compared to those in previous Orders apart from AWO 2017(see Table 2).

Table 2: Hourly Wages Rates by Grade in AWO 2012, 2016-2019.

	Wage Rates 2012-2019					In-grade difference, 2012-2019				
Grade	**2012**	**2016**	**2017**	**2018**	**2019**	**2012**	**2016**	**2017**	**2018**	**2019**
Grade 1 worker (aged 25+)	£6.21	£7.2	£7.51	£7.83	£8.21	-	-	-	-	-
Grade 2 worker	£6.96	£7.39	£7.54	£8.29	£8.45	12%	10%	**0.4%**	6%	3%
Grade 3 worker	£7.66	£8.12	£8.22	£8.54	£8.70	10%	10%	9%	3%	3%
Grade 4 worker	£8.21	£8.72	£8.82	£9.16	£9.36	7%	7%	7%	7%	8%
Grade 5 worker	£8.7	£9.23	£9.34	£9.70	£9.88	6%	6%	6%	6%	6%
Grade 6 worker	£9.4	£9.97	£10.09	£10.48	£10.64	8%	8%	8%	8%	8%

Source: Hourly wage rates are from AWO 2012, 2016, 2017, 2018 and AWO 2019 proposal. Percentage paid above the previous grade is calculated from minimum hourly wage rates.

Similarly, the difference between the minimum wage rates for Grade 2 and Grade 3 also becomes smaller at 3%. In previous AWOs the difference between

[3] The wage rates compared also reflect changes in NMW/NLW rates from April 2019.

the two grades was around 10%. This change may lead to reduced incentives for Grade 2 workers to upskill so as to progress to Grade 3 although some workers may still be incentivised to pursue training to reach even higher grades.

For other grades (4-6), the in grade difference are maintained at the same level in previous years (6-8%)

- **Year 1 and Year 2 Apprentice**

The minimum wage rates for the Y1 apprentices within AWO 2019 are higher than the NMW/NLW rates for Apprentice which other sectors would abide to. This will help the agricultural sector to become a viable and appealing career choice.

The minimum hourly pay rates for Y1 Apprentice and Y2 Apprentice (aged 16-17) in the proposed AWO 2019 are 2% higher than the AWO 2018 rates.

The hourly rate for Y2 Apprentices aged 18 and older in AWO 2019 are set at the NMW/NLW rates.

However, as there is no data available on the number of apprentices working in agriculture, the impact of changes in minimum wage rates of these Apprentice grades cannot be quantified.

- **Changes in other provisions**

In addition to the changes in minimum wage rates for different types of agricultural workers, there are a few other changes in other provisions (see Table 3). These include changes to dog allowance, night allowance and birth and adoption grants, all of which has a 4% increase from the AWO 2018 rate.

Table 3: Changes to other provisions

Type	AWO 2019	AWO 2018	% increase
Dog allowance	£8.17	£8.02	2%
Night allowance	£1.55	£1.52	2%
Birth and adoption grants	£64.29	£63.09	2%

The costs and benefits of these changes cannot be quantified due to lack of data.

- **Summary of quantification of wage costs/earnings**

Due to data availability, the breakdown by grade is not available for many of the worker groups. Therefore, only the costs and benefits associated with agricultural workers for Grade 1 (aged 25+) to Grade 6 were estimated for both basic pay and overtime pay in the RIA where the number of workers in each grade were estimated based on data from Farm Labour and Wage Statistics

(Defra, 2012)[4]. These estimates were based on Defra's costings model and the hours worked per week collected from the Earnings & Hours survey, run by Defra's Economics and Statistics Programme.

The hours were broken down into basic and overtime, and the calculation of the wage costs reflected this. Although the data is dated, it represented the only available source of data that contained break down information by grade of workers. It should also be noted that this was not Wales specific data and represented the labour structure by grade of workers for England and Wales. Therefore, the assumption was made that the labour structure in Wales was similar to the overall estimate made by Defra in their survey.

The limited amount of Wales specific information has been identified as an area for attention. Work is underway to both fully explore the existing information sources and to gather up-to-date information directly to inform future orders.

The changes in costs or benefits related to other categories of workers are expected to be very small due to small number of people involved in those categories, which include Grade 1 workers aged between 16-24 and Year 2 Apprentice.

The Panel also proposed making two further policy changes in relation to the definitions of 'apprentice' and 'qualifying days' in the order.

- **Enforcement cost**

In terms of enforcement costs, it is anticipated that administrative costs accruing to the Welsh Government would be broadly similar under Agricultural Wages Order 2019 as the Welsh Government is enforcing the Orders introduced under the 2014 Act.

The government enforcement costs associated with the 2014 Act for enforcing the provisions of the 2012 wages order was estimated at around £3,000 per year in the previous RIAs of the wages orders in 2016 and 2017. This was based on a reactive enforcement mechanism, where the Welsh Government would investigate any claims of potential underpayment and if necessary, issue enforcement notices. There were four formal cases needing varying levels of investigation 2016-2018. It is difficult to predict the number of cases arising, or their precise nature. Enforcement costs continue to be based on the assumption that there are two cases per year to investigate.

No separate costing to Welsh Government associated with inspection/enforcement work. It is difficult to predict accurately the number of cases that may come forward but these will be met from existing provision.

[4] Available at: http://webarchive.nationalarchives.gov.uk/20130123162956/http:/www.defra.gov.uk/statistics/files/defra-stats-foodfarm-farmmanage-earnings-labour2012-120627.pdf

- **Administrative cost**

In addition to the cost of compliance, there will be a cost to farm businesses for adjusting to the requirements of the new AWO and changes in associated calculations in Wales.

Farmers will need to be familiar with both the Welsh AWO provisions and UK labour legislation (for example, in relation to the national minimum wage) to ensure that workers are being correctly remunerated.

It is assumed that each employer would need one hour[5] to familiarise themselves with the new Order and make adjustments to pay rates and other provisions. Based on data from the Office for National Statistics (ONS)' Annual Survey of Hours and Earnings (2018)[6], it is assumed that the average cost per hour of a farmer's time is £11.67 (figure for all employees in the agriculture, forestry and fishing industry, excluding overtime pay). The median value of agricultural labour cost from the same source was £9.85 per hour. Inclusion of non-wage labour costs, such as employer's national insurance and pension contributions would serve to increase such cost estimates. In addition, the hourly rate used here is an average/median value for all farm workers. In reality, however, those whose time is involved are likely to be the farmer owners or farm business managers whose wage rates are likely to be at the higher end of the wage rate distribution.

According to ONS statistics on business population by region and by sector, there are 15,800 businesses in agriculture, forestry and fishing sector in Wales in 2018 with 2,925 businesses being employers[7]. The administrative costs to farm businesses are therefore estimated at £34k for Wales. If using the median value for the labour cost (£9.85 per hour), the total admin costs to farm businesses are estimated at £29k. The estimated cost would be higher if the wage rates for farm managers/owners were used and non-wage costs were reflected in the rates. However, it should also be noted that not all the 2,925 agricultural businesses who employed labour are using the AWO but it is not known how many of these businesses being users of the AWO.

[5] This is consistent with the estimates used in the RIA of abolishment of AWB by Defra and the RIA of the Act 2014.

[6] Estimates for 2018 (provisional) of paid hours worked, weekly, hourly and annual earnings for UK employees by gender and full/part-time working by 2 digit Standard Industrial Classification 2007. Industry (2 digit SIC) - ASHE: Table 4.6a. Available at: https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/datasets/industry2digitsicashetable4

[7] Table 21 Number of businesses in the private sector and their associated employment and turnover, by number of employees and industry section in Wales, start 2018 within statistics on BUSINESS POPULATION ESTIMATES FOR THE UK AND REGIONS 2018. Available at: https://www.gov.uk/government/statistics/business-population-estimates-2018.

6.2.1 Evidence Review

In this RIA, we have reviewed the evidence presented in the previous RIAs of AWO 2016, AWO 2017, AWO 2018 and considered additional literature where relevant. Our conclusion is that the key points made in the previous RIAs on the minimum wage impacts are still valid, which are summarised as follows. However, it should be noted that the evidence was focused on the impact of minimum wages while the economic evidence on the effects of the multi-grade minimum wage structure (i.e. multiple wage floors) is rather limited.

- *Employment:* Provided minimum wage levels are set cautiously, their negative effect on employment levels within affected sectors can be minimised. Some evidence has been found for a reduction in hours worked, but this is not conclusive. There is also evidence suggesting that the introduction of the minimum wages was associated with an increase in labour productivity. On balance, the evidence suggests that there are limited effects of the introduction of the minimum wages on employment. This is especially the case where the minimum wage rates have been set incrementally within context of economic/labour market conditions.

- *Wage rates and structure:* If minimum wages are set above current market rates, they act to raise the wage floor, tending to compress the wage structure by raising the wages of the lowest paid relative to others. The effect may be transmitted up the pay structure, leading to wage rises for those being paid more than the statutory minimum, although the extent to which this has taken place has varied across different minimum wage regimes.

- *In-work poverty:* Minimum wages tend to benefit the lowest-earning working households, thus having some positive impact on in-work poverty. This positive impact, however, may not necessarily positively impact on low earning households. Overall, the impact of minimum wages on poverty is very small. The Institute for Fiscal Studies[8] has found that the National Living Wage will raise household incomes by less than 1% on average, even for poorer households.

- *Company level impacts:* Research suggests that firm responses to involuntary increases in wage costs can include increasing prices, increasing labour productivity[9], accepting reduced profits, organisational changes (such as tighter human resource practices, increased performance standards at work, and better management practices),

[8] Institutes for Fiscal Studies (IFS), 2016. Living Standards, Poverty and Inequality in the UK: 2015-16 to 2020-2. IFS Report R114.

[9] Research on labour productivity growth in general tends to demonstrate linkages between the NMW and productivity that are positive but not statistically significant. [Source: David Metcalf, 'Why has the British National Minimum Wages had Little or No Impact on Employment?'. Journal of Industrial Relations, Vol 50:3, pp. 489-512 (pp. 501-502).]

efficiency wage[10] and training responses (increasing training provisions to employees). However, the relationships between company level responses and the pay structure with multiple minimum wage levels are an under-explored area within the literature. This seems unlikely to change given the limited use of multiple wage-minima arrangements.

6.3 Costs & benefits

This section assesses the potential costs and benefits for both policy options. However, significant limitations exist across data and methodology. Specifically, disaggregated up to date data for Wales are not always available and few methodologies exist to demonstrate the relationship between employment, business performance of the agricultural sector and minimum wages. As a result, some impacts cannot be quantified with any degree of accuracy. The quantification was focused on the impact on wage costs/earnings for Grade 1-6 agricultural workers where disaggregated data are most available. However, the distribution by grade of workers was based on Defra study in 2012 which was not Wales's specific data and relatively dated. The impact on other categories of workers or the impact of changes in allowances generally affect very small groups of workers and therefore the impacts are expected to be minimal. Due to lack of detailed data on these groups, the impacts of changes related to them were not estimated. However, the administrative costs to the farmers are estimated for their time to familiarise themselves with and make adjustments in accordance to AWO 2019. Where estimates are provided, they are indicative, with Appendix A containing the detailed calculations of how these estimates were derived.

In terms of minimum wage rate changes, the AWO 2019 represents a rise of 2% rise for agricultural workers within Grade 2-6. This affects over 9,900 workers (with 65% of whom being part-time and casual workers) out of the 12,900 paid agricultural workers in Wales in 2018.

As a result, this RIA takes the following approach to assessing each option:

- ***Option 1***: Baseline option.

- ***Option 2:*** Provides more detailed estimates as to the impact of changes in minimum wage levels for Grades 1 to 6, aiming to calculate additional impacts that directly relate to Option 2.

Option 1: Do nothing

This is the baseline option and as such there are no additional costs or benefits associated with this 'do nothing' option.

[10] The efficiency wages are based on the notion that wages do not only determine employment but also affect employees' productive behaviour or quality. Under certain conditions, it is optimal for employers to set compensation above the market clearing level in order to recruit, retain or motivate employees.

Option 2: Introducing Agricultural Wages (Wales) Order 2019 to replace AWO 2018.

6.3.1 Impact on Employment

Empirical studies examining the employment impacts of the NMW/NLW suggest that labour demand has remained broadly unchanged despite this legislated rise in earnings for the lowest paid[11]. This is consistent with the findings from the literature review in the previous RIAs of AWO 2016, AWO 2017, and AWO 2018 for Wales.

In the previous RIAs, employment effect was estimated using a minimum wage elasticity of -0.19 (an average value from the literature). This mean value was based on a meta-analysis[12] (carried out in 2014) of 236 estimated minimum wage elasticities from 16 UK studies. The median value from these 236 estimated elasticities was much smaller at -0.03 which means increases in minimum wages would lead to statistically insignificant reductions in employment. A more recent comprehensive systematic review and meta-analysis of the UK NMW empirical research carried out RAND Europe[13] suggests an even smaller employment effect no overall statistically or economically significant adverse employment effect, neither on employment and hours nor on employment retention probabilities. The minimum wage elasticities reported by this study were -0.0097 and -0.0022 when considering partial correlations. This adverse employment effect is so small that it is negligible and has no meaningful policy implication.

The agricultural labour force in Wales in 2018 totalled 52,200 people, with 12,900 of these being employed as farm workers (see Table 7 Appendix A). No data is available as to the proportion of the total farm workers in each grade in Wales. However, such data is available for the UK as a whole for 2012 from Defra which is based on historic data and assumptions. The estimates from the Defra study can be combined with the 2018 data for the total agricultural labour force in Wales to provide crude estimates of workforce grade composition (see in Table 8 Appendix A). It is estimated that some 3,000 workers may be within Grade 1; 7,000 workers within Grade 2 and some 2,700 workers within Grades (3-6).

Based on these estimates, an application of the mean elasticity estimate (-0.19) and the assumption that workers move from the current minimum to the new minimum wage, it is estimated that there would be a reduction in employment of 125 farm workers (see Table 15 in Appendix B for detailed calculations). It should be noted that these minimum pay rate increases are not the full difference between AWO 2018 and AWO 2019; instead, it has taken account of forthcoming increases in NMW and NLW from April 2019. If using the median value of elasticity coefficient -0.03, the reduction in employment would be 20

[11] Riley, R. and Bondibene, C. (2015). Raising the Standard: Minimum Wages and Firm Productivity. National Institute of Economic and Social Research.

[12] A statistical analysis of a large collection of results from individual studies for the purpose of integrating the findings.

[13] Hafner. M et.al, 2016. The impact of the National Minimum Wage on employment: a meta-analysis. A report for the UK Low Pay Commission.

people (see Table 16 at Appendix B). If using the elasticities of -0.0097 and -0.0022, the reductions in employment would be 6 and 2 people. Overall, the impact on employment is negligible.

In terms of reductions to hours worked, some evidence suggests that it is likely that some farm businesses will seek to absorb higher labour costs through reducing the number of hours worked in addition to other effects on employment, although this cannot be estimated with any degree of accuracy.

6.3.2 Earnings

In 2012, Defra published a labour force model which was used to calculate gross wage costs at a UK level. The estimated additional costs of the proposed pay rate increases for each worker type (full time, part time and casual) have been calculated by multiplying the increase per hour for the respective grades, the number of hours worked per week, the number of weeks worked per year and the number of workers in the industry (not adjusted to taking account of non-wage labour costs). There are separate costings for basic and overtime. As disaggregated data by grade of workers for Wales were not available, the cost estimates are based on these 2012 UK assumptions combined with 2016 agricultural labour force data for Wales (see Table 7 to Table 10 in Appendix A) of changes in gross annual wage costs for Option 2 relative to the baseline option. These estimates are also provided in Table 4, which suggests that the changes in costs for Option 2 are estimated at £2.2million in 2019-20 with the largest impact from Grade 2 workers. This represents a transfer from farm businesses to farm labour, with the former incurring an equivalent cost of £2.2million. Although the basis used to estimate the number of workers in each grade, the number of hours worked per week and the number of weeks worked per year is partly relying on data from Defra cost model which is dated back to 2012, it still represents the best estimate that is available for calculating the additional labour costs as a result of pay rate rises.

The limited amount of Wales specific information has been identified as an area for attention. Work is underway to both fully explore the existing information sources and to gather up-to-date information directly to inform future orders.

It should also be noted that the difference in minimum wage rates between Option 1 and 2 is not the full difference between AWO 2018 and AWO 2019. It also takes account of forthcoming statutory NMW and NLW from April 2019.

Table 4: Estimated changes in annual wage costs, waged agricultural workforce, Wales 2019-20 (a-c)

Grade	**Full-time (£)**		**Part-time(£)**		**Casual (£)**		**Total (£)**
	Basic	Overtime	Basic	Overtime	Basic	Overtime	All
1	0	0	0	0	0	0	0
2	427,535	99,444	315,544	0	150,011	24,624	1,017,158
3	98,662	22,949	35,060	0	0	0	156,671

4	411,091	95,619	68,869	0	0	0	575,579
5	135,660	31,554	16,904	0	0	0	184,118
6	188,417	43,825	17,217	0	0	0	249,459
Total (£)	1,261,365	293,391	453,595	0	150,011	24,624	2,182,986

Notes:

(a) Data assumes that workers are earning no more than the hourly minimum.

(b) Defra assumed that part-time workers do not work overtime.

(c) Totals may not sum due to rounding.

Source: Authors' calculations

Option 2 may create a wage difference between Wales and England, potentially disadvantaging farmers who largely compete with producers based in England, as is the case for the dairy industry. More generally, this would affect actual wage rates/terms and mobility of labour and potentially increase to the cost base. This relative increase to the cost base may accentuate the degree to which decreases in profits/ hours worked, or increases in prices may take place. However, farmer businesses in Wales are generally price-takers with limited power to influence the price of their goods and there will be limited scope to pass on cost increases via price rises. Despite this, it is reasonable to conclude that the increased cost base associated with Option 2 will have some negative impact on the sector's competitive positioning with those businesses located in England, such impacts are likely to be relatively marginal in overall terms. In general, changes in market conditions have a much larger impact on the agricultural sector than differences in wage rates. In other words, structural changes in the agricultural sector are more likely to be driven by the changes in market conditions while impact of the differences in wages rates are relatively modest.

The distribution by grade was based on data from Defra which was not Wales specific data and has not been updated after 2012. As such, there are some uncertainties around whether the data from the Defra study represents the distribution of farm workers by grade in Wales. Therefore, sensitivity analysis was carried out to test the impact on the results of different distribution of farm worker by grade.

Three tests were carried out varying the percentages for Grade 2, Grade 4 or Grade 5 full-time workers. Composition 1 is the baseline; composition 2 increasing Grade 2 workers by 10% and reducing Grade 4 workers by 10%; composition 3 increasing Grade 2 workers by 10% and reducing Grade 5 workers by 10%[14]. For composition 1, the wage cost of Option 2 is estimated at £2.18million. The wage cost based on composition 2 is £2.14million and £2.17million based on composition 3. Collection of data on farm workers by grade in Wales would help improving accuracy of estimates.

composition 1			
Grade	Full-time	Part-time	Casual

[14] 10% is an arbitrary number. As the actual distribution by grade for Wales is not known, a 10% redistribution between grades was assumed and deemed to be big enough to test sensitivity.

Grade 1	6%	14%	39%
Grade 2	39%	63%	61%
Grade 3	9%	7%	
Grade 4	30%	11%	
Grade 5	11%	3%	
Grade 6	5%	1%	

Composition 2			
Grade	Full-time	Part-time	Casual
Grade 1	6%	14%	39%
Grade 2	49%	63%	61%
Grade 3	9%	7%	
Grade 4	20%	11%	
Grade 5	11%	3%	
Grade 6	5%	1%	

Composition 3

Grade	Full-time	Part-time	Casual
Grade 1	6%	14%	39%
Grade 2	49%	63%	61%
Grade 3	9%	7%	
Grade 4	30%	11%	
Grade 5	1%	3%	
Grade 6	5%	1%	

6.3.3 Impact on prices, productivity and profitability

As well as impacting on total wage costs and labour inputs, increases to the cost base caused by additional wage costs may be expected to impact on farm businesses – and three issues profits, prices and productivity are briefly discussed. The extent to which these outcomes will occur in relation to Option 2 depends on a broad range of factors affecting individual farm businesses. Existing literature is unclear on the linkages between minimum wages and these factors, which are therefore assessed qualitatively.

In relation to output prices, farms in Wales are generally price-takers with limited power to influence the price of their goods. While such influence will vary according to the type and nature of the product being sold, Welsh farmers are generally operating in a national or international market with relatively limited product differentiation. When combined with current market pressures, this means that passing on cost increases via price rises seems unlikely, although farms in some sectors may be more likely than others to have a marginally greater ability to increase prices.

There is limited evidence as to the linkage between minimum wage structure and labour productivity on farms in Wales. The scope available to each farm to exploit productivity improvements will depend to a large extent on issues such as technology adoption, characteristics of the farm and farmer and any scope for economies of scale. Overall, there is insufficient evidence to assess the likely outcomes in terms of productivity implications.

In the absence of other adjustments, increased wage costs would be expected to put downward pressure on profits (reflecting the transfers to agricultural workers). In relation to profitability, there is great variation between farms in Wales and the extent of impacts will vary across farms.

6.3.4 Cost: government enforcement

It is considered that the enforcement cost related to Option 2 would remain at similar levels with Option 1.

6.3.5 Benefits

6.3.5.1 Impact on Earnings

Under the previously explained assumptions, the proposed changes in AWO 2019 minimum wage rates are estimated would raise total wages received by agricultural workers by some £2.2 million per annum. It should be noted that these benefits are not related to full change between AWO 2018 and AWO 2019; instead, they relate to the changes in wage rates taking account of forthcoming increases in NMW and NLW from April 2019.

This sum can be expected to have further indirect impacts in terms of localised spending power, with a greater concentration within rural areas with a higher proportion of agricultural workers although this also depends on patterns of expenditure that would have taken place from farm businesses (given the transfers).

6.3.5.2 Impact on poverty including in-work poverty

By raising the earnings floor, minimum wages might be expected to raise household income. With all else being equal, some potential impact on in-work poverty is expected, although this could be offset by a reduction in hours worked/employment and, where relevant, could be dampened by the effects of

the tax and benefits system whereby workers would pay more tax on increased pay and/or receive reduced benefits. The effect also depends on business and individual labour decisions.

The raising of minimum wage levels will have had some impact on in-work poverty by supporting the wages of the lowest paid workers. Although evidence is not available on the effects of multiple wage floors compared to single wage floors, the use of multiple minimal wage structure may accentuate impact on in work poverty, given that more workers will be affected than would be the case for a single wage floor. Putting this into the context of agricultural workers in Wales, of the 12,900 waged workers in agriculture within Wales in 2018, 28% were full time. The remaining 72% were part-time, seasonal or casual. The probability of in-work poverty is generally higher for part-time, seasonal or casual workers than full-time workers. This relates to around 9,000 farm workers on part-time or seasonal basis.

There is an increase of 2% in hour rates for Grade 2-6 workers. This could positively impact some 3,300 people on full time basis, 3,000 on part-time basis and 3,500 casual workers (see Table 10) in Appendix A.

However, total impact on overall in-work poverty and on rural poverty in general, will be limited due to the small number of people involved and the more uncertain impact on household poverty.

6.3.5.3 Impact on training and skills

It is anticipated that AWO 2019 will continue to enable up skilling and a clearer career structure within the agricultural sector. It will contribute to developing and retaining skills across the entire agricultural sector. ADAS carried out a study on the use of AWO for Welsh Government in early 2016 which involves a survey of 176 farm businesses that employed labour across different farm size and type. The survey collected responses from 34 AWO users, 109 non-users and 33 who never heard of AWO. Among those who are aware of AWO (143 farmers), a higher percentage (49%) of AWO users than that (45%) of non-users thought AWO was somewhat or very useful in staff skill development and performance, although this difference is not statistically significant. Within the non-users of AWO (109 farm businesses), 41% thought AWO would be useful in encouraging staff to seek new skills or qualifications in order to obtain higher grades.

Overall, the increase to agricultural minimum wage levels in Wales offers the opportunity to incentivise skills acquisition within the agricultural sector, potentially increasing the number of people receiving all types of training within the sector, and potentially enhancing the supply of skilled labour. As the minimum wage rates set out in AWO 2019 are generally higher than NMW/NLW and it maintains a privilege rate not universally enjoyed by other sectors than agriculture, this should help to retain the employment and skills within the agricultural industry. The up skilling impact is more related to the pay structure, which will be maintained under AWO 2019. However, the potential increase in

labour cost may to some extent negatively affect the provision of up skilling by employers.

6.4 Sector impacts

6.4.1 Impact on local government

No evidence of significant differential impact.

6.4.2 Impact on voluntary sector

No evidence of significant differential impact.

6.4.3 Impact on small businesses

The increase in costs associated with pay and other amended terms and conditions will affect farm businesses, including small businesses in the sector. The minimum agricultural wage rates had been updated annually by AWB until 2013. Grade 1 workers' pay rates were adjusted between 2013 and 2015 in line with NMW/NLW. The pay rates were further raised in the AWO 2016, AWO 2017 and AWO 2018. It is important to acknowledge though that these rates only set statutory minimum wage levels and that employers may pay higher wages to workers to reflect their skills and the level of responsibilities taken on farm.

According to the Office for National Statistics (see Table 5), there are 15,800 agricultural, forestry and fishing businesses in Wales and 19% are employer businesses. The figures for England were 104,665 and 38%. The data suggests that agriculture in Wales is dominated by small businesses (17% being businesses that employ less than five employees, 10% being businesses with five and move employees) and the majority of businesses do not employ labour (73%). For smaller business with paid labour, the increases in labour costs as a result of increases in AMW may have a negative impact on business profitability.

ADAS carried out a study on the use of AWO for Welsh Government in early 2016 which involves a survey of 176 farm businesses that employed labour across different farm size and type. The study suggested that the average labour cost (for paid labour) was around 18% of the total inputs but no statistically significant differences were found between different farm sizes. This suggests that in terms of the cost structure (% of paid labour cost within total costs), it is similar across all farm sizes and there is no indication that smaller businesses would be affected disproportionally due to increases in the cost of paid labour.

Table 5: Number of agricultural businesses by size band in England and Wales (2018)

Agriculture, Forestry and Fishing	England		Wales		

	No. of businesses	%	No. of businesses	%
All businesses	104,665	*100.0*	15,800	*100.0*
All employers	39,935	*39.1*	2,925	*18.5*
With no employees (unregistered)*	5,575	*2.0*	1,920	*12.2*
With no employees (registered)*	59,155	*25.3*	10,955	*69.3*
1	13,770	*10.3*	1,185	*7.5*
2-4	17,830	*19.0*	1,270	*8.0*
5-9	5,320	*10.9*	335	*2.1*
10-19	1,795	*7.2*	105	*0.7*
20-49	815	*7.2*	25	*0.2*
50-99	245	*4.9*	5	*0.0*
100-199	90	*3.4*	0	*0.0*
200-249	15	*	0	*0.0*
250-499	35	*	0	*0.0*
500 or more	20	*5.5*	0	*0.0*

Source: ONS (2018) Business population estimates for the UK and regions 2018, Table 20 and Table 21. https://www.gov.uk/government/statistics/business-population-estimates-2018
Note: * Businesses with no employees can either be 'registered' for VAT or PAYE or are 'unregistered'.

The majority of farms in Wales are small businesses and the policy has been developed within this context. As a result, the impact of Option 2 is not expected to impose any additional or disproportionate impact on small businesses. The larger farms, dairy farms and horticultural businesses tend to use more paid labour than the smaller businesses or other farm types. These farms may face more pressure from labour cost increases.

6.4.4 Impact by sector

The impact on different sectors may vary depending on the composition of cost base of the farm businesses. The Farm Business Survey data for Wales (2017-2018) suggests that the costs for casual and regular labour accounted for 4-6% of their agricultural cost base (see Table 6).

Table 6 : Labour cost as a percentage of total input for farm businesses in Wales by sector (2017-2018)

Farm type	Labour cost (£), casual and regular labour	Agricultural cost (£)	Share of labour cost
LFA Cattle and Sheep Farms	3,400	82,000	4%
Lowland Cattle and Sheep Farms	3,000	77,500	4%
Dairy	18,600	312,000	6%
All Farm Types	5,900	118,100	5%

Source: Calculated from Farm Business Survey (FBS) data for Wales (2017/2018) https://gov.wales/statistics-and-research/farm-incomes/?lang=en.

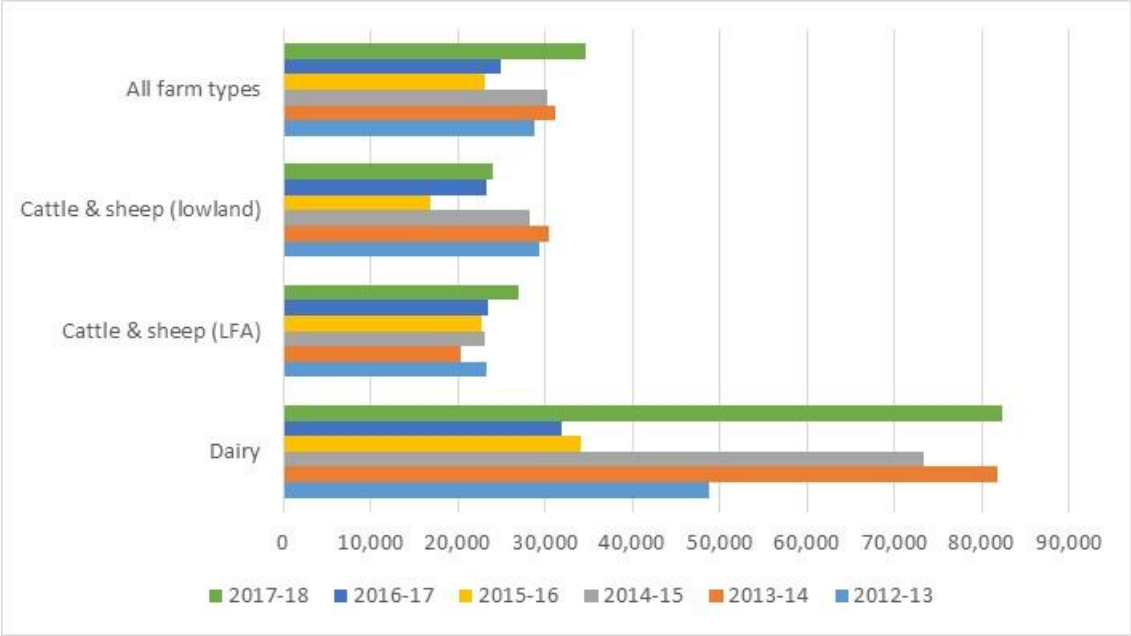
There is limited evidence as to labour productivity on farms in Wales. The scope available to each farm to exploit productivity improvements will depend to a large extent on issues such as technology adoption, characteristics of the farm and farmer and any scope for economies of scale. Overall, there is insufficient evidence to assess the likely outcomes in terms of productivity improvements.

In relation to profitability, there is variation between farms in Wales. Information on farm business income for 2017-18 suggests that there is variation across the major farm types. For dairy farms, the average farm business income was around £82,400 and cattle and sheep farms in the Less Favoured Area (LFA) around 26,900, cattle and sheep (lowland) 24,000[15].

Time series of farm business income data (see Figure 1) suggests that business profitability across the main farm types stays at a low level and that there is also variation between years and between farm types. For example, the farm business income for the dairy sector has fluctuated most dramatically (large decline in 2015/16 and 2016/17 and bounced back in 2017/18) in recent years and income for LFA cattle and sheep farms have been relatively stable but at low levels.

[15] Source: Welsh Government 2017. Statistics on Farm Incomes. Available at: http://gov.wales/statistics-and-research/farm-incomes/?lang=en. For lowland cattle and sheep farms, there was a significant increase (+40% from the previous year) in farm business income in the year 2016-17 e.

Figure 1: Farm Business Income (in real terms at 2017/18 prices) in Recent Years (2012/13-2017/18) by Farm Type

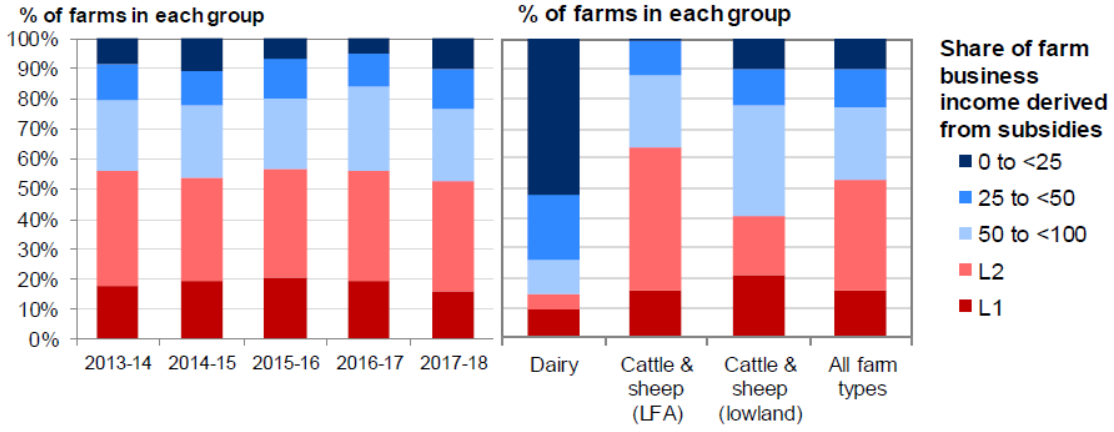


Source: Based on Statistics on Farm Incomes (2017-2018).

It should be noted however, the profitability data of farm businesses should be interpreted in the context that the industry is currently heavily relying on public subsidies. According to the Farm Business Survey, over 50% of all farms either made a loss or would have do done so without subsidy in year 2017-18 (see Figure 2). The level of dependence varies between farm types. In 2017-18, around 62% of cattle & sheep (LFA) farms either made a loss or would have done so without subsidy, compared with around 40% cattle & sheep (lowland) farms and around 15% of dairy farms.

As a wider context, this dependence on subsidy can leave farms vulnerable to policy changes especially after Brexit. Increases in labour cost would add more pressure to farm business profitability particularly for those farms that are making a loss with and without subsidies.

Figure 2: Variation in subsidies* as a share of farm business income in Wales



Source: Farm Business Survey Quoted in Statistics Release on Farm Incomes in Wales 2017/18.
Note *: subsidies include agri-environment payments and single farm payments; L1 - Including subsidy, the farm made a loss; L2 - Without subsidy, farm would have made a loss.

Several recent studies (AHDB 2017; Dwyer 2018; House of Commons Welsh Affairs Committee, 2018)[16] on the impacts of Brexit on agriculture in Wales suggest that many parts of the agricultural supply chain are heavily reliant on migrant workers from the EU. Often, the demand for labour in agriculture and the associated supply chain is on a seasonal basis as opposed to year-round employment. If there is no longer free movement of workers between the UK and the rest of the EU post-Brexit, availability and the cost of labour will be negatively impacted. The most vulnerable sectors include horticultural sector and wider agri-food sectors such as abattoirs, veterinary services, meat cutting, dairy processing plants and food packing.

In general terms, increases to the agricultural cost base will impact on farm income and profitability, but the extent of this cannot be accurately forecast. However, it is reasonable to assume that AWO 2019 may add further pressure on the cost base increases when compared to baseline.

6.5 Consultation

The Panel met to decide whether to propose changes to the 2019 wages order on 4 September 2018. A targeted consultation on their proposals was conducted from 26 September – 26 October 2018. The proposals were emailed to an extensive list of people and organisations and were made available on the Agricultural Advisory Panel for Wales' page of the Welsh Government website. Copies of the consultation were also available on request.

Key stakeholders, including the farming unions, UNITE, agricultural colleges and organisations such as the NFU Cymru were included. Panel members were encouraged to share the proposals throughout their networks.

Three responses were received. There was overall support for the proposals but with suggestions to increase some individual wages rates to be in line with NMW/NLV.

6.6 Competition Assessment

See Appendix C.

[16] AHDB, 2017. Brexit Scenarios: an impact assessment: https://ahdb.org.uk/documents/Horizon_Brexit_Analysis_20September2016.pdf
Dwyer, J. 2018. The Implications of Brexit for Agriculture, Rural Areas and Land Use in Wales. Report to Public Policy Institute for Wales.

6.7 Conclusion

Potential costs and benefits for both policy options are considered and compared. However, significant limitations exist across data and methodology. Specifically, disaggregated up to date data for Wales are not always available and few methodologies exist to demonstrate the relationship between employment, business performance of the agricultural sector and minimum wages. As a result, some impacts cannot be quantified with any degree of accuracy. The quantification was focused on the impact on wage costs/earnings for Grade 1-6 agricultural workers where disaggregated data are most available. However, the distribution by grade of workers was based on Defra study in 2012 which was not Wales specific data. The impact on other categories of workers or the impact of changes in other allowances generally affect very small groups of workers and the impacts are expected to be minimal. Due to lack of detailed data on these groups, the impacts of changes related to them were not estimated. However, the administrative costs to the farmers are estimated for their time to familiarise themselves with and make adjustments in accordance to AWO 2019. It should also be noted that the two policy scenarios are not the full difference between AWO 2018 and 2019; the differences in labour minimum wage rates also take account of the forthcoming changes in NMW and NLW from April 2019.

In terms of the relative increases within the pay structure, the wage rate for Grade 1 workers (aged 25 and above) is set at the NLW level from April 2019. This increase represents a 5% increase from the AWO 2018 rate. There is a 2% increase for Grade 2-6 workers.

Potential costs that are additional for Option 2 are summarised as follows:

1. *Employment:* The proposed increases may lead to reduction of about 20 or fewer agricultural jobs in Wales. The overall impact on employment is negligible. Reductions in hours worked may take place, but cannot be quantified.

2. *Earnings:* The total transfer could be raised by some £2.2 million per annum. This is the estimate for additional earnings under AWO 2019 also taking account of changes in NMW/NLW from April 2019.

3. *Prices, productivity and profitability:* All else given, this is likely to put downward pressure on farm business profits, but with an unclear effect on productivity. Output price rises enabling margins to be maintained seem unlikely given that the farm businesses are generally price-takers and there is limited pricing power of farm businesses. In terms changes in agricultural outputs, they are more directly affected by broader agricultural market conditions.

4. *Administrative costs:* there will be a cost to farm businesses for adjusting to the requirements of the new AWO and changes in associated calculations in Wales. It is estimated that this will cost farming businesses £29k-£34k.

5. *Government enforcement:* It is likely that administrative costs accruing to the Welsh Government would be broadly similar under both options as the Welsh Government is already enforcing the AWO regime that has been preserved under the 2014 Act assuming no changes in the volume of case work to investigate each year.

Potential benefits that are additional to Option 2 include:

1. ***Earnings:*** The proposed minimum wage rate changes are estimated to transfer some £2.2 million per annum to agricultural workers (from employers) (excluding the effects of non-wage labour costs) in terms of their total gross income, with potential impacts throughout the wages distribution associated with the differential minimum wage rates for the different grades.

2. ***In-work poverty****:* Option 2 would be expected to reduce in-work poverty to some extent (to the extent that the higher hourly wage rates are not offset by reduced hours/employment), with a geographic focus on areas with a higher concentration of agricultural employment. However, this effect varies across businesses and individual labours depending on individual circumstances and decisions.
3. *Training and skills:* Uprating minimum wages throughout the grade structure and for all categories of workers, including apprentices, will provide greater incentives for workers to acquire skills and progress through the grade system. Compared to other industries, as the AWO 2019 minimum wage rates are generally higher than NMW and NLW, it maintains a privilege rate that is not universally enjoyed by other sectors than agriculture. This should help to retain the employment and skills within the agricultural industry. Option 2 would increase wages for all grades in line with previous arrangements under the AWO 2018. It is reasonable to conclude that Option 2 could be more likely to support up skilling within the sector, as well as potentially having a positive impact on efficiency. However, this up skilling benefit is more related to the grade structure itself rather than the pay rates and also depends on the ability of the businesses to pay for further training after the increase in labour costs.

In conclusion, Option 2 provides an established and previously accepted approach to the setting of minimum wages and other aspects of the employment relationship. With wage rates increasing and linked to NMW (for Grade 1 and 2 workers), the AWO 2019 will benefit the waged workforce in terms of increasing earnings and supporting further up skilling within the industry. However, this up skilling benefit is more related to the grade structure itself rather than the pay rates and may be offset to some extent by the pressure from increases in labour costs for farm businesses.

APPENDIX A: Supporting Calculations for Cost and Benefit Estimates

1. Employment Data

Table 7: Persons engaged in work on agricultural holdings, Wales (2016)

Type of Labour		**Number of people**
Total farmers, partners, directors and spouses: (a)		
	Full-time	18,300
	Part-time (b)	21,000
	Total	**39,300**
Farm workers:		
	Regular full-time (c)	3,600*
	Regular part-time (b) (c)	3,500*
	Seasonal or casual workers	5,800*
	Total farm workers	**12,900**
Total labour force		**52,200**

Source: Welsh Government, Welsh Agricultural Statistics, 2018 [online] http://gov.wales/statistics-and-research/welsh-agricultural-statistics/?lang=en
Note:

(a) Figures are for main and minor holdings.

(b) Part-time defined as less than 39 hours per week.

(c) Includes salaried managers.

** Calculated based on percentage composition of different types of workers in 2016.*

2. Earnings

Table 8: Persons engaged in work on agricultural holdings, Wales (2018)

	Type of labour	No. of people	% composition
Full-time	Regular full-time farm workers*	3,600	28%
Part-time	Regular part-time farm workers	3,500	27%
Casual	Seasonal or casual workers	5,800	45%
Total waged labour force		12,900	100%

Note:
Source: Figures for farm workers by type are from Welsh Government, Welsh Agricultural Statistics are not available for 2018 but estimated base on 2016 figures on composition by type [online] http://gov.wales/statistics-and-research/welsh-agricultural-statistics/?lang=en.
Number of workers in each category are calculated based on total no. of workers in 2018 and composition by type of workers in 2016.

Table 9: Profile of workers at each AWO grade (average %), UK (2007-2010)

Grade	Full-time	Part-time (a)	Casual
Grade 1	6%	14%	39%
Grade 2	39%	63%	61%
Grade 3	9%	7%	
Grade 4	30%	11%	
Grade 5	11%	3%	
Grade 6	5%	1%	

Source: Defra Farm Labour and Wage Statistics, 2012. [online] http://webarchive.nationalarchives.gov.uk/20130123162956/http://www.defra.gov.uk/statistics/files/defra-stats-foodfarm-farmmanage-earnings-labour2012-120627.pdf , Table 12 on p.13.

Note: (a) Totals do not sum to 100% due to rounding.

Table 10 combines data from Table 8 and Table 9 to provide rough estimates of the number of full time, part-time and casual staff within each grade in Wales using employment data for year 2018.

Table 10: Number of workers at each AWO grade, estimated for Wales 2018(a)

Grade	Full-time		Part-time		Casual
Grade 1	216		490		2,262
Grade 2	1,404		2,205		3,538
Grade 3	324		245		
Grade 4	1,080		385		
Grade 5	396		105		
Grade 6	180		35		
Total	**3,600**		**3,465**		**5,800**

Note: (a) Totals do not add up to 12,900 due to rounding in Table 9*.*

Table 11 provides Defra's estimates of the average hours worked by full time, part-time and casual staff.

Table 11: Hours worked by worker type per week, UK, 2003 to 2010 average

Worker type	Total hours worked	Basic hours	Overtime hours
full time (a)	42.5	36.3	6.2
part time (b)	17.2	17.2	0
Casual (c)	29.4	26.5	2.9

Source: (a) and (b) Total no. of hours worked are based on estimates from Brookdale Consulting Report to the Welsh Government. Agriculture in Wales: Welsh Labour Market Information. Basic and overtime hours are estimated based on total no. of hours and split between basic and overtime hours from the Defra (2012) Farm Labour and Wage Statistics..
(c) Defra Farm Labour and Wage Statistics, 2012. [online] http://webarchive.nationalarchives.gov.uk/20130123162956/http://www.defra.gov.uk/statistics/files/defra-stats-foodfarm-farmmanage-earnings-labour2012-120627.pdf, Table 10 on p.12.

Note: (b) Assumed that part-time workers do not work overtime.

Table 13 summarises the number of weeks that each type of workers worked per year.

Table 12: Number of weeks worked per year by different type of employment

Worker type	No. of weeks worked at Basic hours	No. of weeks worked at overtime hours
full time	52	47.6
part time (a)	52	49.2
Casual	10	10

Source: Defra Farm Labour and Wage Statistics, 2012. [online] http://webarchive.nationalarchives.gov.uk/20130123162956/http://www.defra.gov.uk/statistics/files/defra-stats-foodfarm-farmmanage-earnings-labour2012-120627.pdf, Table 39 on p.36.

Table 13 provides the agricultural minimum wages set in the AWO 2018 and 2019 for the agricultural industry and the increases in wage rates by grade for both basic and overtime pay.

Table 13: AWO hourly pay rates, 2018 and 2019

Grade or category of worker	Basic pay 2019	Basic pay 2018	Basic pay increase	Overtime pay increase*
Grade 1 work (aged 25+)	£8.21	£8.21**	£0.16	£0.24
Grade 2 worker	£8.45	£8.29	£0.16	£0.24
Grade 3 worker	£8.70	£8.54	£0.20	£0.30
Grade 4 worker	£9.36	£9.16	£0.18	£0.27
Grade 5 worker	£9.88	£9.70	£0.16	£0.24
Grade 6 worker	£10.64	£10.48	£0.16	£0.24

Source: UK Government, Agricultural Workers' Rights [online] https://www.gov.uk/agricultural-workers-rights/pay-and-overtime
*Note: * Overtime pay levels are set at 1.5 times of basic rates.*
*** The rates set at NLW levels from April 2019.*

Table 14 combines data in Table 8, Table 10-Table 13 to provide a rough estimate of the additional labour costs per year for Option 2 relative to Option 1 in Wales across all grades for full time, part time and casual workers. The calculations for the additional wages costs were based on the number of workers in each grade by type (full time, part time and casual) multiplied by the increase per hour for the respective grades, the number of hours worked per week and the number of weeks worked per year.

Table 14: Additional labour costs per year for Option 2.

Grade	**Full-time (£)**		**Part-time(£)**		**Casual (£)**		**Total (£)**
	Basic	Overtime	Basic	Overtime	Basic	Overtime	All
1	0	0	0	0	0	0	0
2	427,535	99,444	315,544	0	150,011	24,624	1,017,158
3	98,662	22,949	35,060	0	0	0	156,671
4	411,091	95,619	68,869	0	0	0	575,579
5	135,660	31,554	16,904	0	0	0	184,118
6	188,417	43,825	17,217	0	0	0	249,459
Total (£)	1,261,365	293,391	453,595	0	150,011	24,624	2,182,986

APPENDIX B: Calculations of Employment Effect

Wage elasticity of supply is the grade of influence on the supply of labour caused by a change of wages.

The formula for wage elasticity is: Wage elasticity =change of supply of labour in percentage / change of wage in percentage.

Therefore:

- Change of supply of labour in percentage=wage elasticity*change of wage in percentage;
- Absolute change in labour supply=number of workers*change of supply of labour in percentage (i.e. wage elasticity*change of wage in percentage)

Table 15: Change in labour supply assuming wage elasticity=-0.19

	No. of workers (a)	Wage elasticity (b)	Change of wage in % (c)	Absolute changes in no, of workers (d) (d=a*b*c)
Grade 1 workers	2,968	-0.19	4.00%	-23
Grade 2 workers	7,147	-0.19	6.00%	-81
Grade 3-6 workers	2,750	-0.19	4.00%	-21
Total	**-**	**-**	**-**	**-125**

Table 16: Change in labour supply assuming wage elasticity=-0.03

	No. of workers (a)	Wage elasticity (b)	Change of wage in % (c)	Absolute changes in no, of workers (d) (d=a*b*c)
Grade 1 workers	2,968	-0.03	4.00%	-4
Grade 2 workers	7,147	-0.03	6.00%	-13
Grade 3-6 workers	2,750	-0.03	4.00%	-3
Total	**-**	**-**	**-**	**-20**

APPENDIX C: The Competition Assessment

Answers to the competition filter test

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

Appendix D - The Panel's consultation letter

Agricultural Advisory Panel for Wales

Dear Consultee

The Agricultural Advisory Panel for Wales was established under The Agricultural Sector (Wales) Act 2014. One of its key responsibilities is "to prepare agricultural wages orders in draft, consulting on such orders and submitting them to Ministers for approval".

As Chair of the Panel I am writing to ask for your views on the Panel's proposed changes to the terms and conditions for agricultural workers, to be included in the Agricultural Wages Order 2019. These proposals were made at the Panel's meeting on 4 September and are listed below.

1. Rates of Pay

The Panel proposes that the minimum rates of pay for agricultural workers should be increased as follows:

Grade	Current Rate £ per hour	Proposed Rate £ per Hour
Grade 1 under 16	£3.47	£3.54
Grade 1 16-24	£7.38	£7.52
Grade 1 25 +	£7.83	£7.98
Grade 2	£8.29	£8.45
Grade 3	£8.54	£8.70
Grade 4	£9.16	£9.36
Grade 5	£9.70	£9.88
Grade 6	£10.48	£10.64

Other allowances:

	Current	Proposed	
Dog Allowance	£8.02	£8.17	Per Dog per Week
Night Time Work Allowance	£1.52	£1.55	Per Hour of Night Work
Birth / Adoption Allowance	£63.09	£64.29	For Each Child

2. Other Proposed Changes

The first is a clarification rather than a policy change and the second is needed to ensure compliance with existing employment law:

a. The removal of Paragraph 11(b) of the Agriculture Wages (Wales) Order;
Under Article 11 of the Agricultural Wages (Wales) Order 2018 an apprentice is defined as follows:

11.—(1) An agricultural worker is an apprentice employed under an apprenticeship if—
(a) they are employed under either a contract of apprenticeship, an apprenticeship agreement within the meaning of section 32 of the Apprenticeships, Skills, Children and Learning Act 2009(1) or

are treated as employed under a contract of apprenticeship; ***and***

(b) they are within the first 12 months after the commencement of that employment under 19 years of age.

(2) An agricultural worker must be treated as employed under a contract of apprenticeship if they are engaged in Wales under Government arrangements known as Foundation Apprenticeships, Apprenticeships or Higher Apprenticeships.

In this article "Government arrangements" means arrangements made under section 2 of the Employment and Training Act 1973(1) or under section 17B of the Jobseekers Act 1995(2).

The Panel considers that this definition is misleading, as an apprentice does not need to be under 19 years of age. This age reference relates to when under the National Minimum Wage (NMW) legislation an apprentice would be entitled to the apprenticeship rate of NMW. This is not relevant to agricultural workers as the Agricultural Wages Order sets prescribed rates for agricultural apprentices.

The Panel considers that this issue can be clarified by removing clause 11(b) (the wording highlighted in bold and italics above).

b. Amendment of the term 'qualifying days' in relation to annual leave provision

The Panel considers that the current definition of "qualifying days" which is used in the Agricultural Wages Order to calculate annual leave entitlement could be interpreted in a way which could be detrimental to agricultural workers who are taking annual leave, bereavement leave or statutory family leave (e.g. maternity, paternity, shared parental or adoption leave). The definition of "qualifying days" in the Agricultural Wages (Wales) Order is as follows:

"qualifying days" means days on which the agricultural worker would normally be required to be available for work apart from days on which the agricultural worker-
(a) Was taking annual leave;
(b) Was taking bereavement leave; or
(c) Was taking statutory maternity, paternity or adoption leave.

This definition could be interpreted to mean "qualifying days" *do not* include days on which annual leave, bereavement leave or family leave is taken. Agricultural workers are entitled to accrue holiday whilst taking annual leave, bereavement leave or statutory family leave. Such an interpretation therefore could result in a detriment for agricultural workers. Agricultural workers are also entitled to accrue holiday whilst on a period of sickness.

The Panel therefore wishes to clarify the definition of qualifying days to ensure that qualifying days ***includes*** days on which agricultural workers are taking annual leave, bereavement leave, family leave or on periods of sickness absence.
The Panel proposes amending the definition of qualifying days as follows:

"qualifying days" means days on which the agricultural worker would normally be required to be available for work including days on which the agricultural worker-

(a) was taking annual leave;
(b) was taking bereavement leave;

(c) was taking statutory maternity, paternity, shared parental or adoption leave; or
(d) was on a period of sickness absence.

I should be grateful for your comments on these proposals before **26 October** so that the Panel may submit our advice to Ministers as required by the Agricultural Sector (Wales) Act 2014.

The responses to this consultation will be made publicly available. Should you wish to remain anonymous, please indicate this within your response. Thank you in advance for your input.

Please respond to the Panel Manager in writing at the address below or by email to: Ryan.Davies@gov.wales

Ryan Davies
Agricultural Advisory Panel Manager
Welsh Government
Spa Road East
Llandrindod Wells
Powys
LD1 5HA
Yours sincerely
Lionel Walford
Chair
Agricultural Advisory Panel for Wales

Yours sincerely

Lionel Walford
Chair
Agricultural Advisory Panel for Wales

CONSULTATION DISTRIBUTION LIST

Race / Equality

British Pakistan Foundation	BVSNW
Diverse Cymru	SEWREC
NWREN	Race Equality First
CTP International	Race Council Cymru
BENNW - Black Environment Network	Gofal Cymru

Religion

Muslim Council of Wales	The Interfaith Council for Wales
The Jewish Leadership Council	CYTUN
Cafod	The Church in Wales
Baha'i Council in Wales	Welsh Refugee Council
British Humanist Association	Evangelical Alliance Wales

Welsh Language

Merched Y Wawr	Welsh Language Commissioner

Youth Children's Rights

Campaign for the Children & Young People Assembly	Youth United Foundation
National Youth Agency	Plant yng Nghymru - Children in Wales
YFC Wales	Childrens Commissioner Wales
UK Youth	Learning Disability Wales
Council for Wales Voluntary Youth Services	British Youth Council
Wales Council for Voluntary Youth Action	Action for Children

Businesses

Associated British Ports	Atkins Global
BAM Nuttall Ltd	British Water
Canal and Rivers Trust	Chartered Institute of Housing
Clee Tompkinson and Francis	Coal Authority
Common Vision	Community Housing Cymru
Community Land Advice	Constructing Excellence in Wales
Crown Estate	Denbighshire County Council
DM Property Consultants	Dwr Cymru
EH Law	Energy Savings Trust
Ffos Las Racecourse	Fjord Horse
Freightliner	Friends of the Earth Cymru
Landscape Institute	Llanishen Reservoir Action Group

Lloyds Bank PLC
Mid & West Wales Fire and Rescue Service
Mineral Products Association
MOD
National Sewerage Association
OFTEC
RICS Wales
Royal Town Planning Institute
Scottish Government
Seven Rivers Trust
The Oil Specialists
Tir Enterprises
United Utilities
University of Bangor
Welsh Local Government Association
Coleg Sir Gar
Coleg Cambria
Edward Perkins Chartered Surveyors
IOSH
Trades Union Congress Cymru
TCS Management
Country Land & Business Association

Disabilities

Disability Wales
Action on Hearing Loss
All Wales People First
Cardiff & Vale Coalition of Disabled People
British Deaf Association Wales
Leornard Cheshire Trust
British Dyslexia Association
Disability Advice Project (Torfaen)
Communication Matters
Disability Powys
Employers Forum on Disability
Equality and Human Rights Commission
Eplisepsy Wales
Wales Council for the Blind
Mind Cymru
North Wales Deaf Association
Wales Council for Deaf People
Swansea Disability Forum
Disability Arts Cymru
Gofal Cymru
Mencap Cymru
National Deaf Childrens Society Wales
North Wales Deaf Association
RNIB

Gender / Sexuality

LGBT Consortium
A:Gender
Unique Transgender Network
Stonewall Cymru
Unity Group Wales

Women

Career Women Wales
Chwarae Teg
UNIFEM in Wales
BAWSO
Mewn Cymru
Welsh Assembly of Women
Welsh Women's Aid
Women Connect First
Women on Boards
WEN Wales
Women in Wales
Womens Food and Farming Union
Network She
Women in Property
Wales Women in Agriculture Forum
WiRE (Women in Rural Enterprise)
Women's Engineering Society

Wales Resource Centre for Women in Science, Engineering & Technology

Elderly

Age Cymru
Age Concern Cardiff
Older Peoples Commissioner for Wales

Poverty

Joseph Rowntree Foundation
Low Pay Commission
Bevan Foundation
National Energy Action Wales

General

Workplace Report Magazine
CATCH-UP
Oxfam Cymru
CCF - Cardiff Communities First
Participation Cymru
MENFA - Mentoring for All
WRAP Wellness Recovery Action Plan
LDW - Learning Disability Wales
Equality and Human Rights Commission
Journey - Depression Alliance Cymru
British Red Cross South Wales
Duffryn Community Link
BTCV
SOVA
Carers Wales / Cynhalwyr Cymru

Agriculture

Aberdeen Angus Cattle Society
ADAS
Agricultural Business
APHA
Archaelogical Trust
Association of National Parks
Brecknock Wildlife Trust
Brecon Beacons National Park
British Blonde Society
British Blue Cattle Society
British Limousin Cattle Society
British Simmental Cattle Society
British Veterinarian Association
Brown Swiss Cattle Society
BWW Management Planner Forum
CAAV
CADW
Campaign for the Protection of Rural Wales
Carmarthen Bay and Estuaries
Carmarthen Rivers Trust
CBI
CCFG (Continious Cover Forestry Group)
Celtic Ecology
Centre for Alternative Technology
CLA
Coastal Zone and Marine Environment Research Unit
Cynnal Cymru
DARDNI
Dartmoor Society
Dairy Co
Dairy Development Centre (DDC)
Dairy Strategy Group
Defra
Dept for BIS
Dyfi Biosphere
Elan Valley Trust
Eryri National Park
Farming and Countryside Education
Forest Research
Future Farmers

FUW
FWAG
Horticulture Wales
HSBC Agriculture
Hybu Cig Cymru/Meat Promotion Wales
IBERS
Institute of Chartered Foresters
LANDEX
Lantra
Llais Y Goedwig
Menter a Busnes
Menter Mon
National Beef Association
Natural Resources Wales
National Trust
NFU Cymru
NFU
NFU Mutual Senior Agent
NPTC College Group
OCW
Pembrokeshire Coast
Pembrokeshire NPA
PINS
Powys County Council
RHSMR Mottershead
RSPB
RWAS
Santander
Sustainable Farming Consultant
TFA
Unite the Union Wales
Visit Wales
Wales Environment Link
Wales Wildlife and Countryside Trust
Water Regulations Advisory Service
Wales Rural Observatory
Wales Tourism Alliance
Watts and Morgan
Welsh Black Cattle Society
Welsh Lamb and Beef Promotions
West Wales European Centre
Wildfowl and Wetlands Trust
Wildlife Trusts Wales
WLGA
WWF Cymru
Wye and Usk Foundation
Whittingham Riddell
Lusitanos
Farmers Welsh Lavender Ltd

SL(5)405 – Gorchymyn Rhywogaethau Goresgynnol Estron (Gorfodi a Thrwyddedu) 2019

Cefndir a Diben

Mae'r Gorchymyn hwn yn cyflwyno darpariaethau hawlenni a thrwyddedau sydd eu hangen i gydymffurfio â gofynion Rheoliad Rhif 1143/2014 yr UE ar atal a rheoli cyflwyno a lledaenu rhywogaethau estron goresgynnol ("Rheoliad yr UE"). Mae hefyd yn cynnwys darpariaethau gorfodi ac yn rhagnodi troseddau a chosbau.

Mae Rheoliad yr UE yn creu rhestr o rywogaethau sydd o bryder i'r Undeb y mae eu heffaith andwyol yn golygu bod angen gweithredu cydgysylltiedig ar draws yr UE. Mae'n gosod cyfyngiadau llym ar y rhywogaethau hyn felly ni ellir eu mewnforio, eu cadw, eu bridio, eu cludo, eu gwerthu, eu defnyddio na'u cyfnewid, eu caniatáu i atgynhyrchu, neu gael eu tyfu, eu trin, neu eu rhyddhau i'r amgylchedd.

Caiff Rheoliad yr UE ei drosi'n gyfraith y DU pan fydd y DU yn gadael yr UE.

Gweithdrefn

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

    - Gwnaed y Gorchymyn hwn fel offeryn cyfansawdd, sy'n golygu bod y Gorchymyn: (a) wedi cael ei wneud gan Weinidogion Cymru a'r Ysgrifennydd Gwladol, a (b) wedi cael ei osod gerbron Cynulliad Cenedlaethol Cymru a Senedd y DU. O ganlyniad, mae'r Gorchymyn wedi'i wneud yn Saesneg yn unig.

    - Mae'r Memorandwm Esboniadol yn nodi bod angen gwneud y Gorchymyn ar sail gyfansawdd er mwyn helpu i sicrhau dull gorfodi cyson, ac er mwyn sicrhau hygyrchedd a dealltwriaeth ar gyfer aelodau o'r cyhoedd ac eraill. Mae'r cynghorwyr cyfreithiol yn derbyn bod rhesymau da dros wneud y Gorchymyn hwn ar sail gyfansawdd, ond nodwn yr effaith a gaiff hynny (h.y. nid oes fersiwn Gymraeg).

2. **Rheol Sefydlog 21.2 (vi) – ei bod yn ymddangos bod gwaith drafftio'r offeryn neu'r drafft yn ddiffygiol neu ei fod yn methu â bodloni gofynion statudol.**

    - Mae Datganiad y Gweinidog yn y Memorandwm Esboniadol yn cyfeirio'n anghywir at y Gorchymyn hwn fel 'the Invasive Alien Species (Enforcement and Permitting) *(Wales)* Order 2019 (*ychwanegwyd y pwyslais*).

3. **Rheol Sefydlog 21.2 (vi) – ei bod yn ymddangos bod gwaith drafftio'r offeryn neu'r drafft yn ddiffygiol neu ei fod yn methu â bodloni gofynion statudol.**

- Mae erthygl 32(1)(a) yn cyfeirio at "the costs of storing a relevant organism detained under article *27(2)*" (*ychwanegwyd y pwyslais*). Mae is-baragraff (2) o Erthygl 27 yn nodi'r cyfnod hiraf y caniateir cadw organeb berthnasol. Nid yw'n rhoi'r pŵer i swyddog tollau dynodedig atafaelu'r organeb berthnasol.

- Mae'n ymddangos bod y pŵer sy'n caniatáu i swyddog tollau dynodedig atafaelu organeb berthnasol wedi'i gynnwys yn is-baragraff (1) o Erthygl 27 (yn hytrach nag is-baragraff (2)). Byddai'r cynghorwyr cyfreithiol yn croesawu eglurhad ynglŷn â'r pwynt hwn.

Rhinweddau: craffu

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

Y goblygiadau yn sgil gadael yr Undeb Ewropeaidd

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

1. **Rheol Sefydlog 21.3(ii) – 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'r Gorchymyn hwn yn trosglwyddo gofynion Rheoliad yr UE Rhif 1143/2014 yn uniongyrchol, sy'n rhoi'r ddyletswydd a ganlyn ar Aelod-wladwriaethau: "Member States shall lay down the provisions on penalties applicable to infringements of this Regulation. Member States shall take all the necessary measures to ensure that they are applied." Mae'r Memorandwm Esboniadol yn tynnu sylw at y ffaith bod y Gorchymyn, ar adeg ei osod, yn cynnwys materion gweithredadwyedd y gwyddys amdanynt, gan gynnwys yr angen i sicrhau cysondeb â Rhiant-reoliad yr UE (a gywirwyd gan Reoliadau Rhywogaethau Estron Goresgynnol (Diwygio etc.) (Ymadael â'r UE) 2019).

    - Mae'r Memorandwm Esboniadol yn nodi y bwriedir cywiro'r materion gweithredol hyn drwy gyfrwng offeryn gweithredu ar wahân.

Ymateb y Llywodraeth

Mae angen ymateb gan y Llywodraeth.

Cynghorwyr Cyfreithiol
Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol
5 Mawrth 2019

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CYMRU

2019 Rhif 602 (Cy. 127)

PYSGODFEYDD MÔR, CYMRU

Gorchymyn Pysgota Môr (Hysbysiadau Cosb) (Cymru) (Diwygio) 2019

NODYN ESBONIADOL

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

Mae'r Gorchymyn hwn yn diwygio Gorchymyn Pysgota Môr (Hysbysiadau Cosb) (Cymru) 2019 (O.S. 2019/363 (Cy. 86)) er mwyn cywiro gwall sy'n ymwneud â chymhwyso'r offeryn hwnnw.

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.

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O F F E R Y N N A U S T A T U D O L
C Y M R U

2019 Rhif 602 (Cy. 127)

PYSGODFEYDD MÔR, CYMRU

Gorchymyn Pysgota Môr (Hysbysiadau Cosb) (Cymru) (Diwygio) 2019

Gwnaed *18 Mawrth 2019*

Gosodwyd gerbron Cynulliad Cenedlaethol Cymru *19 Mawrth 2019*

Yn dod i rym *21 Mawrth 2019*

Mae Gweinidogion Cymru, drwy arfer y pwerau a roddir gan adran 30(2) o Ddeddf Pysgodfeydd 1981(**1**) a freiniwyd bellach ynddynt hwy(**2**) ac adrannau 294 a 316(1)(b) o Ddeddf y Môr a Mynediad i'r Arfordir 2009(**3**), yn gwneud y Gorchymyn a ganlyn.

Enwi, cymhwyso, dehongli a chychwyn

1.—(1) Enw'r Gorchymyn hwn yw Gorchymyn Pysgota Môr (Hysbysiadau Cosb) (Cymru) (Diwygio) 2019.

(**1**) 1981 p. 29 ("Deddf 1981"); *gweler* adran 30(3) i gael y diffiniad o "the Ministers".

(**2**) Cafodd swyddogaethau'r Gweinidogion o dan adran 30 o Ddeddf 1981, i'r graddau yr oeddent yn arferadwy o ran Cymru, eu trosglwyddo i Gynulliad Cenedlaethol Cymru a'u trosglwyddo wedyn o'r corff hwnnw i Weinidogion Cymru; *gweler* erthygl 2(a) o Orchymyn Cynulliad Cenedlaethol Cymru (Trosglwyddo Swyddogaethau) 1999 (O.S. 1999/672) ac Atodlen 1 iddo a pharagraff 30 o Atodlen 11 i Ddeddf Llywodraeth Cymru 2006 (p. 32). Cafodd swyddogaethau'r Gweinidogion o dan adran 30 o Ddeddf 1981, i'r graddau yr oeddent yn arferadwy o ran parth Cymru, eu trosglwyddo i Weinidogion Cymru gan erthygl 4(1)(e) o Orchymyn Parth Cymru (Ffiniau a Throsglwyddo Swyddogaethau) 2010 (O.S. 2010/760). Cafodd y swyddogaethau hynny eu trosglwyddo ymhellach, ar sail gydredol, o ran cychod pysgota Cymru y tu hwnt i derfyn parth Cymru tua'r môr gan adran 59A o Ddeddf Llywodraeth Cymru 2006 a pharagraff 2(1) o Atodlen 3A iddi.

(**3**) 2009 p. 23; *gweler* adran 294(8) i gael y diffiniad o "the appropriate national authority".

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(2) Mae'r Gorchymyn hwn yn gymwys o ran Cymru a pharth Cymru.

(3) Yn y Gorchymyn hwn, mae i "Cymru" yr ystyr a roddir i "Wales" ac mae i "parth Cymru" yr ystyr a roddir i "Welsh zone" gan adran 158(1) o Ddeddf Llywodraeth Cymru 2006(**1**).

(4) Daw'r Gorchymyn hwn i rym ar 21 Mawrth 2019.

Diwygio Gorchymyn Pysgota Môr (Hysbysiadau Cosb) (Cymru) 2019

2.—(1) Mae Gorchymyn Pysgota Môr (Hysbysiadau Cosb) (Cymru) 2019(**2**) wedi ei ddiwygio fel a ganlyn.

(2) Yn erthygl 1 (enwi, cychwyn a chymhwyso), yn lle paragraff (3) rhodder—

> "(3) Mae'r Gorchymyn hwn yn gymwys o ran Cymru a pharth Cymru."

(3) Yn erthygl 2 (dehongli), yn y mannau priodol, mewnosoder—

> "mae i "Cymru" yr un ystyr ag a roddir i "Wales" yn adran 158(1) o Ddeddf Llywodraeth Cymru 2006;";
>
> "mae i "parth Cymru" yr un ystyr ag a roddir i "the Welsh zone" yn adran 158(1) o Ddeddf Llywodraeth Cymru 2006;".

Lesley Griffiths
Gweinidog yr Amgylchedd, Ynni a Materion Gwledig, un o Weinidogion Cymru
18 Mawrth 2019

(**1**) 2006 p. 32; mae diwygiadau i adran 158 nad ydynt yn berthnasol i'r diffiniad hwn. At ddibenion y diffiniad o "Wales" yn adran 158(1), y ffin rhwng y rhannau hynny o'r môr o fewn Aberoedd Hafren a Dyfrdwy sydd i'w trin fel rhai sy'n gyfagos i Gymru a'r rhai nad ydynt i'w trin felly yw, ym mhob achos, linell a dynnir rhwng y cyfesurynnau a nodir yn Atodlen 3 i Orchymyn Cynulliad Cenedlaethol Cymru (Trosglwyddo Swyddogaethau) 1999 (O.S. 1999/672). Yn rhinwedd adran 162 o Ddeddf Llywodraeth Cymru 2006, a pharagraff 26 o Atodlen 11 iddi, mae O.S. 1999/672 yn parhau i gael effaith. Mewnosodwyd y diffiniad o "Welsh zone" yn adran 158(1) gan adran 43(2) o Ddeddf y Môr a Mynediad i'r Arfordir 2009. Pennir parth Cymru yng Ngorchymyn Parth Cymru (Ffiniau a Throsglwyddo Swyddogaethau) 2010.

(**2**) O.S. 2019/363 (Cy. 86).

Explanatory Memorandum to The Sea Fishing (Penalty Notices)(Wales) (Amendment) Order 2019

This Explanatory Memorandum has been prepared by the Marine and Fisheries Division and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The Sea Fishing (Penalty Notices) (Wales) (Amendment) Order 2019.

Lesley Griffiths AM
Minister for Environment, Energy and Rural Affairs
19 March 2019

PART 1

Description

1. The Sea Fishing (Penalty Notices) (Wales) Order 2019 (the "Principal Order"), creates a scheme for the issuing and payment of penalty notices for certain offences relating to sea fishing. It revokes the Sea Fishing (Enforcement of Community Measures) (Penalty Notices) Order 2008 and replaces it with a scheme that applies to offences created under domestic legislation as well as those arising from a breach of an enforceable community restriction or other obligation.

2. The Sea Fishing (Penalty Notices) (Wales) (Amendment) Order 2019 (the "Amending Order") amends the Principal Order so as to ensure it is intra vires. Specifically, the Amending Order removes the reference in Article 1(3) to Welsh fishing boats "wherever they may be", thereby restricting the application of the instrument to Wales and Welsh zone.

Matters of special interest to the Constitutional and Legislative Affairs Committee

3. The Amending Order is being laid under the negative procedure with deviation from the standard 21 day laying day period. It is necessary to breach the 21 day rule to ensure the Principal Order is not ultra vires when it comes into force on 22 March 2019.

4. The effect of the Amending Order is to render the Principal Order intra vires by reducing its scope. To assist in this regard, two definitions are added to the Principal Order for clarity.

5. The Constitutional and Legislative Affairs Committee report on the Principal Order queried why that instrument prohibited payments in cash being made in respect of a penalty notice. The reason for this prohibition is that cash payments would be subject to more onerous checks in order to mitigate loss or fraud. In addition, not all Welsh Government offices are able to accept cash payments. It is noteworthy that the equivalent English scheme contains a prohibition on paying in cash.

Legislative background

6. The Amending Order is made in exercise of powers conferred by Section 30(2) of the Fisheries Act 1981 and Sections 294 and 316(1) (b) of the Marine and Coastal Access Act 2009. The functions of the Ministers under section 30 of the 1981 Act, so far as exercisable in relation to Wales, were 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 (S.I. 1999/672) and paragraph 30 of Schedule 11 to the Government of Wales Act 2006

(c.32). The functions of the Ministers under section 30 of the 1981 Act, so far as exercisable in relation to the Welsh zone, were 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).

7. The Amending Order follows the negative resolution procedure, pursuant to Section 316(8) of the Marine and Coastal Access Act 2009.

Purpose and intended effect of the legislation

8. Although it is not made under the EU Withdrawal Act 2018, the Principal Order is considered desirable in advance of the United Kingdom's withdrawal from the European Union. In addition, the scheme is necessary in order to provide more flexibility in the enforcement of fisheries law. The UK government implemented a scheme of this type for England only in 2011. It should be noted the English scheme applies to Welsh fishing boats outside the Welsh zone.

Consultation

9. Due to the urgency involved it has not been possible to carry out a consultation in relation to the Amending Order. It should be noted however, the effect of the Amending Order is solely to render the Principal Order intra vires and therefore to ensure Welsh Government acts lawfully. Further, the Amending Order will restrict, rather than increase, the impact of the Principal Order on the Welsh fishing industry.

Rebecca Evans AC/AM
Y Gweinidog Cyllid a'r Trefnydd
Minister for Finance and Trefnydd

Llywodraeth Cymru
Welsh Government

Eich cyf/Your ref
Ein cyf/Our ref MA-L/LG/0293/19

19 Mawrth 2019

Annwyl Elin,

Gorchymyn Pysgota Môr (Hysbysiadau Cosb) (Cymru) (Diwygio) 2019

Yn unol â'r canllawiau, rwy'n eich hysbysu y bydd adran 11A(4) o Ddeddf Offerynnau Statudol 1946, fel y'i mewnosodwyd gan baragraff 3 o Atodlen 10 o Ddeddf Llywodraeth Cymru 2006, sy'n cyflwyno'r rheol y bydd offynnau statudol yn dod i rym o leiaf 21 diwrnod o ddyddiad eu gosod, yn cael ei thorri er mwyn gallu cyflwyno Gorchymyn Pysgota Môr (Hysbysiadau Cosb) (Cymru) (Diwygio) 2019. Amgaeir y Memorandwm Esboniadol i chi er eich gwybodaeth.

Mae Gorchymyn Pysgota Môr (Hysbysiadau Cosb) (Cymru) (Diwygio) 2019 ("y Gorchymyn Diwygio") yn diwygio Gorchymyn Pysgota Môr (Hysbysiadau Cosb) (Cymru) 2019 ("y Prif Orchymyn) er mwyn sicrhau bod y Prif Orchymyn yn intra vires. Yn benodol, mae'r Gorchymyn Diwygio'n dileu'r elfen sy'n cyfeirio at gychod pysgota Cymru sy'n pysgota y tu allan i Gymru ac i Barth Cymru fel nad ydynt yn dod o dan gwmpas y Prif Orchymyn, gan gyfyngu'r defnydd o'r offeryn i Gymru ac i barth Cymru.

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

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

Cefndir

Mae'r Prif Orchymyn yn creu cynllun ar gyfer dyroddi a thalu hysbysiadau cosb ynglŷn â throseddau penodol sy'n ymwneud â physgota môr. Mae'n dirymu Gorchymyn Pysgota Môr (Gorfodi Mesurau'r Gymuned) (Hysbysiadau Cosb) 2008 gan ddisodli hwnnw â chynllun sy'n gymwys i droseddau a grëir o dan ddeddfwriaeth ddomestig yn ogystal â'r rhai sy'n codi o ganlyniad i dorri cyfyngiad cymunedol gorfodadwy neu rwymedigaeth arall.
Mae erthygl 1(3) o'r Prif Orchymyn yn datgan ei fod yn gymwys o ran Cymru, parth Cymru, a chychod pysgota Cymru ym mha le bynnag y bônt. Y ffaith amdani yw bod y pŵer galluogi perthnasol (adran 294 o Ddeddf y Môr a Mynediad i'r Arfordir 2009) yn caniatáu i Weinidogion Cymru yn unig i greu cynllun ar gyfer hysbysiadau cosb sy'n gymwys i Gymru a Pharth Cymru. Felly, i'r graddau bod y Prif Orchymyn yn gymwys i gychod pysgota Cymru y tu allan i barth Cymru, mae'n ultra vires.

Byddai'r Gorchymyn Diwygio yn diwygio'r Prif Orchymyn er mwyn dileu'r cyfeiriad yn Erthygl 1(3) at gychod pysgota Cymru ym mha le bynnag y bônt. Yn sgil hynny byddai'r Prif Orchymyn yn gymwys i Gymru a pharth Cymru yn unig, ac felly'n intra vires.

Mae angen torri'r rheol 21 diwrnod i sicrhau nad yw'r Prif Orchymyn yn ultra vires pan fydd yn dod i rym ar 22 Mawrth 2019. Oherwydd cymhlethdod y darpariaethau perthnasol sy'n ymdrin â throsglwyddo swyddogaethau a'r llwyth gwaith na welwyd ei debyg o'r blaen sy'n cael ei wneud gan y Gwasanaethau Cyfreithiol mewn perthynas ag ymadawiad y Deyrnas Unedig (DU) â'r Undeb Ewropeaidd (UE), dim ond yn ddiweddar y cafodd y gwall yn Erthygl 1(3) o'r Prif Orchymyn ei nodi.

Er nad yw'n cael ei wneud o dan Ddeddf yr UE (Ymadael) 2018, ystyrir bod y Prif Orchymyn yn ddymunol cyn i'r DU adael yr UE. Yn ychwanegol, mae angen inni gael y cynllun er mwyn sicrhau mwy o hyblygrwydd wrth orfodi cyfraith pysgodfeydd. Roedd Llywodraeth y DU wedi rhoi cynllun tebyg ar waith yn Lloegr yn unig yn 2011. Dylid nodi bod y cynllun yn Lloegr yn gymwys i gychod pysgota Cymru y tu allan i barth Cymru.

Oherwydd bod hwn yn fater o frys, ni fu'n bosibl cynnal ymgynghoriad mewn perthynas â'r Gorchymyn Diwygio. Fodd bynnag, dylid nodi mai unig effaith y Gorchymyn Diwygio yw gwneud y Prif Orchymyn yn intra vires, gan sicrhau felly bod Llywodraeth Cymru a'r Cynulliad yn gweithredu mewn modd cyfreithlon. Yn ychwanegol, bydd y Gorchymyn Diwygio yn cyfyngu, yn hytrach na chynyddu, effaith y Prif Orchymyn ar y diwydiant pysgota yng Nghymru.

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

Mae copi o'r llythyr hwn yn cael ei anfon at Mick Antoniw AC, Cadeirydd y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol a Sian Wilkins, Pennaeth Gwasanaethau'r Siambr a'r Pwyllgorau

Yn gywir,

Rebecca Evans AC/AM
Y Gweinidog Cyllid a'r Trefnydd
Minister for Finance and Trefnydd

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

Eitem 3.9

SL(5)393 – The Invasive Alien Species (Enforcement and Permitting) Order 2019

Background and Purpose

This Order introduces permitting and licensing provisions needed to comply with the requirements of EU Regulation No 1143/2014 on the prevention and management of the introduction and spread of invasive alien species ("the EU Regulation"). It also provides enforcement provisions and prescribes offences and penalties.

The EU Regulation creates a list of species of Union concern whose adverse impacts are such that they require coordinated action across the EU. It applies strict restrictions on these species so they cannot be imported, kept, bred, transported, sold, used or exchanged, allowed to reproduce, or be grown, cultivated, or released into the environment.

The EU Regulation will be converted into UK law when the UK leaves the EU.

Procedure

Negative.

Technical Scrutiny

The following points are identified for reporting under Standing Order 21.2 in respect of this instrument:-

1. **Standing Order 21.2(ix) – the instrument is not made in both English and Welsh**

    - This Order has been made as a composite instrument, meaning the Order has been: (a) made by both the Welsh Ministers and the Secretary of State, and (b) laid before both the National Assembly for Wales and the UK Parliament. As a result, the Order has been made in English only.

    - The Explanatory Memorandum states that the Order needed to be made on a composite basis in order to "assist with a consistent enforcement approach, and accessibility and understanding for members of the public and others". Legal Advisers accept there are good reasons to make this Order on a composite basis, but we note the effect that has (i.e. there is no Welsh language version).

2. **Standing Order 21.2 (vi) - that its drafting appears to be defective or it fails to fulfil statutory requirements.**

    - The 'Minister's Declaration' section of the Explanatory Memorandum incorrectly refers to this Order as the Invasive Alien Species (Enforcement and Permitting) *(Wales)* Order 2019 (*emphasis added*).

3. **Standing Order 21.2 (vi) - that its drafting appears to be defective or it fails to fulfil statutory requirements.**

- Article 32(1)(a) refers to "the costs of storing a relevant organism detained under article *27(2)*" (*emphasis added*). Sub-paragraph (2) of Article 27 provides the maximum period a relevant organism may be detained for, it does not provide a designated customs official with the power to seize.
- It appears that the power allowing a designated customs official to seize a relevant organism is actually contained in sub-paragraph (1) of Article 27 (rather than sub-paragraph (2)). Legal Advisers would welcome clarification on this point.

Merits Scrutiny

No points are identified for reporting under Standing Order 21.3 in respect of this instrument.

Implications arising from exiting the European Union

The following points are identified for reporting under Standing Order 21.3 in respect of this instrument:

1. Standing Order 21.3(ii) – the instrument is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly

- This Order directly transposes the requirements of EU Regulation No 1143/2014, which places a duty on Member States to "lay down the provisions on penalties applicable to infringements of the EU Regulation" and to "take all the necessary measures to ensure that they are applied". The Explanatory Memorandum highlights that at the time of laying, the Order contains known operability issues, including the need to ensure consistency with the parent EU Regulation (which was corrected by the Invasive Non-Native Species (Amendment etc.) (EU Exit) Regulations 2019).
- The Explanatory Memorandum states that it is planned that these operability issues will be corrected by means of a separate operability instrument.

Government Response

A government response is required.

Legal Advisers
Constitutional and Legislative Affairs Committee
18 March 2019

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STATUTORY INSTRUMENTS

2019 No. 510

WILDLIFE

The Invasive Alien Species (Enforcement and Permitting) Order 2019

Made - - - - at 1.00 p.m. on 7th March 2019

Laid before Parliament at 6.00 p.m. on 7th March 2019

Laid before the National Assembly for Wales 7th March 2019

Coming into force - - 1st October 2019

CONTENTS

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PART 10
Review

The Secretary of State and Welsh Ministers make this Order 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**), and by section 22(5) of the Wildlife and Countryside Act 1981(**b**).

The Secretary of State has been designated for the purposes of section 2(2) of the 1972 Act in relation to the environment(**c**), and the Welsh Ministers have been designated for those purposes in relation to the prevention and remedy of environmental damage(**d**).

This Order makes 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 the references to the list of invasive alien species of Union concern adopted by the Commission in accordance with Regulation (EU) No. 1143/2014 of the European Parliament and of the Council on the prevention and management of the introduction and spread of invasive alien species(**e**) to be construed as references to that list as amended from time to time.

(**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 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. It was amended by Part 1 of the Schedule to the European Union (Amendment) Act 2008 and by S.I. 2007/1388.
(**b**) 1981 c. 69. Section 22(5) was amended by section 25(5) of the Infrastructure Act 2015 (c. 7).
(**c**) S.I. 2008/301.
(**d**) S.I. 2014/1890.
(**e**) OJ No. L317, 4.11.2014, p. 35.

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PART 1

Introductory provisions

Citation, commencement, extent and application

1.—(1) This Order may be cited as the Invasive Alien Species (Enforcement and Permitting) Order 2019 and comes into force on 1st October 2019.

(2) This Order does not extend to Scotland and Northern Ireland except in so far as—

(a) it relates to controls on imports into and exports from the United Kingdom;

(b) it relates to the offshore marine area; or

(c) it applies in relation to any provision which relates to a matter mentioned in sub-paragraph (a) or (b).

(3) Part 6 does not extend to Scotland or Northern Ireland.

(4) This Order applies—

(a) to England and Wales;

(b) to the offshore marine area; and

(c) as regards any provision which applies in relation to controls on imports into and exports from the United Kingdom, and any provision which relates to any such provision, to Scotland and Northern Ireland.

Interpretation

2.—(1) In this Order—

"contained holding" means keeping an organism in closed facilities from which escape or spread is not possible;

"designated customs official" has the same meaning as in section 14(6) of the Borders, Citizenship and Immigration Act 2009(**a**);

"England" includes that part of the territorial sea which is not for the purposes of this Order treated as forming part of Scotland, Wales or Northern Ireland;

"enforcement officer" means—

(a) a constable;

(b) in England and Wales, a wildlife inspector authorised in accordance with section 18A of the Wildlife and Countryside Act 1981(**b**);

(c) an officer authorised for the purposes of the enforcement of this Order by a competent authority specified in article 21(2);

(d) an officer authorised for the purposes of the enforcement of this Order by—

(i) the Secretary of State;

(ii) Natural England;

(iii) the Welsh Ministers; or

(iv) the Natural Resources Body for Wales;

"ex situ conservation" means the conservation of components of biological diversity outside their natural habitat;

"invasive alien species" means any species of animal, plant, fungus or micro-organism included from time to time on the Union list;

(**a**) 2009 c. 11.

(**b**) 1981 c. 69. Section 18A was inserted, in relation to England and Wales, by paragraph 1 of Part 1 of Schedule 5 to the Natural Environment and Rural Communities Act 2006 (c. 16).

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"licence" means a licence granted in accordance with article 36 (licences for activities relating to invasive alien species);

"the licensing authority" means—

(a) Natural England in relation to—

(i) England;

(ii) the offshore marine area; and

(iii) licences relating to imports into or exports from the United Kingdom;

(b) the Natural Resources Body for Wales in relation to Wales, except in relation to licensing within sub-paragraph (a)(iii);

"Northern Ireland" includes the area of territorial sea adjacent to Northern Ireland, which is to be construed in accordance with article 2 of the Adjacent Waters Boundaries (Northern Ireland) Order 2002 (the territorial sea adjacent to Northern Ireland)(**a**);

"the offshore marine area" means—

(a) any part of the seabed and subsoil situated in any area designated under section 1(7) of the Continental Shelf Act 1964 (exploration and exploitation of continental shelf)(**b**); and

(b) any part of the waters within British fishery limits(**c**) (except the internal waters of, and the territorial sea adjacent to, the United Kingdom, the Channel Islands and the Isle of Man);

"permit" means a permit issued in accordance with article 35 (permits for activities relating to invasive alien species);

"permitting authority" means—

(a) the Secretary of State in relation to—

(i) England;

(ii) the offshore marine area;

(iii) permits relating to imports into or exports from the United Kingdom;

(b) the Welsh Ministers in relation to Wales, except in relation to permits within sub-paragraph (a)(iii);

"premises" includes any place or land (including buildings) and, in particular, includes any place, plant, machinery, apparatus, vehicle, vessel, aircraft, boat, ship, hovercraft, trailer, container, tent or movable building or structure;

"Principal Regulation" means Regulation (EU) No 1143/2014 of the European Parliament and of the Council on the prevention and management of the introduction and spread of invasive alien species;

"registered veterinary surgeon" means a person who is registered in the register of veterinary surgeons under section 2 of the Veterinary Surgeons Act 1966 (register of veterinary surgeons)(**d**);

"relevant organism" means a live animal, plant, fungus or micro-organism, and includes any part, gamete, seed, egg, or propagule that might grow, hatch or reproduce, as the case may be;

"research" means descriptive or experimental work, undertaken under regulated conditions, to obtain new scientific findings or to develop new products, including the initial phases of identification, characterisation and isolation of genetic features (other than those features which make a species invasive) of invasive alien species in so far as essential to enable the breeding of those features into non-invasive species;

(**a**) S.I. 2002/791.

(**b**) 1964 c. 29. Section 1(7) was amended by section 37 of, and paragraph 1 of Schedule 3 to, the Oil and Gas (Enterprise) Act 1982 (c. 23) and by section 103 of the Energy Act 2011 (c. 16). Areas have been designated under section 1(7) by S.I. 1987/1265 (as amended by S.I. 2000/3062) and 2013/3162.

(**c**) As defined by section 1 of the Fishery Limits Act 1976 (c. 86).

(**d**) 1966 c. 36. Section 2 was amended by S.I. 2003/2919 and 2008/1824.

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"Scotland" includes the area of territorial sea adjacent to Scotland, which is to be construed in accordance with article 3 of, and Schedule 1 to, the Scottish Adjacent Waters Boundaries Order 1999 (boundaries – internal waters and territorial sea)(**a**);

"seize" includes "detain" and cognate words are to be construed accordingly;

"species" includes—

(a) any hybrid, variety or breed of a species that might survive and subsequently reproduce; and

(b) any subspecies or lower taxon of a species.

"specimen" means a specimen of any live invasive alien species, and includes any part, gamete, seed, egg, or propagule of such a species that might grow, hatch or reproduce, as the case may be;

"the Union list" means the list of invasive alien species of Union concern adopted by the European Commission in accordance with Articles 4(1) and 10(4) of the Principal Regulation, as amended from time to time;

"Wales" includes the area of territorial sea adjacent to Wales, which is to be construed in accordance with article 6 of, and Schedule 3 to, the National Assembly for Wales (Transfer of Functions) Order 1999 (the sea adjacent to Wales)(**b**).

(2) This Order applies to the Isles of Scilly as if the Isles were a county and the Council of the Isles were a county council.

(3) Any reference in this Order to five working days, in relation to the detention of a relevant organism, is a reference to a period of 120 hours calculated from the time when the detention occurs, but disregarding so much of any period as falls on a Saturday or Sunday or on Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971(**c**) in the part of the United Kingdom where the goods are seized.

PART 2

Offences

Import, keeping, breeding, purchase, release etc. of invasive alien species

3.—(1) A person who contravenes a provision of the Principal Regulation specified in Table 1 of Schedule 1 is guilty of an offence.

(2) A person who releases or allows to escape into the wild any specimen which is of a species of animal which—

(a) is not ordinarily resident in and is not a regular visitor to Great Britain in a wild state, or

(b) is included in Part 1 of Schedule 2,

is guilty of an offence.

(3) A person who plants or otherwise causes to grow in the wild any specimen which is of a species of plant which is included in Part 2 of Schedule 2 is guilty of an offence.

(4) A person who—

(a) sells, offers or exposes for sale, or has in his possession or transports for the purposes of sale, any specimen of a species included in Part 3 of Schedule 2, or

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(**a**) S.I. 1999/1126.

(**b**) S.I. 1999/672, to which there are amendments not relevant to this Order. These provisions continue to have effect as if made under section 158(3) of the Government of Wales Act 2006 (c. 32) by virtue of paragraph 26(3) of Schedule 11 to that Act.

(**c**) 1971 c. 80. Section 1 was amended by paragraph 4(1) of Schedule 5 to the Northern Ireland Constitutions Order 1973 (c. 36). Schedule 1 was amended by section 1 of the St Andrew's Day Bank Holiday (Scotland) Act 2007 (asp 2). There are other amendments which are not relevant to this Order.

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(b) publishes or causes to be published any advertisement likely to be understood as conveying that he buys or sells, or intends to buy or sell, any specimen of a species included in Part 3 of Schedule 2,

is guilty of an offence.

(5) A person may not by reason of the same act be convicted of both—

(a) an offence under paragraph (1); and

(b) an offence under paragraph (2), (3) or (4).

(6) The power to make an order under section 14ZA(3)(b) of the Wildlife and Countryside Act 1981 (sale of invasive non-native species)(**a**) applies for the purposes of enabling the Secretary of State, or (in relation to Wales) the Welsh Ministers, to add to or remove from Part 3 of Schedule 2 any species of animal or plant as it applies for the purposes of enabling animals or plants to be prescribed for the purposes of section 14ZA of that Act.

False statements

4.—(1) A person who, for the purpose of obtaining the issue of a permit or the grant of a licence (whether for that person or another), knowingly or recklessly—

(a) makes a statement or representation which is false in a material particular, or

(b) furnishes a document or information which is false in a material particular,

is guilty of an offence.

(2) A person who, for the purpose of the notice referred to in article 19(2), makes a statement or representation which is false in a material particular is guilty of an offence.

Misuse of permits or licences

5. A person who knowingly falsifies or alters a permit or a licence is guilty of an offence.

Compliance with permits and licences

6. A person who knowingly contravenes a condition of a permit or of a licence is guilty of an offence.

Obstruction and deception

7.—(1) A person who intentionally obstructs an enforcement officer or a designated customs official acting in accordance with the powers conferred in Part 5 is guilty of an offence.

(2) A person who, without reasonable excuse, fails to give any assistance or information reasonably required by an enforcement officer or a designated customs official acting in accordance with the powers conferred in Part 5 is guilty of an offence.

(3) A person who, with intent to deceive, pretends to be an enforcement officer or a designated customs official is guilty of an offence.

(4) A person who furnishes to an enforcement officer or a designated customs official any information knowing it to be false or misleading is guilty of an offence.

Attempts to commit offences etc.

8.—(1) A person who attempts to commit an offence under articles 3 to 6 is guilty of an offence.

(2) A person who, for the purposes of committing an offence under articles 3 to 6 is in possession of anything capable of being used for committing the offence is guilty of an offence.

(**a**) 1981 c. 69. Section 14ZA was inserted by section 50 of the Natural Environment and Rural Communities Act 2006 (c. 16) and amended by section 25(3) of the Infrastructure Act 2015 (c. 7).

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Offences by bodies corporate

9.—(1) If an offence under this Part committed by a body corporate is proved—

(a) to have been committed with the consent or connivance of an officer, or

(b) to be attributable to any neglect on the part of an officer,

the officer, as well as the body corporate, is guilty of the offence and liable to be proceeded against and punished accordingly.

(2) In paragraph (1), "officer", in relation to a body corporate, means—

(a) a director, manager, secretary or other similar officer of the body; or

(b) a person purporting to act in any such capacity.

(3) If the affairs of a body corporate are managed by its members, paragraph (1) applies in relation to the acts and defaults of a member in connection with the member's functions of management as it applies to an officer of a body corporate.

Offences by Scottish partnerships

10.—(1) If an offence under this Part committed by a Scottish partnership is proved—

(a) to have been committed with the consent or connivance of a partner, or

(b) to be attributable to any neglect on the part of a partner,

the partner, as well as the partnership, is guilty of the offence and liable to be proceeded against and punished accordingly.

(2) In paragraph (1), "partner" includes a person purporting to act as a partner.

Offences by partnerships and unincorporated associations

11.—(1) Proceedings for an offence under this Part alleged to have been committed by a partnership (other than a Scottish partnership) or an unincorporated association must be brought against the partnership or association in the name of the partnership or association.

(2) For the purposes of such proceedings—

(a) rules of court relating to the service of documents have effect as if the partnership or unincorporated association were a body corporate; and

(b) the following provisions apply as they apply in relation to a body corporate—

(i) section 33 of the Criminal Justice Act 1925 (procedure on charge of offence against corporation)(**a**) and Schedule 3 to the Magistrates' Courts Act 1980 (corporations)(**b**);

(**a**) 1925 c. 86. Section 33 was amended by section 132 of, and Schedule 6 to, the Magistrates Courts Act 1952 (c. 55); paragraph 19 of Schedule 8 to the Courts Act 1971 (c. 23); and paragraph 71 of Schedule 8, and Schedule 10, to the Courts Act 2003 (c. 39) (subject to savings specified in S.I. 2004/2066).

(**b**) 1980 c. 43. Schedule 3 was amended by Schedule 13 to the Criminal Justice Act 1991 (c. 53); and paragraph 51 of Schedule 3, and paragraph 1 of Part 4 of Schedule 37 to the Criminal Justice Act 2003 (c. 44).

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(ii) sections 70 and 143 of the Criminal Procedure (Scotland) Act 1995 (proceedings against organisations and prosecution of companies, etc.)(**a**);

(iii) section 18 of the Criminal Justice Act (Northern Ireland) 1945 (procedure on charge)(**b**) and Schedule 4 to the Magistrates' Courts (Northern Ireland) Order 1981(**c**).

(3) A fine imposed on a partnership or unincorporated association on its conviction of an offence under this Part is to be paid out of the funds of the partnership or association.

(4) If an offence under this Part committed by a partnership is proved—

(a) to have been committed with the consent or connivance of a partner, or

(b) to be attributable to any neglect on the part of a partner,

the partner, as well as the partnership, is guilty of the offence and liable to be proceeded against and punished accordingly.

(5) In paragraph (4), "partner" includes a person purporting to act as a partner.

(6) If an offence under this Part committed by an unincorporated association (other than a partnership) is proved—

(a) to have been committed with the consent or connivance of an officer of the association, or

(b) to be attributable to any neglect on the part of such an officer,

the officer, as well as the association, is guilty of the offence and liable to be proceeded against and punished accordingly.

(7) In paragraph (6), "officer", in relation to an unincorporated association, means—

(a) an officer of the association or a member of its governing body; or

(b) a person purporting to act in such a capacity.

Application of offences in the offshore marine area

12.—(1) Subject to paragraph (2), the offences in this Part apply (in so far as they are capable of so applying) to any person—

(a) in any part of the waters comprised in the offshore marine area;

(b) on a ship in any part of the waters comprised in the offshore marine area;

(c) on or under an offshore marine installation.

(2) The offences in this Part do not apply to any person on a third country ship.

(3) In this article—

"offshore marine installation" means any artificial island, installation or structure (other than a ship) which is situated—

(a) in any part of the waters designated under section 1(7) of the Continental Shelf Act 1962 (exploration and exploitation of the continental shelf)(**d**); or

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(**a**) 1995 (c. 46). Section 70 was amended by section 10(6) of the Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5) (subject to savings); section 28 of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6); section 66 of the Criminal Justice and Licensing (Scotland) Act 2010 (asp 13); section 6(4) of the Partnerships (Prosecution) (Scotland) Act 2013 (c. 21); section 83(a) of Part 3 of the Criminal Justice (Scotland) Act 2016 (asp 1); and S.I. 2001/1149. Section 143 was amended by section 17 of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6); section 67 of the Criminal Justice and Licensing (Scotland) Act 2010 (asp 13); and SSI 2001/128.

(**b**) 1945 c. 15 (N.I.). Section 18(1), (2) and (6) was repealed by Schedule 7 to the Magistrates' Court Act (Northern Ireland) 1964 (c. 21 (N.I.)). Section 18(3) was amended by S.I. 1972/538 (N.I. 1), and its effect was continued by paragraph 1 of Schedule 12 to the Justice (Northern Ireland) Act 2002 (c. 26).

(**c**) S.I. 1981/1675 (N.I. 26).

(**d**) 1964 c. 29. Section 1(7) was amended by section 37 of, and paragraph 1 of Schedule 3 to, the Oil and Gas (Enterprise) Act 1982 (c. 23). Areas have been designated under section 1(7) by S.I. 1987/1265 (as amended by S.I. 2000/3062) and 2013/3162.

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(b) in any part of the waters in any area designated under section 84(4) of the Energy Act 2004 (exploitation of areas outside the territorial sea for energy production)(**a**);

"ship" means any vessel (including hovercraft, submersible craft and other floating craft) other than one which permanently rests on, or is permanently attached to, the seabed;

"third country ship" means a ship which—

(a) is flying the flag of, or is registered in, any State or territory (other than Gibraltar) which is not a member State; and

(b) is not registered in a member State.

Proceedings for offences: venue and time limits

13.—(1) For the purposes of conferring jurisdiction in any proceedings for the prosecution of an offence under this Part, any such offence is deemed to have been committed in any place where the offender is found or to which the offender is first brought after the commission of the offence.

(2) Summary proceedings for such an offence may be commenced within the period of six months from the date on which the prosecutor first knows of evidence sufficient, in the prosecutor's opinion, to justify proceedings.

(3) But, subject to the time limits contained in paragraphs 17(2) and 29(3) of Schedule 3 (criminal proceedings following failure to comply with a civil penalty), no such proceedings may be commenced more than two years after the commission of the offence.

(4) For the purposes of paragraph (2)—

(a) a certificate signed by or on behalf of the prosecutor and stating the date on which the prosecutor first knew of evidence to justify the proceedings is conclusive evidence of that fact; and

(b) a certificate stating that matter and purporting to be so signed is deemed to be so signed unless the contrary is proved.

PART 3

Defences

Defences: permits and licences

14. Article 3 (import, keeping, breeding, purchase, release etc. of invasive alien species) does not apply to anything done under, and in accordance with—

(a) a permit; or

(b) a licence.

Defences: enforcement activity

15. It is a defence to a charge of committing an offence under article 3(1) in relation to a breach of the restrictions in Article 7(1)(b) (keeping), (d) (transportation) or (f) (use and exchange) of the Principal Regulation if the person accused is—

(a) an enforcement officer or designated customs official, or a person acting at the request, or on behalf, of an enforcement officer or designated customs official; and

(b) acting for a purpose connected with the enforcement of this Order.

(**a**) 2004 c. 20. Section 84(4) was substituted by paragraph 4 of Schedule 4 to the Marine and Coastal Access Act 2009 (c. 23). Areas have been designated under section 84(4) by S.I. 2004/2668 and 2013/3161.

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Transitional provision for non-commercial owners: companion animals

16.—(1) It is a defence to a charge of committing an offence under article 3(1) in relation to a breach of the restrictions in Article 7(1)(b) (keeping) or (d) (transportation) of the Principal Regulation to show that the specimen to which the alleged offence relates—

(a) immediately before its inclusion on the Union list, was kept as a companion animal; and

(b) the condition in paragraph (2) or the condition in paragraph (3) applies.

(2) The condition in this paragraph is that, at all material times—

(a) the purpose in keeping the animal was to keep it as a companion animal;

(b) the animal was kept in contained holding and appropriate measures were in place to ensure that the animal could not reproduce or escape.

(3) The condition in this paragraph is that, at all material times—

(a) the animal was kept for the purpose of transporting it to—

(i) a facility to which a relevant licence had been granted;

(ii) an establishment to which a relevant permit had been issued; or

(iii) a place where it was to be humanely dispatched; and

(b) the animal was kept in contained holding and appropriate measures were in place to ensure that the animal could not reproduce or escape.

(4) In this article—

"relevant licence" means a licence under—

(a) article 36(2)(d) (licences for the keeping of animals by a facility);

(b) any provision in legislation which applies in relation to Scotland and which enables licences to be granted for the keeping of an animal by a facility until the end of its natural life in accordance with Article 31(4) of the Principal Regulation; or

(c) any provision in legislation which applies in relation to Northern Ireland and which enables licences to be granted for the keeping of an animal by a facility until the end of its natural life in accordance with Article 31(4) of the Principal Regulation;

"relevant permit" means a permit under—

(a) article 35 (permits for activities relating to invasive alien species) of this Order;

(b) any provision in legislation which applies in relation to Scotland and which enables permits to be issued in accordance with Article 8 or 9 of the Principal Regulation; or

(c) any provision in legislation which applies in relation to Northern Ireland and which enables permits to be issued in accordance with Article 8 or 9 of the Principal Regulation.

Transitional provision for non-commercial owners: commercial stocks

17. It is a defence to a charge of committing an offence under article 3(1) in relation to a breach of the restrictions in Article 7(1)(b) (keeping) or (d) (transportation) of the Principal Regulation to show that the specimen to which the alleged offence relates—

(a) was received from a keeper of commercial stocks in accordance with article 18(3)(d) (transitional provisions for commercial stocks); and

(b) at all material times was kept in contained holding and appropriate measures were in place to ensure that the specimen could not reproduce or escape.

Transitional provisions for commercial stocks

18.—(1) It is a defence to a charge of committing an offence to which this article applies for a keeper of a commercial stock of specimens to show that—

(a) the specimens were acquired before their inclusion on the Union list; and

(b) the activity constituting the offence—

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(i) was carried out for one of the purposes listed in paragraph (3); and

(ii) was not carried out after the end of the relevant period following the inclusion of the species to which the specimen in question belongs on the Union list.

(2) This article applies to—

(a) an offence under article 3(1) in relation to a breach the restrictions in Article 7(1)(b) (keeping), (d) (transportation), (e) (placing on the market) or (f) (use or exchange) of the Principal Regulation; and

(b) an offence under article 3(4).

(3) The purposes are—

(a) sale or transfer to a research or ex situ conservation establishment which holds a relevant permit, provided that the conditions in paragraph (4) apply;

(b) medicinal activities pursuant to a relevant permit, provided that the conditions in paragraph (4) apply;

(c) humane dispatch (in the case of animals) or destruction (in the case of plants, fungi or micro-organisms) of the specimen to exhaust the keeper's stock; or

(d) sale or transfer to a non-commercial user, provided that the conditions in paragraph (4) apply.

(4) The conditions are that, at all material times—

(a) the specimen was kept and transported in contained holding; and

(b) appropriate measures were in place to ensure that the specimen could not reproduce or escape.

(5) For the purposes of paragraph (1)(b)(ii), the relevant period is—

(a) in relation to an activity carried out for a purpose mention in paragraph (3)(a) to (c), two years;

(b) in relation to an activity carried out for a purpose mentioned in paragraph (3)(d), one year.

(6) In this article, "relevant permit" means—

(a) for the purposes of paragraph (3)(a), a permit under—

(i) article 35(1)(a) (permits for research or ex situ conservation);

(ii) any provision in legislation which applies in relation to Scotland and which enables permits to be issued for research or ex situ conservation in accordance with Article 8 of the Principal Regulation; or

(iii) any provision in legislation which applies in relation to Northern Ireland and which enables permits to be issued for research or ex situ conservation in accordance with Article 8 of the Principal Regulation;

(b) for the purposes of paragraph (3)(b), a permit under—

(i) article 35(1)(b) (permits for medicinal activities);

(ii) any provision in legislation which applies in relation to Scotland and which enables permits to be issued for scientific production and subsequent medicinal use in accordance with Article 8 of the Principal Regulation; or

(iii) any provision in legislation which applies in relation to Northern Ireland and which enables permits to be issued for scientific production and subsequent medicinal use in accordance with Article 8 of the Principal Regulation.

Defences: due diligence

19.—(1) It is defence to a charge of committing an offence under article 3(2) to (4) if the person charged ("P") shows that P took all reasonable steps and exercised all due diligence to avoid committing the offence.

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(2) Where the defence provided by paragraph (1) involves an allegation that the commission of the offence was due to the act or omission of another person, the person charged is not, without leave of the court, entitled to rely on the defence unless, within a period ending seven clear days before the hearing, the person has served on the prosecutor a notice giving such relevant information as was then in the person's possession.

(3) In paragraph (2), "relevant information" means information which identifies or assists in the identification of the other person.

PART 4

Penalties

Penalties etc.

20.—(1) A person guilty of an offence under this Order is liable—

(a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine (not exceeding the statutory maximum in Scotland or Northern Ireland, as the case may be), or to both;

(b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine (not exceeding the statutory maximum in Scotland or Northern Ireland, as the case may be), or to both.

(2) A permit or licence in relation to which an offence under article 4 or 5 (false statements and misuse of permits or licences) has been committed is void—

(a) in the case of an offence under article 4, as from the time when it was granted; and

(b) in the case of an offence under article 5, as from the time when the falsification or alteration was made.

(3) The court by which any person is convicted of an offence under this Order may order that the person convicted may not, for a period of up to five years—

(a) be issued with any permit, or issued with a permit for a particular activity; or

(b) be granted any licence, or granted a licence for a particular purpose.

PART 5

Enforcement

General

21.—(1) This Order is enforced by enforcement officers and designated customs officials.

(2) The competent authorities for the purpose of the official controls referred to in Article 15 of the Principal Regulation (which requires the designation of competent authorities responsible for official controls to prevent the introduction into the Union of invasive alien species) are—

(a) in England and the offshore marine area—

(i) the Secretary of State;

(ii) the Food Standards Agency;

(iii) county councils, district councils, Port Health Authorities, London borough councils; and

(iv) in the city of London, the Common Council of the City of London;

(b) in Wales—

(i) the Secretary of State;

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(ii) the Welsh Ministers;

(iii) the Food Standards Agency; and

(iv) county councils, county borough councils and Port Health Authorities;

(c) in Scotland—

(i) the Secretary of State;

(ii) the Scottish Ministers;

(iii) Food Standards Scotland; and

(iv) councils constituted under section 2 of the Local Government etc. (Scotland) Act 1994(**a**);

(d) in Northern Ireland—

(i) the Secretary of State;

(ii) the Department of Agriculture, Environment and Rural Affairs;

(iii) the Food Standards Agency; and

(iv) district councils.

Power to stop and search persons

22.—(1) If a constable or a designated customs official has reasonable grounds to suspect that any person is committing or has committed an offence under this Order, the constable or designated customs official may, without warrant—

(a) stop and detain that person for the purpose of a search;

(b) search that person if the constable or designated customs official suspects with reasonable cause that evidence of the commission of the offence is to be found on that person; or

(c) search or examine anything which that person may be using or which is in that person's possession if the constable or designated customs official suspects with reasonable cause that evidence of the commission of the offence is to be found on it.

(2) Nothing in this article authorises a strip search or an intimate search.

(3) A rub-down search shall not be carried out except by a person of the same sex as the person being searched.

(4) The powers conferred by this article may be exercised in any place to which the constable or designated customs official has access (whether or not it is a place to which the public has access).

(5) In this article, "intimate search", "rub-down search" and "strip search" have the same meanings as in section 164(5) of the Customs and Excise Management Act 1979 (power to search persons)(**b**).

Power to enter and search vehicles

23.—(1) If a constable or designated customs official has reasonable grounds to suspect that there is relevant evidence in a vehicle, other than a vehicle used wholly or mainly as a private dwelling, the constable or designated customs official may, at any time—

(a) stop and detain the vehicle for the purposes of entering and searching it; and

(b) enter the vehicle and search it for that evidence.

(2) Where—

(a) a constable or designated customs official has stopped a vehicle under this article, and

(b) the constable or designated customs official considers that it would be impracticable to search the vehicle in the place where it has stopped,

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(**a**) 1994 c. 39, to which there are amendments not relevant to this Order.
(**b**) 1979 c. 2. Section 164(5) was inserted by section 10(3) of the Finance Act 1988 (c. 39).

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the constable or designated customs official may require the vehicle to be taken to such place as the constable or designated customs official directs to enable the vehicle to be searched.

(3) A constable or designated customs official may require—

(a) any person travelling in a vehicle, or

(b) the registered keeper of a vehicle,

to afford such facilities and assistance with respect to matters under that person's control as the constable or designated customs official considers would facilitate the exercise of any power conferred by this article.

(4) The powers conferred by this article may be exercised in any place to which the constable or designated customs official has access (whether or not it is a place to which the public has access).

(5) In this article—

"vehicle" includes any vessel, including any aircraft;

"relevant evidence" means evidence that an offence under this Order has been committed.

Powers of entry

24.—(1) Where an enforcement officer has reasonable grounds to suspect a specimen is being kept at premises, other than premises used wholly or mainly as a private dwelling, the enforcement officer may, at a reasonable time and on giving reasonable notice, enter, search and inspect those premises, for the purpose of—

(a) ascertaining whether an offence under this Order is being or has been committed;

(b) verifying information supplied by a person for the purpose of obtaining a permit or a licence; or

(c) ascertaining whether a condition of a permit or of a licence is being or has been complied with.

(2) The requirement to give notice does not apply—

(a) where reasonable efforts to agree an appointment have failed;

(b) where the enforcement officer reasonably believes that giving notice would defeat the object of the entry;

(c) where the enforcement officer has reasonable grounds for suspecting that an offence under this Order is being or has been committed; or

(d) in an emergency.

(3) Paragraph (4) applies where—

(a) on an application made by an enforcement officer, or a justice of the peace (in England or Wales), sheriff or summary sheriff (in Scotland) or lay magistrate (in Northern Ireland) is satisfied that—

(i) there are reasonable grounds to suspect that an offence under this Order is being or has been committed and that evidence of the offence may be found on any premises; or

(ii) there is a need to ascertain whether a condition of a permit or of a licence is being or has been complied with; and

(b) one of the conditions specified in paragraph (5) applies.

(4) Where this paragraph applies, the justice of the peace, sheriff or summary sheriff, or lay magistrate (as the case may be) may issue a warrant authorising an enforcement officer to enter, search and inspect premises, and such a warrant may authorise persons to accompany the enforcement officer who is executing it.

(5) The conditions referred to in paragraph (3)(b) are that—

(a) entry to the premises has been refused, or is likely to be refused, and notice of the intention to apply for a warrant has been given to the occupier; or

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(b) one of the grounds specified in paragraph (6) justifying the absence of such notice applies.

(6) The grounds justifying absence of notice are—

(a) asking for admission to the premises, or giving such notice, would interfere with the purpose or effectiveness of the entry;

(b) entry is required urgently; or

(c) the premises are unoccupied or the occupier is temporarily absent.

(7) An enforcement officer entering any premises which are unoccupied, or from which the occupier is temporarily absent, must—

(a) where entry is by virtue of paragraph (4), leave a copy of the warrant in a prominent place on the premises; and

(b) leave the premises as effectively secured against unauthorised entry as they were before entry.

(8) An enforcement officer who enters premises by virtue of this article may—

(a) examine, photograph or mark any part of the premises or any object on the premises;

(b) open any bundle, container, package, packing case or item of personal luggage, or require the owner or any person in charge of it to open it in the manner specified by the enforcement officer;

(c) make copies of any documents or records (in whatever form they may be held); and

(d) require any person to—

(i) produce any document or record that is in that person's possession or control; and

(ii) render any such document or record on a computer system into a visible and legible form, including requiring it to be produced in a form in which it may be taken away.

(9) An enforcement officer who is, by virtue of paragraph (1) or (4), lawfully on premises may—

(a) be accompanied by such other persons, and

(b) bring onto the premises such equipment, vehicles or materials,

as the enforcement officer considers necessary.

(10) A person accompanying an enforcement officer under paragraph (9)(a) may—

(a) remain on the premises and from time to time re-enter the premises without the enforcement officer;

(b) bring onto the premises any equipment or vehicle that the person considers necessary; and

(c) carry out work on the premises in the manner directed by an enforcement officer.

(11) A warrant granted under this article continues in force for three months.

(12) An enforcement officer must, if requested to do so, produce evidence of his or her authority before entering premises by virtue of paragraph (1) or (4).

Examining relevant organisms and taking samples

25.—(1) An enforcement officer may, for the purpose of ascertaining whether an offence under this Order is being or has been committed—

(a) require that any relevant organism in the possession of any person is made available for examination by the enforcement officer;

(b) in order to determine the identity or ancestry of any relevant organism, require the taking of a sample of that relevant organism, provided that—

(i) where the sample is to be taken from a live animal—

(aa) it is taken by a registered veterinary surgeon; and

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(bb) the taking of the sample will not cause any avoidable pain, distress or suffering; and

(ii) where the sample is to be taken from a live plant or fungus, the taking of the sample will not cause lasting harm to the plant or fungus.

(2) An enforcement officer may destroy or otherwise dispose of any sample taken under this article when the sample is no longer required.

(3) In this article, "sample" means a sample of blood, tissue or other biological material.

Power of seizure for purposes of investigation etc.

26.—(1) An enforcement officer exercising the powers conferred by this Part may seize anything where the enforcement officer has reasonable grounds for believing that—

(a) seizure is necessary for the purpose of determining whether an offence under this Order is being or has been committed;

(b) it is a specimen which has been imported or is being kept in contravention of the Principal Regulation;

(c) seizure is necessary for the conservation of evidence; or

(d) seizure is necessarily incidental to seizure of a thing pursuant to sub-paragraph (a), (b) or (c).

(2) If, in the opinion of the enforcement officer, it is not for the time being practicable for the enforcement officer to seize and remove any item from premises, the enforcement officer may require any person on the premises to secure that the item is not removed or otherwise interfered with until such time as the enforcement officer may seize and remove it.

(3) Where—

(a) any item which an enforcement officer wishes to seize is in a container, and

(b) the enforcement officer reasonably considers that it would facilitate the seizure of the item if it remained in the container for that purpose,

any power to seize the item conferred by this article includes power to seize the container.

(4) The enforcement officer must make reasonable efforts to give a written receipt for anything that is seized to each of the following persons—

(a) in the case of an item seized from a person, the person from whom the item was seized;

(b) in the case of an item seized from a vehicle, any person who appears to the enforcement officer to be the owner of the vehicle, or otherwise in charge of the vehicle;

(c) in the case of an item seized from premises, any person who appears to the enforcement officer to be the occupier of the premises, or otherwise in charge of the premises;

(d) in any other case, or where the enforcement officer believes that the item may belong to any person not falling within sub-paragraph (a) to (c), to the person to whom the enforcement officer believes the item belongs.

(5) Where an item is seized from a vehicle or premises and it is not reasonably practicable to give written notice to the person referred to in paragraph (4), the officer must leave a copy of the receipt in a prominent place in the vehicle or on the premises.

(6) Any relevant organism seized by an enforcement officer must, unless the enforcement officer is satisfied that it is not a specimen, be held and transported in contained holding.

(7) Any such relevant organism—

(a) may be transferred—

(i) to another enforcement officer; or

(ii) to an establishment or facility which is authorised to keep it by a permit or licence (as the case may be); or

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(b) where the enforcement officer is satisfied it is a specimen, may be humanely dispatched (in the case of animals) or destroyed (in the case of plants, fungi or micro-organisms) as the enforcement officer sees fit.

Power of seizure to facilitate functions of an enforcement officer

27.—(1) A designated customs official may, for the purpose of facilitating the exercise by an enforcement officer of any functions conferred on an enforcement officer by or under this Order, seize any relevant organism which is being imported or exported or which has been imported or brought to a place for the purpose of export—

(a) where the designated customs official suspects that it is a specimen; or

(b) on the request of an enforcement officer.

(2) Any relevant organism seized under paragraph (1) may be detained for not more than five working days.

(3) A request under paragraph (1)(b)—

(a) may identify the relevant organism in any relevant way; and

(b) must be made in writing or be made orally and confirmed in writing as soon as reasonably practicable thereafter.

(4) Any relevant organism seized under paragraph (1)—

(a) must, if seized following a request under paragraph (1)(b), be dealt with during the period of its detention in such manner as the requesting enforcement officer may direct;

(b) may, if the designated customs official considers it appropriate, be transferred to an enforcement officer, who may hold it for a period not longer than the remainder of the detention period referred to in paragraph (2).

(5) A relevant organism held by an enforcement officer under paragraph (4)(b) must be held in contained holding.

Power to use reasonable force

28. Designated border officials and enforcement officers may use reasonable force, if necessary, in the exercise of the powers conferred by articles 22 to 27.

Proof of lawful import or export

29.—(1) Where a relevant organism is being imported or exported, or has been imported or brought to a place for the purpose of being exported, a designated customs official who suspects that the relevant organism is a specimen may require a person possessing or having control, or appearing to possess or have control, of that relevant organism to furnish relevant proof.

(2) Until relevant proof is provided to the satisfaction of the designated customs official, the designated customs official may detain the relevant organism for not more than five working days.

(3) Any relevant organism detained under this article may, if the designated customs official considers it appropriate, be transferred to an enforcement officer, who may hold the relevant organism for a period not longer than the remainder of the detention period referred to in paragraph (2).

(4) A relevant organism held by an enforcement officer under paragraph (3) must be held in contained holding.

(5) In this article, and in article 30, "relevant proof" in relation to the importation or exportation of a relevant organism, means proof—

(a) that the relevant organism is not a specimen; or

(b) that such importation or exportation (as the case may be) is or was authorised by a permit or a licence, or (if it would otherwise be unlawful) is lawful by virtue of a defence under articles 15 to 18.

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Action following seizure

30.—(1) This article applies where a relevant organism has—

(a) been seized under article 26 whilst being imported or exported, or once imported or brought to a place for the purpose of export,

(b) been seized under article 27 or 29(2), or

(c) otherwise been seized following the official controls referred to in Article 15 of the Principal Regulation,

and the designated customs official or enforcement officer (as the case may be) suspects that the relevant organism is a specimen.

(2) In a case where the relevant organism has been imported or was being imported and relevant proof is not provided to the satisfaction of the designated customs official or enforcement officer, as the case may be, within 5 working days of seizure, the relevant organism must be re-dispatched to a destination outside of the United Kingdom, except in a case within paragraph (3) or (4).

(3) Where the relevant organism is required for enforcement purposes, an enforcement officer may arrange for the transfer of the relevant organism to an establishment or facility authorised to keep it by a permit or a licence (as the case may be).

(4) Where re-dispatch of the relevant organism under paragraph (2) would contravene the Principal Regulation, or is not reasonably practicable, an enforcement officer may arrange—

(i) where the enforcement officer is satisfied it is a specimen, for its humane dispatch (in the case of animals) or destruction (in the case of plants, fungi or micro-organisms); or

(ii) for the transfer of the relevant organism to an establishment or facility authorised to keep it by a permit or a licence (as the case may be).

(5) In a case where a relevant organism was being exported, or has been brought to a place for the purpose of export, and relevant proof is not provided to the satisfaction of the designated customs official or enforcement officer, as the case may be, within 5 working days of seizure—

(a) where an enforcement officer considers it appropriate, the relevant organism may be released to the exporter, provided such release would not result in the commission of an offence under article 3, or

(b) an enforcement officer may arrange—

(i) where the enforcement officer is satisfied it is a specimen, for its humane dispatch (in the case of animals) or destruction (in the case of plants, fungi or micro-organisms); or

(ii) the transfer of the relevant organism to an establishment or facility authorised to keep it by a permit or a licence (as the case may be).

(6) Where relevant proof is provided within five working days of seizure, the relevant organism must be released to the importer or exporter (as the case may be).

(7) In paragraphs (6) "importer" and "exporter" include any authorised representative of the importer or exporter, as the case may be.

Information sharing

31.—(1) The Commissioners of Her Majesty's Revenue and Customs, a designated customs official, a competent authority and an enforcement officer may exchange information for the purposes of this Order, and may divulge information to the enforcement authorities in Scotland and Northern Ireland for the purposes of this Order or the equivalent legislation in those jurisdictions.

(2) Disclosure of information which is authorised by this article does not breach—

(a) an obligation of confidence owed by the person making the disclosure; or

(b) any other restriction on the disclosure of information (however imposed).

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(3) But nothing in this article authorises the disclosure of information where doing so breaches—

(a) the Data Protection Act 2018(**a**); or

(b) Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC(**b**).

(4) This article does not limit the circumstances in which information may be exchanged apart from this article.

Recovery of costs

32.—(1) The importer or exporter (as the case may be) is responsible for—

(a) the costs of storing a relevant organism detained under article 27(2) or 29(2) during its period of detention;

(b) the costs incurred by an enforcement officer under article 30(2), (4) and (5).

(2) The court which convicts a person of an offence under this Order must order the offender to reimburse any costs incurred in connection with keeping a relevant specimen by the person—

(a) holding it following its seizure by an enforcement officer under article 26(1); or

(b) to whom it was transferred under article 30(3).

(3) Where—

(a) the costs referred to in paragraph (1) are not paid, or

(b) an order is made under paragraph (2), and the amount specified in the order is not paid,

the unpaid amount is recoverable summarily as a civil debt.

(4) In this article—

"importer" and "exporter" include any authorised representative of the importer or exporter, as the case may be;

"relevant specimen" means the specimen in relation to which the offence was committed.

Forfeiture

33.—(1) The court by which any person is convicted of an offence under this Order—

(a) must order the forfeiture of a specimen or other thing in respect of which the offence was committed; and

(b) may order the forfeiture of any vehicle, equipment or other thing which was used to commit the offence.

(2) In paragraph (1)(b), "vehicle" includes aircraft, hovercraft and boats.

(3) A specimen forfeited under this article must be—

(i) humanely dispatched (in the case of animals) or destroyed (in the case of plants, fungi or micro-organisms); or

(ii) transferred to an establishment or facility authorised to keep it by a permit or a licence (as the case may be).

(**a**) 2018 c. 12.
(**b**) OJ No. L119, 4.5.2016, p.1.

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PART 6

Civil sanctions

Civil Sanctions

34. Schedule 3 (which provides for civil sanctions) has effect.

PART 7

Permits

Permits for activities relating to invasive alien species

35.—(1) A permitting authority may issue to an establishment a permit which authorises it to carry out any prohibited action in relation to a specimen where it is carried out in the course of one or more of the following activities—

(a) research on, or ex situ conservation of, an invasive alien species;

(b) scientific production, and subsequent medicinal use, where the use of products derived from an invasive alien species is necessary for the advancement of human health; or

(c) in exceptional circumstances, such other activities as are justified by reasons of compelling public interest, including those of a social or economic nature, in accordance with Article 9 of the Principal Regulation (authorisations).

(2) A permit may only be issued under paragraph (1) where the activity to be authorised is to be carried out in accordance with the conditions specified in paragraphs 2 and 3 of Article 8 of the Principal Regulation (permits) and set out in Table 2 of Schedule 1.

(3) A permit may not be issued under paragraph (1)(a) or (b) to authorise—

(a) placing on the market; or

(b) release into the environment.

(4) An application for a permit must be accompanied by sufficient evidence to enable the permitting authority to ascertain whether the requirement in paragraph (2) is met.

(5) The permit may be subject to such other conditions as the permitting authority considers appropriate, including but not limited to any conditions required to ensure that the requirement in paragraph (2) is met.

(6) The permitting authority may revoke or suspend a permit at any time if—

(a) an adverse impact on biodiversity or related ecosystem services results, or in the opinion of the permitting authority is likely to result, from—

(i) any failure to comply with a condition of a permit; or

(ii) any unforeseen event; or

(b) the specimen to which the permit relates has—

(i) in the case of a specimen of an animal species, escaped from contained holding;

(ii) in the case of a specimen of a species of plant, fungus or micro-organism, spread beyond contained holding.

(7) For the purposes of paragraph (6)(b)(ii), "spread beyond contained holding" means that a specimen deriving from the specimen to which the permit relates is outside the contained holding.

(8) A decision to revoke or suspend a permit under paragraph (6)(a) must be justifiable—

(a) on scientific grounds; or

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(b) where scientific information is insufficient, by the application of the precautionary principle(**a**).

(9) The permitting authority must make available the relevant permit information in respect of any permit issued under this article—

(a) by publishing it on the internet; and

(b) by providing it to any person who asks for it in writing(**b**).

(10) For the purposes of paragraph (9), "the relevant permit information" means—

(a) the scientific and common names of the invasive alien species to which the permit relates;

(b) the number or the volume of specimens concerned;

(c) the purpose for which the permit has been issued; and

(d) the codes of Combined Nomenclature as provided by Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff(**c**).

(11) A permitting authority must undertake such inspections as it considers appropriate of establishments to which a permit issued under paragraph (1) relates in order to ensure that the conditions of that permit are being complied with.

(12) For the purposes of Article 8(2)(b) of the Principal Regulation (permitting activities to be carried out by qualified personnel), "qualified personnel" means employees of the establishment to which a permit has been issued who have been trained in the activity allowed by the permit.

(13) In this article—

"biodiversity" means the variability among living organisms from all sources, including terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part, including diversity within species, between species and of ecosystems;

"ecosystem services" means the direct and indirect contributions of ecosystems to human wellbeing;

"prohibited action" means any action specified in Table 1 of Schedule 1.

PART 8

Licences

Licences for activities relating to invasive alien species

36.—(1) Subject to the provisions of this article, the licensing authority may grant a licence for the purposes specified in paragraph (2).

(2) The purposes are—

(a) implementation of an eradication measure pursuant to Article 17 of the Principal Regulation (rapid eradication at an early stage of invasion);

(b) implementation of a management measure pursuant to Article 19 of the Principal Regulation (management measures);

(c) the commercial use, on a temporary basis, of an invasive alien species as part of a management measure pursuant to Article 19(2) of the Principal Regulation (commercial use of invasive alien species which are already established); or

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(**a**) Article 191 of the Treaty on the Functioning of the European Union requires Union policy on the environment to be based on the precautionary principle. It aims at ensuring a higher level of environmental protection through preventative decision-taking in the case of risk. See the Communication from the Commission on the precautionary principle (COM/2000/0001/Final).

(**b**) Requests in writing can be made to the Centre for International Trade, Animal and Plant Health Agency, Horizon House, Deanery Road, Bristol, BS1 5AH.

(**c**) OJ No. L256, 7.9.1987, p.1.

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(d) the keeping of an animal by a facility (including any necessary ancillary activities such as transportation) until the end of its natural life in accordance with Article 31(4) of the Principal Regulation (transitional provisions for non-commercial owners).

(3) A licence under this article may only be granted to such persons as are named in the licence.

(4) A licence under this article must specify—

(a) the invasive alien species to which the licence relates;

(b) where the licensing authority considers it appropriate, the number or volume of specimens to which the licence relates;

(c) the conditions subject to which the action authorised by the licence may be taken and in particular—

(i) the methods, means and arrangements by which the action authorised by the licence may be taken;

(ii) the area or areas within which the action authorised by the licence may be taken;

(iii) when or over what period the action authorised by the licence may be taken; and

(iv) any other conditions that the licensing authority considers are appropriate.

(5) The licensing authority must not grant a licence under this article unless satisfied—

(a) in relation to a licence for a purpose mentioned in paragraph (2)(a), that the licence is subject to such conditions as are, in the opinion of the licensing authority, necessary to meet the aim of ensuring that the eradication plan to which the licence relates will be effective in achieving the complete and permanent removal of the population of the invasive alien species concerned;

(b) in relation to a licence for a purpose mentioned in paragraph (2)(c), that there is strict justification and that all appropriate controls are in place to avoid any further spread of the invasive alien species concerned;

(c) in relation to a licence for a purpose mentioned in paragraph (2)(d), that all appropriate controls are in place to ensure that reproduction or escape of the animal to which the licence relates is not possible.

(6) A licence may be modified, suspended, or revoked at any time by the licensing authority, but is otherwise valid for the period stated in the licence.

PART 9

Amendments, revocations and effect in relation to other enactments

The Destructive Imported Animals Act 1932

37.—(1) A person may not by reason of the same act be convicted of both—

(a) an offence under this Order; and

(b) an offence under the Destructive Imported Animals Act 1932(**a**).

(2) In so far as any act authorised by a permit or a licence under this Order would otherwise be an offence under section 6 of the Destructive Imported Animals Act 1932 (offences etc.) unless authorised by a 1932 Act licence, the permit or licence has effect for the purposes of that Act as such a licence, authorising that act to the extent authorised by the permit or licence and (so far as relevant to the offence in question) subject to the conditions to which it is subject, including (in

(**a**) 1932 c. 12. The Act was amended by Schedule 13 to the Agriculture Act 1947 (c. 48); section 31 of the Criminal Law Act 1977 (c. 45); sections 38 and 46 of the Criminal Justice Act 1982 (c. 48); paragraph 1 of Schedule 6 of, and paragraph 1 of Schedule 11 to, the Natural Environment and Rural Communities Act 2006 (c. 16); paragraph 1 of Schedule 13 to, the Deregulation Act 2015 (c. 20); and S.I. 1955/554 and 1992/3302. The Act was repealed in relation to Scotland by section 25 of, and Part 2 of the Schedule to, the Wildlife and Natural Environment (Scotland) Act 2011 (asp 6).

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the case of a permit) the conditions specified in paragraphs 2 and 3 of Article 8 of the Principal Regulation (permits) and set out in Table 2 of Schedule 1.

(3) In so far as any act authorised by a 1932 Act licence would otherwise be an offence under this Order unless authorised by a permit issued under article 35(1)(a) or (b), and could have been authorised by such a permit, the 1932 Act licence has effect for the purposes of this Order as such a permit, authorising that act to the extent authorised by the 1932 Act licence, and (so far as relevant to the offence in question) subject to the conditions to which the 1932 Act licence is subject and the conditions specified in paragraphs 2 and 3 of Article 8 of the Principal Regulation (permits) and set out in Table 2 of Schedule 1.

(4) In so far as any act authorised by a 1932 Act licence would otherwise be an offence under this Order unless authorised by a licence, and could have been authorised by such a licence, the 1932 Act licence has effect for the purposes of this Order as such a licence, authorising that act to the extent authorised by the 1932 Act licence, and (so far as relevant to the offence in question) subject to the conditions to which the 1932 Act licence is subject.

(5) In this article, "1932 Act licence" means a licence granted under section 3 or 8 of the Destructive Imported Animals Act 1932 (grant and revocation of licences, and savings in respect of animals kept for exhibition etc.).

The Customs and Excise Management Act 1979

38. The provisions of this Order apply without prejudice to the Customs and Excise Management Act 1979(**a**).

The Keeping and Introduction of Fish (Wales) Regulations 2014

39.—(1) A person may not by reason of the same act be convicted of both—

(a) an offence under this Order; and

(b) an offence under the Keeping and Introduction of Fish (Wales) Regulations 2014(**b**).

(2) In so far as any act authorised by a permit or a licence under this Order would otherwise be an offence under regulation 4 or 5 of the Keeping and Introduction of Fish (Wales) Regulations 2014 (introduction and keeping of fish) unless authorised by a 2014 Regulations permit, the permit or licence has effect for the purposes of those Regulations as such a permit, authorising that act to the extent authorised by the permit or licence and (so far as relevant to the offence in question) subject to the conditions to which it is subject, including (in the case of a permit) the conditions specified in paragraphs 2 and 3 of Article 8 of the Principal Regulation (permits) and set out in Table 2 of Schedule 1.

(3) In so far as any act authorised by a 2014 Regulations permit would otherwise be an offence under this Order unless authorised by a permit issued under article 35(1)(a) or (b), and could have been authorised by such a permit, the 2014 Regulations permit has effect for the purposes of this Order as such a permit, authorising that act to the extent authorised by the 2014 Regulations permit, and (so far as relevant to the offence in question) subject to the conditions to which the 2014 Regulations permit is subject and the conditions specified in paragraphs 2 and 3 of Article 8 of the Principal Regulation (permits) and set out in Table 2 of Schedule 1.

(4) In so far as any act authorised by a 2014 Regulations permit would otherwise be an offence under this Order unless authorised by a licence, and could have been authorised by such a licence, the 2014 Regulations permit has effect for the purposes of this Order as such a licence, authorising that act to the extent authorised by the 2014 Regulations permit, and (so far as relevant to the offence in question) subject to the conditions to which the 2014 Regulations permit is subject.

(5) In this article, "2014 Regulations permit" means a permit granted under regulation 6 of the Keeping and Introduction of Fish (Wales) Regulations 2014 (grant of permit).

(**a**) 1979 c. 2.
(**b**) S.I. 2014/3303 (W. 336); amended by S.I. 2017/1012.

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40.—(1) A person may not by reason of the same act be convicted of both—

(a) an offence under this Order; and

(b) an offence under the Keeping and Introduction of Fish (England and River Esk Catchment Area) Regulations 2015(**a**).

(2) In so far as any act authorised by a permit or a licence under this Order would otherwise be an offence under regulation 4 or 5 of the Keeping and Introduction of Fish (England and River Esk Catchment Area) Regulations 2015 (introduction and keeping of fish) unless authorised by a 2015 Regulations permit, the permit or licence has effect for the purposes of those Regulations as such a permit, authorising that act to the extent authorised by the permit or licence and (so far as relevant to the offence in question) subject to the conditions to which it is subject, including (in the case of a permit) the conditions specified in paragraphs 2 and 3 of Article 8 of the Principal Regulation (permits) and set out in Table 2 of Schedule 1.

(3) In so far as any act authorised by a 2015 Regulations permit would otherwise be an offence under this Order unless authorised by a permit issued under article 35(1)(a) or (b), and could have been authorised by such a permit, the 2015 Regulations permit has effect for the purposes of this Order as such a permit, authorising that act to the extent authorised by the 2015 Regulations permit, and (so far as relevant to the offence in question) subject to the conditions to which the 2015 Regulations permit is subject and the conditions specified in paragraphs 2 and 3 of Article 8 of the Principal Regulation (permits) and set out in Table 2 of Schedule 1.

(4) In so far as any act authorised by a 2015 Regulations permit would otherwise be an offence under this Order unless authorised by a licence, and could have been authorised by such a licence, the 2015 Regulations permit has effect for the purposes of this Order as such a licence, authorising that act to the extent authorised by the 2015 Regulations permit, and (so far as relevant to the offence in question) subject to the conditions to which the 2015 Regulations permit is subject.

(5) In this article, "2015 Regulations permit" means a permit granted under regulation 6 of the Keeping and Introduction of Fish (England and River Esk Catchment Area) Regulations 2015 (grant of permit).

Amendments

41. Schedule 4 (amendments) has effect.

Revocations

42. The Prohibition of Keeping of Live Fish (Crayfish) (Amendment) Order 1996(**b**) is revoked.

PART 10

Review

Review: England

43.—(1) The Secretary of State, in relation to England, must from time to time—

(a) carry out a review of the regulatory provisions contained in this Order; and

(b) publish a report setting out the conclusions of the review.

(2) The first report must be published before 1st October 2024.

(3) Subsequent reviews must be carried out at intervals not exceeding five years.

(**a**) S.I. 2015/10; amended by S.I. 2017/1012.
(**b**) S.I. 1996/1374.

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(4) Section 30(3) of the Small Business, Enterprise and Employment Act 2015(**a**) requires that a review carried out under this article must, so far as is reasonable, have regard to how the Principal Regulation is implemented in other member States.

(5) Section 30(4) of the Small Business, Enterprise and Employment Act 2015 requires that a review carried out under this article must, in particular—

(a) set out the objectives intended to be achieved by the regulatory provision referred to in paragraph (1)(a);

(b) assess the extent to which those objectives are achieved; and

(c) if those objectives remain appropriate, assess the extent to which they could be achieved in another way which involves less onerous regulatory provision.

(6) In this article, "regulatory provision" has the same meaning as in sections 28 to 33 of the Small Business, Enterprise and Employment Act 2015 (see section 32 of that Act).

Gardiner of Kimble
Parliamentary Under Secretary of State
at 1.00 p.m. on 7th March 2019 Department for Environment, Food and Rural Affairs

Lesley Griffiths
Minister for Environment, Energy and Rural Affairs,
7th March 2019 one of the Welsh Ministers

SCHEDULE 1

Articles 3, 35, 37, 39 and 40

Provisions of the Principal Regulation

Table 1

Provision of the Principal Regulation	*Subject matter*
Article 7(1)(a) to (h)	Invasive alien species shall not be intentionally— -brought into the territory of the Union, including transit under customs supervision; - kept, including in contained holding; - bred, including in contained holding; - transported to, from or within the Union, except for the transportation of species to facilities in the context of eradication; - placed on the market; - used or exchanged; - grown, cultivated or permitted to reproduce, including in contained holding; - released into the environment.

Table 2

(**a**) 2015 c. 26. Section 30(3) was amended by section 19 of the Enterprise Act 2016 (c. 12), and by paragraph 36 of Part 2 of Schedule 8 to the European Union (Withdrawal) Act 2018 (c. 16).

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Provision of the Principal Regulation	*Conditions*
Article 8 paragraph 2	(a) the invasive alien species of Union concern is kept in and handled in contained holding in accordance with Article 8(3); (b) the activity is to be carried out by appropriately qualified personnel as laid down by the competent authorities; (c) transport to and from contained holding is carried out under conditions that preclude escape of the invasive alien species as established by the permit; (d) in the case of invasive alien species of Union concern that are animals, they are marked or otherwise effectively identified where appropriate, using methods that do not cause avoidable pain, distress or suffering; (e) the risk of escape or spread or removal is effectively managed, taking into account the identity, biology and means of dispersal of the species, the activity and the contained holding envisaged, the interaction with the environment and other relevant factors; (f) a continuous surveillance system and a contingency plan covering possible escape or spread is drawn up by the applicant, including an eradication plan. The contingency plan is to be approved by the competent authority. If an escape or spread occurs, the contingency plan is to be implemented immediately and the permit may be withdrawn, temporarily or permanently. The permit is to be limited to a number of invasive alien species and specimens that does not exceed the capacity of the contained holding. It must include the restrictions necessary to mitigate the risk of escape or spread of the species concerned. It must accompany the invasive alien species to which it refers at all times when those species are kept, brought into and transported within the Union.
Article 8 paragraph 3	3. Specimens are to be considered to be kept in contained holding if the following conditions are fulfilled: (a) the specimens are physically isolated and they cannot escape or spread or be removed by unauthorised persons from the holdings where they are kept; (b) cleaning, waste handling and maintenance protocols ensure that no specimens or reproducible parts can escape, spread or be removed by unauthorised persons; (c) the removal of the specimens from the holdings, disposal or destruction or humane cull is done in such way as to exclude propagation or reproduction outside of the holdings.

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SCHEDULE 2

Article 3

Animals and plants to which Articles 3(2) to (4) apply

PART 1

Animals to which the offence in article 3(2) applies

Common Name[1]	*Scientific Name*
Crab, Chinese Mitten	Eriocheir sinensis
Crayfish, Red Swamp	Procambarus clarkii
Crayfish, Signal	Pacifastacus leniusculus
Crayfish, Spiny-cheek	Orconectes limosus
Deer, Muntjac	Muntiacus reevesi
Duck, Ruddy	Oxyura jamaicensis
Goose, Egyptian	Alopochen aegyptiacus
Squirrel, Grey	Sciurus carolinensis

[1] The common name or names given in the first column are included by way of guidance only; in the event of any dispute or proceedings, the common name or names will not be taken into account.

PART 2

Plants to which the offence in article 3(3) applies

Common Name[1]	*Scientific Name*
Balsam, Himalayan	Impatiens glandulifera
Fanwort (otherwise known as Carolina Water-Shield)	Cabomba caroliniana
Hogweed, Giant	Heracleum mantegazzianum
Hyacinth, Water	Eichhornia crassipes
Parrot's feather	Myriophyllum aquaticum
Pennywort, Floating	Hydrocotyle ranunculoides
Primrose, Floating Water (otherwise known as Floating Primrose-willow)	Ludwigia peploides
Primrose, Water	Ludwigia grandiflora
Rhubarb, Giant (otherwise known as Chilean Rhubarb)	Gunnera tinctoria
Waterweed, Curly	Lagarosiphon major
Waterweed, Nuttall's	Elodea nuttallii.

[1] The common name or names given in the first column are included by way of guidance only; in the event of any dispute or proceedings, the common name or names will not be taken into account.

PART 3

Species to which the offences in article 3(4) apply

Common Name[1]	*Scientific Name*
Parrot's Feather	Myriophyllum aquaticum
Pennywort, Floating	Hydrocotyle ranunculoides
Primrose, Floating Water	Ludwigia peploides
Primrose, Water	Ludwigia grandiflora.

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[1] The common name or names given in the first column are included by way of guidance only; in the event of any dispute or proceedings, the common name or names will not be taken into account.

SCHEDULE 3

Article 34

Civil sanctions

PART 1

Power to impose civil sanctions

The regulator

1. In this Schedule, "the regulator" means—

(a) Natural England in relation to—

(i) England;

(ii) the offshore marine area;

(iii) offences relating to imports into or exports from the United Kingdom;

(b) the Natural Resources Body for Wales in relation to Wales unless sub-paragraph (a)(iii) applies.

Compliance notice

2.—(1) This paragraph applies where the regulator is satisfied on the balance of probabilities that a person has committed an offence under Part 2 of this Order.

(2) The regulator may by notice ("a compliance notice") impose on that person a requirement to take such steps as the regulator may specify, within such period as it may specify, to secure that the offence does not continue or recur.

(3) A compliance notice may not be imposed on more than one occasion in relation to the same act or omission.

Restoration notice

3.—(1) This paragraph applies where the regulator is satisfied on the balance of probabilities that a person has committed an offence under Part 2 of this Order.

(2) The regulator may by notice ("a restoration notice") impose on that person a requirement to take such steps as the regulator may specify, within such period as it may specify, to secure that the position is, so far as possible, restored to what it would have been if the offence had not been committed.

(3) A restoration notice may not be imposed on more than one occasion in relation to the same act or omission.

Imposition of a fixed monetary penalty

4.—(1) This paragraph applies where the regulator is satisfied on the balance of probabilities that a person has committed an offence under Part 2 of this Order.

(2) The regulator may by notice impose on that person a requirement to pay a monetary penalty to the regulator of £1000 where the person is an individual and £3000 where the person is a body corporate, partnership or unincorporated association ("a fixed monetary penalty").

(3) A fixed monetary penalty may not be imposed on more than one occasion in relation to the same act or omission.

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(4) The regulator may recover any fixed monetary penalty imposed under this paragraph as if payable under an order of the court.

(5) A fixed monetary penalty paid to the regulator under this paragraph must be paid into—

(a) the Consolidated Fund, where the regulator is Natural England; and

(b) the Welsh Consolidated Fund, where the regulator is the Natural Resources Body for Wales.

Imposition of a variable monetary penalty

5.—(1) This paragraph applies where the regulator is satisfied on the balance of probabilities that a person has committed an offence under Part 2 of this Order.

(2) The regulator may by notice impose on that person a requirement to pay a monetary penalty to the regulator in such amount as it may determine ("a variable monetary penalty").

(3) A variable monetary penalty may not be imposed on more than one occasion in relation to the same act or omission.

(4) The amount of a variable monetary penalty must not exceed £250,000.

(5) Before serving a notice relating to a variable monetary penalty, the regulator may require the person on whom it is to be served to provide such information as is reasonable to establish the amount of any financial benefit arising as a result of the offence.

(6) The regulator may recover any variable monetary penalty imposed under this paragraph as if payable under an order of the court.

(7) A variable monetary penalty paid to the regulator under this paragraph must be paid into—

(a) the Consolidated Fund, where the regulator is Natural England; and

(b) the Welsh Consolidated Fund, where the regulator is the Natural Resources Body for Wales.

Notice of intent

6.—(1) If the regulator proposes to serve on a person a compliance notice, a restoration notice or a notice imposing a fixed or variable monetary penalty under this Part, it must serve on that person a notice of what is proposed (a "notice of intent").

(2) The notice of intent must include—

(a) the grounds for serving the proposed notice;

(b) the requirements of the proposed notice and, in the case of a penalty, the amount to be paid;

(c) in the case of a fixed monetary penalty, a statement that liability for the penalty can be discharged by paying 50% of the penalty within 28 days beginning with the day on which the notice was received and information on the effect of such a discharge payment; and

(d) information as to—

(i) the right to make representations and objections within 28 days beginning with the day on which the notice of intent was received; and

(ii) the circumstances in which the regulator may not serve the proposed notice.

Combination of penalties

7.—(1) The regulator may not serve a notice of intent relating to a fixed monetary penalty if, in relation to the same offence—

(a) a compliance notice, restoration notice or stop notice has been served on that person (see paragraphs 2, 3, and 18);

(b) a variable monetary penalty has been imposed on that person (see paragraph 5); or

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(c) a third party or enforcement undertaking has been accepted from that person (see paragraphs 10 and 24).

(2) The regulator may not serve a notice of intent relating to a compliance notice, a restoration notice, or a variable monetary penalty, or serve a stop notice, on any person if, in relation to the same offence—

(a) a fixed monetary penalty has been imposed on that person; or

(b) that person has discharged liability for a fixed monetary penalty following service of a notice of intent to impose that penalty.

Discharge of liability – fixed monetary penalties

8. A fixed monetary penalty is discharged if a person who receives a notice of intent pays 50% of the amount of the penalty within 28 days beginning with the day on which the notice was received.

Making representations and objections

9. A person on whom a notice of intent is served may within 28 days beginning with the day on which the notice is received make written representations and objections to the regulator in relation to the proposed service of a compliance notice, restoration notice or notice imposing a fixed or variable monetary penalty.

Third party undertakings

10.—(1) A person on whom a notice of intent relating to a compliance notice, a restoration notice or a variable monetary penalty is served may offer an undertaking as to action to be taken by that person (including the payment of a sum of money) to benefit any third party affected by the offence ("a third party undertaking").

(2) The regulator may accept or reject a third party undertaking.

(3) The regulator must take into account any third party undertaking that it accepts in its decision as to whether or not to serve a final notice, and, if it serves a notice imposing a variable monetary penalty, the amount of the penalty.

Final notice

11.—(1) After the end of the period for making representations and objections, the regulator must decide whether to impose the requirements described in the notice of intent, with or without modifications.

(2) Where the regulator decides to impose a requirement, the notice imposing it (the "final notice") must comply with paragraph 12 (for compliance or restoration notices) or 13 (for fixed or variable monetary penalties).

(3) The regulator may not impose a final notice on a person where it is satisfied that the person would not, by reason of any defence, permit or licence be liable to be convicted of the offence to which the notice relates.

(4) Where the regulator serves a final notice relating to a fixed monetary penalty in respect of any offence, the regulator may not in relation to that offence serve—

(a) a compliance notice;

(b) a restoration notice;

(c) a notice imposing a variable monetary penalty; or

(d) a stop notice.

(5) This paragraph does not apply to a person who has discharged a fixed monetary penalty in accordance with paragraph 8.

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Contents of final notice: compliance and restoration notices

12. A final notice relating to a compliance notice or a restoration notice must include information as to—

(a) the grounds for serving the notice;

(b) what compliance or restoration is required and the period within which it must be completed;

(c) rights of appeal; and

(d) the consequences of failing to comply with the notice.

Contents of final notice: fixed and variable monetary penalties

13. A final notice relating to a fixed or variable monetary penalty must include information as to—

(a) the grounds for imposing the penalty;

(b) the amount to be paid;

(c) how payment may be made;

(d) the period within which payment must be made ("the payment period"), which must be not less than 56 days;

(e) in the case of a fixed monetary penalty, details of the early payment discount (see paragraph 14) and late payment penalties (see paragraph 16(2) and (3));

(f) rights of appeal; and

(g) the consequences of failing to comply with the notice.

Fixed monetary penalty: discount for early payment

14. If a person who was served with a notice of intent relating to a proposed fixed monetary penalty made representations or objections concerning that notice within the time limit specified in paragraph 9, that person may discharge the final notice by paying 50% of the final penalty within 28 days beginning with the day on which the final notice was received.

Appeals against a final notice

15.—(1) The person on whom a final notice is served may appeal against it.

(2) The grounds for appeal are—

(a) that the decision was based on an error of fact;

(b) that the decision was wrong in law;

(c) in the case of a variable monetary penalty, that the amount of the penalty is unreasonable;

(d) in the case of a non-monetary requirement, that the nature of the requirement is unreasonable;

(e) that the decision was unreasonable for any other reason;

(f) that the decision was wrong for any other reason.

Fixed monetary penalty: non-payment within the stated payment period

16.—(1) This paragraph applies to a final notice relating to a fixed monetary penalty.

(2) If the final penalty is not paid within the stated payment period, the amount payable is increased by 50%.

(3) In the case of an appeal which is unsuccessful, the penalty is payable within 28 days of the determination of the appeal, and if it is not paid within 28 days, the amount of the penalty is increased by 50%.

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Criminal proceedings

17.—(1) If—

(a) a compliance notice or restoration notice is served on any person,

(b) a third party undertaking is accepted from any person,

(c) a notice imposing a variable monetary penalty is served on any person, or

(d) a fixed monetary penalty is served on any person,

that person may not at any time be convicted of an offence under Part 2 of this Order in respect of the act or omission giving rise to the compliance notice, restoration notice, third party undertaking, variable monetary penalty or fixed monetary penalty, except in a case falling within paragraph (1)(a) or (b) (and not also falling within paragraph (1)(c)) where the person fails to comply with the compliance notice, restoration notice or third party undertaking (as the case may be).

(2) Criminal proceedings for offences to which a notice or third party undertaking in sub-paragraph (1) relates may be instituted at any time up to 6 months from the date when the regulator notifies the person against whom the proceedings are to be taken that the person has failed to comply with that notice or undertaking.

PART 2

Stop notices

Stop notices

18.—(1) The regulator may serve a notice (a "stop notice") on any person prohibiting that person from carrying on an activity specified in the notice until the person has taken the steps specified in the notice.

(2) A stop notice may only be served where—

(a) the person is carrying on the activity or the regulator reasonably believes that the person is likely to carry on the activity;

(b) the regulator reasonably believes that the activity is causing, or is likely to cause, economic or environmental harm, or adverse effects to human health; and

(c) the regulator reasonably believes that the activity carried on, or likely to be carried on, by that person involves or is likely to involve the commission of an offence under Part 2 of this Order.

(3) The steps referred to in sub-paragraph (1) must be steps to eliminate the risk of the offence being committed.

Contents of a stop notice

19. A stop notice must include information as to—

(a) the grounds for serving the stop notice;

(b) the activity which is prohibited;

(c) the steps the person must take to comply with the stop notice and the period within which they must be completed;

(d) rights of appeal; and

(e) the consequences of failing to comply with the notice.

Appeals

20.—(1) The person on whom a stop notice is served may appeal against the decision to serve it.

(2) The grounds for appeal are—

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(a) that the decision was based on an error of fact;

(b) that the decision was wrong in law;

(c) that the decision was unreasonable;

(d) that any step specified in the notice is unreasonable;

(e) that the person has not committed the offence and would not have committed it had the stop notice not been served;

(f) that the person would not, by reason of any defence, permit or licence have been liable to be convicted of the offence had the stop notice not been served;

(g) that the decision was wrong for any other reason.

Completion certificates

21.—(1) The regulator must issue a certificate (a "completion certificate") if, after service of a stop notice, the regulator is satisfied that the person on whom it was served has taken the steps specified in the notice.

(2) A stop notice ceases to have effect on the issue of a completion certificate.

(3) The regulator may require the person on whom the stop notice was served to provide sufficient information to determine that the steps specified in the notice have been taken.

(4) A person on whom a stop notice is served may at any time apply for a completion certificate.

(5) The regulator must decide whether to issue a completion certificate and give written notice of the decision to the applicant (including information as to the right of appeal) within 14 days of the application.

(6) The applicant may appeal against a decision not to issue a completion certificate on the grounds that the decision—

(a) was based on an error of fact;

(b) was wrong in law;

(c) was unfair or unreasonable;

(d) was wrong for any other reason.

Compensation

22.—(1) The regulator must compensate a person for loss suffered as the result of the service of the stop notice or the refusal of a completion certificate if that person has suffered loss as a result of the notice or refusal and—

(a) the stop notice is subsequently withdrawn or amended by the regulator because the decision to serve it was unreasonable or any step specified in the notice was unreasonable;

(b) the regulator is in breach of its statutory obligations;

(c) the person successfully appeals against the stop notice and the First-tier Tribunal finds that the service of the notice was unreasonable; or

(d) the person successfully appeals against the refusal of a completion certificate and the First-tier Tribunal finds that the refusal was unreasonable.

(2) A person may appeal against a decision not to award compensation or the amount of compensation on the grounds that—

(a) the regulator's decision was unreasonable;

(b) the amount offered was based on incorrect facts; or

(c) the decision was wrong for any other reason.

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Offences

23. If a person on whom a stop notice is served does not comply with it within the time limit specified in the notice, the person is guilty of an offence and liable on summary conviction to a fine.

PART 3

Enforcement undertakings

Enforcement undertakings

24. Where the regulator has reasonable grounds to suspect that a person has committed an offence under Part 2 of this Order, the regulator may accept a written undertaking (an "enforcement undertaking") given by that person to take such action as may be specified in the undertaking within such period as may be specified.

Contents of an enforcement undertaking

25.—(1) An enforcement undertaking must specify—

(a) action to be taken by the person to secure that the offence does not continue or recur;

(b) action to secure that the position is, so far as possible, restored to what it would have been if the offence had not been committed; or

(c) action (including the payment of a sum of money) to be taken by the person to benefit any person affected by the offence.

(2) It must specify the period within which the action must be completed.

(3) It must include—

(a) a statement that the undertaking is made in accordance with this Schedule;

(b) the terms of the undertaking; and

(c) information as to how and when the person is to be considered to have discharged the undertaking.

(4) The enforcement undertaking may be varied, or the period within which the action must be completed may be extended, if both the regulator and the person who gave the undertaking agree in writing.

Acceptance of an enforcement undertaking

26.—(1) If the regulator has accepted an enforcement undertaking from a person—

(a) that person may not at any time be convicted of the offence in respect of the act or omission to which the undertaking relates; and

(b) the regulator may not serve on that person a compliance notice, restoration notice or stop notice, or impose a fixed or variable monetary penalty on that person, in respect of that act or omission.

(2) Paragraph (1) does not apply if the person who gave the undertaking has failed to comply with it or any part of it.

Discharge of an enforcement undertaking

27.—(1) If the regulator is satisfied that an enforcement undertaking has been complied with, it must issue a certificate ("a discharge certificate") to that effect.

(2) An enforcement undertaking ceases to have effect on the issue of a discharge certificate.

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(3) The regulator may require the person who has given the undertaking to provide sufficient information to determine that the undertaking has been complied with.

(4) The person who gave the undertaking may at any time apply for a discharge certificate.

(5) The regulator must decide whether to issue a discharge certificate, and give written notice of the decision to the applicant (including information as to the right of appeal), within 14 days of such an application.

(6) The applicant may appeal against a decision not to issue a discharge certificate on the grounds that the decision—

(a) was based on an error of fact;

(b) was wrong in law;

(c) was unfair or unreasonable;

(d) was wrong for any other reason.

Inaccurate, incomplete or misleading information

28.—(1) A person who has given inaccurate, misleading or incomplete information in relation to an enforcement undertaking is to be regarded as not having complied with it.

(2) The regulator may by notice in writing revoke a discharge certificate issued under paragraph 27 if it was issued on the basis of inaccurate, incomplete or misleading information.

Non-compliance with an enforcement undertaking

29.—(1) If a person does not comply with an enforcement undertaking, the regulator may, in the case of an offence committed under Part 2 of this Order —

(a) serve a compliance notice, restoration notice, variable monetary penalty, stop notice or non-compliance penalty; or

(b) bring criminal proceedings.

(2) If a person has complied partly but not fully with an undertaking, that partial compliance must be taken into account in the imposition of any criminal or other sanction on the person.

(3) Criminal proceedings for offences to which an enforcement undertaking relates may be instituted at any time up to 6 months from the date on which the regulator notifies the person that the person has failed to comply with that undertaking.

PART 4

Non-compliance penalties

Non-compliance penalties

30.—(1) If a person fails to comply with a compliance notice, restoration notice or third party undertaking, the regulator may, irrespective of whether a variable monetary penalty was also imposed, serve a notice on that person imposing a monetary penalty (“a non-compliance penalty”).

(2) The amount of the non-compliance penalty must be determined by the regulator, and must be a percentage of the costs of fulfilling the remaining requirements of the compliance notice, restoration notice or third party undertaking.

(3) The percentage must be determined by the regulator having regard to all the circumstances of the case and may, if appropriate, be 100%.

(4) The notice must include information as to—

(a) the grounds for imposing the non-compliance penalty;

(b) the amount to be paid;

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(c) how payment must be made;

(d) the period in which payment must be made, which must not be less than 28 days;

(e) rights of appeal;

(f) the consequences of failure to comply with the notice; and

(g) any circumstances in which the regulator may reduce the amount of the penalty.

(5) If the requirements of the compliance notice, restoration notice or third party undertaking are fulfilled before the time specified for payment of the non-compliance penalty, the penalty is not payable.

(6) Following expiry of the specified payment period, the regulator may recover the non-compliance penalty as if payable under an order of the court.

(7) A non-compliance penalty paid to the regulator under this paragraph must be paid into—

(a) the Consolidated Fund, where the regulator is Natural England; and

(b) the Welsh Consolidated Fund, where the regulator is the Natural Resources Body for Wales.

Appeals

31.—(1) The person on whom the notice imposing the non-compliance penalty is served may appeal against it.

(2) The grounds of appeal are—

(a) that the decision to serve the notice was based on an error of fact;

(b) that the decision was wrong in law;

(c) that the decision was unfair or unreasonable for any reason;

(d) that the amount of the penalty is unreasonable;

(e) that the decision was wrong for any other reason.

PART 5

Withdrawal and amendment of notices

Withdrawing or amending a notice

32. The regulator may at any time in writing—

(a) withdraw a compliance notice, restoration notice or stop notice, or amend the steps specified in such a notice in order to reduce the amount of work necessary to comply with the notice;

(b) withdraw a notice imposing a fixed monetary penalty; or

(c) withdraw a notice imposing a variable monetary penalty or a non-compliance penalty, or reduce the amount of the penalty specified in the notice.

PART 6

Costs recovery

Recovery of enforcement costs

33.—(1) The regulator may give a costs recovery notice if any of the conditions in sub-paragraph (3) are met.

(2) A cost recovery notice is a notice requiring the person to pay the regulator's costs.

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(3) The conditions are that that the regulator has—

(a) imposed on the person a compliance notice under paragraph 2;

(b) imposed on the person a restoration notice under paragraph 3;

(c) imposed on the person a variable monetary penalty under paragraph 5; or

(d) served on the person a stop notice under paragraph 18.

(4) In sub-paragraph (2), the reference to costs is a reference to any costs relating to preparing and giving the compliance notice, restoration notice, variable monetary penalty, or stop notice, as the case may be, and includes a reference to the costs of any related investigation or expert advice, (including legal advice).

(5) The costs recovery notice must include information as to—

(a) the amount of the costs which must be paid;

(b) the period in which payment must be made, which must not be less than 28 days;

(c) how payment must be made;

(d) the consequences of failing to make payment within the specified payment period; and

(e) rights of appeal.

(6) Following expiry of the specified payment period, the regulator may recover the costs referred to in the costs recovery notice as if payable under an order of the court.

(7) The person to whom the costs recovery notice is given may appeal against it.

(8) The grounds of appeal are—

(a) that the decision to serve the notice was based on an error of fact;

(b) that the decision was wrong in law;

(c) that the decision was unfair or unreasonable for any reason;

(d) that the amount of the penalty was unreasonable;

(e) that the decision was wrong for any other reason.

PART 7

Appeals

Appeals

34.—(1) Any appeal under this Schedule must be made to the First-tier Tribunal.

(2) In any appeal the Tribunal must determine the standard of proof.

(3) An appeal against a notice served under this Schedule (other than a stop notice) suspends the effect of the notice appealed against until the appeal is determined or withdrawn.

(4) The Tribunal may, in relation to the imposition of a requirement or service of a notice—

(a) withdraw the requirement or notice;

(b) confirm the requirement or notice;

(c) vary the requirement or notice;

(d) take such steps as the regulator could take in relation to the act or omission giving rise to the requirement or notice;

(e) remit the decision whether to confirm the requirement or notice, or any matter relating to that decision, to the regulator.

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PART 8

Guidance and publicity

Guidance as to use of civil sanctions

35.—(1) The regulator must publish guidance about its use of civil sanctions.

(2) The regulator must revise and update the guidance where appropriate.

(3) The regulator must have regard to the guidance or revised and updated guidance in exercising its functions.

(4) In the case of guidance about compliance notices, restoration notices, fixed monetary penalties, variable monetary penalties, stop notices and non-compliance penalties, the guidance must contain information as to—

(a) the circumstances in which the civil sanction is likely to be imposed;

(b) the circumstances in which it is not likely to be imposed;

(c) where relevant, rights to make representations and objections;

(d) rights of appeal; and

(e) in the case of guidance about variable monetary penalties and non-compliance penalties, the matters likely to be taken into account by the regulator in determining the amount of the penalty (including voluntary reporting by a person of the person's own non-compliance).

(5) In the case of guidance about enforcement undertakings, the guidance must contain information as to—

(a) the circumstances in which the regulator is likely to accept an enforcement undertaking; and

(b) the circumstances in which the regulator is not likely to accept an enforcement undertaking.

Consultation on guidance

36. The regulator must consult such persons as it considers appropriate before publishing—

(a) any guidance; or

(b) any significant revisions or updates to guidance which has already been published.

Publication of enforcement action

37.—(1) The regulator must publish annually—

(a) the cases in which civil sanctions have been imposed;

(b) where the civil sanction is a compliance notice, a restoration notice or variable monetary penalty, the cases in which a third party undertaking has been accepted;

(c) the cases in which an enforcement undertaking has been accepted.

(2) In sub-paragraph (1)(a), the reference to cases in which civil sanctions have been imposed does not include cases where a sanction has been imposed but overturned on appeal.

(3) This paragraph does not apply in cases where the regulator considers that publication would be inappropriate.

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SCHEDULE 4

Article 41

Amendments

PART 1

Amendments to primary legislation

Wildlife and Countryside Act 1981

1.—(1) The Wildlife and Countryside Act 1981(a) is amended as follows.

(2) In section 14 (introduction of new species etc.), after subsection (4) insert—

"(4ZA) Subsection (1)(a) does not apply to species included on the list of invasive alien species of Union concern adopted by the European Commission in accordance with Articles 4(1) and 10(4) of Regulation (EU) No 1143/2014 of the European Parliament and of the Council of 22 October 2014 on the prevention and management of the introduction and spread of invasive alien species, as amended from time to time.".

(3) In Schedule 9 (animals and plants to which section 14 applies)—

(a) in Part 1 (animals which are established in the wild) omit the following entries—

Common Name	*Scientific Name*
Crab, Chinese Mitten	Eriocheir sinensis
Crayfish, Red Swamp	Procambarus clarkii
Crayfish, Signal	Pacifastacus leniusculus
Crayfish, Spiny-cheek	Orconectes limosus
Deer, Muntjac	Muntiacus reevesi
Duck, Ruddy	Oxyura jamaicensis
Goose, Egyptian	Alopochen aegyptiacus
Squirrel, Grey	Sciurus carolinensis;

(b) in Part 2 (plants)—

(i) omit the following entries—

Common Name	*Scientific Name*
Balsam, Himalayan	Impatiens glandulifera
Fanwort (otherwise known as Carolina Water-Shield)	Cabomba caroliniana
Hogweed, Giant	Heracleum mantegazzianum
Hyacinth, Water	Eichhornia crassipes
Parrot's feather	Myriophyllum aquaticum
Pennywort, Floating	Hydrocotyle ranunculoides
Primrose, Floating Water	Ludwigia peploides
Primrose, Water	Ludwigia grandiflora
Rhubarb, Giant	Gunnera tinctoria
Waterweed, Curly	Lagarosiphon major;

(ii) for the entry in respect of "Waterweeds" substitute—

(**a**) 1981 c.69. Section 14 of the Act was amended by section 102 of, and Part 4 of Schedule 16 to, the Countryside and Rights of Way Act 2000 (c. 16) and sections 23 and 25 of the Infrastructure Act 2015 (c. 7). Section 14ZA was inserted by section 50 of the Natural Environment and Rural Communities Act 2006 (c. 16) and amended by section 25(3) of the Infrastructure Act 2015 (c. 7). Schedule 9 was amended by sections 24 and 25 of the Infrastructure Act 2015 (c. 7); S.I. 1992/320, 1992/2674, 1997/226, 1999/1002, 2010/609 and (in relation to Wales) 2015/1180. Schedule 9A was inserted by section 23(3) of the Infrastructure Act 2015 (c. 7). There are other amendments which are not relevant.

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"Waterweeds (except Nuttall's Waterweed)	All species of the genus Elodea, except Elodea nuttallii".

(4) In Schedule 9A (species control agreements and orders)—

(a) in sub-paragraph (2) of paragraph 1 (overview), for paragraphs (a) and (b) substitute—

"(a) a species of animal or plant included on the Union list,

(b) an invasive non-native species of animal or plant not falling within sub-paragraph (a), or

(c) a species of animal that is no longer normally present in Great Britain.";

(b) in paragraph 2 (definitions relating to species), after sub-paragraph (5), insert—

"(6) The "Union list" means the list of invasive alien species of Union concern adopted by the European Commission in accordance with Articles 4(1) and 10(4) of Regulation (EU) No 1143/2014 of the European Parliament and of the Council of 22 October 2014 on the prevention and management of the introduction and spread of invasive alien species, as amended from time to time.".

PART 2

Amendments to secondary legislation

The Prohibition of Keeping of Live Fish (Crayfish) Order 1996

2.—(1) The Prohibition of Keeping of Live Fish (Crayfish) Order 1996(**a**) is amended as follows.

(2) For article 1(2), substitute—

"(2) In this Order "crayfish" means a freshwater decapod crustacean of the Families Astacidae, Cambaridae or Parastacidae, other than the species—

(a) *Austropotamobius pallipes* (commonly known as the Atlantic stream, or white-clawed, crayfish);

(b) *Orconectes limosus* (commonly known as the spiny-cheek crayfish);

(c) *Orconectes virilis* (commonly known as the virile crayfish);

(d) *Pacifastacus leniusculus* (commonly known as the signal crayfish);

(e) *Procambarus clarkii* (commonly known as the red swamp crayfish); and

(f) *Procambarus fallax* f. *virginalis* (commonly known as the marbled crayfish).".

(3) In article 2—

(a) in paragraph (1), omit the words "(2) and";

(b) omit paragraph (2).

(4) Omit the Schedule.

The Wildlife and Countryside Act 1981 (Prohibition on Sale etc. of Invasive Non-native Plants (England) Order 2014

3. In the table in article 3 of the Wildlife and Countryside Act 1981 (Prohibition on Sale etc. of Invasive Non-native Plants) (England) Order 2014(**b**) omit the following entries—

(**a**) S.I. 1996/1104, amended by section 73(2) of the Countryside and Rights of Way Act 2000 (c. 37); S.I. 1996/1374 and 2011/2292.
(**b**) S.I. 2014/538.

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Common Name	*Scientific Name*
Parrot's Feather	Myriophyllum aquaticum
Pennywort, Floating	Hydrocotyle ranunculoides
Primrose, Floating Water	Ludwigia peploides
Primrose, Water	Ludwigia grandiflora.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order gives effect to Regulation (EU) No 1143/2014 of the European Parliament and of the Council on the prevention and management of the introduction and spread of invasive alien species (OJ No. L317, 4.11.2014, p.35) (the Principal Regulation).

The Order has effect in relation to invasive alien species on the list of invasive alien species of Union concern adopted by the European Commission in accordance with the Principal Regulation is a reference to that list as amended from time to time (see the definition of "Union list" in article 2(1)).

The Order extends to England and Wales, and the offshore marine area. Provisions relating to controls on imports into and exports from the United Kingdom (apart from provisions relating to civil penalties) also extend to Scotland and Northern Ireland (article 1). References to England, Wales, Scotland and Northern Ireland include the adjacent territorial sea (article 2).

Part 2 of the Order contains criminal offences. It also reproduces a small number of existing offences contained in the Wildlife and Countryside Act 1981 (c. 69) that are disapplied by Part 9. Parts 3 and 4 contain defences and penalties, respectively. Part 5 contains enforcement provisions. The Order will be enforced by enforcement officers (which includes constables) and designated customs officials (article 21). Article 21 in Part 5 also designates the competent authorities who are responsible for the official controls to prevent the introduction of invasive alien species into the Union pursuant to Article 15 of the Principal Regulation.

Part 6 provides for civil sanctions (article 34 and Schedule 3). The suite of sanctions available to the regulator (defined in paragraph 1 of Schedule 3) consists of compliance, restoration and stop notices, fixed and variable monetary penalties, as well as the ability to accept third party undertakings and enforcement undertakings.

Part 7 provides for the issue of permits in accordance with Articles 8 and 9 of the Principal Regulation (article 35). Part 8 contains licensing provisions; licences may be granted for a number of different activities, provided specified conditions are met (article 36).

Part 9 contains provisions ensuring that a person may not be convicted of both an offence under this Order and under other specified enactments by reason of the same act. Article 41 and Schedule 4 make consequential amendments and Article 42 contains a consequential revocation as a result of the Order. Part 10 contains a review provision.

An impact assessment has not been produced for this instrument in relation to England, Scotland or Northern Ireland as no impact on the private or voluntary sector is foreseen.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to this Order. As a result, a regulatory impact assessment has been prepared as to the likely costs and benefits of complying with this Order. A copy can be obtained from the Welsh Government (Land, Nature and Forestry Division), Rhodfa Padarn, Llanbadarn Fawr, Aberystwyth, Ceredigion, SY23 3UR.

Explanatory Memorandum to The Invasive Alien Species (Enforcement and Permitting) Order 2019

This Explanatory Memorandum has been prepared by the Department for Environment and Rural Affairs and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The Invasive Alien Species (Enforcement and Permitting) (Wales) Order 2019. I am satisfied the benefits justify the likely costs.

Lesley Griffiths
Minister for Environment, Energy and Rural Affairs
7 March 2019

PART 1

1. Description

This Invasive Alien Species (Enforcement and Permitting) Order 2019 ("the Order") provides enforcement provisions, prescribes offences and penalties. It also introduces the permitting and licensing provisions needed to comply with the requirements of EU Regulation No 1143/2014 on the prevention and management of the introduction and spread of invasive alien species ("the EU Regulation").

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

This instrument is being made on a composite basis with the Secretary of State for DEFRA. As well as introducing enforcement provisions, prescribing the offences and penalties needed to comply with the requirements of the EU Regulation, the Order amends earlier England and Wales legislation (the Wildlife and Countryside Act 1981 ("the WCA 1981")). The policy approach to controlling invasive alien species in Wales and England is aligned as invasive alien species do not recognise borders. A composite SI, which applies simultaneously throughout Wales and England will assist with a consistent enforcement approach, and accessibility and understanding for members of the public and others.

The Animal and Plant Health Agency (APHA) currently delivers statutory functions in Wales (such as inspections and enforcement), on behalf of the Welsh Ministers, through a Concordat arrangement. A single Order will ensure that statutory functions under it are exercised in a consistent manner across England and Wales by APHA inspectors.

Section 80(1) GOWA 2006 provides that an EU obligation of the United Kingdom is also an obligation of the Welsh Ministers if and to the extent that the obligation could be implemented (or enabled to be implemented) or complied with by the exercise by the Welsh Ministers of any of their functions.

The Order is made using the powers designated to the Welsh Ministers under section 2(2) of the European Communities Act 1972 ("the ECA 1972"). The Welsh Ministers may rely on their power under section 2(2) of the ECA 1972, by way of their designation for those purposes, in relation to the prevention and remedy of environmental damage[1], in order to implement the substantive requirements of the IAS Regulation in relation to Wales.

In addition, devolved powers under section 22 of the Wildlife and Countryside Act 1981 may be used to, by order add or remove any animal or plant on the IAS Regulation list, from schedule 9 of the Wildlife and Countryside Act 1981.

[1] S.I. 2014/1890

The Order is subject to the negative resolution procedure in the National Assembly for Wales and in the UK Parliament. This is deemed the appropriate procedure because section 2(2) of the ECA 1972 offers a choice between negative and affirmative procedures. The negative procedure will be used in this case as the discretion of the Welsh Ministers to make the required provisions is limited due to the need to give effect to the provisions of the EU Regulation. Moreover the exercise of powers under section 22 of the WCA 1981 is subject to annulment by the motion of the Assembly (negative procedure).

As this Order will be subject to UK Parliamentary scrutiny, it is not considered reasonably practicable for this instrument to be made or laid bilingually. The instrument is not amending earlier bi-lingual legislation.

3. Legislative background

The EU Regulation creates a list of species of Union concern whose adverse impacts are such that they require coordinated action across the EU. It applies strict restrictions on these species so they cannot be imported, kept, bred, transported, sold, used or exchanged, allowed to reproduce, or be grown, cultivated, or released into the environment. There are currently 49 species listed under the Regulation. The EU Regulation will be converted into UK law when we exit the EU.

The EU Regulation places a duty on Member States to “lay down the provisions on penalties applicable to infringements of the EU Regulation” and to “take all the necessary measures to ensure that they are applied”. The Welsh Ministers therefore make the Order to fulfil that duty by providing enforcement provisions, prescribing the offences and penalties and introducing permitting and licensing provisions. The Order also contains a number of consequential amendments and provisions to resolve/remove overlaps between existing domestic legislation and the controls set out in the EU Regulation.

This Order does not relate to withdrawal from the European Union. However, the Order contains known operability issues at the time of laying, including the need to ensure consistency with the parent EU Regulation which was corrected by The Invasive Non-native Species (Amendment etc.) (EU Exit) Regulations 2019. It is planned these operability issues will be corrected by means of a separate operability SI.
https://www.legislation.gov.uk/ukdsi/2019/9780111176269/contents

4. Extent and Territorial Application

This Order applies to England and Wales. The provisions also extend to Scotland and Northern Ireland in so far as – a) they relate to controls on import into and export from the United Kingdom; b) they relate to the offshore marine area; or c) they apply in relation to the provisions mention in a) and b).

5. Purpose and intended effect of the legislation

Invasive alien species challenge the survival of our rarest species, and damage some of our most sensitive ecosystems. The impacts of invasive alien species on our domestic and global biodiversity are severe and growing, and are estimated to cost the GB economy more than £1.7 billion per year. This cost is due to their effects across a wide range of industries and networks, from farming, to the building industry, and national waterways. They include threats to our natural ecosystems and crop pollinators from incursions of species such as the Asian Hornet, which is one of the 49 species listed under the regulation.

The Nature Recovery Plan sets out how the Welsh Government is committed to continue to improve biosecurity, including in respect to plant health and invasive non-native species. The introduction of invasive species, pests and diseases is leading to adverse impacts on native species and habitats and on productive capacity. The Welsh Government, in collaboration with DEFRA, is committed to improving biosecurity standards to minimise disease risk and spread of disease. The UK was instrumental in developing the EU Regulation, and the Order is required in order to meet Welsh Ministers' obligations to implement EU law and to ensure the EU Regulation is effectively enforced.

Part 1 of the Order sets out introductory provisions concerning commencement, extent, application and interpretation. The coming in to force date for this Order is 1 October 2019. This date has been chosen to allow for public consultation on management measures. This is a requirement under the EU Regulation, and as such is required before licences pertaining to management measure actions can be offered under the Order.

Part 2 contains criminal offences, which include breach of the main restrictions in the EU Regulation as well as ancillary offences, for example relating to false statements, attempts, and obstruction. It also contains provisions relating to offences by bodies corporate and partnerships. The Order reproduces a small number of existing offences contained in the Wildlife and Countryside Act 1981 that are dis-applied by Part 9 of the Order. The criminal offences are intended to back up the civil penalties regime contained in Part 6 of, and Schedule 3 to the Order. These take account of the views of stakeholders who responded to the England and Wales joint consultation. Criminal penalties will act as a major deterrent to potential offenders, and give regulators another option to enforce the most serious breaches.

Parts 3 and 4 contain defences and penalties respectively. Penalties are set to be consistent with similar penalties contained in existing legislation relating to wildlife crime and invasive non-native species. Welsh Government considers that the penalties set out in this Order should be set at a consistent level with existing penalties in the Wildlife and Countryside Act 1981 (see sections 14 and 14ZA). A summary conviction therefore carries maximum imprisonment of 6 months, a fine or both. Conviction on indictment carries a maximum imprisonment of 2 years, a fine (not exceeding the statutory maximum in Scotland or Northern Ireland) or both.

Part 5 contains enforcement powers available to enforcement officers and designated customs officials who will enforce the Order.

The Order provides powers for an enforcement officer to enter premises without a warrant, on strict justification, where there are grounds for suspicion that a specimen is being kept on those premises. Entry without a warrant in this way must take place at a reasonable time. Entry to private dwellings is only permitted with a warrant from a justice of the peace (sheriff or summary sheriff in Scotland or lay magistrate in Northern Ireland). Notice must be given before entry, whether under warrant or not, unless one of the listed exceptions applies.

The Order also ensures that the EU Regulation is effectively enforced at the UK border. It makes provisions for live specimens of invasive species to be seized at the UK border by Border Force officials. The Order contains provisions on cost recovery by our regulatory bodies, including the Police, for costs involved with dealing with animals and plants seized under the Order.

Part 6 provides for civil sanctions, the detailed provisions for which are set out in Schedule 3. These are broadly based on powers contained in Regulatory Enforcement and Sanctions Act 2008. Civil sanctions allow for a proportionate response to minor/accidental breaches, with the added deterrent of criminal sanctions available as a last resort for habitual/gross breaches of the prohibitions. The suite of sanctions available to the regulator consists of compliance, restoration and stop notices, fixed and variable monetary penalties, as well as the ability to accept third party undertaking and enforcement undertakings. There are provisions which allow regulators to recover their costs incurred when imposing civil sanctions, in order to facilitate effective action.

Part 7 and Part 8 contain permitting and licensing provisions respectively. Permits, which will be issued by the Animal and Plant Health Agency, and by the Centre for Environment and Aquaculture Science, provide for import, keeping and breeding (but not for sale or release) of specimens, for the purposes of research, ex-situ conservation or the production and use of products for the advancement of human health. Permits may also be granted in exceptional circumstances for reasons of compelling public interest, following the procedure set out in Article 9 of the EU Regulation. Specimens covered by a permit must be kept in contained holding. Licences, which will be issued by Natural England for England and the Natural Resources Body for Wales for Wales. The list of purposes for which such licences can be granted is limited, in order to meet the requirements of the EU Regulation.

Part 9 concerns related domestic legislation, making changes where existing provisions overlap with the controls set out in the EU Regulation. Of particular note are the amendments to the Wildlife and Countryside Act 1981 (contained in Part 1 of Schedule 4). These amendments remove the species of Union concern from the ambit of the provisions relating to invasive non-native species in sections 14 and 14ZA of the 1981 Act. This is to make the legislation more functional for enforcement purposes, bringing all the offences relating to invasive alien species into one instrument.

Schedule 9A of the 1981 Act, which relates to species control agreements and orders has been amended. This is to ensure these tools can be used for all species of Union concern including widely-spread invasive species.

Part 10 sets out the arrangements for review in England only. This relates to a requirement in the UK Government under their Better Regulation scheme. There is no equivalent programme in Wales.

6. Consultation

Details of consultation undertaken are included in the Regulatory Impact Assessment below.

PART 2 – REGULATORY IMPACT ASSESSMENT

Options

Option 0
Do nothing. No statutory action taken to introduce the provisions on penalties applicable to infringements of EU Regulation 1143/2014 on the prevention and management of the introduction and spread of invasive alien species ("the EU Regulation").

Option 1
Introduce civil penalties. Under this option, civil sanctions would be introduced to on penalties applicable to infringements of EU Regulation.

Option 2
Introduce civil and criminal penalties - Under this option, civil and criminal sanctions would be introduced on penalties applicable to infringements of EU Regulation. This is the preferred option.

7. Costs and benefits

Background

It is widely accepted that Invasive Alien Species (IAS) are one of the greatest threats to biodiversity across the globe. IAS, also known as Invasive Non-native Species (INNS), damage our environment, the economy, our health and the way we live. INNS have been estimated to cost the British economy more than £1.7 billion pounds annually, affecting farming, horticultural transport, construction, recreation, aquaculture and utilities.

Regulation (EU) No. 1143/2014 on the prevention and management of the introduction and spread of invasive alien species ("the EU Regulation") came into force on 1 January 2015. The aim of the EU Regulation is to prevent, minimise or mitigate the adverse impact of the introduction and spread of invasive non-native species within the European Union.

A core provision of the EU Regulation is the creation of a list of species of Union concern which are those species whose adverse impact is such that they require coordinated action at an EU level. The list currently contains 49 species some of which are currently present in the UK. The Regulation applies strict restrictions on these species so they cannot be intentionally imported, kept, bred, transported, sold, used or exchanged, allowed to reproduce, grown or cultivated, or released into the environment. The Regulation requires Member States to introduce a system of penalties and sanctions to enforce these prohibitions.

The Invasive Non-native Species (Amendment ETC.) (EU Exit) Regulations 2019 ensure that legislation relating to the prevention and management of the introduction and spread of invasive non-native species remains operable after

we leave the EU and that the strict protections that are in place for these species are maintained.

This Order provides enforcement provisions, prescribes offences and penalties and introduces the permitting and licensing provisions needed to comply with the requirements of the EU Regulation.

Option 0

Do nothing. No statutory action taken to introduce the provisions on penalties applicable to infringements of EU Regulation 1143/2014 on the prevention and management of the introduction and spread of invasive alien species ("the EU Regulation").

Benefits: No significant benefits identified.

Costs: No significant reduction in the costs of dealing with INNS, currently estimated to cost the British economy at least £1.7 billion pounds annually.

Conclusions: The EU requires all Member States to introduce a domestic enforcement and permitting regulation to support the EU Regulation. Failure to do so could lead to infraction proceedings and risk us not realising the potential benefits associated with the regulatory regime. This is not considered a valid option.

Option 1

Introduce civil penalties. Under this option, civil sanctions would be introduced applicable to infringements of EU Regulation.

Benefits: The presumption will be that civil sanctions should be used except for the most serious of breaches. Civil sanctions allow for a proportionate response to minor/accidental breaches. The suite of sanctions available to the Regulator consists of compliance, restoration and stop notices, fixed and variable monetary penalties, as well as the ability to accept third party undertaking and enforcement undertakings. There are provisions which allow regulators to recover their costs incurred when imposing civil sanctions, in order to facilitate effective action.

Costs: The existence of the civil sanctions regime within the Order will impact on stakeholders in three ways:

- Familiarisation (first year only)
- Applying for permits and licences (ongoing)
- Enforcement costs

Familiarisation

Stakeholders who trade in, or keep plants and animals (such as plant nurseries, zoos or animal sanctuaries) will be affected as they will need to familiarise themselves with the new penalty regime. Included in this group are a handful of organisations who would seek to trade in or import the restricted species, but would only be allowed to do so under limited terms of a permit. The Welsh

Government with other UK administrations have updated an existing FAQ document for UK stakeholders regarding the requirements of the EU Regulation. It now additionally reflects the requirements of the Order and will help stakeholders in the familiarisation process.

A number of assumptions are used to estimate the overall impact on businesses of familiarisation with the new regime.

Data from the Inter-Departmental Business Register (IDBR)[2] has been used to estimate the population of affected businesses in Wales. Table 1 gives the relevant types of business activity, together with the population of those businesses in Wales.

Table 1: Population of private sector businesses possibly affected

Activity (SIC)	**Number of businesses**
Retail sale of flowers, plants, seeds, fertilisers, pet animals and pet food in specialised stores (4776)	290
Freshwater and marine aquaculture (0322 and 0321)	20
Agents involved in the sale of agricultural raw materials, live animals, textile raw materials and semi-finished goods (4611)	55
Wholesale of grain, unmanufactured tobacco, seeds and animal feeds (4621)	60
Wholesale of flowers and plants (4622)	20
Wholesale of live animals (4623)	25
Plant propagation (0130)	20
Botanical and zoological gardens and nature reserve activities (9104)	25
Total	**490**

There will be a requirement for staff in the affected business to take time from their regular work to familiarise themselves with the new regime.

It is assumed each enterprise will allocate 2 hours of staff time to familiarise themselves with the regulation. The population of businesses affected is the

[2] https://www.ons.gov.uk/businessindustryandtrade/business/activitysizeandlocation/datasets/ukbusinessactivitysizeandlocation

total in Table 1. This is likely to be at the high end of the range of possible values for affected businesses as it is expected only a proportion of the businesses listed will have any need to familiarise themselves with the new regime.

To estimate the value of the time taken in completing the familiarisation task, median gross weekly earnings for full-time employees for all local authorities by place of work, in Wales[3] have been used. This equals £501.44 per week and has been divided by 37 to provide an hourly rate; £13.55 per hour. It is standard practise to add on 30% to this value (reflecting employer's NI and pension costs) to calculate the total cost. This equates to an hourly rate of £17.62.

Using the hourly rate and multiplying it by 2 hours and total number of business gives an estimated costs of £18,000 across Wales. These costs are anticipated in the first year of the regime. After that familiarisation costs would be much reduced.

Permits and licences

The Order sets out provisions relating to permits and licences, which allow derogations from the restrictions in the EU Regulation, and provisions for enforcing the conditions of permits and licences. Permits under the regime are already issued by the Animal and Plant Health Agency, and (in the case of fish and shellfish) by the Centre for Environment and Aquaculture Science, on behalf of the Secretary of State and the Ministers of the Devolved Administrations. Costs relating to permits are therefore not considered further in this document.

Licences, which will be issued by Natural Resources Wales (NRW), will be available for certain activities which would otherwise be prohibited by the EU Regulation. These purposes include; implementing an eradication measure for a newly arrived species; implementing a management measure for a widely spread species; or lower level purposes such as keeping an animal until the end of its natural life, for example where a zoo acquires an animal which appears on the EU IAS list after the species was listed

Licensing officers within Natural Resources Wales (NRW) will be involved in assessing and determining a licence application for specified activities relating to listed species. The first two categories of licence highlighted above ("higher level applications") are likely to require significantly more time input from NRW licensing and specialist staff than a licence issued under the third category above ("lower level application") which will mainly be administrative and straight forward. It is assumed NRW, as the principle environmental advisor and regulator in Wales, will be actively involved with the work to implement an eradication measure or management measure of the type for which a licence would be required as well as acting as the relevant licensing authority. Table 1 shows a breakdown of the estimated costs (staff time and wages) for NRW, to complete each task involved with reviewing an application to implement an

3 https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/bulletins/annualsurveyofhoursandearnings/2018

eradication or management measure. These calculations are based on best estimates Welsh Government discussed with Natural Resources Wales.

Table 2 - application to implement an eradication or management measure (higher level application)

Activity	**Time taken to complete (days: assume 7.24 working hours per day)**	**Grade of employee and wage (£ per hour – rounded down)**	**Total cost (£)**
Processing application in Permitting team	0.5	B3 (£19)	68 (3.62 x 19)
Dealing with initial enquiries/proposal/discussions	1	C2 (£24)	173 (7.24 x24)
Site visits or meetings	1	C2 (£24)	173 (7.24 x 24)
Background research / consultations	1	C2 (£24)	173 (7.24 x 24)
Placing application notice (for comment) on website and collating/analysing comments	1	C2 (£24)	173 (7.24 x 24)
Detailed proposal/application assessment	1	C2 (£24)	173 (7.24 x 24)
Authorising application	0.5	D1 (£32)	115 (3.62 X 32)
Drafting licence / rejection / notifying decision	0.5	B3 (£19)	68 (3.62 x 19)
Total	**6.5**		**£1,116 (round up to nearest pound).**

Table 3 - application for a basic application (lower level application)

Activity	**Time taken to complete (days: assume 7.24 working hours per day)**	**Grade of employee and wage (£ per hour – rounded down)**	**Total cost (£)**
Processing application in Permitting team	0.25	B3 (£19)	34 (1.81 x 19)
Dealing with initial enquiries /proposal/discussions	0.25	C2 (£24)	43 (1.81 x24)
Application assessment	0.5	C2 (£24)	86 (3.62 x 24)
Authorising application	0.25	D1 (£32)	57 (1.81 X 32)
Drafting licence / rejection / notifying decision	0.25	B3 (£19)	34 (1.81 x 19)
Total	**1.5**		**£254 (round up to nearest pound).**

Estimated costs for a higher level application are £1,116 and for a lower level application £254. On the best guess scenario it is assumed there might be between 1 - 3 applications per year for a higher level application and 10-15 applications per year for lower level applications. This amounts to between £3656 - £7,158 pa. It is standard practise to add on 30% to this value (reflecting

employer's NI and pension costs) to calculate the total cost to the licensing authority in delivering a service, so that actual total will be approximately between **£4,750 - £9,300 per annum.**

The above figures do not take account of any monitoring of licence conditions or enforcement action where licence conditions are not complied with. It would be difficult to make assumptions on unknown future individual events such as a breach of any number of possible licence conditions. However, the process involved in pre-licence discussions and planning should, to a great extent, reduce the likelihood of potential adverse impacts, and where there are any there should be procedures in place to mitigate these included in the detailed proposal submitted with an application. Investigation of a complicated case however could include costs for senior office time, confiscation and keeping of a specimen and disposal of a specimen.

Costs of any required mitigation and enforcement should be far less under a licences regime than a non-licensed regime.

There is an additional anticipated one-off cost to NRW for setting up the licensing system. This might include costs around online guidance, drafting new application forms and licence templates and making these available on the NRW website. NRW already undertake wildlife licensing functions on behalf of Welsh Ministers and as such are familiar with the requirements of a licensing process and have a templates which could be modified and a licensing area on their website. The costs of set up are therefore estimated to be minimal and might include 2 weeks of a B£ officer and 4 days of a C2 officer. This would amount to a total set up costs of approximately **£2,800**. Calculated by £19 x 74 hours, £24 x 30 hours x130%.

Estimated costs to a licence applicant

An applicant will need to provide supporting information with any application and potentially, for higher level applications, carry out public engagement and / or consultation exercises. An application would likely take an organisation several weeks, to produce. Assuming the application process is condensed into a single block of work, we estimate the process would take between 20 - 30 days of staff time. An applicant may wish to seek additional professional guidance / advice in order to complete the application. Applicants would be expected to comply with existing regulations and any available recognised INNS guidance.

Table 4 - application to implement an eradication or management measure (higher level application)

Activity	**Time taken to complete (days: assume 7.24 working hours per**	**Time taken to complete (days: assume 7.24 working hours**	**Wage of employee (£ per hour – rounded down)**	**Total cost (£) (20 days)**	**Total cost (£) (30 days)**

	day)	per day)			
Administration associated with coordination of licence application	10	13	£19	1,368 (72 x 19)	1,788 (94 x 19)
Background research / consultations with stakeholders	5	10	£24	864 (36 x24)	1,737 (72 x24)
Detailed proposal/licence application and internal sign-off	5	7	£32	1,152 (36 x 32)	1,621 (50 x 32)
Total	**20**	**30**		**£3,384 (round up to nearest pound).**	**£5,148 (round up to nearest pound).**

It is standard practise to add on 30% to the calculated value (reflecting employer's NI and pension costs) to calculate the total cost to the organisation in submitting a licence application. For 20 days of work, the total cost will be approximately **£4,400.** For 30 days of work, the total cost will be approximately **£6,700.**

It is anticipated to prepare and submit a lower level application would take no more than 1 day of staff time.

There is currently no fee charged for wildlife licence applications. However, this is a matter that will be considered in the future. The Welsh Government requires NRW to recover the cost for their regulatory work from those who they regulate as set out in Welsh Government's Managing Welsh Public Money policy. In England, Natural England already have the ability to recover costs in certain circumstances for example under the powers in the new Wildlife Licence Charges (England) Order 2018. Charging for INNS licences would not be introduced before a public consultation was undertaken and responses were fully considered.

NRW view cost recovery as important because it protects the grant in aid money they receive for use delivering other outcomes that cannot be funded from charges. Charging also enables NRW to provide a professional permitting service for our customers and help ensure NRW have resources to gather evidence about risk and adopt a preventative approach.

We estimate that there will be between 10 and 30 applications made to NRW for higher level licence applications, over the next 10 years therefore amounting to between £44,000 and £201,000 between the organisations applying. The majority of these organisations are likely to be government agencies, utility companies or conservation organisations using grant monies.

Enforcement costs

The enforcement regime includes issuing of warning letters as the first course of action in most circumstances to seek to bring an individual or business into compliance with the Order. Once a civil sanction is served, this will provide an opportunity to seek to resolve issues between the parties without the need for further action. It is estimated 0 – 3 civil penalties issued in Wales per annum.

The civil sanctions regime within the Order is broadly based on powers contained in Regulatory Enforcement and Sanctions Act 2008. However, the regime deviates from the RES model with regard to:

- Fixed Monetary Penalties - penalty levels set at £1,000 for individuals and £3,000 for a body corporate;

- Standard of proof - a balance of probability rather than a criminal standard approach has been adopted.

The Order allows for the use of Fixed Monetary Penalties, Variable Monetary Penalties and Restoration Notices to be used for all businesses, irrespective of size, and not just businesses with over 250 employees.

Conclusions: The Welsh Government believes civil sanctions are a useful tool to enforce against breaches of wildlife law. However, we want to highlight the serious risk that INNS pose to the environment and economy and believe it is necessary to create criminal offences to cover the prohibitions contained in the EU Regulation. There is case law setting out the requirements in EU law for equivalence between EU and national penalties. Specifically, penalties for breach of EU law need to be equivalent, both procedurally and substantively, to those applicable to infringements of national law of a similar nature and importance. The Wildlife and Countryside Act 1981 contains provisions of a similar nature and importance with regard to the sale and release of protected and non-native species (NNS), namely those found in (species listed in Schedule 9, and offences contained in s.14 and s.14ZA of the Wildlife and Countryside Act 1981 as amended). It would be difficult to argue that the prohibitions set out in the Regulation were significantly less serious than the sale and release of NNS, and in fact the release of INNS is significantly more serious.

Option 2

Introduce civil and criminal penalties - Under this option, civil and criminal sanctions would be introduced for penalties applicable to infringements of the EU Regulation.

Benefits: The EU requires all Member States to introduce a domestic enforcement and permitting regulation to support the EU Regulation. This option is likely to be the most effective in terms of tackling the threats caused by INNS and is the most likely option to reduce the costs of dealing with INNS, currently estimated to cost the British economy at least £1.7 billion pounds annually.

Costs: Costs under Option 1 are similar to those outlined under Option 2 other than higher fines relating to criminal penalties.

The fines and custodial penalties are set out below. They are based on equivalent penalties in the Wildlife and Countryside Act:

A person guilty of an offence under the proposed legislation would be liable:

a) on summary conviction to imprisonment for a term not exceeding six months or to a fine, or to both:

(b) on conviction on indictment, to a imprisonment for a term not exceeding two years or to a fine, or to both.

Whilst low levels (between 0 – 3 per annum) of criminal prosecutions are anticipated Welsh Government's view is that criminal penalties will act as a suitable deterrent.

Conclusions: Welsh Government want to highlight the serious risk that INNS pose to the environment and economy and believe it is necessary to create criminal offences to cover the prohibitions contained in the EU Regulation. These have been put in place to act as a backstop to the civil penalties, and as a final step in preventing extreme/persistent breaches of the prohibitions. They would also place penalties for breach of the Regulation at an equivalent level to existing domestic legislation on non-native species (sections 14 and 14ZA of the Wildlife and Countryside Act 1981, relating to release and sale of non-native species).

This approach is in line with legislation being put in place by Northern Ireland and the Scottish Government. Although in the case of Scotland, they are proposing not to offer the option of civil penalties.

Having a joined up approach across the whole of the UK is essential to maintaining a universal strategy for INNS management and control. Alongside our obligation to implement the Regulation, the UK as a whole has committed to numerous international agreements, such as the Convention on Biological Diversity.

8. Consultation

Between 9 January and 3 April 2018, Defra and Welsh Government undertook a joint public consultation via Citizen Space. The consultation sought views on proposed penalties in respect of restrictions outlined at Article 7 of the EU Regulation which prohibit the intentional: (a) importing; (b) keeping; (c) breeding; (d) transporting; (e) selling; (f) using or exchanging; (g) permitting to reproduce, grow or cultivate or (h) releasing into the environment of any live specimens of the species on the Union list.

It also sought views on penalties in respect of permits which allow derogations from the above restrictions. Proposed penalties related to: making a false statement to obtain a permit; falsifying or altering a permit; or using a specimen otherwise than in accordance with a permit; knowingly contravening a condition or requirement of a permit; intentionally obstructing an authorised enforcement officer; impersonating an enforcement officer, with intent to deceive; attempting to commit any of the offences above.

128 responses were received from a wide range of interests. 42 of those were from individuals clearly representing organisations and 86 from individuals presenting their own views.

The proposed civil penalties regime was well received with two thirds of those consulted content with the proposal. Half of those who were not content believed penalties should be higher or stronger (criminal) sanctions are required.

Regarding the level at which penalties should be set, 66% of respondents supported new penalties being in line with, or higher than, existing penalties as set out in the Wildlife and Countryside Act 1981.

As the majority of the prohibitions contained in the Order cover Wales and England, Welsh Government has worked closely with Defra colleagues to prepare the Order. Scotland and Northern Ireland are putting in place their own equivalent regulations to enforce the EU Regulation. The Devolved Administrations and Defra have liaised closely through regular meetings. Policy colleagues have not raised any particular concerns.

A summary of the consultation responses is available at:
https://www.gov.uk/government/consultations/invasive-non-native-species-regulations-enforcement

9. Competition Assessment

See Appendix A

10. Post implementation review

The review clause at section 43 relates to the Secretary of State only. The UK Government requires review provisions in all new legislation which imposes a regulatory burden. There is currently no similar requirement in Wales.

APPENDIX A

The Competition Assessment

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

SL(5)395 - Rheoliadau Deddf Anghenion Dysgu Ychwanegol a'r Tribiwnlys Addysg (Cymru) 2018 (Darpariaethau Atodol) 2019

Cefndir a Diben

Mae Deddf Anghenion Dysgu Ychwanegol a'r Tribiwnlys Addysg (Cymru) 2018 (**Deddf 2018)** yn sefydlu'r system statudol yng Nghymru ar gyfer diwallu anghenion dysgu ychwanegol plant a phobl ifanc. Mae Rhan 3 o Ddeddf 2018 yn parhau â Thribiwnlys Anghenion Addysgol Arbennig Cymru ac yn ei ailenwi'n Dribiwnlys Addysg Cymru.

Mae'r Rheoliadau hyn yn gwneud diwygiadau i adran 91 o Ddeddf 2018 sy'n darparu ar gyfer cyfansoddiad y Tribiwnlys Addysg, gan gynnwys penodi Llywydd y Tribiwnlys ac aelodau eraill y Tribiwnlys Addysg.

Mae rheoliad 2(2) yn dileu o adran 91(3) o Ddeddf 2018 y gofyniad i gael cytundeb yr Arglwydd Brif Ustus i'r Arglwydd Ganghellor benodi Llywydd y Tribiwnlys Addysg.

Mae rheoliad 2(3) yn dileu o adran 91(4) o Ddeddf 2018 y gofyniad i gael cytundeb Llywydd y Tribiwnlys i'r Arglwydd Ganghellor benodi'r panel cadeirydd cyfreithiol.

Mae rheoliad 3 yn rhoi yn lle'r cofnod yn Atodlen 14 i Ddeddf Diwygio Cyfansoddiadol 2005 sy'n ymwneud â Thribiwnlys Anghenion Addysgol Arbennig Cymru gofnod sy'n ymwneud â'r Tribiwnlys Addysg.

Gweithdrefn

Cadarnhaol.

Materion technegol: craffu

Ni nodir dim pwyntiau i gyflwyno adroddiad arnynt o dan Reol Sefydlog 21.2 mewn perthynas â'r offeryn hwn.

Rhinweddau: craffu

Nodir un pwynt i gyflwyno adroddiad arno o dan Reol Sefydlog 21.3 mewn perthynas â'r offeryn hwn.

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

1.1 Proses y Pwyllgor Penodiadau Barnwrol ar gyfer penodi Llywydd Tribiwnlys Anghenion Addysgol Arbennig Cymru

Mae proses y Comisiwn Penodiadau Barnwrol yn gymwys ar hyn o bryd ar gyfer penodi Llywydd Tribiwnlys Anghenion Addysgol Arbennig Cymru. Mae proses y Comisiwn yn ei gwneud yn ofynnol i'r Arglwydd Ganghellor ddilyn proses tri cham cyn penodi'r Llywydd.

1.2 Proses Deddf 2018 ar gyfer penodi Llywydd Tribiwnlys Addysg Cymru

Nid yw proses y Comisiwn Penodiadau Barnwrol yn gymwys ar hyn o bryd ar gyfer penodi Llywydd Tribiwnlys Addysg Cymru. Mae proses benodi wahanol yn gymwys o dan Ddeddf 2018 ar gyfer penodi Llywydd Tribiwnlys Addysg Cymru. O dan Ddeddf 2018, mae Llywydd Tribiwnlys Addysg Cymru i gael ei benodi gan yr Arglwydd Ganghellor gyda chytundeb yr Arglwydd Brif Ustus.

1.3 Y Rheoliadau

Mae'r Rheoliadau hyn yn ceisio diwygio deddfwriaeth sy'n gysylltiedig â'r Comisiwn Penodiadau Barnwrol fel bod proses y Comisiwn yn cael ei chymhwyso ar gyfer penodi Llywydd Tribiwnlys Addysg Cymru. O dan broses y Comisiwn Penodiadau Barnwrol, yr Arglwydd Ganghellor fyddai'n gyfrifol am benodi Llywydd Tribiwnlys Addysg Cymru.

Mae hyn felly'n creu gwrthdaro o ran penodi Llywydd Tribiwnlys Addysg Cymru: byddai proses y Comisiwn Penodiadau Barnwrol yn cynnwys yr Arglwydd Ganghellor yn unig, tra byddai proses Deddf 2018 yn cynnwys yr Arglwydd Ganghellor a'r Arglwydd Brif Ustus.

Mae'r Rheoliadau yn ceisio mynd i'r afael â'r gwrthdaro hwn trwy ddileu'r cyfeiriad at yr Arglwydd Brif Ustus yn adrannau perthnasol Deddf 2018, fel mai dim ond yr Arglwydd Ganghellor sy'n ymwneud â phroses y Comisiwn Penodiadau Barnwrol a phroses Deddf 2018.

1.4 Defnyddio pwerau atodol

Mae'r Memorandwm Esboniadol yn nodi bod y pwerau galluogi yn adran 97(1) a (2) o Ddeddf 2018 yn gwneud fel a ganlyn (pwyslais wedi'i ychwanegu):

> "provides the Welsh Ministers with power to make regulations to make supplementary, incidental, consequential, transitory, transitional or saving provisions if they consider it necessary or expedient **to give full effect to provisions in the Act or in consequence of any provisions in the Act or for the purposes of any provisions of the Act**."

O ystyried bod y broses benodi fel y'i nodir yn Neddf 2018 yn gweithio fel y mae wedi'i drafftio ar hyn o bryd (yn gyfreithiol nid oes nam yn y broses benodi a nodir yn Neddf 2018) rydym yn gofyn i Lywodraeth Cymru egluro:

- ei dealltwriaeth o'r gair "atodol" yn adran 97(1) o Ddeddf 2018, a pham mae'r pŵer "atodol" yn cael ei ddefnyddio i gymhwyso proses y Comisiwn Penodiadau Barnwrol ar gyfer penodi Llywydd Tribiwnlys Addysg Cymru (a thrwy hynny newid y gyfraith fel y'i trafodwyd a'i pasiwyd gan y Cynulliad);
- pa elfen o "giving full effect to provisions in the Act or in consequence of any provisions in the Act or for the purpose of any provisions of the Act" yn adran 97(1) o Ddeddf 2018 y dibynnir arni yn y Rheoliadau hyn (o gofio nad yw'r broses benodi yn Neddf 2018 yn ddiffygiol).

Ni ddylai fod yn syndod bod y Pwyllgor hwn yn pryderu bod pwerau atodol yn cael eu defnyddio i wrthdroi adrannau pwysig o Ddeddf Cynulliad.

1.5 Trafodion Cyfnod 4 Deddf 2018

Nodwn, yn ystod trafodion Cyfnod 4 Deddf 2018, fod y Gweinidog Addysg wedi dweud:

Hoffwn i sôn yn gyflym am ddatblygiad diweddar iawn a fydd yn mynnu mân ddiwygiad i'r Bil pan ddaw'n Ddeddf. Nid oedd penodiadau i'r Tribiwnlys Anghenion Addysgol Arbennig Cymru yn rhan o'r Comisiwn Penodiadau Barnwrol yn flaenorol, a oedd yn rhyfedd. Gwnaeth gorchymyn a wnaed gan Weinyddiaeth Gyfiawnder Llywodraeth y DU, a ddaeth i rym ar 1 Rhagfyr, datrys hynny am y tro cyntaf ac mae hynny i'w groesawu. O ganlyniad, rydym yn cynnig diwygio adran 91 o'r Bil drwy orchymyn. Bydd hyn yn dileu swyddogaeth gytuno yr Arglwydd Brif Ustus a'r llywydd. Bydd yn cysoni penodiadau i'r tribiwnlys addysg yn y dyfodol ac yn normaleiddio sefyllfa, fel sydd wedi digwydd i TAAAC. Mae cytundeb â Llywodraeth y DU ar gyfer ymdrin â hyn, sydd mewn gwirionedd yn fater technegol, bach.

Rydym yn derbyn bod y Cynulliad wedi cael rhybudd o'r newid sy'n cael ei gynnig gan y Rheoliadau hyn, ac rydym yn derbyn bod y Cynulliad wedi pleidleisio o blaid y Bil Anghenion Dysgu Ychwanegol a'r Tribiwnlys Addysg (Cymru) yng Nghyfnod 4, a hynny o 50 pleidlais i 0.

Fodd bynnag, ni chredwn mai Cyfnod 4 yw'r ffordd briodol o gyhoeddi bwriadau i wneud newidiadau i rannau pwysig o Ddeddfau'r Cynulliad, yn enwedig newidiadau sy'n codi o ganlyniad i gytundeb munud olaf rhwng Llywodraeth Cymru a Llywodraeth y DU.

Rydym yn gofyn i Lywodraeth Cymru egluro pam na ellid fod wedi trafod y newidiadau arfaethedig yn briodol yn ystod Cyfnod Adrodd ychwanegol.

Y goblygiadau yn sgil gadael yr Undeb Ewropeaidd

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

Ymateb y Llywodraeth

Mae angen ymateb gan y Llywodraeth.

Cynghorwyr Cyfreithiol
Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol
20 Mawrth 2019

Rheoliadau drafft a osodwyd gerbron Cynulliad Cenedlaethol Cymru o dan adran 98 o Ddeddf Anghenion Dysgu Ychwanegol a'r Tribiwnlys Addysg (Cymru) 2018, i'w cymeradwyo drwy benderfyniad gan Gynulliad Cenedlaethol Cymru.

O F F E R Y N N A U S T A T U D O L
C Y M R U D R A F F T

2019 Rhif 000 (Cy. 000)

ADDYSG, CYMRU

Rheoliadau Deddf Anghenion Dysgu Ychwanegol a'r Tribiwnlys Addysg (Cymru) 2018 (Darpariaethau Atodol) 2019

NODYN ESBONIADOL

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

Mae Deddf Anghenion Dysgu Ychwanegol a'r Tribiwnlys Addysg (Cymru) 2018 ("Deddf 2018") yn sefydlu'r system statudol yng Nghymru ar gyfer diwallu anghenion dysgu ychwanegol plant a phobl ifanc. Mae Rhan 3 o Ddeddf 2018 yn parhau â Thribiwnlys Anghenion Addysgol Arbennig Cymru ac yn ei ailenwi'n Dribiwnlys Addysg Cymru.

Mae'r Rheoliadau hyn yn gwneud diwygiadau i adran 91 o Ddeddf 2018 sy'n darparu ar gyfer cyfansoddiad y Tribiwnlys Addysg, gan gynnwys penodi Llywydd y Tribiwnlys ac aelodau eraill y Tribiwnlys Addysg.

Mae rheoliad 2(2) yn dileu o adran 91(3) o Ddeddf 2018 y gofyniad i gael cytundeb yr Arglwydd Brif Ustus i'r Arglwydd Ganghellor benodi Llywydd y Tribiwnlys Addysg.

Mae rheoliad 2(3) yn dileu o adran 91(4) o Ddeddf 2018 y gofyniad i gael cytundeb Llywydd y Tribiwnlys i'r Arglwydd Ganghellor benodi'r panel cadeirydd cyfreithiol.

Mae rheoliad 3 yn rhoi yn lle'r cofnod yn Atodlen 14 i Ddeddf Diwygio Cyfansoddiadol 2005 sy'n ymwneud â Thribiwnlys Anghenion Addysgol Arbennig Cymru gofnod sy'n ymwneud â'r Tribiwnlys Addysg.

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

Rheoliadau drafft a osodwyd gerbron Cynulliad Cenedlaethol Cymru o dan adran 98 o Ddeddf Anghenion Dysgu Ychwanegol a'r Tribiwnlys Addysg (Cymru) 2018, i'w cymeradwyo drwy benderfyniad gan Gynulliad Cenedlaethol Cymru.

OFFERYNNAU STATUDOL CYMRU DRAFFT

2019 Rhif 000 (Cy. 000)

ADDYSG, CYMRU

Rheoliadau Deddf Anghenion Dysgu Ychwanegol a'r Tribiwnlys Addysg (Cymru) 2018 (Darpariaethau Atodol) 2019

Gwnaed ***

Yn dod i rym yn unol â rheoliad 1(2) a (3)

Mae Gweinidogion Cymru, drwy arfer y pwerau a roddir gan adran 97(1) a (2) o Ddeddf Anghenion Dysgu Ychwanegol a'r Tribiwnlys Addysg (Cymru) 2018(**1**), yn gwneud y Rheoliadau a ganlyn.

Yn unol ag adran 98 o Ddeddf Anghenion Dysgu Ychwanegol a'r Tribiwnlys Addysg (Cymru) 2018, gosodwyd drafft o'r Rheoliadau hyn gerbron Cynulliad Cenedlaethol Cymru ac fe'i cymeradwywyd ganddo drwy benderfyniad.

Enwi a chychwyn

1.—(1) Enw'r Rheoliadau hyn yw Rheoliadau Deddf Anghenion Dysgu Ychwanegol a'r Tribiwnlys Addysg (Cymru) 2018 (Darpariaethau Atodol) 2019.

(2) Daw'r Rheoliadau hyn i rym ar 10 Ebrill 2019 yn ddarostyngedig i baragraff (3).

(3) Daw rheoliad 3 i rym ar y diwrnod y daw adran 91 o Ddeddf Anghenion Dysgu Ychwanegol a'r Tribiwnlys Addysg (Cymru) 2018 i rym.

(**1**) 2018 dccc 2.

Diwygiadau i Ddeddf Anghenion Dysgu Ychwanegol a'r Tribiwnlys Addysg (Cymru) 2018

2.—(1) Mae adran 91 o Ddeddf Anghenion Dysgu Ychwanegol a'r Tribiwnlys Addysg (Cymru) 2018 wedi ei diwygio fel a ganlyn.

(2) Yn is-adran (3) hepgorer "gyda chytundeb yr Arglwydd Brif Ustus".

(3) Yn is-adran (4) hepgorer "gyda chytundeb y Llywydd".

Diwygiadau i Ddeddf Diwygio Cyfansoddiadol 2005

3.—(1) Yn Rhan 3 o Atodlen 14 i Ddeddf Diwygio Cyfansoddiadol 2005, mae Tabl 1 (penodiadau gan yr Arglwydd Ganghellor) wedi ei ddiwygio fel a ganlyn.

(2) Yn lle'r cofnod sy'n ymwneud ag adran 332(2) o Ddeddf Addysg 1996 a'r swyddi y mae'r adran honno yn ymwneud â hwy, rhodder —

"President of the Education Tribunal for Wales Member of the legal chair panel of the Education Tribunal for Wales	Section 91(3) and (4) of the Additional Learning Needs and Education Tribunal (Wales) Act 2018"

Enw
Y Gweinidog Addysg, un o Weinidogion Cymru
Dyddiad

The Additional Learning Needs and Educational Tribunal (Wales) Act 2018 (Supplementary Provisions) Regulations 2019

This Explanatory Memorandum has been prepared by the Support for Learners Division of the Education Directorate and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1

Ministers Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Additional Learning Needs and Educational Tribunal (Wales) Act 2018 Supplementary Provisions Regulations 2019.

Kirsty Williams
Minister for Education
12 March 2019

1. Description

The Additional Learning Needs and Educational Tribunal (Wales) Act 2018 ('the Act') makes provision for a new statutory framework for supporting children and young people with additional learning needs in Wales.

Section 91 of the Act sets out how the Education Tribunal for Wales is constituted, including that it must have a President, and other appointments and whether appointments must have prescribed agreement.

These regulations:

- remove the requirement for the agreement of the Lord Chief Justice, for the appointment of the President of the Education Tribunal for Wales by the Lord Chancellor from Section 91 (3) of the Act;
- remove the requirement for the agreement the President of the Education Tribunal for Wales for the appointment of the legal chair panel members by the Lord Chancellor from Section 91 (4) of the Act; and
- substitute the entry in Schedule 14 to the Constitutional Reform Act 2005 relating to the Special Educational Needs Tribunal for Wales with an entry relating to the Education Tribunal for Wales.

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

There are no specific matters that have been identified that are of interest to the Constitutional and Legislative Affairs Committee.

3. Legislative background

These regulations are made under Section 97 (1) and (2) of the Act under the Assembly's affirmative procedure..

Section 97 (1) and (2) of the Act provides the Welsh Ministers with power to make regulations to make supplementary, incidental, consequential, transitory, transitional or saving provisions if they consider it necessary or expedient to give full effect to provisions in the Act or in consequence of any provisions in the Act or for the purposes of any provisions of the Act. The regulations may amend, repeal or revoke any provisions in an enactment (defined in section 99(1)) and statutory documents (defined in subsection (4)).

4. Purpose and intended effect of the legislation

These regulations are necessary to amend Sections 91 (3) and (4) as those provisions do not need to include the agreement of the Lord Chief Justice when appointing the President in subsection 3 or for the President's agreement when appointing legal chair members of the panel in subsection 4 of the Act. This is because the Judicial Appointments and Discipline (Amendment and Addition of Offices) Order 2017 ('the 2017 Order'), which came into force on 1 December 2017, provides for judicial appointments as set out below.

The effect of the 2017 Order read alongside the Judicial Appointments Regulations 2013 is to require appointments of the President and legal chairs of Special Educational Needs Tribunal for Wales (and in the future, the Education Tribunal for Wales) to be subject to the usual Judicial Appointments Commission arrangements.

These regulations also substitute the entry in Schedule 14 to the Constitutional Reform Act 2005 relating to the Special Educational Needs Tribunal for Wales with an entry relating to the Education Tribunal for Wales.

5. Consultation

No specific, formal public consultation has been undertaken in relation to these regulations. These regulations make an amendment to the Act to ensure clarity and accessibility of the appointments process of the President and Legal Chairs of the Education Tribunal for Wales.

6. Regulatory Impact Assessment (RIA)

A Regulatory Impact Assessment has not been prepared as these regulations do not impose any additional costs on business, employers or third parties.

These regulations have no impact on the statutory duties (sections 77 -79 of the Government of Wales Act 2006 (‘the 2006 Act’) or statutory partners (sections 72-75 of the 2006 Act).

SL(5)396 – The Qualifications Wales (Monetary Penalties) (Determination of Turnover) Regulations 2019

Background and Purpose

These draft Regulations make provision for how Qualifications Wales ("QW") is to determine the amount of a monetary penalty to be imposed on an awarding body that has failed to comply with a condition of its recognition, or a condition of approval to which its approved qualification is subject. Section 38(1) of the Qualifications Wales Act 2015 ("the Act") enables QW to impose such penalties.

Regulation 3 would set a cap on the penalties of 10% of the turnover of the awarding body. Regulations 4 and 5 would determine the turnover of an awarding body for these purposes. Subject to those parameters, and to certain general requirements in the Act as to how it carries out its enforcement functions, QW would be able to decide what penalty is appropriate in all the circumstances of each case.

The general requirements in the Act most relevant to these Regulations are the requirement to have regard to listed principles in exercising its enforcement functions, and the duty to publish certain information about the way in which it is likely to exercise those functions.

The principles to which QW must have regard in exercising its enforcement functions, amongst other functions, are that:

(a) regulatory activities should be carried out in a way that is transparent, accountable, proportionate and consistent, and
(b) regulatory activities should be targeted only at cases in which action is needed;
(section 54 of the Act).

The publication duty is to prepare and publish a policy statement containing (amongst other things) information as to:
(a) the circumstances in which QW is likely to impose a monetary penalty; and
(b) factors which QW is likely to take into account in determining the amount of a penalty to be imposed;
(section 47 of the Act).

Procedure

Affirmative.

Technical Scrutiny

One point is identified for reporting under Standing Order 21.2 in respect of this instrument.

Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation

Regulation 4 sets out what period is to be used to calculate a body's turnover, on which the maximum penalty laid down in Regulation 3 would be based. It uses the words "month" and "months" in a number of places. The word "month" is not defined in the Act, nor in the Education Act 1996, definitions from which are imported into the Act by section 57(1).

However, "month" is defined in the Interpretation Act 1978, for the purposes of all primary and secondary legislation in Wales and England (subject to a clear contrary intention) as meaning a calendar month. This avoids any possible ambiguity, given the alternative possible meaning of a four-week (lunar month) period. It also makes clear that a "month" is a full calendar month, unless the enactment makes clear that part months are also included.

This Committee wrote to the Welsh Government on 26 January 2018 to express concern about the difficulties, for users of legislation, caused by the use of terms that are defined for the purposes of a piece of secondary legislation, but where that definition is not contained in that secondary legislation itself. The Counsel General responded (9 February 2018) with a commitment to "look to make greater use of … approaches" such as footnotes in those circumstances.

We are concerned that this approach appears not to have been followed in these draft Regulations. It is true that, in this case, the meaning of "month[s]" is reasonably clear from regulation 4 itself (given, for instance, references to "the last day of the month"). The Counsel General's response expressed the view that definitions (or, presumably, references to definitions) should be avoided where meanings were clear, and we agree, in principle, with that view. Nevertheless, in the present case, we consider that the draft Regulations do not give absolute clarity, and, particularly given the importance of the provision in question to those affected, we report on it and remind the Welsh Government of its previous commitment in this regard.

Merits Scrutiny

Three points are identified for reporting under Standing Order 21.3 in respect of this instrument.

Standing Order 23.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly

1. <u>Extent of QW's discretion as to amount of penalties</u>

The first point relates to the discretion left to QW in setting the amount of a penalty. Section 38(3) of the Act, the power under which these draft Regulations are proposed to be made, provides:

"A *"monetary penalty"* is a requirement to pay to QW a penalty of an amount determined by it in accordance with regulations."

Our report of March 2015 on the Qualifications Wales Bill at Stage 1 (paragraphs 22-23) focused on section 38(3) (then, section 33(3)). We quoted from the Government's original Explanatory Memorandum

on the Bill ("the Bill EM") (pp. 36-37), which explained that regulations under that section had been subjected to the affirmative procedure because they affect:

"… the amount an awarding body may be required to pay as a monetary penalty **and affords the Assembly the opportunity to debate and scrutinise the amount of the penalty**"(emphasis added).

However, in the event, the draft Regulations would leave QW free to set a penalty of any amount, and calculated in any way, provided that it:

(a) does not exceed the cap laid down in regulation 3;
(b) does not breach QW's own statutory policy statement (but, as we have seen, QW is not required to set out in that statement what factors it **will** take into account when determining the amount of a penalty);
(c) does not breach the principles laid down in the Act, such as proportionality and consistency; and
(d) does not breach public law requirements, notably reasonableness and the need to take into account all relevant factors and set aside all irrelevant ones.

Notably, penalties below the cap level do not have to be based on turnover; not only the amount, but the method of calculating it, are at QW's discretion (subject to the matters listed in the previous paragraph).

We considered carefully whether there appeared to be doubt that regulation 3(3) was intra vires, and so whether to report it under Standing Order 21.2(i). Our consideration focused on the rule against unlawful sub-delegation: that is, the rule that subordinate legislation cannot give a greater discretion to make decisions than is allowed by the parent primary legislation[1]. After careful consideration, we reached the view that the wording of section 38(3) of the Act was wide enough to allow regulations to set only very minimal conditions on QW's discretion, and so that there did not appear to be doubt as to vires.

However, we remain concerned that Assembly Members, when considering the Bill that led to the Act, might not have anticipated such a wide discretion being left to QW. The wording of section 38(3) might have suggested to Members that the Regulations would create a firmer framework for the exercise of that discretion. Moreover, this impression would in our view have been strengthened by the Bill EM, which promised that the Assembly would have the opportunity to "debate and scrutinise" the way in which penalties would be set. This Committee, as constituted in March 2015, evidently gave weight to that promise, given that it quoted it verbatim in its Report.

In the event, the discretion left to QW by the draft Regulations is so wide that there is little for the Assembly to scrutinise, other than the very width of that discretion.

[1] The rule also forbids giving a power to a person unless the parent Act allows this.

We note that the England equivalent of section 38(3), section 151B of the Apprenticeship, Skills, Children and Learning Act 2009 (as amended) states,

"151B Monetary penalties: amount

(1) The amount of a monetary penalty imposed on a recognised body under section 151A must not exceed 10% of the body's turnover.

(2) The turnover of a body for the purposes of subsection (1) is to be determined in accordance with an order made by the Secretary of State.

(3) Subject to subsection (1), the amount may be whatever Ofqual decides is appropriate in all the circumstances of the case."

Thus, the England provision makes clear the extent of Ofqual's discretion **on the face of primary legislation**, while in Wales the equivalent is stated in subordinate legislation (regulation 3(3)), to which the Assembly has no power to propose amendments.

2. Concerns raised in the Welsh Government's consultation

The Explanatory Memorandum ("the EM") accompanying the draft Regulations reveals, at paragraph 13, that five of the eight awarding bodies who responded to the Welsh Government's consultation on how monetary penalties should be set expressed concern about the effects of an event occurring which affected qualifications in both England and Wales. This would mean the involvement of both Ofqual (for England) and Qualification Wales. The five bodies were concerned that, if both regulators decided to impose financial penalties, an organisation could face a fine of up to 20% of its turnover. On a related point, some responses suggested a risk that potential high penalties could lead awarding bodies to withdraw from the market in Wales, and thus lead to gaps in regulated qualification provision across Wales.

We note that the Welsh Government states (paragraph 20 of the EM):

"QW works closely with the other regulators of qualifications, especially Ofqual and so would want to co-ordinate any monetary penalty decisions to ensure that the regulators were joined up in their overall approach and to safeguard from placing fines on the same awarding bodies for the same breaches".

The EM (paragraph 27, under the heading Option 2) goes on to state that this close working between QW and Ofqual is supported by a Memorandum of Understanding. We note that the Memorandum (signed 26 February 2016) is, intentionally, a high-level document and contains no specific commitment to avoiding "double-jeopardy" penalties. Instead, it simply states (paragraph 11),

"11. … There will be circumstances where collaborative working between us will be the best way to enable us to discharge our statutory responsibilities effectively and efficiently. This will be to our benefit and that of the awarding organisations we both regulate by avoiding duplication and unnecessarily increasing regulatory burden (*sic*).

Those areas of common interest include: … the imposition of sanctions … on awarding organisations which are recognised by both Regulators."

Therefore, the Memorandum of Understanding (which, of course, is not legally binding) does not provide very strong reassurance on this point. However, we note that QW is under a duty to exercise its

enforcement functions in a manner which is "proportionate" (see section 54 of the Act). And, finally, we note that one of its principal aims, under section 3 of the Act, is "ensuring that qualifications, and the Welsh qualification system, are effective for meeting the reasonable needs of learners in Wales".

These factors reassure us that the maximum level of penalty set by the draft Regulations is an appropriate policy choice for the Welsh Government to make, having considered the consultation responses.

However, this matter is likely to be of interest to the Assembly and so we report it.

3. The EM - potential confusion for stakeholders

The third point we report under Standing Order 23.3(ii) relates to the EM itself. We are concerned that its drafting could cause confusion for stakeholders as to the present status, and effect, of the policy statement required by section 47 of the Act. Paragraphs 19 and 35 of the EM appear to us to suggest that such a statement (listing the factors likely to be taken into account when fixing a penalty) is already operational. However, paragraphs 22 and 30 state (presumably correctly) that the policy statement is in draft and will be published once the Regulations have been made.

Perhaps more importantly, paragraphs 19 and 35 of the EM gives the impression that the factors set out in the statutory policy statement **will** be taken into account in determining a monetary penalty. However, section 47 of the Act requires QW only to list factors it is "likely" to take into account in reaching that decision. We call on the Welsh Government to clarify the EM in these regards.

In considering this point, we have noted what may be a weakness in the Act itself. We note it here, although it is not a reporting point on the draft Regulations themselves, in the hope that the Welsh Government may bear it in mind when drafting future legislation. It is this. The ambiguity around what factors QW will in fact take into account in reaching a decision on monetary penalty appears to run counter to the statutory requirement for QW to exercise its regulatory functions "transparently". We consider that the Government would have to show good reasons, in future, for proposing that public bodies (including themselves) should merely have to list factors "likely to" influence decisions which affect others. Other tried and tested formulations are available, which would give stakeholders more certainty, while allowing a degree of discretion. For instance, factors which QW was required to take into account, in so far as relevant to the individual case, could have been listed on the face of the Act. The list could have been exhaustive, but with a power for Ministers to add to or change them, subject to Assembly approval. Alternatively, more discretion could have been left to QW, by the Act listing the factors on a non-exhaustive, "including but not limited to", basis.

We should however note here that, if QW does propose to impose a monetary penalty, section 38 of the Act requires it to give the awarding body in question notice of this fact and of its reasons. Therefore, any vagueness as to the status of the factors listed in the policy statement should not obstruct an awarding body from making representations to QW to challenge the proposal, or indeed seeking judicial review of, or appealing against, the subsequent decision.

Moreover, as a public body, the common law requires that QW's decisions must be reasonable, while the Act expressly requires them to be "proportionate" and "consistent".

Therefore, our concerns about the Act, noted here, are mainly about transparency for stakeholders, rather than about potential impact on them; in other words, they are more about legislative drafting than about policy.

Implications arising from exiting the European Union

No points have been identified for reporting under this heading in respect of this instrument, which does not flow from the UK's withdrawal from the EU.

Government Response

A government response is not required.

Legal Advisers
Constitutional and Legislative Affairs Committee
19 March 2019

Rheoliadau drafft a osodwyd gerbron Cynulliad Cenedlaethol Cymru o dan adran 55(2)(b) o Ddeddf Cymwysterau Cymru 2015, i'w cymeradwyo drwy benderfyniad gan Gynulliad Cenedlaethol Cymru.

O F F E R Y N N A U S T A T U D O L
C Y M R U D R A F F T

2019 Rhif (Cy.)

ADDYSG, CYMRU

Rheoliadau Cymwysterau Cymru (Cosbau Ariannol) (Penderfynu ar Drosiant) 2019

NODYN ESBONIADOL

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

Mae adran 38(1) o Ddeddf Cymwysterau Cymru 2015 ("y Ddeddf") yn galluogi Cymwysterau Cymru i osod cosb ariannol ar gorff dyfarnu sydd wedi methu â chydymffurfio ag un o amodau ei gydnabyddiaeth neu amod cymeradwyo y mae ei gymhwyster a gymeradwywyd yn ddarostyngedig iddo.

Mae'r Rheoliadau hyn yn gwneud darpariaeth ynghylch sut i benderfynu ar y swm sydd i'w dalu gan y corff dyfarnu at ddibenion adran 38(3) o'r Ddeddf.

Caniateir i swm y gosb ariannol fod beth bynnag y mae Cymwysterau Cymru yn penderfynu ei fod yn briodol o dan holl amgylchiadau'r achos, ond ni chaniateir iddo fod yn fwy na'r swm a amlinellir gan Weinidogion Cymru yn rheoliad 3 o'r Rheoliadau hyn.

Mae rheoliadau 4 a 5 yn penderfynu ar drosiant corff dyfarnu at ddibenion rheoliad 3.

Ystyriwyd Cod Ymarfer Gweinidogion Cymru ar gynnal Asesiadau Effaith Rheoleiddiol mewn perthynas â'r Rheoliadau hyn. O ganlyniad, lluniwyd asesiad effaith rheoleiddiol o'r costau a'r manteision sy'n debygol o ddeillio o gydymffurfio â'r Rheoliadau hyn. Gellir cael copi oddi wrth yr Is-adran Cwricwlwm ac Asesu yn yr Adran Addysg a Gwasanaethau Cyhoeddus yn Llywodraeth Cymru, Parc Cathays, Caerdydd, CF10 3NQ.

Rheoliadau drafft a osodwyd gerbron Cynulliad Cenedlaethol Cymru o dan adran 55(2)(b) o Ddeddf Cymwysterau Cymru 2015, i'w cymeradwyo drwy benderfyniad gan Gynulliad Cenedlaethol Cymru.

OFFERYNNAU STATUDOL CYMRU DRAFFT

2019 Rhif (Cy.)

ADDYSG, CYMRU

Rheoliadau Cymwysterau Cymru (Cosbau Ariannol) (Penderfynu ar Drosiant) 2019

Gwnaed	***
Yn dod i rym	***

Mae Gweinidogion Cymru drwy arfer y pwerau a roddir iddynt gan adrannau 38(3) a 55(1) o Ddeddf Cymwysterau Cymru 2015(**1**) yn gwneud y Rheoliadau a ganlyn.

Yn unol ag adran 55(2)(b) o'r Ddeddf honno, gosodwyd drafft o'r offeryn hwn gerbron Cynulliad Cenedlaethol Cymru ac fe'i cymeradwywyd ganddo drwy benderfyniad.

Enwi a chychwyn

1.—(1) Enw'r Rheoliadau hyn yw Rheoliadau Cymwysterau Cymru (Cosbau Ariannol) (Penderfynu ar Drosiant) 2019.

(2) Daw'r Rheoliadau hyn i rym ar 12 Ebrill 2019.

Dehongli

2.—(1) Yn y Rheoliadau hyn—

ystyr "blwyddyn fusnes" ("*business year*") yw cyfnod o fwy na 6 mis y mae corff dyfarnu yn cyhoeddi cyfrifon mewn cysylltiad ag ef neu, os nad yw unrhyw gyfrifon o'r fath wedi eu cyhoeddi

(**1**) 2015 dccc 5; *gweler* y diffiniad o "rheoliadau" yn adran 57(3).

am y cyfnod, y mae'n llunio cyfrifon mewn cysylltiad ag ef;

ystyr "blwyddyn fusnes flaenorol" ("*preceding business year*") yw'r flwyddyn fusnes yn union cyn y dyddiad hysbysu;

mae i "corff dyfarnu" ("*awarding body*") yr ystyr a roddir gan adran 57 o Ddeddf 2015;

ystyr "dyddiad hysbysu" ("*date of notice*") yw'r dyddiad y mae Cymwysterau Cymru yn rhoi hysbysiad i gorff dyfarnu o dan adran 38(4) o'r Ddeddf o'i fwriad i osod cosb ariannol ar y corff dyfarnu;

ystyr "y Ddeddf" ("*the Act*") yw Deddf Cymwysterau Cymru 2015.

Cosb ariannol: swm

3.—(1) Ni chaniateir i swm cosb ariannol a osodir ar gorff dyfarnu o dan adran 38 o'r Ddeddf fod yn fwy na 10% o drosiant y corff dyfarnu.

(2) Mae trosiant corff dyfarnu at ddibenion paragraff (1) i'w benderfynu yn unol â rheoliadau 4 a 5.

(3) Yn ddarostyngedig i baragraff (1), caniateir i'r swm fod beth bynnag y mae Cymwysterau Cymru yn penderfynu ei fod yn briodol o dan holl amgylchiadau'r achos.

Penderfynu ar drosiant at ddibenion rheoliad 3

4.—(1) Pan fo'r flwyddyn fusnes flaenorol yn gyfnod o 12 mis, trosiant corff dyfarnu yw trosiant cymwys y corff am y flwyddyn fusnes flaenorol gyfan.

(2) Pan nad oedd y flwyddyn fusnes flaenorol yn hafal i 12 mis, y trosiant yw trosiant cymwys y corff dyfarnu am y flwyddyn fusnes honno wedi ei rannu â nifer y misoedd yn y flwyddyn fusnes honno ac wedi ei luosi â 12.

(3) Pan nad oedd blwyddyn fusnes flaenorol, y trosiant yw'r trosiant cymwys am y 12 mis sy'n dod i ben ar ddiwrnod olaf y mis cyn y mis y mae'r dyddiad hysbysu yn dod ynddo.

(4) Pan fo gan y corff dyfarnu, wrth gymhwyso paragraff (3), drosiant am gyfnod o lai na 12 mis, y trosiant yw'r trosiant cymwys yn y cyfnod hwnnw wedi ei rannu â nifer y misoedd yn y cyfnod hwnnw ac wedi ei luosi â 12.

(5) Yn y rheoliad hwn—

mae i "trosiant cymwys" yr ystyr a roddir yn rheoliad 5.

Trosiant cymwys

5.—(1) At ddibenion rheoliad 4, trosiant cymwys corff dyfarnu yw cyfanswm—

(a) pob swm sy'n dod i'r corff am ddarparu nwyddau a gwasanaethau sy'n dod o fewn gweithgareddau arferol y corff yn y Deyrnas Unedig; a

(b) pob swm arall a geir gan y corff yng nghwrs gweithgareddau arferol y corff yn y Deyrnas Unedig ar ffurf rhodd, grant, cymhorthdal neu ffi aelodaeth,

ar ôl didynnu gostyngiadau masnach, treth ar waith a threthi eraill yn seiliedig ar y symiau sy'n dod felly neu a geir felly.

(2) Mae'r symiau i'w cyfrifo gan gydymffurfio ag egwyddorion cyfrifyddu a dderbynnir yn gyffredinol yn y Deyrnas Unedig.

Enw
Y Gweinidog Addysg, un o Weinidogion Cymru
Dyddiad

Explanatory Memorandum: Qualifications Wales (Monetary Penalties) (Determination of Turnover) Regulations 2019

This Explanatory Memorandum has been prepared by the Education Department and is laid before the National Assembly for Wales in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view if the expected impact of the Qualifications Wales (Monetary Penalties) (Determination of Turnover) Regulations 2019. I am satisfied that the benefits justify the likely costs.

Kirsty Williams

Minister for Education

12 March 2019

Description

1. Section 38 (1) of the Qualifications Wales Act 2015 enables Qualifications Wales to impose a monetary penalty on an awarding body that fails to comply with a condition of its recognition. The regulations create an upper limit or cap on the amount of the monetary penalty that Qualifications Wales can impose. The regulations stipulate that the amount of the monetary penalty may be whatever Qualifications Wales decide is appropriate but may not exceed 10% of an awarding body's UK turnover.

2. The regulations also set out how Qualification Wales will determine turnover for the purposes of the 10% cap. The regulations state that turnover includes all amounts derived by the awarding body from the provision of goods and services falling within the body's ordinary activities in the United Kingdom and all other amounts received by the body in the course of its ordinary activities. The amounts are to be calculated in conformity with generally accepted accounting principles in the UK.

Matters of Special Interest to the Constitutional and Legislative Affairs Committee

3. None

Legislative background

4. The Qualifications Wales Act 2015 ("the Act") established Qualifications Wales as the independent regulator for non-degree qualifications in Wales.

5. Part 7 of the Act makes provision about steps that may be taken by Qualifications Wales if it considers that a body awarding qualifications in Wales has failed to comply with a condition to which its recognition, or the approval of a qualification awarded by it, is subject. Among the enforcement sanctions available to Qualifications Wales is the power to impose a monetary penalty on a body it regulates for non-compliance with its Standard Conditions of Recognition and regulatory documentation.

6. Section 38(3) of the Act provides that the amount of the penalty is to be determined in accordance with regulations made by the Welsh Government. The regulations are intended to limit the range of the penalty that Qualifications Wales may impose on bodies it regulates. Subject to this limit, the monetary penalty imposed by Qualifications Wales will be whatever they decide is appropriate in all the circumstances of the case.

7. The regulations are made subject to approval under the affirmative resolution procedure in the Assembly.

Purpose and intended effect of the legislation

8. The regulations need to be made by the Welsh Government to determine the financial limit on the monetary penalty that Qualifications Wales may impose; until these regulations are made Qualifications Wales cannot exercise their power to impose a monetary penalty. The regulations also set out how Qualification Wales will determine turnover of an awarding body for the purposes of the cap.

9. It is proposed that regulations are made to cap any monetary penalty imposed by Qualifications Wales at 10% of an awarding body's total UK turnover in the financial year preceding the issuing of the monetary penalty notice.

10. The regulations apply to awarding bodies operating in Wales.

Consultation

11. The consultation on the policy content of the Qualifications Wales (Monetary Penalties) (Determination of Turnover) Regulations 2019 took place from 22 October 2018 to 7 January 2019. The consultation exercise involved the consultation document being on the Welsh Government website for the period stated above. Organisations could respond on line or by email. Key awarding bodies and the Federation of Awarding bodies were made aware by email of the consultation exercise.

12. There were 13 responses, which is relatively low as Qualifications Wales regulates 104 awarding bodies. One response was from the Federation of Awarding Bodies who are the representative body for the awarding body sector.

Sector	Total Number of Responses
Awarding Bodies	8
Other Organisations	3
Individuals	2
Total	**13**

13. The majority of respondents to the consultation (eleven out of thirteen) agreed that Qualifications Wales should be able to impose monetary penalties and that these should be capped at a maximum level. However the majority of respondents disagreed that the cap should be 10% of the awarding bodies' total UK turnover, making the following comments:

- A number of awarding bodies felt that determining the maximum penalty as 10% of UK turnover would put risks on awarding bodies operating across the UK. One awarding body made the comment that it seemed 'unduly harsh' on awarding bodies that do not generate the majority of their regulated income from Wales.
- Eight out of thirteen of the respondents felt it was unfair to use their total annual UK turnover as a means of determining a monetary penalty with regard to often much smaller operations within Wales. Some awarding bodies felt it would be possible to separate out 'revenue' generated from business in Wales.
- Generally the awarding bodies felt it was unfair to include their other activities, including non-regulated qualifications and support materials, when determining a percentage of turnover. Some awarding bodies suggested that only 'Regulated activity' in Wales should be taken into account when determining their turnover.
- Five of the eight awarding who responded expressed concern about the effects of an event occurring which affected qualifications in both England and Wales, which meant the involvement of both Ofqual and Qualification Wales. They were concerned that if both regulators decided to impose financial penalties (which could be up to 10% of turnover), an organisation could face a fine of up to 20% of its turnover.

14. A number of other comments were received from respondents including:

- One awarding body made the point that the proposed upper limit could lead to gaps in regulated qualification provision across Wales if awarding bodies withdraw from the market because the risk of remaining is too severe.
- The predominant view was that the proposals outlined did not offer any particular incentives for awarding bodies to offer Welsh medium qualifications. One respondent, however, felt the proposed monetary penalties regulations would assist Qualifications Wales in ensuring qualifications were available through the medium of Welsh and should have a positive effect on the Welsh Language.
- The point was made by two of the awarding bodies that awarding bodies 'understood that any monetary penalties would be paid into the Wales Consolidated Fund.' They said they would 'appreciate some consideration being given to the proceeds of any monetary penalties being assigned to a fund that is used to support the technical and vocational education sector.'

15. Many of the other comments coming back from the awarding bodies concerned the implementation of the regulations which would be the responsibility of Qualifications Wales who are the Welsh Regulator.

16. The two most common factors from the consultation responses were:

    i. The disagreement with the proposal to calculate turnover using all of an awarding body's activity rather than using only regulated activity; and
    ii. That it was unfair to use the awarding bodies' total annual UK turnover as a means of determining a monetary penalty with regard to often much smaller operations within Wales.

17. We have considered these responses against the need to ensure that Qualifications Wales are able to exercise this power to fine equally across all organisations which award qualifications in Wales. As there was no clear majority view on what was thought to be the best way to determine an awarding body's turnover, the proposal, as set out in the consultation, has been used as the basis. To restrict the determination of turnover to regulated activities only would be targeting a specific group of awarding bodies, those which charge a sufficient amount for the award of their qualifications. Other awarding bodies, such as, employers and some other organisations that do not charge for their qualifications would have little or no turnover generated from regulated activity. As such, the Welsh Ministers would be unable to impose any effective fine on these organisations. Further clarification has been made within the regulations on the interpretation of what is "applicable turnover" in relation to an awarding body's ordinary activities.

18. The proposed definition of turnover allows Qualifications Wales to have an effective monetary penalties policy taking into account the diverse nature of the qualifications market. The definition is in line with the Companies Act 2006, using this definition is fair, transparent and straightforward making it less burdensome to administer. No workable alternatives were presented by the awarding bodies in their responses to the consultation exercise.

19. With regards to the argument that it was unfair to use an awarding body's total UK turnover for determining a monetary penalty, some awarding bodies felt it would be possible to separate out 'revenue' generated from business in Wales. However, Qualifications Wales is not able to access authoritative data on awarding bodies' turnover in Wales (rather than in the UK as a whole). It will only be able to access UK turnover as awarding bodies are generally registered as companies operating in England and Wales. Qualifications Wales published a list of factors which would be taken into account in determining a monetary penalty. Relevant turnover is one of these as would be the severity of the breach. Qualifications Wales would work with an awarding body which may be subject to a monetary penalty to see what the level of their activity in Wales was and would take this into account in determining a potential monetary penalty. Qualifications Wales would need to be proportionate and reasonable in all cases.

20. In practice, a number of awarding bodies are regulated by both Qualifications Wales and Ofqual with regard to the qualifications they offer in Wales and England respectively. Qualifications Wales works closely with the other regulators of qualifications, especially Ofqual and so would want to co-

ordinate any monetary penalty decisions to ensure that the regulators were joined up in their overall approach and to safeguard from placing fines on the same awarding bodies for the same breaches. Therefore, if both Ofqual and Qualification Wales have the same upper limit, it would support both organisations to work effectively together.

21. The First-tier Tribunal will be in place to ensure there are effective checks and balances in the system. The Regulations should set the overall parameters, but it is Qualifications Wales' responsibility as regulator to place an appropriate level of monetary penalty which is proportionate and reasonable or else risk being referred to the Tribunal. The cap itself is therefore not the place to try to control this, but for Qualifications Wales to work through when deciding on a case by case basis what is the appropriate level of monetary penalty.

22. A number of operational queries were raised in the consultation exercise which have been discussed with Qualifications Wales. Qualifications Wales will be giving additional clarity in their Monetary Penalties policy which will implement the regulations. They will publish their revised policy after the regulations have come into force.

23. For these reasons it is felt appropriate to continue with the proposal for the upper limit for a monetary penalty to be set at 10% of an awarding body's UK turnover as proposed in the consultation paper.

Part 2 – Regulatory Impact Assessment

24. This Regulatory Impact Assessment has been developed to consider the regulatory implications of the proposed Monetary Penalties Regulations.

Examination of options

25. Four options for a cap on the Monetary Penalty Qualifications Wales is permitted to impose on awarding bodies have been examined here.

26. In examining alternative options, officials have researched the powers to impose financial penalties of other regulators. These range from the unlimited power of the Gambling Commission to the £500k limit imposed on the Information Commissioner's Office. Many regulators have their powers to impose financial penalties capped at 10% of the turnover of the organisations they regulate; these include Ofqual, Ofgem, Ofwat and the Office of Rail and Road Regulation.

27. Officials have considered a number of potential options to determine **the limit** of the financial penalties imposed by Qualifications Wales. These are:

Option 1

Not imposing a cap

Advantages

- The advantage of this approach is that it does not fetter Qualifications Wales with regard to the level of monetary penalty it may impose.

Disadvantages

- This approach could however lead to uncertainty amongst awarding bodies over the maximum monetary penalty that could be imposed
- It may not be in keeping with the spirit of debates during the development of the Qualifications Wales Act in 2013/14.

Option 2

A cap of up to 10% of an awarding body's total turnover in the United Kingdom in the financial year preceding the issuing of the monetary penalty notice.

Advantages

- This approach would maintain consistency. When the Welsh Ministers were regulators for qualifications and had the power to impose monetary penalties under section 32AB of the Education Act 1997 the Welsh Ministers set the cap at 10% of total turnover .
- Setting the cap at 10% of total turnover would give Qualifications Wales the same upper limit to monetary penalties as Ofqual, Qualifications Wales' counterpart in England, and so treat the two awarding bodies the same. In practice, over 100 awarding bodies are regulated by both Qualifications Wales and Ofqual with regard to the qualifications they offer in Wales and England respectively. In many cases it would be the regulator who had monitored the awarding body and undertaken the investigation into the breach who would issue the monetary penalty.
- If both Ofqual and Qualifications Wales have the same upper limit, it would support both organisations to work effectively together on an equal footing. Qualifications Wales works closely with the other regulators of qualifications, especially Ofqual, with whom it has a memorandum of understanding (2016), and so would want to co-ordinate any monetary penalty decisions to ensure that the two regulators were joined up in their overall approach and to also avoid imposing monetary penalties on the same awarding bodies for the same breaches. It would not be appropriate for Qualifications Wales to be seen as a regulator with lesser powers. Although some awarding bodies do less business in Wales, that is not the case with all awarding bodies.

- This would be an upper limit only and not a guide to what is an appropriate level of monetary penalty.

Disadvantages

- There is a view that limiting Qualifications Wales' power to impose monetary penalties to 10% of an awarding body's total UK turnover may be considered disproportionate in terms of the relative size of the Welsh qualifications market when compared to England. In cases where awarding activities in Wales account for a small proportion of an awarding body's business, the cap may be relatively large compared to the scale of the awarding body's activities. This point was raised by awarding bodies when the Welsh Government consulted on capping monetary penalties in 2012 when it was regulator for qualifications and again during scrutiny of the Qualifications Wales Bill. However, the extent of activity in Wales is one of the areas Qualifications Wales would consider in arriving at an appropriate monetary penalty.

Option 3

Up to a percentage of turnover from relevant activities in Wales in the financial year preceding the monetary penalty notice or £100k whichever is the greater.

Advantages

- This option could be seen as a workable compromise. For those awarding bodies deriving income from providing qualifications; the cap is determined in relation to that income, but not all awarding bodies have an income from 'regulated' activities
- This option also allows Qualifications Wales the opportunity to issue a monetary penalty against those organisations who do not charge fees. Officials believe that Qualifications Wales would be able to estimate the turnover from relevant activities as it would be able to access data on the number of awards made during the relevant period and would have access to data on fees charged.

Disadvantages

- This approach could be punitive for small awarding bodies that do charge fees but only make a small number of awards in Wales and whose total turnover from relevant activities in Wales (or in some cases total turnover from the United Kingdom as a whole) may not reach £100,000.
- A monetary penalty based on a percentage of turnover would be a better way of future-proofing the regulations (as a specified sum of money may be out of date in a few years). Some awarding bodies undertake significant activity in Wales, as we have said, so a percentage of turnover is a more progressive approach. A policy based on fee income may,

however, be misleading as awarding bodies have many different business models and derive income from a variety of sources and not just fees. As stated above not all awarding bodies derive an income from 'regulated' activities. In arriving at a monetary penalty Qualifications Wales would aim to work with the awarding body to define relevant activity in Wales. Qualifications Wales cannot access data from ONS on turnover in Wales.

Option 4

Apply a different penalty cap according to the severity of the breach**.**

Advantages

- There would be a different cap applied depending on whether the breach was categorised for example, as 'minor', 'moderate' or 'significant' and is similar to that taken by the Office of Rail and Road. The maximum penalty the Office of Rail and Road may impose is 10% of the licensee's or relevant operator's turnover.

Disadvantages

- It would be difficult to define acceptable parameters for each category to cover all eventualities.

- Such an approach could lead to ambiguity and place an unnecessary burden on awarding bodies if they felt compelled to appeal a decision based on the category the breach had been placed in. Qualifications Wales will consider the severity of the breach, taking account of the impact of the breach on learners and public confidence when determining the amount of the monetary penalty.

Table of Options

Options	How it operates	Minimum Penalty	Maximum Penalty	Comments
1	No cap	No minimum	No upper limit	Could lead to uncertainty

2	10% of UK turnover as difficult to determine Welsh turnover as many different business models exist	No minimum	10% of UK turnover. UK turnover of £20m – max monetary penalty of £2m. UK turnover of £750,000 – max monetary penalty of £75,000. Turnover in UK £40,000 max penalty £4,000	QW would infact look at turnover and business in Wales along with other factors, with the awarding body, and take a proportionate approach in imposing a monetary penalty.
3	A percentage of relevant activities in Wales or £100,000 which ever is the greater	£100,000	Percentage of relevant activities in Wales eg relevant activities in Wales of £25,000 – max monetary penalty of £2,500.	£100,000 may be significant for some awarding bodies who do not undertake a lot of work in Wales. In addition, a percentage rather than a sum of money is preferable in order to future-proof the penalty.
4	Different cap imposed according to the severity of the breach	No minimum	No maximum	Difficult to define acceptable parameters for each category eg minor, moderate or severe. Could lead to many appeals by awarding bodies.

Preferred Option

28. On balance the preferred option is option 2 set out above. This option sets a cap of 10% of an awarding body's total UK turnover on any monetary penalty Qualifications Wales can impose.

29. As noted above, awarding bodies have a variety of different business models and it will always be difficult to devise a scheme that is equally acceptable to all. In considering options for the cap, we have anticipated the concerns of both large and small awarding bodies, especially those who generate very little income from regulated activity in Wales, based on concerns raised in the Welsh Government's 2012 consultation and any concerns voiced during scrutiny of the Qualifications Wales Bill.

30. We have also considered any concerns in the context of Qualifications Wales' draft policy on monetary penalties and our own Welsh Government consultation exercise. We are of the opinion that the factors Qualifications Wales will take into account when calculating any monetary penalty, in particular the level of an awarding body's business in Wales, mitigate any concerns raised. Setting the cap at 10% would also provide consistency with Ofqual.

31. The First-tier Tribunal will be in place to ensure there are checks and balances in the system. The Regulations should set the overall parameters, but it is Qualifications Wales' responsibility as regulator to place an appropriate level of monetary penalty which is proportionate and reasonable or else risk being referred to the Tribunal. The cap itself is therefore not the place to try to control this, but for Qualifications Wales to work through when deciding on a case by case basis what is the appropriate level of monetary penalty.

Turnover

32. When the power to impose monetary penalties was previously with the Welsh Ministers (under 32AA of the Education Act 1997), the Welsh Ministers had power under section 32AB (2) of the Act to make an Order (The Recognised Persons (Monetary Penalties) (Determination of Turnover) (Wales) Order (2012) to determine the turnover of a person for the purposes of the 10% cap applying to monetary penalties.

33. Welsh Ministers no longer have this power expressly under the Qualifications Wales Act. However, the scope of the regulation making power is wide enough to allow the Welsh Ministers to include the parameters for determining turnover in the regulations. A provision is included about determining turnover which QW can apply consistently when imposing monetary penalties on awarding bodies. The role of the Welsh Ministers would be setting the parameters and QW's role will be in determining turnover, that is to say applying the parameters which have been set so that QW can determine each awarding body's turnover when imposing the monetary penalty. The parameters proposed include the following elements:

34. Turnover of a recognised body would be the sum of:

    - All amounts derived by the body from the provision of goods and services falling within the body's ordinary activities in the UK
    - All other amounts received by the body in the course of its ordinary activities in the UK by way of gift, grant, subsidy or membership fee after deduction of trade discounts, value added tax and other taxes based on the amounts received.
    - The amounts would be calculated in conformity with the generally accepted accounting principles in the UK.
    - The turnover of the recognised body would be the body's turnover for the business year preceding the date of the notice to impose a monetary penalty.

35. However, the size of the cap does not directly determine the level of monetary penalty, and it would not free Qualifications Wales from the obligation to set a monetary penalty that is proportionate and reasonable in all the circumstances of the case. Qualifications Wales states in its Monetary Penalties policy that it will take factors such as the extent of the awarding body's business in Wales, the impact of the breach on learners and/or on the qualifications system in Wales into account when setting the level of any fine. Qualifications Wales will also take account of whether any financial sanctions have been imposed in relation to the same breach by other regulators when calculating the level of fine.

Costs and Benefits

36. We have examined the cost of the preferred option and of the General Regulatory Chamber First Tier Tribunal which Qualifications Wales have agreed to pay for.

37. Start-up costs rather than transition costs are envisaged.

38. Qualifications Wales is an independent statutory body, funded by the Welsh Government. They oversee the standards to which qualifications are awarded, independent of influence from others. A core part of this work is to monitor the compliance of awarding bodies and qualifications against their rules ("regulatory activity").

39. Occasionally, when certain awarding bodies cannot or will not comply with the Qualifications Wales rules, they will decide to impose sanctions, using the statutory powers given to them by the Qualifications Wales Act 2015. These powers include the ability to impose a monetary penalty, and to require an awarding body to pay the costs incurred by Qualifications Wales in connection with imposing that penalty.

40. As outlined in the Qualifications Wales draft Monetary Penalties Policy which they consulted on in 2018, they would generally only consider imposing a monetary penalty for the more serious cases of non-compliance. These would

include cases where the non-compliance was either deliberate or the awarding body must have known, or ought reasonably to have known, that there was a risk that a non-compliance would occur and failed to take reasonable steps to prevent it.

41. As such, Qualifications Wales does not anticipate imposing a monetary penalty on a regular basis. It may be useful to note that Ofqual, in the eight years in which it has been in operation, has to date imposed monetary penalties on only **six** occasions. It should also be noted that Ofqual has decided to recover costs incurred in **all** cases where a monetary penalty has been imposed. On this basis, the average number of monetary penalties expected to be imposed in Wales each year is less than one.

42. As noted above, the Act allows Qualifications Wales to require an awarding body to pay the costs incurred by Qualifications Wales in connection with imposing a monetary penalty. This power deters awarding bodies from behaving irresponsibly and ensures that, in the few cases where such a strong regulatory response is necessary, those responsible for the non-compliance pay the costs of investigations and not the public.

43. In deciding whether to require an awarding body to pay these costs, Qualifications Wales will have regard to the extent of these costs, and whether those costs would be proportionate to the monetary penalty imposed.

    They may seek to recover:

    - any costs incurred in investigating the non-compliance that exceed those which they would anticipate in undertaking their regulatory activity;
    - any costs incurred in imposing a monetary penalty that exceed those which they would anticipate in undertaking their regulatory activity;
    - any costs incurred in obtaining legal advice in relation to the specific application of the monetary penalty.

44. They will also consider whether there are any countervailing factors which indicate that the regulator, rather than the awarding body, should meet the costs of imposing the monetary penalty e.g. that a significant period of time has passed since Qualifications Wales incurred costs in connection with the direction, or that their costs exceed the sum of the monetary penalty imposed.

45. In the absence of regulations which grant them the power to impose monetary penalties, Qualifications Wales has not carried out investigations of this nature to date. As such, they are unable to provide Welsh Government with an accurate estimate of the likely costs they would incur in imposing a monetary penalty.

46. It is also important to emphasise that these costs are likely to vary dependent on the nature of each case in question. In the six cases to date in which Ofqual have recovered costs incurred in imposing a monetary penalty, these have ranged from £5,842 to £50,000.

47. However, Qualifications Wales would expect that any direct costs (such as the costs of obtaining external legal advice) will be recoverable as billed. Their investigation and administration costs are likely to be based on the number of hours recorded by staff at different grades, with an hourly rate calculated in accordance with the Managing Welsh Public Money framework[1].

48. They would expect that the majority of the investigation and administrative costs would be incurred at Officer and Manager levels within the Qualifications Wales structure, but also foresee that some costs would be incurred at Associate Director and Director levels in respect of approving such enforcement decisions.

Awarding Bodies

49. The costs to the awarding bodies themselves are likely to vary depending on the nature of each case in question.

50. In the six cases to date in which Ofqual have imposed monetary penalties, these have ranged from £30,000 to £175,000. In determining the amount of a monetary penalty that an awarding body will be required to pay, Qualifications Wales will take the following factors into account:

- the awarding body's turnover;
- the upper limit of the monetary penalty that they may impose on an awarding body, as set by Welsh Ministers;
- the impact of the non-compliance on learners, centres, other awarding bodies and on the Welsh qualification system;
- any costs incurred by the awarding body in attempting to prevent the non-compliance or mitigate its effects;
- the potential impact of a monetary penalty on the awarding body and its ability to comply in the future.

51. Qualifications Wales will also work with other regulators to determine, where necessary, if non-compliance has occurred in relation to their jurisdictions. Qualifications Wales will take any action taken by other regulators into account when deciding whether to impose a monetary penalty.

First-tier Tribunal Costs

52. There will be an impact on the General Regulatory Chamber of the First Tier Tribunal. The Ministry of Justice envisage that costs associated with the new appeals going to the General Regulatory Chamber of the First Tier Tribunal will be formed by start-up costs of £7,000 and running cost of £35,000 for 10 appeals in the first 12 months (this includes any IT changes). Appeals will

[1] Section 6 confirms that '*the standard approach is to set charges to recover full costs*' and that '*cost should be calculated on an accruals basis, including overheads, depreciation (e.g. for start-up or improvement costs) and the cost of capital*'.

then be costed on costs per case basis as £3,500 per appeal (ball park figure). QW have agreed to meet these costs.

53. Tribunals charge an initial start up and running cost when the appeal is due to be implemented and is on the proviso that no IT development of the database is required nor significant judicial training. Those would be subject to additional costs.

54. Start-up costs cover update of the website, guidance, forms, staff and judicial training, senior judicial input into implementation, implementation time and expenses incurred by operational and the jurisdictional and operational support team.

55. The running cost covers only First-tier Tribunal judicial cost for salaried and fee paid judges, expert panel members and lay members and administration for those appeals and use of HMCTS estate for both hearing and administration.

Specific Impact Assessments

Impact of the proposed legislation on duties of the Welsh Ministers as set out in the Government of Wales Act 2006.

56. The 2019 Regulations are not considered to have any specific impact on the duties of the Welsh Ministers as set out in the Government of Wales Act 2006.

UNCRC

57. The regulations actively support the UN Convention on the rights of the child, specifically under articles 12, 29 and 30. The regulations include appropriate protections for learners and for awarding bodies. The Integrated Impact Assessment can be viewed on line.

58. Positive impacts on children and young people were identified as a result of the proposed regulations which will give more protection to learners through the ability of QW to impose penalties. Children and learners can be more confident that the qualifications they take meet their reasonable needs and are rigorous.

Welsh Language

59. Qualifications Wales has regard to the Welsh Language Measure 2011 and promotes and facilitates the uptake of Welsh Language qualifications.

Equality of Opportunity

60. No issues relating to these duties are considered to arise from the making of these 2018 Regulations. The integrated impact assessment can be viewed on the Welsh Government website. The regulations focus on the quality assurance aspects of Qualifications Wales' work. The regulations will help ensure that qualifications are effective in meeting the reasonable needs of learners and that there is public confidence in the qualifications and regulatory processes. As a result of the regulations children, young people and all learners will be able to be

more confident that the qualifications they take are fit for purpose. Section 149(1) of the Equality Act 2010 requires that the Welsh Ministers have regard in the exercise of their functions to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the 2010 Act. The QW Act 2015 references the Equality Act 2010 and the Framework document between the two organisations also says QW should have regard to equality of opportunity.

Well-being and Future Generations (Wales) Act 2015

61. Qualifications Wales will have due regard to the principles of the Well-being and Future Generations Act and this is stipulated in the Framework Agreement between the Welsh Government and Qualifications Wales.

Sustainable Development

62. Through having regard to the Well-being and Future Generations (Wales) Act 2015, QW will act in accordance with the sustainable development principles.

Impact upon the Voluntary Sector

63. We do not expect the voluntary sector to be affected by the new regulations.

Competition Assessment

64. There are no market implications associated with the making of these 2019 Regulations.

Post implementation review

65. The Welsh Government will monitor the impact of the new regulations through feed-back from awarding bodies, Qualifications Wales and other stakeholders.

SL(5)386 - The Rural Affairs, Environment, Fisheries and Food (Miscellaneous Amendments and Revocations) (Wales) Regulations 2019

Background and Purpose

These Regulations introduce miscellaneous amendments to a number of statutory instruments relating to education, environmental protection, agriculture, animal health and welfare, education, environment, food, plant health, sea fisheries and water. The majority of the changes amend out of date references to European and domestic legislation. The instrument also makes a small number of revocations in relation to redundant legislation.

The technical changes made by these Regulations are necessary to ensure the effective and correct functioning of the statute book following the UK's exit from the EU.

Additional amendments cover the following:

•Changes to the Healthy Eating in Schools (Nutritional Standards and Requirements) (Wales) Regulations 2013 to introduce an ambulatory reference to Directives 2008/1333/EC, 2008/1334/EEC;

•Amendment to the Environmental Damage (Prevention and Remediation) (Wales) Regulations 2009 to reflect the addition of hazardous substances to the list of dangerous substances, plant protection products and biocidal products;

•Amendment to the Private Water Supplies (Wales) Regulations 2017 to ensure up to date transposition of the Drinking Water Directive (Council Directive 98/83/EC).

Procedure

Negative.

In so far as the Regulations are made under the European Communities Act 1972 that Act provides that either negative or affirmative resolution approval procedure may be used and therefore a decision as to which procedure is appropriate must be made according to the particular circumstances of the individual piece of legislation. The explanatory memorandum says that "these Regulations are being made under negative resolution on the basis that they are not controversial or novel, do not amend primary legislation, do not impose or increase a financial burden and do not include consideration of any matters of public policy such as the creation of a new criminal offence." Legal services agree with this view.

Technical Scrutiny

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.

Merits Scrutiny

No points are identified for reporting under Standing Order 21.3 in respect of this instrument.

Implications arising from exiting the European Union

After the UK exits the European Union, this instrument will become part of retained EU law.

Government Response

A government response is not required.

Legal Advisers
Constitutional and Legislative Affairs Committee
20 March 2019

SL(5)362 - Rheoliadau Organeddau a Addaswyd yn Enetig (Eu Gollwng yn Fwriadol a'u Symud ar draws Ffin) (Diwygiadau Amrywiol) (Cymru) (Ymadael â'r UE) 2019

Cefndir a Diben

Mae Rheoliadau Organeddau a Addaswyd yn Enetig (Eu Gollwng yn Fwriadol a'u Symud ar draws Ffin) (Diwygiadau Amrywiol) (Cymru) (Ymadael â'r UE) 2019 yn diwygio gweithrediad presennol Cyfarwyddeb 2001/18/EC Senedd Ewrop a'r Cyngor dyddiedig 12 Mawrth 2001 ar ollwng GMO yn fwriadol i'r amgylchedd ("y Gyfarwyddeb Gollyngiadau Bwriadol"). Mae'r Gyfarwyddeb yn nodi fframwaith o reolaethau ar ollwng GMO, at ddibenion treialu ac ar gyfer eu rhoi ar y farchnad.

O dan y Gyfarwyddeb, mae angen awdurdodiad ymlaen llaw ar gyfer gollyngiadau arfaethedig, ar yr amod bod y GMO dan sylw yn pasio asesiad gwyddonol o'i effaith bosibl ar iechyd dynol a'r amgylchedd. Yn achos gollwng ar gyfer treialu, yr Aelod-wladwriaethau sy'n penderfynu a ddylid cymeradwyo ai peidio, ac, yn y DU, mae'r penderfyniadau hyn wedi'u datganoli, gan gynnwys i Gymru. Ar y llaw arall, mae penderfyniadau ar ollwng GMO ar gyfer marchnata masnachol yn cael eu gwneud ar y cyd ar lefel yr UE ar hyn o bryd. Mae'r Gyfarwyddeb hefyd yn delio'n benodol â hadau GMO i'w hamaethu: yn hyn o beth, mae'r Gyfarwyddeb yn caniatáu i Aelod-wladwriaethau atal amaethu ar eu tiriogaeth, er bod yr hadau wedi cael cymeradwyaeth yr UE. Mae penderfyniadau ar y mater hwn hefyd wedi'u datganoli i Gymru.

Gweithredir y Gyfarwyddeb yng Nghymru gan Reoliadau Organeddau a Addaswyd yn Enetig (Eu Gollwng yn Fwriadol) (Cymru) 2002 ("Rheoliadau Gollwng yn Fwriadol Cymru 2002").

Mae'r Rheoliadau sy'n destun gwaith craffu hefyd yn diwygio Rheoliadau Organeddau a Addaswyd yn Enetig (Eu Symud ar draws Ffin) (Cymru) 2005 ("Rheoliadau Symudiadau ar draws y Ffin Cymru 2002"), sy'n rheoli allforio GMO o Gymru, fel rhan o'r UE, i drydydd gwledydd (rhai y tu allan i'r UE). Y gofyniad allweddol yw, cyn yr allforio arfaethedig cyntaf o'r GMO y bwriedir iddo gael ei ollwng i'r amgylchedd, bod rhaid hysbysu'r wlad sy'n derbyn i'w gymeradwyo cyn ei anfon.

Ar hyn o bryd, mae Rheoliadau Symudiadau ar draws y Ffin Cymru 2002 yn gweithredu, yng Nghymru, Reoliad (EC) Rhif 1946/2003 Senedd Ewrop a'r Cyngor dyddiedig 15 Gorffennaf 2003. Mae'r Rheoliad UE hwn, yn ei dro, yn gweithredu cytuniad rhyngwladol (y mae'r UE a'r DU yn bartïon iddo), sef Protocol Bioddiogelwch Cartagena i Gonfensiwn y Cenhedloedd Unedig ar Amrywiaeth Fiolegol.

Gwneir y rhan fwyaf o'r diwygiadau i'r ddau offeryn statudol hyn yng Nghymru o dan bwerau ym mharagraff 1(1) o Atodlen 2, a pharagraff 21 o Atodlen 7, i'r Ddeddf Ymadael â'r UE. Mae paragraff 1(1) o Atodlen 2 yn rhoi pŵer i Weinidogion Cymru fynd i'r afael, o fewn cymhwysedd datganoledig, â methiannau cyfraith yr UE a ddargedwir i weithredu'n effeithiol, a diffygion eraill yng nghyfraith yr UE a ddargedwir, sy'n deillio o'r DU yn ymadael a'r Undeb Ewropeaidd. Mae paragraff 21 o Atodlen 7 yn rhoi pŵer i Weinidogion Cymru wneud

darpariaeth gysylltiedig, atodol, ganlyniadol, drosiannol, ddarfodol neu arbed, wrth fynd i'r afael â'r methiannau neu'r diffygion hynny, gan gynnwys y pŵer i ailddatgan unrhyw gyfraith yr UE a ddargedwir mewn ffordd gliriach neu fwy hygyrch.

Mae offerynnau statudol Cymru a ddiwygir gan y Rheoliadau hyn yn gyfystyr â chyfraith yr UE a ddargedwir at ddibenion adran 2 o Ddeddf yr Undeb Ewropeaidd (Ymadael) 2018 ("y Ddeddf Ymadael"). Mae Rheoliadau a Phenderfyniadau'r UE y cyfeirir atynt yn y Rheoliadau hyn hefyd yn gyfystyr â chyfraith yr UE a ddargedwir, o dan adran 3 o'r Ddeddf Ymadael.

Fodd bynnag, nid yw rhai diwygiadau a wneir yn deillio o'r DU yn ymadael â'r UE, ond, yn hytrach, yn cywiro cyfeiriadau sydd wedi dyddio. Gwneir y diwygiadau hyn drwy ddefnyddio pwerau a roddir o dan adran 2(2) o Ddeddf y Cymunedau Ewropeaidd 1972 ("Deddf y Cymunedau Ewropeaidd"). Er y bydd y Ddeddf honno yn cael ei diddymu gan adran 1 o'r Ddeddf Ymadael ar y diwrnod ymadael, bydd y diwygiadau a wneir i ddeddfwriaeth ddomestig yn parhau i gael effaith, yn rhinwedd adran 2 o'r Ddeddf honno.

Yn fras gellir categoreiddio'r diwygiadau a wneir gan y Rheoliadau y creffir arnynt fel a ganlyn:

- Dileu cyfeiriadau at ddarpariaethau fel rhai sydd yn 'unol â [deddfwriaeth benodol yr UE]', a chyfeiriadau eraill at gyfraith neu rwymedigaethau'r UE, ac yn hytrach gyfeirio at gyfraith yr UE neu'r rhwymedigaethau hynny wrth iddynt gael eu trosi i gyfraith yr UE a ddargedwir yn rhinwedd y Ddeddf Ymadael;
- Copïo diffiniadau o fewn offerynnau'r UE, fel eu bod yn dod yn rhan o ddeddfwriaeth ddomestig, yn hytrach na diffinio termau drwy gyfeirio at yr offerynnau UE hynny; neu fel arall, nodi y dylid cyfeirio at 'fersiynau' penodol o ddarnau o ddeddfwriaeth yr UE, fel na fydd newidiadau ôl-Brexit i'r ddeddfwriaeth honno yn cael eu trosglwyddo;
- Diweddaru cyfeiriadau at setiau eraill o ddeddfwriaeth a fydd yn cael eu newid yn dilyn ymadael â'r UE neu pan oedd cyfeiriadau at ddarn o ddeddfwriaeth sydd wedi dyddio;
- Newid cyfeiriadau o gysyniadau cyfraith yr UE i rai y DU, e.e. newid 'lefel Aelod-wladwriaeth' i 'unrhyw gyfraith o unrhyw ran o'r DU'; a
- Dileu darpariaethau sy'n ei gwneud yn ofynnol i Weinidogion Cymru weithredu ar lefel yr UE, fel hysbysu'r Comisiwn neu Aelod-wladwriaethau eraill yr UE.

Gweithdrefn

Negyddol.

Materion technegol: craffu

Nodwyd 11 o bwyntiau i gyflwyno adroddiad arnynt o dan Reol Sefydlog 21.3 mewn perthynas â'r offeryn hwn.

1. Rheol Sefydlog 21.2(i) - ei bod yn ymddangos bod amheuaeth a yw intra vires, neu Reol Sefydlog 21.2(ii) – ei bod yn ymddangos ei fod yn gwneud defnydd anarferol neu annisgwyl ar y pwerau a roddwyd gan y deddfiad y mae wedi'i wneud neu y mae i'w wneud odano

1.1 Rheoliad 3(10)(a)

1.1.1 Mae rheoliad 3(10)(a) yn rhoi (inter alia) paragraff (4) newydd yn rheoliad 25 o Reoliadau Gollwng yn Fwriadol Cymru 2002. Mae Rheoliad 25 o Reoliadau Gollwng yn Fwriadol Cymru 2002 yn ymdrin â chydsyniad i farchnata GMO, ac roedd y paragraff (4) gwreiddiol yn gwneud darpariaeth mai'r uchafswm cyfnod y gallai'r Cynulliad Cenedlaethol (Gweinidogion Cymru, erbyn hyn) roi cydsyniad iddo oedd 10 mlynedd. Mae'n ymddangos bod y diwygiadau a wneir gan y rheoliadau hyn yn dileu'r cap hwnnw ar gyfnodau cydsynio.

1.1.2 Ni allwn weld ar unwaith sut y byddai'r cap yn achosi methiant yng nghyfraith yr UE a ddargedwir i weithredu'n effeithiol, neu ddiffyg arall yng nghyfraith yr UE a ddargedwir, yn deillio o ymadawiad y DU â'r Undeb Ewropeaidd; ac felly ni allwn weld sut y mae dileu'r cap yn dod o fewn y pwerau a roddir i Weinidogion Cymru gan baragraff 1(1) o Atodlen 2 i'r Ddeddf Ymadael. At hynny, credwn na ellir dweud bod dileu cap ar gyfnodau cydsynio GMO yn dod o fewn y pŵer ym mharagraff 21 o Atodlen 7 i'r Ddeddf Ymadael; nid yw'n ymddangos i ni ei bod yn ddarpariaeth atodol, ganlyniadol, gysylltiedig, drosiannol neu dros dro.

1.2 Rheoliad 3(16)(b)

1.2.1 Mae'r ddarpariaeth hon yn mewnosod paragraff (3A) newydd yn rheoliad 35 o Reoliadau Gollwng yn Fwriadol Cymru 2002, sy'n ymdrin â data sydd i'w gynnwys ar gofrestr gyhoeddus o wybodaeth am GMO, a gynhelir gan Weinidogion Cymru o dan adran 122 o Ddeddf Diogelu'r Amgylchedd 1990 (ac o dan rwymedigaethau yn y Gyfarwyddeb Gollyngiadau Bwriadol ac odani).

1.2.2 Bydd paragraff newydd (3A) yn golygu y bydd gwybodaeth ychwanegol yn cael ei rhoi ar gofrestr gyhoeddus pan fydd rhywun yn gwneud cais am ganiatâd i farchnata GMO. Fodd bynnag, mae gwybodaeth gyfrinachol wedi'i heithrio.

1.2.3 Nodwn, ar ôl Brexit, mai Gweinidogion Cymru, ac nid y Comisiwn Ewropeaidd, fydd yn penderfynu ar roi caniatâd i farchnata. Am y rheswm hwnnw, rydym yn deall pam mae is-baragraff (3A)(e) newydd yn briodol; mae'n gwneud synnwyr gweinyddol i Weinidogion Cymru neilltuo cod cyfeirnod cais i bob cais ac i gysylltu hyn ag unrhyw wybodaeth am y cais hwnnw ar y gofrestr. Felly, ystyriwn fod is-baragraff (3A)(e) yn dod o dan y pwerau cysylltiedig a ddarperir gan baragraff 21 o Atodlen 7 i'r Ddeddf Ymadael.

1.2.4 Fodd bynnag, mewn perthynas â'r is-baragraffau eraill rydym yn llai clir ynglŷn â vires. Nid yw'n ymddangos bod y darpariaethau yn ofynnol o dan gyfraith yr UE cyn Brexit, ac felly nid yw'r pwerau a roddir gan Ddeddf y Cymunedau Ewropeaidd yn ymddangos yn berthnasol. O ran y pwerau a ddarperir gan y Ddeddf Ymadael, byddem yn disgwyl i'r rhain gael eu defnyddio i ddisodli, mor agos â phosibl, unrhyw rwymedigaethau ar y Comisiwn i roi gwybodaeth am geisiadau i farchnata GMO yn y parth cyhoeddus.

1.2.5 Fodd bynnag, ymddengys i ni mai rhwymedigaethau'r Comisiwn yn y cyswllt hwn yw cyhoeddi'r wybodaeth gryno a ddarperir gan yr ymgeisydd, ynghyd ag asesiad yr Aelod-wladwriaeth o'r cais, os yw'n ffafriol. Yn amlwg, bydd ail ran y rhwymedigaeth hon yn disgyn unwaith y bydd Gweinidogion Cymru yn dod yn benderfynwr terfynol ac felly mae'n briodol peidio ag ailadrodd hyn yn y rheoliadau. Ond mae'n ymddangos bod rhan gyntaf y rhwymedigaeth wedi'i throsglwyddo i Weinidogion Cymru drwy is-baragraff (i) newydd, a

fewnosodwyd yn rheoliad 35(3). Ar yr olwg gyntaf, byddai hyn yn ymddangos yn briodol i ni i atal unrhyw fethiant yng nghyfraith yr UE a ddargedwir rhag gweithredu yn effeithiol, yn deillio o ymadawiad y DU â'r UE (ynghyd â'r ddarpariaeth newydd yn is-baragraff (3A)(e)).

1.2.6 Hoffem bwysleisio ein bod yn gefnogol iawn i'r nod ym mhenderfyniadau Gweinidogion Cymru i fod yn dryloyw, ac yn arbennig felly ar bynciau sy'n effeithio'n uniongyrchol ar holl ddinasyddion Cymru, fel argaeledd GMO ar y farchnad. Fodd bynnag, mae'r hyn yr ydym yn ymdrin ag ef yma yn vires i sicrhau'r tryloywder hwnnw. Os yw paragraff newydd (3A)(a)-(d) ac (f)-(g) yn mynd ymhellach na rhoi dyletswyddau i Weinidogion Cymru sy'n adlewyrchu rhwymedigaethau presennol y Comisiwn i'w cyhoeddi, mae'n anodd gweld sut y mae hyn yn dod o dan y pwerau ym mharagraff 1 o Atodlen 2 i'r Ddeddf Ymadael, neu'r rhai atodol ym mharagraff 21 o Atodlen 7. Felly, byddem yn gofyn i Weinidogion Cymru egluro'r materion hyn er mwyn cael gwared ar unrhyw amheuaeth ynghylch vires.

2. Rheol Sefydlog 21.2(v) – bod angen eglurhad pellach ynglŷn â'i ffurf neu ei ystyr am unrhyw reswm penodol

2.1 Rheoliad 3(2)(a) ac (f), sy'n diwygio'r diffiniadau a gynhwysir yn rheoliad 2(1) o Reoliadau Gollwng yn Fwriadol Cymru 2002

2.1.1 Mae rheoliad 3(2)(a) yn newid y diffiniad o "gynnyrch wedi'i gymeradwyo", at ddibenion caniatâd i gael ei farchnata yng Nghymru. Yn ei hanfod, daw'r diffiniad presennol o "gynnyrch wedi'i gymeradwyo" yn ddiffiniad o "cynnyrch wedi'i gymeradwyo cyn y diwrnod ymadael", yn rhinwedd diffiniad newydd a fewnosodir yn rheoliad 2(1) o Reoliadau Gollwng yn Fwriadol Cymru gan reoliad 3(2)(f) o'r Rheoliadau presennol.

2.1.2 Y diffiniad newydd o "cynnyrch wedi'i gymeradwyo", yn ei hanfod, yw cynnyrch sydd naill ai wedi cael cydsyniad gan Weinidogion Cymru o dan adran 111(1) o Ddeddf Diogelu'r Amgylchedd 1990, neu a awdurdodwyd o dan Reoliad 1829/2003 EC, a adwaenir (ac y cyfeirir ato yn y rheoliadau presennol) fel y Rheoliad Bwyd a Bwyd Anifeiliaid.

2.1.3 Bydd y Rheoliad Bwyd a Bwyd Anifeiliaid yn dod yn gyfraith ddomestig ar y diwrnod ymadael, yn rhinwedd adran 3 o'r Ddeddf Ymadael. Ni fydd rheoliad 3 o'r rheoliadau presennol yn dod i rym nes y diwrnod ymadael. Felly, at ddibenion cyfraith ôl-Brexit Cymru, mae'n ymddangos bod awdurdodiad o dan y Rheoliad Bwyd a Bwyd Anifeiliaid yn golygu awdurdodiad a roddir ar ôl y diwrnod ymadael. Mae hyn hefyd yn rhesymegol o ystyried creu diffiniad ar wahân ar gyfer "cynnyrch[cynhyrchion] wedi'i gymeradwyo cyn y diwrnod ymadael".

2.1.4 Fodd bynnag, mae hyn yn codi dau fater. Yn gyntaf, mae'r Rheoliad Bwyd a Bwyd Anifeiliaid eisoes mewn grym. Gofynnir am eglurhad pellach ynghylch pam nad yw'r diffiniad o "cynnyrch wedi'i gymeradwyo cyn y diwrnod ymadael" yn cynnwys cynhyrchion a gymeradwywyd o dan y Rheoliad hwnnw cyn y diwrnod ymadael.

2.1.5 Mae'r ail fater yn bwynt Rhinweddau ac fe'i nodir isod o dan Reol Sefydlog 21.3(ii).

2.2 Rheoliad 3(6)(b) ac (c), sy'n diwygio rheoliad 17(2)(g) a (j) o Reoliadau Gollwng yn Fwriadol Cymru 2002

2.2.1 Mae'r darpariaethau hyn yn diweddaru'r cyfeiriadau at ddogfennau sy'n nodi'r fformat ar gyfer ceisiadau am gydsyniad i farchnata GMO, pryd y gwneir y ceisiadau hynny i

Weinidogion Cymru. Felly, maent yn ddarpariaethau pwysig i ymgeiswyr. Mae rheoliad 3(6)(b) yn darparu bod yn rhaid i ymgeiswyr ddarparu cynllun monitro a baratowyd, inter alia, yn unol â fformat a nodir yn yr Atodiad i Benderfyniad y Comisiwn 2002/811/EC.

2.2.2 Mae'r ffurflenni cais a nodir yn yr Atodiad hwnnw yn cyfeirio mewn nifer o leoedd at y Gymuned Ewropeaidd (yr Undeb Ewropeaidd, erbyn hyn, wrth gwrs) ac at y Comisiwn Ewropeaidd. Yn benodol, maent yn ei gwneud yn ofynnol i ymgeisydd ddisgrifio, fel rhan o'r cynllun monitro sy'n rhan orfodol o'r cais, yr amodau lle bydd yr ymgeisydd yn adrodd i'r Comisiwn. Mae angen mwy o eglurhad ynghylch pam a sut y mae'r fformat a nodir yn yr Atodiad hwn yn briodol ar gyfer ceisiadau ôl-Brexit am gydsyniad i Weinidogion Cymru.

2.2.3 Mae Rheoliad 3(6)(c) yn ymwneud â'r crynodeb gorfodol y mae'n rhaid iddo fod yn rhan o'r cais. Rydym yn codi, isod, y pwynt nad yw'n ymddangos mai hon yw'r ddogfen gywir a nodir yn rheoliad 3(6)(c) fel yr un sy'n gosod y fformat ar gyfer y crynodeb hwn. At ddibenion y pwynt adrodd hwn, byddwn yn tybio mai'r bwriad oedd gorchymyn i ymgeiswyr ddilyn y fformat a nodir yn yr Atodiad i Benderfyniad y Cyngor 2002/812 EC.

2.2.4 Mae'r Atodiad hwnnw hefyd yn cynnwys nifer o gyfeiriadau at y Gymuned Ewropeaidd (*sic*) sy'n ymddangos fel petai angen eglurhad pellach. Er enghraifft, mae'n ofynnol i ymgeiswyr nodi a yw eu cynnyrch yn cael ei hysbysu i "Aelod-wladwriaeth" arall, ac a yw person arall wedi rhoi cynnyrch arall gyda'r un cyfuniad o GMO ar "farchnad y Gymuned Ewropeaidd". Yn yr achos olaf, nid yw'n glir i ni sut y bydd gan yr ymgeiswyr y wybodaeth hon ar ôl i'r DU ymadael â'r UE. Mae hefyd yn ofynnol i ymgeiswyr ddarparu amcangyfrif o'r galw mewn marchnadoedd allforio am "gyflenwadau'r Gymuned Ewropeaidd" o'r cynnyrch (cyn-Brexit, byddai cyflenwadau'r DU wrth gwrs yn cyfrif fel cyflenwadau'r Gymuned Ewropeaidd ond ni fyddant yn gwneud hynny ar ôl Brexit).

2.3 Rheoliad 3(8)(b), sy'n diwygio rheoliad 22(6) o Reoliadau Gollwng yn Fwriadol Cymru 2002

Mae ein pryderon am y ddarpariaeth hon yn debyg i'r rhai a nodir yn 1.2. Yn ôl y ddarpariaeth newydd, mae'n ofynnol i ymgeiswyr ddarparu gwybodaeth mewn fformat a nodir yn yr Atodiad i Benderfyniad y Comisiwn (2003/71/EC). Mae'r Atodiad hwnnw yn gwneud amryw o gyfeiriadau sy'n ymddangos yn anodd eu gweithredu ar ôl Brexit, gan gynnwys gofyniad i ymgeiswyr ddyfynnu "rhif hysbysu Ewropeaidd".

2.4 Rheoliad 3(9)(a)(ii), sy'n diwygio rheoliad 24(1)(d) o Reoliadau Gollwng yn Fwriadol Cymru 2002

2.4.1 Mae'r ddarpariaeth hon yn disodli rheoliad 24(1)(d) o reoliadau Gollwng yn Fwriadol Cymru 2002 gyda darpariaeth newydd. Nid oes angen eglurhad pellach ar y ffaith ei fod yn cael ei disodli, gan fod y ddarpariaeth wreiddiol yn gosod dyletswydd ar Weinidogion Cymru *vis a vis* y Comisiwn Ewropeaidd, na fydd modd ei weithredu mwyach ar ôl y diwrnod ymadael. Fodd bynnag, rydym o'r farn bod angen peth eglurhad ar osod y ddarpariaeth newydd yn rheoliad 24(1). Mae rheoliad 24(1)(ch) yn ymdrin â dyletswyddau Gweinidogion Cymru i hysbysu ceisydd o'u penderfyniad. Roedd y 24(1)(d) gwreiddiol yn ymdrin â chamau gweithredu yn dilyn y penderfyniad hwnnw. Fodd bynnag, mae'r 24(1)(d) newydd yn ei gwneud yn ofynnol i Weinidogion Cymru ystyried materion penodol wrth wneud eu penderfyniad. Yn rhesymegol, felly, ymddengys y dylai'r rheoliad 24(1)(d) newydd ragflaenu rheoliad 24(1)(ch), yn hytrach na'i ddilyn.

2.5 Rheoliad 3(16)(b) a (17), sy'n diwygio rheoliadau 35 a 36 o Reoliadau Gollwng yn Fwriadol Cymru 2002

2.5.1 Fel y trafodwyd uchod, mae rheoliad 3(16)(b) yn gosod dyletswyddau ar Weinidogion Cymru i gyhoeddi gwybodaeth ychwanegol yn y gofrestr gyhoeddus ynghylch GMO. Fodd bynnag, nid yw rheoliad 3(17) yn diwygio rheoliad 36 o Reoliadau Gollwng yn Fwriadol Cymru 2002 er mwyn rhagnodi terfyn amser i Weinidogion Cymru wneud hynny. Efallai nad bwriad polisi Gweinidogion Cymru oedd gosod terfyn amser o'r fath arnynt eu hunain. Fodd bynnag, mae rheoliad 36 o Reoliadau Gollwng yn Fwriadol (Cymru) 2002 yn gwneud hynny ar gyfer yr holl gategorïau gwybodaeth eraill a restrir yn rheoliad 35 (er bod y diwygiadau a wnaed gan y rheoliadau y creffir arnynt yn codi'r dyddiadau cau hynny mewn perthynas â phenderfyniadau cyn-Brexit y Comisiwn Ewropeaidd neu Aelod-wladwriaethau eraill).

2.5.2 Felly, gofynnir am eglurhad pellach ynghylch absenoldeb dyddiad cau ar gyfer cyhoeddi'r wybodaeth berthnasol.

2.6 Drwy'r cyfan o reoliad 3

2.6.1 Mae nifer o'r diwygiadau a wneir gan reoliad 3 yn cael yr effaith y bydd Rheoliadau Gollwng yn Fwriadol Cymru 2002 yn defnyddio dau enw gwahanol i gyfeirio at yr hyn sydd bellach yr un person cyfreithiol, sef "y [cyn-]Gynulliad Cenedlaethol Cymru" a "Gweinidogion Cymru". Mae'r holl gyfeiriadau hyn i'w dehongli fel cyfeiriadau at Weinidogion Cymru, yn rhinwedd paragraffau 28 a 30 o Atodlen 11 i Ddeddf Llywodraeth Cymru 2006. Fodd bynnag, ni fydd hynny'n amlwg ar unwaith i'r rhai sy'n ceisio deall y ddeddfwriaeth. Mewn rhai mannau, bydd y ddau enw yn ymddangos yn yr un ddarpariaeth - er enghraifft, yn rheoliad 24 o Reoliadau Gollwng yn Fwriadol Cymru 2002 (gweler rheoliad 3(9)(a) o'r rheoliadau y creffir arnynt).

2.6.2 Yn ein barn ni, byddai Gweinidogion Cymru wedi cael vires i newid pob cyfeiriad at y Cynulliad Cenedlaethol yn gyfeiriadau atynt eu hunain, lle y bo'n briodol, o dan baragraff 21 o Atodlen 7 i'r Ddeddf Ymadael, gan y byddent yn atodol neu'n gysylltiedig i ddarpariaeth a wnaed o dan baragraff 1(1) o Atodlen 2 i'r Ddeddf honno, ac a fyddai'n ailddatgan cyfraith yr UE a ddargedwir (offerynnau statudol Cymru a ddiwygiwyd) mewn ffordd gliriach a mwy hygyrch.

2.6.3 Fodd bynnag, rydym yn deall bod Llywodraeth Cymru yn gweithio o dan bwysau difrifol i wneud yr holl ddiwygiadau hanfodol i gyfraith yr UE a ddargedwir, fel y mae'n gymwys o fewn cymhwysedd datganoledig Cymru, cyn y diwrnod ymadael ac na fyddai bob amser yn ymarferol gwneud diwygiadau sydd, gellid dadlau, yn ddymunol heb fod yn angenrheidiol ar gyfer gweithredu ar ôl ymadael.

2.6.4 Rydym hefyd yn gofyn am eglurhad pellach o'r rhesymeg y tu ôl i ddiwygiadau i'r ffordd y cyfeirir at rai darnau o ddeddfwriaeth yr UE yn y rheoliadau. Bydd y ddeddfwriaeth hon yn dod yn gyfraith yr UE a ddargedwir ar y diwrnod ymadael, yn rhinwedd y Ddeddf Ymadael.

2.6.5 Mae rheoliad 3(2)(e) yn darparu bod cyfeiriadau yn Rheoliadau Gollwng yn Fwriadol Cymru 2002 at Benderfyniad Cyntaf y Weithdrefn wedi'i Symleiddio (planhigion cnwd) yn gyfeiriad at y Penderfyniad hwnnw fel y mae'n gymwys yn union cyn y diwrnod ymadael. Fodd bynnag, nid yw'r rheoliadau'n diwygio cyfeiriadau eraill at gyfraith uniongyrchol yr UE a ddargedwir yn Rheoliadau Gollwng yn Fwriadol Cymru 2002 yn y modd hwnnw (er enghraifft, y cyfeiriadau,

yn rheoliad 2 o'r rheoliadau hynny, at Reoliad Bwyd a Bwyd Anifeiliaid, Rheoliad y Cyngor 1829/2003/EC).

2.6.6 Nid yw cyfeiriadau newydd yn y rheoliadau ychwaith at reoliadau uniongyrchol yr UE a ddargedwir (Rheoliadau a Phenderfyniadau'r UE) yn cael eu trin fel hyn (gweler er enghraifft y cyfeiriad at Benderfyniad y Cyngor 2002/813/EC, a fewnosodwyd gan reoliad 3(4)(b)).

2.6.7 Mae'n ymddangos i ni y bydd pob un o'r cyfeiriadau hyn at ddeddfwriaeth yr UE - p'un a ydynt yn bodoli eisoes yn Rheoliadau Gollwng yn Fwriadol Cymru 2002 neu'n rhai sydd wedi'u mewnosod yn ddiweddar - yn cael eu trin fel cyfeiriadau at ddeddfwriaeth yr UE fel y mae'n gymwys yn union cyn y diwrnod ymadael, yn rhinwedd Rheoliadau Deddf yr Undeb Ewropeaidd (Ymadael) 2018 (Addasiadau a Diddymiadau a Dirymiadau Canlyniadol) (Ymadael â'r UE) 2019, sydd ar ffurf ddrafft ar hyn o bryd. Y rheswm am hyn yw nad yw'r un o'r cyfeiriadau yn "newidiadwy" (hynny yw, nid ydynt yn cael eu nodi fel cyfeiriadau at offerynnau'r UE fel y'u diwygiwyd o bryd i'w gilydd gan sefydliadau'r UE; ni nodir ychwaith eu bod yn gyfeiriadau at yr offerynnau hynny fel yr oeddent yn gymwys ar amser penodol cyn y diwrnod ymadael). Yn wir, byddai y tu allan i bwerau'r Ddeddf Ymadael i wneud cyfeiriadau newydd yn y gyfraith ddomestig at offerynnau'r UE yn newidadwy yn yr ystyr hwn; nid yw'r Ddeddf Ymadael yn rhoi pwerau i Weinidogion olrhain datblygiadau cyfraith yr UE yn y modd hwn, mewn is-ddeddfwriaeth.

2.6.8 Felly, gofynnir am esboniad pellach o'r rhesymeg y tu ôl i Weinidogion Cymru yn dewis gwneud darpariaeth o'r math yn rheoliad 3(2)(e) mewn rhai achosion ac nid mewn achosion eraill er mwyn tryloywder, i'r Cynulliad ac i ddefnyddwyr y ddeddfwriaeth.

2.7 Rheoliad 4 - diwygiadau i'r Atodlen i reoliadau Symudiadau ar draws y Ffin Cymru 2005

2.7.1 Mae llawer o ddarpariaethau rheoliadau Symudiadau ar draws y Ffin Cymru 2005 yn ddibynnol ar "y darpariaethau Cymunedol penodedig", hynny yw, y darpariaethau hynny yn Rheoliad (EC) Rhif 1946/2003 a restrir yn yr Atodlen i'r rheoliadau. Er enghraifft, mae rheoliad 3 yn darparu bod yn rhaid i'r Cynulliad Cenedlaethol (Gweinidogion Cymru, nawr) orfodi a gweithredu'r darpariaethau Cymunedol penodedig, tra bo rheoliad 8 yn darparu ei bod yn dramgwydd i unrhyw un fynd yn groes i'r darpariaethau Cymunedol penodedig, neu i fethu â chydymffurfio â hwy. Felly, mae union ystyr y darpariaethau Cymunedol penodedig yn hynod o bwysig.

2.7.2 Mae rheoliad 4 o'r rheoliadau y creffir arnynt yn diwygio disgrifiad o ddau o'r "darpariaethau Cymunedol penodedig" yn yr Atodlen. Mae'r ddau ddiwygiad yn ymddangos, ynddynt eu hunain, yn briodol o ran addasu rheoliadau Symudiadau ar draws y Ffin Cymru 2005 o ganlyniad i'r DU yn ymadael â'r UE. Mae un yn dileu cyfeiriad at "y Comisiwn", tra bo'r llall yn diwygio'r rheolau ynghylch pa awdurdodiadau sydd eu hangen i allforio GMO i'w defnyddio'n uniongyrchol fel bwyd neu fwyd anifeiliaid neu i'w prosesu. Yn flaenorol, gellid bod wedi cytuno o fewn yr UE awdurdodi mewnforio i wlad benodol; mae'r rheoliadau y creffir arnynt yn disodli hyn o'r diwrnod ymadael gyda darpariaeth bod caniatâd i farchnata yn y DU yn ddigonol.

2.7.3 Fodd bynnag, nid yw'n glir i ni sut y mae'r diwygiadau hyn yn effeithiol oni bai bod darpariaethau perthnasol Rheoliad Rhif 1946/2003 ei hun yn cael eu diwygio yn yr un modd,

fel cyfraith yr UE a ddargedwir. Diffinnir y darpariaethau yn yr Atodlen i reoliadau Symudiadau ar draws y Ffin Cymru 2005 fel darpariaethau'r Rheoliad hwnnw. Yng ngoleuni'r cyswllt diffiniol hwnnw, mae'n ymddangos yn amheus i ni y gellir newid effaith y darpariaethau hynny, at ddibenion Rheoliadau 2005, drwy ddiwygio'r Atodlen yn unig, ac nid y Rheoliad UE sylfaenol (fel y bydd yn bodoli mewn cyfraith ddomestig ar ôl y diwrnod ymadael). Unwaith eto, rydym yn pwysleisio bod peidio â chydymffurfio â darpariaethau'r Atodlen yn drosedd; mae'r ail enghraifft a roddir yn y paragraff blaenorol yn enghraifft o sefyllfa lle gallai hyn fod yn uniongyrchol berthnasol.

2.7.4 Rydym yn cydnabod bod modd osgoi neu gywiro'r mater a nodwyd gennym gan ddeddfwriaeth arall sy'n gysylltiedig â Brexit. Fodd bynnag, fel y dywedom yn ein hadroddiad diweddar ar Reoliadau'r Polisi Amaethyddol Cyffredin (Diwygiadau Amrywiol) (Cymru) (Ymadael a'r UE) 2019, rydym yn credu bod dyletswydd ar Lywodraeth Cymru i geisio esbonio, yn well ac yn fwy llawn, i'r Cynulliad ac i ddinasyddion sut y mae pob darn o ddeddfwriaeth Gymreig ynghylch ymadael â'r Undeb Ewropeaidd yn cyd-fynd â'r darlun cyfan o ddeddfwriaeth y DU a'r UE – cyfredol ac arfaethedig – ar y pwnc penodol. Ymddengys mai'r lle priodol ar gyfer hyn fyddai'r Memorandwm Esboniadol sy'n cyd-fynd ag offerynnau statudol.

2.7.5 At hynny, fel y dywedasom dro ar ôl tro mewn Adroddiadau blaenorol, mae eglurder yn y gyfraith droseddol yn arbennig o bwysig. Am yr holl resymau hyn, felly, rydym yn galw ar Lywodraeth Cymru i roi esboniad pellach o'r darpariaethau hyn.

3. Rheol Sefydlog 21.2(vi) – ei bod yn ymddangos bod gwaith drafftio'r offeryn neu'r drafft yn ddiffygiol neu ei fod yn methu â bodloni gofynion statudol.

3.1 Rheoliad 3(6)(c)

Fel y nodir uchod, mae'r ddarpariaeth hon yn newid y ddogfen sy'n nodi'r fformat ar gyfer ceisiadau am awdurdodiadau i ollwng yn fwriadol. Felly, mae'n ddarpariaeth bwysig i ymgeiswyr. Mae'n darparu mai'r fformat cywir yw'r un a nodir yn "yr Atodiad i Benderfyniad y Comisiwn 2002/812 EC". Fodd bynnag, ymddengys nad oes Penderfyniad y Comisiwn gyda'r rhif hwnnw. Fodd bynnag, mae yna Benderfyniad y Cyngor gyda'r rhif hwnnw, ac ymddengys mai'r Atodiad i'r Penderfyniad hwnnw yw'r ddogfen berthnasol.

3.2 Rheoliad 3(10)(b)(ii)

Mae'r ddarpariaeth hon yn disodli rheoliad 25(5) o Reoliadau Gollwng yn Fwriadol Cymru 2002. Mae'n cyfeirio at "reoliad (3) o Reoliadau Hadau (Rhestrau Cenedlaethol o Amrywogaethau) 2001". Mae hwn yn amlwg yn gyfeirnod anghywir, gan nad yw rheoliadau'n cael eu nodi gan rifau mewn cromfachau. Ar ôl ystyried y Rheoliadau 2001 y cyfeirir atynt, ymddengys i ni mai'r bwriad oedd cyfeirio at "rheoliad 3". Rydym yn ystyried mai gwall teipograffyddol yw hwn yn unig ac nad oes risg gwirioneddol o ddryswch gyda darpariaeth arall yn offeryn statudol 2001. Fodd bynnag, dylid ei gywiro er mwyn dileu unrhyw amheuaeth i ddefnyddwyr y ddeddfwriaeth.

Nodir un pwynt i gyflwyno adroddiad arno o dan Reol Sefydlog 21.3 mewn perthynas â'r offeryn hwn.

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

4.1 Rheoliad 3(2)(a) a (f), sy'n diwygio rheoliadau 35 a 36 o Reoliadau Gollwng yn Fwriadol Cymru 2002

4.1.1 Mae'r pwynt hwn yn ymwneud â'r diwygiadau a wnaed gan reoliad 3(2)(a) ac (f) i'r diffiniad o "gynnyrch wedi'i gymeradwyo" yn rheoliadau Gollwng yn Fwriadol Cymru 2002, at ddibenion caniatâd i gael ei farchnata yng Nghymru. Nodir manylion y ddwy ddarpariaeth hon uchod, o dan baragraff 2.1, sy'n ymwneud â Rheol Sefydlog 21.1(v).

4.1.2 Mae'r darpariaethau hyn hefyd yn codi pwynt o ran rhinweddau. Mae'r Rheoliad Bwyd a Bwyd Anifeiliaid yn rhoi'r swyddogaeth o awdurdodi cynhyrchion i'w marchnata i'r Comisiwn Ewropeaidd, gyda chymorth Pwyllgor yr UE, ac ar sail barn wyddonol gan yr Awdurdod Diogelwch Bwyd Ewropeaidd ("EFSA"). Os na chaiff y Rheoliad Bwyd a Bwyd Anifeiliaid, pan ddaw'n gyfraith ddomestig ar y diwrnod ymadael, ei ddiwygio yn y cyswllt hwnnw, bydd y Comisiwn yn gallu parhau i roi awdurdodiadau a gydnabyddir yn y DU, gan gynnwys yng Nghymru. Byddai hyn yn gyson â bwriad cyffredinol y Ddeddf Ymadael i sicrhau parhad, cyn belled ag y bo'n ymarferol ac am y tro, rhwng cyfraith cyn ac ar ôl Brexit sy'n deillio o'r UE.

4.1.3 Fodd bynnag, mae'n bwysig yn wleidyddol y bydd tystysgrifau marchnata ar gyfer cynhyrchion bwyd a bwyd anifeiliaid a wneir o gynhwysion a addaswyd yn enetig, neu sy'n cynnwys cynhwysion a addaswyd yn enetig, a gyhoeddir gan gorff yr UE, yn parhau i gael eu cydnabod yng Nghymru ar ôl Brexit. Mae hyn yn arbennig o wir o ystyried y ddadl yn y DU ac yng Nghymru ynghylch diogelwch bwyd a addaswyd yn enetig.

4.1.4 Rydym yn cydnabod y gallai'r Rheoliad Bwyd a Bwyd Anifeiliaid fod wedi ei ddiwygio, neu ar fin cael ei ddiwygio, mewn rhyw ffordd berthnasol, fel cyfraith yr UE a ddargedwir, gan is-ddeddfwriaeth Llywodraeth y DU o dan y Ddeddf Ymadael. Rydym hefyd yn cydnabod yr anawsterau sy'n wynebu Gweinidogion Cymru wrth geisio deddfu o dan bwysau amser eithafol ac mewn cyd-destun lle mae llawer iawn o ddeddfwriaeth gysylltiedig arall yn cael ei gwneud ganddynt hwy a chan Lywodraeth y DU.

4.1.5 Fodd bynnag, rydym o'r farn, lle bo annibyniaeth o'r fath yn bodoli rhwng gwahanol ddarnau o ddeddfwriaeth, a wnaed neu sydd i'w gwneud, mewn maes cyfreithiol mor bwysig, y dylid eu hesbonio, neu o leiaf gyfeirio atynt, yn y Memorandwm Esboniadol sy'n cyd-fynd â'r is-ddeddfwriaeth ar gyfer craffu.

Y goblygiadau yn sgil ymadael a'r Undeb Ewropeaidd

Nodir un pwynt i gyflwyno adroddiad arno o dan Reol Sefydlog 21.3 mewn perthynas â'r offeryn hwn.

Mae paragraff 4.5 o'r Memorandwm Esboniadol yn nodi fel a ganlyn:

Wales intends to follow England, Northern Ireland and Scotland's approach on the release of GMO's.

Efallai mai mater o iaith anffodus yw hyn, ond nid ydym o'r farn y dylai Llywodraeth Cymru "ddilyn" dull gweithredu gwledydd eraill y DU; yn enwedig ar fater mor bwysig a dadleuol. Mae "dilyn" yn fater gwahanol iawn i gytuno ar ddull cyffredin gyda llywodraethau'r gwledydd eraill hynny. Nodwn fod y Cytundeb Rhynglywodraethol rhwng Llywodraethau Cymru a'r DU ar 24 Ebrill 2018 wedi nodi "Amaethyddiaeth - marchnata a thyfu GMO", yn ogystal ag amrywiol faterion yn ymwneud â bwyd, yn feysydd y byddai'r ddwy lywodraeth yn cytuno y byddai'n debygol bod angen fframweithiau cyffredin y DU arnynt - rhai deddfwriaethol neu fel arall - ac rydym yn tybio bod y frawddeg a amlygir uchod yn ceisio adlewyrchu'r cytundeb hwn.

Ymateb y Llywodraeth

Mae angen ymateb gan y Llywodraeth.

Trafodaeth y Pwyllgor

Trafododd y Pwyllgor yr offeryn yn ei gyfarfod ar 18 Mawrth 2019 ac mae'n cyflwyno adroddiad i'r Cynulliad yn unol â'r pwyntiau technegol a'r pwyntiau rhinweddau uchod.

SL(5)372 - Rheoliadau'r Gwasanaeth Iechyd Gwladol (Cynllun Esgeuluster Clinigol) (Cymru) 2019

Cefndir a Diben

Mae'r Rheoliadau yn sefydlu'r Cynllun Esgeuluster Clinigol ar gyfer Ymddiriedolaethau'r GIG a Byrddau Iechyd Lleol i ddarparu ar gyfer yr holl atebolrwyddau cymhwysol, o 1 Ebrill 2019, sef atebolrwyddau contractiol ac atebolrwyddau mewn camwedd.

Mae'r indemniad a ddarperir fel rhan o'r Cynllun yn cwmpasu atebolrwyddau esgeuluster clinigol aelodau (Byrddau Iechyd Lleol ac Ymddiriedolaethau GIG) yn ogystal ag atebolrwyddau contractwyr nad ydynt yn aelodau sy'n darparu gwasanaethau meddygol sylfaenol yn rhinwedd trefniant gydag aelod o'r Cynllun (e.e. contract gwasanaethau meddygol cyffredinol).

Mae'r Cynllun yn gymwys o 1 Ebrill 2019 mewn perthynas â'r holl atebolrwyddau o fewn ei gwmpas. Golyga hyn, o'r dyddiad hwnnw, y cwmpesir aelodau a chontractwyr o dan y Cynllun yn awtomatig mewn perthynas ag atebolrwyddau o'r fath.

Gweithdrefn

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

Nodir un pwynt i gyflwyno adroddiad arno o dan Reol Sefydlog 21.3 mewn perthynas â'r offeryn hwn.

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

Mae'r Rheoliadau hyn yn cyflwyno cynllun a gefnogir gan y wladwriaeth i ddarparu indemniad esgeuluster clinigol i ddarparwyr gwasanaethau meddygol cyffredinol. Bydd y cynllun yn cwmpasu pob ymarferydd cyffredinol contractiol a gweithwyr iechyd proffesiynol eraill sy'n gweithio ym maes meddygol cyffredinol y GIG.

Mae'r Memorandwm Esboniadol i'r Rheoliadau hyn yn nodi, ym mharagraff 6:

> "A Regulatory Impact Assessment has not been prepared for this instrument as it imposes no costs or no savings, or negligible costs or savings on the public, private or charities and voluntary sectors."

O ystyried arwyddocâd y Rheoliadau hyn, byddem yn croesawu eglurhad gan Lywodraeth Cymru ynghylch pam na chynhaliwyd Asesiad Effaith Rheoleiddiol (ac ar ba eithriad yng "Nghod Asesiad Effaith Rheoleiddiol Gweinidogion Cymru ar gyfer Is-ddeddfwriaeth" y mae Llywodraeth Cymru yn dibynnu i beidio â chynnal Asesiad Effaith Rheoleiddiol).

Y goblygiadau yn sgil gadael yr Undeb Ewropeaidd

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

Ymateb y Llywodraeth

Ymateb i'r pwynt Craffu ar Rinweddau yn unol â Rheol Sefydlog 21.3(ii) sy'n ceisio eglurhad o ran pam na chynhaliwyd Asesiad Effaith Rheoleiddiol.

1. Ystyriaethau Polisi

1.1 Cyhoeddodd y Gweinidog Iechyd a Gwasanaethau Cymdeithasol ar 14 Mai 2018 y byddai Llywodraeth Cymru yn cyflwyno o 1 Ebrill 2019 gynllun wedi ei gefnogi gan y wladwriaeth i ddarparu Indemniad Esgeuluster Clinigol ar gyfer darparwyr gwasanaethau ymarferwyr cyffredinol yng Nghymru (h.y. ar gyfer gwaith y GIG). Croesawyd y cyhoeddiad a'i gefnogi gan Bwyllgor Ymarferwyr Cyffredinol Cymru a bwysleisiodd yn benodol fod cyflwyno'r Cynllun yn gam pwysig tuag at wneud ymarfer meddygol yng Nghymru yn fwy cynaliadwy drwy fynd i'r afael â'r pwysau sylweddol o ran costau ar ymarferwyr cyffredinol, o ystyried y ffaith bod costau sy'n gysylltiedig â phremiymau indemniad ymarferwyr cyffredinol yn tueddu i gynyddu. Byddai cyflwyno'r Cynllun yn gyson cyn belled â phosibl â'r cynllun wedi ei gefnogi gan y wladwriaeth a gyhoeddwyd ar gyfer ymarferwyr cyffredinol yn Lloegr y bwriedid iddo ddod i rym ar 1 Ebrill 2019 hefyd.

1.2 Bydd y Cynllun yn adeiladu ar y sicrwydd indemniad presennol wedi ei gefnogi gan y wladwriaeth a ddarperir ar gyfer gofal eilaidd a gwasanaethau ymarferwyr cyffredinol y tu allan i oriau o fewn GIG Cymru.

1.3 Yn dilyn y cyhoeddiad hwn, ymgysylltwyd yn helaeth ag ymarferwyr cyffredinol, y tri sefydliad amddiffyn meddygol yn y DU, Partneriaeth Cydwasanaethau GIG Cymru, GIG Cymru gan gynnwys y Byrddau Iechyd, Cyfarwyddwyr Gofal Sylfaenol, Cyfarwyddwyr Cyswllt Meddygol, Cyfarwyddwyr Cyllid, Cyfarwyddwyr Nyrsio a Rheolwyr Practisau Ymarferwyr Cyffredinol. Yn benodol mae Grŵp Cyfeirio Rhanddeiliaid wedi ei sefydlu fel fforwm ar gyfer trafod a gwella cynigion i gyflawni'r Cynllun yn ogystal â sicrhau bod rhanddeiliaid allweddol wedi cael diweddariadau clir ac wedi eu hysbysu am ddatblygiadau allweddol. Mae Llywodraeth Cymru hefyd wedi bod yn gweithio'n agos gyda'r Adran Iechyd a Gofal Cymdeithasol i sicrhau bod Cynlluniau Cymru a Lloegr yn gyson pan fo'n bosibl. Nid yw'r cynllun wedi ei gefnogi gan y wladwriaeth ar gyfer Indemniad Proffesiynol Ymarferwyr Cyffredinol yn cael unrhyw effaith ar y sector gwirfoddol nac ar lywodraeth leol.

1.4 Rhyddhawyd dau ddatganiad ysgrifenedig pellach hefyd gan y Gweinidog ar 15 Tachwedd 2018 a 6 Chwefror 2019 a oedd yn darparu'r wybodaeth ddiweddaraf am gynnydd y cynllun i Gymru sydd wedi ei gefnogi gan y wladwriaeth.

2. Gofyniad Proffesiynol am Indemniad Esgeuluster Clinigol

2.1 Mae sicrwydd esgeuluster clinigol yn amod cofrestru yn y DU ar gyfer pob proffesiynolyn gofal iechyd rheoleiddiedig, ac yn achos ymarferwyr meddygol, yn amod i gael trwydded o dan adran 44C o Ddeddf Feddygol 1983. Felly, mae'n ofynnol i broffesiynolion gofal iechyd feddu ar sicrwydd indemniad esgeuluster clinigol priodol i dalu am gostau hawliadau ac iawndal a ddyfernir i gleifion sy'n deillio o esgeuluster. Gall y sicrwydd fod yn bolisi yswiriant, yn drefniant indemniad, neu'n gyfuniad o'r ddau.

3. Effaith Ariannol y Cynllun

3.1 Mae effaith ariannol cyflawni'r Cynllun wedi ei hasesu gan Gyllid y GIG a Chyllidebu Strategol Llywodraeth Cymru. Mae'r cyngor actiwaraidd a'r dadansoddiad o gostau wedi eu darparu gan Pricewaterhouse Coopers ynghyd â throsolwg a ddarparwyd gan Adran Actiwaraidd y Llywodraeth. Ni ellir rhyddhau manylion yr asesiad ariannol gan eu bod yn ddarostyngedig i gytundebau peidio â datgelu â'r tri sefydliad amddiffyn meddygol.

3.2 Rhaid pwysleisio na ellir cyhoeddi'r holl wybodaeth ariannol gan gynnwys y dadansoddiad o gostau ac opsiynau oherwydd ei natur hynod gyfrinachol a masnachol sensitif ac oherwydd ei bod wedi ei rhwymo gan gytundebau peidio â datgelu.

3.3 Caiff y Cynllun ei gyllido drwy'r gyllideb bresennol a bydd yn niwtral o ran costau i aelodau a chontractwyr sydd wedi eu hyswirio o dan y Cynllun.

3.4 Ni fydd y Cynllun yn cael unrhyw effaith ariannol ar y sector cyhoeddus na'r sector gwirfoddol.

3.5 Bydd y Cynllun yn cael effaith ariannol sy'n niwtral fwy neu lai ar sefydliadau amddiffyn meddygol gan mai Llywodraeth Cymru a fydd yn gyfrifol am unrhyw atebolrwyddau yn y dyfodol ac y caiff premiymau indemniad ymarferwyr cyffredinol a ddarperir gan y sefydliadau amddiffyn meddygol eu haddasu i adlewyrchu'r ffaith bod yr hawliadau esgeuluster clinigol ar gyfer gwaith y GIG yn cael eu dileu. Ceir yr effaith gyffredinol hon ar gyfer gweithgarwch Cymru yng nghyd-destun cyfran marchnad Cymru (3%) o gyfanswm y farchnad amddiffyn meddygol yn y DU.

4. Cynaliadwyedd yn y Tymor Hwy

4.1 Bydd y Cynllun yn darparu datrysiad cynaliadwy yn y tymor hwy i fynd i'r afael â chostau cynyddol sicrwydd indemniad meddygol. Ymhellach, bydd y Cynllun yn helpu i sicrhau y caiff ymarferwyr cyffredinol eu recriwtio'n barhaus ac na fydd cynlluniau gwahanol sy'n gweithredu yng Nghymru a Lloegr yn effeithio ar weithgarwch trawsffiniol Cymru a Lloegr.

5. Eithriad i'r angen am Asesiad Effaith Rheoleiddiol

5.1 Nid oes effaith fawr ar bolisi gan ei fod yn ofyniad presennol i ymarferwyr cyffredinol feddu ar sicrwydd esgeuluster clinigol fel y'i nodir yn 2.1. Mae'r Rheoliadau hyn yn darparu ar gyfer dull o roi sicrwydd indemniad ar gyfer ymarferwyr cyffredinol am waith y GIG ac yn alinio ag indemniad presennol gofal eilaidd ac ymarferwyr cyffredinol y tu allan i oriau GIG Cymru sydd wedi ei gefnogi gan y wladwriaeth.

Trafodaeth y Pwyllgor

Trafododd y Pwyllgor yr offeryn, ynghyd ag ymateb y Llywodraeth, yn ei gyfarfod ar 18 Mawrth 2019 ac mae'n cyflwyno adroddiad i'r Cynulliad yn unol â'r pwyntiau adrodd rhinweddau uchod.

Llywodraeth Cymru
Welsh Government

DATGANIAD YSGRIFENEDIG
GAN
LYWODRAETH CYMRU

TEITL	**Rheoliadau Rheoliad (EC) rhif 1370/2007 (Rhwymedigaethau Gwasanaeth Cyhoeddus mewn Trafnidiaeth) (Diwygio) (Ymadael â'r UE) 2019**
DYDDIAD	**14 Mawrth 2019**
GAN	**Rebecca Evans AC, y Gweinidog Cyllid a'r Trefnydd**

Rheoliadau Rheoliad (EC) rhif 1370/2007 (Rhwymedigaethau Gwasanaeth Cyhoeddus mewn Trafnidiaeth) (Diwygio) (Ymadael â'r UE) 2019

Y Gyfraith sy'n cael ei diwygio:

Rheoliad (EC) rhif 1370/2007 Senedd Ewrop a'r Cyngor ar wasanaethau trafnidiaeth teithwyr cyhoeddus ar y ffyrdd a'r rheilffyrdd

Unrhyw effaith y gall yr OS ei chael ar gymhwysedd deddfwriaethol y Cynulliad a/neu ar gymhwysedd gweithredol Gweinidogion Cymru

Mae fy natganiad ar 25 Ionawr am **Reoliadau Cymorth Gwladwriaethol (Ymadael â'r UE) 2019** yn nodi barn Llywodraeth Cymru bod cymorth gwladwriaethol yn fater datganoledig ac nad yw wedi'i gadw'n ôl o dan Atodlen 7A Deddf Llywodraeth Cymru 2006. Nid yw Llywodraeth y DU o'r un farn ac ni wnaeth ofyn o'r herwydd am ganiatâd Gweinidogion Cymru o dan delerau'r Cytundeb Rhynglywodraethol ar gyfer **Rheoliadau Cymorth Gwladwriaethol (Ymadael â'r UE) 2019.**

Mae'n safbwynt ar gymorth gwladwriaethol yn effeithio ar **Reoliadau Rheoliad (EC) rhif 1370/2007 (Rhwymedigaethau Gwasanaeth Cyhoeddus mewn Trafnidiaeth) (Diwygio) (Ymadael â'r UE) 2019.** Mae Rheoliad 1370/2007 yn pennu'r amodau ar gyfer digolledu gweithredwyr rhwymedigaethau gwasanaeth cyhoeddus (PSO) am y costau y maent yn eu hysgwyddo wrth gynnal eu rhwymedigaethau gwasanaeth

cyhoeddus. Mae Rheoliad 1370 yn darparu ar gyfer eithrio'r sector rhag y rheolau cyffredinol ar gymorth gwladwriaethol (gwasanaethau trafnidiaeth teithwyr cyhoeddus ar y ffyrdd a'r rheilffyrdd), gan ryddhau'r awdurdodau cyhoeddus rhag gorfod cael cymeradwyaeth cymorth gwladwriaethol ymlaen llaw gan y Comisiwn bob tro y telir iawndal i weithredwr gwasanaeth cyhoeddus, cyn belled â bod yr iawndal yn cydymffurfio â gofynion Rheoliad 1370/2007.

Diben y diwygiadau

Mae Rheoliad (EC) rhif 1370/2007 Senedd Ewrop a'r Cyngor dyddiedig 23 Hydref 2007 ar wasanaethau trafnidiaeth teithwyr cyhoeddus ar y ffyrdd a'r rheilffyrdd (''Rheoliad 1370/2007'') yn cynnwys nifer o ddarpariaethau a fydd yn ddiffygiol pan ddaw'r Rheoliad yn gyfraith yr UE a gadwyd ar ôl i'r Deyrnas Unedig ymadael â'r Undeb Ewropeaidd.

Pwrpas y diwygiadau hyn yw cywiro'r diffygion hyn. Mae'r offeryn yn cynnwys hefyd ddarpariaethau trosiannol a darpariaethau arbed i sicrhau bod y ddeddfwriaeth yn gweithio'n effeithiol ar ôl y diwrnod ymadael.

Mae'r OS a'r Memorandwm Esboniadol sy'n mynd gydag ef, sy'n nodi effaith y diwygiad hwn i'w gweld yma: https://www.gov.uk/eu-withdrawal-act-2018-statutory-instruments/the-regulation-ec-no-1370-2007-public-service-obligations-amendment-eu-exit-regulations-2019

Materion o ddiddordeb arbennig i'r Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol

Mae'r offeryn yn darparu ar gyfer arbed Erthygl 5 o Reoliad 1370/2007 gan ddefnyddio'r pwerau a roddir yn adran 23(6) a pharagraff 23(3) Atodlen 7 Deddf yr UE (Ymadael) 2018. Y mae wedyn yn darparu bod Erthygl 5 ynghyd â gweddill y Rheoliad yn "gyfraith yr UE a gadwyd", gan ddefnyddio'r pŵer ym mharagraff 23(5) Atodlen 7.

Mae Erthygl 5 yn rhoi pŵer cyfyngedig i ddyfarnu masnachfreintiau'n uniongyrchol heb gystadleuaeth gaffael lawn. Darpariaeth sy'n benodol i'r sector hwn yw hon, sy'n adlewyrchu'r angen i sicrhau parhad trafnidiaeth gyhoeddus, gan gynnwys mewn sefyllfaoedd brys. Fodd bynnag, oherwydd y gydberthynas rhwng geiriad Erthygl 8 o Reoliad 1370/2007 (fel y'i diwygiwyd yn ddiweddar gan Reoliad (UE) 2016/2338) ac adran 3(3) Deddf yr UE (Ymadael) 2018, ni fydd Erthygl 5 yn gyfraith yr UE a gadwyd o dan adran 3 Deddf yr UE (Ymadael) 2018.

Mae Adran 3 Deddf yr UE (Ymadael) 2018 yn ymgorffori deddfwriaeth uniongyrchol yr UE cyn belled â'i bod yn weithredol (''operative'') yn union cyn y diwrnod ymadael. Tan 24 Rhagfyr 2017, roedd Erthygl 5 yn weithredol yn unol ag ystyr Deddf yr UE (Ymadael) 2018, ond nid oes gorfodaeth ar aelod-wladwriaethau i gydymffurfio'n llawn â'i thelerau tan 3 Rhagfyr 2019. Fodd bynnag, yn sgil y diwygiad i Reoliad 1370/2007 a ddaeth i rym ar 24 Rhagfyr 2017, newidiwyd geiriad y ddarpariaeth drosiannol berthnasol yn Erthygl 8(2), gan ddarparu y dylai Erthygl 5 ond bod yn gymwys (''apply'') o 3 Rhagfyr 2019. Ni fydd Erthygl 5 felly yn weithredol yn unol ag ystyr adran 3 Deddf Ymadael â'r UE ar y diwrnod ymadael.

Fodd bynnag, mae Erthygl 8(2) yn parhau i roi'r rhwymedigaeth ar awdurdodau cymwys i gydymffurfio'n raddol ag Erthygl 5 ac y caiff y ddarpariaeth "weithredol" ei chadw'n ôl mewn cyfraith ddomestig ar y diwrnod ymadael. Mae hyn yn creu bwlch yn y ddeddfwriaeth gan greu ansicrwydd cyfreithiol, gan y bydd gofyn i awdurdodau cymwys weithio i ateb gofynion nad ydynt wedi'u nodi yn ddeddfwriaeth. Felly. fe'i ystyrir yn briodol arbed Erthygl 5 i sicrhau bod Rheoliad 1370/2007 yn parhau i weithio'n effeithiol ac i gael gwared ar yr ansicrwydd hwn. Fel y nodwyd uchod, gwneir hyn trwy arbed Erthygl 5 fel "cyfraith yr UE a gadwyd" o dan adran 23(6) a pharagraff 23(3) a (5) Atodlen 7 Deddf Ymadael yr UE.

Mae'r offeryn hefyd yn cywiro diffygion technegol yn Erthygl 5 (fel cyfraith yr UE a gadwyd) o dan adran 8(1).

Pam y rhoddwyd cydsyniad

Nid oes gwahaniaeth rhwng Llywodraeth Cymru a Llywodraeth y DU o ran y polisi sy'n gysylltiedig â'r diwygio, ac nid yw sylwedd y diwygiadau'n sensitif yn wleidyddol.

Fodd bynnag, ceir pryderon sylweddol ynghylch y trywydd y mae Llywodraeth y DU wedi'i fabwysiadu o dan **Reoliadau Cymorth Gwladwriaethol (Ymadael â'r UE) 2019** ynghyd â'r offeryn statudol cysylltiedig, gan gynnwys **Rheoliadau Rheoliad (EC) rhif 1370/2007 (Rhwymedigaethau Gwasanaeth Cyhoeddus mewn Trafnidiaeth) (Diwygio) (Ymadael â'r UE) 2019.**

Serch hynny, rydym yn sylweddoli bod angen sicrhau bod y llyfr statud yn weithredol ar y diwrnod ymadael, ac yn cydnabod bod y cywiriadau i'r ddeddfwriaeth sy'n sail i drefn masnachfraint y rheilffyrdd a sefydlwyd gan yr OS hwn yn hanfodol er mwyn i'r gwasanaethau rheilffyrdd ar draws y DU allu parhau.

At hynny, mae trafodaethau'n mynd rhagddynt â swyddogion yr Adran Fusnes, Ynni a Strategaeth Ddiwydiannol i ddatblygu Memorandwm Cyd-ddealltwriaeth ar gyfer rhedeg system cymorth gwladwriaethol ar gyfer y DU yn gyfan.

Mae'n glir i ni fodd bynnag bod y terfynau amser sydd ar ein gwarthaf yn cyfyngu ar sgôp unrhyw negodi ar y pwnc cymhleth hwn sydd wedi para heb ei ddatrys ers blynyddoedd lawer. Rydym am fod yn bragmatig yn hyn o beth er mwyn diogelu pobl a chaniatáu'r OS am nad oes gwahaniaeth o ran polisi ac y bydd yn lleddfu'n pryderon. Nid yw hyn yn rhagfarnu'n safbwynt am gymhwysedd deddfwriaethol mewn cysylltiad â chymorth gwladwriaethol.

UK MINISTERS ACTING IN DEVOLVED AREAS

125 - The Regulation (EC) No 1370/2007 (Public Service Obligations In Transport) (Amendment) (EU Exit) Regulations 2019

Laid in the UK Parliament: 28 January 2019

Sifting	
Subject to sifting in UK Parliament?	Yes
Procedure:	Proposed negative
Date of consideration by the House of Commons European Statutory Instruments Committee	12 February 2019
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	w/c 11 February 2019
Date sifting period ends in UK Parliament	18 February 2019
Written statement under SO 30C:	Paper 40
SICM under SO 30A (because amends primary legislation)	Not required
Scrutiny procedure	
Outcome of sifting	Not known
Procedure	Negative or Affirmative
Date of consideration by the Joint Committee on Statutory Instruments	Not known
Date of consideration by the House of Commons Statutory Instruments Committee	Not known
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	Not known

Commentary

These Regulations are proposed to be made by the UK Government under sections 8(1) and 23(6) of, and paragraphs 21 and 23(3) and (5) of Schedule 7 to, the European Union (Withdrawal) Act 2018.

Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road ("Regulation 1370/2007") contains a number of provisions which would be deficient when the Regulation becomes retained EU law following the United Kingdom's departure from the European Union.

The purpose of these amendments is to correct these deficiencies. The instrument also includes transitional provisions and savings provisions to ensure the legislation operates effectively after exit day.

Given the Welsh Government and the UK Government have different views as to whether State aid and, consequently, Public Service Obligations in Transport, are devolved, Members may wish to consider writing to the Secondary Legislation Scrutiny Committee of the House of Lords to make observations.

Legal Advisers agree with the statement laid by the Welsh Government dated 14 March 2019 regarding the effect of these Regulations.

It is also worth noting how helpful the Counsel General's letter to the Committee dated 8 March 2019 has been in setting out the particularly complex status of Public Service Obligations legislation.

The above summary and the content of the Explanatory Memorandum to these Regulations confirm their effect and the extent to which these Regulations would enact new policy in devolved areas.

Legal Advisers draw the Committee's attention to the following issues in relation to paragraph 8 of the Memorandum on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks:

Public Services Obligations legislation links very closely to State aid legislation. As the Committee is aware, there have been recent disagreements between the Welsh Government and the UK Government as to whether State aid is devolved. Given that Public Services Obligations legislation links so closely with State aid, it is no surprise that similar disagreement arises in respect of these Regulations.

We note the Welsh Government has nevertheless consented to the UK Government making these Regulations, taking a pragmatic approach to ensure that the law and rail services operate effectively on exit, with discussions continuing around developing a Memorandum of Understanding in this area of law.

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Y Cwnsler Cyffredinol a Gweinidog Brexit
Counsel General and Brexit Minister

Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: MA-L/KS/0051/19

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8 Mawrth 2019

Annwyl Mick

Yn dilyn fy llythyr ar 25 Ionawr am ymateb Gweinidogion Cymru pan osodwyd y Rheoliadau Cymorth Gwladwriaethol (Ymadael â'r UE) gan Lywodraeth y DU yn Senedd y DU, rwy'n ysgrifennu atoch i'ch hysbysu am safbwynt Llywodraeth Cymru o ran yr Offeryn Statudol cysylltiedig: **Rheoliadau Rheoliad (EC) rhif 1370/2007 (Rhwymedigaethau Gwasanaeth Cyhoeddus mewn Trafnidiaeth) (Diwygio) (Ymadael â'r UE) 2019** ('OS y PSO').

Fel y gwyddoch, gosodwyd **Rheoliadau Cymorth Gwladwriaethol (Ymadael â'r UE) 2019** gan yr Adran Fusnes, Ynni a Strategaeth Ddiwydiannol yn Senedd y DU ar 21 Ionawr. Yn ein barn ni, nid yw cymorth gwladwriaethol yn fater sydd wedi'i gadw'n ôl ac o dan delerau'r Cytundeb Rhynglywodraethol, rydym yn credu y dylid bod wedi gofyn i Weinidogion Cymru am eu caniatâd cyn gosod yr offeryn. Hefyd, rydym yn siomedig nad yw'r rheoliadau, fel y maent wedi eu gosod, yn darparu ar gyfer gwneud penderfyniadau drwy gydsyniad rhwng y naill a'r llall ac nad ydynt yn darparu trefniant Cymorth Gwladwriaethol sydd wir yn eiddo i bob un o'r pedair Llywodraeth yn y DU.

Mae ein barn am gymorth gwladwriaethol yn effeithio ar OS y PSO. Mae Rheoliad 1370/2007 yn pennu'r amodau ar gyfer digolledu gweithredwyr rhwymedigaethau gwasanaeth cyhoeddus (PSO) am y costau y maent yn eu hysgwyddo wrth gynnal eu rhwymedigaethau gwasanaeth cyhoeddus. Mae Rheoliad 1370 yn darparu ar gyfer eithrio'r sector rhag y rheolau cyffredinol ar gymorth gwladwriaethol (gwasanaethau trafnidiaeth teithwyr cyhoeddus ar y ffyrdd a'r rheilffyrdd), gan ryddhau'r awdurdodau cyhoeddus rhag gorfod cael cymeradwyaeth cymorth gwladwriaethol ymlaen llaw gan y Comisiwn bob tro y telir iawndal i weithredwr gwasanaeth cyhoeddus, cyn belled â bod yr iawndal yn cydymffurfio â gofynion Rheoliad 1370/2007.

Serch hynny, rydym yn sylweddoli bod angen sicrhau bod y llyfr statud yn weithredol ar y diwrnod ymadael, ac yn cydnabod bod y cywiriadau i'r ddeddfwriaeth sy'n sail i drefn masnachfraint y rheilffyrdd a sefydlwyd gan yr OS hwn yn hanfodol er mwyn i'r gwasanaethau rheilffyrdd ar draws y DU allu parhau.

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

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At hynny, mae trafodaethau'n mynd rhagddynt â swyddogion yr Adran Fusnes, Ynni a Strategaeth Ddiwydiannol i ddatblygu Memorandwm Cyd-ddealltwriaeth ar gyfer rhedeg system cymorth gwladwriaethol ar gyfer y DU yn gyfan.

Mae'r Adran Drafnidiaeth wedi'n hysbysu ni y bu'n rhaid gosod yr OS ar gyfer sifftio ar 28 Ionawr er mwyn cael digon o amser iddo ddod i rym ar y diwrnod ymadael pe bai'r pwyllgorau sifftio yn penderfynu y dylai'r OS ddilyn y drefn gadarnhaol. Fodd bynnag, mae'r Memorandwm Esboniadol yn datgan na chaiff yr offeryn ei wneud heb ganiatâd Gweinidogion Cymru.

Mae'n glir i ni fod y terfynau amser eithriadol sydd ar ein gwarthaf yn cyfyngu ar sgôp unrhyw negodi ar y pwnc cymhleth hwn sydd wedi para heb ei ddatrys ers blynyddoedd lawer. Rydym felly yn fodlon bod yn bragmatig yn hyn o beth er mwyn diogelu pobl a chaniatáu'r OS yn ei gyfanrwydd am nad oes gwahaniaeth o ran polisi rhyngom ac y byddai'n lleddfu pryderon yr Awdurdodau Datganoledig. Nid yw hyn, serch hynny, yn rhagfarnu'n safbwynt am gymhwysedd deddfwriaethol mewn cysylltiad â chymorth gwladwriaethol.

Mae Gweinidog yr Economi a Thrafnidiaeth wedi ysgrifennu at yr Is-ysgrifennydd Gwladol Seneddol dros Drafnidiaeth, Andrew Jones AS, sy'n gyfrifol am yr OS hwn, i gyfleu'r farn hon a bydd trafodaethau'n para rhwng y ddwy weinyddiaeth.

Byddwn yn hysbysu Aelodau'r Cynulliad am hyn trwy ddatganiad ysgrifenedig cyn hir.

Yn gywir

Jeremy Miles AC
Y Cwnsler Cyffredinol a Gweinidog Brexit
Counsel General and Brexit Minister

Mark Drakeford AC/AM
Prif Weinidog Cymru/First Minister of Wales

Llywodraeth Cymru
Welsh Government

Dai Rees AC
Cadeirydd, y Pwyllgor Materion Allanol a Deddfwriaeth Ychwanegol
Cynulliad Cenedlaethol Cymru
Caerdydd

20 Mawrth 2019

Annwyl David,

Rwyf yn ysgrifennu mewn ymateb i'ch llythyr ynghylch rôl y Cynulliad wrth ddeddfu ar gyfer Brexit.

Rwyf wedi nodi'ch cefnogaeth i'r adroddiad a gyhoeddwyd gan y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol. Rwyf hefyd wedi nodi'ch pryder ynghylch a oedd Offerynnau Statudol y DU yn creu polisïau newydd, y defnydd o pwerau cydredol a'r broses cydsyniad deddfwriaethol ar gyfer deddfwriaeth sylfaenol.

Amgaeaf y llythyr a anfonais at y Pwyllgor mewn ymateb i'r adroddiad cynnydd, sy'n nodi safbwynt y llywodraeth ar y pwyntiau a godwyd yn eich llythyr.

Cofion gorau,

Mark

MARK DRAKEFORD

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Cynulliad Cenedlaethol Cymru
Y Pwyllgor Cydraddoldeb, Llywodraeth Leol a Chymunedau

National Assembly for Wales
Equality, Local Government and Communities Committee

Llywydd

20 Mawrth 2019

Diwygio'r Cynulliad: Ariannu'r Comisiwn Etholiadol a'i atebolrwydd ar gyfer etholiadau datganoledig

Annwyl Elin

Yn dilyn eich gohebiaeth ym mis Rhagfyr 2018, a'n cyfarfod ym mis Ionawr, trafododd y pwyllgor y posibilrwydd o edrych ar y drefn o ran ariannu'r Comisiwn Etholiadol a'i atebolrwydd ar gyfer etholiadau datganoledig yng Nghymru. Fodd bynnag, wrth ystyried ein blaenraglen waith yn gyffredinol, penderfynodd y pwyllgor beidio â gwneud hynny oherwydd ei lwyth gwaith deddfwriaethol trwm a'r gwaith polisi arall a gynlluniwyd.

Diolch am godi'r materion hyn gyda'r pwyllgor.

Rwy'n anfon copi o'r llythyr hwn at Gadeirydd y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol.

Yn gywir

John

John Griffiths

Croesewir gohebiaeth yn Gymraeg neu'n Saesneg.

We welcome correspondence in Welsh or English

Copi at: Mick Antoniw AC, Cadeirydd y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol

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Counsel General and Brexit Minister

Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: CG/05038/19

Mick Antoniw AM
Chair
Constitutional and Legislative Affairs Committee
National Assembly for Wales
SeneddCLA@assembly.wales

20 March 2019

Dear Mick

Thank you for your letter of 6 February on The State Aid (EU Exit) Regulations 2019, and for your support in this matter.

I have noted that you wrote to the House of Lords Secondary Legislation Scrutiny Committee, the House of Lords Constitution Committee, and the House of Commons Public Administration and Constitutional Affairs Committee. Thank you for sharing the response you received with us. This seems helpful and I await to hear the UK Government's response.

You requested that I provide the Committee with an update when I am in a position to do so. You will have seen that there have been two further UK EU Exit SIs which are connected to the wider State aid issue, and you have received letters about these SIs.

As you have seen, our consent was not sought for The State Aid (Agriculture and Fisheries) (Amendment) (EU Exit) Regulations 2019. For this SI we adopted the same approach as for The State Aid (EU Exit) Regulations 2019. The Minister for Environment, Energy and Rural Affairs wrote to the Secretary of State setting out our position regarding State aid, and our disappointment that the systems established under the SI did not fully reflect devolution.

Our consent was sought for The Regulation (EC) No 1370/2007 (Public Service Obligations in Transport) (Amendment) (EU Exit) Regulations 2019. The substance of this SI is the provision of public transport, but it is intrinsically linked to the wider State aid regime. After much consideration, we gave consent to this SI on the basis that it was primarily concerned with public transport, but also took the opportunity to reiterate our position on the wider issues around the administration of State aid. My letter on this SI set out the basis on which consent was given.

The Minister for Economy and Transport has since received a letter from the Secretary of State for Business, Energy and Industrial Strategy regarding State aid. In this letter he

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reiterates that State aid is reserved, but acknowledges that there is a difference of opinion on whether the regulation of State aid is reserved.

The letter also notes that there is no difference of opinion between our administrations on the current policy adopted in relation to State aid, and we concur with that.

The letter also gave further reassurance that, in bringing the EU State aid rules into UK law through the Regulations under the EU (Withdrawal) Act 2018, the substantive rules will be frozen as they stand at exit day. The powers currently held by the European Commission to make and amend block exemption and de minimis regulations will not be brought into the domestic regime. There is limited scope, therefore, to depart from mirroring the EU State aid regime using powers in the Regulations.

The letter also committed that, in the longer term, the UK Government will work closely with the Welsh Government and the other devolved administrations on the development of State aid policy. This includes continued engagement between officials and facilitating input on policy development, though this work will be strongly influenced by the negotiations with the EU on the Future Economic Partnership. The letter also restated the aim of concluding a Memorandum of Understanding on State aid.

Therefore, we are reassured that there is still scope to resolve the ongoing dispute between our administrations to reflect devolution in the medium to longer term, and will continue working with the UK Government towards that end.

Yours sincerely

Jeremy Miles AM
Y Cwnsler Cyffredinol a Gweinidog Brexit
Counsel General and Brexit Minister

Rebecca Evans AC/AM
Y Gweinidog Cyllid a'r Trefnydd
Minister for Finance and Trefnydd

Llywodraeth Cymru
Welsh Government

Eich cyf/Your ref
Ein cyf/Our ref

Mick Antoniw AC
Cadeirydd
Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol
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21 Mawrth 2019

Annwyl Mick

Diolch ichi am eich llythyr ynghylch Rheoliadau Maeth (Diwygio etc.) (Ymadael â'r UE) 2019.

Rydym yn nodi'r ymholiadau yn eich llythyr, dyddiedig 1 Mawrth 2019. Ystyriwn eu bod wedi eu trin yn y llythyr diweddar i chi gan y Prif Weinidog, dyddiedig 11 Mawrth 2019.

Yn gywir

Rebecca Evans.

Rebecca Evans AC/AM
Y Gweinidog Cyllid a'r Trefnydd
Minister for Finance and Trefnydd

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Mae cyfyngiadau ar y ddogfen hon

Eitem 9

CYNULLIAD CENEDLAETHOL CYMRU

PWYLLGOR MATERION CYFANSODDIADOL A DEDDFWRIAETHOL

BIL SENEDD AC ETHOLIADAU

Ystyriaeth Cyfnod 1

Sylwadau gan yr Athro Keith Bush CF

Cyflwyniad

1. Mae'r awdur yn Athro Anrhydeddus yn ysgol gyfraith Prifysgol Abertawe[1]. Mae'n arbenigo mewn pynciau cyfraith gyhoeddus ac yn croesawu'r cyfle i gyfrannu at ystyriaeth Cyfnod 1 o Fil Senedd ac Etholiadau (Cymru). Rhoddir crynodeb isod o'i sylwadau ar agweddau cyfreithiol a chyfansoddiadol darpariaethau'r Bil. Bydd yn medru manylu arnynt pe dymunai'r Pwyllgor iddo wneud hynny.

Enw Cynulliad Cenedlaethol Cymru

2. Nid oes unrhyw reswm *cyfreithiol* pam fod angen newid enw Cynulliad Cenedlaethol Cymru. Mae'r enw presennol yn cyflawni'r swyddogaeth o ddarparu enw clir a diamwys i'r sefydliad. Ond derbynnir bod yna resymau eraill a all gyfiawnhau newid yn yr enw, sef:
   - Tanlinellu'r gwahaniaeth o ran strwythur a swyddogaethau rhwng y sefydliad presennol a'r corff corfforaethol unedig, gyda swyddogaethau gweithredol yn unig (y "Cynulliad"), a sefydlwyd gan Ddeddf Llywodraeth Cymru 1998;
   - Gwella dealltwriaeth y cyhoedd o natur a gwaith y sefydliad, sydd bellach (ers i Ddeddf Llywodraeth Cymru 2006 ddod i rym) yn gorff deddfwriaethol yn debyg, o ran ei natur, i Senedd San Steffan a Senedd yr Alban;
   - Adlewyrchu, trwy'r enw newydd, statws dyrchafedig yr iaith Gymraeg newn Cymru ddatganoledig.

3. Rhaid cydnabod nad yw'r tri amcan uchod o angenrheidrwydd yn hollol gyson a'i gilydd. Mae bron pawb yng Nghymru a thu hwnt yn deall natur "Parliament". Mae'r enw hwnnw'n cydfynd ag enwau cyrff sy'n arfer swyddogaethau tebyg ar lefel y Deyrnas Unedig, yn yr Alban ac yng ngwledydd eraill o fewn y Gymanwlad. Ond mae "Senedd" yn air am "Parliament" mewn iaith sy'n cael ei deall, ar hyn o bryd, gan dim ond tua un allan o bump o boblogaeth Cymru.

[1] Gweler Atodiad 2 am ragor o wybodaeth am yr awdur.

4. Wrth gwrs, byddai defnydd o'r enw "Senedd" fel y ffordd arferol o gyfeirio at y sefydliad, yn y ddwy iaith, yn dod yn gyfarwydd o fewn amser. Erbyn hyn does dim rheswm i gredu bod gan boblogaeth di-Wyddeleg Iwerddon unrhyw drafferth i ddeall natur a swyddogaeth yr "Oireachtas".

5. **Ond nid yw'r awdur yn credu bod mabwysiadu'r enw "Senedd", ar ben ei hun, yn synhwyrol yn achos Cymru. Mae'n credu'n gryf mai "Senedd Cymru" dylai'r enw fod.**

6. Hyd yn oed yn achos Iwerddon, enwau swyddogol (o dan gyfansoddiad Iwerddon) dau dy'r Oireachtas yw "Dáil Éireann" a "Seanad Éireann". Mae hynny er gwaethaf y ffaith mai dim ond un ddeddfwrfa sy'n gweithredu yng ngweriniaeth Iwerddon a bod gair Gwyddeleg hollol wahanol sef "Parlaimint" yn cael ei ddefnyddio ar gyfer seneddau San Steffan, Holyrood a Stasbourg / Brwsel.

7. Ac o fewn systemau ffederal neu led-ffederal, lle bo deddfwrfeydd yn gweithredu ochr yn ochr a'i gilydd, ar lefelau gwahanol, yr arferiad yw defnyddio terminoleg sy'n gwahanu'n glir rhyngddynt. Gall hynny fod ar sail defnyddio termau hollol wahanol. Yng Nghanada ceir Senedd Canada ond Cynulliad Deddfwriaethol Ontario ac Assemblée Nationale Québec. Yn yr Almaen ceir y Deutsche Bundestag a'r Bayerischer Landtag. Neu gellid defnyddio'r un enw ond gan ddynodi awdurdodaeth ddaearyddol y ddeddfwrfa. Yn Awstralia ceir Senedd Awstralia a Senedd Queensland, Senedd Tasmania, ac yn y blaen.

8. Yn achos y Deyrnas Unedig mae'r angen i addasu defnydd o'r term "Senedd" wrth gyfeirio at sefydliad gwahanol i senedd San Steffan yn cael ei atgyfnerthu gan y ffaith mai senedd San Steffan oedd yr unig un (heblaw am gyfnod Senedd Gogledd Iwerddon rhwng 1922 a 1972) a oedd yn bodoli o fewn y wladwriaeth cyn 1999. Mae cyfeiriadau at "y Senedd" yn Gymraeg yn cael eu cymryd yn naturiol, ar hyn o bryd, fel cyfeiriadau at senedd San Steffan. Y senedd honno, wrth gwrs, yw'r unig senedd ar gyfer Lloegr o hyd. Bydd yr arfer o gyfeirio, yn y cyfryngau ac mewn dogfennau cyfreithiol, gweinyddol a masnachol, at senedd y Deyrnas Unedig fel "y Senedd" yn debyg o barhau. Bydd angen, yn ymarferol, cyfeirio'n aml yn Gymraeg, ar lafar ac mewn ysgrifen, at "Senedd Cymru". Os daw "Senedd Cymru", mewn gwirionedd, yn ffordd arferol o gyfeirio at y sefydliad, o leiaf mewn un iaith, byddai eglurdeb a chysondeb yn cael eu cryfhau pe bai hwnnw hefyd yn enw cyfreithiol arno

9. Ar y llaw arall, nid yw'r awdur yn gweld unrhyw angen *ymarferol*, os bydd "Senedd Cymru" yn cael ei fabwysiadu fel enw swyddogol y sefydliad, i awdurdodi'n swyddogol defnydd o'r term amgen "Welsh Parliament". Diau y bydd cyfeiriadau anffurfiol mynych yn cael eu gwneud yn y cyfryngau ac yn y blaen at "Senedd Cymru (the Welsh parliament)". Ond byddai rhoi statws cyfreithiol i'r enw "Welsh Parliament" yn gwanháu effaith pwysleisio safle'r Gymraeg fel yr iaith genedlaethol hanesyddol, os dyna yw nod pennaf y newid enw. Petai teimlad cryf na ddylai enw uniaith Gymraeg gael ei mabwysiadu byddai'n fwy rhesymegol i fabwysiadu, yn syml, enw dwyieithog, gyda "Senedd Cymru" a "Welsh Parliament" yn cael eu defnyddio'n gyson yn y ddwy iaith. Mae'r awdur yn pwysleisio, fodd bynnag, nad yw defnydd o "Oireachtas", "Dáil Éireann" a "Seanad Éireann" (nac o "Taoiseach" ar gyfer prif weinidog) fel petaent yn achosi unrhyw problemau ymarferol yn Iwerddon.

10. Yn naturiol, byddai "y Senedd" neu "the Senedd" yn dal i gael eu defnyddio, yn ymarferol, mewn llawer iawn o gyd-destunau, fel y defnyddir "the Parliament" yng nghyd-destun gweithdrefnau mewnol Senedd yr Alban. Er enghraifft, mae Rheolau Sefydlog y senedd honno'n cychwyn trwy ddatgan bod Senedd yr Alban wedi'i sefydlu gan Ddeddf yr Alban 1998 ond wedyn yn mynd ymlaen i gyfeirio'n gyson at "the Parliament".

11. Yn wir, ni fyddai angen defnyddio'r ymadrodd "Senedd Cymru" llawn yn Neddf Llywodraeth Cymru 2006, unwaith y byddai enw newydd y corff wedi'i bennu (gweler Atodlen 2 isod). Mae'r Deddf ar hyn o bryd yn cychwyn trwy bennu enw llawn y sefydliad ("National Assembly for Wales / Cynulliad Cenedlaethol Cymru") ond wedyn yn cyfeirio'n unig at "the Assembly".

12. Pe byddai "Senedd Cymru" yn cael ei fabwysiadu byddai enwau'r swyddi, cyrff a deddfiadau sy'n cynnwys enw'r sefydliad yn dilyn yr un patrwm yn naturiol:

- Deddfau Senedd Cymru / Acts of Senedd Cymru;
- Aelodau Senedd Cymru (ASC) / Members of Senedd Cymru (MSC);
- Clerc Senedd Cymru / Clerk of Senedd Cymru;
- Comisiwn Senedd Cymru / Senedd Cymru Commission;
- Bwrdd Taliadau Senedd Cymru / Senedd Cymru Remuneration Board;

- Comisiydd Safonau Senedd Cymru / Senedd Cymru Commissioner for Standards.

13. Mae Rhan 2 o'r Bil yn cymryd, ar hyn o bryd, ffurf darpariaethau deddfwriaethol sy'n sefyll ar eu traed ei hun yn hytrach na diwygiadau i Ddeddf Llywodraeth Cymru 2006, er bod yr ail dull o weithredu yn cael ei ddefnyddio mewn perthynas â'r diwygiadau amrywiol a wneir gan Atodlen 1 i'r Bil er mwyn newid y cyfeiriadau lluosog yn Neddf 2006 at "Assembly" ac yn y blaen.

14. Mae'r awdur yn teimlo y byddai'n well, yn hytrach, i ddiwygio adran 1(1) o Ddeddf Llywodraeth Cymru 2006 i ddarllen:

> "(1) There is to be an Assembly for Wales to be known as Senedd Cymru (referred to in this Act as "the Senedd")."

(Byddai'r diwygiad hwnnw yn dod i rym ar ddiwedd y Cynulliad presennol.)

15. Rhoddir enghreifftiau o sut y byddai darpariaethau eraill yn Neddf 2006 yn newid yn Atodlen 1 i'r papur hwn

16. Mae angen hefyd ddiwygio, er mwyn eglurdeb ac effeithiorwydd, adran 150A o Ddeddf Llywodraeth Cymru 2006, sy'n delio gydag effaith newid enwau Cynulliad Cenedlaethol Cymru, y Comisiwn a Deddfau'r Cynulliad. Gellid diddymu is-adran (1) yn gyfan gwbl gan gadw is-adran (2) ond gan ei newid i "... is to be read as, or including, a reference to Senedd Cymru, the Senedd Cymru Commission or to an Act of Senedd Cymru (as the case may be)."

Etholiadau

17. Mater o bolisi yw gostwng yr oedran pleidleisio ar gyfer Senedd Cymru o 18 i 16 ac nid yw'r awdur yn dymuno gwneud unrhyw sylwadau arno.

Anghymhwyso

18. Mae'r awdur yn cymeradwyo'r newidiadau yn y drefn anghymwyso a fwriedir o dan Ran 4 o'r Bil. Maent yn adlewyrchu tystiolaeth a roddodd i Bwyllgor Cyfansoddiadol a Materion Deddfwriaethol y Pedwerydd Cynulliad yn 2014.

19. Awgrymir cadw rhestr o swyddi sydd, am resymau cyfansoddiadol, yn sylfaenol angydnaws â bod yn Aelod, ac felly'n anghymwyso rhag bod yn ymgeisydd (tra bod swyddi eraill yn caniatáu i rywun sefyll fel ymgeisydd ond yn eu gorfodi i gael gwared ar y swydd pe byddent yn cael eu hethol).

20. Mae'r drefn honno'n un synhwyrol a rhesymegol. Ond bydd angen bod yn ofalus i sicrhau cysondeb yn y dosraniad o swyddi. Nodir, er enghraifft, nad yw swydd Llywydd Tribiwnlysoedd Cymru'n ymddangos, ar hyn o bryd, yn y rhestr gyntaf er ei bod yn un sy'n gyfansoddiadol anghydnaws ag ymgeisyddiaeth i fod yn Aelod.

Amrywiol

21. Amseriad y cyfarfod cyntaf

Mae'r awdur yn cytuno y dylai'r cyfnod rhwng etholiad a chyfarfod cyntaf y Senedd fod yn ddim mwy na phedwar diwrnod ar ddeg yn hytrach na saith diwrnod. Mae angen cael digon o amser i'r pleidiau trafod, ym mhlith ei gilydd, pwy bydd yn ffurfio llywodraeth ac, yn sgil hynny, pwy ddylai dal swyddi'r Llywydd a'r Dirprwy Lywydd.

22. Pŵer Gweinidogion Cymru i wneud darpariaeth ynghylch etholiadau

Mae ehangder y pwerau ychwanegol a fyddai'n cael eu rhoi i Weinidogion Cymru gan adran 36 yn ymddangos ei fod yn mynd tu hwnt i'r hyn sy'n cael ei weld yn gyfansoddiadol dderbyniol. Dylai newidiadau pwysig i'r gyfraith, yn enwedig mewn perthynas â chyfraith etholiadol, fod yn agored i graffu deddfwriaethol llawn. Gall gweithdrefnau deddfwriaethol fod yn symlach, wrth gwrs, yn achos diwygiadau technegol a argymhellir gan Gomisiwn y Gyfraith ond dylid cadw rheolaeth drostynt, yn y pen draw, yn nwylo'r ddeddfwrfa.

23. Comisiwn y Senedd

Bydd adran 37 yn dileu unrhyw amheuaeth am sail cyfreithiol gweithgarwch sydd, wrth gwrs, eisoes yn digwydd i raddau a, thrwy hynny, yn rhyddhau'r Comisiwn i ddatblygu'r gweithgarwch hynny, o fewn ffiniau synhwyrol, fel bydd angen.

Keith Bush CF

Mawrth 2019

ATODIAD 2

Enghreifftiau o sut y byddai darpariaethau eraill yn Neddf 2006 yn newid yn unol ag awgrym yr awdur:

- Adran 1(3):

  "(3) Members of Senedd Cymru (referred to in this Act as "Senedd Members")...."

- Adran 26(1):

  "(1) The Senedd Commission must appoint a person to be Clerk of Senedd Cymru or Clerc Senedd Cymru (referred to in this Act as "the clerk")"

- Adran 27(1):

  "(1) There is to be a body corporate to be known as the Senedd Cymru Commission or Comisiwn Senedd Cymru.

- Adran 107:

  "The Senedd may make laws, to be known as Acts of Senedd Cymru or Deddfau Senedd Cymru (referred to in this Act as "Acts of the Senedd.").

- Adran 1(2):

  "(2) The Senedd is to consist of –

  (a) one member for each Senedd constituency (referred to in this Act as "Senedd constituency members"), and

  (b) members for each Senedd Assrembly electoral region (referred to in this Act as "Senedd regional members").

ATODIAD 2

Mae Keith Bush CF LLM (Llundain) yn fargyfreithiwr ac yn Athro Anrhydeddus yn ysgol gyfraith Hillary Rodham Clinton ym Mhrifysgol Abertawe. Mae hefyd yn Llywydd Tribiwnlys y Gymraeg, yn aelod o Bwyllgor Ymgynghorol Comisiwn y Gyfraith ar gyfer Cymru, yn aelod o bwyllgor Cyfraith Gyhoeddus Cymru ac yn Drysorydd Sefydliad Cymru'r Gyfraith.

Ar ôl gweithio fel Bargyfreithiwr yng Nghaerdydd am dros 20 mlynedd, ymunodd â gwasanaeth cyfreithiol Llywodraeth Cymru yn 1999, lle daeth yn Gwnsler Deddfwriaethol, gan arwain y tîm cyfreithiol a weithiodd ar nifer o Filiau'n ymwneud â Chymru, gan gynnwys yr un a ddaeth yn Ddeddf Llywodraeth Cymru 2006. O 2007 tan 2012, ef oedd prif gynghorydd cyfreithiol Cynulliad Cenedlaethol Cymru.

Mae ef wedi cyfrannu at y *Statute Law Review*, y *Cambrian Law Review*, *Wales Legal Journal*, *Journal of the Welsh Legal History Society* a'r *New Law Journal* ac mae'n darlithio'n aml ar faterion cyfraith gyhoeddus yn y Gymraeg a'r Saesneg. Mae wedi bod yn Gyfarwyddwr Modiwl ar gyfer dau fodiwl israddedig arloesol ym Mhrifysgol Abertawe ar Ddeddfwriaeth a'r Gyfraith Llywodraethiant Aml-lefel yn ogystal â chyfrannu at addysgu cyfraith gyhoeddus yn Gymraeg ac yn Saesneg. Mae'n awdur gwaith iaith Gymraeg ar gyfraith gyhoeddus- *'Sylfeini'r Gyfraith Gyhoeddus'* a gomisiynwyd gan Brifysgol Bangor a'r Coleg Cymraeg Cenedlaethol. Mae ei ddiddordebau addysgu ac ymchwil yn cynnwys cyfraith datganoli, gwladwriaethau ffederal a lled-ffederal a strwythurau cyfansoddiadol annhiriogaethol a hawliau cyfreithiol grwpiau ieithyddol a diwylliannol