

# Agenda – Y Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

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Lleoliad:	I gael rhagor o wybodaeth cysylltwch a:
Fideo gynadledda drwy Zoom	<b>Gareth Williams</b>
Dyddiad: Dydd Llun, 2 Tachwedd 2020	Clerc y Pwyllgor
Amser: 10.00	0300 200 6565
	<a href="mailto:SeneddDCC@senedd.cymru">SeneddDCC@senedd.cymru</a>

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Yn unol â Rheol Sefydlog 34.19, mae'r Cadeirydd wedi penderfynu gwahardd y cyhoedd o gyfarfod y Pwyllgor er mwyn diogelu iechyd y cyhoedd. Bydd y cyfarfod hwn yn cael ei ddarlledu'n fyw ar [www.Senedd.TV](http://www.Senedd.TV)

Rhag-gyfarfod anffurfiol (09.30–10.00)

- 1 Cyflwyniad, ymddiheuriadau, dirprwyon a datgan buddiannau**  
10.00
- 2 Memorandwm Cydsyniad Deddfwriaethol ar Fil Marchnad Fewnol y  
DU: Sesiwn dystiolaeth**  
10.00–11.00 (Tudalennau 1 – 109)  
Jeremy Miles AS, Cwnsler Cyffredinol  
Sophie Brighthouse, Dirprwy Gyfarwyddwr, Polisi, Llywodraeth Cymru  
Gareth McMahon, Uwch-Cyfreithiwr Llywodraeth, Llywodraeth Cymru

[Memorandwm Cydsyniad Deddfwriaethol](#)

CLA(5)–31–20 – Papur briffio

CLA(5)–31–20 – Papur 1 – Papur briffio gan Lywodraeth Cymru

CLA(5)–31–20 – Papur 2 – Nodyn cyngor cyfreithiol

CLA(5)–31–20 – Papur 3 – Gwasanaeth Ymchwil: Y wybodaeth ddiweddaraf am gynnydd y Bil yn Nhŷ'r Arglwyddi



CLA(5)-31-20 – Papur 4 – Gwasanaeth Ymchwil: Crynodeb diweddaraf o'r Bil  
CLA(5)-31-20 – Papur 5 – Llythyr gan Ysgrifennydd Gwladol Cymru, 3 Hydref  
2020

**3 Cynnig o dan Reol Sefydlog 17.42 i benderfynu gwahardd y  
cyhoedd o'r cyfarfod ar gyfer eitem 4**

11.00

**4 Memorandwm Cydsyniad Deddfwriaethol ar Fil Marchnad Fewnol y  
DU: Trafod y dystiolaeth**

11.00-11.15

Egwyl [11.15-11.20]

**5 Offerynnau negyddol arfaethedig nad ydynt yn cynnwys materion i  
gyflwyno adroddiad arnynt o dan Reol Sefydlog 21.3B**

11.20-11.25

(Tudalennau 110 – 111)

CLA(5)-31-20 – Papur 6 – Offerynnau statudol negyddol arfaethedig sydd ag  
adroddiadau clir

**5.1 pNeg(5)32 – Rheoliadau Cymwysterau Athrawon (Diwygio) (Cymru) (Ymadael  
â'r UE) 2020**

**5.2 pNeg(5)34 – Rheoliadau'r Amgylchedd (Diwygiadau Amrywiol) (Cymru)  
(Ymadael â'r UE) 2020**

**6 Offerynnau nad ydynt yn codi materion i gyflwyno adroddiad  
arnynt i'r Senedd o dan Reol Sefydlog 21.2 neu 21.3**

11.25-11.30

(Tudalen 112)

CLA(5)-31-20 – Papur 7 – Offerynnau statudol sydd ag adroddiadau clir  
Offerynnau'r weithdrefn penderfyniad negyddol

**6.1 SL(5)637 – Gorchymyn Cyflog ac Amodau Athrawon Ysgol (Cymru) 2020**

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

11.30–11.40

Offerynnau'r weithdrefn penderfyniad negyddol

### **7.1 SL(5)636 – Rheoliadau Diogelu Iechyd (Coronafeirws, Gwybodaeth Iechyd y Cyhoedd ar gyfer Personau sy'n Teithio i Gymru etc.) (Diwygio) 2020**

(Tudalennau 113 – 131)

CLA(5)–31–20 – Papur 8 – Adroddiad

CLA(5)–31–20 – Papur 9 – Rheoliadau

CLA(5)–31–20 – Papur 10 – Memorandwm Esboniadol

CLA(5)–31–20 – Papur 11 – Datganiad ysgrifenedig, 14 Hydref 2020

### **7.2 SL(5)639 – Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) (Diwygio) (Rhif 15) 2020**

(Tudalennau 132 – 145)

CLA(5)–31–20 – Papur 12 – Adroddiad

CLA(5)–31–20 – Papur 13 – Rheoliadau

CLA(5)–31–20 – Papur 14 – Memorandwm Esboniadol

CLA(5)–31–20 – Papur 15 – Llythyr gan y Gweinidog Cyllid a'r Trefnydd, 16 Hydref 2020

CLA(5)–31–20 – Papur 16 – Datganiad ysgrifenedig, 15 Hydref 2020

### **7.3 SL(5)642 – Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) (Diwygio) (Rhif 16) 2020**

(Tudalennau 146 – 162)

CLA(5)–31–20 – Papur 17 – Adroddiad

CLA(5)–31–20 – Papur 18 – Rheoliadau

CLA(5)–31–20 – Papur 19 – Memorandwm Esboniadol

CLA(5)–31–20 – Papur 20 – Llythyr gan y Gweinidog Cyllid a'r Trefnydd, 23 Hydref 2020

CLA(5)–31–20 – Papur 21 – Datganiad ysgrifenedig, 22 Hydref 2020

Offerynnau'r weithdrefn penderfyniad cadarnhaol 'gwnaed'

**7.4 SL(5)638 – Rheoliadau Diogelu Iechyd (Cyfyngiadau Coronafeirws) (Rhif 2)  
(Cymru) (Diwygio) (Rhif 19) 2020**

(Tudalennau 163 – 191)

CLA(5)–31–20 – Papur 22 – Adroddiad

CLA(5)–31–20 – Papur 23 – Rheoliadau

CLA(5)–31–20 – Papur 24 – Memorandwm Esboniadol

CLA(5)–31–20 – Papur 25 – Llythyr gan y Prif Weinidog, 16 Hydref 2020

CLA(5)–31–20 – Papur 26 – Datganiad ysgrifenedig, 16 Hydref 2020

**7.5 SL(5)641 – Rheoliadau Diogelu Iechyd (Cyfyngiadau Coronafeirws) (Rhif 3)  
(Cymru) 2020**

(Tudalennau 192 – 254)

CLA(5)–31–20 – Papur 27 – Adroddiad

CLA(5)–31–20 – Papur 28 – Rheoliadau

CLA(5)–31–20 – Papur 29 – Memorandwm Esboniadol

CLA(5)–31–20 – Papur 30 – Llythyr gan y Prif Weinidog, 21 Hydref 2020

CLA(5)–31–20 – Papur 31 – Datganiad ysgrifenedig, 19 Hydref 2020

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

11.40–11.45

**8.1 SL(5)607 – Rheoliadau Diogelu Iechyd (Cyfyngiadau Coronafeirws) (Rhif 2)  
(Cymru) (Diwygio) (Rhif 8) (Caerffili) 2020**

(Tudalennau 255 – 258)

CLA(5)–31–20 – Papur 32 – Adroddiad

CLA(5)–31–20 – Papur 33 – Ymateb gan Lywodraeth Cymru

**8.2 SL(5)611 – Rheoliadau Diogelu Iechyd (Cyfyngiadau Coronafeirws)  
(Swyddogaethau Awdurdodau Lleol) (Cymru) 2020**

(Tudalennau 259 – 265)

CLA(5)–31–20 – Papur 34 – Adroddiad

CLA(5)–31–20 – Papur 35 – Ymateb gan Lywodraeth Cymru



**8.3 SL(5)616 – Rheoliadau Diogelu Iechyd (Cyfyngiadau Coronafeirws)  
(Swyddogaethau Awdurdodau Lleol etc.) (Cymru) 2020**

(Tudalennau 266 – 270)

CLA(5)–31–20 – Papur 36 – Adroddiad

CLA(5)–31–20 – Papur 37 – Ymateb gan Lywodraeth Cymru

**8.4 SL(5)630 – Rheoliadau Mabwysiadu a Maethu (Cymru) (Diwygiadau Amrywiol)  
(Coronafeirws) 2020**

(Tudalennau 271 – 275)

CLA(5)–31–20 – Papur 38 – Adroddiad

CLA(5)–31–20 – Papur 39 – Ymateb gan Lywodraeth Cymru

**9 Is-ddeddfwriaeth sy'n cynnwys materion i gyflwyno adroddiad  
arnynt i'r Cynulliad o dan Reol Sefydlog 21.7**

11.45–11.50

Y weithdrefn penderfyniad cadarnhaol ar y cyd

**9.1 SL(5)635 – The Debt Respite Scheme (Breathing Space Moratorium and  
Mental Health Crisis Moratorium) (England and Wales) Regulations 2020  
(Cyflwynwyd yn Saesneg yn unig)**

(Tudalennau 276 – 361)

CLA(5)–31–20 – Papur 40 – Adroddiad

CLA(5)–31–20 – Papur 41 – Rheoliadau

CLA(5)–31–20 – Papur 42 – Memorandwm Esboniadol

**10 Offerynnau Statudol y mae angen cydsyniad y Senedd arnynt  
(Memoranda Cydsyniad Offerynnau Statudol)**

11.50–12.00

**10.1 SICM(5)31 – Rheoliadau Ymadael â'r Undeb Ewropeaidd (Addasiadau  
Canlyniadol) (Ymadael â'r UE) 2020**

(Tudalennau 362 – 398)

CLA(5)–31–20 – Papur 43 – Memorandwm Cydsyniad Offeryn Statudol

CLA(5)–31–20 – Papur 44 – Rheoliadau

CLA(5)–31–20 – Papur 45 – Memorandwm Esboniadol

CLA(5)–31–20 – Papur 46 – Datganiad ysgrifenedig

CLA(5)-31-20 – Papur 47 – Sylwebaeth

**10.2 SICM(5)32 – Rheoliadau Ansawdd a Diogelwch Organau y Bwriedir eu  
Trawsblannu (Diwygio) (Ymadael â'r UE) 2020**

(Tudalennau 399 – 423)

CLA(5)-31-20 – Papur 48 – Memorandwm Cydsyniad Offeryn Statudol

CLA(5)-31-20 – Papur 49 – Rheoliadau

CLA(5)-31-20 – Papur 50 – Memorandwm Esboniadol

CLA(5)-31-20 – Papur 51 – Llythyr gan y Gweinidog Iechyd a Gwasanaethau  
Cymdeithasol, 15 Hydref 2020

CLA(5)-31-20 – Papur 52 – Datganiad ysgrifenedig

CLA(5)-31-20 – Papur 53 – Sylwebaeth

**10.3 SICM(5)33 – Rheoliadau Caffael Cyhoeddus (Diwygio etc.) (Ymadael â'r UE)  
2020 sy'n cynnwys diwygiadau i adran 155(2) a (3) o Ddeddf Cydraddoldeb  
2010**

(Tudalennau 424 – 497)

CLA(5)-31-20 – Papur 54 – Memorandwm Cydsyniad Offeryn Statudol

CLA(5)-31-20 – Papur 55 – Rheoliadau

CLA(5)-31-20 – Papur 56 – Memorandwm Esboniadol

CLA(5)-31-20 – Papur 57 – Datganiad ysgrifenedig

CLA(5)-31-20 – Papur 58 – Sylwebaeth

**10.4 SICM(5)34 – Rheoliadau Polisi Pysgodfeydd Cyffredin (Diwygiadau etc)  
(Ymadael â'r UE) 2020**

(Tudalennau 498 – 559)

CLA(5)-31-20 – Papur 59 – Memorandwm Cydsyniad Offeryn Statudol

CLA(5)-31-20 – Papur 60 – Rheoliadau

CLA(5)-31-20 – Papur 61 – Memorandwm Esboniadol

CLA(5)-31-20 – Papur 62 – Llythyr gan Weinidog yr Amgylchedd, Ynni a  
Materion Gwledig, 22 Hydref 2020

CLA(5)-31-20 – Papur 63 – Datganiad ysgrifenedig

CLA(5)-31-20 – Papur 64 – Sylwebaeth

**10.5 SICM(5)35 – Rheoliadau Iechyd Planhigion (Diwygio etc) (Ymadael â'r UE)  
2020**

(Tudalennau 560 – 661)

**CLA(5)–31–20 – Papur 65 – Memorandwm Cydsyniad Offeryn Statudol**

**CLA(5)–31–20 – Papur 66 – Rheoliadau**

**CLA(5)–31–20 – Papur 67 – Memorandwm Esboniadol**

**CLA(5)–31–20 – Papur 68 – Llythyr gan Weinidog yr Amgylchedd, Ynni a  
Materion Gwledig, 22 Hydref 2020**

**CLA(5)–31–20 – Papur 69 – Datganiad ysgrifenedig**

**CLA(5)–31–20 – Papur 70 – Sylwebaeth**

**10.6 SICM(5)37 – Rheoliadau Gwastraff a Thrwyddedu Amgylcheddol etc.**

**(Swyddogaethau Deddfwriaethol a Diwygio etc.) (Ymadael â'r UE) 2020**

(Tudalennau 662 – 739)

**CLA(5)–31–20 – Papur 71 – Memorandwm Cydsyniad Offeryn Statudol**

**CLA(5)–31–20 – Papur 72 – Rheoliadau**

**CLA(5)–31–20 – Papur 73 – Memorandwm Esboniadol**

**CLA(5)–31–20 – Papur 74 – Llythyr gan Weinidog yr Amgylchedd, Ynni a  
Materion Gwledig, 27 Hydref 2020**

**CLA(5)–31–20 – Papur 75 – Datganiad ysgrifenedig**

**CLA(5)–31–20 – Papur 76 – Sylwebaeth**

**11 Datganiadau ysgrifenedig o dan Reol Sefydlog 30C**

12.00–12.15

**11.1 WS–30C(5)174 – Rheoliadau Llygryddion Organig Parhaus (Diwygio) (Ymadael  
â'r UE) 2020**

(Tudalennau 740 – 745)

**CLA(5)–31–20 – Papur 77 – Datganiad ysgrifenedig**

**CLA(5)–31–20 – Papur 78 – Sylwebaeth**

**11.2 WS–30C(5)175 – Rheoliadau Plaladdwyr (Diwygio) (Ymadael â'r UE) 2020**

(Tudalennau 746 – 752)

**CLA(5)–31–20 – Papur 79 – Datganiad ysgrifenedig**

**CLA(5)–31–20 – Papur 80 – Sylwebaeth**

**11.3 WS-30C(5)177 – Rheoliadau Sylweddau sy'n Teneuo'r Osôn a Nwyon Tŷ  
Gwydr wedi'u Fflworeiddio (Diwygiadau etc.) (Ymadael â'r UE) 2020**

(Tudalennau 753 – 757)

CLA(5)-31-20 – Papur 81 – Datganiad ysgrifenedig

CLA(5)-31-20 – Papur 82 – Sylwebaeth

**11.4 WS-30C(5)178 – Rheoliadau Cymorth Gwladwriaethol (Dirymu etc) (Ymadael  
â'r UE) 2020**

(Tudalennau 758 – 764)

CLA(5)-31-20 – Papur 83 – Datganiad ysgrifenedig

CLA(5)-31-20 – Papur 84 – Sylwebaeth

**11.5 WS-30C(5)179 – Rheoliadau Diogelwch ac Ansawdd Gwaed (Diwygio)  
(Ymadael â'r UE) 2020**

(Tudalennau 765 – 768)

CLA(5)-31-20 – Papur 85 – Datganiad ysgrifenedig

CLA(5)-31-20 – Papur 86 – Sylwebaeth

**11.6 WS-30C(5)181 – Rheoliadau Meinweoedd Dynol (Ansawdd a Diogelwch at  
Ddefnydd mewn Bodau Dynol) (Diwygio) (Ymadael â'r UE) 2020**

(Tudalennau 769 – 772)

CLA(5)-31-20 – Papur 87 – Datganiad ysgrifenedig

CLA(5)-31-20 – Papur 88 – Sylwebaeth

**11.7 WS-30C(5)182 – Rheoliadau Organebau a Addaswyd yn Enetig (Diwygio)  
(Ymadael â'r UE) 2020**

(Tudalennau 773 – 778)

CLA(5)-31-20 – Papur 89 – Datganiad ysgrifenedig

CLA(5)-31-20 – Papur 90 – Sylwebaeth

**11.8 WS-30C(5)183 – Rheoliadau Cynnyrch Organig (Cynhyrchu a Rheoli)  
(Diwygio) (Ymadael â'r UE) 2020**

(Tudalennau 779 – 782)

CLA(5)-31-20 – Papur 91 – Datganiad ysgrifenedig

CLA(5)-31-20 – Papur 92 – Sylwebaeth

**11.9 WS-30C(5)184 – Rheoliadau Hylendid a Diogelwch Bwyd a Bwyd Anifeiliaid  
(Diwygiadau Amrywiol) (Ymadael â'r UE) 2020**

(Tudalennau 783 – 793)

CLA(5)-31-20 – Papur 93 – Datganiad ysgrifenedig

CLA(5)-31-20 – Papur 94 – Sylwebaeth

**11.10 WS-30C(5)186 – Rheoliadau Iechyd Planhigion (Cyflyrau Ffytoiechydol)  
(Diwygio) (Ymadael â'r UE) 2020**

(Tudalennau 794 – 797)

CLA(5)-31-20 – Papur 95 – Datganiad ysgrifenedig

CLA(5)-31-20 – Papur 96 – Sylwebaeth

**11.11 WS-30C(5)189 – Rheoliadau Rheoli Mercwri (Diwygio) (Ymadael â'r UE) 2020**

(Tudalennau 798 – 803)

CLA(5)-31-20 – Papur 97 – Datganiad ysgrifenedig

CLA(5)-31-20 – Papur 98 – Sylwebaeth

**11.12 WS-30C(5)190 – Rheoliadau REACH etc. (Diwygio etc.) (Ymadael â'r UE)  
2020**

(Tudalennau 804 – 808)

CLA(5)-31-20 – Papur 99 – Datganiad ysgrifenedig

CLA(5)-31-20 – Papur 100 – Sylwebaeth

**12 Cytundeb Cysylltiadau Rhyngsefydliadol rhwng y Senedd a  
Llywodraeth Cymru: Adroddiad Blynyddol**

12.15-12.20

(Tudalennau 809 – 817)

CLA(5)-31-20 – Papur 101 – Cytundeb Cysylltiadau Rhyngsefydliadol rhwng

y Senedd a Llywodraeth Cymru, Adroddiad Blynyddol 2019–2020  
CLA(5)–31–20 – Papur 102 – Datganiad ysgrifenedig, 26 Hydref 2020

### **13 Papurau i'w nodi**

12.20–12.25

#### **13.1 Llythyr at y Llywydd: Craffu ar reoliadau Covid-19**

(Tudalennau 818 – 820)

CLA(5)–31–20 – Papur 103 – Llythyr at y Llywydd, 22 Hydref 2020

#### **13.2 Llythyr gan Gadeirydd y Pwyllgor Newid Hinsawdd, Amgylchedd a Materion Gwledig at y Gweinidog Tai a Llywodraeth Leol: Y Cytundeb Amlinellol Fframwaith drafft ar gyfer Cynllunio o ran Sylweddau Peryglus**

(Tudalennau 821 – 824)

CLA(5)–31–20 – Papur 104 – Llythyr gan Gadeirydd y Pwyllgor Newid Hinsawdd, Amgylchedd a Materion Gwledig, 26 Hydref 2020

#### **13.3 Llythyr gan y Cwnsler Cyffredinol: Drafftio Biliau Cymru**

(Tudalennau 825 – 828)

CLA(5)–31–20 – Papur 105 – Llythyr gan y Cwnsler Cyffredinol, 28 Hydref 2020

#### **13.4 Llythyr gan y Cwnsler Cyffredinol: Cyd-bwyllgor y Gweinidogion**

(Negodiadau'r UE)

(Tudalen 829)

CLA(5)–31–20 – Papur 106 – Llythyr gan y Cwnsler Cyffredinol, 29 Hydref 2020

### **14 Cynnig o dan Reol Sefydlog 17.42 i benderfynu gwahardd y cyhoedd o weddill y cyfarfod**

12.25

### **15 Memorandwm Cydsyniad Deddfwriaethol ar y Bil Ardrethu Annomestig (Rhestrau) (Rhif 2): Trafod yr adroddiad drafft**

12.25–12.30

(Tudalennau 830 – 834)

CLA(5)–31–20 – Papur 107 – Adroddiad drafft

**16 Craffu ar reoliadau sy'n deillio o ymadawiad y DU â'r Undeb  
Ewropeaidd – Protocol rhwng Llywodraeth Cymru a Phwyllgor  
Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad Senedd Cymru**

12.30–12.40

(Tudalennau 835 – 845)

**CLA(5)–31–20 – Papur 108** – Llythyr gan y Gweinidog Cyllid a'r Trefnydd, 29 Hydref 2020

**CLA(5)–31–20 – Papur 109** – Protocol Diwygiedig

**CLA(5)–31–20 – Papur 110** – Llythyr gan y Prif Weinidog, 16 Medi 2020

**CLA(5)–31–20 – Papur 111** – Llythyr at y Prif Weinidog, 23 Gorffennaf 2020

**Dyddiad y cyfarfod nesaf – 9 Tachwedd 2020**

Mae cyfyngiadau ar y ddogfen hon



Mae cyfyngiadau ar y ddogfen hon

Mae cyfyngiadau ar y ddogfen hon

Mae cyfyngiadau ar y ddogfen hon

Yn rhinwedd paragraff(au) vi o Reol Sefydlog 17.42

Mae cyfyngiadau ar y ddogfen hon

Ref: 215SOS20

T: 0292 092 4216  
E: Correspondence@ukgovwales.gov.uk

**Mick Antoniw MS**

Chair of the Legislation, Justice and Constitution Committee  
Senedd Cymru  
Cardiff Bay  
Cardiff, CF99 1SN

3<sup>rd</sup> October 2020

*Daw Mick.*

**UK Internal Market Bill**


Thank you for the letter of 18 September regarding application of the Sewel Convention to the UK Internal Market Bill.

The Government remains fully committed to the convention on legislative consent. As you note, the Bill's explanatory notes state clearly that we are seeking consent in relation to all parts of the Bill. In line with usual practice the UK government ministers responsible for the Bill wrote to the Minister for Economy, Transport and North Wales ahead of the Bill's introduction to set this position out in detail and ask that he begin the process for seeking the Senedd's consent.

We are working closely with the Welsh Government as the Bill progresses through Parliament to understand and respond to the concerns outlined in the legislative consent memorandum published on 25 September. It is very much the Government's intention that this work will result in a recommendation that the Senedd supports the Bill.

I am copying this letter to the Secretary of State for Business, Energy and Industrial Strategy, the Minister of State for the Constitution and Devolution, the Minister for Small Business, Consumers and Labour Markets, the Chairs of the External Affairs and Additional Legislation Committee, Finance and Constitution Committee, Committee for the Executive Office, the Welsh Affairs Committee, the Public Administration and Constitutional Affairs Committee, and the Lords Constitution Committee.

*Simon Hart*



**Rt Hon Simon Hart MP**  
Secretary of State for Wales  
Ysgrifennydd Gwladol Cymru

# Eitem 5

## **Negyddol Arfaethedig Offerynnau Statudol sydd ag Adroddiadau Clir**

### **2 Tachwedd 2020**

#### **Pn(5)32 – Rheoliadau Cymwysterau Athrawon (Diwygio) (Cymru) (Ymadael â'r UE) 2020**

##### **Gweithdrefn: Arfaethedig**

Mae'r Rheoliadau hyn yn gwneud diwygiadau technegol i Reoliadau Cymwysterau Athrawon (Diwygio) (Cymru) (Ymadael â'r UE) ("Rheoliadau 2019") i ddiweddarar croesgyfeiriadau at ddarpariaethau yn Rheoliadau Cydnabod Cymwysterau Proffesiynol (Diwygio etc.) (Ymadael â'r UE) 2019 ("Rheoliadau CCP 2019") sy'n codi o ganlyniad i ddiwygiadau a wnaed gan Reoliadau Cymwysterau a Gwasanaethau Proffesiynol (Diwygiadau a Darpariaethau Amrywiol) (Ymadael â'r UE) 2020.

Gwnaeth Rheoliadau 2019 ddiwygiadau i Reoliadau Cymwysterau Athrawon Ysgol (Cymru) 2012 mewn perthynas â chydabod cymwysterau athrawon yng Nghymru yn unol â Rheoliadau CCP 2019.

Cafodd y Rheoliadau hyn eu gosod at ddibenion sifftio o dan Ddeddf yr Undeb Ewropeaidd (Ymadael) 2018 yn unol â Rheol Sefydlog 27.9A.

**Rhiant-Ddeddf:** Deddf yr Undeb Ewropeaidd (Ymadael) 2018, Ddeddf Addysg 2002

**Bodlonwyd Gofynion y Sifft:** Na

#### **Pn(5)34 – Rheoliadau'r Amgylchedd (Diwygiadau Amrywiol) (Cymru) (Ymadael â'r UE) 2020**

##### **Gweithdrefn: Arfaethedig**

Diben Rheoliadau'r Amgylchedd (Diwygio Amrywiol) (Cymru) (Ymadael â'r UE) 2020 ("y Rheoliadau") yw sicrhau bod cyfraith yr UE a ddargedwir yn gweithredu'n effeithiol unwaith y bydd y DU yn gadael yr UE.



Gwnaeth Rheoliadau Safonau Ansawdd Aer (Cymru) (Diwygio) (Ymadael â'r UE) 2019 ("Rheoliadau 2019") ddiwygiadau i Reoliadau Safonau Ansawdd Aer (Cymru) 2010 (OS 2010/1433) a oedd yn trosi gofynion Cyfarwyddebau 2008/50/EC a 2004/107/EC ar ansawdd aer yr amgylchedd yn Ewrop.

Mae Rheoliad 2(5)(a) o Reoliadau 2019 yn cyfeirio at Gyfarwyddeb 2008/1/EC ynghylch atal a rheoli llygredd yn integredig. Nid yw'r Gyfarwyddeb hon mewn grym mwyach.

Mae Rheoliad 3 o'r Rheoliadau hyn yn diwygio Rheoliadau 2019 drwy gyfeirio at Gyfarwyddeb 2010/75/EU yn lle cyfeirio at Gyfarwyddeb 2008/1/EC ynghylch allyriadau diwydiannol (atal a rheoli llygredd yn integredig).

Mae'r Rheoliadau hefyd yn diwygio erthyglau 11 ac 11A o Orchymyn Corff Adnoddau Naturiol Cymru (Sefydlu) 2012 yng ngoleuni ymadawiad y Deyrnas Unedig â'r Undeb Ewropeaidd.

Cafodd y Rheoliadau hyn eu gosod at ddibenion sifftio o dan Ddeddf yr UE (Ymadael) 2018 yn unol â Rheol Sefydlog 27.9A.

**Rhiant-Ddeddf:** Deddf yr Undeb Ewropeaidd (Ymadael) 2018

**Bodlonwyd Gofynion y Sifft:** Na



# Eitem 6

## Offerynnau Statudol sydd ag Adroddiadau Clir

### 2 Tachwedd 2020

## SL(5)637 – Gorchymyn Cyflog ac Amodau Athrawon Ysgol (Cymru) 2020

### Gweithdrefn: Negyddol

Mae'r Gorchymyn yn gwneud darpariaeth ar gyfer penderfynu tâl ac amodau cyflogaeth athrawon ysgol yng Nghymru, a hynny drwy gyfeirio at adran 2 o ddogfen o'r enw "Dogfen Cyflog ac Amodau Athrawon Ysgol (Cymru) 2020 a chanllawiau ar gyflog ac amodau athrawon ysgol" ("y Ddogfen").

Daw'r Gorchymyn i rym ar 6 Tachwedd 2020. Bydd y darpariaethau ar gyflog ac amodau athrawon o dan adran 2 o'r ddogfen yn cael effaith ôl-weithredol o 1 Medi 2020.

**Rhiant-Ddeddf:** Deddf Addysg 2002

**Fe'u gwnaed ar:** 13 Hydref 2020

**Fe'u gosodwyd ar:** 15 Hydref 2020

**Yn dod i rym ar:** 06 Tachwedd 2020





## **SL(5)636 - Rheoliadau Diogelu Iechyd (Coronafeirws, Gwybodaeth Iechyd y Cyhoedd ar gyfer Personau sy'n Teithio i Gymru etc.) (Diwygio) 2020**

### **Cefndir a Diben**

Mae Rheoliadau Diogelu Iechyd (Coronafeirws, Gwybodaeth Iechyd y Cyhoedd ar gyfer Personau sy'n Teithio i Gymru etc.) 2020 ("y Rheoliadau Gwybodaeth") yn gosod gofyniad ar weithredwyr gwasanaethau teithwyr rhyngwladol sy'n dod o'r tu allan i'r ardal deithio gyffredin i faes awyr, maes hofrenyddion neu borthladd môr yng Nghymru ("gweithredwyr") i ddarparu gwybodaeth iechyd y cyhoedd benodol i deithwyr.

Mae'r Rheoliadau hyn yn diwygio'r Rheoliadau Gwybodaeth er mwyn—

- ei gwneud yn ofynnol i weithredwyr ddarparu'r wybodaeth yn ystod cam ychwanegol, sef 24 i 48 o oriau cyn yr amser y disgwylir i wasanaeth teithwyr rhyngwladol ymadael, a
- diweddarau'r wybodaeth sydd i'w darparu cyn yr archebir taith a chyn y cofrestrir ar gyfer taith, ac yn ystod y daith i'r porthladd yng Nghymru.

Mae rheoliad 2(3) yn diwygio rheoliad 3 o'r Rheoliadau Gwybodaeth er mwyn pennu'r wybodaeth wedi ei diweddarau sydd i'w darparu cyn yr archebir taith a chyn y cofrestrir ar gyfer taith.

Mae rheoliad 2(4) yn mewnosod rheoliad 3A newydd yn y Rheoliadau Gwybodaeth sy'n ei gwneud yn ofynnol i weithredwyr ddarparu'r wybodaeth 24 i 48 o oriau cyn yr amser y disgwylir i wasanaeth teithwyr rhyngwladol ymadael.

Mae rheoliad 2(5), (6) a (7) yn gwneud diwygiadau canlyniadol, gyda rheoliad 2(7) yn diwygio rheoliad 6 o'r Rheoliadau Gwybodaeth (Troseddau), fel bod person sy'n torri gofyniad yn rheoliad 3A(2) yn cyflawni trosedd ac yn agored ar gollfarn ddiannod i ddirwy.

Mae rheoliad 2(8) yn amnewid yr Atodlen i'r Rheoliadau Gwybodaeth.

### **Gweithdrefn**

Negyddol

Gwnaed y Rheoliadau gan Weinidogion Cymru cyn iddynt gael eu gosod gerbron y Senedd. Caiff y Senedd ddirymu'r Rheoliadau o fewn 40 diwrnod ac eithrio unrhyw ddiwrnodau pan fo'r Senedd: (i) wedi'i diddymu neu (ii) ar doriad am fwy na phedwar diwrnod i'r dyddiad y cawsant eu gosod gerbron y Senedd.



## Materion technegol: craffu

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

**1. Rheol Sefydlog 21.2 (v) –** bod angen eglurhad pellach ynglŷn â'i ffurf neu ei ystyr am unrhyw reswm penodol.

Mae rheoliad 2(3) yn amnewid y testun newydd i reoliad 3(2) o'r Rheoliadau Gwybodaeth ac yn rheoliad newydd 3(2)(d) mae'n ei gwneud yn ofynnol i weithredwr ofyn i'r wybodaeth berthnasol gael ei throsglwyddo i unrhyw berson y mae archeb yn cael ei gwneud ar ei ran, neu daith sy'n cael ei chofrestru. Nid yw'n glir a ddylai'r cais hwnnw fod yn ysgrifenedig neu a ellir ei wneud ar lafar.

Mae hyn yn wahanol i reoliad 3A(5) newydd, a fewnosodir gan reoliad 2(4). Mae'n nodi pan fo person arall yn archebu taith ar wasanaeth teithwyr rhyngwladol ar ran teithiwr arall, cydymffurfir â'r rheoliad os darperir y wybodaeth berthnasol i'r person hwnnw rhwng 24 i 48 o oriau cyn yr amser ymadael a drefnwyd, ynghyd â chais ysgrifenedig yn gofyn iddynt ddarparu'r wybodaeth honno i'r teithiwr.

## Rhinweddau: craffu

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

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

Nodwn na fu unrhyw ymgynghori ffurfiol ar y Rheoliadau hyn. Yn benodol, nodwn y paragraff a ganlyn yn y Memorandwm Esboniadol:

*O ystyried y bygythiad difrifol ac uniongyrchol sy'n codi o'r coronafeirws a'r angen am ymateb iechydd y cyhoedd brys, ni fu ymgynghoriad cyhoeddus mewn perthynas â'r 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 Senedd**

Rydym yn nodi na chynhaliwyd Asesiad Effaith Rheoleiddiol. Yn benodol, nodwn y paragraffau a ganlyn yn y Memorandwm Esboniadol:

*Yn dilyn cod asesu effaith rheoleiddiol Gweinidogion Cymru ar gyfer is ddeddfwriaeth, mae'r Rheoliadau hyn yn rhan o'r ymateb i bandemig parhaus COVID-19 ac mae angen eu rhoi ar waith ar frys. Felly, nid oes Asesiad Effaith Rheoleiddiol wedi'i baratoi.*

*Fodd bynnag, mae asesiad cychwynnol yn dangos bod effaith y Rheoliadau Diwygio ar weithredwyr yn isel.*



## Y goblygiadau yn sgil ymadael â'r Undeb Ewropeaidd

Dim

### Ymateb Llywodraeth Cymru

O ystyried yr amgylchiadau presennol o ran y coronafeirws, mae angen ymateb gan Lywodraeth Cymru cyn gynted ag sy'n rhesymol ymarferol mewn perthynas â'r pwynt adrodd technegol.

### Cynghorwyr Cyfreithiol

**Y Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad**

**26 Hydref 2020**



Senedd Cymru

**Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad**

—

Welsh Parliament

**Legislation, Justice and Constitution Committee**

Tudalen y pecyn 115

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OFFERYNNAU STATUDOL  
CYMRU

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**2020 Rhif 1118 (Cy. 253)**

**IECHYD Y CYHOEDD,  
CYMRU**

Rheoliadau Diogelu Iechyd  
(Coronafeirws, Gwybodaeth Iechyd  
y Cyhoedd ar gyfer Personau sy'n  
Teithio i Gymru etc.) (Diwygio)  
2020

**NODYN ESBONIADOL**

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

Mae Rheoliadau Diogelu Iechyd (Coronafeirws, Gwybodaeth Iechyd y Cyhoedd ar gyfer Personau sy'n Teithio i Gymru etc.) 2020 (“y Rheoliadau Gwybodaeth”) yn gosod gofyniad ar weithredwyr gwasanaethau teithwyr rhyngwladol sy'n dod o'r tu allan i'r ardal deithio gyffredin i faes awyr, maes hofrenyddion neu borthladd môr yng Nghymru (“gweithredwyr”) i ddarparu gwybodaeth iechyd y cyhoedd benodol i deithwyr.

Mae'r Rheoliadau hyn yn diwygio'r Rheoliadau Gwybodaeth er mwyn—

- (a) ei gwneud yn ofynnol i weithredwyr ddarparu'r wybodaeth yn ystod cam ychwanegol, sef 24 i 48 o oriau cyn yr amser y disgwylir i wasanaeth teithwyr rhyngwladol ymadael, a
- (b) diweddarau'r wybodaeth sydd i'w darparu cyn yr archebir taith a chyn y cofrestrir ar gyfer taith, ac yn ystod y daith i'r porthladd yng Nghymru.

Mae rheoliad 2(3) yn diwygio rheoliad 3 o'r Rheoliadau Gwybodaeth er mwyn pennu'r wybodaeth wedi ei diweddarau sydd i'w darparu cyn yr archebir taith a chyn y cofrestrir ar gyfer taith.

Mae rheoliad 2(4) yn mewnosod rheoliad 3A newydd yn y Rheoliadau Gwybodaeth sy'n ei gwneud yn ofynnol i weithredwyr ddarparu'r wybodaeth 24 i 48 o oriau cyn yr amser y disgwylir i wasanaeth teithwyr rhyngwladol ymadael.

Mae rheoliad 2(5), (6) a (7) yn gwneud diwygiadau canlyniadol, ac mae rheoliad 2(8) yn amnewid yr Atodlen i'r Rheoliadau Gwybodaeth.

Ystyriwyd Cod Ymarfer Gweinidogion Cymru ar gynnal Asesiad Effaith Rheoleiddiol mewn perthynas â'r Rheoliadau hyn. O ganlyniad, ni luniwyd asesiad effaith rheoleiddiol o'r costau a'r manteision sy'n debygol o ddeillio o gydymffurfio â'r Rheoliadau hyn.

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OFFERYNNAU STATUDOL  
CYMRU

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**2020 Rhif 1118 (Cy. 253)**

**IECHYD Y CYHOEDD,  
CYMRU**

Rheoliadau Diogelu Iechyd  
(Coronafeirws, Gwybodaeth Iechyd  
y Cyhoedd ar gyfer Personau sy'n  
Teithio i Gymru etc.) (Diwygio)  
2020

*Gwnaed am 12.21 a.m. ar 14 Hydref 2020*

*Gosodwyd gerbron Senedd  
Cymru am 3.00 p.m. ar 14 Hydref 2020*

*Yn dod i rym 4 Tachwedd 2020*

Mae Gweinidogion Cymru yn gwneud y Rheoliadau a ganlyn drwy arfer y pwerau a roddir iddynt gan adrannau 45B, 45F(2) a 45P(2) o Ddeddf Iechyd y Cyhoedd (Rheoli Clefydau) 1984(1).

**Enwi a dod i rym**

**1.**—(1) Enw'r Rheoliadau hyn yw Rheoliadau Diogelu Iechyd (Coronafeirws, Gwybodaeth Iechyd y Cyhoedd ar gyfer Personau sy'n Teithio i Gymru etc.) (Diwygio) 2020.

(2) Daw'r Rheoliadau hyn i rym ar 4 Tachwedd 2020.

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(1) 1984 p. 22. Mewnosodwyd Rhan 2A gan adran 129 o Ddeddf Iechyd a Gofal Cymdeithasol 2008 (p. 14). Mae'r swyddogaeth o wneud rheoliadau o dan Ran 2A wedi ei rhoi i "the appropriate Minister". O dan adran 45T(6) o Ddeddf 1984 y Gweinidog priodol, o ran Cymru, yw Gweinidogion Cymru.

**Diwygio Rheoliadau Diogelu Iechyd (Coronafeirws, Gwybodaeth Iechyd y Cyhoedd ar gyfer Personau sy'n Teithio i Gymru etc.) 2020**

2.—(1) Mae Rheoliadau Diogelu Iechyd (Coronafeirws, Gwybodaeth Iechyd y Cyhoedd ar gyfer Personau sy'n Teithio i Gymru etc.) 2020(1) wedi eu diwygio fel a ganlyn.

(2) Yn rheoliad 2 (dehongli), yn y lle priodol mewnosoder—

“ystyr “gofyniad i ddarparu gwybodaeth” (“*requirement to provide information*”) yw'r gofyniad i ddarparu gwybodaeth yn unol â Rhan 2 o Reoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) 2020(2);”;

“ystyr “gofyniad i ynysu” (“*requirement to isolate*”) yw'r gofyniad i ynysu yn unol â Rhan 3 o Reoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) 2020;”.

(3) Yn lle rheoliad 3(2) (darparu gwybodaeth cyn archebu ac wrth gofrestru) rhodder—

“(2) Yr wybodaeth a grybwyllir ym mharagraff (1) yw—

(a) yn achos cyfleuster a ddarperir er mwyn archebu taith ar-lein—

(i) yr wybodaeth a nodir yn Rhan 1 o'r Atodlen y mae rhaid iddi fod wedi ei gosod mewn lle amlwg fel ei bod yn weladwy cyn archebu,

(ii) dolen i [www.gov.uk/uk-border-control](http://www.gov.uk/uk-border-control) (y cyfeirir ati yn Rhan 1 o'r Atodlen), a

(iii) dolen i [www.gov.uk/provide-journey-contact-details-before-travel-uk](http://www.gov.uk/provide-journey-contact-details-before-travel-uk);

(b) yn achos cyfleuster a ddarperir er mwyn cofrestru ar gyfer taith ar-lein—

(i) yr wybodaeth a nodir yn Rhan 1 o'r Atodlen y mae rhaid iddi fod wedi ei gosod mewn lle amlwg fel ei bod yn weladwy cyn cofrestru,

(1) O.S. 2020/595 (Cy. 136), a ddiwygiwyd gan O.S. 2020/714 (Cy. 160).

(2) O.S. 2020/574 (Cy. 132), a ddiwygiwyd gan O.S. 2020/595 (Cy. 136), O.S. 2020/714 (Cy. 160), O.S. 2020/726 (Cy. 163), O.S. 2020/804 (Cy. 177), O.S. 2020/817 (Cy. 179), O.S. 2020/840 (Cy. 185), O.S. 2020/868 (Cy. 190), O.S. 2020/886 (Cy. 196), O.S. 2020/917 (Cy. 205), O.S. 2020/944 (Cy. 210), O.S. 2020/962 (Cy. 216), O.S. 2020/981 (Cy. 220), O.S. 2020/1015 (Cy. 226), O.S. 2020/1042 (Cy. 231), O.S. 2020/1080 (Cy. 243) ac O.S. 2020/1098 (Cy. 249).

- (ii) dolen i [www.gov.uk/uk-border-control](http://www.gov.uk/uk-border-control) (y cyfeirir ati yn Rhan 1 o'r Atodlen),
  - (iii) dolen i [www.gov.uk/provide-journey-contact-details-before-travel-uk](http://www.gov.uk/provide-journey-contact-details-before-travel-uk), a
  - (iv) dolen i <https://llyw.cymru/eithriadau-rhag-hunanynysu-coronafeirws-covid-19-html>;
- (c) yn achos cyfleuster a ddarperir er mwyn archebu taith neu gofrestru ar gyfer taith dros y ffôn neu wyneb yn wyneb—
- (i) pan ddarperir yr wybodaeth ar lafar, yr wybodaeth a nodir yn Rhan 1 o'r Atodlen;
  - (ii) pan ddarperir yr wybodaeth yn ysgrifenedig, hysbysiad ysgrifenedig sy'n nodi'r gofyniad i ddarparu gwybodaeth a'r gofyniad i ynysu;
- (d) yn unrhyw un o'r achosion uchod, cais i drosglwyddo'r wybodaeth a grybwyllir yn is-baragraff (a), (b) neu (c) (yn ôl y digwydd) i unrhyw berson—
- (i) yr archebir taith ar ei ran, neu
  - (ii) y cofrestrir ar gyfer taith ar ei ran.

(4) Ar ôl rheoliad 3 mewnosoder—

#### **“Darparu gwybodaeth cyn i daith ymadael**

**3A.**—(1) Mae paragraff (2) yn gymwys pan archebir taith, o leiaf 48 o oriau cyn yr amser y disgwylir i wasanaeth teithwyr rhyngwladol ymadael, ar gyfer teithiwr (“P”) ar y gwasanaeth hwnnw.

(2) Pan fo'r paragraff hwn yn gymwys, rhaid i weithredwr y gwasanaeth sicrhau, rhwng 24 a 48 o oriau cyn yr amser y disgwylir i'r gwasanaeth ymadael, bod yr wybodaeth a bennir ym mharagraff (4) (“yr wybodaeth ofynnol”) wedi ei darparu i P.

(3) Rhaid i'r wybodaeth ofynnol gael ei darparu drwy neges destun neu hysbysiad gwthio, drwy'r e-bost neu ar lafar.

(4) Yr wybodaeth ofynnol a grybwyllir ym mharagraff (2) yw—

- (a) pan ddarperir yr wybodaeth drwy neges destun neu hysbysiad gwthio, testun sydd—



- (i) yn hysbysu P am y gofyniad i ddarparu gwybodaeth,
  - (ii) yn hysbysu P bod cosbau yn gymwys am fethu â chydymffurfio â'r gofyniad i ddarparu gwybodaeth,
  - (iii) yn cynnwys dolen i <https://www.gov.uk/provide-journey-contact-details-before-travel-uk>, a
  - (iv) os yw'r gwasanaeth teithwyr rhyngwladol yn un y dyrennir arno rif sedd i P, yn cyngori P i ddarparu rhif y sedd fel rhan o'r gofyniad i ddarparu gwybodaeth;
- (b) pan ddarperir yr wybodaeth drwy'r e-bost—
- (i) yr wybodaeth a nodir yn Rhan 1 o'r Atodlen,
  - (ii) dolen i [www.gov.uk/uk-border-control](http://www.gov.uk/uk-border-control) (y cyfeirir ati yn Rhan 1 o'r Atodlen),
  - (iii) dolen i <https://www.gov.uk/provide-journey-contact-details-before-travel-uk>, a
  - (iv) dolen i <https://llyw.cymru/eithriadau-rhag-hunanynysu-coronafeirws-covid-19-html>;
- (c) pan ddarperir yr wybodaeth ar lafar, yr wybodaeth a nodir yn Rhan 1 o'r Atodlen.

(5) Pan fo person arall ("A") yn archebu taith ar wasanaeth teithwyr rhyngwladol ar ran teithiwr arall (pa un a yw A hefyd yn deithiwr ar y gwasanaeth hwnnw ai peidio), rhaid trin y gofyniad i ddarparu gwybodaeth yn unol â'r rheoliad hwn fel gofyniad y cydymffurfiwyd ag ef, o ran yr amser a nodir ym mharagraff (1), os darparwyd yr wybodaeth ofynnol i A yn y dull sy'n ofynnol rhwng 24 a 48 o oriau cyn yr amser y disgwylir i'r gwasanaeth hwnnw ymadael, ynghyd â chais ysgrifenedig i A ddarparu'r wybodaeth honno i'r teithiwr."

(5) Yn rheoliad 4(1) (darparu gwybodaeth yn ystod taith), yn lle "yr Atodlen" rhodder "Rhan 2 o'r Atodlen".

(6) Yn rheoliad 5 (eithriad o ofynion rheoliadau 3 a 4)—

- (a) yn y pennawd, ar ôl "3" mewnosoder ", 3A";
- (b) yn y rheoliad, ar ôl "3" mewnosoder ", 3A".

(7) Yn rheoliad 6(1) (troseddau), ar ôl “(3)” mewnosoder “, rheoliad 3A(2)”.

(8) Yn lle’r Atodlen rhodder—

## “YR ATODLEN

Rheoliadau 3, 3A a 4

### RHAN 1

Yr wybodaeth sydd i’w darparu at ddibenion rheoliadau 3(2)(a)(i), 3(2)(b)(i), 3(2)(c)(i), 3A(4)(b)(i) a 3A(4)(c) yw—

“ESSENTIAL INFORMATION TO ENTER THE UK

The United Kingdom is taking steps to help stop the spread of COVID-19.

1) To protect your health and others’, everyone must complete an online Passenger Locator Form before arrival in the United Kingdom.

2) You may be required to self-isolate for 14 days on arrival. Check the exempt countries list immediately before you travel as this list can change at short notice.

3) It is a legal requirement that you wear a face covering on public transport in the UK.

Failure to comply with the above measures is a criminal offence and you could be fined. Please visit [www.gov.uk/uk-border-control](http://www.gov.uk/uk-border-control) for detailed public health advice and requirements for entering the UK.”

### RHAN 2

Y datganiad sydd i’w ddarparu at ddibenion rheoliad 4 yw—

(a) y fersiwn Gymraeg—

“Dyma neges iechyd y cyhoedd ar ran asiantaethau iechyd y cyhoedd y Deyrnas Unedig.

Cyn cael mynediad i’r Deyrnas Unedig, rhaid i chi lenwi Ffurflen Lleoli Teithwyr ar-lein, ni waeth o ble yr ydych yn cyrraedd. Rhaid i chi hefyd hunanynysu am y 14 o ddiwrnodau cyntaf ar ôl i chi gyrraedd, oni bai eich bod mewn categori esempt. Mae hyn er mwyn eich diogelu chi ac eraill.

Ewch i [gov.uk](http://gov.uk) i gael rhagor o wybodaeth.

Symptomau'r coronafeirws yw peswch cyson newydd, tymheredd uchel neu gollu eich synnwyr blasu neu arogli arferol, neu newid yn eich synnwyr blasu neu arogli arferol. Os ydych yn profi unrhyw un o'r symptomau hyn, ni waeth pa mor ysgafn ydynt, fe'ch cynghorir i wneud eich hunan yn hysbys i'r criw.

Camau syml y gallwch eu cymryd i helpu i'ch diogelu chi a'ch teulu yw:

Golchi eich dwylo

Osgoi cyffwrdd â'ch wyneb â'ch dwylo

Dal peswch a thisian mewn hances bapur a'i gwaredu ar unwaith.”;

(b) y fersiwn Saesneg—

“The following is a public health message on behalf of the UK's public health agencies.

Before entering the UK, you must complete a Passenger Locator Form online, regardless of where you are arriving from. You must also self-isolate for the first 14 days after you arrive, unless you are in an exempt category. This is to protect yourself and others.

Visit [gov.uk](http://gov.uk) for more information.

The symptoms of coronavirus are a new continuous cough, a high temperature or a loss of, or change in, normal sense of taste or smell. If you experience any of these symptoms, however mild, you are advised to make yourself known to the crew.

Simple measures you can take to help protect yourself and family are:

Wash your hands

Avoid touching your face with your hands

Catch coughs and sneezes in a tissue and dispose of it immediately.”;

(c) y datganiad sydd ym mharagraff (a) neu (b) wedi ei gyfieithu i iaith a gydnabyddir yn swyddogol yn y wlad yr ymadawyd â hi.”

*Vaughan Gething*

Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol,

un o Weinidogion Cymru

Am 12.21 a.m. ar 14 Hydref 2020

**Memorandwm Esboniadol ar gyfer Rheoliadau Diogelu Iechyd (Coronafeirws, Gwybodaeth Iechyd y Cyhoedd ar gyfer Personau sy'n Teithio i Gymru etc.) (Diwygio) 2020**

Lluniwyd y Memorandwm Esboniadol hwn gan Lywodraeth Cymru ac fe'i gosodir gerbron Senedd Cymru ar y cyd â'r is-ddeddfwriaeth uchod ac yn unol â Rheol Sefydlog 27.1.

**Datganiad y Gweinidog**

Yn fy marn i, mae'r Memorandwm Esboniadol hwn yn rhoi darlun teg a rhesymol o effaith ddisgwyliedig Rheoliadau Diogelu Iechyd (Coronafeirws, Gwybodaeth Iechyd y Cyhoedd ar gyfer Personau sy'n Teithio i Gymru etc.) (Diwygio) 2020.

**Vaughan Gething**  
**Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol**

14 Hydref 2020

## Memorandwm Esboniadol

### 1. Disgrifiad

Mae Rheoliadau Diogelu Iechyd (Coronafeirws, Gwybodaeth Iechyd y Cyhoedd ar gyfer Personau sy'n Teithio i Gymru etc.) (Diwygio) 2020 ("y Rheoliadau Diwygio") yn diwygio'r wybodaeth sy'n ofynnol i'w rhoi i deithwyr sy'n teithio i Gymru gan Reoliadau Diogelu Iechyd (Coronafeirws, Gwybodaeth Iechyd y Cyhoedd ar gyfer Personau sy'n Teithio i Gymru etc.) 2020 ("y Rheoliadau Gwybodaeth i Deithwyr").

Cyflwynodd y Rheoliadau Gwybodaeth i Deithwyr ofynion i weithredwyr gwasanaethau teithwyr rhyngwladol awyr a môr ("gweithredwyr") roi gwybodaeth i'w teithwyr am y coronafeirws a materion cysylltiedig (fel y ddyletswydd i hunanynysu wrth ddod i Gymru o'r tu allan i'r Ardal Deithio Gyffredin), yn ogystal â gwybodaeth am ganllawiau iechyd y cyhoedd. Daeth y gofynion hyn i rym ar 17 Mehefin 2020.

Diwygiwyd y Rheoliadau Gwybodaeth i Deithwyr gan Reoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol a Gwybodaeth Iechyd y Cyhoedd i Deithwyr) (Cymru) (Diwygio) 2020 er mwyn:

- gwneud cynnwys y datganiad iechyd cyhoeddus a gyflwynir i deithwyr yn ystod eu taith yn gyson ar draws y DU;
- dileu'r gofyniad i'r datganiad gael ei wneud ar lafar, er mwyn rhoi mwy o hyblygrwydd i weithredwyr o ran sut y caiff y datganiad ei gyflwyno;
- newid cyfnod yr adolygiad ar gyfer y Rheoliadau o bob 21 diwrnod i bob 28 diwrnod, gan ddechrau ar 23 Gorffennaf 2020.

Daeth y diwygiadau hyn i rym ar 10 Gorffennaf 2020.

Mae Rheoliadau Diogelu Iechyd (Coronafeirws, Gwybodaeth Iechyd y Cyhoedd ar gyfer Personau sy'n Teithio i Gymru etc.) (Diwygio) 2020 ("y Rheoliadau Diwygio") yn rhan o gyfres o ddiwygiadau rheoleiddiol sy'n cael eu gwneud gan bob un o 4 gwlad y DU i'r wybodaeth y mae'n rhaid i weithredwyr ei rhoi i deithwyr sy'n cyrraedd o'r tu allan i'r Ardal Deithio Gyffredin. Maent yn diwygio'r Rheoliadau Gwybodaeth i Deithwyr ymhellach er mwyn:

- darparu testun yr wybodaeth y mae'n rhaid i weithredwyr gwasanaethau teithio rhyngwladol ei rhoi i deithwyr yn ystod y camau archebu a chofrestru (check in), a rhagnodi dolenni gwe i dudalennau gwe perthnasol y llywodraeth (yn flaenorol, ni ragnodwyd union eiriad y wybodaeth hon ond y gweithredwr oedd i benderfynu);
- ei gwneud yn ofynnol i weithredwyr ddarparu gwybodaeth i bob teithiwr rhwng 24 a 48 awr cyn teithio i Gymru - gan gynnwys dolenni i dudalennau gwe perthnasol y llywodraeth;
- diweddarau'r datganiad ar fwrdd y cerbyd y mae'n rhaid ei gyflwyno yn ystod y daith i'r DU.

## **2. Materion o ddiddordeb arbennig i'r Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad**

Dim

### **3. Cefndir deddfwriaethol**

Mae'r Rheoliadau hyn yn cael eu gwneud gan ddefnyddio pwerau a geir yn adrannau 45B(1), 45F(2) a 45P(2) o Ddeddf Iechyd y Cyhoedd (Rheoli Clefydau) 1984 ("Deddf 1984").

Mae Deddf 1984 a'r Rheoliadau a wneir o dan y Ddeddf honno yn darparu fframwaith deddfwriaethol ar gyfer diogelu iechyd yng Nghymru a Lloegr. Mewnosodwyd Rhan 2A o Ddeddf 1984 gan Ddeddf Iechyd a Gofal Cymdeithasol 2008, ac mae'n darparu sail gyfreithiol i ddiogelu'r cyhoedd rhag bygythiadau sy'n deillio o glefydau heintus.

Mae Adran 45B o Ddeddf 1984 yn darparu ar gyfer gwneud rheoliadau diogelu iechyd sy'n ymwneud â theithio rhyngwladol ac ati. O dan adran 45B(1)(a), caiff y Gweinidog priodol drwy reoliadau wneud darpariaeth ar gyfer atal perygl i iechyd y cyhoedd rhag gychod a llongau, awyrennau, trenau neu gerbydau eraill sy'n cyrraedd unrhyw le. Mae adran 45B(2)(e) yn darparu y caiff rheoliadau o dan adran 45B(1) gynnwys darpariaeth sy'n gwahardd neu'n rheoleiddio dyfodiad neu ymadawriad cerbydau a mynediad neu ymadawriad personau neu bethau. Mae adran 45B(2)(g) yn darparu y caiff rheoliadau o dan adran 45B(1) gynnwys darpariaeth sy'n ei gwneud yn ofynnol i bersonau ddarparu gwybodaeth neu ateb cwestiynau (gan gynnwys gwybodaeth neu gwestiynau sy'n ymwneud â'u hiechyd).

Mae adran 45F o Ddeddf 1984 yn darparu y caiff rheoliadau a wneir o dan adran 45B greu troseddau a darparu ar gyfer gweithredu a gorfodi cyfyngiadau a gofynion a osodir gan neu o dan y rheoliadau. Mae gweithredwr yn cyflawni trosedd o dan y Rheoliadau os yw'n methu â chydymffurfio â'r gofyniad i sicrhau bod gwybodaeth yn cael ei darparu. Mae adran 45F(2)(a) yn cynnwys darpariaeth atodol sy'n ymwneud â rheoliadau a wneir o dan adran 45B; mae'n darparu y caiff rheoliadau a wneir o dan adran 45B roi swyddogaethau i bersonau. Rhoddir swyddogaethau sy'n berthnasol i fonitro cydymffurfiaeth a gorfodi'r gofynion i bersonau awdurdodedig.

Rhoddir y pwerau o dan yr adrannau hyn i'r "Gweinidog priodol". O dan adran 45T(6) o Ddeddf 1984, ystyr Gweinidog priodol, mewn perthynas â Chymru, yw Gweinidogion Cymru.

#### Dod i rym

Mae'r Rheoliadau Diwygio hyn yn ddarostyngedig i gael eu dirymu gan Senedd Cymru (y 'weithdrefn negyddol').

Dônt i rym ar 4 Tachwedd 2020.

#### Dull gweithredu ledled y DU

Er bod Llywodraeth y DU yn arwain y polisi ar y cyd ar gyfer teithio rhyngwladol, mae'n cydweithio â'r Llywodraethau Datganoledig ac mae wedi datblygu dull unedig o weithredu ar draws y DU. O ganlyniad, mae gan Lywodraethau pob un o'r 4 gwlad ddeddfwriaeth gyfatebol i'r Rheoliadau Gwybodaeth i Deithwyr.

Mae'r Rheoliadau Diwygio yn rhan o gyfres o newidiadau rheoleiddiol sy'n cael eu gwneud gan bob un o'r 4 gwlad i'r wybodaeth y mae'n rhaid i weithredwyr ei rhoi i deithwyr sy'n cyrraedd o'r tu allan i'r Ardal Deithio Gyffredin.

#### **4. Diben y ddeddfwriaeth a'r effaith y bwriedir iddi ei chael**

Cyflwynwyd y Rheoliadau Gwybodaeth i Deithwyr i sicrhau mai dim ond y personau hynny a oedd yn barod i gydymffurfio ac yn gallu cydymffurfio â'r gofynion perthnasol a'r canllawiau iechyd cyhoeddus a gwblhaodd eu taith i Gymru.

Erbyn iddynt gyrraedd, dylai teithwyr fod wedi cael yr wybodaeth ddiweddaraf fel eu bod yn gwybod beth sy'n ofynnol ganddynt yn syth ar ôl cyrraedd. Bydd sicrhau bod gan bobl sy'n dod i Gymru y gofynion a'r canllawiau hyn, a'u bod yn gallu cydymffurfio â nhw, yn helpu i leihau'r broses o drosglwyddo SARS-CoV-2 a thrwy hynny atal perygl i iechyd y cyhoedd o awyrennau a chychod a llongau sy'n cyrraedd Cymru o'r tu allan i'r Ardal Deithio Gyffredin.

Gall y rhai nad ydynt yn gallu cydymffurfio neu sy'n amharod i gydymffurfio â'r gofynion hyn ddewis peidio â theithio.

Fodd bynnag, mae pryderon bod rhai gweithredwyr yn methu â chyfleu'r wybodaeth ofynnol yn glir i deithwyr wrth archebu a chofrestru. Yn hytrach, gall y wybodaeth a roddir fod yn aneglur nac yn ddryslud.

Yn ogystal, mae rhai teithwyr yn cyrraedd Cymru heb gwblhau Ffurflenni Lleoli Teithwyr, yn enwedig pan fônt yn dychwelyd o wledydd sy'n rhannu "Coridor Teithio" â Chymru.

Mae pryderon hefyd bod angen sicrhau bod teithwyr yn ymwybodol y gallai'r gwledydd hynny sy'n rhannu "Coridor Teithio" â Chymru newid yn gyflym. O ganlyniad, efallai y bydd yn ofynnol i deithwyr hunanynysu ar ôl dychwelyd i Gymru, er nad oedd hyn o bosibl yn ofyniad pan trefnwyd y daith yn wreiddiol neu pan wnaed y daith allanol.

Er mwyn sicrhau bod pob teithiwr yn cael yr wybodaeth sydd ei hangen arnynt am ofynion perthnasol a chanllawiau iechyd y cyhoedd fel y gallant wneud dewis gwybodus ynghylch a ddylid teithio i Gymru ai peidio, mae'r Rheoliadau Diwygio hyn yn gosod darpariaethau newydd yn y Rheoliadau Gwybodaeth i Deithwyr:

##### a) Archebu

Mae'r darpariaethau newydd yn rhagnodi union eiriad yr wybodaeth y mae'n rhaid i weithredwyr ei rhoi i deithwyr cyn cwblhau archeb. Wrth archebu drwy wefan gweithredwr neu ap ar ddyfais symudol, rhaid i'r wybodaeth hon gynnwys dolenni i'r tudalennau gwe canlynol:

- i. [www.gov.uk/provide-journey-contact-details-before-travel-uk](http://www.gov.uk/provide-journey-contact-details-before-travel-uk)
- ii. [www.gov.uk/uk-border-control](http://www.gov.uk/uk-border-control).

Ceir dolenni at gyngor iechyd cyhoeddus pob gwlad o [www.gov.uk/uk-border-control](http://www.gov.uk/uk-border-control); i Gymru, bydd hwn yn ddolen i <https://llyw.cymru/coronafeirws>.

Pan fo archeb yn cael ei gwneud dros y ffôn neu wyneb yn wyneb, rhaid darllen yr wybodaeth i'r teithiwr drwy sgrïpt neu drwy hysbysiad ysgrifenedig sy'n nodi'r gofyniad i ddarparu gwybodaeth a'r gofyniad i ynysu, yn unol â Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) 2020.

Drwy ei gwneud yn ofynnol i weithredwyr ddarparu'r wybodaeth ragnodedig hon yn ystod y cam archebu, mae pobl mewn sefyllfa well i wneud penderfyniad gwybodus ynghylch a ydynt yn dymuno teithio i Gymru.

b) Cofrestru (check in)

Mae'r Rheoliadau Diwygio yn ei gwneud yn ofynnol i'r un wybodaeth wedi'i sgrïptio gael ei ddarparu i deithwyr wrth gofrestru ag a ddefnyddir wrth archebu. (Yn yr un modd ag wrth archebu, yn flaenorol ni ragnodwyd union eiriad yr wybodaeth hon ond fe'i gadawyd i'r gweithredwr benderfynu). Rhaid darparu'r wybodaeth cyn cwblhau'r broses gofrestru.

Pan fydd y broses gofrestru yn cael ei gwneud yn ddigidol, bydd yr wybodaeth hon yn cynnwys dolenni i'r tudalennau gwe canlynol:

- i. [www.gov.uk/provide-journey-contact-details-before-travel-uk](http://www.gov.uk/provide-journey-contact-details-before-travel-uk);
- ii. [www.gov.uk/uk-border-control](http://www.gov.uk/uk-border-control);
- iii. [www.llyw.cymru/eithriadau-rhag-hunanyysu-coronafeirws-covid-19-html](http://www.llyw.cymru/eithriadau-rhag-hunanyysu-coronafeirws-covid-19-html)

Ar gyfer teithwyr sy'n cofrestru yn y maes awyr neu'r porthladd, rhaid i weithredwyr ddarparu'r wybodaeth ar lafar drwy sgrïpt, neu drwy hysbysiad ysgrifenedig sy'n nodi'r gofyniad i ddarparu gwybodaeth a'r gofyniad i ynysu, yn unol â Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) 2020.

Mae angen y drydedd ddolen [www.llyw.cymru/eithriadau-rhag-hunanyysu-coronafeirws-covid-19-html](http://www.llyw.cymru/eithriadau-rhag-hunanyysu-coronafeirws-covid-19-html) wrth gofrestru i gyfeirio teithwyr - a fydd yn agosáu at eu dyddiad teithio – at yr wybodaeth ddiweddaraf am “Goridorau Teithio”, a phwy sydd wedi'i eithrio o'r gofynion i hunanyysu.

Yn yr un modd ag yn ystod y cam archebu, bydd dolenni amlwg i gyngor iechyd cyhoeddus ar gyfer pob gwlad y DU ar [www.gov.uk/uk-border-control](http://www.gov.uk/uk-border-control). I Gymru, bydd hwn yn ddolen i [www.llyw.cymru/coronafeirws](http://www.llyw.cymru/coronafeirws).



Mae'n debygol y bydd oedi rhwng y camau archebu a chofrestru, lle gallai canllawiau'r Llywodraeth newid. Drwy ei gwneud yn ofynnol i weithredwyr ddarparu'r wybodaeth ragnodedig wrth gofrestru, gall pobl wneud penderfyniad gwybodus ynghylch a ydynt, yng ngoleuni unrhyw newidiadau, yn dal yn dymuno teithio i Gymru.

Gall y rhai nad ydynt yn gallu cydymffurfio â chanllawiau'r llywodraeth neu sy'n amharod i gydymffurfio â nhw ddewis peidio â theithio.

c. Hysbysiad cyn gadael

Mae'r Rheoliadau Diwygio yn gosod gofyniad newydd ar weithredwyr i ddarparu gwybodaeth i deithwyr rhwng 24 a 48 awr cyn iddynt adael. Darperir yr wybodaeth y mae'n rhaid i'r neges hon ei chynnwys yn y darpariaethau a fewnosodir yn y Rheoliadau Gwybodaeth i Deithwyr gan y Rheoliadau Diwygio, ac mae'n cynnwys dolen at [www.gov.uk/provide-journey-contact-details-before-travel-uk](http://www.gov.uk/provide-journey-contact-details-before-travel-uk)

Rhaid i weithredwyr gysylltu â theithwyr i ddarparu'r wybodaeth hon drwy un o'r dulliau canlynol: e-bost, neges SMS, hysbysiad pwyso ap, neu alwad ffôn.

d. Tra bo teithwyr ar yr awyren neu'r fferi.

Mae'r datganiad y mae'n rhaid ei gyflwyno i deithwyr yn ystod eu taith i Gymru yn cael ei ddiweddarau i egluro, ymhlith materion eraill, fod yn rhaid i deithwyr lenwi Ffurflen Lleoli Teithwyr ni waeth o ble y maent yn cyrraedd. Mae'r gofyniad i hunanynysu oni bai bod esemptiad hefyd yn cael ei symud i ddechrau'r datganiad, er mwyn rhoi mwy o bwyslais arno.

Ystyrir bod y datganiad hwn ar fwrdd yr awyren neu'r fferi yn hanfodol, oherwydd gellir cymryd archebion, a gall gwasanaethau cofrestru gael eu rheoli, gan drydydd partion (asiantau teithio, cyfryngwyr), yn hytrach na gan weithredwyr yn uniongyrchol. Er mai'r nod yw darparu gwybodaeth i bob teithiwr yn ystod y camau archebu a chofrestru, ni ellir gwarantu hyn. Er mwyn sicrhau bod pawb sy'n teithio i Gymru wedi cael y canllawiau, mae felly'n angenrheidiol i weithredwyr eu darparu iddynt tra byddant ar fwrdd yr awyren neu'r fferi ac yn ystod eu taith.

## 5. Ymgynghoriad

O ystyried y bygythiad difrifol ac uniongyrchol yn sgil y coronafeirws a'r angen am ymateb iechyd cyhoeddus brys, ni chynhaliwyd ymgynghoriad cyhoeddus mewn perthynas â'r Rheoliadau hyn.

## 6. Asesiad Effaith Rheoleiddiol

Yn dilyn cod asesu effaith rheoleiddiol Gweinidogion Cymru ar gyfer is-ddeddfwriaeth, mae'r Rheoliadau hyn yn rhan o'r ymateb i bandemig parhaus COVID-19 ac mae angen eu rhoi ar waith ar frys. Felly, nid oes Asesiad Effaith Rheoleiddiol wedi'i baratoi.

Fodd bynnag, mae asesiad cychwynnol yn dangos bod effaith y Rheoliadau Diwygio ar weithredwyr yn isel.

Bydd rhai costau ymgyfarwyddo, ond gan fod y Rheoliadau Gwybodaeth i Deithwyr eisoes yn ei gwneud yn ofynnol i weithredwyr ddarparu gwybodaeth i deithwyr (ond yn ôl eu disgresiwn eu hunain o ran sut y darperir yr wybodaeth hon wrth archebu a chofrestru) disgwylir i'r costau hyn fod yn isel.

Er y bydd costau ychwanegol i ddiwygio systemau a phrosesau er mwyn darparu'r testun a'r awgrymiadau penodol sy'n ofynnol gan y darpariaethau a fewnosodir yn y Rheoliadau Gwybodaeth i Deithwyr gan y Rheoliadau Diwygio, mae gan weithredwyr systemau eisoes ar waith i ddarparu gwybodaeth i deithwyr wrth archebu ac wrth gofrestru, cyn gadael, ac yn ystod y camau ar fwrdd y cerbyd yn ystod taith y teithwyr. Felly, disgwylir i gostau diwygio systemau a phrosesau presennol fod yn isel.

Nid yw'n bosibl priodoli unrhyw fudd penodol o'r polisi yn uniongyrchol i ganlyniad iechyd y cyhoedd, gan fod y mesurau hyn yn gyfrwng i gyfathrebu a galluogi mesurau iechyd eraill drwy sicrhau bod teithwyr yn ymwybodol o'r gofynion diweddaraf o ran iechyd y cyhoedd a theithio. Heb y newidiadau i wybodaeth teithwyr a wneir gan y Rheoliadau Diwygio hyn, efallai na fydd manteision llawn y gofynion hyn yn cael eu gwireddu. Felly, disgwylir i'r Rheoliadau hyn helpu i leihau'r broses o drosglwyddo COVID-19.



Llywodraeth Cymru  
Welsh Government

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## DATGANIAD YSGRIFENEDIG GAN LYWODRAETH CYMRU

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**TEITL** Rheoliadau Diogelu Iechyd (Coronafeirws, Gwybodaeth Iechyd y Cyhoedd ar gyfer Personau sy'n Teithio i Gymru etc.) (Diwygio) 2020

**DYDDIAD** 14 Hydref 2020

**GAN** Vaughan Gething, Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol

Cyflwynodd y Rheoliadau Diogelu Iechyd (Coronafeirws, Gwybodaeth Iechyd y Cyhoedd ar gyfer Personau sy'n Teithio i Gymru etc.) 2020 ("y Rheoliadau Gwybodaeth i Deithwyr") ofynion i weithredwyr gwasanaethau teithwyr rhyngwladol awyr a môr roi gwybodaeth i'w teithwyr am y coronafeirws a'r ddyletswydd i hunanynysu, yn ogystal â gwybodaeth am ganllawiau iechyd y cyhoedd. Daeth y gofynion hyn i rym ar 17 Mehefin 2020.

Ar 10 Gorffennaf, cafodd y Rheoliadau Gwybodaeth i Deithwyr eu diwygio er mwyn newid cynnwys y datganiad iechyd cyhoeddus a gyflwynir i deithwyr yn ystod eu taith, ac i ddileu'r gofyniad i'r datganiad hwn gael ei gyflwyno ar lafar. Cafodd y cyfnod adolygu ar gyfer y Rheoliadau hefyd ei newid o bob 21 diwrnod i bob 28 diwrnod, gan ddechrau ar 23 Gorffennaf 2020.

Heddiw, rwyf wedi gosod y Rheoliadau Diogelu Iechyd (Coronafeirws, Gwybodaeth Iechyd y Cyhoedd ar gyfer Personau sy'n Teithio i Gymru etc.) (Diwygio) 2020 gerbron y Senedd. Mae'r Rheoliadau hyn yn diwygio'r Rheoliadau Gwybodaeth i Deithwyr ymhellach i alluogi teithwyr i wneud penderfyniad mwy gwybodus ynghylch a ydynt yn dymuno teithio i Gymru ai peidio, drwy wneud y canlynol:

- rhagnodi'r wybodaeth y mae'n rhaid i weithredwyr gwasanaethau teithio rhyngwladol ei rhoi i deithwyr wrth archebu a chofrestru (check in);
- ei gwneud yn ofynnol i weithredwyr gwasanaethau teithio rhyngwladol ddarparu gwybodaeth benodol pellach i deithwyr rhwng 24 a 48 awr cyn eu bod yn teithio i Gymru.

Daw'r diwygiadau hyn i rym ar 4 Tachwedd 2020.

# Eitem 7.2

## **SL(5)639 - Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) (Diwygio) (Rhif 15) 2020**

### **Cefndir a Diben**

Mae'r Rheoliadau hyn yn diwygio Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) 2020 (y "Rheoliadau Teithio Rhyngwladol"). Mae'r Rheoliadau Teithio Rhyngwladol yn gosod gofynion ar bersonau sy'n dod i Gymru ar ôl bod dramor. Maent yn cynnwys gofyniad i bersonau sy'n cyrraedd Cymru ynysu am gyfnod i'w bennu yn unol â'r Rheoliadau hynny. Mae gofynion y Rheoliadau Teithio Rhyngwladol yn ddarostyngedig i rai eithriadau, ac mae categorïau penodol o bersonau wedi eu hesemпто rhag gofod cydymffurfio.

Nid yw'n ofynnol i bersonau sy'n dod i Gymru ynysu ar ôl bod mewn un neu ragor o'r gwledydd a'r tiriogaethau a restrir yn Atodlen 3 i'r Rheoliadau Teithio Rhyngwladol ("gwledydd a thiriogaethau esempt").

Mae Rheoliad 2 o'r Rheoliadau hyn yn diwygio Atodlen 3 i'r Rheoliadau Teithio Rhyngwladol i dynnu'r Eidal, San Marino a Dinas y Fatican oddi ar y rhestr o wledydd a thiriogaethau esempt. Mae Rheoliad 3 yn gwneud darpariaeth drosiannol mewn cysylltiad â'r newid yn statws y gwledydd hyn.

Mae Rheoliad 4 o'r Rheoliadau hyn yn diwygio Atodlen 3 i'r Rheoliadau Teithio Rhyngwladol fel na fydd ynys Groeg, Creta yn cael ei heithrio mwyach o'r esemptiad ar gyfer Gwlad Groeg o 4:00am ar 18 Hydref 2020 ac y bydd, felly, yn cael ei hystyried yn diriogaeth esempt. Bydd ynys Mykonos yn parhau i fod wedi ei heithrio o'r esemptiad ar gyfer Gwlad Groeg. Mae Rheoliad 5 yn gwneud darpariaeth drosiannol mewn cysylltiad â'r newid yn statws y diriogaeth honno.

### **Gweithdrefn**

Negyddol.

Gwnaed y Rheoliadau gan Weinidogion Cymru cyn iddynt gael eu gosod gerbron y Senedd. Caiff y Senedd ddirymu'r Rheoliadau o fewn 40 diwrnod ac eithrio unrhyw ddiwrnodau pan fo'r Senedd: (i) wedi'i diddymu neu (ii) ar doriad am fwy na phedwar diwrnod i'r dyddiad y cawsant eu gosod gerbron y Senedd.

### **Materion technegol: craffu**

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



## Rhinweddau: craffu

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

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

Rydym yn nodi cyfiawnhad Llywodraeth Cymru dros unrhyw ymyrraeth bosibl â hawliau dynol. Yn benodol, nodwn y paragraff a ganlyn yn y Memorandwm Esboniadol:

*"Nid yw'r diwygiadau yn y Rheoliadau hyn yn newid y ffaith fod hawliau unigol o dan Ddeddf Hawliau Dynol 1998 a Siarter Hawliau Sylfaenol Ewrop yn gysylltiedig â'r Rheoliadau Teithio Rhyngwladol; mae'r Llywodraeth o'r farn eu bod yn gymesur a hefyd yn gyfiawn at ddiben atal lledaeniad haint a/neu y caniateir ymyriad ar y sail ei fod yn anelu at gyflawni nod dilys, sef diogelu iechyd y cyhoedd."*

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

Nodwn na fu unrhyw ymgynghori ffurfiol ar y Rheoliadau hyn. Yn benodol, nodwn y paragraff a ganlyn yn y Memorandwm Esboniadol:

*"Oherwydd y bygythiad difrifol ac uniongyrchol sy'n deillio o'r coronafeirws a'r angen am ymateb iechyd y cyhoedd brys, ni chynhaliwyd unrhyw ymgynghoriad cyhoeddus mewn perthynas â'r Rheoliadau hyn."*

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

Nodwn y torrir y rheol 21 diwrnod (h.y. y rheol y dylai 21 diwrnod fynd heibio rhwng y dyddiad y gosodir offeryn penderfyniad negyddol gerbron y Senedd a'r dyddiad y daw'r offeryn i rym), a'r esboniad am dorri'r rheol a ddarparwyd gan Rebecca Evans AS, y Gweinidog Cyllid a'r Trefnydd, mewn llythyr at y Llywydd, dyddiedig 16 Hydref 2020.

Yn benodol, nodwn y canlynol yn y llythyr:

*"Mae peidio â chadw at y confensiwn 21 diwrnod yn galluogi'r Rheoliadau hyn i ddod i rym cyn gynted â phosibl, ac o ystyried newid yn y dystiolaeth ar risg mewn cysylltiad â'r clefyd hwn, ystyrir bod hyn yn angenrheidiol ac yn gyfiawn yn yr achos hwn."*

## Y goblygiadau yn sgil ymadael â'r Undeb Ewropeaidd

Dim.

## Ymateb Llywodraeth Cymru



Nid oes angen ymateb gan Lywodraeth Cymru.

**Cynghorwyr Cyfreithiol**  
**Y Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad**  
**26 Hydref 2020**



Senedd Cymru

**Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad**

—

Welsh Parliament

Tudalen y pecyn 134

**Legislation, Justice and Constitution Committee**

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**2020 Rhif 1133 (Cy. 258)**

**IECHYD Y CYHOEDD,  
CYMRU**

Rheoliadau Diogelu Iechyd  
(Coronafeirws, Teithio  
Rhyngwladol) (Cymru) (Diwygio)  
(Rhif 15) 2020

**NODYN ESBONIADOL**

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

Mae'r Rheoliadau hyn yn diwygio Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) 2020 (O.S. 2020/574 (Cy. 132)) (y "Rheoliadau Teithio Rhyngwladol"). Diwygiwyd y Rheoliadau Teithio Rhyngwladol yn flaenorol gan:

- Rheoliadau Diogelu Iechyd (Coronafeirws, Gwybodaeth Iechyd y Cyhoedd ar gyfer Personau sy'n Teithio i Gymru etc.) 2020 (O.S. 2020/595) (Cy. 136);
- Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol a Gwybodaeth Iechyd y Cyhoedd i Deithwyr) (Cymru) (Diwygio) 2020 (O.S. 2020/714) (Cy. 160);
- Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) (Diwygio) 2020 (O.S. 2020/726) (Cy. 163);
- Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) (Diwygio) (Rhif 2) 2020 (O.S. 2020/804) (Cy. 177);
- Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) (Diwygio) (Rhif 3) 2020 (O.S. 2020/817) (Cy. 179);
- Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) (Diwygio) (Rhif 4) 2020 (O.S. 2020/840) (Cy. 185);
- Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) (Diwygio) (Rhif 5) 2020 (O.S. 2020/868) (Cy. 190);

- Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) (Diwygio) (Rhif 6) 2020 (O.S. 2020/886) (Cy. 196);
- Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) (Diwygio) (Rhif 7) 2020 (O.S. 2020/917) (Cy. 205);
- Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) (Diwygio) (Rhif 8) 2020 (O.S. 2020/944) (Cy. 210);
- Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) (Diwygio) (Rhif 9) 2020 (O.S. 2020/962) (Cy. 216);
- Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) (Diwygio) (Rhif 10) 2020 (O.S. 2020/981) (Cy. 220);
- Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) (Diwygio) (Rhif 11) 2020 (O.S. 2020/1015) (Cy. 226);
- Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) (Diwygio) (Rhif 12) 2020 (O.S. 2020/1042) (Cy. 231);
- Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) (Diwygio) (Rhif 13) 2020 (O.S. 2020/1080) (Cy. 243);
- Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) (Diwygio) (Rhif 14) 2020 (O.S. 2020/1098) (Cy. 249).

Mae'r Rheoliadau Teithio Rhyngwladol yn gosod gofynion ar bersonau sy'n dod i Gymru ar ôl bod dramor. Maent yn cynnwys gofyniad i bersonau sy'n cyrraedd Cymru ynysu am gyfnod i'w bennu yn unol â'r Rheoliadau. Mae gofynion y Rheoliadau Teithio Rhyngwladol yn ddarostyngedig i eithriadau, ac mae categorïau penodol o bersonau wedi eu hesemptio rhag gorfod cydymffurfio. Nid yw'n ofynnol i bersonau sy'n dod i Gymru ynysu ar ôl bod mewn un neu ragor o'r gwledydd a'r tiriogaethau a restrir yn Atodlen 3 i'r Rheoliadau Teithio Rhyngwladol. Cyfeirir at y gwledydd a'r tiriogaethau a restrir yn Atodlen 3 i'r Rheoliadau Teithio Rhyngwladol fel "gwledydd a thiriogaethau esempt", ond mae rhai o'r cofnodion yn Atodlen 3 yn ddarostyngedig i eithriadau mewn cysylltiad â thiriogaethau penodol. Felly, er enghraifft, o ran Gwlad Groeg, sy'n wlad esempt at ddibenion y Rheoliadau Teithio Rhyngwladol, mae ynysuedd penodol sy'n rhan o Wlad Groeg wedi eu heithrio o'r esemptiad.

Mae Rhan 2 o'r Rheoliadau hyn yn diwygio'r rhestr o wledydd a thiriogaethau esempt.

Mae rheoliad 2 o'r Rheoliadau hyn yn diwygio Atodlen 3 i'r Rheoliadau Teithio Rhyngwladol er mwyn hepgor yr Eidal, Gwladwriaeth Dinas y Fatican



a San Marino o'r rhestr o wledydd a thiriogaethau esempt.

Mae rheoliad 3 o'r Rheoliadau hyn yn gwneud darpariaeth drosiannol mewn cysylltiad â'r newid yn statws y gwledydd hyn. Mae'r ddarpariaeth drosiannol yn ymdrin â maes a all fod yn destun amheuaeth o ran effaith y diwygiadau a wneir gan reoliad 2 o'r Rheoliadau hyn ar weithredu'r Rheoliadau Teithio Rhyngwladol.

Mae rheoliad 4 o'r Rheoliadau hyn yn diwygio Atodlen 3 i'r Rheoliadau Teithio Rhyngwladol fel na fydd, o 4:00 a.m. ar 18 Hydref 2020, ynys Creta yng Ngwlad Groeg wedi ei heithrio mwyach o'r esemptiad ar gyfer Gwlad Groeg. Bydd ynys Mykonos yn parhau i fod wedi ei heithrio o'r esemptiad ar gyfer Gwlad Groeg.

Mae rheoliad 5 o'r Rheoliadau hyn yn gwneud darpariaeth drosiannol mewn cysylltiad â'r newid yn statws y diriogaeth honno. Mae'r ddarpariaeth drosiannol yn ymdrin â maes a all fod yn destun amheuaeth o ran effaith y diwygiad a wneir gan reoliad 4 o'r Rheoliadau hyn ar weithredu'r Rheoliadau Teithio Rhyngwladol.

Ystyriwyd Cod Ymarfer Gweinidogion Cymru ar gynnal Aseidiadau Effaith Rheoleiddiol mewn perthynas â'r Rheoliadau hyn. O ganlyniad, ni luniwyd asesiad effaith rheoleiddiol o'r costau a'r manteision sy'n debygol o ddeillio o gydymffurfio â'r Rheoliadau hyn.

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**2020 Rhif 1133 (Cy. 258)**

**IECHYD Y CYHOEDD,  
CYMRU**

Rheoliadau Diogelu Iechyd  
(Coronafeirws, Teithio  
Rhyngwladol) (Cymru) (Diwygio)  
(Rhif 15) 2020

*Gwnaed* am 3.29 p.m. ar 16 Hydref 2020

*Gosodwyd* gerbron *Senedd*  
*Cymru* am 6.00 p.m. ar 16 Hydref 2020

*Yn dod i rym* am 4.00 a.m. ar 18 Hydref 2020

Mae Gweinidogion Cymru, drwy arfer y pwerau a roddir iddynt gan adrannau 45B a 45P(2) o Ddeddf Iechyd y Cyhoedd (Rheoli Clefydau) 1984(1), yn gwneud y Rheoliadau a ganlyn.

**RHAN 1**

**Cyffredinol**

**Enwi, dod i rym a dehongli**

1.—(1) Enw'r Rheoliadau hyn yw Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) (Diwygio) (Rhif 15) 2020.

(2) Daw'r Rheoliadau hyn i rym am 4.00 a.m. ar 18 Hydref 2020.

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(1) 1984 p. 22. Mewnosodwyd Rhan 2A gan adran 129 o Ddeddf Iechyd a Gofal Cymdeithasol 2008 (p. 14). Mae'r swyddogaeth o wneud rheoliadau o dan Ran 2A wedi ei rhoi i "the appropriate Minister". O dan adran 45T(6) o Ddeddf 1984 y Gweinidog priodol, o ran Cymru, yw Gweinidogion Cymru.

(3) Yn y Rheoliadau hyn, ystyr y “Rheoliadau Teithio Rhyngwladol” yw Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) 2020(1).

## RHAN 2

Diwygiadau i’r rhestr o wledydd a thiriogaethau esempt yn Atodlen 3 i’r Rheoliadau Teithio Rhyngwladol

### **Hepgor gwledydd o’r rhestr o wledydd a thiriogaethau esempt**

2. Yn Rhan 1 o Atodlen 3 i’r Rheoliadau Teithio Rhyngwladol (gwledydd a thiriogaethau esempt y tu allan i’r ardal deithio gyffredin), hepgorer—

“Yr Eidal”

“Gwladwriaeth Dinas y Fatican”

“San Marino”.

### **Darpariaeth drosiannol mewn cysylltiad â rheoliad 2**

3.—(1) Mae paragraff (2) yn gymwys pan fo person (“P”)—

- (a) yn cyrraedd Cymru am 4:00 a.m. ar 18 Hydref 2020 neu wedi hynny, a
- (b) wedi bod mewn gwlad a restrir yn rheoliad 2 ddiwethaf—
  - (i) o fewn y cyfnod o 14 o ddiwrnodau sy’n dod i ben â’r diwrnod y mae P yn cyrraedd Cymru, a
  - (ii) cyn 4.00 a.m. ar 18 Hydref 2020.

(2) Mae P, yn rhinwedd y ffaith iddo fod mewn gwlad a restrir yn rheoliad 2, i’w drin at ddibenion rheoliadau 7(1) ac 8(1) o’r Rheoliadau Teithio Rhyngwladol fel pe bai wedi cyrraedd Cymru o wlad neu diriogaeth nad yw’n esempt, neu fel pe bai wedi cyrraedd ar ôl bod mewn gwlad neu diriogaeth o’r fath.

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(1) O.S. 2020/574 (Cy. 132) fel y’i diwygiwyd gan O.S. 2020/595 (Cy. 136), O.S. 2020/714 (Cy. 160), O.S. 2020/726 (Cy. 163), O.S. 2020/804 (Cy. 177), O.S. 2020/817 (Cy. 179), O.S. 2020/840 (Cy. 185), O.S. 2020/868 (Cy. 190), O.S. 2020/886 (Cy. 196), O.S. 2020/917 (Cy. 205), O.S. 2020/944 (Cy. 210), O.S. 2020/962 (Cy. 216), O.S. 2020/981 (Cy. 220), O.S. 2020/1015 (Cy. 226), O.S. 2020/1042 (Cy. 231), O.S. 2020/1080 (Cy. 243) ac O.S. 2020/1098 (Cy. 249).

#### **Diwygiad i'r rhestr o wledydd a thiriogaethau esempt**

4. Yn Rhan 1 o Atodlen 3 i'r Rheoliadau Teithio Rhyngwladol (gwledydd a thiriogaethau esempt y tu allan i'r ardal deithio gyffredin), yn y cofnod ar gyfer Gwlad Groeg, yn lle'r geiriau o "tiriogaethau" hyd at y diwedd rhodder "tiriogaeth Mykonos".

#### **Darpariaeth drosiannol mewn cysylltiad â rheoliad 4**

5.—(1) Mae paragraff (2) yn gymwys pan, yn union cyn 4.00 a.m. ar 18 Hydref 2020—

- (a) oedd person ("P") yn ddarostyngedig i ofyniad i ynysu yn rhinwedd y ffaith iddo gyrraedd Cymru o diriogaeth Creta, neu ar ôl bod yn nhiriogaeth Creta, a
- (b) diwrnod olaf ynysiad P yw 18 Hydref 2020 neu ddiwrnod ar ôl y diwrnod hwnnw.

(2) Nid yw hepgor tiriogaeth Creta o Ran 1 o Atodlen 3 i'r Rheoliadau Teithio Rhyngwladol gan reoliad 4 yn effeithio ar y gofyniad i ynysu fel y mae'n gymwys i P, nac ar y modd y pennir diwrnod olaf ynysiad P o dan y Rheoliadau Teithio Rhyngwladol.

(3) Mae paragraff (4) yn gymwys pan fo person ("P")—

- (a) yn cyrraedd Cymru am 4.00 a.m. ar 18 Hydref 2020 neu wedi hynny, a
- (b) wedi bod yn nhiriogaeth Creta o fewn y cyfnod o 14 o ddiwrnodau sy'n dod i ben â'r diwrnod y mae P yn cyrraedd Cymru.

(4) At ddibenion rheoliadau 7(1) ac 8(1) o'r Rheoliadau Teithio Rhyngwladol, mae'r cwestiwn o ran a yw P wedi cyrraedd Cymru o wlad neu diriogaeth nad yw'n esempt neu ar ôl bod mewn gwlad neu diriogaeth o'r fath i'w bennu, mewn perthynas â thiriogaeth Creta, drwy gyfeirio at ba un a oedd tiriogaeth Creta yn diriogaeth nad yw'n esempt pan oedd P yno ddiwethaf (ac nid drwy gyfeirio at statws y diriogaeth pan fo P yn cyrraedd Cymru).

(5) Yn y rheoliad hwn, mae i "gofyniad i ynysu" yr ystyr a roddir gan reoliad 10(2) o'r Rheoliadau Teithio Rhyngwladol; ac mae cyfeiriadau at ddiwrnod olaf ynysiad P i'w dehongli yn unol â rheoliad 12 o'r Rheoliadau hynny.

*Vaughan Gething*

Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol,  
un o Weinidogion Cymru  
Am 3.29 p.m. ar 16 Hydref 2020

**Memorandwm Esboniadol ar gyfer Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) (Diwygio) (Rhif 15) 2020**

Lluniwyd y Memorandwm Esboniadol hwn gan Lywodraeth Cymru ac fe'i gosodir gerbron Senedd Cymru ar y cyd â'r is-ddeddfwriaeth uchod ac yn unol â Rheol Sefydlog 27.1.

**Datganiad y Gweinidog**

Yn fy marn i, mae'r Memorandwm Esboniadol hwn yn rhoi darlun teg a rhesymol o effaith ddisgwyliedig Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) (Diwygio) (Rhif 15) 2020.

**Vaughan Gething**  
**Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol**

16 Hydref 2020

## 1. Disgrifiad

Yn ddarostyngedig i esemptiadau penodedig, tan 10 Gorffennaf 2020, mae Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) 2020 ("Y Rheoliadau Teithio Rhyngwladol") yn ei gwneud yn ofynnol i bob teithiwr sy'n cyrraedd Cymru o'r tu allan i'r Ardal Deithio Gyffredin (h.y. yr ardal ffiniau agored sy'n cynnwys y Deyrnas Unedig, Ynysoedd y Sianel, Ynys Manaw a Gweriniaeth Iwerddon) ddarparu ei fanylion cyswllt a gwybodaeth am ei daith – ac ynysu am gyfnod o 14 o ddiwrnodau.

Diwygiwyd y Rheoliadau Teithio Rhyngwladol gan Reoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol a Gwybodaeth Iechyd y Cyhoedd i Deithwyr) (Cymru) (Diwygio) 2020 er mwyn (ymhlith pethau eraill) cyflwyno esemptiad rhag y gofyniad i ynysu ar gyfer teithwyr sy'n cyrraedd o wledydd a thiriogaethau penodol, a elwir yn "wledydd esempt".

Mae'r Rheoliadau hyn yn diwygio ymhellach y Rheoliadau Teithio Rhyngwladol er mwyn gweithredu newidiadau a nodwyd gan y Gydganolfan Biddiogelwch yn statws risg iechyd cyhoeddus rhai gwledydd neu diriogaethau, fel y bo'n angenrheidiol er mwyn diogelu iechyd y cyhoedd.

## 2. Materion o ddiddordeb arbennig i'r Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

*Yn dod i rym*

Yn unol ag adran 11A(4) o Ddeddf Offerynnau Statudol 1946, hysbyswyd y Llywydd y bydd y Rheoliadau wedi dod i rym llai na 21 diwrnod ar ôl gosod yr offeryn yn y Senedd.

*Y Confensiwn Ewropeaidd ar Hawliau Dynol*

Nid yw'r diwygiadau yn y Rheoliadau hyn yn newid y ffaith fod hawliau unigol o dan Ddeddf Hawliau Dynol 1998 a Siarter Hawliau Sylfaenol Ewrop yn gysylltiedig â'r Rheoliadau Teithio Rhyngwladol; mae'r Llywodraeth o'r farn eu bod yn gymesur a hefyd yn gyfiawn at ddiben atal lledaeniad haint a/neu y caniateir ymyriad ar y sail ei fod yn anelu at gyflawni nod dilys, sef diogelu iechyd y cyhoedd.

## 3. Y cefndir deddfwriaethol

Mae Deddf Iechyd y Cyhoedd (Rheoli Clefydau) 1984 ("Deddf 1984"), a rheoliadau a wnaed oddi tani, yn darparu fframwaith deddfwriaethol ar gyfer diogelu iechyd yng Nghymru a Lloegr. Gwneir y Rheoliadau drwy ddiwynnu ar y pwerau yn adrannau 45B a 45P(2) o Ddeddf 1984. Mae'r Memorandwm Esboniadol i'r Rheoliadau Teithio Rhyngwladol yn rhoi rhagor o wybodaeth am y pwerau hyn.

#### **4. Diben y ddeddfwriaeth a'r effaith y bwriedir iddi ei chael**

Gwnaed y Rheoliadau Teithio Rhyngwladol ar 5 Mehefin 2020 a daethant i rym ar 8 Mehefin 2020 mewn ymateb i'r bygythiad difrifol ac uniongyrchol i iechyd y cyhoedd a berir gan fynychder a lledaeniad syndrom anadlol aciwt difrifol coronafeirws 2 (SARS-CoV-2).

Mae'r Rheoliadau Teithio Rhyngwladol yn cael eu hadolygu'n rheolaidd ac mae newidiadau wedi'u gwneud i'r rhestr o'r gwledydd a'r tiriogaethau esempt na fyddai'n ofynnol i deithwyr ynysu ar ôl cyrraedd Cymru o'r manau hynny – yn fwyaf diweddar ar 9 Hydref 2020.

Mae'r cyngor sydd bellach wedi dod i law oddi wrth y Gydganolfan Bioddiogelwch yn dangos bod y risg i iechyd y cyhoedd yn sgil mynychder a lledaeniad y coronafeirws wedi cynyddu yn yr Eidal, Gwladwriaeth Dinas y Fatican a San Marino. Ar sail y cyngor hwn, mae Llywodraeth Cymru o'r farn y dylai gofynion i ynysu yn awr gael eu cyflwyno i deithwyr sy'n dod i Gymru o'r gwledydd hynny.

Ni fydd ynys Creta yng Ngwlad Groeg wedi ei heithrio mwyach o'r esemptiad ar gyfer Gwlad Groeg, felly bydd yn cael ei hystyried yn diriogaeth esempt. Mae hyn yn seiliedig ar y ffaith bod y data a gafwyd gan y Gydganolfan Bioddiogelwch wedi dangos bod y risg i iechyd y cyhoedd yn sgil teithwyr sy'n cyrraedd Cymru o'r ynys hon wedi lleihau ac felly dylai'r teithwyr hynny gael eu heithrio rhag y gofynion i ynysu. Bydd ynys Mykonos, fodd bynnag, yn parhau i fod wedi ei heithrio o'r esemptiad ar gyfer Gwlad Groeg.

Bydd y diwygiadau yn dod i rym ar gyfer unrhyw deithwyr sy'n cyrraedd yr Ardal Deithio Gyffredin o'r gwledydd neu'r tiriogaethau hyn am 4:00am neu wedi hynny ar 18 Hydref 2020. Ni fydd yr un o'r diwygiadau i'r Rheoliadau Teithio Rhyngwladol yn effeithio ar y gofynion o dan y Rheoliadau hynny i bersonau sy'n cyrraedd yr Ardal Deithio Gyffredin cyn i'r diwygiadau ddod i rym.

Mae Gweinidogion Cymru o'r farn fod y diwygiadau hyn, yn gymesur â'r hyn y maent yn ceisio ei gyflawni, sef ymateb i fygythiad difrifol ac uniongyrchol i iechyd y cyhoedd.

#### **5. Ymgynghori**

Oherwydd y bygythiad difrifol ac uniongyrchol sy'n deillio o'r coronafeirws a'r angen am ymateb iechyd y cyhoedd brys, ni chynhaliwyd unrhyw ymgynghoriad cyhoeddus mewn perthynas â'r Rheoliadau hyn.

#### **6. Aseiad Effaith Rheoleiddiol**

Ni chynhaliwyd unrhyw aseiad effaith rheoleiddiol mewn perthynas â'r Rheoliadau hyn oherwydd yr angen i'w rhoi ar waith ar fyrder i ymdrin â bygythiad difrifol ac uniongyrchol i iechyd y cyhoedd.



Ein cyf/Our ref: MA/VG/3476/20

Elin Jones, AS  
Llywydd  
Senedd Cymru  
Bae Caerdydd - CF99 1SN

16 Hydref 2020

Annwyl Lywydd,

**Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru)  
(Diwygio) (Rhif 15) 2020**

Yn unol ag adran 11A(4) o Ddeddf Offerynnau Statudol 1946 rwy'n eich hysbysu y bydd yr Offeryn Statudol hwn yn dod i rym lai na 21 diwrnod ar ôl iddo gael ei osod. Amgaeir y Memorandwm Esboniadol sy'n cyd-fynd â'r Rheoliadau er eich gwybodaeth.

Mae'r Rheoliadau a wneir heddiw yn diwygio Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) 2020 ymhellach i dynnu yr Eidal, San Marino a Gwladwriaeth Dinas y Fatican oddi ar y rhestr o wledydd a thiriogaethau sydd wedi'u heithrio. Ni fydd ynys Roegaidd Crete yn cael ei heithrio mwyach o'r esemptiad presennol ar gyfer Gwlad Groeg ac felly bydd yn cael ei ystyried yn diriogaeth sydd wedi'i heithrio. Mae'r Rheoliadau'n gwneud y newidiadau hyn oherwydd y newidiadau a nodwyd yn y risg i iechyd y cyhoedd yn sgil cyrraedd o'r tiriogaethau hynny.

Mae peidio â chadw at y confensiwn 21 diwrnod yn galluogi'r Rheoliadau hyn i ddod i rym cyn gynted â phosibl, ac o ystyried newid yn y dystiolaeth ar risg mewn cysylltiad â'r clefyd hwn, ystyrir bod hyn yn angenrheidiol ac yn gyfiawn yn yr achos hwn.

Oherwydd natur frys y Rheoliadau, ni chynhaliwyd ymgynghoriad.

Rwy'n anfon copi o'r llythyr hwn at Mick Antoniw AS, Cadeirydd y Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad, Sian Wilkins, Pennaeth Gwasanaethau'r Siambr a Phwyllgorau a Julian Luke, Pennaeth Gwasanaeth y Pwyllgorau Polisi a Deddfwriaeth.

Yn gywir,

**Rebecca Evans AS/MS**  
Y Gweinidog Cyllid a'r Trefnydd

Bae Caerdydd • Cardiff Bay  
Caerdydd • Cardiff  
CF99 1NA

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:  
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[Gohebiaeth.Rebecca.Evans@llyw.cymru](mailto:Gohebiaeth.Rebecca.Evans@llyw.cymru)





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# DATGANIAD YSGRIFENEDIG

## GAN

### LYWODRAETH CYMRU

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<b>TEITL</b>	<b>Diwygio Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru)</b>
<b>DYDDIAD</b>	<b>15 Hydref 2020</b>
<b>GAN</b>	<b>Vaughan Gething, y Gweinidog Iechyd a Gwasanaethau Cymdeithasol</b>

Bydd yr Aelodau'n ymwybodol bod Llywodraeth Cymru wedi gwneud darpariaeth yn Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) 2020 i sicrhau bod teithwyr sy'n cyrraedd Cymru o wledydd a thiriogaethau tramor yn gorfod ynysu am 14 diwrnod, a darparu gwybodaeth am deithwyr, er mwyn atal y coronafeirws rhag lledaenu ymhellach. Daeth y cyfyngiadau hyn i rym ar 8 Mehefin 2020.

Ar 10 Gorffennaf, diwygiodd Llywodraeth Cymru'r Rheoliadau hyn i gyflwyno eithriadau i'r gofyniad i ynysu ar gyfer rhestr o wledydd a thiriogaethau, ac ystod gyfyngedig o bobl mewn sectorau neu gyflogaeth arbenigol a allai fod wedi'u heithrio rhag y gofyniad i ynysu neu rhag rhai o ddarpariaethau'r gofynion ynghylch gwybodaeth teithwyr.

Ers hynny, mae'r rheoliadau hyn wedi'u hadolygu'n gyson ac mae nifer o newidiadau wedi'u gwneud i'r rhestr o wledydd a thiriogaethau sydd wedi'u heithrio.

Heddiw, adolygais asesiadau diweddaraf y Gydganolfan Biddiogelwch ac rwyf wedi penderfynu y bydd yr Eidal, Gwladwriaeth Dinas y Fatican a San Marino yn cael eu tynnu oddi ar y rhestr o wledydd a thiriogaethau sydd wedi'u heithrio. Felly bydd rhaid i deithwyr sy'n cyrraedd o'r gwledydd hyn ynysu pan fyddant yn cyrraedd Cymru. Rwyf hefyd wedi penderfynu na fydd ynys roegaidd Crete yn cael ei heithrio mwyach o'r eithriad ar gyfer Gwlad Groeg, ac felly bydd yn cael ei ystyried fel tiriogaeth sydd wedi'i heithrio.

Yfory, byddaf yn gosod y rheoliadau angenrheidiol a ddaw i rym am 04:00 ddydd Sul 18 Hydref.

# Eitem 7.3

## **SL(5)642 - Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) (Diwygio) (Rhif 16) 2020**

### **Cefndir a Diben**

Mae'r Rheoliadau hyn yn diwygio Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) 2020 (y "Rheoliadau Teithio Rhyngwladol") OS 2020/574. Mae'r Rheoliadau Teithio Rhyngwladol yn gosod gofynion ar bersonau sy'n dod i Gymru ar ôl bod dramor. Maent yn cynnwys gofyniad i bersonau sy'n cyrraedd Cymru ynysu am gyfnod i'w bennu yn unol â'r Rheoliadau hynny. Mae gofynion y Rheoliadau Teithio Rhyngwladol yn ddarostyngedig i rai eithriadau, ac mae categorïau penodol o bersonau wedi eu hesemptio rhag gorfod cydymffurfio.

Nid yw'n ofynnol i bersonau sy'n dod i Gymru ynysu ar ôl bod mewn un neu ragor o'r gwledydd a'r tiriogaethau a restrir yn Atodlen 3 i'r Rheoliadau Teithio Rhyngwladol ("gwledydd a thiriogaethau esempt").

Mae rheoliadau 2 a 3 o'r Rheoliadau hyn yn diwygio'r Rheoliadau Teithio Rhyngwladol er mwyn ychwanegu Denmarc, Maldives, yr Ynysoedd Dedwydd, ac ynys Mykonos yng Ngwlad Groeg at y rhestr o wledydd a thiriogaethau esempt.

Mae rheoliad 5 o'r Rheoliadau hyn yn diwygio Atodlen 3 i'r Rheoliadau Teithio Rhyngwladol er mwyn hepgor Liechtenstein o'r rhestr o wledydd a thiriogaethau esempt.

Mae rheoliadau 4 a 5 o'r Rheoliadau hyn yn gwneud darpariaeth drosiannol mewn cysylltiad â'r newid yn statws y gwledydd a'r tiriogaethau hyn.

### **Gweithdrefn**

Negyddol.

Gwnaed y Rheoliadau hyn gan Weinidogion Cymru cyn iddynt gael eu gosod gerbron y Senedd. Caiff y Senedd ddirymu'r Rheoliadau o fewn 40 diwrnod ac eithrio unrhyw ddiwrnodau pan fo'r Senedd: (i) wedi'i diddymu neu (ii) ar doriad am fwy na phedwar diwrnod i'r dyddiad y cawsant eu gosod gerbron y Senedd.

### **Materion technegol: craffu**

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



## Rhinweddau: craffu

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

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

Rydym yn nodi cyfiawnhad Llywodraeth Cymru dros unrhyw ymyrraeth bosibl â hawliau dynol. Yn benodol, nodwn y paragraff a ganlyn yn y Memorandwm Esboniadol:

*"Nid yw'r diwygiadau yn y Rheoliadau hyn yn newid y ffaith fod hawliau unigol o dan Ddeddf Hawliau Dynol 1998 a Siarter Hawliau Sylfaenol Ewrop yn gysylltiedig â'r Rheoliadau Teithio Rhyngwladol; mae'r Llywodraeth o'r farn eu bod yn gymesur ahefyd yn gyfiawn at ddiben atal lledaeniad haint a/neu y caniateir ymyriad ar y sail eifod yn anelu at gyflawni nod dilys, sef diogelu iechyd y cyhoedd."*

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

Nodwn na fu unrhyw ymgynghori ffurfiol ar y Rheoliadau hyn. Yn benodol, nodwn y paragraff a ganlyn yn y Memorandwm Esboniadol:

*"Oherwydd y bygythiad difrifol ac uniongyrchol sy'n deillio o'r coronafeirws a'r angen am ymateb iechyd y cyhoedd brys, ni chynhaliwyd unrhyw ymgynghoriad cyhoeddus mewn perthynas â'r Rheoliadau hyn."*

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

Nodwn y torrir y rheol 21 diwrnod (h.y. y rheol y dylai 21 diwrnod fynd heibio rhwng y dyddiad y gosodir offeryn penderfyniad negyddol gerbron y Senedd a'r dyddiad y daw'r offeryn i rym), a'r esboniad am dorri'r rheol a ddarparwyd gan Rebecca Evans AS, y Gweinidog Cyllid a'r Trefnydd, mewn llythyr at y Llywydd, dyddiedig 23 Hydref 2020.

Yn benodol, nodwn y canlynol yn y llythyr:

*"Mae peidio â chadw at y confensiwn 21 diwrnod yn galluogi'r Rheoliadau hyn i ddod i rym cyn gynted â phosibl, ac o ystyried newid yn y dystiolaeth ar risg mewn cysylltiad â'r clefyd hwn, ystyrir bod hyn yn angenrheidiol ac yn gyfiawn yn yr achos hwn."*

## Y goblygiadau yn sgil ymadael â'r Undeb Ewropeaidd

Dim.

## Ymateb Llywodraeth Cymru

Nid oes angen ymateb gan Lywodraeth Cymru.



**Cynghorwyr Cyfreithiol**  
**Y Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad**  
**28 Hydref 2020**



Senedd Cymru

**Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad**

—

Welsh Parliament

**Tudalen y pecyn 148**

**Legislation, Justice and Constitution Committee**

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OFFERYNNAU STATUDOL  
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**2020 Rhif 1165 (Cy. 263)**

**IECHYD Y CYHOEDD,  
CYMRU**

Rheoliadau Diogelu Iechyd  
(Coronafeirws, Teithio  
Rhyngwladol) (Cymru) (Diwygio)  
(Rhif 16) 2020

**NODYN ESBONIADOL**

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

Mae'r Rheoliadau hyn yn diwygio Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) 2020 (O.S. 2020/574 (Cy. 132)) (y "Rheoliadau Teithio Rhyngwladol"). Diwygiwyd y Rheoliadau Teithio Rhyngwladol yn flaenorol gan:

- Rheoliadau Diogelu Iechyd (Coronafeirws, Gwybodaeth Iechyd y Cyhoedd ar gyfer Personau sy'n Teithio i Gymru etc.) 2020 (O.S. 2020/595) (Cy. 136);
- Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol a Gwybodaeth Iechyd y Cyhoedd i Deithwyr) (Cymru) (Diwygio) 2020 (O.S. 2020/714) (Cy. 160);
- Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) (Diwygio) 2020 (O.S. 2020/726) (Cy. 163);
- Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) (Diwygio) (Rhif 2) 2020 (O.S. 2020/804) (Cy. 177);
- Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) (Diwygio) (Rhif 3) 2020 (O.S. 2020/817) (Cy. 179);
- Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) (Diwygio) (Rhif 4) 2020 (O.S. 2020/840) (Cy. 185);
- Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) (Diwygio) (Rhif 5) 2020 (O.S. 2020/868) (Cy. 190);

- Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) (Diwygio) (Rhif 6) 2020 (O.S. 2020/886) (Cy. 196);
- Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) (Diwygio) (Rhif 7) 2020 (O.S. 2020/917) (Cy. 205);
- Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) (Diwygio) (Rhif 8) 2020 (O.S. 2020/944) (Cy. 210);
- Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) (Diwygio) (Rhif 9) 2020 (O.S. 2020/962) (Cy. 216);
- Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) (Diwygio) (Rhif 10) 2020 (O.S. 2020/981) (Cy. 220);
- Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) (Diwygio) (Rhif 11) 2020 (O.S. 2020/1015) (Cy. 226);
- Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) (Diwygio) (Rhif 12) 2020 (O.S. 2020/1042) (Cy. 231);
- Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) (Diwygio) (Rhif 13) 2020 (O.S. 2020/1080) (Cy. 243);
- Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) (Diwygio) (Rhif 14) 2020 (O.S. 2020/1098) (Cy. 249);
- Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) (Diwygio) (Rhif 15) 2020 (O.S. 2020/1133) (Cy. 258).

Mae'r Rheoliadau Teithio Rhyngwladol yn gosod gofynion ar bersonau sy'n dod i Gymru ar ôl bod dramor. Maent yn cynnwys gofyniad i bersonau sy'n cyrraedd Cymru ynysu am gyfnod i'w bennu yn unol â'r Rheoliadau. Mae gofynion y Rheoliadau Teithio Rhyngwladol yn ddarostyngedig i eithriadau, ac mae categorïau penodol o bersonau wedi eu hesemptio rhag gorfod cydymffurfio. Nid yw'n ofynnol i bersonau sy'n dod i Gymru ynysu ar ôl bod mewn un neu ragor o'r gwledydd a'r tiriogaethau a restrir yn Atodlen 3 i'r Rheoliadau Teithio Rhyngwladol. Cyfeirir at y gwledydd a'r tiriogaethau a restrir yn Atodlen 3 fel "gwledydd a thiriogaethau esempt", ond mae rhai o'r cofnodion yn Atodlen 3 yn ddarostyngedig i eithriadau mewn cysylltiad â thiriogaethau penodol. Felly, er enghraifft, o ran Gwlad Groeg, sy'n wlad esempt at ddibenion y Rheoliadau Teithio Rhyngwladol, mae ynysodd penodol sy'n rhan o Wlad Groeg wedi eu heithrio o'r esemptiad.

Mae Rhan 2 o'r Rheoliadau hyn yn diwygio'r rhestr o wledydd a thiriogaethau esempt.

Mae rheoliadau 2 a 3 o'r Rheoliadau hyn yn diwygio'r Rheoliadau Teithio Rhyngwladol er mwyn ychwanegu Denmarc, Maldives, yr Ynysoedd Dedwydd, ac ynys Mykonos yng Ngwlad Groeg at y rhestr o wledydd a thiriogaethau esempt.

Mae rheoliad 5 o'r Rheoliadau hyn yn diwygio'r Rheoliadau Teithio Rhyngwladol er mwyn hepgor Liechtenstein o'r rhestr o wledydd a thiriogaethau esempt.

Mae rheoliadau 4 a 6 o'r Rheoliadau hyn yn gwneud darpariaeth drosiannol mewn cysylltiad â'r newid yn statws y gwledydd a'r tiriogaethau hyn. Mae'r ddarpariaeth drosiannol yn ymdrin â maes a all fod yn destun amheuaeth o ran effaith y diwygiadau a wneir gan reoliadau 2, 3 a 5 o'r Rheoliadau hyn ar weithredu'r Rheoliadau Teithio Rhyngwladol.

Ystyriwyd Cod Ymarfer Gweinidogion Cymru ar gynnal Aseidiadau Effaith Rheoleiddiol mewn perthynas â'r Rheoliadau hyn. O ganlyniad, ni luniwyd aseiad effaith rheoleiddiol o'r costau a'r manteision sy'n debygol o ddeillio o gydymffurfio â'r Rheoliadau hyn.

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**2020 Rhif 1165 (Cy. 263)**

**IECHYD Y CYHOEDD,  
CYMRU**

Rheoliadau Diogelu Iechyd  
(Coronafeirws, Teithio  
Rhyngwladol) (Cymru) (Diwygio)  
(Rhif 16) 2020

*Gwnaed am 2.43 p.m. ar 23 Hydref 2020*

*Gosodwyd gerbron Senedd  
Cymru am 6.30 p.m. ar 23 Hydref 2020*

*Yn dod i rym am 4.00 a.m. ar 25 Hydref 2020*

Mae Gweinidogion Cymru, drwy arfer y pwerau a roddir iddynt gan adrannau 45B a 45P(2) o Ddeddf Iechyd y Cyhoedd (Rheoli Clefydau) 1984(1), yn gwneud y Rheoliadau a ganlyn.

**RHAN 1**

**Cyffredinol**

**Enwi, dod i rym a dehongli**

1.—(1) Enw'r Rheoliadau hyn yw Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) (Diwygio) (Rhif 16) 2020.

(2) Daw'r Rheoliadau hyn i rym am 4.00 a.m. ar 25 Hydref 2020.

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(1) 1984 p. 22. Mewnosodwyd Rhan 2A gan adran 129 o Ddeddf Iechyd a Gofal Cymdeithasol 2008 (p. 14). Mae'r swyddogaeth o wneud rheoliadau o dan Ran 2A wedi ei rhoi i "the appropriate Minister". O dan adran 45T(6) o Ddeddf 1984 y Gweinidog priodol, o ran Cymru, yw Gweinidogion Cymru.



(3) Yn y Rheoliadau hyn, ystyr y “Rheoliadau Teithio Rhyngwladol” yw Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) 2020(1).

## RHAN 2

Diwygiadau i’r rhestr o wledydd a thiriogaethau esempt yn Atodlen 3 i’r Rheoliadau Teithio Rhyngwladol

### **Ychwanegiadau at y rhestr o wledydd a thiriogaethau esempt**

2. Yn Rhan 1 o Atodlen 3 i’r Rheoliadau Teithio Rhyngwladol (gwledydd a thiriogaethau esempt y tu allan i’r ardal deithio gyffredin), yn y lle priodol mewnosoder—

“Denmarc”

“Maldives”

“Yr Ynysoedd Dedwydd”.

### **Diwygiad i’r rhestr o wledydd a thiriogaethau esempt**

3. Yn Rhan 1 o Atodlen 3 i’r Rheoliadau Teithio Rhyngwladol (gwledydd a thiriogaethau esempt y tu allan i’r ardal deithio gyffredin), yn y cofnod ar gyfer Gwlad Groeg, hepgorer “; ac eithrio tiriogaeth Mykonos”.

### **Darpariaeth drosiannol mewn cysylltiad â rheoliadau 2 a 3**

4.—(1) Mae paragraff (2) yn gymwys pan, yn union cyn 4.00 a.m. ar 25 Hydref 2020—

- (a) oedd person (“P”) yn ddarostyngedig i ofyniad i ynysu yn rhinwedd y ffaith iddo gyrraedd Cymru o wlad neu diriogaeth a restrir yn rheoliad 2 neu 3, neu ar ôl bod mewn gwlad neu diriogaeth o’r fath, a
- (b) diwrnod olaf ynysiad P yw 25 Hydref 2020 neu ddiwrnod ar ôl y diwrnod hwnnw.

(2) Nid yw ychwanegu’r gwledydd a’r tiriogaethau a restrir yn rheoliadau 2 a 3 at Ran 1 o Atodlen 3 i’r Rheoliadau Teithio Rhyngwladol yn effeithio ar y

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(1) O.S. 2020/574 (Cy. 132) fel y’i diwygiwyd gan O.S. 2020/595 (Cy. 136), O.S. 2020/714 (Cy. 160), O.S. 2020/726 (Cy. 163), O.S. 2020/804 (Cy. 177), O.S. 2020/817 (Cy. 179), O.S. 2020/840 (Cy. 185), O.S. 2020/868 (Cy. 190), O.S. 2020/886 (Cy. 196), O.S. 2020/917 (Cy. 205), O.S. 2020/944 (Cy. 210), O.S. 2020/962 (Cy. 216), O.S. 2020/981 (Cy. 220), O.S. 2020/1015 (Cy. 226), O.S. 2020/1042 (Cy. 231), O.S. 2020/1080 (Cy. 243), O.S. 2020/1098 (Cy. 249) ac O.S. 2020/1133 (Cy. 258).

gofyniad i ynysu fel y mae'n gymwys i P, nac ar y modd y pennir diwrnod olaf ynysiad P o dan y Rheoliadau Teithio Rhyngwladol.

(3) Mae paragraff (4) yn gymwys pan fo person (“P”)—

- (a) yn cyrraedd Cymru am 4.00 a.m. ar 25 Hydref 2020 neu wedi hynny, a
- (b) wedi bod mewn gwlad neu diriogaeth a restrir yn rheoliad 2 neu 3 o fewn y cyfnod o 14 o ddiwrnodau sy'n dod i ben â'r diwrnod y mae P yn cyrraedd Cymru.

(4) At ddibenion rheoliadau 7(1) ac 8(1) o'r Rheoliadau Teithio Rhyngwladol, mae'r cwestiwn o ran a yw P wedi cyrraedd Cymru o wlad neu diriogaeth nad yw'n esempt neu ar ôl bod mewn gwlad neu diriogaeth o'r fath i'w bennu, mewn perthynas â gwlad neu diriogaeth a restrir yn rheoliad 2 neu 3, drwy gyfeirio at ba un a oedd y wlad neu'r diriogaeth yn wlad neu'n diriogaeth nad yw'n esempt pan oedd P yno ddiwethaf (ac nid drwy gyfeirio at statws y wlad neu'r diriogaeth pan fo P yn cyrraedd Cymru).

(5) Yn y rheoliad hwn, mae i “gofyniad i ynysu” yr ystyr a roddir gan rheoliad 10(2) o'r Rheoliadau Teithio Rhyngwladol; ac mae cyfeiriadau at ddiwrnod olaf ynysiad P i'w dehongli yn unol â rheoliad 12 o'r Rheoliadau hynny.

#### **Hepgor Liechtenstein o'r rhestr o wledydd a thiriogaethau esempt**

5. Yn Rhan 1 o Atodlen 3 i'r Rheoliadau Teithio Rhyngwladol (gwledydd a thiriogaethau esempt y tu allan i'r ardal deithio gyffredin), hepgorer—

“Liechtenstein”.

#### **Darpariaeth drosiannol mewn cysylltiad â rheoliad 5**

6.—(1) Mae paragraff (2) yn gymwys pan fo person (“P”)—

- (a) yn cyrraedd Cymru am 4:00 a.m. ar 25 Hydref 2020 neu wedi hynny, a
- (b) wedi bod yn Liechtenstein ddiwethaf—
  - (i) o fewn y cyfnod o 14 o ddiwrnodau sy'n dod i ben â'r diwrnod y mae P yn cyrraedd Cymru, a
  - (ii) cyn 4.00 a.m. ar 25 Hydref 2020.

(2) Mae P, yn rhinwedd y ffaith iddo fod yn Liechtenstein, i'w drin at ddibenion rheoliadau 7(1) ac 8(1) o'r Rheoliadau Teithio Rhyngwladol fel pe bai wedi cyrraedd Cymru o wlad neu diriogaeth nad yw'n esempt, neu fel pe bai wedi cyrraedd ar ôl bod mewn gwlad neu diriogaeth o'r fath.

*Vaughan Gething*  
Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol,  
un o Weinidogion Cymru  
Am 2.43 p.m. ar 23 Hydref 2020

## **Memorandwm Esboniadol ar gyfer Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) (Diwygio) (Rhif 16) 2020**

Lluniwyd y Memorandwm Esboniadol hwn gan Lywodraeth Cymru ac fe'i gosodir gerbron Senedd Cymru ar y cyd â'r is-ddeddfwriaeth uchod ac yn unol â Rheol Sefydlog 27.1.

### **Datganiad y Gweinidog**

Yn fy marn i, mae'r Memorandwm Esboniadol hwn yn rhoi darlun teg a rhesymol o effaith ddisgwyliedig Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) (Diwygio) (Rhif 16) 2020.

**Vaughan Gething**  
**Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol**

23 Hydref 2020

## 1. Disgrifiad

Yn ddarostyngedig i esemptiadau penodedig, tan 10 Gorffennaf 2020, mae Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) 2020 ("Y Rheoliadau Teithio Rhyngwladol") yn ei gwneud yn ofynnol i bob teithiwr sy'n cyrraedd Cymru o'r tu allan i'r Ardal Deithio Gyffredin (h.y. yr ardal ffiniau agored sy'n cynnwys y Deyrnas Unedig, Ynysoedd y Sianel, Ynys Manaw a Gweriniaeth Iwerddon) ddarparu ei fanylion cyswllt a gwybodaeth am ei daith – ac ynysu am gyfnod o 14 o ddiwrnodau.

Diwygiwyd y Rheoliadau Teithio Rhyngwladol gan Reoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol a Gwybodaeth Iechyd y Cyhoedd i Deithwyr) (Cymru) (Diwygio) 2020 er mwyn (ymhlith pethau eraill) cyflwyno esemptiad rhag y gofyniad i ynysu ar gyfer teithwyr sy'n cyrraedd o wledydd a thiriogaethau penodol, a elwir yn "wledydd esempt".

Mae'r Rheoliadau hyn yn diwygio ymhellach y Rheoliadau Teithio Rhyngwladol er mwyn gweithredu newidiadau a nodwyd gan y Gydganolfan Biddiogelwch yn statws risg iechyd cyhoeddus rhai gwledydd neu diriogaethau, fel y bo'n angenrheidiol er mwyn diogelu iechyd y cyhoedd.

## 2. Materion o ddiddordeb arbennig i'r Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

*Yn dod i rym*

Yn unol ag adran 11A(4) o Ddeddf Offerynnau Statudol 1946, hysbyswyd y Llywydd y bydd y Rheoliadau wedi dod i rym llai na 21 diwrnod ar ôl gosod yr offeryn yn y Senedd.

*Y Confensiwn Ewropeaidd ar Hawliau Dynol*

Nid yw'r diwygiadau yn y Rheoliadau hyn yn newid y ffaith fod hawliau unigol o dan Ddeddf Hawliau Dynol 1998 a Siarter Hawliau Sylfaenol Ewrop yn gysylltiedig â'r Rheoliadau Teithio Rhyngwladol; mae'r Llywodraeth o'r farn eu bod yn gymesur a hefyd yn gyfiawn at ddiben atal lledaeniad haint a/neu y caniateir ymyriad ar y sail ei fod yn anelu at gyflawni nod dilys, sef diogelu iechyd y cyhoedd.

*Dogfen enghreifftiol o welliannau*

Mae dogfen enghreifftiol sy'n dangos diwygiadau a wnaed i'r Rheoliadau Teithio Rhyngwladol yn cael ei pharatoi, a chaiff ei chyhoeddi ar wefan GOV.cymru yn fuan. Bydd yn cynnwys y diwygiadau sy'n cael eu gwneud gan y Rheoliadau hyn.

## 3. Y cefndir deddfwriaethol

Mae Deddf Iechyd y Cyhoedd (Rheoli Clefydau) 1984 ("Deddf 1984"), a rheoliadau a wnaed oddi tani, yn darparu fframwaith deddfwriaethol ar gyfer diogelu iechyd yng Nghymru a Lloegr. Gwneir y Rheoliadau drwy ddibynnu ar y pwerau yn adrannau

45B a 45P(2) o Ddeddf 1984. Mae'r Memorandwm Esboniadol i'r Rheoliadau Teithio Rhyngwladol yn rhoi rhagor o wybodaeth am y pwerau hyn.

#### **4. Diben y ddeddfwriaeth a'r effaith y bwriedir iddi ei chael**

Gwnaed y Rheoliadau Teithio Rhyngwladol ar 5 Mehefin 2020 a daethant i rym ar 8 Mehefin 2020 mewn ymateb i'r bygythiad difrifol ac uniongyrchol i iechyd y cyhoedd a berir gan fynychder a lledaeniad syndrom anadlol aciwt difrifol coronafeirws 2 (SARS-CoV-2).

Mae'r Rheoliadau Teithio Rhyngwladol yn cael eu hadolygu'n rheolaidd ac mae newidiadau wedi'u gwneud i'r rhestr o'r gwledydd a'r tiriogaethau esempt na fyddai'n ofynnol i deithwyr ynysu ar ôl cyrraedd Cymru o'r manau hynny – yn fwyaf diweddar ar 18 Hydref 2020.

Mae'r cyngor sydd bellach wedi dod i law oddi wrth y Gydganolfan Bioddiogelwch yn dangos bod y risg i iechyd y cyhoedd yn sgil mynychder a lledaeniad y coronafeirws wedi cynyddu yn Liechtenstein. Ar sail y cyngor hwn, mae Llywodraeth Cymru o'r farn y dylai gofynion i ynysu yn awr gael eu cyflwyno i deithwyr sy'n dod i Gymru o'r wlad honno.

Ni fydd ynys Mykonos yng Ngwlad Groeg wedi ei heithrio mwyach o'r esemptiad ar gyfer Gwlad Groeg, felly bydd yn cael ei hystyried yn diriogaeth esempt. Mae hyn yn seiliedig ar y ffaith bod y data a gafwyd gan y Gydganolfan Bioddiogelwch wedi dangos bod y risg i iechyd y cyhoedd yn sgil teithwyr sy'n cyrraedd Cymru o'r ynys hon wedi lleihau ac felly dylai'r teithwyr hynny gael eu heithrio rhag y gofynion i ynysu.

Mae'r Rheoliadau hefyd yn ychwanegu'r Ynysoedd Dedwydd, Denmarc a'r Maldives at y rhestr o wledydd a thiriogaethau eithriedig. Mae hyn ar y sail bod y data a dderbyniwyd gan y Gydganolfan Ddiogelwch wedi dangos bod y risg i iechyd y cyhoedd a achosir gan y gwledydd a'r tiriogaethau hynny bellach wedi gostwng, ac felly y dylid eithrio'r rhai sy'n cyrraedd o'r manau hynny rhag y gofynion ynysu.

Bydd y diwygiadau yn dod i rym ar gyfer unrhyw deithwyr sy'n cyrraedd yr Ardal Deithio Gyffredin o'r gwledydd neu'r tiriogaethau hyn am 4:00am neu wedi hynny ar ddydd Sul 25 2020. Ni fydd yr un o'r diwygiadau i'r Rheoliadau Teithio Rhyngwladol yn effeithio ar y gofynion o dan y Rheoliadau hynny i bersonau sy'n cyrraedd yr Ardal Deithio Gyffredin cyn i'r diwygiadau ddod i rym.

Mae Gweinidogion Cymru o'r farn fod y diwygiadau hyn, yn gymesur â'r hyn y maent yn ceisio ei gyflawni, sef ymateb i fygythiad difrifol ac uniongyrchol i iechyd y cyhoedd.

#### **5. Ymgynghori**

Oherwydd y bygythiad difrifol ac uniongyrchol sy'n deillio o'r coronafeirws a'r angen am ymateb iechyd y cyhoedd brys, ni chynhaliwyd unrhyw ymgynghoriad cyhoeddus mewn perthynas â'r Rheoliadau hyn.

## **6. Aseiad Effaith Rheoleiddiol**

Ni chynhaliwyd unrhyw aseiad effaith rheoleiddiol mewn perthynas â'r Rheoliadau hyn oherwydd yr angen i'w rhoi ar waith ar fyrder i ymdrin â bygythiad difrifol ac uniongyrchol i iechyd y cyhoedd.



Ein cyf/Our ref: MA/VG/3593/20

Elin Jones, AS  
Llywydd  
Senedd Cymru  
Bae Caerdydd  
CF99 1SN

23 Hydref 2020

Annwyl Lywydd,

**Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru)  
(Diwygio) (Rhif 16) 2020**

Yn unol ag adran 11A(4) o Ddeddf Offerynnau Statudol 1946 rwy'n eich hysbysu y bydd yr Offeryn Statudol hwn yn dod i rym lai na 21 diwrnod ar ôl iddo gael ei osod. Amgaeir y Memorandwm Esboniadol sy'n cyd-fynd â'r Rheoliadau er eich gwybodaeth.

Mae'r Rheoliadau a wneir heddiw yn diwygio Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) 2020 ymhellach i dynnu Liechenstein oddi ar y rhestr o wledydd a thiriogaethau sydd wedi'u heithrio ac i ychwanegu'r Ynysoedd Dedwydd, Denmarc a'r Maldives at y rhestr. Ni fydd ynys Mykonos yn cael ei heithrio mwyach o'r esemptiad presennol ar gyfer Gwlad Groeg ac felly bydd yn cael ei ystyried yn diriogaeth sydd wedi'i heithrio. Mae'r Rheoliadau'n gwneud y newidiadau hyn oherwydd y newidiadau a nodwyd yn y risg i iechyd y cyhoedd yn sgil cyrraedd o'r tiriogaethau hynny.

Mae peidio â chadw at y confensiwn 21 diwrnod yn galluogi'r Rheoliadau hyn i ddod i rym cyn gynted â phosibl, ac o ystyried newid yn y dystiolaeth ar risg mewn cysylltiad â'r clefyd hwn, ystyrir bod hyn yn angenrheidiol ac yn gyfiawn yn yr achos hwn.

Oherwydd natur frys y Rheoliadau, ni chynhaliwyd ymgynghoriad.

Bae Caerdydd • Cardiff Bay  
Caerdydd • Cardiff  
CF99 1NA

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

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[Gohebiaeth.Rebecca.Evans@llyw.cymru](mailto:Gohebiaeth.Rebecca.Evans@llyw.cymru)



Rwy'n anfon copi o'r llythyr hwn at Mick Antoniw AS, Cadeirydd y Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad, Sian Wilkins, Pennaeth Gwasanaethau'r Siambr a Phwyllgorau a Julian Luke, Pennaeth Gwasanaeth y Pwyllgorau Polisi a Deddfwriaeth.

Yn gywir,

A handwritten signature in black ink that reads "Rebecca Evans". The script is cursive and fluid.

**Rebecca Evans AS/MS**

Y Gweinidog Cyllid a'r Trefnydd  
Minister for Finance and Trefnydd



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# DATGANIAD YSGRIFENEDIG

## GAN

### LYWODRAETH CYMRU

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<b>TEITL</b>	<b>Diwygio Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru)</b>
<b>DYDDIAD</b>	<b>22 Hydref 2020</b>
<b>GAN</b>	<b>Vaughan Gething, y Gweinidog Iechyd a Gwasanaethau Cymdeithasol</b>

Bydd yr Aelodau'n ymwybodol bod Llywodraeth Cymru wedi gwneud darpariaeth yn Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) 2020 i sicrhau bod teithwyr sy'n cyrraedd Cymru o wledydd a thiriogaethau tramor yn gorfod hunanynysu am 14 diwrnod, a darparu gwybodaeth am deithwyr, er mwyn atal y coronafeirws rhag lledaenu ymhellach. Daeth y cyfyngiadau hyn i rym ar 8 Mehefin 2020.

Ar 10 Gorffennaf, diwygiodd Llywodraeth Cymru'r Rheoliadau hyn i gyflwyno eithriadau i'r gofyniad i hunanynysu ar gyfer rhestr o wledydd a thiriogaethau, ac ystod gyfyngedig o bobl mewn sectorau neu gyflogaeth arbenigol a allai fod wedi'u heithrio rhag y gofyniad i hunanynysu neu rhag rhai o ddarpariaethau'r gofynion ynghylch gwybodaeth am deithwyr.

Ers hynny, mae'r rheoliadau hyn wedi'u hadolygu'n gyson ac mae nifer o newidiadau wedi'u gwneud i'r rhestr o wledydd a thiriogaethau sydd wedi'u heithrio.

Heddiw, adolygais asesiadau diweddaraf y Gyd-ganolfan Biaddiogelwch ac rwyf wedi penderfynu y bydd Liechtenstein yn cael ei thynnu oddi ar y rhestr o wledydd a thiriogaethau sydd wedi'u heithrio. Felly bydd rhaid i deithwyr sy'n cyrraedd o Liechtenstein hunanynysu pan fyddant yn cyrraedd Cymru. Rwyf hefyd wedi penderfynu na fydd ynys roegaid Mykonos yn cael ei heithrio mwyach o'r esemptiad ar gyfer Gwlad Groeg, ac felly bydd yn cael ei hystyried fel tiriogaeth sydd wedi'i heithrio. Bydd yr Ynysoedd Dedwydd, Denmarc a'r Maldives yn cael eu rhoi ar y rhestr o wledydd a thiriogaethau sydd wedi'u heithrio. Ni fydd yn ofynnol felly i deithwyr o'r gwledydd a'r tiriogaethau hyn hunanynysu pan fyddant yn cyrraedd Cymru.

Yfory, byddaf yn gosod y rheoliadau angenrheidiol a ddaw i rym am 04:00 ddydd Sul 25 Hydref.

## SL(5)638 – Rheoliadau Diogelu Iechyd (Cyfyngiadau Coronafeirws) (Rhif 2) (Cymru) (Diwygio) (Rhif 19) 2020

### Cefndir a Diben

Mae'r Rheoliadau hyn yn diwygio Rheoliadau Diogelu Iechyd (Cyfyngiadau Coronafeirws) (Rhif 2) (Cymru) 2020 (y "prif Reoliadau"). Gwneir y Rheoliadau o dan adrannau 45C(1), a (3)(c), 45F(2) a 45P o Ddeddf Iechyd y Cyhoedd (Rheoli Clefydau) 1984.

Mae'r Rheoliadau hyn:

- yn gosod cyfyngiadau ar bersonau sy'n teithio i ardaloedd o Gymru nad ydynt wedi eu dynodi'n ardaloedd diogelu iechyd lleol o rannau o Loegr, yr Alban a Gogledd Iwerddon sydd â chyffredinrwydd uchel o'r Coronafeirws, a chyfyngiadau cyfatebol ar bobl sy'n teithio o Gymru i ardaloedd o'r fath. Yr ardaloedd sydd â chyffredinrwydd uchel yw'r rhai a ddynodwyd fel a ganlyn gan yr awdurdod perthnasol yn y rhan honno o'r DU:
  - Lloegr – pob ardal Haen 2 "uchel" a Haen 3 "uchel iawn"
  - Yr Alban – ardaloedd wedi eu diogelu sy'n destun mesurau dros dro ychwanegol
  - Gogledd Iwerddon – y diriogaeth gyfan ar hyn o bryd.
- yn darparu bod mynd i mewn i ardal diogelu iechyd leol, neu ei gadael, i gymryd rhan mewn gweithgareddau, neu eu hwyluso, a drefnir ar gyfer datblygiad neu lesiant plant yn esgus rhesymol, ac maent yn addasu'r esgusodion rhesymol dros ymgynnull ac am fynd i mewn i ardal diogelu iechyd leol, neu ei gadael, fel eu bod yn gyson.
- yn gwneud newidiadau mân a chanlyniadol i sicrhau cysondeb a diweddarau enw llawn "Menai (Bangor)" fel un o'r adrannau etholiadol yng Ngwynedd, a restrir ym mharagraff 1 o Atodlen 4A i'r prif Reoliadau.

Daw'r Rheoliadau i rym am 6.00 p.m. ar 16 Hydref 2020. Mae'n rhaid i'r cyfyngiadau a'r gofynion a gyflwynir gan y diwygiadau hyn mewn perthynas â theithio gael eu hadolygu ar 23 Hydref 2020, neu cyn hynny, ac o leiaf unwaith bob saith diwrnod wedi hynny.

### Y weithdrefn

Gwneud cadarnhaol.

Gwnaed y Rheoliadau hyn gan Weinidogion Cymru cyn iddynt gael eu gosod gerbron y Senedd. Mae'n rhaid i'r Senedd gymeradwyo'r Rheoliadau o fewn 28 diwrnod (ac eithrio



diwrnodau pan fo'r Senedd: (i) wedi'i diddymu neu (ii) ar doriad am fwy na phedwar diwrnod) i'r dyddiad y'u gwnaed er mwyn iddynt barhau i gael effaith.

## Materion technegol: craffu

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

### **1. Rheol Sefydlog 21.2(v) – bod angen eglurhad pellach ynglŷn â'i ffurf neu ei ystyr am unrhyw reswm penodol**

Mae rheoliad 2(4)(a) o'r Rheoliadau hyn yn gwneud diwygiadau i reoliad 14(2) o'r prif Reoliadau ac i "is-baragraff (b)". Nid yw rheoliad 2(4)(a) o'r fersiwn Gymraeg o'r Rheoliadau hyn yn cyfeirio at is-baragraff (b). Yn hytrach, mae'n dweud "ym mharagraff (2)". Dylai'r testun Cymraeg ddarllen fel "yn is-baragraff (b)" er mwyn sicrhau eglurder a chysondeb â'r fersiwn Saesneg.

## Rhinweddau: craffu

Nodwyd y 4 pwynt a ganlyn i gyflwyno adroddiad arnynt o dan Reol Sefydlog 21.3 mewn perthynas â'r offeryn hwn.

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

Rydym yn nodi cyfiawnhad Llywodraeth Cymru dros unrhyw ymyrraeth bosibl â hawliau dynol. Yn benodol, nodwn y paragraffau a ganlyn yn y Memorandwm Esboniadol:

*"Mae'r Llywodraeth o'r farn bod y cyfyngiadau a osodwyd gan y diwygiadau a wnaed gan y Rheoliadau hyn i'r prif Reoliadau, yn gymesur. Mae'r diwygiadau hyn yn cydbwysu'r angen i gynnal ymateb priodol i'r bygythiad a achosir gan y coronafeirws â'r angen i gynnal hawliau unigolion a busnesau, mewn modd sy'n dal i fod yn gymesur â'r angen i atal cyfradd drosglwyddo'r coronafeirws rhag cynyddu, gan ystyried y dystiolaeth wyddonol."*

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

Rydym yn croesawu'r dystiolaeth a ddarparodd Llywodraeth Cymru yn y Memorandwm Esboniadol yn esbonio'r rheswm bod y prif Reoliadau wedi'u diwygio i gyfyngu ar deithio o ardaloedd eraill, ac at ddibenion caniatáu i bersonau adael ardal diogelu iechyd leol os bydd ganddynt esgus rhesymol dros wneud hynny. Credwn y bydd darparu'r dystiolaeth hon yn helpu o ran tryloywder, ac yn helpu gyda gwaith craffu'r Senedd ar gyfyngiadau'r coronafeirws. Yn benodol, nodwn y paragraff a ganlyn o'r Memorandwm Esboniadol sy'n cyfeirio at yr adroddiad "SARS-Cov-2 Genomic Insights".



*“Mae tystiolaeth gan weithwyr iechyd y cyhoedd proffesiynol yn awgrymu bod y coronafeirws yn symud o’r dwyrain i’r gorllewin ar draws y DU ac ar draws Cymru. Fel rheol gyffredinol, mae’n canolbwyntio ar ardaloedd trefol cyn lledu i ardaloedd llai poblog o ganlyniad i bobl yn teithio. Mae’r papur SARS-Cov-2 Genomic Insights (Hydref 2020) yn dangos lledaeniad yr haint yn ddaearyddol ac yn cefnogi’r achos dros gyfyngiadau teithio fel modd o reoli’r lledaeniad. I atal lledaeniad pellach mewn ardaloedd lle mae nifer yr achosion o’r feirws yn parhau i fod yn gymharol isel, mae angen cyfyngu ar fyrder ar deithio nad yw’n hanfodol ar draws y DU. Bydd y diwygiadau’n cyflawni’r nod hwn.*

[https://llyw.cymru/sites/default/files/publications/2020-10/dealltwriaeth-genomig-sars-cov-2-hydref-2020\\_0.pdf](https://llyw.cymru/sites/default/files/publications/2020-10/dealltwriaeth-genomig-sars-cov-2-hydref-2020_0.pdf)

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

Nodwn na fu unrhyw ymgynghori ffurfiol ar y Rheoliadau hyn. Yn benodol, nodwn y paragraffau a ganlyn yn y Memorandwm Esboniadol:

*O ystyried y bygythiad difrifol ac uniongyrchol a achosir gan y coronafeirws a'r angen am ymateb iechyd y cyhoedd brys, ni fu ymgynghoriad cyhoeddus mewn perthynas â'r Rheoliadau hyn. Yn ehangach, cafodd grwpiau cynrychiolwyr ynghyd ag unigolion a busnesau wybod am lacio’r cyfyngiadau drwy ddarllediadau gwybodaeth eang a pharhaus i’r cyhoedd ledled y DU, gan gynnwys gennyf innau. Ynghyd â Gweinidogion eraill a Llywodraeth Cymru, rwyf wedi parhau i roi’r wybodaeth ddiweddaraf i unigolion a busnesau gydol y newidiadau dilynol i’r Rheoliadau.*

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

Nodwn nad oes asesiad o’r effaith ar gydraddoldeb ar gyfer y Rheoliadau hyn a gofynnwn i Lywodraeth Cymru esbonio pa drefniadau y mae wedi eu gwneud, mewn perthynas â’r Rheoliadau hyn, i gyhoeddi adroddiadau o’r asesiadau o’r effaith ar gydraddoldeb yn unol â rheoliad 8(1)(d) o Reoliadau Deddf Cydraddoldeb 2010 (Dyletswyddau Statudol) (Cymru) 2011.

## **Y goblygiadau yn sgil ymadael â’r Undeb Ewropeaidd**

Dim.

## **Ymateb Llywodraeth Cymru**

Mae angen ymateb gan Lywodraeth Cymru o ran y pwynt adrodd technegol a phwynt 4 adrodd rhinweddau yn unig.



**Cynghorwyr Cyfreithiol**  
**Y Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad**  
**22 Hydref 2020**



*Rheoliadau a wnaed gan Weinidogion Cymru, a osodwyd gerbron Senedd Cymru o dan adran 45R o Ddeddf Iechyd y Cyhoedd (Rheoli Clefydau) 1984 (p. 22), i'w cymeradwyo drwy benderfyniad gan Senedd Cymru o fewn wyth niwrnod ar hugain gan ddechrau â'r diwrnod y gwneir yr offeryn, yn ddarostyngedig i'w estyn dros gyfnodau o ddiddymu neu doriad am fwy na phedwar diwrnod.*

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OFFERYNNAU STATUDOL  
CYMRU

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**2020 Rhif 1130 (Cy. 257)**

**IECHYD Y CYHOEDD,  
CYMRU**

**Rheoliadau Diogelu Iechyd  
(Cyfyngiadau Coronafeirws) (Rhif  
2) (Cymru) (Diwygio) (Rhif 19)  
2020**

**NODYN ESBONIADOL**

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

Mae Rhan 2A o Ddeddf Iechyd y Cyhoedd (Rheoli Clefydau) 1984 yn galluogi Gweinidogion Cymru, drwy reoliadau, i wneud darpariaeth at ddiben atal, diogelu rhag, rheoli neu ddarparu ymateb iechyd y cyhoedd i fynychder neu ledaeniad haint neu halogiad yng Nghymru.

Mae'r Rheoliadau hyn wedi eu gwneud mewn ymateb i'r bygythiad difrifol ac uniongyrchol i iechyd y cyhoedd a berir gan fynychder a lledaeniad coronafeirws syndrom anadlol aciwt difrifol 2 (SARS-CoV-2) yng Nghymru.

Mae'r Rheoliadau hyn yn diwygio Rheoliadau Diogelu Iechyd (Cyfyngiadau Coronafeirws) (Rhif 2) (Cymru) 2020 (y "prif Reoliadau"). Mae'r diwygiadau—

- (a) yn gosod cyfyngiadau ar bersonau sy'n teithio i Gymru o rannau o Loegr, yr Alban a Gogledd Iwerddon sydd â chyfraddau uwch o achosion o'r coronafeirws, a chyfyngiadau cyfatebol ar bobl sy'n teithio o Gymru i ardaloedd o'r fath (gwneir hyn drwy gyfeirio at y rhannau o Gymru nad ydynt wedi eu

dynodi'n ardaloedd diogelu iechyd lleol oherwydd y cyfyngiadau sydd eisoes yn eu lle ar fynd i'r ardaloedd hyn neu eu gadael);

- (b) yn darparu ei fod yn esgus rhesymol i fynd i ardal diogelu iechyd leol neu adael ardal o'r fath er mwyn cymryd rhan mewn gweithgareddau sydd wedi eu trefnu, neu hwyluso gweithgareddau sydd wedi eu trefnu, er datblygiad neu lesiant plant, ac yn addasu'r esgusodion rhesymol ar gyfer ymgynnull ac ar gyfer mynd i ardal diogelu iechyd leol a gadael ardal o'r fath fel eu bod yn gyson;
- (c) yn gwneud mân ddarpariaethau a darpariaethau canlyniadol eraill.

Ystyriwyd Cod Ymarfer Gweinidogion Cymru ar gynnal Aseidiadau Effaith Rheoleiddiol mewn perthynas â'r Rheoliadau hyn. O ganlyniad, ni luniwyd asesiad effaith rheoleiddiol o'r costau a'r manteision sy'n debygol o ddeillio o gydymffurfio â'r Rheoliadau hyn.



*Rheoliadau a wnaed gan Weinidogion Cymru, a osodwyd gerbron Senedd Cymru o dan adran 45R o Ddeddf Iechyd y Cyhoedd (Rheoli Clefydau) 1984 (p. 22), i'w cymeradwyo drwy benderfyniad gan Senedd Cymru o fewn wyth niwrnod ar hugain gan ddechrau â'r diwrnod y gwneir yr offeryn, yn ddarostyngedig i'w estyn dros gyfnodau o ddiddymu neu doriad am fwy na phedwar diwrnod.*

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OFFERYNNAU STATUDOL  
CYMRU

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**2020 Rhif 1130 (Cy. 257)**

**IECHYD Y CYHOEDD,  
CYMRU**

**Rheoliadau Diogelu Iechyd  
(Cyfyngiadau Coronafeirws) (Rhif  
2) (Cymru) (Diwygio) (Rhif 19)  
2020**

*Gwnaed am 11.40 a.m. ar 16 Hydref 2020*

*Gosodwyd gerbron Senedd  
Cymru am 1.00 p.m. ar 16 Hydref 2020*

*Yn dod i rym am 6.00 p.m. ar 16 Hydref 2020*

Mae Gweinidogion Cymru yn gwneud y Rheoliadau a ganlyn drwy arfer y pwerau a roddir gan adrannau 45C(1) a (3)(c), 45F(2) a 45P o Ddeddf Iechyd y Cyhoedd (Rheoli Clefydau) 1984(1).

Mae'r Rheoliadau hyn wedi eu gwneud mewn ymateb i'r bygythiad difrifol ac uniongyrchol i iechyd y cyhoedd a berir gan fynychder a lledaeniad coronafeirws syndrom anadlol aciwt difrifol 2 (SARS-CoV-2) yng Nghymru.

Mae Gweinidogion Cymru yn ystyried bod y diwygiadau a wneir gan y Rheoliadau hyn yn gymesur

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(1) 1984 p. 22. Mewnosodwyd adrannau 45C, 45F a 45P gan adran 129 o Ddeddf Iechyd a Gofal Cymdeithasol 2008 (p. 14). Mae'r swyddogaethau o dan yr adrannau hyn wedi eu rhoi i "the appropriate Minister" ("y Gweinidog priodol"). O dan adran 45T(6) o Ddeddf 1984, y Gweinidog priodol, o ran Cymru, yw Gweinidogion Cymru.

â'r hyn y maent yn ceisio ei gyflawni, sef ymateb iechyd y cyhoedd i'r bygythiad hwnnw.

Yn unol ag adran 45R o'r Ddeddf honno, oherwydd brys, mae Gweinidogion Cymru o'r farn ei bod yn angenrheidiol gwneud yr offeryn hwn heb fod drafft wedi ei osod gerbron Senedd Cymru ac wedi ei gymeradwyo ganddi drwy benderfyniad.

### Enwi a dod i rym

1. Enw'r Rheoliadau hyn yw Rheoliadau Diogelu Iechyd (Cyfyngiadau Coronafeirws) (Rhif 2) (Cymru) (Diwygio) (Rhif 19) 2020 a deuant i rym am 6.00 p.m. ar 16 Hydref 2020.

### Diwygio Rheoliadau Diogelu Iechyd (Cyfyngiadau Coronafeirws) (Rhif 2) (Cymru) 2020

2.—(1) Mae Rheoliadau Diogelu Iechyd (Cyfyngiadau Coronafeirws) (Rhif 2) (Cymru) 2020(1) wedi eu diwygio fel a ganlyn.

(2) Yn rheoliad 2—

(a) ym mharagraff (1), ar ôl is-baragraff (r) mewnosoder—

“(s) ystyr “plentyn” yw person sydd o dan 18 oed, ond yn rheoliadau 14(2)(ja), 14A(2)(ea) a 14D(3)(l) a pharagraffau 3(2)(la) a 4(2)(la) o Atodlen 4A, ei ystyr yw person a oedd o dan 18 oed ar 31 Awst 2020;

(t) ystyr “ardal diogelu iechyd leol” yw ardal a restrir ym mharagraff 1 o Atodlen 4A.”;

(b) ar y diwedd mewnosoder—

“(8) At ddibenion rheoliadau 14, 14A a 14D ac Atodlen 4A, mae gweithgaredd neu ddigwyddiad “wedi ei drefnu”—

(a) os yw wedi ei drefnu gan—

(i) busnes,

(ii) corff cyhoeddus neu sefydliad elusennol, llesiannol, addysgol neu ddyngarol,

(iii) clwb neu sefydliad gwleidyddol, neu

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(1) O.S. 2020/725 (Cy. 162), fel y'i diwygiwyd gan O.S. 2020/752 (Cy. 169), O.S. 2020/803 (Cy. 176), O.S. 2020/820 (Cy. 180), O.S. 2020/843 (Cy. 186), O.S. 2020/867 (Cy. 189), O.S. 2020/884 (Cy. 195), O.S. 2020/912 (Cy. 204), O.S. 2020/961 (Cy. 215), O.S. 2020/985 (Cy. 222), O.S. 2020/1007 (Cy. 224), O.S. 2020/1011 (Cy. 225), O.S. 2020/1022 (Cy. 227), O.S. 2020/1035 (Cy. 229), O.S. 2020/1040 (Cy. 230), O.S. 2020/1043 (Cy. 232), O.S. 2020/1049 (Cy. 235), O.S. 2020/1066 (Cy. 240), O.S. 2020/1079 (Cy. 242) ac O.S. 2020/1102 (Cy. 251).

- (iv) corff llywodraethu cenedlaethol camp neu weithgaredd arall, a
- (b) os yw'r person sy'n ei drefnu wedi—
  - (i) cynnal asesiad risg a fyddai'n bodloni gofynion rheoliad 3 o Reoliadau Rheoli Iechyd a Diogelwch yn y Gwaith 1999(1), pa un a yw'r person yn ddarostyngedig i'r Rheoliadau hynny ai peidio, a
  - (ii) cydymffurfio â gofynion rheoliadau 12(2) a 13(1).
- (9) At ddibenion paragraff (8)(b)—
  - (a) mae rheoliad 3 o Reoliadau Rheoli Iechyd a Diogelwch yn y Gwaith 1999 yn gymwys fel pe bai'r gweithgaredd neu'r digwyddiad yn ymgymeriad a wneir gan y person sy'n ei drefnu;
  - (b) mae rheoliad 12(2) o'r Rheoliadau hyn yn gymwys fel pe bai'r man lle y mae'r gweithgaredd neu'r digwyddiad yn digwydd yn fangre agored y mae'r person sy'n ei drefnu yn gyfrifol amdani.”
- (3) Yn rheoliad 4, ar ôl paragraff (2) mewnosoder—
 

“(3) Rhaid i Weinidogion Cymru adolygu'r angen am y cyfyngiadau a osodir gan reoliad 14D, a pha un a yw'r cyfyngiadau hynny yn gymesur â'r hyn y mae Gweinidogion Cymru yn ceisio ei gyflawni drwyddynt—

  - (a) erbyn 23 Hydref 2020;
  - (b) o leiaf unwaith yn y cyfnod o 7 diwrnod sy'n dechrau ar 24 Hydref 2020;
  - (c) o leiaf unwaith ym mhob cyfnod dilynol o 7 niwrnod.”
- (4) Yn rheoliad 14(2)—
  - (a) ym mharagraff (2), yn lle “darparu neu gael gofal neu gynhorthwy, gan gynnwys gofal personol perthnasol” rhodder “darparu, cael neu gael gafael ar ofal neu gynhorthwy, gan gynnwys gofal plant neu ofal personol perthnasol”;
  - (b) yn lle is-baragraff (ja) rhodder—
 

“(ja)cymryd rhan mewn gweithgareddau wedi eu trefnu er datblygiad neu lesiant plant (gan gynnwys chwaraeon, cerddoriaeth a gweithgareddau hamdden eraill megis y rheini a

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(1) O.S. 1999/3242. Diwygiwyd rheoliad 3 gan O.S. 2005/1541, O.S. 2015/21 ac O.S. 2015/1637.

ddarperir ar gyfer plant y tu allan i oriau'r ysgol ac yn ystod gwyliau'r ysgol), neu hwyluso'r gweithgareddau hynny;”.

(5) Yn rheoliad 14A—

(a) ym mharagraff (2), yn lle is-baragraff (e) rhodder—

“(e) darparu, cael neu gael gafael ar ofal plant;

(ea) cymryd rhan mewn gweithgareddau wedi eu trefnu er datblygiad neu lesiant plant (gan gynnwys chwaraeon, cerddoriaeth a gweithgareddau hamdden eraill megis y rheini a ddarperir ar gyfer plant y tu allan i oriau'r ysgol ac yn ystod gwyliau'r ysgol), neu hwyluso'r gweithgareddau hynny;”;

(b) ym mharagraff (3), yn y geiriau o flaen is-baragraff (a), yn lle “ddigwyddiad awyr agored wedi ei drefnu” rhodder “ddigwyddiad wedi ei drefnu a gynhelir yn yr awyr agored”;

(c) hepgorer paragraffau (4) a (5).

(6) Ar ôl rheoliad 14C mewnosoder—

## “RHAN 4B

### Cyfyngiadau teithio

#### **Cyfyngiadau ar deithio i ardaloedd ac o ardaloedd lle y mae nifer yr achosion o'r coronafeirws yn uchel**

**14D.**—(1) Ni chaiff unrhyw berson sy'n byw mewn ardal a restrir yn Atodlen 4B, heb esgus rhesymol, fynd i ran o Gymru nad yw'n ardal diogelu iechyd leol neu aros mewn rhan o Gymru o'r fath.

(2) Ni chaiff unrhyw berson sy'n byw mewn rhan o Gymru nad yw'n ardal diogelu iechyd leol, heb esgus rhesymol, adael Cymru at ddiben mynd i ardal a restrir yn Atodlen 4B.

(3) At ddibenion paragraffau (1) a (2), mae esgus rhesymol yn cynnwys yr angen i wneud y canlynol mewn rhan o Gymru nad yw'n ardal diogelu iechyd leol neu mewn ardal a restrir yn Atodlen 4B (yn y drefn honno)—

(a) cael—

(i) bwyd a chyflenwadau meddygol ar gyfer y rheini yn yr un aelwyd (gan gynnwys anifeiliaid yn yr un aelwyd) neu ar gyfer personau hyglwyf;

- (ii) cyflenwadau ar gyfer cynnal, cynnal a chadw a gweithrediad hanfodol yr aelwyd, neu aelwyd person hyglwyf;
- (b) cael arian oddi wrth unrhyw fusnes neu wasanaeth a restrir ym mharagraff 6 neu 7 o Atodlen 4 neu adneuo arian gydag unrhyw fusnes neu wasanaeth o'r fath;
- (c) cael neu ddarparu cynhorthwy meddygol, gan gynnwys cael gafael ar unrhyw un neu ragor o'r gwasanaethau y cyfeirir atynt ym mharagraff 10 o Atodlen 4 neu gael gafael ar wasanaethau milfeddygol;
- (d) darparu, cael neu gael gafael ar ofal neu gynhorthwy, gan gynnwys gofal plant neu ofal personol perthnasol o fewn ystyr "relevant personal care" ym mharagraff 7(3B) o Atodlen 4 i Ddeddf Diogelu Grwpiau Hyglwyf 2006<sup>(1)</sup>, pan fo'r person sy'n cael y gofal yn berson hyglwyf;
- (e) gweithio neu ddarparu gwasanaethau gwirfoddol neu elusennol pan na fo'n rhesymol ymarferol gwneud y gwaith neu ddarparu'r gwasanaeth o'r tu allan i'r ardal;
- (f) pan fo'r person yn athletwr elît, hyfforddi a chystadlu;
- (g) darparu neu gael cynhorthwy brys;
- (h) mynd i weinyddiad priodas neu ffurfiad partneriaeth sifil —
  - (i) fel parti i'r briodas neu'r bartneriaeth sifil,
  - (ii) os caiff ei wahodd i fynychu, neu
  - (iii) fel gofalwr person sy'n mynd i'r briodas neu'r bartneriaeth sifil;
- (i) mynd i angladd —
  - (i) fel person sy'n gyfrifol am drefnu'r angladd,
  - (ii) os caiff ei wahodd gan berson sy'n gyfrifol am drefnu'r angladd, neu
  - (iii) fel gofalwr person sy'n mynd i'r angladd;
- (j) cyflawni rhwymedigaeth gyfreithiol, gan gynnwys mynd i'r llys neu fodloni amodau mechniaeth, neu gymryd rhan mewn achos cyfreithiol;

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(1) 2006 p. 47. Mewnosodwyd paragraff 7(3B) gan adran 66(2) o Ddeddf Diogelu Rhyddidau 2012 (p. 9).

- (k) cael gafael ar wasanaethau cyhoeddus neu gael y gwasanaethau hynny;
- (l) cymryd rhan mewn gweithgareddau wedi eu trefnu er datblygiad neu lesiant plant (gan gynnwys chwaraeon, cerddoriaeth a gweithgareddau hamdden eraill megis y rheini a ddarperir ar gyfer plant y tu allan i oriau'r ysgol ac yn ystod gwyliau'r ysgol), neu hwyluso'r gweithgareddau hynny;
- (m) cael gafael ar wasanaethau addysgol;
- (n) mewn perthynas â phlant nad ydynt yn byw yn yr un aelwyd â'u rhieni, neu un o'u rhieni, parhau â threfniadau presennol ar gyfer gweld rhieni a phlant, a chyswllt rhyngddynt, ac at ddibenion y paragraff hwn, mae "rhiant" yn cynnwys person nad yw'n rhiant i'r plentyn, ond sydd â chyfrifoldeb rhiant dros y plentyn neu sydd â gofal drosto;
- (o) symud cartref;
- (p) ymgymryd â gweithgareddau mewn cysylltiad â phrynu, gwerthu, gosod neu rentu eiddo preswyl;
- (q) osgoi anaf neu salwch neu ddianc rhag risg o niwed;
- (r) teithio i gyrraedd man y tu allan i'r ardal.

(3) At ddibenion paragraff (1), nid yw'n esgus rhesymol i berson fynd i ran o Gymru nad yw'n ardal diogelu iechyd leol, neu aros mewn rhan o Gymru o'r fath, i wneud unrhyw beth os byddai'n rhesymol ymarferol i'r person wneud y peth hwnnw y tu allan i'r ardal

(4) At ddibenion paragraff (2), nid yw'n esgus rhesymol i berson adael Cymru at ddiben mynd i ardal a restrir yn Atodlen 4B i wneud unrhyw beth os byddai'n rhesymol ymarferol i'r person wneud y peth hwnnw y tu allan i'r ardal."

(7) Yn rheoliad 18—

- (a) ar ôl paragraff (4A) mewnosoder—
 

“(4B) Pan fo gan swyddog gorfodaeth sail resymol dros amau bod person (“P”) yn torri (neu ar fin torri) rheoliad 14D(1) neu (2), caiff y swyddog gyfarwyddo P i ddychwelyd i'r man lle y mae P yn byw.”;
- (b) ym mharagraff (5)(a), yn lle “neu (4A)” rhodder “, (4A) neu (4B)”;
- (c) ym mharagraff (6ZA), yn lle “paragraff” rhodder “rheoliad 14D(1) neu (2) neu baragraff”.

(8) Yn rheoliad 20—

- (a) ym mharagraff (1)(b), yn lle “neu 14B(1)” rhodder “, 14B(1) neu 14D(1) neu (2)”;
- (b) ym mharagraff (3)(a), ar ôl “18(4A)(a),” mewnosoder “18(4B),”.

(9) Yn Atodlen 4A—

- (a) ym mharagraff 1(q)(viii), ar ôl “Menai” mewnosoder “(Bangor)”;

(b) ym mharagraff 3(2)—

- (i) yn is-baragraff (d), yn lle “darparu neu gael gofal neu gynhorthwy, gan gynnwys gofal personol perthnasol,” rhodder “darparu, cael neu gael gafael ar ofal neu gynhorthwy, gan gynnwys gofal plant neu ofal personol perthnasol”;
- (ii) yn is-baragraff (l), yn lle “ofal plant neu wasanaethau addysg neu gael y gofal neu’r gwasanaethau hynny” rhodder “wasanaethau addysgol neu gael y gwasanaethau hynny”;

(iii) ar ôl is-baragraff (l) mewnosoder—

“(la)cymryd rhan mewn gwasanaethau wedi eu trefnu er datblygiad neu lesiant plant (gan gynnwys chwaraeon, cerddoriaeth a gweithgareddau hamdden eraill megis y rheini a ddarperir ar gyfer plant y tu allan i oriau’r ysgol ac yn ystod gwyliau’r ysgol), neu hwyluso’r gwasanaethau hynny;”;

(c) ym mharagraff 4(2)—

- (i) yn is-baragraff (d), yn lle “darparu neu gael gofal neu gynhorthwy, gan gynnwys gofal personol perthnasol,” rhodder “darparu, cael neu gael gafael ar ofal neu gynhorthwy, gan gynnwys gofal plant neu ofal personol perthnasol”;
- (ii) yn is-baragraff (l), yn lle “ofal plant neu wasanaethau addysg neu gael y gofal neu’r gwasanaethau hynny” rhodder “wasanaethau addysgol neu gael y gwasanaethau hynny”;

(iii) ar ôl is-baragraff (l) mewnosoder—

“(la)cymryd rhan mewn gwasanaethau wedi eu trefnu er datblygiad neu lesiant plant (gan gynnwys chwaraeon, cerddoriaeth a gweithgareddau hamdden eraill megis y rheini a ddarperir ar gyfer plant y tu allan i oriau’r ysgol ac yn ystod gwyliau’r ysgol), neu hwyluso’r gweithgareddau hynny;”.

(10) Ar ôl Atodlen 4A mewnosoder—

“ATODLEN 4B Rheoliad 14D

Ardaloedd cyfyngiadau teithio

Rhan 1: Lloegr

1. Ardaloedd y canlynol, a ddynodir yn ardaloedd Haen 2 gan Reoliadau Diogelu Iechyd (Coronafeirws, Lefel Rhybudd COVID-19 Leol) (Uchel) (Lloegr) 2020(1) neu'n ardaloedd Haen 3 gan Reoliadau Diogelu Iechyd (Coronafeirws, Lefel Rhybudd COVID-19 Leol) (Uchel Iawn) (Lloegr) 2020(2)—

*Cumbria*

Cyngor Bwrdeistref Barrow-in-Furness

*De Swydd Efrog*

Cyngor Bwrdeistref Fetropolitanaid Barnsley

Cyngor Bwrdeistref Fetropolitanaid Rotherham

Cyngor Dinas Sheffield

Cyngor Doncaster

*Durham*

Cyngor Sir Durham

*Essex*

Cyngor Basildon

Cyngor Bwrdeistref Brentwood

Cyngor Bwrdeistref Castle Point

Cyngor Bwrdeistref Colchester

Cyngor Dinas Chelmsford

Cyngor Dosbarth Braintree

Cyngor Dosbarth Epping Forest

Cyngor Dosbarth Maldon

Cyngor Dosbarth Rochford

Cyngor Dosbarth Tendring

Cyngor Dosbarth Uttlesford

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(1) O.S. 2020/1104.  
(2) O.S. 2020/1105.



Cyngor Harlow

*Glannau Mersi*

Cyngor Bwrdeistref Fetropolitanaidd Knowsley

Cyngor Bwrdeistref Fetropolitanaidd Wirral

Cyngor Bwrdeistref Halton

Cyngor Bwrdeistref Sefton

Cyngor Bwrdeistref St Helens

Cyngor Dinas Lerpwl

*Gogledd Swydd Efrog*

Cyngor Dinas Caerefrog

*Gorllewin Canolbarth Lloegr*

Cyngor Bwrdeistref Fetropolitanaidd Sandwell

Cyngor Bwrdeistref Fetropolitanaidd Solihull

Cyngor Dinas Birmingham

Cyngor Dinas Wolverhampton

Cyngor Walsall

*Gorllewin Swydd Efrog*

Cyngor Bwrdeistref Fetropolitanaidd Calderdale

Cyngor Dinas Leeds

Cyngor Dosbarth Metropolitanaidd Dinas  
Bradford

Cyngor Metropolitanaidd Kirklees

Cyngor Wakefield

*Llundain Fwyaf*

Cyngor Bwrdeistref Barking a Dagenham

Cyngor Bwrdeistref Barnet

Cyngor Bwrdeistref Bexley

Cyngor Bwrdeistref Brent

Cyngor Bwrdeistref Bromley

Cyngor Bwrdeistref Camden

Cyngor Bwrdeistref Croydon

Cyngor Bwrdeistref Ealing

Cyngor Bwrdeistref Enfield

Cyngor Bwrdeistref Greenwich  
Cyngor Bwrdeistref Hackney  
Cyngor Bwrdeistref Hammersmith a Fulham  
Cyngor Bwrdeistref Haringey  
Cyngor Bwrdeistref Harrow  
Cyngor Bwrdeistref Havering  
Cyngor Bwrdeistref Hillingdon  
Cyngor Bwrdeistref Hounslow  
Cyngor Bwrdeistref Islington  
Cyngor Bwrdeistref Kensington a Chelsea  
Cyngor Bwrdeistref Kingston upon Thames  
Cyngor Bwrdeistref Lambeth  
Cyngor Bwrdeistref Lewisham  
Cyngor Bwrdeistref Merton  
Cyngor Bwrdeistref Newham  
Cyngor Bwrdeistref Redbridge  
Cyngor Bwrdeistref Richmond upon Thames  
Cyngor Bwrdeistref Southwark  
Cyngor Bwrdeistref Sutton  
Cyngor Bwrdeistref Tower Hamlets  
Cyngor Bwrdeistref Waltham Forest  
Cyngor Bwrdeistref Wandsworth  
Cyngor Cyffredin Dinas Llundain  
Cyngor Dinas Westminster

*Manceinion Fwyaf*

Cyngor Bwrdeistref Fetropolitanaidd Bolton  
Cyngor Bwrdeistref Fetropolitanaidd Bury  
Cyngor Bwrdeistref Fetropolitanaidd Oldham  
Cyngor Bwrdeistref Fetropolitanaidd Stockport  
Cyngor Bwrdeistref Fetropolitanaidd Tameside  
Cyngor Bwrdeistref Fetropolitanaidd Trafford  
Cyngor Bwrdeistref Fetropolitanaidd Wigan  
Cyngor Bwrdeistref Rochdale  
Cyngor Dinas Manceinion

Cyngor Dinas Salford

*Northumberland*

Cyngor Sir Northumberland

*Surrey*

Cyngor Bwrdeistref Elmbridge

*Swydd Derby*

Cyngor Bwrdeistref Chesterfield

Cyngor Bwrdeistref Erewash

Cyngor Dosbarth Gogledd-ddwyrain Swydd Derby

Yn ardal Cyngor Bwrdeistref High Peak, yr ardaloedd etholiadol (fel y diffinnir “electoral area” gan adran 203(1) o Ddeddf Cynrychiolaeth y Bobl 1983(1)) a ganlyn—

Dinting

Gamesley

Hadfield North

Hadfield South

Howard Town

Old Glossop

Padfield

Simmondley

St John’s

Tintwistle

Whitfield

*Swydd Gaer*

Cyngor Bwrdeistref Warrington

Cyngor Dwyrain Swydd Gaer

Cyngor Gorllewin Swydd Gaer a Chaer

*Swydd Gaerhirfryn*

Cyngor Blackpool

Cyngor Bwrdeistref Blackburn gyda Darwen

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(1) p. 2. Diwygiwyd gan Atodlen 3 i Ddeddf Awdurdod Llundain Fwyaf 1999 (p. 29).

Cyngor Bwrdeistref Burnley

Cyngor Bwrdeistref Chorley

Cyngor Bwrdeistref De Ribble

Cyngor Bwrdeistref Fylde

Cyngor Bwrdeistref Gorllewin Swydd  
Gaerhirfryn

Cyngor Bwrdeistref Hyndburn

Cyngor Bwrdeistref Pendle

Cyngor Bwrdeistref Ribble Valley

Cyngor Bwrdeistref Rossendale

Cyngor Bwrdeistref Wyre

Cyngor Dinas Caerhirfryn

Cyngor Dinas Preston

*Swydd Gaerlŷr*

Cyngor Bwrdeistref Oadby a Wigston

Cyngor Dinas Caerlŷr

*Swydd Nottingham*

Cyngor Bwrdeistref Broxtowe

Cyngor Bwrdeistref Gedling

Cyngor Bwrdeistref Rushcliffe

Cyngor Dinas Nottingham

Cyngor Dosbarth Ashfield

Cyngor Dosbarth Bassetlaw

Cyngor Dosbarth Mansfield

Cyngor Dosbarth Newark a Sherwood

*Tees Valley*

Cyngor Bwrdeistref Darlington

Cyngor Bwrdeistref Hartlepool

Cyngor Bwrdeistref Middlesbrough

Cyngor Bwrdeistref Redcar a Cleveland

Cyngor Bwrdeistref Stockton-on-Tees

*Tyne a Wear*

Cyngor De Tyneside

Cyngor Dinas Newcastle

Cyngor Dinas Sunderland

Cyngor Gateshead

Cyngor Gogledd Tyneside

## Rhan 2: Yr Alban

**2.** Yr ardal a ddynodir yn ardal wedi ei diogelu gan Reoliadau Diogelu Iechyd (Coronafeirws) (Cyfyngiadau a Gofynion) (Mesurau Ychwanegol Dros Dro) (Yr Alban) 2020<sup>(1)</sup>, sydd wedi ei ffurfio o'r ardaloedd llywodraeth leol a ganlyn—

De Swydd Ayr

De Swydd Lanark

Dinas Caeredin

Dinas Glasgow

Dwyrain Lothian

Dwyrain Swydd Ayr

Dwyrain Swydd Dunbarton

Dwyrain Swydd Renfrew

Falkirk

Gogledd Swydd Ayr

Gogledd Swydd Lanark

Gorllewin Lothian

Gorllewin Swydd Dunbarton

Inverclyde

Midlothian

Stirling

Swydd Clackmannan

Swydd Renfrew

## Rhan 3: Gogledd Iwerddon

**3.** Gogledd Iwerddon yn ei chyfanrwydd.”

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<sup>(1)</sup> O.S.A. 2020/318.

*Mark Drakeford*

Y Prif Weinidog, un o Weinidogion Cymru

Am 11.40 a.m. ar 16 Hydref 2020

**Memorandwm Esboniadol ar gyfer Rheoliadau Diogelu Iechyd (Cyfyngiadau Coronafeirws) (Rhif 2) (Cymru) (Diwygio) (Rhif 19) 2020**

Lluniwyd y Memorandwm Esboniadol hwn gan Lywodraeth Cymru ac fe'i gosodir gerbron Senedd Cymru ar y cyd â'r is-ddeddfwriaeth uchod ac yn unol â Rheol Sefydlog 27.1.

**Datganiad y Gweinidog**

Yn fy marn i, mae'r Memorandwm Esboniadol hwn yn rhoi darlun teg a rhesymol o effaith ddisgwyliedig Rheoliadau Diogelu Iechyd (Cyfyngiadau Coronafeirws) (Rhif 2) (Cymru) (Diwygio) (Rhif 19) 2020

**Mark Drakeford**  
**Y Prif Weinidog**

16 Hydref 2020

## 1. Disgrifiad

Mae'r Rheoliadau hyn yn diwygio Rheoliadau Diogelu Iechyd (Cyfyngiadau Coronafeirws) (Rhif 2) (Cymru) 2020 ("y prif Reoliadau").

## 2. Materion o ddiddordeb arbennig i'r Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

Gwneir y Rheoliadau hyn o dan y weithdrefn frys y darperir ar ei chyfer yn adran 45R o Ddeddf Iechyd y Cyhoedd (Rheoli Clefydau) 1984 (p. 22) ("Deddf 1984"). Caiff y Rheoliadau eu gwneud heb fod drafft wedi'i osod gerbron y Senedd a'i gymeradwyo ganddi. Mae Gweinidogion Cymru o'r farn, oherwydd brys, ei bod yn angenrheidiol gwneud y Rheoliadau heb i ddrafft gael ei osod a'i gymeradwyo fel y gellir gweithredu mesurau iechyd y cyhoedd er mwyn ymateb yn gyflym i'r bygythiad a berir i iechyd pobl gan y coronafeirws.

### Y Confensiwn Ewropeaidd ar Hawliau Dynol

Er bod y prif Reoliadau yn cyffwrdd â hawliau unigol o dan Ddeddf Hawliau Dynol 1998 a Siarter Hawliau Sylfaenol Ewrop, mae'r Llywodraeth yn credu bod modd eu cyfiawnhau er mwyn atal lledaeniad clefydau heintus ac y caniateir yr ymyrraeth gan fod nod dilys i'r ymyrraeth honno, sef diogelu iechyd y cyhoedd. Mae'r Llywodraeth felly yn credu bod y Rheoliadau yn gymesur.

Bydd y cyfyngiadau a'r gofynion yn y prif Reoliadau a ddiwygiwyd gan y Rheoliadau hyn o bosib yn cyffwrdd â hawliau o dan Erthygl 8 (hawl i barch am y teulu a bywyd preifat); Erthygl 9 (hawl i ryddid meddwl, cydwybod a chrefydd); Erthygl 11 (rhyddid i ymgynnull a chymdeithasu); Erthygl 14 (gwahardd gwahaniaethu) ac Erthygl 1 y Protocol Cyntaf (Diogelu Eiddo).

Mae pob un o'r rhain yn hawliau amodol, sy'n caniatáu i Weinidogion Cymru ymyrryd ag arfer yr hawliau os yw hynny'n angenrheidiol mewn cymdeithas ddemocrataidd er budd diogelwch y cyhoedd neu er mwyn diogelu iechyd. Rhaid i bob cyfyngiad a gofyniad o'r fath gael eu cyfiawnhau ar y sail bod iddynt nod dilys, sef diogelu iechyd y cyhoedd, a'u bod yn gymesur.

Mae'r Llywodraeth o'r farn bod y cyfyngiadau a osodwyd gan y diwygiadau a wnaed gan y Rheoliadau hyn i'r prif Reoliadau, yn gymesur. Mae'r diwygiadau hyn yn cydbwysu'r angen i gynnal ymateb priodol i'r bygythiad a achosir gan y coronafeirws â'r angen i gynnal hawliau unigolion a busnesau, mewn modd sy'n dal i fod yn gymesur â'r angen i atal cyfradd drosglwyddo'r coronafeirws rhag cynyddu, gan ystyried y dystiolaeth wyddonol.



Ymysg pethau eraill, mae'r diwygiadau'n gosod cyfyngiadau ar deithio rhwng ardaloedd â chyffredinrwydd isel o'r coronafeirws yng Nghymru ac ardaloedd gyda chyffredinrwydd uchel o'r coronafeirws yng ngweddill y DU. Oherwydd natur y cyfyngiadau mae'r diwygiadau'n ei gwneud yn ofynnol i Weinidogion Cymru adolygu cymesuredd y cyfyngiadau erbyn 23 Hydref 2020 ac o leiaf unwaith bob saith diwrnod ar ôl y dyddiad hwnnw.

### 3. Y sylfaen dystiolaeth

*Esgus rhesymol o gymryd rhan mewn gweithgareddau a drefnwyd ar gyfer datblygiad neu lesiant plant, neu hwyluso'r gweithgareddau hynny.*

Mae'r Rheoliadau hyn yn diwygio'r prif Reoliadau i ddarparu y bydd gan unrhyw berson esgus rhesymol i fynd i ardal diogelu iechyd lleol, neu i adael yr ardal honno, i gymryd rhan mewn gweithgareddau a drefnwyd ar gyfer datblygiad neu lesiant plant, neu i hwyluso'r gweithgareddau hynny. Yn hyn o beth-

- cymharol ychydig o dystiolaeth a geir o'r effaith y mae caniatáu i bobl fynd i ardaloedd diogelu iechyd lleol, a gadael yr ardaloedd hynny, a'r mwy o gymysgu fel pobl o ganlyniad, yn debygol o'i chael ar y gyfradd R;
- dengys y dystiolaeth ar sail y profiad o ailagor ysgolion gyda'r cyfyngiadau presennol (mesurau hylendid, cadw pellter gan ddibynnu ar oed, cyfyngu ar nifer y bobl sy'n dod i gysylltiad â'i gilydd drwy greu swigod, defnyddio gorchuddion wyneb lle y bo angen) nad oes bron dim tystiolaeth o drosglwyddo yn yr ysgol ymhlith y rheini dan 18 oed;
- mae tystiolaeth o hyn yn y ffaith bod y mwyafrif o achosion a gadarnhawyd ymhlith myfyrwyr ysgol yn achosion unigol ac nid yn gystyrau;
- deellir bod cyfranogiad plant mewn gweithgareddau chwaraeon a gweithgareddau datblygiadol eraill yn fanteisiol i'w hiechyd a'u llesiant meddyliol a chorfforol.

### Cyfyngiadau teithio

Mae'r Rheoliadau hefyd yn diwygio'r prif Reoliadau i gyfyngu ar deithio o ardaloedd sydd â niferoedd is o'r coronafeirws yng Nghymru i ardaloedd sydd ag achosion uwch o'r coronafeirws yn Lloegr, yr Alban a Gogledd Iwerddon ac atal pobl o'r ardaloedd hynny sydd â niferoedd uwch o'r coronafeirws rhag mynd i ardaloedd sydd â niferoedd is o'r coronafeirws yng Nghymru.

Mae tystiolaeth gan weithwyr iechyd y cyhoedd proffesiynol yn awgrymu bod y coronafeirws yn symud o'r dwyrain i'r gorllewin ar draws y DU ac ar draws Cymru. Fel rheol gyffredinol, mae'n canolbwyntio ar ardaloedd trefol cyn lledu i ardaloedd llai poblog o ganlyniad i bobl yn teithio. Mae'r papur SARS-Cov-2 *Genomic Insights* (Hydref 2020) yn dangos lledaeniad yr haint yn ddaearyddol ac yn cefnogi'r achos dros gyfyngiadau teithio fel modd o reoli'r lledaeniad. I atal lledaeniad pellach mewn ardaloedd lle mae nifer yr achosion o'r feirws yn parhau i fod yn gymharol isel, mae

angen cyfyngu ar fyrder ar deithio nad yw'n hanfodol ar draws y DU. Bydd y diwygiadau'n cyflawni'r nod hwn.

<https://gov.wales/sites/default/files/publications/2020-10/sars-cov-2-genomic-insights-october-2020.pdf>

#### **4. Y cefndir deddfwriaethol**

Gwneir y Rheoliadau o dan adrannau 45C(1) a (3)(c), 45F(2) a 45P o Ddeddf 1984.

Mae rhagor o wybodaeth am y pwerau hyn ar gael yn y Memorandwm Esboniadol i'r prif Reoliadau.

#### **5. Diben y ddeddfwriaeth a'r effaith y bwriedir iddi ei chael**

Cafodd y prif Reoliadau eu gwneud mewn ymateb i'r bygythiad difrifol ac uniongyrchol i iechyd y cyhoedd o ganlyniad i fynychder a lledaeniad coronafeirws syndrom anadlol aciwt difrifol 2 (SARS-CoV-2).

Mae'r Rheoliadau hyn yn diwygio'r prif Reoliadau i-

- ddarparu y bydd gan berson sy'n byw mewn ardal diogelu iechyd lleol esgus rhesymol i deithio i ardaloedd diogelu iechyd lleol eraill i gymryd rhan mewn gweithgareddau a drefnwyd ar gyfer datblygiad neu lesiant plant, neu i hwyluso'r gweithgareddau hynny. Gall hyn gynnwys gweithgareddau chwaraeon, diwylliannol, cerddoriaeth, drama a ffydd;
- cyfyngu ar deithio i ardaloedd yng Nghymru sydd heb eu dynodi yn ardaloedd diogelu iechyd lleol o ardaloedd sydd â niferoedd uchel o achosion mewn ardaloedd eraill o'r DU, yn seiliedig ar y darpariaethau perthnasol yn y Rheoliadau Coronafeirws sydd mewn grym yng ngwledydd eraill y DU. Mae'r diwygiadau hefyd yn cyfyngu ar deithio o ardaloedd yng Nghymru nad ydynt wedi'u dynodi yn ardaloedd diogelu iechyd lleol i'r ardaloedd sydd â niferoedd uchel o achosion mewn mannau eraill yn y DU. Yr ardaloedd sydd â niferoedd uchel o achosion yw'r rhai a ddynodwyd fel a ganlyn yn ôl yr awdurdod perthnasol yn y rhan honno o'r DU:
  - Lloegr – pob ardal Haen 2 “uchel” a Haen 3 “uchel iawn”
  - Yr Alban – ardaloedd wedi'u diogelu sydd yn ddarostyngedig i fesurau ychwanegol dros dro
  - Gogledd Iwerddon – y diriogaeth gyfan ar hyn o bryd;
- gwneud mân ddiwygiadau a diwygiadau canlyniadol. Mae'r rhain yn sicrhau cysondeb o ran y termau a ddefnyddir yn y prif Reoliadau ac yn diweddarau enw llawn ward “Menai (Bangor)” ym mharagraff 1 o Atodlen 4A yn y prif Reoliadau.

Daw'r Rheoliadau i rym am 6.00p.m. ar 16 Hydref 2020. Rhaid adolygu'r cyfyngiadau a'r gofynion a gyflwynir gan y diwygiadau hyn mewn perthynas â theithio ar 23 Hydref 2020 neu cyn y dyddiad hwnnw, ac o leiaf unwaith bob saith diwrnod ar ôl y dyddiad hwnnw.

Mae'n hollbwysig cymryd pob cam rhesymol i gyfyngu ar drosglwyddo'r coronafeirws. Cafodd y coronafeirws ei ddatgan yn Argyfwng Iechyd y Cyhoedd o Bryder Rhyngwladol ar 30 Ionawr 2020 gan Sefydliad Iechyd y Byd, a chymerir camau ledled y byd i gyfyngu ar ei drosglwyddo. Aseiad Prif Swyddog Meddygol Cymru, ar y cyd â'r Prif Swyddogion Meddygol eraill ar draws y DU, o hyd yw bod y risgiau i iechyd y cyhoedd sy'n deillio o'r coronafeirws yn uchel.

Mae Gweinidogion Cymru o'r farn bod cyflwyno'r gofynion a'r cyfyngiadau hyn drwy wneud y diwygiadau i'r prif Reoliadau yn gymesur â'r hyn y mae'r prif Reoliadau'n ceisio ei gyflawni, sef ymateb i fygythiad difrifol ac uniongyrchol i iechyd y cyhoedd.

## **6. Ymgynghori**

O ystyried y bygythiad difrifol ac uniongyrchol a achosir gan y coronafeirws a'r angen am ymateb iechyd y cyhoedd brys, ni fu ymgynghoriad cyhoeddus mewn perthynas â'r Rheoliadau hyn.

Yn ehangach, cafodd grwpiau cynrychiolwyr ynghyd ag unigolion a busnesau wybod am lacio'r cyfyngiadau drwy ddarllediadau gwybodaeth eang a pharhaus i'r cyhoedd ledled y DU, gan gynnwys gennyf innau.

Ynghyd â Gweinidogion eraill a Llywodraeth Cymru, rwyf wedi parhau i roi'r wybodaeth ddiweddaraf i unigolion a busnesau gydol y newidiadau dilynol i'r Rheoliadau.

## **7. Aseiad effaith rheoleiddiol ac asesiadau eraill**

Ni luniwyd aseiad effaith rheoleiddiol mewn perthynas â'r Rheoliadau hyn oherwydd yr angen i'w rhoi ar waith ar fyrder fel rhan o'r ymateb parhaus i fygythiad difrifol ac uniongyrchol i iechyd y cyhoedd.



Elin Jones AS  
Llywydd  
Senedd Cymru  
Bae Caerdydd  
CF99 1SN

16 Hydref 2020

Annwyl Elin

**Rheoliadau Diogelu Iechyd (Cyfyngiadau Coronafeirws) (Rhif 2) (Cymru) (Diwygio) (Rhif 19) 2020**

Heddiw, rwyf wedi gwneud Rheoliadau Diogelu Iechyd (Cyfyngiadau Coronafeirws) (Rhif 2) (Cymru) (Diwygio) (Rhif 19) 2020 o dan adrannau 45C(1) a (3)(c), 45F(2) a 45P o Ddeddf Iechyd y Cyhoedd (Rheoli Clefydau) 1984. Daw'r Rheoliadau hyn i rym am 6.00 p.m. ar 16 Hydref 2020. Rwy'n amgáu copi o'r offeryn statudol ac yr wyf yn bwriadu gosod yr offeryn a'r memorandwm esboniadol cysylltiedig pan fydd yr offeryn statudol wedi'i gofrestru.

Yn unol â'r weithdrefn frys a nodwyd yn adran 45R o Ddeddf Iechyd y Cyhoedd (Rheoli Clefydau) 1984, mae'n rhaid i'r Senedd gymeradwyo'r offeryn hwn erbyn 19 Tachwedd 2020 er mwyn iddo barhau i fod mewn grym. Yn yr amgylchiadau hyn, rwy'n deall bod rheol sefydlog 21.4A yn berthnasol ac y caiff y Pwyllgor Busnes sefydlu a chyhoeddi amserlen i'r pwyllgor neu'r pwyllgorau perthnasol adrodd arno. Rwy'n bwriadu trefnu i'r Rheoliadau hyn gael eu trafod yn sesiwn adalw'r Cyfarfod Llawn ar 03 Tachwedd 2020.

Rwy'n anfon copi o'r llythyr hwn at y Gweinidog Cyllid a'r Trefnydd, Mick Antoniw AS fel Cadeirydd y Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad, Sian Wilkins, Pennaeth Gwasanaethau'r Siambr a'r Pwyllgorau, a Julian Luke, Pennaeth Gwasanaeth y Pwyllgorau Polisi a Deddfwriaeth.

Yn gywir

**MARK DRAKEFORD**

Bae Caerdydd • Cardiff Bay  
Caerdydd • Cardiff  
CF99 1NA

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

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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.





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## DATGANIAD YSGRIFENEDIG GAN LYWODRAETH CYMRU

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**TEITL** Diwygiadau i Reoliadau Diogelu Iechyd (Cyfyngiadau Coronafeirws) (Rhif 2) (Cymru) 2020

**DYDDIAD** 16 Hydref 2020

**GAN** Mark Drakeford AS, y Prif Weinidog

Mae Rheoliadau Diogelu Iechyd (Cyfyngiadau Coronafeirws) (Rhif 2) (Cymru) 2020 yn gosod cyfres o gyfyngiadau ar ymgynnull a symud gan bobl ac ar y ffordd y caiff busnesau eu gweithredu, gan gynnwys cau busnesau. Maent yn eu gwneud yn ofynnol i fusnesau sydd ar agor gymryd mesurau rhesymol i leihau'r perygl i bobl ddod i gysylltiad â'r coronafeirws. Eu bwriad yw diogelu pobl rhag lledaeniad coronafeirws syndrom anadlol aciwt difrifol 2 (SARS-CoV-2).

Mae nifer yr achosion ledled Cymru yn cynyddu ac mae ein gwasanaeth iechyd yn dod o dan bwysau.

Er mwyn cadw Cymru'n ddiogel, mae Llywodraeth Cymru felly'n diwygio'r Rheoliadau i'w gwneud yn glir na fyddai pobl sy'n byw mewn ardaloedd lle ceir lefelau uchel o'r coronafeirws yn Lloegr, yr Alban a Gogledd Iwerddon yn cael teithio i rannau o Gymru lle mae nifer yr achosion yn isel.

Mae'n hanfodol ein bod yn cadw cymunedau sydd â lefelau heintio isel mor ddiogel â phosibl, a bydd y cyfyngiad synhwyrol ac angenrheidiol hwn yn helpu i atal y feirws rhag symud o ardaloedd trefol, poblog iawn i ardaloedd llai poblog.

Mae gwaharddiad eisoes ar deithio i ardal diogelu iechyd leol yng Nghymru, boed hynny o rannau eraill o Gymru, o rannau eraill o'r DU neu o wledydd eraill. Fel yn achos y rheolau ar gyfer ardaloedd diogelu iechyd lleol, mae rhai eithriadau, er enghraifft teithio ar gyfer gwaith neu i ddarparu gwasanaethau elusennol neu wirfoddol os nad oes modd i bobl wneud y rheini lle maent yn byw.

Rydym yn sylweddoli hefyd bod hwn yn gyfnod arbennig o anodd i blant a phobl ifanc a byddwn yn diwygio'r Rheoliadau i ganiatáu i blant adael eu hardaloedd diogelu iechyd lleol i gymryd rhan mewn chwaraeon neu weithgareddau eraill fel dosbarthiadau drama neu ddawns, sydd mor bwysig i'w hiechyd a'u lles meddyliol a chorfforol.

Os byddwn i gyd yn parhau i weithio gyda'n gilydd, gallwn amddiffyn ein hunain a'n teuluoedd a diogelu Cymru.

# Eitem 7.5

## SL(5)641 – Rheoliadau Diogelu Iechyd (Cyfyngiadau Coronafeirws) (Rhif 3) (Cymru) 2020

### Cefndir a Diben

Mae'r Rheoliadau hyn yn dirymu Rheoliadau Diogelu Iechyd (Cyfyngiadau Coronafeirws) (Rhif 2) (Cymru) 2020 a'i rheoliadau diwygio, sy'n cynnwys mesurau a roddwyd ar waith ar gyfer cyfyngiadau lleol yng Nghymru. (Mae rhestr gyflawn o'r rheoliadau a ddirymwyd yn rheoliad 34.)

Mae'r Rheoliadau hyn yn gosod nifer o gyfyngiadau a gofynion mewn ymateb i'r risgiau i iechyd y cyhoedd sy'n deillio o'r Coronafeirws. Mae hyn mewn ymateb i'r duedd sy'n gwaethygu a nifer yr achosion o Covid-19, a'r risg i iechyd y cyhoedd yn seiliedig ar dystiolaeth wyddonol a ddarperir gan Gell Cyngori Technegol Llywodraeth Cymru.

Daeth y Rheoliadau hyn i rym am 6pm ddydd Gwener 23 Hydref 2020, a byddant yn dod i ben ar ddiwedd y dydd ar 8 Tachwedd 2020 (cyfanswm o 17 diwrnod). Yn ôl arweiniad y Llywodraeth, *"ar ddiwedd y cyfnod atal byr, bydd set newydd o reolau cenedlaethol yn cael eu cyflwyno, yn ymdrin â sut y caiff pobl gwrdd a sut y bydd y sector cyhoeddus a busnesau'n gweithredu."*

Mae'r Rheoliadau hyn yn gwneud darpariaeth mewn 4 maes allweddol:

- cyfyngu ar symud a theithio trwy ei gwneud yn ofynnol i bobl aros gartref oni bai bod ganddyn nhw esgus rhesymol;
- cyfyngu ar ymgynnull gyda phobl eraill;
- cau rhai mathau o fusnesau ac adeiladau; a
- gosod rhwymedigaethau ar bersonau sy'n gyfrifol am fangre sy'n agored i'r cyhoedd, neu am waith sy'n cael ei gynnal mewn unrhyw fangre.

I grynhoi:-

Mae Rhan 2 yn gosod cyfyngiadau ar symud a theithio. Mae rheoliad 3 yn ei gwneud yn ofynnol i bobl sy'n byw yng Nghymru aros gartref, oni bai bod ganddynt esgus rhesymol dros ymadael. Mae'r Rheoliadau'n gwneud darpariaeth benodol ar gyfer mynd i ddiwyddiad i gadw Sul y Cofio fel esgus rhesymol i ymgynnull gydag eraill, yn ddarostyngedig i amodau penodol. At hynny, o dan yr amgylchiadau cyfyngedig pan fo pobl yn gallu ymadael â'r cartref, mae cyfyngiad yn rheoliad 4 ar bobl rhag ymgynnull gydag unrhyw berson sydd ddim yn rhan o'u haelwyd. Effaith cyffredinol y darpariaethau hyn yw cyfyngu ar symudiadau pobl sy'n byw yng Nghymru. Mae rheoliad 5 yn darparu bod angen esgus rhesymol ar bobl sy'n byw tu allan i Gymru er mwyn teithio i Gymru. Mae rheoliadau 6 a 7 yn cyfyngu ar yr amgylchiadau pan fo gan ddisgybl neu fyfyrwr esgus rhesymol dros fynychu mangre ysgol





neu sefydliad addysg bellach. Mae rheoliad 9 hefyd yn gwneud darpariaeth bellach sy'n ei gwneud yn drosedd (a gosbir drwy gosb uwch) trefnu digwyddiadau cerddorol mawr sy'n annog pobl i ymgynnull yn anghyfreithlon.

Mae Rhan 3 yn ymwneud â busnesau a gwasanaethau y mae eu mangreoedd ar agor i'r cyhoedd fel arfer, gan ei gwneud yn ofynnol i lawer ohonynt gau. Mae Rhan 1 o Atodlen 1 yn rhestru'r busnesau hynny a'r gwasanaethau hynny y mae rhaid i'w mangreoedd fod ar gau i'r cyhoedd. Mae Rhan 1 o Atodlen 1 yn rhestru'r busnesau hynny a'r gwasanaethau hynny y mae rhaid i'w mangreoedd fod ar gau i'r cyhoedd. Mae'r rhain wedi eu categoreiddio yn fangreoedd sy'n gwerthu bwyd a diod (a restrir ym Mhennod 1); mangreoedd sy'n cynnig llety gwesty neu lety gwyliau (a restrir ym Mhennod 2) ac eraill (a restrir ym Mhennod 3. Mae rheoliad 16 yn ei gwneud yn glir, pan fo mwy nag un math o fusnes neu wasanaeth yn cael ei ddarparu yn yr un fangre, e.e. mewn archfarchnad fawr, nad yw'r mathau o fusnes neu wasanaeth a waharddir i barhau am y cyfnod y mae'r rheoliadau hyn yn parhau i fod mewn grym.

Mae Rhan 4 yn gwneud darpariaethau at ddiben lleihau'r risg o ddod i gysylltiad â'r coronafeirws. Mae rheoliad 17 yn gymwys i "mangre reoleiddiedig" (unrhyw fan sydd ar agor i'r cyhoedd neu lle y gwneir gwaith) ac yn ei gwneud yn ofynnol: (1) i bob mesur rhesymol gael ei gymryd i sicrhau y cynhelir pellter o 2 fetr rhwng personau yn y fangre; (2) i unrhyw fesurau rhesymol eraill gael eu cymryd, er enghraifft er mwyn cyfyngu ar ryngweithio wyneb yn wyneb agos a chynnal hylendid; a (3) i wybodaeth gael ei darparu i'r rheini sy'n mynd i fangre neu sy'n gweithio ynddi ynghylch sut i leihau'r risg o ddod i gysylltiad â'r coronafeirws. Mae hefyd yn pennu y gall peidio â gwneud gweithgaredd, cau rhan o fangre, caniatáu i staff ynysu a chasglu gwybodaeth gyswllt oddi wrth y rheini yn y fangre fod yn fesurau rhesymol. Mae rheoliadau 18 a 19 yn darparu bod rhaid gwisgo gorchuddion wyneb ar drafnidaeth gyhoeddus, gan gynnwys tacsis, ac mewn mannau penodol o dan do, yn ddarostyngedig i esemptiadau ac eithriadau a restrir. Mae rheoliad 20 yn darparu i ganllawiau gael eu dyroddi ynghylch cymhwyso'n ymarferol y gofynion a osodir gan y Rhan hon, a rhaid i'r rheini y mae'r gofynion yn gymwys iddynt roi sylw i'r canllawiau hynny.

Mae Rhan 5 yn ymwneud â gorfodi'r cyfyngiadau a'r gofynion. Mae'r rhan hon yn rhestru pwy a gaiff gymryd camau gorfodi ac mae'n cynnwys pwerau mynediad eang, pwerau i symud a gwasgaru pobl a phwerau i ddefnyddio grym rhesymol o dan amgylchiadau penodol.

Mae Rhan 6 yn gwneud darpariaeth ynghylch troseddau a chosbau. Mae rheoliad 29 yn darparu bod person sy'n torri gofynion (a restrir) yn y Rheoliadau hyn, heb esgus rhesymol, yn cyflawni trosedd. Mae'r drosedd honno i'w chosbi drwy ddirwy ddiderfyn. Mae rheoliad 30 yn ymwneud â throseddau gan gyrff corfforedig. Mae rheoliad 31 yn caniatáu i droseddau gael eu cosbi drwy hysbysiadau cosb benodedig ac mae rheoliad 32 yn ymwneud ag erlynnu troseddau o dan y rheoliadau.



Mae Rhan 7 yn cynnwys termau wedi eu diffinio (rheoliad 33) ac yn dirymu Rheoliadau Diogelu Iechyd (Cyfyngiadau Coronafeirws) (Cymru) (Rhif 2) 2020 (O.S. 2020/725 (Cy. 162)) fel y'u diwygiwyd. Mae rheoliad 33 hefyd yn gwneud darpariaeth sy'n addasu'r cyfyngiadau niferus ar unigolion yn y Rheoliadau sy'n cyfyngu ar ryngweithio ag unrhyw un nad yw'n aelod o'u haelwyd. Mae hyn yn caniatáu i berson sy'n byw ar ei ben ei hun neu ddim ond gyda phlant gytuno i ffurfio aelwyd estynedig gydag aelwyd arall, sy'n golygu y gall aelodau o'r ddwy aelwyd ryngweithio â'i gilydd fel pe baent yn aelodau o un aelwyd.

#### Gweithdrefn

Gwneud cadarnhaol.

Gwnaed y Rheoliadau gan Weinidogion Cymru cyn iddynt gael eu gosod gerbron y Senedd. Rhaid i'r Senedd gymeradwyo'r Rheoliadau o fewn 28 diwrnod (ac eithrio unrhyw ddiwrnodau pan fydd y Senedd wedi'i diddymu neu yn ystod y toriad am fwy na phedwar diwrnod) o'r dyddiad y'i gwnaed iddynt barhau i gael effaith.

### Materion technegol: craffu

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

### Rhinweddau: craffu

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

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

1. Rydym yn nodi cyfiawnhad Llywodraeth Cymru dros unrhyw ymyrraeth bosibl â hawliau dynol. Yn benodol, nodwn y paragraffau a ganlyn yn y Memorandwm Esboniadol:

*“Er bod y Rheoliadau yn cyffwrdd â hawliau unigol o dan y Ddeddf Hawliau Dynol 1998 a Siarter Hawliau Sylfaenol Ewrop, mae'r Llywodraeth yn credu bod modd eu cyfiawnhau er mwyn atal lledaeniad clefydau heintus a/neu y caniateir yr ymyrraeth gan fod nod dilys i'r ymyrraeth honno, sef diogelu iechyd y cyhoedd. Mae'r Llywodraeth hefyd yn credu bod y Rheoliadau yn gymesur.*

*Mae'r Rheoliadau hyn yn cyffwrdd ag Erthygl 5 (yr hawl i ryddid), Erthygl 8 (yr hawl i barch at fywyd preifat a theuluol), Erthygl 9 (rhyddid meddwl, cydwybod a chrefydd), Erthygl 11 (rhyddid i ymgynnull a chymdeithasu) ac Erthygl 1 o'r Protocol Cyntaf (diogelu eiddo).*

*Mae pob un o'r rhain yn hawliau amodol, sy'n caniatáu i Weinidogion Cymru ymyrryd ag arfer yr hawliau os yw hynny'n angenrheidiol mewn cymdeithas ddemocrataidd er budd diogelwch y cyhoedd neu er mwyn diogelu iechyd. Rhaid i bob cyfyngiad a gofyniad o'r fath gael eu cyfiawnhau ar y sail bod iddynt nod dilys, sef diogelu iechyd y*



*cyhoedd, a'u bod yn gymesur. Mae angen i unrhyw ymyrraeth yn yr hawliau hyn hefyd gael ei gydbwyso yn erbyn rhwymedigaethau cadarnhaol y Wladwriaeth o dan Erthygl 2 (yr hawl i fywyd). Mae gweithredu'r cyfyngiadau cenedlaethol newydd am gyfnod cyfyngedig o 17 diwrnod o dan y Rheoliadau hyn yn ymateb cymesur i ledaeniad cynyddol y coronafeirws dros yr wythnosau diwethaf. Mae'n cydbwyso'r angen i gynnal ymateb priodol i'r bygythiad a achosir gan y coronafeirws yn erbyn hawliau unigolion a busnesau, mewn modd sy'n dal i fod yn gymesur â'r angen i leihau'r cynnydd yng nghyfradd drosglwyddo'r coronafeirws, gan ystyried y dystiolaeth wyddonol."*

2. Nodwn na fu unrhyw ymgynghori ffurfiol ar y Rheoliadau hyn. Yn benodol, nodwn y paragraffau a ganlyn yn y Memorandwm Esboniadol:

*"O ystyried y bygythiad difrifol ac uniongyrchol sy'n codi o'r coronafeirws a'r angen am ymateb y cyhoedd brys, ni fu ymgynghoriad cyhoeddus mewn perthynas â'r Rheoliadau hyn.*

*Wrth benderfynu ar yr angen am y cyfyngiadau a'r gofynion a amlinellir yn y Rheoliadau hyn, a'u manylion, cymerais i, ynghyd â Gweinidogion eraill a swyddogion Llywodraeth Cymru, ran mewn cyfres o drafodaethau brys gyda sectorau a rhanddeiliaid allweddol, gan gynnwys llywodraeth leol ac arweinwyr busnes ac undebau llafur yng Nghymru. Cyhoeddais yn fy nghynhadledd i'r wasg ar 19 Hydref fwriad Llywodraeth Cymru i gyflwyno'r newidiadau a gyflawnir yn y Rheoliadau hyn, ac adroddwyd am hynny yn eang wedyn."*

Er bod y Pwyllgor yn cydnabod bod y Rheoliadau hyn wedi'u gwneud mewn ymateb i argyfwng iechyd cyhoeddus, mae'r Pwyllgor yn nodi'r adroddiadau eang gan y cyfryngau am yr anfodlonrwydd ynghylch y rhybudd byr a roddwyd gan y Llywodraeth o ran cyflwyno'r Rheoliadau hyn. Er enghraifft, cafwyd adroddiad gan y BBC fod Ffederasiwn y Busnesau Bach yng Nghymru yn siomedig ynghylch y rhynudd byr a roddwyd ar gyfer y newidiadau a'r cyfyngiadau hyn, a'r cyfyngiadau a roddwyd ar fusnesau. Hoffai'r Pwyllgor i'r Llywodraeth roi manylion pellach ynghylch pwy yr ymgynghorodd â hwy a phryd, cyn gwneud y Rheoliadau hyn.

3. Mae rheoliad 16 yn gosod cyfyngiadau ar fusnesau cymysg. O dan y rheoliadau, busnesau cymysg yw'r rhai sy'n rhedeg busnesau a ganiateir ac a waherddir yn yr un fangre. Mae'r Pwyllgor yn nodi'r feirniadaeth eang o'r polisi penodol hwn, y dryswch a berwyd ganddo ymhlith rhanddeiliaid a deiseb y Senedd sydd wedi'i llofnodi gan 66,000 o ddinasyddion, sef y nifer fwyaf erioed (ar 26 Hydref 2020). O ystyried bod eglurder yn hanfodol wrth lunio deddfwriaeth, gofynnir i'r Llywodraeth roi'r wybodaeth ddiweddaraf o ran a yw'n bwriadu diwygio'r ddarpariaeth benodol hon, neu a ddylid rhoi arweiniad pellach i fusnesau ac aelodau'r cyhoedd mewn o ran y ddarpariaeth hon.

4. Mae'r rheoliadau'n gwneud darpariaeth i'r llywodraeth ddarparu canllawiau ar y newidiadau deddfwriaethol y mae'n eu gwneud ar gyfer y cyfnod hwn o 17 diwrnod.



Gofynnir i'r Llywodraeth roi manylion pellach o ran pryd y cyhoeddwyd canllawiau o'r fath, er mwyn rhoi cyfle i randdeiliaid gydymffurfio â'r newidiadau deddfwriaethol hyn.

5. Mae'r Pwyllgor yn nodi bod asesiadau effaith perthnasol wedi'u cyhoeddi ar gyfer y rheoliadau hyn ar 26 Hydref 2020 ac maent i'w gweld yma – <https://llyw.cymru/crynodeb-or-cyfyngiadau-ar-ymgynnull-yn-gymdeithasol-theithio-cau-busnesau-phresenoldeb-yn-yr-ysgol-html>

## Y goblygiadau yn sgil ymadael â'r Undeb Ewropeaidd

Dim.

## Cyfrifoldebau Llywodraeth Cymru

Mae angen ymateb gan Lywodraeth Cymru i'r pwyntiau rhinweddau 2, 3 a 4.

### Cynghorwyr Cyfreithiol

### Y Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

27 Hydref 2020



Senedd Cymru

**Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad**

—

Welsh Parliament

Tudalen y pecyn 196

**Legislation, Justice and Constitution Committee**

*Rheoliadau a wnaed gan Weinidogion Cymru, a osodwyd gerbron Senedd Cymru o dan adran 45R o Ddeddf Iechyd y Cyhoedd (Rheoli Clefydau) 1984 (p. 22), i'w cymeradwyo drwy benderfyniad gan Senedd Cymru o fewn wyth niwrnod ar hugain gan ddechrau â'r diwrnod y gwneir yr offeryn, yn ddarostyngedig i'w estyn dros gyfnodau o ddiddymu neu doriad am fwy na phedwar diwrnod.*

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OFFERYNNAU STATUDOL  
CYMRU

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**2020 Rhif 1149 (Cy. 261)**

**IECHYD Y CYHOEDD,  
CYMRU**

**Rheoliadau Diogelu Iechyd  
(Cyfyngiadau Coronafeirws) (Rhif  
3) (Cymru) 2020**

**NODYN ESBONIADOL**

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

Mae Rhan 2A o Ddeddf Iechyd y Cyhoedd (Rheoli Clefydau) 1984 yn galluogi Gweinidogion Cymru, drwy reoliadau, i wneud darpariaeth at ddiben atal, diogelu rhag, rheoli neu ddarparu ymateb iechyd y cyhoedd i fynychder neu ledaeniad haint neu halogiad yng Nghymru.

Mae'r Rheoliadau hyn wedi eu gwneud mewn ymateb i'r bygythiad difrifol ac uniongyrchol i iechyd y cyhoedd a berir gan fynychder a lledaeniad coronafeirws syndrom anadlol aciwt difrifol 2 (SARS-CoV-2) yng Nghymru. Mae'r Rheoliadau yn gosod gofynion a chyfyngiadau ar unigolion, busnesau ac eraill.

Mae 7 Rhan i'r Rheoliadau.

Mae **Rhan 1** yn darparu y daw'r Rheoliadau hyn i rym am 6 p.m. ar **23 Hydref 2020** ac y deuant i ben ar ddiwedd y dydd ar **8 Tachwedd 2020**.

Mae **Rhan 2** yn gosod cyfyngiadau ar symud a theithio. Mae rheoliad 3 yn ei gwneud yn ofynnol i bobl sy'n byw yng Nghymru aros gartref, oni bai bod ganddynt esgus rhesymol dros ymadael. Yn ogystal, o dan yr amgylchiadau cyfyngedig pan fo pobl yn gallu ymadael â'r cartref, mae cyfyngiad yn rheoliad 4 ar

bobl rhag ymgynnull gydag unrhyw berson sydd ddim yn rhan o'u haelwyd. Effaith cyffredinol y darpariaethau hyn yw cyfyngu ar symudiadau pobl sy'n byw yng Nghymru. Yn gyson â hynny, mae rheoliad 5 yn darparu bod angen esgus rhesymol ar bobl sy'n byw tu allan i Gymru er mwyn teithio i Gymru. Mae rheoliadau 6 a 7 yn cyfyngu ar yr amgylchiadau pan fo gan ddisgybl neu fyfyrwr esgus rhesymol dros fynychu mangre ysgol neu sefydliad addysg bellach. Mae rheoliad 9 hefyd yn gwneud darpariaeth bellach sy'n ei gwneud yn drosedd (a gosbir drwy gosb uwch) trefnu digwyddiadau cerddorol mawr sy'n annog pobl i ymgynnull yn anghyfreithlon.

Mae **Rhan 3** yn ymwneud â busnesau a gwasanaethau y mae eu mangreoedd ar agor i'r cyhoedd fel arfer, gan ei gwneud yn ofynnol i lawer ohonynt gau. Mae Rhan 1 o Atodlen 1 yn rhestru'r busnesau hynny a'r gwasanaethau hynny y mae rhaid i'w mangreoedd fod ar gau i'r cyhoedd (er bod rheoliad 11 yn ei gwneud yn glir nad yw hyn yn atal rhai gweithgareddau penodol rhag digwydd yn y fangre). Mae Rhan 2 o Atodlen 1 yn rhestru busnesau a mangreoedd y mae rhaid i'w mangreoedd gael eu cau ond y gall mynediad iddynt gael ei ganiatáu ar sail cyfyngedig. Mae'r rhain wedi eu categoreiddio yn fangreoedd sy'n gwerthu bwyd a diod (a restrir ym Mhennod 1 ac y caniateir mynediad cyfyngedig iddynt yn unol â rheoliad 12); mangreoedd sy'n cynnig llety gwesty neu lety gwyliau (a restrir ym Mhennod 2 ac y caniateir mynediad cyfyngedig iddynt yn unol â rheoliad 13); ac eraill (a restrir ym Mhennod 3 ac y caniateir mynediad cyfyngedig iddynt yn unol â rheoliad 14). Mae rheoliad 15 yn darparu eithriad i'r gofyniad i gau sy'n gymwys i fangreoedd busnesau neu wasanaethau a restrir yn Rhan 3 o Atodlen 1. Mae rheoliad 16 yn ei gwneud yn glir, pan fo mwy nag un math o fusnes neu wasanaeth yn cael ei ddarparu yn yr un fangre, nad yw'r mathau o fusnes neu wasanaeth a waharddir gan reoliad 11 (ac a restrir yn Rhan 1 o Atodlen 1) i barhau.

Mae **Rhan 4** yn gwneud darpariaethau at ddiben lleihau'r risg o ddod i gysylltiad â'r coronafeirws. Mae rheoliad 17 yn gymwys i "mangre reoleiddiedig" (unrhyw fan sydd ar agor i'r cyhoedd neu lle y gwneir gwaith) ac yn ei gwneud yn ofynnol: (1) i bob mesur rhesymol gael ei gymryd i sicrhau y cynhelir pellter o 2 fetr rhwng personau yn y fangre; (2) i unrhyw fesurau rhesymol eraill gael eu cymryd, er enghraifft er mwyn cyfyngu ar ryngweithio wyneb yn wyneb agos a chynnal hylendid; a (3) i wybodaeth gael ei darparu i'r rheini sy'n mynd i fangre neu sy'n gweithio ynddi ynghylch sut i leihau'r risg o ddod i gysylltiad â'r coronafeirws. Mae hefyd yn pennu y gall peidio â gwneud gweithgaredd, cau rhan o fangre, caniatáu i staff ynysu a chasglu gwybodaeth gyswllt oddi wrth y

rheini yn y fangre fod yn fesurau rhesymol. Mae rheoliadau 18 a 19 yn darparu bod rhaid gwisgo gorchuddion wyneb ar drafnidaeth gyhoeddus, gan gynnwys tacsis, ac mewn mannau penodol o dan do, yn ddarostyngedig i esemptiadau ac eithriadau a restrir. Mae rheoliad 20 yn darparu i ganllawiau gael eu dyroddi ynghylch cymhwyso'n ymarferol y gofynion a osodir gan y Rhan hon, a rhaid i'r rheini y mae'r gofynion yn gymwys iddynt roi sylw i'r canllawiau hynny.

Mae **Rhan 5** yn ymwneud â gorfodi'r cyfyngiadau a'r gofynion. Mae rheoliad 21 yn gwneud darpariaeth ynghylch y rheini a gaiff gymryd camau gorfodi, mae rheoliad 22 yn gwneud darpariaeth bellach (yn Atodlenni 2 a 3) ynghylch gorfodi'r angen i gymryd mesurau ataliol o dan reoliad 17, mae rheoliad 23 yn ymwneud â hysbysiadau cydymffurfio, ac mae rheoliad 24 yn ymwneud â phwerau symud a gwasgaru. Mae rheoliad 25 yn ymwneud yn benodol â gorfodi'r gofyniad i wisgo gorchudd wyneb ac mae rheoliad 26 yn ymwneud â phlant. Mae rheoliad 27 yn cynnwys pŵer i fynd i fangre ac mae rheoliad 28 yn caniatáu i rym rhesymol gael ei ddefnyddio o dan amgylchiadau penodol.

Mae **Rhan 6** yn gwneud darpariaeth ynghylch troseddau a chosbau. Mae rheoliad 29 yn darparu bod person sy'n torri gofynion (a restrir) yn y Rheoliadau hyn, heb esgus rhesymol, yn cyflawni trosedd. Mae'r drosedd honno i'w chosbi drwy ddirwy ddiderfyn. Mae rheoliad 30 yn ymwneud â throseddau gan gyrrff corfforedig. Mae rheoliad 31 yn caniatáu i droseddau gael eu cosbi drwy hysbysiadau cosb benodedig ac mae rheoliad 32 yn ymwneud ag erlyn troseddau o dan y rheoliadau.

Mae **Rhan 7** yn cynnwys termau wedi eu diffinio (rheoliad 33) ac yn dirymu Rheoliadau Diogelu Iechyd (Cyfyngiadau Coronafeirws) (Cymru) (Rhif 2) 2020 (O.S. 2020/725 (Cy. 162)) fel y'u diwygiwyd (rheoliad 34). Mae rheoliad 33 hefyd yn gwneud darpariaeth sy'n addasu'r cyfyngiadau niferus ar unigolion yn y Rheoliadau sy'n cyfyngu ar ryngweithio ag unrhyw un nad yw'n aelod o'u haelwyd. Mae hyn yn caniatáu i berson sy'n byw ar ei ben ei hun neu ddim ond gyda phlant gytuno i ffurfio aelwyd estynedig gydag aelwyd arall, sy'n golygu y gall aelodau o'r ddwy aelwyd ryngweithio â'i gilydd fel pe baent yn aelodau o un aelwyd.

Ystyriwyd Cod Ymarfer Gweinidogion Cymru ar gynnal Aseidiadau Effaith Rheoleiddiol mewn perthynas â'r Rheoliadau hyn. O ganlyniad, ni luniwyd aseiad effaith rheoleiddiol o'r costau a'r manteision sy'n debygol o ddeillio o gydymffurfio â'r Rheoliadau hyn.

*Rheoliadau a wnaed gan Weinidogion Cymru, a osodwyd gerbron Senedd Cymru o dan adran 45R o Ddeddf Iechyd y Cyhoedd (Rheoli Clefydau) 1984 (p. 22), i'w cymeradwyo drwy benderfyniad gan Senedd Cymru o fewn wyth niwrnod ar hugain gan ddechrau â'r diwrnod y gwneir yr offeryn, yn ddarostyngedig i'w estyn dros gyfnodau o ddiddymu neu doriad am fwy na phedwar diwrnod.*

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OFFERYNNAU STATUDOL  
CYMRU

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**2020 Rhif 1149 (Cy. 261)**

**IECHYD Y CYHOEDD,  
CYMRU**

**Rheoliadau Diogelu Iechyd  
(Cyfyngiadau Coronafeirws) (Rhif  
3) (Cymru) 2020**

*Gwnaed* 21 Hydref 2020

*Gosodwyd gerbron Senedd  
Cymru* 22 Hydref 2020

*Yn dod i rym am 6.00 p.m. ar 23 Hydref 2020*

Mae Gweinidogion Cymru yn gwneud y Rheoliadau a ganlyn drwy arfer y pwerau a roddir gan adrannau 45C(1) a (3)(c), 45F(2) a 45P o Ddeddf Iechyd y Cyhoedd (Rheoli Clefydau) 1984(1).

Mae'r Rheoliadau hyn wedi eu gwneud mewn ymateb i'r bygythiad difrifol ac uniongyrchol i iechyd y cyhoedd a berir gan fynychder a lledaeniad coronafeirws syndrom anadlol aciwt difrifol 2 (SARS-CoV-2) yng Nghymru.

Mae Gweinidogion Cymru yn ystyried bod y cyfyngiadau a'r gofynion a osodir gan y Rheoliadau hyn yn gymesur â'r hyn y maent yn ceisio ei gyflawni, sef ymateb iechyd y cyhoedd i'r bygythiad hwnnw.

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(1) 1984 p. 22. Mewnosodwyd adrannau 45C, 45F a 45P gan adran 129 o Ddeddf Iechyd a Gofal Cymdeithasol 2008 (p. 14). Mae'r swyddogaethau o dan yr adrannau hyn wedi eu rhoi i "the appropriate Minister" ("y Gweinidog priodol"). O dan adran 45T(6) o Ddeddf 1984, y Gweinidog priodol, o ran Cymru, yw Gweinidogion Cymru.



Yn unol ag adran 45R o'r Ddeddf honno, oherwydd brys, mae Gweinidogion Cymru o'r farn ei bod yn angenrheidiol gwneud yr offeryn hwn heb fod drafft wedi ei osod gerbron Senedd Cymru ac wedi ei gymeradwyo ganddi drwy benderfyniad.

## RHAN 1

### Cyflwyniad

#### Enwi, cychwyn a dod i rym

1.—(1) Enw'r Rheoliadau hyn yw Rheoliadau Diogelu Iechyd (Cyfyngiadau Coronafeirws) (Rhif 3) (Cymru) 2020.

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

(3) Daw'r Rheoliadau hyn i rym am 6.00 p.m. ar 23 Hydref 2020.

#### Dod i ben

2.—(1) Daw'r Rheoliadau hyn i ben ar ddiwedd y dydd ar 8 Tachwedd 2020.

(2) Nid yw'r rheoliad hwn yn effeithio ar ddilysrwydd unrhyw beth a wneir yn unol â'r Rheoliadau hyn cyn iddynt ddod i ben.

## RHAN 2

### Cyfyngiadau ar symud ac ymgynnull gydag eraill

#### Gofyniad i aros gartref

3.—(1) Ni chaiff unrhyw berson yng Nghymru, heb esgus rhesymol, ymadael â'r man lle y mae'n byw neu aros i ffwrdd o'r man hwnnw.

(2) Mae esgus rhesymol yn cynnwys yr angen i wneud y canlynol—

- (a) cael cyflenwadau oddi wrth unrhyw fusnes neu wasanaeth a restrir yn Rhan 3 o Atodlen 1 gan gynnwys—
  - (i) bwyd a chyflenwadau meddygol ar gyfer y rheini ar yr un aelwyd (gan gynnwys anifeiliaid ar yr aelwyd) neu ar gyfer personau hyglwyf;
  - (ii) cyflenwadau ar gyfer cynnal, cynnal a chadw a gweithrediad hanfodol yr aelwyd, neu aelwyd person hyglwyf;
- (b) ceisio neu ddarparu cynhorthwy meddygol, gan gynnwys cael gafael ar unrhyw un neu ragor o'r gwasanaethau y cyfeirir atynt ym

mharagraff 47 o Ran 3 o Atodlen 1 neu gael gafael ar wasanaethau milfeddygol;

- (c) darparu, cael neu gael gafael ar ofal neu gynhorthwy, gan gynnwys gofal plant neu ofal personol perthnasol o fewn ystyr “relevant personal care” ym mharagraff 7(3B) o Atodlen 4 i Ddeddf Diogelu Grwpiau Hyglwyf 2006(1), pan fo’r person sy’n cael y gofal yn berson hyglwyf;
- (d) gweithio neu ddarparu gwasanaethau gwirfoddol neu elusennol, pan na fo’n rhesymol ymarferol gwneud hynny gartref;
- (e) pan fo’r person yn athletwr elît, hyfforddi ar gyfer digwyddiad chwaraeon penodedig, paratoi ato a chystadlu ynddo;
- (f) darparu hyfforddiant neu gymorth arall i athletwr elît mewn cysylltiad â digwyddiad chwaraeon penodedig;
- (g) gwasanaethu fel swyddog mewn digwyddiad chwaraeon penodedig neu fel arall ymwneud â’i redeg;
- (h) gwneud ymarfer corff, naill ai—
  - (i) ar ei ben ei hun,
  - (ii) gydag aelodau eraill o aelwyd y person, neu
  - (iii) gyda gofalwr y person;
- (i) darparu neu gael cynhorthwy brys;
- (j) mynd i weinyddiad priodas neu ffurfiad partneriaeth sifil—
  - (i) fel parti i’r briodas neu’r bartneriaeth sifil,
  - (ii) os caiff ei wahodd i fynd iddi, neu
  - (iii) fel gofalwr person sy’n mynd i’r briodas neu’r bartneriaeth sifil.
- (k) mynd i angladd—
  - (i) fel person sy’n gyfrifol am drefnu’r angladd,
  - (ii) os caiff ei wahodd gan berson sy’n gyfrifol am drefnu’r angladd, neu
  - (iii) fel gofalwr person sy’n mynd i’r angladd;
- (l) cyflawni rhwymedigaeth gyfreithiol, gan gynnwys mynd i’r llys neu fodloni amodau mechnïaeth, neu gymryd rhan mewn achos cyfreithiol;
- (m) cael gafael ar wasanaethau cyhoeddus neu gael y gwasanaethau hynny;

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(1) 2006 p. 47. Mewnosodwyd paragraff 7(3B) gan adran 66(2) o Ddeddf Diogelu Rhyddidau 2012 (p. 9).

- (n) cael gafael ar wasanaethau addysgol neu gael y gwasanaethau hynny, yn ddarostyngedig i reoliadau 6 a 7;
- (o) mewn perthynas â phlant nad ydynt yn byw ar yr un aelwyd â'u rhieni, neu un o'u rhieni, parhau â threfniadau presennol ar gyfer gweld rhieni a phlant, a chyswllt rhyngddynt, ac at ddibenion y paragraff hwn, mae "rhiant" yn cynnwys person nad yw'n rhiant i'r plentyn, ond sydd â chyfrifoldeb rhiant dros y plentyn neu sydd â gofal drosto;
- (p) cael arian oddi wrth unrhyw fusnes neu wasanaeth a restrir ym mharagraff 44 neu 45 o Ran 3 o Atodlen 1 neu adneuo arian gydag unrhyw fusnes neu wasanaeth o'r fath;
- (q) symud cartref;
- (r) paratoi eiddo preswyl i bersonau symud i mewn;
- (s) osgoi anaf neu salwch neu ddianc rhag risg o niwed.

(3) Mae gan berson esgus rhesymol i ymadael â'r man lle y mae'n byw i fynd i ddigwyddiad i gadw Sul y Cofio—

- (a) a gynhelir ar 7 neu 8 Tachwedd 2020;
- (b) a gynhelir yn yr awyr agored;
- (c) a chanddo ddim mwy na 30 o bobl yn bresennol.

(4) Ym mharagraff (2)(h)—

- (a) rhaid i ymarfer corff ddechrau a gorffen yn y man lle y mae'r person yn byw, neu
- (b) pan fo angen i'r person, am resymau salwch neu nam corfforol neu feddyliol, neu anabledd (o fewn yr ystyr a roddir i "disability" yn adran 6 o Ddeddf Cydraddoldeb 2010<sup>(1)</sup>), wneud ymarfer corff mewn man arall, rhaid i ymarfer corff ddigwydd mewn ardal sy'n lleol i'r man lle y mae'r person yn byw.

(5) Nid yw paragraff (1) yn gymwys i unrhyw berson sy'n ddigartref.

### **Gofyniad i beidio ag ymgynnull gyda phobl eraill**

4.—(1) Pan na fo person yn y man lle y mae'n byw (yn rhinwedd bod ag esgus rhesymol o dan reoliad 3), ni chaiff y person hwnnw, heb esgus rhesymol, ymgynnull ag unrhyw berson arall ac eithrio—

- (a) aelodau o'i aelwyd,
- (b) ei ofalwr, neu
- (c) person y mae'n darparu gofal iddo.

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(1) 2010 p. 15.

(2) Mae esgus rhesymol yn cynnwys yr angen i wneud y canlynol—

- (a) gweithio neu ddarparu gwasanaethau gwirfoddol neu elusennol, pan na fo'n rhesymol ymarferol gwneud hynny heb ymgynnull gydag eraill;
- (b) cyflawni rhwymedigaeth gyfreithiol, gan gynnwys mynd i'r llys neu fodloni amodau mechniaeth, neu gymryd rhan mewn achos cyfreithiol;
- (c) cael gafael ar wasanaethau cyhoeddus neu gael y gwasanaethau hynny;
- (d) cael gafael ar wasanaethau addysgol neu gael y gwasanaethau hynny, yn ddarostyngedig i reoliadau 6 a 7;
- (e) darparu, cael neu gael gafael ar ofal neu gynhorthwy, gan gynnwys gofal plant neu ofal personol perthnasol o fewn ystyr "relevant personal care" ym mharagraff 7(3B) o Atodlen 4 i Ddeddf Diogelu Grwpiau Hyglwyf 2006, pan fo'r person sy'n cael y gofal yn berson hyglwyf;
- (f) pan fo'r person yn athletwr elît, hyfforddi ar gyfer digwyddiad chwaraeon penodedig, paratoi ato neu gystadlu ynddo;
- (g) darparu hyfforddiant a chymorth arall i athletwr elît mewn cysylltiad â digwyddiad chwaraeon penodedig;
- (h) gwasanaethu fel swyddog mewn digwyddiad chwaraeon penodedig neu fel arall ymwneud â'i redeg;
- (i) darparu neu gael cynhorthwy brys;
- (j) mynd i weinyddiad priodas neu ffurfiad partneriaeth sifil—
  - (i) fel parti i'r briodas neu'r bartneriaeth sifil,
  - (ii) os caiff ei wahodd i fynd iddi, neu
  - (iii) fel gofalwr person sy'n mynd i'r briodas neu'r bartneriaeth sifil;
- (k) mynd i angladd—
  - (i) fel person sy'n gyfrifol am drefnu'r angladd,
  - (ii) os caiff ei wahodd gan berson sy'n gyfrifol am drefnu'r angladd, neu
  - (iii) fel gofalwr person sy'n mynd i'r angladd.

(3) Mae gan berson hefyd esgus rhesymol dros ymgynnull gyda pherson arall i fynd i ddigwyddiad i gadw Sul y Cofio—

- (a) a gynhelir ar 7 neu 8 Tachwedd 2020;
- (b) a gynhelir yn yr awyr agored;

- (c) a chanddo ddim mwy na 30 o bobl yn bresennol.

### Cyfyngiad ar deithio i Gymru

5.—(1) Ni chaiff unrhyw berson sy'n byw y tu allan i Gymru, heb esgus rhesymol, fynd i Gymru neu aros yng Nghymru.

(2) Mae esgus rhesymol yn cynnwys yr angen i wneud y canlynol yng Nghymru—

- (a) cael—
- (i) bwyd a chyflenwadau meddygol ar gyfer y rheini ar yr un aelwyd (gan gynnwys anifeiliaid ar yr aelwyd) neu ar gyfer personau hyglwyf;
  - (ii) cyflenwadau ar gyfer cynnal, cynnal a chadw a gweithrediad hanfodol yr aelwyd, neu aelwyd person hyglwyf;
- (b) cael arian oddi wrth unrhyw fusnes neu wasanaeth a restrir ym mharagraff 44 neu 45 o Ran 3 o Atodlen 1 neu adneuo arian gydag unrhyw fusnes neu wasanaeth o'r fath;
- (c) cael neu ddarparu cynhorthwy meddygol, gan gynnwys cael gafael ar unrhyw un neu ragor o'r gwasanaethau y cyfeirir atynt ym mharagraff 47 o Ran 3 o Atodlen 1 neu gael gafael ar wasanaethau milfeddygol;
- (d) darparu, cael neu gael gafael ar ofal neu gynhorthwy, gan gynnwys gofal plant neu ofal personol perthnasol o fewn ystyr "relevant personal care" ym mharagraff 7(3B) o Atodlen 4 i Ddeddf Diogelu Grwpiau Hyglwyf 2006, pan fo'r person sy'n cael y gofal yn berson hyglwyf;
- (e) gweithio neu ddarparu gwasanaethau gwirfoddol neu elusennol pan na fo'n rhesymol ymarferol gwneud y gwaith neu ddarparu'r gwasanaeth o'r tu allan i Gymru;
- (f) pan fo'r person yn athletwr elît, hyfforddi ar gyfer digwyddiad chwaraeon penodedig, paratoi ato a chystadlu ynddo;
- (g) darparu hyfforddiant neu gymorth arall i athletwr elît mewn cysylltiad â digwyddiad chwaraeon penodedig;
- (h) gwasanaethu fel swyddog mewn digwyddiad chwaraeon penodedig neu fel arall ymwneud â'i redeg;
- (i) darparu neu gael cynhorthwy brys;
- (j) mynd i weinyddiad priodas neu ffurfiad partneriaeth sifil—
- (i) fel parti i'r briodas neu'r bartneriaeth sifil,

- (ii) os caiff ei wahodd i fynd iddi, neu
- (iii) fel gofalwr person sy'n mynd i'r briodas neu'r bartneriaeth sifil;
- (k) mynd i angladd—
  - (i) fel person sy'n gyfrifol am drefnu'r angladd,
  - (ii) os caiff ei wahodd gan berson sy'n gyfrifol am drefnu'r angladd, neu
  - (iii) fel gofalwr person sy'n mynd i'r angladd;
- (l) cyflawni rhwymedigaeth gyfreithiol, gan gynnwys mynd i'r llys neu fodloni amodau mechnïaeth, neu gymryd rhan mewn achos cyfreithiol;
- (m) cael gafael ar wasanaethau cyhoeddus neu gael y gwasanaethau hynny;
- (n) cael gafael ar wasanaethau addysgol, yn ddarostyngedig i reoliadau 6 a 7;
- (o) mewn perthynas â phlant nad ydynt yn byw ar yr un aelwyd â'u rhieni, neu un o'u rhieni, parhau â threfniadau presennol ar gyfer gweld rhieni a phlant, a chyswllt rhyngddynt, ac at ddibenion y paragraff hwn, mae "rhiant" yn cynnwys person nad yw'n rhiant i'r plentyn, ond sydd â chyfrifoldeb rhiant dros y plentyn neu sydd â gofal drosto;
- (p) symud cartref;
- (q) osgoi anaf neu salwch neu ddianc rhag risg o niwed;
- (r) teithio i gyrraedd man y tu allan i Gymru.

(3) At ddibenion paragraff (1), nid yw'n esgus rhesymol i berson fynd i Gymru neu aros yng Nghymru i wneud unrhyw beth os byddai'n rhesymol ymarferol i'r person wneud y peth hwnnw y tu allan i Gymru.

### **Cyfyngiad ar fynd i'r ysgol**

**6.**—(1) Ni chaiff disgybl ym mlwyddyn 9 neu uwch fynd i fangre ysgol yng Nghymru.

(2) Ond nid yw paragraff (1) yn atal—

- (a) disgybl rhag mynd i fangre ysgol—
  - (i) i wneud arholiad neu asesiad arall;
  - (ii) pan fo perchennog yr ysgol yn hysbysu rhiant y disgybl ei fod yn ystyried ei bod yn briodol i'r disgybl fynd yno oherwydd amgylchiadau eithriadol sy'n ymwneud â hyglwyfedd y disgybl;
- (b) disgybl rhag mynd i fangre ysgol arbennig;
- (c) disgybl rhag mynd i fangre uned cyfeirio disgyblion;

- (d) disgybl rhag mynd i fangre uned mewn ysgol, lle—
  - (i) mae awdurdod lleol yn cydnabod bod yr uned wedi'i neilltuo ar gyfer disgyblion ag anghenion addysgol arbennig, a
  - (ii) bod y disgybl yn cael ei addysgu'n gyfan gwbl neu'n bennaf yn yr uned;
- (e) disgybl sy'n ddisgybl preswyl—
  - (i) rhag preswyllo mewn llety ym mangre'r ysgol;
  - (ii) rhag cael addysg yn y llety hwnnw.

### Cyfyngiad ar fynd i addysg bellach

7.—(1) Ni chaiff myfyriwr fynd i fangre sefydliad addysg bellach yng Nghymru.

(2) Ond nid yw paragraff (1) yn atal myfyriwr rhag mynd i fangre—

- (a) sefydliad addysg bellach i wneud arholiad neu asesiad arall;
- (b) sefydliad yn y sector addysg bellach pan fo'r sefydliad yn hysbysu'r myfyriwr ei fod yn ystyried ei bod yn briodol i'r myfyriwr fynd yno oherwydd amgylchiadau eithriadol sy'n ymwneud â hyglwyfedd y myfyriwr.

### Dehongli rheoliadau 6 a 7

8. At ddibenion rheoliadau 6 a 7—

- (a) ystyr “Deddf 1996” yw Deddf Addysg 1996<sup>(1)</sup>;
- (b) mae i “disgybl preswyl” yr ystyr a roddir i “boarder” gan adran 579 o Ddeddf 1996;
- (c) ystyr “sefydliad addysg bellach” yw—
  - (i) sefydliad yn y sector addysg bellach;
  - (ii) darparwr addysg neu hyfforddiant o fewn ystyr “education or training” yn adran 31(1)(a) neu (b) neu 32(1)(a) neu (b) o Ddeddf Dysgu a Sgiliau 2000<sup>(2)</sup>—
    - (aa) nad yw'n sefydliad o fewn ystyr paragraff (i);
    - (bb) nad yw'n sefydliad yn y sector addysg uwch o fewn ystyr “higher education sector” yn adran 91(5) o Ddeddf Addysg Bellach ac Uwch 1992<sup>(3)</sup>, ac
    - (cc) sy'n cael cyllid i ddarparu'r addysg honno neu'r hyfforddiant

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(1) 1996 p. 56.  
 (2) 2000 p. 21.  
 (3) 1992 p. 13.

hwnnw oddi wrth Weinidogion  
Cymru neu awdurdod lleol;

ond nid yw'n cynnwys cyflogwr sy'n  
ddarparwr dim ond am fod y cyflogwr yn  
darparu addysg neu hyfforddiant o'r fath  
i'w gyflogeion;

- (d) mae i "ysgol annibynnol" yr ystyr a roddir i "independent school" gan adran 463 o Ddeddf 1996;
- (e) mae i "sefydliad o fewn y sector addysg bellach" yr ystyr a roddir i "institutions within the further education sector" gan adran 91(3) o Ddeddf Addysg Bellach ac Uwch 1992;
- (f) mae i "rhiant" yr ystyr a roddir i "parent" gan adran 576 o Ddeddf 1996;
- (g) mae i "perchennog" yr ystyr a roddir i "proprietor" gan adran 579 o Ddeddf 1996;
- (h) mae i "disgybl" yr ystyr a roddir i "pupil" gan adran 4 o Ddeddf 1996;
- (i) mae i "uned cyfeirio disgyblion" yr ystyr a roddir i "pupil referral unit" gan adran 19 o Ddeddf 1996;
- (j) mae i "anghenion addysgol arbennig" yr ystyr a roddir i "special educational needs" gan adran 312 o Ddeddf 1996;
- (k) ystyr "ysgol arbennig" yw—
  - (i) ysgol arbennig o fewn yr ystyr a roddir i "special school" gan adran 337 o Ddeddf 1996;
  - (ii) ysgol annibynnol sy'n darparu'n gyfan gwbl neu'n bennaf addysg ar gyfer disgyblion ag anghenion addysgol arbennig;
- (l) mae i "ysgol" yr ystyr a roddir i "school" gan adran 4 o Ddeddf 1996;
- (m) ystyr "blwyddyn ysgol" yw'r cyfnod sy'n dechrau â'r tymor ysgol cyntaf i ddechrau ar ôl mis Gorffennaf ac sy'n dod i ben â dechrau'r tymor cyntaf o'r fath i ddechrau ar ôl y mis Gorffennaf canlynol;
- (n) ystyr "blwyddyn 9" yw grŵp blwyddyn y bydd y rhan fwyaf o'r plant ynddo yn cyrraedd 14 oed yn ystod y flwyddyn ysgol;
- (o) ystyr "grŵp blwyddyn" yw grŵp o blant mewn ysgol y bydd y rhan fwyaf ohonynt yn cyrraedd yr un oedran mewn blwyddyn ysgol benodol.



### **Gwaharddiad ar drefnu digwyddiadau cerddorol penodol sydd heb eu trwyddedu**

**9.**—(1) Ni chaiff unrhyw berson ymwneud â threfnu digwyddiad cerddorol perthnasol sydd heb ei drwyddedu.

(2) At ddibenion y rheoliad hwn, ystyr “digwyddiad cerddorol perthnasol sydd heb ei drwyddedu” yw digwyddiad—

- (a) sy'n cynnwys mwy na 30 o bobl,
- (b) lle y mae pobl yn ymgynnull yn groes i reoliad 4(1),
- (c) lle y mae cerddoriaeth yn cael ei chwarae neu ei pherfformio at ddiben adloniant, neu at ddibenion sy'n cynnwys y diben hwnnw, a
- (d) lle o ran chwarae neu berfformio cerddoriaeth—
  - (i) y mae'n weithgarwch trwyddedadwy (o fewn ystyr Deddf Trwyddedu 2003(1)), a
  - (ii) nas cynhelir o dan awdurdodiad nac yn unol ag awdurdodiad (o fewn yr ystyr a roddir i “authorisation” gan adran 136(5) o'r Ddeddf honno).

(3) At ddibenion y rheoliad hwn, nid yw person yn ymwneud â threfnu digwyddiad cerddorol perthnasol sydd heb ei drwyddedu os nad yw'r person ond yn ymwneud â'r digwyddiad, neu na fyddai ond yn ymwneud â'r digwyddiad, drwy fynd iddo.

## **RHAN 3**

Cyfyngiadau ar fusnesau a gwasanaethau y mae eu mangreoedd fel arfer ar agor i'r cyhoedd

### **PENNOD 1**

#### **Trosolwg**

### **Cyfeiriadau at “mangre” a throsolwg**

**10.**—(1) Yn y Rhan hon, mae cyfeiriadau at “mangre” yn gyfeiriadau at fangre busnes neu wasanaeth—

- (a) sydd yng Nghymru, a
- (b) y mae gan y cyhoedd fynediad iddi neu y caniateir i'r cyhoedd gael fynediad iddi, pa un ai drwy dalu neu fel arall.

(2) Mae Pennod 2 yn gwneud darpariaeth ynghylch busnesau neu wasanaethau y mae rhaid i'w mangreoedd gau.

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(1) 2003 p. 17.

(3) Mae Pennod 3 yn gwneud darpariaeth ynghylch busnesau neu wasanaethau y mae rhaid i'w mangreoedd gau ond y caniateir mynediad cyfyngedig iddynt.

(4) Mae Pennod 4 yn gwneud darpariaeth ynghylch busnesau neu wasanaethau y caiff eu mangreoedd barhau i fod ar agor.

(5) Gweler rheoliad 17 am ddarpariaeth bellach ynghylch mangreoedd a gaiff barhau i fod ar agor neu a gaeir ond y caniateir mynediad cyfyngedig iddynt yn unol â'r Rhan hon.

## PENNOD 2

Busnesau a gwasanaethau y mae rhaid i'w mangreoedd gau

### **Cau mangreoedd a ddefnyddir gan fusnesau a gwasanaethau penodol**

**11.**—(1) O ran person sy'n gyfrifol am gynnal busnes neu ddarparu gwasanaeth a restrir yn Rhan 1 o Atodlen 1—

- (a) rhaid iddo gau i aelodau'r cyhoedd unrhyw fangre a weithredir fel rhan o'r busnes neu'r gwasanaeth, a
- (b) ni chaiff gynnal y busnes neu'r gwasanaeth yn y fangre honno ac eithrio yn unol â'r rheoliad hwn.

(2) Nid yw paragraff (1) yn atal—

- (a) gwneud gwaith cynnal a chadw ac atgyweirio neu waith arall i sicrhau bod mangre yn addas i'w defnyddio pan na fydd paragraff (1) yn gymwys i'r fangre mwyach;
- (b) defnyddio mangre at unrhyw ddiben y mae Gweinidogion Cymru neu awdurdod lleol yn gofyn amdano neu'n ei awdurdodi;
- (c) defnyddio mangre i ddarlledu heb gynulleidfa yn bresennol yn y fangre (pa un ai dros y rhyngrwyd neu fel rhan o ddarllediad radio neu deledu);
- (d) defnyddio mangre ar gyfer darparu gwasanaethau neu wybodaeth (gan gynnwys gwerthu, llogi neu ddanfôn nwyddau neu wasanaethau)—
  - (i) drwy wefan, neu fel arall drwy gyfathrebiad ar lein,
  - (ii) dros y ffôn, gan gynnwys drwy neges destun, neu
  - (iii) drwy'r post.

### PENNOD 3

Busnesau a gwasanaethau y mae rhaid cau eu mangreoedd ond y caniateir mynediad cyfyngedig iddynt

#### Cau bariau a bwytaï etc.

**12.**—(1) O ran person sy'n gyfrifol am gynnal busnes a restrir ym mharagraffau 22 i 25 o Atodlen 1—

- (a) rhaid iddo gau i aelodau'r cyhoedd unrhyw fangre a weithredir fel rhan o'r busnes, a
- (b) ni chaiff gynnal busnes yn y fangre honno ac eithrio yn unol â'r rheoliad hwn.

(2) Nid yw paragraff (1) yn atal—

- (a) defnyddio mangre ar gyfer—
  - (i) gwerthu bwyd a diod i'w fwyta neu i'w hyfed oddi ar y fangre, neu
  - (ii) gwasanaethau sy'n darparu bwyd neu ddioid i bobl ddigartref;
- (b) darparu gwasanaeth ystafell mewn gwesty neu lety arall (pan fo'r gwesty neu'r llety arall yn parhau i weithredu yn unol â'r eithriadau cyfyngedig a ganiateir gan reoliad 13);
- (c) ffreutur yn y gweithle rhag bod ar agor pan na fo dewis ymarferol arall i staff yn y gweithle hwnnw gael bwyd;
- (d) gwneud gwaith cynnal a chadw ac atgyweirio neu waith arall i sicrhau bod mangre yn addas i'w defnyddio pan na fydd paragraff (1) yn gymwys i'r fangre mwyach.

(3) At ddibenion paragraff (1), mae ardal o dan do sy'n gyfagos i fangre'r busnes lle y mae seddau yn cael eu rhoi ar gael i gwsmeriaid y busnes (pa un ai gan y busnes ai peidio) i'w thrin fel rhan o fangre'r busnes hwnnw.

#### Cau llety gwyliau

**13.**—(1) O ran person sy'n gyfrifol am gynnal busnes a restrir ym mharagraffau 26 i 29 o Atodlen 1—

- (a) rhaid iddo gau i aelodau'r cyhoedd unrhyw fangre a weithredir fel rhan o'r busnes, a
- (b) ni chaiff gynnal busnes yn y fangre honno ac eithrio yn unol â'r rheoliad hwn.

(2) Nid yw paragraff (1) yn atal—

- (a) defnyddio mangre at unrhyw ddiben y mae Gweinidogion Cymru neu awdurdod lleol yn gofyn amdano neu'n ei awdurdodi;

- (b) darparu llety ar gyfer unrhyw bersonau sy'n aros yn y llety hwnnw pan ddaw'r Rheoliadau hyn i rym ac—
  - (i) nad ydynt yn gallu dychwelyd i'w prif breswylfa, neu
  - (ii) sy'n defnyddio'r llety fel eu prif breswylfa;
- (c) defnyddio mangre i gynnal y busnes drwy ddarparu gwybodaeth neu wasanaethau eraill—
  - (i) drwy wefan, neu fel arall drwy gyfathrebiad ar lein,
  - (ii) dros y ffôn, gan gynnwys ymholiadau drwy neges destun, neu
  - (iii) drwy'r post;
- (d) gwneud gwaith cynnal a chadw ac atgyweirio neu waith arall i sicrhau bod mangre yn addas i'w defnyddio pan nad yw paragraff (1) yn gymwys mwyach i'r fangre.

**Cau addoldai, canolfannau cymunedol ac amlogfeydd**

**14.**—(1) Rhaid i berson sy'n gyfrifol am fangre o fath a restrir ym mharagraffau 30 i 32 o Atodlen 1 sicrhau bod y fangre ar gau i aelodau'r cyhoedd, ac eithrio ar gyfer y defnydd a ganiateir gan baragraffau (2), (3) a (4).

(2) Caiff addoldy fod ar agor—

- (a) ar gyfer angladdau;
- (b) ar gyfer gweinyddu priodas neu ffurfio partneriaeth sifil;
- (c) i ddarparu (heb gynulleidfa) weithred addoli, angladd neu weinyddiad priodas neu ffurfiad partneriaeth sifil (pa un ai dros y rhyngwyd neu fel rhan o ddarllediad radio neu deledu);
- (d) i ddarparu gwasanaethau gwirfoddol hanfodol;
- (e) i ddarparu gwasanaethau cyhoeddus ar gais Gweinidogion Cymru neu awdurdod lleol.

(3) Caiff canolfan gymunedol fod ar agor—

- (a) i ddarparu gwasanaethau gwirfoddol hanfodol, neu
- (b) i ddarparu gwasanaethau cyhoeddus ar gais Gweinidogion Cymru neu awdurdod lleol.

(4) Caiff amlogfa agor i aelodau'r cyhoedd ar gyfer angladdau neu gladdu (ac i ddarparu angladd neu gladdu pa un ai dros y rhyngwyd neu fel arall).

(5) Ond nid yw paragraff (1) yn gymwys i'r tir o amgylch amlogfa, gan gynnwys unrhyw gladdfa neu ardd goffa.

(6) Yn y rheoliad hwn, mae “gwasanaethau cyhoeddus” yn cynnwys darparu banciau bwyd neu gymorth arall ar gyfer pobl ddigartref neu bobl hyglwyf, gofal plant, sesiynau rhoi gwaed neu gymorth mewn argyfwng.

#### PENNOD 4

Busnesau a gwasanaethau y caiff eu mangreoedd fod ar agor

##### **Mangreoedd agored**

**15.**—(1) Er gwaethaf darpariaethau blaenorol y Rhan hon, caiff mangreoedd a weithredir gan fusnesau neu wasanaethau a restrir yn Rhan 3 o Atodlen 1 barhau i fod ar agor.

(2) A chaiff canolfannau siopa, arcedau siopa a marchnadoedd fod ar agor i'r cyhoedd i'r graddau y mae hyn yn ofynnol i gael gafael ar fusnes neu wasanaeth a restrir yn Rhan 3 o Atodlen 1.

(3) Ond ni chaiff person sy'n gyfrifol am fangre sydd wedi ei hawdurdodi ar gyfer gwerthu neu gyflenwi alcohol i'w yfed oddi ar y fangre werthu na chyflenwi alcohol rhwng 10.00 p.m. a 6.00 a.m.

(4) Nid yw paragraff (3) yn caniatáu i'r person sy'n gyfrifol am y fangre werthu na chyflenwi alcohol, yn groes i awdurdodiad a ganiateir neu a roddir mewn cysylltiad â'r fangre.

#### PENNOD 5

Busnesau cymysg

##### **Busnesau cymysg**

**16.**—(1) Pan—

(a) bo'n ofynnol i berson sy'n gyfrifol am gynnal busnes (“busnes A”), yn rhinwedd rheoliad 11(1), 12(1) neu 13(1), beidio â chynnal busnes A mewn mangre, a

(b) bo busnes A yn ffurfio rhan o fusnes mwy (“busnes B”),

cydymffurfir â'r gofyniad yn rheoliad 11(1), 12(1) neu 13(1) os yw'r person sy'n gyfrifol am gynnal busnes B yn peidio â chynnal busnes A yn y fangre.

(2) Felly er mwyn osgoi amheuaeth, pan—

(a) caiff mangre a weithredir gan fusnes neu wasanaeth barhau i fod ar agor yn rhinwedd rheoliad 15(1), a

(b) bo'r busnes hwnnw neu'r gwasanaeth hwnnw yn ffurfio rhan o ymgymeriad mwy sy'n cynnwys cynnal busnes neu wasanaeth arall yn yr un fangre,

rhaid i'r person sy'n gyfrifol am y busnes arall hwnnw neu'r gwasanaeth arall hwnnw beidio â'i gynnal os

yw'n ofynnol iddo wneud hynny yn rhinwedd rheoliad 11(1), 12(1) neu 13(1).

## RHAN 4

### Lleihau'r risg o ddod i gysylltiad â'r coronafeirws

#### **Gofyniad i gymryd mesurau ataliol mewn mangre reoleiddiedig i leihau risg**

17.—(1) At ddibenion paragraff (2)—

(a) ystyr “mangre reoleiddiedig” yw—

- (i) mangre y caniateir i'r cyhoedd gael mynediad iddi yn rhinwedd rheoliad 11(2), 12(2), 13(2) neu 14(2), (3) neu (4);
- (ii) mangre busnes neu wasanaeth a gaiff barhau i fod ar agor yn rhinwedd rheoliad 15;
- (iii) cerbyd a ddefnyddir i ddarparu gwasanaeth trafndiaeth gyhoeddus;
- (iv) mangre arall lle y mae gwaith yn cael ei wneud, a

(b) ystyr y “person cyfrifol” yw—

- (i) mewn perthynas â mangre reoleiddiedig y cyfeirir ati yn is-baragraff (a)(i), (ii) neu (iii), y person sy'n gyfrifol am y fangre,
- (ii) mewn perthynas â mangre reoleiddiedig o'r math y cyfeirir ato yn is-baragraff (a)(iv), y person sy'n gyfrifol am y gwaith sy'n cael ei wneud yn y fangre.

(2) At ddibenion lleihau'r risg o ddod i gysylltiad â'r coronafeirws mewn mangre reoleiddiedig, neu ledaenu'r coronafeirws gan y rheini sydd wedi bod mewn mangre reoleiddiedig, rhaid i'r person cyfrifol—

(a) cymryd pob mesur rhesymol i sicrhau—

- (i) y cynhelir pellter o 2 fetr rhwng unrhyw bersonau yn y fangre (ac eithrio rhwng dau aelod o'r un aelwyd, neu rhwng gofalwr a'r person sy'n cael ei gynorthwyo gan y gofalwr);
- (ii) pan fo'n ofynnol i bersonau aros i fynd i'r fangre, y cynhelir pellter o 2 fetr rhyngddynt (ac eithrio rhwng dau aelod o'r un aelwyd, neu rhwng gofalwr a'r person sy'n cael ei gynorthwyo gan y gofalwr),

(b) cymryd unrhyw fesurau rhesymol eraill at y diben hwnnw, er enghraifft mesurau sy'n cyfyngu ar ryngweithio agos wyneb yn wyneb ac yn cynnal hylendid megis—

- (i) newid trefn mangre gan gynnwys lleoliad dodrefn a gweithfannau;
- (ii) rheoli'r defnydd o fynedfeydd, tramwyfeydd, grisiau a lifftiau;
- (iii) rheoli'r defnydd o gyfleusterau a rennir megis toiledau a cheginau;
- (iv) rheoli'r defnydd o unrhyw ran arall o'r fangre neu fynediad iddi fel arall;
- (v) gosod rhwystrau neu sgriniau;
- (vi) darparu, neu'n ei gwneud yn ofynnol defnyddio, cyfarpar diogelu personol, ac
- (c) darparu gwybodaeth i'r rheini sy'n mynd i'r fangre neu'n gweithio ynddi ynglŷn â sut i leihau'r risg o ddod i gysylltiad â'r coronafeirws.

(3) Mae mesurau y gellir eu cymryd o dan baragraff

(2) hefyd yn cynnwys—

- (a) peidio â gwneud gweithgareddau penodol;
- (b) cau rhan o'r fangre;
- (c) caniatáu a galluogi i berson sydd fel arfer yn gweithio yn y fangre ynysu am gyfnod penodedig oherwydd profi'n bositif am y coronafeirws neu am ei fod wedi dod i gysylltiad agos â rhywun sydd wedi profi'n bositif, pan ofynnwyd i'r person hwnnw wneud hynny gan—
  - (i) Gweinidogion Cymru;
  - (ii) swyddog iechyd cyhoeddus;
  - (iii) swyddog i Fwrdd Iechyd lleol;
  - (iv) person sydd wedi ei ddynodi gan awdurdod lleol at ddibenion cysylltu â phersonau a all fod wedi dod i gysylltiad â'r coronafeirws;
- (d) casglu gwybodaeth gyswllt oddi wrth bob person yn y fangre neu, mewn perthynas â phersonau o'r un aelwyd, oddi wrth un ohonynt, a'i chadw am 21 o ddiwrnodau at ddiben ei darparu i unrhyw un o'r canlynol, ar eu cais neu ar ei gais—
  - (i) Gweinidogion Cymru,
  - (ii) swyddog iechyd cyhoeddus,
  - (iii) person sydd wedi ei ddynodi gan awdurdod lleol i brosesu gwybodaeth at ddibenion cysylltu â phersonau a all fod wedi dod i gysylltiad â'r coronafeirws.

(4) Yn y rheoliad hwn—

- (a) ystyr “gwybodaeth gyswllt”, mewn perthynas â pherson yn y fangre, yw enw'r person a gwybodaeth sy'n ddigonol i allu cysylltu â'r person, i roi gwybod iddo y gall fod wedi dod i gysylltiad â'r coronafeirws yn y fangre (gan

gynnwys rhif ffôn a'r dyddiad a'r amser yr oedd y person yn y fangre);

- (b) mae i “swyddog iechyd cyhoeddus” yr un ystyr ag a roddir i “public health officer” ym mharagraff 3(2)(c) o Atodlen 21 i Ddeddf y Coronafeirws 2020(1);
- (c) mae i “Bwrdd Iechyd Lleol” yr ystyr a roddir i “Local Health Board” gan adran 11 o Ddeddf y Gwasanaeth Iechyd Gwladol (Cymru) 2006(2).

### **Gofyniad i wisgo gorchudd wyneb ar drafnidiaeth gyhoeddus**

**18.**—(1) Rhaid i berson (“P”) sy’n teithio fel teithiwr mewn cerbyd a ddefnyddir i ddarparu gwasanaeth trafndiaeth gyhoeddus wisgo gorchudd wyneb.

(2) Ond nid yw hyn yn ofynnol—

- (a) pan fo esemptiad yn gymwys o dan baragraff (3);
- (b) pan fo gan P esgus rhesymol dros beidio â gwisgo gorchudd wyneb, ac o ran hynny gweler paragraff (4).

(3) Mae esemptiad i’r gofyniad i wisgo gorchudd wyneb yn gymwys—

- (a) pan fo P yn blentyn o dan 11 oed;
- (b) mewn cerbyd sy’n darparu gwasanaeth cludiant i’r ysgol;
- (c) ar fferi—
  - (i) pan fo’r rhan o’r fferi sydd ar agor i deithwyr yn yr awyr agored yn gyfan gwbl, neu
  - (ii) pan ellir cynnal pellter o 2 fetr o leiaf rhwng personau ar y rhan o’r fferi sydd ar agor i deithwyr;
- (d) ar long fordeithio;
- (e) pan ddyrennir caban, man cysgu neu lety tebyg arall i P yn y cerbyd, ar unrhyw adeg pan yw P yn y llety hwnnw—
  - (i) ar ei ben ei hunan, neu
  - (ii) gydag aelodau o aelwyd P neu ofalwr i aelod o’r aelwyd yn unig;
- (f) pan—
  - (i) caniateir i P, neu pan fo’n ofynnol fel arfer i P, fynd i gerbyd ac aros ynddo wrth ddefnyddio’r gwasanaeth trafndiaeth gyhoeddus,

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(1) 2020 p. 7.  
 (2) 2006 p. 42.



(ii) na fo'r cerbyd ei hunan yn cael ei ddefnyddio ar gyfer darparu gwasanaeth trafndiaeth gyhoeddus, a

(iii) bo P yn aros yn y cerbyd hwnnw;

(g) ar gerbyd awyr na chychwynnodd o fan yng Nghymru, nac sydd i lanio mewn man yng Nghymru;

(h) ar lestr nad yw'n docio mewn porthladd yng Nghymru.

(4) Mae'r amgylchiadau pan fo gan P esgus rhesymol dros beidio â gwisgo gorchudd wyneb yn cynnwys—

(a) pan na fo P yn gallu rhoi gorchudd am ei wyneb, neu wisgo neu dynnu gorchudd wyneb, oherwydd salwch neu nam corfforol neu feddyliol, neu anabledd (o fewn yr ystyr a roddir i “disability” yn adran 6 o Ddeddf Cydraddoldeb 2010);

(b) pan fo P yn gorfod tynnu'r gorchudd wyneb er mwyn cyfathrebu â pherson arall sy'n cael anhawster i gyfathrebu (mewn perthynas â lleferydd, iaith neu fel arall);

(c) pan fo P yn gorfod tynnu'r gorchudd wyneb er mwyn osgoi niwed neu anaf, neu'r risg o niwed neu anaf, i P ei hunan neu i eraill;

(d) pan fo P yn teithio i osgoi anaf, neu i ddianc rhag risg o niwed, ac nad oes gan P orchudd wyneb;

(e) pan fo P yn gorfod tynnu'r gorchudd wyneb i—

(i) cymryd meddyginiaeth;

(ii) bwyta neu yfed, os caniateir gwneud hyn yn y cerbyd a bod hynny'n rhesymol angenrheidiol (er enghraifft oherwydd hyd y daith);

(f) pan ofynnir i P dynnu'r gorchudd wyneb gan—

(i) swyddog gorfodaeth, neu

(ii) gweithredwr y gwasanaeth trafndiaeth gyhoeddus, cyflogai i'r gweithredwr neu berson sydd wedi ei awdurdodi gan y gweithredwr.

(5) Rhaid i weithredwr gwasanaeth trafndiaeth gyhoeddus y mae paragraff (1) yn gymwys iddo ddarparu gwybodaeth i deithwyr am y gofyniad i wisgo gorchuddion wyneb yn ei gerbydau.

(6) At ddibenion y rheoliad hwn ystyr “gwasanaeth cludiant i'r ysgol” yw unrhyw gludiant nad yw ond yn cael ei ddarparu at ddiben—

(a) cludo person i'r ysgol ac o'r ysgol neu'r man arall y mae'r person yn cael addysg neu hyfforddiant ynddo, neu

- (b) hwyluso fel arall bresenoldeb person mewn ysgol neu fan arall y mae'r person yn cael addysg neu hyfforddiant ynddo.

**Gofyniad i wisgo gorchudd wyneb mewn mannau cyhoeddus penodol o dan do**

19.—(1) Rhaid i berson (“P”) wisgo gorchudd wyneb yn ardaloedd cyhoeddus o dan do mangreoedd y mae gan y cyhoedd fynediad iddynt neu y caniateir i'r cyhoedd gael mynediad iddynt, pa un ai drwy dalu neu fel arall.

(2) Ond nid yw hyn yn ofynnol—

- (a) pan fo P yn blentyn o dan 11 oed;
- (b) pan fo gan P esgus rhesymol dros beidio â gwisgo gorchudd wyneb, ac o ran hynny gweler paragraff (3).

(3) Mae'r amgylchiadau pan fo gan P esgus rhesymol dros beidio â gwisgo gorchudd wyneb yn cynnwys—

- (a) pan na fo P yn gallu rhoi gorchudd am ei wyneb, neu wisgo neu dynnu gorchudd wyneb, oherwydd salwch neu nam corfforol neu feddyliol, neu anabledd (o fewn yr ystyr a roddir i “disability” yn adran 6 o Ddeddf Cydraddoldeb 2010);
- (b) pan fo P yn ymgymryd â gweithgaredd ac y gellir ystyried yn rhesymol fod gwisgo gorchudd wyneb yn ystod y gweithgaredd hwnnw yn peri risg i iechyd P;
- (c) pan fo P yn gorfod tynnu'r gorchudd wyneb i gyfathrebu â pherson arall sy'n cael anhawster i gyfathrebu (mewn perthynas â lleferydd, iaith neu fel arall);
- (d) pan fo P yn gorfod tynnu'r gorchudd wyneb er mwyn osgoi niwed neu anaf, neu'r risg o niwed neu anaf, i P ei hunan neu i eraill;
- (e) pan fo P yn y fangre i osgoi anaf, neu i ddianc rhag risg o niwed, ac nad oes gan P orchudd wyneb;
- (f) pan fo P yn gorfod tynnu'r gorchudd wyneb i—
  - (i) cymryd meddyginiaeth;
  - (ii) bwyta neu yfed, pan fo'n rhesymol angenrheidiol;
- (g) pan ofynnir i P dynnu'r gorchudd wyneb gan swyddog gorfodaeth.

**Canllawiau ar leihau dod i gysylltiad â'r coronafeirws**

20.—(1) Rhaid i berson y mae'n ofynnol iddo gymryd mesurau rhesymol o dan reoliad 17(2) roi sylw

i ganllawiau a ddyroddir gan Weinidogion Cymru ynghylch y mesurau hynny.

(2) Rhaid i weithredwr gwasanaeth trafndiaeth gyhoeddus y mae rheoliad 18 yn gymwys iddo roi sylw i ganllawiau a ddyroddir gan Weinidogion Cymru ynghylch—

- (a) y gofyniad i wisgo gorchudd wyneb yn unol â pharagraffau (1) i (4) o reoliad 18 a gorfodi'r gofyniad hwnnw o dan reoliad 25;
- (b) darparu gwybodaeth i deithwyr yn unol â pharagraff (5) o reoliad 18.

(3) O ran Gweinidogion Cymru—

- (a) cânt ddiwygio canllawiau a ddyroddir o dan baragraff (1) neu (2), a
- (b) rhaid iddynt gyhoeddi'r canllawiau (ac unrhyw ddiwygiadau).

(4) Caiff canllawiau o dan y rheoliad hwn gynnwys (drwy gyfeirio neu drosi) ganllawiau, codau ymarfer neu ddogfennau eraill a gyhoeddir gan berson arall (er enghraifft, cymdeithas fasnach, corff sy'n cynrychioli aelodau o ddiwydiant neu undeb llafur).

## RHAN 5

### Gorfodi

#### Swyddogion gorfodaeth

**21.**—(1) At ddibenion rheoliad 22 ac Atodlen 2, ystyr “swyddog gorfodaeth” yw person sydd wedi ei ddynodi gan awdurdod lleol at ddibenion y Rheoliadau hyn.

(2) At ddibenion rheoliadau 23 i 31, ystyr “swyddog gorfodaeth” yw—

- (a) cwnstabl,
- (b) swyddog cymorth cymunedol yr heddlu,
- (c) person sydd wedi ei ddynodi gan—
  - (i) Gweinidogion Cymru, neu
  - (ii) awdurdod lleol,
 at ddibenion y Rheoliadau hyn (ond gweler paragraff (3)), neu
- (d) person sydd wedi ei ddynodi gan Weinidogion Cymru neu awdurdod lleol o dan—
  - (i) rheoliad 17(1) o Reoliadau Diogelu Iechyd (Cyfyngiadau Coronafeirws)

(Rhif 2) (Cymru) 2020(1) at ddibenion y Rheoliadau hynny, neu

- (ii) rheoliad 10(11)(c) o Reoliadau Diogelu Iechyd (Cyfyngiadau Coronafeirws) (Cymru) 2020(2) yn berson perthnasol (o fewn yr ystyr a roddir gan y rheoliad hwnnw),

(ond gweler paragraff (3)).

(3) Ni chaiff person sydd wedi ei ddynodi gan awdurdod lleol arfer swyddogaethau swyddog gorfodaeth ond mewn perthynas â thorri gofyniad yn rheoliad 11(1), 12(1), 13(1), 14(1), 15(3), 17(2) neu Atodlen 2 (neu achos honedig o'i dorri).

### **Gorfodi'r gofyniad i gymryd mesurau ataliol**

**22.** Mae Atodlenni 2 a 3 yn gwneud darpariaeth ar gyfer rhoi swyddogaethau i swyddogion gorfodaeth at ddiben gorfodi rheoliad 17(2) ac mewn cysylltiad â rhoi'r swyddogaethau hynny.

### **Hysbysiadau cydymffurfio**

**23.**—(1) Caiff swyddog gorfodi roi hysbysiad cydymffurfio i berson os oes gan y swyddog sail resymol dros amau bod y person yn torri gofyniad yn rheoliad 11(1), 12(1), 13(1), 14(1) neu 18(5).

(2) Caiff hysbysiad cydymffurfio bennu mesurau y mae rhaid i'r person y'i rhoddir iddo eu cymryd cyn gynted ag y bo'n rhesymol ymarferol er mwyn atal y person hwnnw rhag parhau i dorri'r gofyniad.

### **Pwerau symud a gwasgaru**

**24.**—(1) Pan fo gan swyddog gorfodaeth sail resymol dros amau bod person ("P") yn torri rheoliad 3(1), caiff y swyddog—

- (a) cyfarwyddo P i ddychwelyd i'r man lle y mae P yn byw;
- (b) symud P i'r man hwnnw.

(2) Pan fo gan swyddog gorfodaeth sail resymol dros amau bod pobl wedi ymgynnull yn groes i reoliad 4(1), caiff y swyddog—

- (a) cyfarwyddo'r cynulliad i wasgaru;
- (b) cyfarwyddo unrhyw berson yn y cynulliad i ddychwelyd i'r man lle y mae'n byw;
- (c) symud unrhyw berson yn y cynulliad i'r man lle y mae'n byw.

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(1) O.S. 2020/725 (Cy. 162). Diwygiwyd gan O.S. 2020/985 (Cy. 222).

(2) O.S. 2020/353 (Cy. 80).

(3) Pan fo gan swyddog gorfodaeth sail resymol dros amau bod person (“P”) yn torri rheoliad 5(1), caiff y swyddog gyfarwyddo P i ymadael â Chymru.

(4) Wrth arfer y pŵer ym mharagraff (1), (2) neu (3), caiff swyddog gorfodaeth gyfarwyddo person i ddilyn unrhyw gyfarwyddiadau y mae’r swyddog yn ystyried eu bod yn angenrheidiol.

(5) Pan fo gan swyddog gorfodaeth sail resymol dros amau bod person (“P”) yn torri, neu ar fin torri, rheoliad 9(1), caiff y swyddog—

- (a) cyfarwyddo P i ddilyn unrhyw gyfarwyddiadau y mae’r swyddog yn ystyried eu bod yn angenrheidiol er mwyn stopio neu atal y toriad;
- (b) symud P o leoliad neu leoliad arfaethedig y digwyddiad y mae’r swyddog yn amau ei fod yn cael, neu ar fin cael, ei drefnu yn groes i reoliad 9(1).

### **Gorfodi gofynion gorchuddion wyneb**

**25.**—(1) Pan fo gan swyddog gorfodaeth sail resymol dros amau bod person (“P”) yn torri (neu ar fin torri) rheoliad 18(1), caiff y swyddog—

- (a) cyfarwyddo P i beidio â mynd i’r cerbyd sy’n darparu’r gwasanaeth trafndiaeth gyhoeddus o dan sylw;
- (b) symud P o’r cerbyd.

(2) Pan fo gan—

- (a) gweithredwr gwasanaeth trafndiaeth gyhoeddus,
- (b) cyflogai i’r gweithredwr, neu
- (c) person sydd wedi ei awdurdodi gan y gweithredwr,

sail resymol dros amau bod person (“P”) ar fin torri rheoliad 18(1), caiff y gweithredwr, y cyflogai neu’r person awdurdodedig gyfarwyddo P i beidio â mynd i’r cerbyd sy’n darparu’r gwasanaeth trafndiaeth gyhoeddus o dan sylw.

(3) Pan fo gan swyddog gorfodaeth sail resymol dros amau bod person (“P”) yn torri (neu ar fin torri) rheoliad 19(1), caiff y swyddog—

- (a) cyfarwyddo P i beidio â mynd i’r fangre;
- (b) symud P o’r fangre.

### **Gorfodi: plant**

**26.**—(1) Pan fo gan swyddog gorfodaeth sail resymol dros amau bod person (“P”) yn torri rheoliad 3(1) neu’n ymgynnull yn groes i reoliad 4(1) a’i fod yn blentyn gydag unigolyn (“U”) a chanddo gyfrifoldeb dros P—

- (a) caiff y swyddog gyfarwyddo U i fynd â P i'r man lle y mae P yn byw, a
- (b) rhaid i U, i'r graddau y mae'n rhesymol ymarferol, sicrhau bod P yn cydymffurfio ag unrhyw gyfarwyddyd neu gyfarwyddiad a roddir gan y swyddog i P.

(2) Pan fo gan swyddog gorfodaeth sail resymol dros amau bod person ("P") yn torri rheoliad 5(1) a'i fod yn blentyn gydag unigolyn ("U") a chanddo gyfrifoldeb dros P—

- (a) caiff y swyddog gyfarwyddo U i fynd â P i fan y tu allan i Gymru, a
- (b) rhaid i U, i'r graddau y mae'n rhesymol ymarferol, sicrhau bod P yn cydymffurfio ag unrhyw gyfarwyddyd neu gyfarwyddiad a roddir gan y swyddog i P.

(3) Pan fo gan swyddog gorfodaeth sail resymol dros amau bod plentyn yn methu â chydymffurfio â gofyniad yn rheoliad 18(1) neu 19(1), caiff y swyddog gyfarwyddo unrhyw unigolyn ("U") a chanddo gyfrifoldeb dros y plentyn i sicrhau, i'r graddau y mae'n rhesymol ymarferol, fod y plentyn yn cydymffurfio â'r gofyniad.

(4) At ddibenion paragraffau (1), (2) a (3), mae gan U gyfrifoldeb dros plentyn os oes gan U—

- (a) gwarchodaeth neu ofal am y plentyn am y tro, neu
- (b) cyfrifoldeb rhiant dros y plentyn.

## **Pŵer mynediad**

**27.**—(1) Caiff swyddog gorfodaeth fynd i fangre—

- (a) os oes gan y swyddog sail resymol dros amau bod gofyniad a osodir gan y Rheoliadau hyn yn cael, wedi cael, neu ar fin cael ei dorri yn y fangre, a
- (b) os yw'r swyddog yn ystyried ei bod yn angenrheidiol mynd i'r fangre at ddiben canfod a yw'r gofyniad yn cael, wedi cael, neu ar fin cael ei dorri.

(2) Caiff swyddog gorfodaeth sy'n mynd i fangre yn unol â pharagraff (1) gymryd unrhyw bersonau eraill, cyfarpar a deunyddiau i'r fangre y mae'n ymddangos i'r swyddog eu bod yn briodol.

(3) Rhaid i swyddog gorfodaeth sy'n mynd i fangre yn unol â pharagraff (1)—

- (a) os gofynnir iddo gan berson yn y fangre, ddangos tystiolaeth o bwy yw'r swyddog ac amlinellu'r diben yr arferir y pŵer ato;
- (b) os nad yw'r fangre wedi ei meddiannu neu os yw'r meddiannydd yn absennol dros dro, adael y fangre wedi ei diogelu rhag mynediad

anawdurdodedig yr un mor effeithiol ag yr oedd pan aeth y swyddog iddi.

### **Gorfodi: darpariaeth atodol**

**28.**—(1) Caiff swyddog gorfodaeth gymryd camau gweithredu eraill i hwyluso arfer pŵer a roddir i'r swyddog gan y Rhan hon.

(2) Caiff swyddog gorfodaeth ddefnyddio grym rhesymol wrth arfer pŵer o dan—

- (a) rheoliad 24(1)(b), (2)(c) neu (5)(b),
- (b) rheoliad 25(1)(b) neu (3)(b), neu
- (c) rheoliad 27(1).

(3) Ni chaiff swyddog gorfodaeth ond arfer pŵer o dan y Rhan hon os yw'r swyddog yn ystyried ei bod yn angenrheidiol ac yn gymesur gwneud hynny.

(4) Yn y Rhan hon mae cyfeiriadau at ofyniad yn cynnwys cyfeiriadau at gyfyngiad.

## **RHAN 6**

### **Troseddau a chosbau**

#### **Troseddau a chosbau**

**29.**—(1) Mae person sydd—

- (a) heb esgus rhesymol, yn torri gofyniad yn rheoliad 9(1), 11(1), 12(1), 13(1), 14(1) neu 15(3), neu
- (b) yn torri gofyniad yn rheoliad 3(1), 4(1), 5(1), 18(1) neu 19(1)

yn cyflawni trosedd.

(2) Mae person sy'n rhwystro, heb esgus rhesymol, unrhyw berson rhag cyflawni swyddogaeth o dan y Rheoliadau hyn yn cyflawni trosedd.

(3) Mae person sydd—

- (a) heb esgus rhesymol, yn torri paragraff 3(1) o Atodlen 2,
- (b) yn torri paragraff 3(2) o'r Atodlen honno, neu
- (c) heb esgus rhesymol, yn tynnu, yn cuddio neu'n difrodi hysbysiad neu arwydd y mae'n ofynnol ei arddangos o dan baragraff 7(2) o'r Atodlen honno,

yn cyflawni trosedd.

(4) Mae person sydd, heb esgus rhesymol—

- (a) yn torri cyfarwyddyd a roddir—
  - (i) gan swyddog gorfodaeth o dan Ran 5, neu
  - (ii) gan weithredwr gwasanaeth trafndiaeth gyhoeddus, cyflogai i'r gweithredwr, neu

berson sydd wedi ei awdurdodi gan y gweithredwr, o dan reoliad 25(2), neu

- (b) yn methu â chydymffurfio â hysbysiad cydymffurfio a roddir gan swyddog gorfodaeth o dan reoliad 23(1),

yn cyflawni trosedd.

(5) Mae trosedd o dan y Rheoliadau hyn i'w chosbi ar euogfarn ddiannod drwy ddirwy.

(6) Mae adran 24 o Ddeddf yr Heddlu a Thystiolaeth Droseddol 1984(1) yn gymwys mewn perthynas â throedd o dan y rheoliad hwn fel petai'r rhesymau yn is-adran (5) yn cynnwys—

- (a) cynnal iechyd y cyhoedd;  
(b) cynnal trefn gyhoeddus.

### **Troseddau a gyflawnwyd gan gyrff corfforedig etc.**

**30.**—(1) Os profir bod trosedd o dan y Rheoliadau hyn a gyflawnwyd gan gorff corfforedig—

- (a) wedi ei chyflawni â chydysyniad neu ymoddefiad swyddog i'r corff hwinnw, neu  
(b) i'w phriodoli i unrhyw esgeulustod ar ran swyddog o'r fath,

mae'r swyddog (yn ogystal â'r corff corfforedig) yn euog o'r drosedd ac yn agored i gael ei erlyn, i gael achos yn ei erbyn a'i gosbi yn unol â hynny.

(2) Ym mharagraff (1), ystyr "swyddog", mewn perthynas â chorff corfforedig, yw cyfarwyddwr, rheolwr, ysgrifennydd neu swyddog tebyg arall i'r corff corfforedig.

(3) Caniateir i achos am drosedd o dan y Rheoliadau hyn yr honnir ei bod wedi ei chyflawni gan bartneriaeth gael ei ddwyn yn enw'r bartneriaeth yn hytrach nag yn enw unrhyw un neu ragor o'r partneriaid.

(4) Caniateir i achos am drosedd o dan y Rheoliadau hyn yr honnir ei bod wedi ei chyflawni gan gorff anghorfforedig ac eithrio partneriaeth gael ei ddwyn yn enw'r corff yn hytrach nag yn enw unrhyw un neu ragor o'i aelodau ac, at ddibenion unrhyw achos o'r fath, mae unrhyw reolau llys sy'n ymwneud â chyflwyno dogfennau yn cael effaith fel pe bai'r corff hwinnw yn gorff corfforedig.

(5) Mae adran 33 o Ddeddf Cyfiawnder Troseddol 1925(2) ac Atodlen 3 i Ddeddf Llysoedd Ynadon 1980(3) yn gymwys mewn achos am drosedd a ddygir yn erbyn partneriaeth neu gymdeithas anghorfforedig

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(1) 1984 p. 60. Amnewidiwyd adran 24 gan adran 110(1) o Ddeddf Troseddu Cyfundrefnol Difrifol a'r Heddlu 2005 (p. 15).  
(2) 1925 p. 86.  
(3) 1980 p. 43.



ac eithrio partneriaeth fel y maent yn gymwys mewn perthynas â chorff corfforedig.

(6) Mae dirwy a osodir ar bartneriaeth ar ei heuogfarnu o drosedd o dan y Rheoliadau hyn i'w thalu o asedau'r bartneriaeth.

(7) Mae dirwy a osodir ar gymdeithas anghorfforedig ac eithrio partneriaeth ar ei heuogfarnu o drosedd o dan y Rheoliadau hyn i'w thalu o gronfeydd y gymdeithas.

### Hysbysiadau cosb benodedig

**31.**—(1) Caiff swyddog gorfodaeth ddyroddi hysbysiad cosb benodedig i unrhyw un y mae'r swyddog yn credu'n rhesymol—

- (a) ei fod wedi cyflawni trosedd o dan y Rheoliadau hyn (ac eithrio trosedd o dan reoliad 29(3)(a)), a
- (b) ei fod yn 18 oed neu drosodd.

(2) Hysbysiad yw hysbysiad cosb benodedig sy'n cynnig i'r person y'i dyroddir iddo y cyfle i gael ei ryddhau o unrhyw atebolrwydd am euogfarn am y drosedd drwy dalu cosb benodedig i—

- (a) awdurdod lleol, neu
- (b) person sydd wedi ei ddynodi gan Weinidogion Cymru at ddibenion cael taliad o dan y rheoliad hwn,

a bennir yn yr hysbysiad.

(3) Caiff Gweinidogion Cymru eu dynodi hwy eu hunain o dan baragraff (2)(b).

(4) Mae person sydd wedi ei ddynodi gan Weinidogion Cymru at ddibenion cael taliad o dan reoliad 13 o Reoliadau Diogelu Iechyd (Cyfyngiadau Coronafeirws) (Cymru) 2020 neu reoliad 21 o Reoliadau Diogelu Iechyd (Cyfyngiadau Coronafeirws) (Rhif 2) (Cymru) 2020 i'w drin fel pe bai wedi ei ddynodi at ddibenion cael taliad o dan y rheoliad hwn.

(5) Pan fo awdurdod lleol wedi ei bennu yn yr hysbysiad rhaid iddo fod yn awdurdod (neu yn ôl y digwydd, unrhyw un o'r awdurdodau) yr honnir bod y drosedd wedi ei chyflawni yn ei ardal.

(6) Pan ddyroddir hysbysiad i berson o dan y rheoliad hwn mewn cysylltiad â throsedd—

- (a) ni chaniateir dwyn unrhyw achos am y drosedd cyn diwedd y cyfnod o 28 o ddiwrnodau ar ôl y dyddiad y dyroddir yr hysbysiad;
- (b) ni chaniateir euogfarnu'r person o'r drosedd os yw'r person yn talu'r gosb benodedig cyn diwedd y cyfnod hwnnw.

(7) Rhaid i hysbysiad cosb benodedig—

- (a) rhoi manylion rhesymol fanwl am yr amgylchiadau yr honnir eu bod yn ffurfio'r drosedd;
- (b) datgan y cyfnod pryd (oherwydd paragraff (6)(a)) na ddygir achos am y drosedd;
- (c) pennu swm y gosb benodedig;
- (d) datgan enw a chyfeiriad y person y caniateir talu'r gosb benodedig iddo;
- (e) pennu dulliau o dalu a ganiateir.

(8) Pan ddyroddir yr hysbysiad mewn cysylltiad â throsgedd honedig o dorri rheoliad 9(1), rhaid i'r swm a bennir o dan baragraff (7)(c) fod yn £10,000 (ac nid yw paragraffau (10) ac (11) yn gymwys).

(9) Mewn unrhyw achos arall, rhaid i'r swm a bennir o dan baragraff (7)(c) fod yn £60 (yn ddarostyngedig i baragraffau (10) ac (11)).

(10) Caiff hysbysiad cosb benodedig bennu, os telir £30 cyn diwedd y cyfnod o 14 o ddiwrnodau yn dilyn dyddiad yr hysbysiad, mai dyna swm y gosb benodedig.

(11) Os yw'r person y dyroddir hysbysiad cosb benodedig iddo eisoes wedi cael hysbysiad cosb benodedig o dan y Rheoliadau hyn neu Reoliadau a grybwyllir ym mharagraff (12)—

- (a) nid yw paragraff (10) yn gymwys, a
- (b) rhaid i'r swm a bennir fel y gosb benodedig fod—
  - (i) yn achos yr ail hysbysiad cosb benodedig a geir, £120;
  - (ii) yn achos y trydydd hysbysiad cosb benodedig a geir, £240;
  - (iii) yn achos y pedwerydd hysbysiad cosb benodedig a geir, £480;
  - (iv) yn achos y pumed hysbysiad cosb benodedig a geir, £960;
  - (v) yn achos y chweched hysbysiad cosb benodedig a geir, ac unrhyw hysbysiad cosb benodedig a geir wedi hynny, £1920.

(12) Wrth gyfrifo nifer yr hysbysiadau cosb benodedig y mae person wedi eu cael, mae hysbysiadau cosb benodedig a ddyroddir i'r person hwnnw o dan—

- (a) Rheoliadau Diogelu Iechyd (Cyfyngiadau Coronafeirws) (Cymru) 2020,
- (b) Rheoliadau Diogelu Iechyd (Cyfyngiadau Coronafeirws) (Rhif 2) (Cymru) 2020, ac

- (c) Rheoliadau Diogelu Iechyd (Cyfyngiadau Coronafeirws) (Swyddogaethau Awdurdodau Lleol etc.) (Cymru) 2020<sup>(1)</sup>.

i'w hystyried, ond nid oes unrhyw ystyriaeth i'w rhoi i unrhyw hysbysiad cosb benodedig a ddyroddir i'r person hwnnw mewn cysylltiad â throedd honedig o dorri rheoliad 14B(1) o Reoliadau Diogelu Iechyd (Cyfyngiadau Coronafeirws) (Rhif 2) (Cymru) 2020 neu reoliad 9(1) o'r Rheoliadau hyn.

(13) Beth bynnag y bo unrhyw ddull arall a bennir o dan baragraff (7)(e), caniateir talu cosb benodedig drwy dalu ymlaen llaw a phostio llythyr sy'n cynnwys swm y gosb (mewn arian parod neu fel arall) i'r person y nodir ei enw o dan baragraff (7)(d) i'r cyfeiriad a nodir.

(14) Pan fo llythyr yn cael ei anfon fel y'i crybwyllir ym mharagraff (13), ystyrir bod taliad wedi ei wneud ar yr adeg y byddai'r llythyr hwnnw wedi cael ei ddanfôn yn nhrefn arferol y post.

(15) Mewn unrhyw achos, mae tystysgrif—

- (a) sy'n honni ei bod wedi ei llofnodi gan neu ar ran y person a chanddo gyfrifoldeb am faterion ariannol—
- (i) yr awdurdod lleol, neu
  - (ii) y person sydd wedi ei ddynodi o dan baragraff (2)(b),
- a bennir yn yr hysbysiad cosb benodedig y mae'r achos yn ymwneud ag ef, a
- (b) sy'n datgan bod y taliad am gosb benodedig wedi dod i law, neu heb ddod i law, erbyn y dyddiad a bennir yn y dystysgrif,

yn dystiolaeth o'r ffeithiau a nodwyd.

## Erlyn

**32.**—(1) Ni chaniateir dwyn achos am drosedd o dan y Rheoliadau hyn ond gan—

- (a) y Cyfarwyddwr Erlyniadau Cyhoeddus,
- (b) unrhyw berson sydd wedi ei ddynodi gan Weinidogion Cymru, neu
- (c) mewn perthynas ag achos am drosedd o dorri gofyniad yn rheoliad 11(1), 12(1), 13(1), 14(1), 15(3), 17(2) neu Atodlen 2, awdurdod lleol.

(2) Mae person sydd wedi ei ddynodi gan Weinidogion Cymru o dan reoliad 14 o Reoliadau Diogelu Iechyd (Cyfyngiadau Coronafeirws) (Cymru) 2020 neu reoliad 22 o Reoliadau Diogelu Iechyd (Cyfyngiadau Coronafeirws) (Rhif 2) (Cymru) 2020

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(1) O.S. 2020/1011 (Cy. 225).

i'w drin fel pe bai wedi ei ddynodi o dan y rheoliad hwn.

## RHAN 7

### Cyffredinol

#### Dehongli

**33.**—(1) Yn y Rheoliadau hyn—

- (a) mae “claddu” yn cynnwys rhoi lludw person marw yn y ddaear;
- (b) ystyr “cartref gofal” yw mangre y mae “gwasanaeth cartref gofal” o fewn yr ystyr a roddir gan baragraff 1 o Atodlen 1 i Ddeddf Rheoleiddio ac Arolygu Gofal Cymdeithasol (Cymru) 2016<sup>(1)</sup> yn cael ei ddarparu ynddi;
- (c) ystyr “gofalwr” yw person sy'n darparu gofal ar gyfer y person a gynorthwyir pan—
  - (i) bo hawlogaeth gan y gofalwr i asesiad o dan adran 24 o Ddeddf Gwasanaethau Cymdeithasol a Llesiant (Cymru) 2014<sup>(2)</sup>,
  - (ii) bo'r gofal yn rhan o'r ddarpariaeth o wasanaethau gofal cymunedol o dan Ran 4 o Ddeddf Gwasanaethau Cymdeithasol a Llesiant (Cymru) 2014, neu
  - (iii) bo'r gofal wedi ei ddarparu gan ddarparwr gofal sydd wedi ei gofrestru o dan Ran 1 o Ddeddf Rheoleiddio ac Arolygu Gofal Cymdeithasol (Cymru) 2016;
- (d) ystyr “plentyn” yw person sydd o dan 18 oed;
- (e) ystyr “coronafeirws” yw coronafeirws syndrom anadlol aciwt difrifol 2 (SARS-CoV-2);
- (f) ystyr “athletwr elît” yw unigolyn sydd wedi ei ddynodi felly at ddibenion y Rheoliadau hyn gan Gyngor Chwaraeon Cymru;
- (g) ystyr “gorchudd wyneb” yw gorchudd o unrhyw fath sy'n gorchuddio trwyn a cheg person;
- (h) ystyr “awdurdod lleol” yw cyngor sir neu gyngor bwrdeistref sirol yng Nghymru;
- (i) mae i “Bwrdd Iechyd Lleol” yr ystyr a roddir gan reoliad 17(4)(c);

<sup>(1)</sup> 2016 dccc 2, fel y'i diwygiwyd gan O.S. 2017/1326 (Cy. 299) ac O.S. 2018/195 (Cy. 44).

<sup>(2)</sup> 2014 dccc 4.

- (j) mae i “cyfrifoldeb rhiant” yr un ystyr ag a roddir i “parental responsibility” yn Neddf Plant 1989(1);
  - (k) mae “person sy’n gyfrifol am gynnal busnes” yn cynnwys perchennog a rheolwr y busnes hwnnw;
  - (l) mae “mangre” yn cynnwys unrhyw adeilad neu strwythur ac unrhyw dir;
  - (m) ystyr “gwasanaeth trafnidiaeth gyhoeddus” yw gwasanaeth a ddarperir ar gyfer cludo teithwyr ar ffordd, ar reilffordd, ar dramffordd, yn yr awyr neu ar y dŵr;
  - (n) mae i “mangre reoleiddiedig” yr ystyr a roddir gan reoliad 17(1);
  - (o) “digwyddiadau chwaraeon penodedig” yw’r canlynol—
    - (i) gêm pêl-droed Cymru v Norwy, gêm gymhwysol merched Pencampwriaethau Ewropeaidd UEFA ar 27 Hydref 2020;
    - (ii) gêm rygbi Cymru v yr Alban, Twrnament merched y 6 Gwlad ar 1 Tachwedd 2020;
    - (iii) gêm Cynghrair Pencampwyr UEFA sy’n cynnwys Merched Dinas Abertawe AFC sydd i’w chynnal ar 3 neu 4 Tachwedd 2020;
  - (p) mae “cerbyd” yn cynnwys awyren, car cebl, trê, tram a llestr;
  - (q) mae “person hyglwyf” yn cynnwys—
    - (i) unrhyw berson sy’n 70 oed neu’n hŷn;
    - (ii) unrhyw berson o dan 70 oed sydd â chyflwr iechyd isorweddol;
    - (iii) unrhyw berson sy’n feichiog;
    - (iv) unrhyw blentyn;
    - (v) unrhyw berson sy’n oedolyn hyglwyf o fewn yr ystyr a roddir i “vulnerable adult” gan adran 60(1) o Ddeddf Diogelu Grwpiau Hyglwyf 2006(2).
- (2) At ddibenion y Rheoliadau hyn—
- (a) mae cynulliad pan fydd dau neu ragor o bobl yn yr un man er mwyn gwneud rhywbeth gyda’i gilydd;
  - (b) mae mangre o dan do os yw’n gaeedig neu’n sylweddol gaeedig o fewn yr ystyr a roddir

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(1) 1989 p. 41. Gweler Rhan 1 o’r Ddeddf, y mae diwygiadau amrywiol wedi eu gwneud iddi, gan gynnwys gan Ddeddf Ffrwythloni Dynol ac Embryoleg 2008 (c. 22) ac O.S. 2019/1458.

(2) 2006 p. 47, fel y’i diwygiwyd gan adran 65 o Ddeddf Diogelu Rhyddidau 2010 (p. 9).

gan reoliad 2 o Reoliadau Mangreoedd etc.  
Di-fwg (Cymru) 2007(1).

(3) Os yw aelwyd sy'n cynnwys dim mwy nag un oedolyn (ac unrhyw nifer o blant) ac aelwyd arall yn cytuno i gael eu trin fel un aelwyd (estynedig) at ddibenion y Rheoliadau hyn, mae unrhyw gyfeiriad yn y Rheoliadau hyn (ac eithrio ym mharagraffau (4) i (6)) at "aelwyd" i'w ddarllen fel pe bai'n cynnwys y ddwy aelwyd.

(4) Er mwyn cytuno i gael eu trin fel un aelwyd rhaid i bob oedolyn ar y ddwy aelwyd gytuno.

(5) Ond—

- (a) dim ond gydag un aelwyd arall y caiff aelwyd gytuno i gael ei thrin fel un aelwyd, a
- (b) os yw'r ddwy aelwyd yn peidio â chytuno i gael eu trin fel un aelwyd, ni chaiff y naill aelwyd na'r llall gytuno i gael ei thrin fel un aelwyd o dan baragraff (3) gydag unrhyw aelwyd arall.

(6) Os yw dwy aelwyd wedi cytuno i gael eu trin fel aelwyd estynedig dros dro yn unol â pharagraff 2 o Atodlen 4A i Reoliadau Diogelu Iechyd (Cyfyngiadau Coronafeirws) (Rhif 2) ((Cymru) 2020(2)) maent i'w trin fel pe baent hefyd wedi cytuno i hi gael eu trin fel un aelwyd (estynedig) at ddibenion y Rheoliadau hyn.

(7) At ddibenion y Rheoliadau hyn, mae mangre wedi ei hawdurdodi ar gyfer gwerthu neu gyflenwi alcohol pan fo awdurdodiad wedi ei ganiatáu neu ei roi i'r fangre o dan Ddeddf Trwyddedu 2003, ac mae i "awdurdodiad" yr ystyr a roddir i "authorisation" gan adran 136(5) o'r Ddeddf honno.

## Dirymu

**34.**—(1) Mae'r Rheoliadau a ganlyn wedi eu dirymu—

- (a) Rheoliadau Diogelu Iechyd (Cyfyngiadau Coronafeirws) (Rhif 2) (Cymru) 2020;
- (b) Rheoliadau Diogelu Iechyd (Cyfyngiadau Coronafeirws) (Rhif 2) (Cymru) (Diwygio) 2020(3);
- (c) Rheoliadau Diogelu Iechyd (Cyfyngiadau Coronafeirws) (Rhif 2) (Cymru) (Diwygio) (Rhif 2) 2020(4);
- (d) Rheoliadau Diogelu Iechyd (Cyfyngiadau Coronafeirws) (Rhif 2) (Cymru) (Diwygio) (Rhif 3) 2020(5);

(1) O.S. 2007/787 (Cy. 68).

(2) O.S. 2020/725 (Cy. 162). Diwygiwyd paragraff 2 o Atodlen 4A gan O.S. 2020/1079 (Cy. 242).

(3) O.S. 2020/752 (Cy. 169).

(4) O.S. 2020/803 (Cy. 176).

(5) O.S. 2020/820 (Cy. 180).

- (e) Rheoliadau Diogelu Iechyd (Cyfyngiadau Coronafeirws) (Rhif 2) (Cymru) (Diwygio) (Rhif 4) 2020(1);
- (f) Rheoliadau Diogelu Iechyd (Cyfyngiadau Coronafeirws) (Rhif 2) (Cymru) (Diwygio) (Rhif 5) 2020(2);
- (g) Rheoliadau Diogelu Iechyd (Cyfyngiadau Coronafeirws) (Rhif 2) (Cymru) (Diwygio) (Rhif 6) 2020(3);
- (h) Rheoliadau Diogelu Iechyd (Cyfyngiadau Coronafeirws) (Rhif 2) (Cymru) (Diwygio) (Rhif 7) 2020(4);
- (i) Rheoliadau Diogelu Iechyd (Cyfyngiadau Coronafeirws) (Rhif 2) (Cymru) (Diwygio) (Rhif 8) (Caerffili) 2020(5);
- (j) Rheoliadau Diogelu Iechyd (Cyfyngiadau Coronafeirws) (Rhif 2) (Cymru) (Diwygio) (Rhif 9) 2020(6);
- (k) Rheoliadau Diogelu Iechyd (Cyfyngiadau Coronafeirws) (Rhif 2) (Cymru) (Diwygio) (Rhif 10) (Rhondda Cynon Taf) 2020(7);
- (l) Rheoliadau Diogelu Iechyd (Cyfyngiadau Coronafeirws) (Rhif 2) (Cymru) (Diwygio) (Rhif 11) (Blaenau Gwent, Casnewydd, Merthyr Tudful a Phen-y-bont ar Ogwr etc.) 2020(8);
- (m) Rheoliadau Diogelu Iechyd (Cyfyngiadau Coronafeirws) (Rhif 2) (Cymru) (Diwygio) (Rhif 12) 2020(9);
- (n) Rheoliadau Diogelu Iechyd (Cyfyngiadau Coronafeirws) (Rhif 2) (Cymru) (Diwygio) (Rhif 13) (Llanelli etc.) 2020(10);
- (o) Rheoliadau Diogelu Iechyd (Cyfyngiadau Coronafeirws) (Rhif 2) (Cymru) (Diwygio) (Rhif 14) (Abertawe a Chaerdydd) 2020(11);
- (p) Rheoliadau Diogelu Iechyd (Cyfyngiadau Coronafeirws) (Rhif 2) (Cymru) (Diwygio) (Rhif 15) (Bro Morgannwg, Castell-nedd Port Talbot a Thorfaen) 2020(12);
- (q) Rheoliadau Diogelu Iechyd (Cyfyngiadau Coronafeirws) (Rhif 2) (Cymru) (Diwygio)

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- (1) O.S. 2020/843 (Cy. 186).
  - (2) O.S. 2020/867 (Cy. 189).
  - (3) O.S. 2020/884 (Cy. 195).
  - (4) O.S. 2020/912 (Cy. 204).
  - (5) O.S. 2020/961 (Cy. 215).
  - (6) O.S. 2020/985 (Cy. 222).
  - (7) O.S. 2020/1007 (Cy. 224).
  - (8) O.S. 2020/1022 (Cy. 227).
  - (9) O.S. 2020/1035 (Cy.229).
  - (10) O.S. 2020/1040 (Cy. 230).
  - (11) O.S. 2020/1043 (Cy. 232).
  - (12) O.S. 2020/1049 (Cy. 235).

(Rhif 16) (Conwy, Sir Ddinbych, Sir y Fflint a Wrecsam) 2020(1);

- (r) Rheoliadau Diogelu Iechyd (Cyfyngiadau Coronafeirws) (Rhif 2) (Cymru) (Diwygio) (Rhif 17) 2020(2);
- (s) Rheoliadau Diogelu Iechyd (Cyfyngiadau Coronafeirws) (Rhif 2) (Cymru) (Diwygio) (Rhif 18) (Bangor) 2020(3);
- (t) Rheoliadau Diogelu Iechyd (Cyfyngiadau Coronafeirws) (Rhif 2) (Cymru) (Diwygio) (Rhif 19) 2020(4).

(2) Er gwaethaf dirymu'r Rheoliadau hynny, maent yn parhau mewn grym mewn perthynas ag unrhyw drosedd a gyflawnwyd, neu unrhyw hysbysiad a roddwyd neu a ddyroddwyd, o dan Reoliadau Diogelu Iechyd (Cyfyngiadau Coronafeirws) (Rhif 2) (Cymru) 2020 cyn i'r Rheoliadau hyn ddod i rym.

### **Diwygiad canlyniadol**

**35.**—(1) Yn rheoliad 19(10) o Reoliadau Diogelu Iechyd (Cyfyngiadau Coronafeirws) (Swyddogaethau Awdurdodau Lleol etc.) (Cymru) 2020, ar ôl is-baragraff (b) mewnosoder—

“(c) Rheoliadau Diogelu Iechyd (Cyfyngiadau Coronafeirws) (Rhif 3) (Cymru) 2020.”

*Mark Drakeford*  
Y Prif Weinidog, un o Weinidogion Cymru  
21 Hydref 2020

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(1) O.S. 2020/1066 (Cy. 240).  
(2) O.S. 2020/1079 (Cy. 242).  
(3) O.S. 2020/1102 (Cy. 251).  
(4) O.S. 2020/1130 (Cy. 257).



## ATODLEN 1

Rheoliadau 11 i 15

### Busnesau a gwasanaethau y mae eu mangreoedd yn ddarostyngedig i gyfyngiadau neu i'w cau

#### RHAN 1

### Busnesau neu wasanaethau y mae rhaid cau eu mangreoedd

1. Unrhyw fusnes sy'n gwerthu nwyddau neu wasanaethau ar gyfer eu gwerthu neu eu hurio mewn siop, gan gynnwys—

- (a) siopau nwyddau i'r cartref;
- (b) salonau ewinedd a harddwch;
- (c) sefydliadau sy'n darparu gwasanaethau lliw haul, gwasanaethau tylino, tyllu'r corff, tatŵio, electrolysis neu aciwbigo;
- (d) tai arwerthiant;
- (e) delwriaethau ceir;
- (f) marchnadoedd;
- (g) siopau betio;
- (h) salonau gwallt a barbwyr;
- (i) canolfannau garddio a meithrinfeydd planhigion.

2. Canolfannau siopa ac arcedau siopa.

3. Sinemâu.

4. Theatrau.

5. Clybiau nos, disgos, neuaddau dawnsio neu leoliadau eraill lle y darperir cerddoriaeth fyw neu wedi ei recordio i aelodau'r cyhoedd neu aelodau'r lleoliad ddawnsio.

6. Lleoliadau adloniant rhywiol (o fewn yr ystyr a roddir i "sexual entertainment venue" gan baragraff 2A o Atodlen 3 i Ddeddf Llywodraeth Leol (Darpariaethau Amrywiol) 1982(1)).

7. Neuaddau bingo.

8. Neuaddau cyngerdd.

9. Casinos.

10. Canolfannau sglefrio.

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(1) Mewnosodwyd paragraff 2A o Atodlen 3 gan adran 27(3) o Ddeddf Plismona a Throsedd 2009 (p. 26).

**11.** Pyllau nofio.

**12.** Canolfannau hamdden a chyfleusterau hamdden gan gynnwys stiwdios ffitrwydd o dan do, campfeydd a sbaon.

**13.** Cyrtau chwaraeon, parciau sglefrio, lawntiau bowlio, cyrsiau golff a meysydd neu leiniau chwaraeon amgaeedig (boed yn yr awyr agored neu o dan do).

**14.** Alïau bowlio, arcedau diddanu a manau chwarae o dan do.

**15.** Amgueddfeydd, orielau a gwasanaethau archifau.

**16.** Ffeiriau pleser, parciau diddanu a pharciau thema.

**17.** Atyniadau i ymwelwyr a busnesau gwyliau, gweithgareddau hamdden neu ddigwyddiadau.

**18.** Canolfannau ailgylchu.

**19.** Llyfrgelloedd.

**20.** Asiantau eiddo neu asiantau gosod eiddo, swyddfeydd gwerthiant datblygwyr a chartrefi arddangos.

**21.** Lleoliadau ar gyfer digwyddiadau neu gynadleddau (gan gynnwys lleoliadau ar gyfer priodasau heblaw am fannau addoli a swyddfeydd cofrestru).

## RHAN 2

### Busnesau neu wasanaethau y mae rhaid cau eu mangreoedd ond y caniateir mynediad cyfyngedig iddynt

#### PENNOD 1

Mangreoedd sy'n gwerthu bwyd a diod i'w  
bwyta ac i'w hyfed yn y fangre

**22.** Bwytai, gan gynnwys bwytai ac ystafelloedd bwyta mewn clybiau aelodau ac ym mangreoedd busnesau a restrir ym Mhennod 2 o'r Rhan hon.

**23.** Caffis, gan gynnwys ffreturau yn y gweithle a chaffis ym mangreoedd busnesau a restrir ym Mhennod 2 o'r Rhan hon.

**24.** Barïau, gan gynnwys barïau mewn clybiau aelodau ac ym mangreoedd busnesau a restrir ym Mhennod 2 o'r Rhan hon.

**25.** Tafarndai.

## PENNOD 2

### Gwestai a llety gwyliau

**26.** Safleoedd gwyliau.

**27.** Safleoedd gwersylla.

**28.** Gwestai a llety gwely a brecwast.

**29.** Llety gwyliau arall (gan gynnwys fflatiau gwyliau, hostelau a thai byrddio).

## PENNOD 3

### Eraill

**30.** Mannau addoli.

**31.** Canolfannau cymunedol.

**32.** Amlogsfeydd.

## RHAN 3

### Busnesau a gwasanaethau y caniateir i'w mangreuedd fod ar agor

**33.** Manwerthwyr bwyd, gan gynnwys marchnadoedd bwyd, archfarchnadoedd, siopau cyfleustra, siopau cornel a sefydliadau sy'n gwerthu bwyd neu ddiod i'w fwyta neu i'w hyfed oddi ar y fangre (gan gynnwys mangreuedd sydd wedi eu hawdurdodi ar gyfer gwerthu neu gyflenwi alcohol i'w yfed oddi ar y fangre).

**34.** Caffis a ffreuturau mewn ysbyty, cartref gofal, ysgol neu mewn llety a ddarperir ar gyfer myfyrwyr.

**35.** Ffreuturau mewn carchar neu sefydliad y bwriedir iddo gael ei ddefnyddio at ddibenion y llynges, y fyddin neu'r llu awyr neu at ddibenion Adran yr Ysgrifennydd Gwladol sy'n gyfrifol am amddiffyn.

**36.** Llyfrgelloedd ysbytai a llyfrgelloedd mewn sefydliadau addysgol.

**37.** Siopau papurau newydd.

**38.** Siopau cyflenwadau adeiladu ac offer.

**39.** Fferyllfeydd (yn cynnwys fferyllfeydd nad ydynt yn darparu cyffuriau ar bresgripsiwn) a siopau cemist.

**40.** Siopau beiciau.

**41.** Gorsafoedd petrol.

**42.** Gwasanaethau trwsio ceir ac MOT.

**43.** Busnesau tacsï neu logi cerbydau.

**44.** Banciau, cymdeithasau adeiladu, undebau credyd, darparwyr benthyciadau tymor byr, clybiau cynilo, peiriannau arian parod ac ymgymeriadau sydd, o ran eu busnes, yn gweithredu swyddfeydd cyfnewid arian cyfred, yn trawsyrru arian (neu unrhyw gynrychiolaeth o arian) drwy unrhyw ddull neu sieciau arian parod sydd wedi eu gwneud yn daladwy i gwsmeriaid.

**45.** Swyddfeydd post.

**46.** Golchdai a siopau glanhau dillad.

**47.** Gwasanaethau deintyddol, optegwyr, gwasanaethau awdioleg, trin traed, ceiropractyddion, osteopathiaid a gwasanaethau meddygol neu iechyd eraill, gan gynnwys gwasanaethau sy'n ymwneud ag iechyd meddwl.

**48.** Milfeddygon a siopau anifeiliaid anwes.

**49.** Siopau cyflenwadau amaethyddol neu ddyframaethu.

**50.** Marchnadoedd neu arwerthiannau da byw.

**51.** Trefnwyr angladdau.

## RHAN 4

### Dehongli

**52.**—(1) At ddibenion yr Atodlen hon, ystyr “safle gwyliau” yw unrhyw dir yng Nghymru lle y gosodir cartref symudol neu garafán at ddibenion byw gan bobl (gan gynnwys unrhyw dir yng Nghymru a ddefnyddir ar y cyd â'r tir hwnnw), y mae'r caniatâd cynllunio perthnasol neu'r drwydded safle ar gyfer y tir mewn cysylltiad ag ef—

- (a) wedi ei fynegi i'w roi neu wedi ei mynegi i'w rhoi at ddefnydd gwyliau yn unig, neu
- (b) yn ei gwneud yn ofynnol bod adegau o'r flwyddyn pan na chaniateir gosod unrhyw gartref symudol neu garafán ar y safle i bobl fyw ynddo neu ynddi.

(2) At ddibenion penderfynu a yw safle yn safle gwyliau ai peidio, mae unrhyw ddarpariaeth yn y caniatâd cynllunio perthnasol neu yn y drwydded safle sy'n caniatáu gosod cartref symudol ar y tir i bobl fyw ynddo drwy gydol y flwyddyn i'w hanwybyddu os yw wedi ei hawdurdodi i'r canlynol feddiannu'r cartref symudol—

- (a) y person sy'n berchennog ar y safle, neu
- (b) person sydd wedi ei gyflogi gan y person hwnnw ond nad yw'n meddiannu'r cartref symudol o dan gytundeb y mae Rhan 4 o

Ddeddf Cartrefi Symudol (Cymru) 2013(1) yn gymwys iddo.

## ATODLEN 2

Rheoliad 22

### Gorfodi gofyniad i gymryd mesurau ataliol mewn mangre reoleiddiedig

#### Hysbysiad gwella mangre

1.—(1) Caiff swyddog gorfodaeth ddyroddi hysbysiad (“hysbysiad gwella mangre”) i berson cyfrifol os yw’r swyddog yn ystyried—

- (a) nad yw’r person yn cydymffurfio â’r rhwymedigaethau a osodir ar y person gan reoliad 17(2), a
- (b) bod y mesurau a bennir yn yr hysbysiad yn angenrheidiol ac yn gymesur er mwyn sicrhau bod y person yn cydymffurfio â’r rhwymedigaethau hynny.

(2) Rhaid i hysbysiad gwella mangre—

- (a) pennu’r fangre y mae’n ymwneud â hi;
- (b) pennu’r mesurau y mae’n ei gwneud yn ofynnol eu cymryd er mwyn sicrhau bod y person yn cydymffurfio â’r rhwymedigaethau a osodir gan reoliad 17(2);
- (c) pennu terfyn amser y mae rhaid cymryd y mesurau oddi mewn iddo (na chaniateir iddo fod yn llai nag 48 awr sy’n dechrau â’r amser y dyroddir yr hysbysiad);
- (d) rhoi manylion yr hawl i apelio a roddir gan baragraff 5.

(3) Yn yr Atodlen hon, mae i “person cyfrifol” yr ystyr a roddir gan reoliad 17(1)(b).

#### Hysbysiad cau mangre

2.—(1) Os yw naill ai amod 1 neu amod 2 wedi ei fodloni, caiff swyddog gorfodaeth ddyroddi hysbysiad (“hysbysiad cau mangre”) i berson cyfrifol sy’n ei gwneud yn ofynnol i’r fangre, neu ran o’r fangre, gael ei chau.

(2) Amod 1 yw—

- (a) bod hysbysiad gwella mangre wedi ei ddyroddi i’r person,
- (b) bod y swyddog gorfodaeth yn ystyried bod y person wedi methu â chymryd y mesurau a

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(1) 2013 decc 6, fel y’i diwygiwyd gan Ddeddf Tai (Cymru) 2014 (decc 7).

bennir yn yr hysbysiad gwella mangre o fewn y terfyn amser penodedig, ac

- (c) bod y swyddog yn ystyried bod cau'r fangre, neu ran o'r fangre, yn angenrheidiol ac yn gymesur at ddiben lleihau'r risg o ddod i gysylltiad â'r coronafeirws.

(3) Amod 2 yw bod y swyddog gorfodaeth yn ystyried—

- (a) nad yw'r person yn cydymffurfio â'r rhwymedigaethau a osodir ar y person gan reoliad 17(2), a
- (b) bod cau'r fangre, neu ran o'r fangre, (heb fod hysbysiad gwella mangre wedi ei ddyroddi) yn angenrheidiol ac yn gymesur at ddiben lleihau'r risg o ddod i gysylltiad â'r coronafeirws.

(4) Rhaid i hysbysiad cau mangre—

- (a) cynnwys disgrifiad o'r fangre sydd i'w chau,
- (b) pan fo hysbysiad gwella mangre wedi ei ddyroddi, nodi'r mesurau y mae'r swyddog gorfodaeth yn ystyried—
  - (i) nad ydynt wedi eu cymryd, a
  - (ii) y mae rhaid eu cymryd er mwyn sicrhau bod y person cyfrifol yn cydymffurfio â'r rhwymedigaethau a osodir gan reoliad 17(2),
- (c) pan na fo hysbysiad gwella mangre wedi ei ddyroddi, nodi'r rhesymau pam y mae'r swyddog gorfodaeth yn ystyried nad yw'r person yn cydymffurfio â'r rhwymedigaethau a osodir gan reoliad 17(2),
- (d) yn y naill achos neu'r llall, nodi'r rhesymau pam y mae'r swyddog gorfodaeth yn ystyried bod cau'r fangre yn angenrheidiol ac yn gymesur at ddiben lleihau'r risg o ddod i gysylltiad â'r coronafeirws,
- (e) pennu'r cyfnod y mae'r hysbysiad yn cael effaith amdano, ac
- (f) rhoi manylion yr hawl i apelio a roddir gan baragraff 5.

(5) Ni chaniateir i'r cyfnod a bennir o dan is-baragraff (4)(e) fod yn hwy na 336 o oriau (14 o ddiwrnodau) sy'n dechrau â'r amser y dyroddir yr hysbysiad.

(6) Mae hysbysiad cau mangre yn cael effaith o'r amser y'i dyroddir neu o amser diweddarach a bennir yn yr hysbysiad.

(7) Ni chaniateir dyroddi hysbysiad cau mangre mewn perthynas â mangre sy'n rhan o seilwaith hollbwysig (er enghraifft, mangre a ddefnyddir i gynhyrchu trydan neu gyflenwi dŵr) neu a ddefnyddir i ddarparu gwasanaethau cyhoeddus hanfodol.

### **Effaith hysbysiad cau mangre**

3.—(1) Cyn gynted ag y bo'n rhesymol ymarferol ar ôl i hysbysiad cau mangre gymryd effaith, rhaid i'r person y'i dyroddir iddo sicrhau—

- (a) bod y fangre y mae'r hysbysiad yn ymwneud â hi yn cael ei chau, a
- (b) na chynhelir unrhyw fusnes neu na ddarperir unrhyw wasanaeth yn y fangre neu ohoni.

(2) Ni chaiff unrhyw berson fynd i'r fangre, neu fod yn y fangre, sydd wedi ei chau o dan is-baragraff (1) heb esgus rhesymol.

(3) At ddibenion is-baragraff (2), mae'r amgylchiadau pan fo gan berson esgus rhesymol yn cynnwys—

- (a) pan fo'r person yn byw yn y fangre;
- (b) pan fo'r person yn gwneud gwaith cynnal a chadw neu atgyweirio hanfodol;
- (c) pan fo'r person yn gwneud pethau sy'n angenrheidiol er mwyn sicrhau y gellir cydymffurfio â rheoliad 17(2) pan ganiateir i'r fangre fod ar agor;
- (d) pan fo'r person yn swyddog gorfodaeth neu berson sy'n cynorthwyo swyddog gorfodaeth;
- (e) pan fo'n angenrheidiol i'r person fod yn y fangre er mwyn osgoi anaf neu salwch neu ddianc rhag risg o niwed.

### **Terfynu hysbysiad gwella neu gau mangre**

4.—(1) Caiff swyddog gorfodaeth ddyroddi hysbysiad sy'n terfynu hysbysiad gwella mangre neu hysbysiad cau mangre os yw wedi ei fodloni—

- (a) bod y mesurau a bennir yn yr hysbysiad gwella mangre (os dyroddwyd un) wedi eu cymryd, neu
- (b) bod mesurau eraill wedi eu cymryd i sicrhau y gellir cydymffurfio â rheoliad 17(2) yn y fangre o dan sylw.

(2) Mae hysbysiad gwella mangre neu hysbysiad cau mangre yn peidio â chael effaith ar yr amser y dyroddir hysbysiad o'r terfyniad.

### **Apelau**

5.—(1) Caiff person y dyroddir hysbysiad gwella mangre neu hysbysiad cau mangre iddo apelio i lys ynadon yn erbyn yr hysbysiad.

(2) Rhaid i apêl gael ei gwneud—

- (a) drwy gŵyn am orchymyn, ac yn unol â Deddf Llysoedd Ynadon 1980, a
- (b) o fewn 7 niwrnod ar ôl i'r hysbysiad gael ei ddyroddi.

(3) Ond caiff llys ynadon ganiatáu i apêl gael ei gwneud ar ôl diwedd y cyfnod a grybwyllir yn is-baragraff (2)(b) os yw wedi ei fodloni bod rheswm da dros fethu ag apelio cyn diwedd y cyfnod hwnnw (a thros unrhyw oedi cyn gwneud cais am ganiatâd i apelio y tu allan i amser).

(4) Caiff llys ynadon atal dros dro effaith hysbysiad gwella mangre neu hysbysiad cau mangre wrth aros am y penderfyniad ar yr apêl.

(5) Ar apêl yn erbyn hysbysiad gwella mangre neu hysbysiad cau mangre, caiff llys ynadon—

- (a) cadarnhau'r penderfyniad i ddyroddi'r hysbysiad;
- (b) cyfarwyddo bod yr hysbysiad i beidio â chael effaith;
- (c) addasu'r hysbysiad;
- (d) gwneud unrhyw orchymyn arall y mae'r llys yn ystyried ei fod yn briodol.

(6) Os yw'r llys ynadon yn cyfarwyddo bod hysbysiad i beidio â chael effaith neu'n addasu hysbysiad, caiff orchymyn i'r awdurdod lleol ar gyfer yr ardal lle y mae'r fangre o dan sylw ddigolledu'r person sy'n gyfrifol am y fangre am golled a ddioddefir o ganlyniad i ddyroddi'r hysbysiad.

(7) Caiff y naill parti neu'r llall ddwyn apêl yn erbyn penderfyniad llys ynadon ar apêl o dan yr adran hon i Lys y Goron.

(8) Ar apêl i Lys y Goron, caiff y Llys—

- (a) cadarnhau, amrywio neu wrthdroi penderfyniad y llys ynadon;
- (b) anfon yr achos yn ôl i'r llys ynadon i'w waredu yn unol â chyfarwyddydau a roddir gan Lys y Goron.

### **Dyroddi hysbysiadau gwella a chau mangreoedd a therfyniadau**

6.—(1) Caiff hysbysiad gwella mangre, hysbysiad cau mangre neu derfyniad o'r naill neu'r llall o'r mathau hynny o hysbysiad ei ddyroddi i berson drwy roi copi ohono yn ysgrifenedig i'r person hwnnw.

(2) Ond pan na fo'r person sy'n gyfrifol am y fangre y mae'r hysbysiad neu'r terfyniad yn ymwneud â hi yn y fangre pan yw'r hysbysiad i'w ddyroddi, mae'r hysbysiad i'w drin fel pe bai wedi ei ddyroddi i'r person hwnnw—

- (a) os rhoddir copi ohono i unrhyw berson arall yn y fangre yr ymddengys ei fod yn gyfrifol am unrhyw fusnes neu wasanaeth a gynhelir yn y fangre, neu
- (b) os nad oes unrhyw berson o'r fath yn y fangre pan yw'r hysbysiad i'w ddyroddi, os gosodir



copi o'r hysbysiad mewn lle amlwg yn y fangre.

### **Rhoi cyhoeddusrwydd i hysbysiadau gwella a chau mangreoedd**

7.—(1) Mae'r rheoliad hwn yn gymwys pan fo swyddog gorfodaeth wedi dyroddi hysbysiad gwella mangre neu hysbysiad cau mangre.

(2) Cyn gynted ag y bo'n rhesymol ymarferol ar ôl dyroddi'r hysbysiad, rhaid i'r swyddog gorfodaeth—

- (a) arddangos copi o'r hysbysiad, ac arwydd ar y ffurf a nodir yn Atodlen 3, mewn man amlwg yn agos i bob mynedfa i'r fangre;
- (b) trefnu i'r hysbysiad gael ei gyhoeddi ar wefan yr awdurdod lleol ar gyfer yr ardal lle y mae'r fangre.

(3) Rhaid i hysbysiad neu arwydd a arddangosir o dan is-baragraff (2)(a) fod o faint A4 o leiaf.

(4) Rhaid i hysbysiad y mae'n ofynnol ei arddangos a'i gyhoeddi o dan is-baragraff (2) barhau i gael ei arddangos a'i gyhoeddi, a rhaid i arwydd y mae'n ofynnol ei arddangos o dan yr is-baragraff hwnnw barhau i gael ei arddangos, am gyhyd ag y mae'r hysbysiad yn cael effaith.

### **Darparu gwybodaeth etc.**

8.—(1) Caiff swyddog gorfodaeth, er mwyn hwyluso arfer pŵer a roddir i'r swyddog gan yr Atodlen hon—

- (a) ei wneud yn ofynnol i unrhyw berson roi unrhyw wybodaeth neu ateb unrhyw gwestiwn y mae'r swyddog yn ystyried ei bod neu ei fod yn berthnasol i arfer y pŵer;
- (b) ei gwneud yn ofynnol dangos unrhyw ddogfennau neu gofnodion electronig, edrych ar y dogfennau hynny neu'r cofnodion electronig hynny neu gymryd copïau ohonynt.

(2) Ni chaniateir ei gwneud yn ofynnol o dan is-baragraff (1) i berson ddarparu dogfen, cofnod neu wybodaeth arall y gellid maentumio hawliad am ffrain broffesiynol gyfreithiol mewn cysylltiad â hi neu ag ef mewn achos cyfreithiol.

(3) Nid yw unrhyw wybodaeth neu ateb a roddir gan berson mewn ymateb i ofyniad a osodir o dan is-baragraff (1)(a) yn dderbyniadwy mewn tystiolaeth yn erbyn y person hwnnw, neu briod neu bartner sifil y person, mewn unrhyw achos ac eithrio achos o dan y Rheoliadau.

## ATODLEN 3

Rheoliad 22

Y ffurf ar arwydd i fynd gyda hysbysiad gwella mangre neu hysbysiad cau mangre

*Yr arwydd i'w arddangos gyda hysbysiad gwella mangre*

1.—(1) Rhaid i arwydd a arddangosir gyda hysbysiad gwella mangre o dan baragraff 7(2)(a) o Atodlen 2 fod ar y ffurf a nodir isod.

(2) Rhaid defnyddio'r lliwiau gwyn, du ac ambr C0 M60 Y100 K0 yn yr arwydd.



GIG  
CYMRU  
NHS  
WALES | Iechyd Cyhoeddus  
Cymru  
Public Health  
Wales



### IECHYD Y CYHOEDD Y CORONAFEIRWS

Gofyniad i leihau'r risg  
o ddod i gysylltiad â'r  
coronafeirws mewn mangre:

### PUBLIC HEALTH CORONAVIRUS

Requirement to minimise  
risk of exposure to  
coronavirus on premises:

**ANGEN  
GWELLA**

**IMPROVEMENT  
NEEDED**

**Diogelu Cymru  
gyda'n gilydd**

**Together we'll  
keep Wales safe**

*Yr arwydd i'w arddangos gyda hysbysiad cau mangre*

2.—(1) Rhaid i arwydd a arddangosir gyda hysbysiad cau mangre o dan baragraff 7(2)(a) o Atodlen 2 fod ar y ffurf a nodir isod.

(2) Rhaid defnyddio'r lliwiau gwyn, du a choch C15 M100 Y100 K0 yn yr arwydd.



**IECHYD Y CYHOEDD  
Y CORONAFEIRWS**

Gofyniad i leihau'r risg  
o ddod i gysylltiad â'r  
coronafeirws mewn mangre:

**PUBLIC HEALTH  
CORONAVIRUS**

Requirement to minimise  
risk of exposure to  
coronavirus on premises:

**CAEWDYD Y  
FANGRE HON**

**PREMISES  
CLOSED**

**Diogelu Cymru  
gyda'n gilydd**

**Together we'll  
keep Wales safe**

## **Memorandwm Esboniadol ar gyfer Rheoliadau Diogelu Iechyd (Cyfyngiadau Coronafeirws) (Rhif 3) (Cymru) 2020**

Lluniwyd y Memorandwm Esboniadol hwn gan Lywodraeth Cymru ac fe'i gosodir gerbron Senedd Cymru ar y cyd â'r is-ddeddfwriaeth uchod ac yn unol â Rheol Sefydlog 27.1.

### **Datganiad y Gweinidog**

Yn fy marn i, mae'r Memorandwm Esboniadol hwn yn rhoi darlun teg a rhesymol o effaith ddisgwyliedig Rheoliadau Diogelu Iechyd (Cyfyngiadau Coronafeirws) (Rhif 3) (Cymru) 2020.

**Mark Drakeford**  
**Prif Weinidog Cymru**

22 Hydref 2020

## 1. Disgrifiad

Mae'r Rheoliadau hyn yn dirymu Rheoliadau Diogelu Iechyd (Cyfyngiadau Coronafeirws) (Rhif 2) (Cymru) 2020 ("y prif Reoliadau") a'r Rheoliadau diwygio dilynol, ac yn gwneud darpariaeth newydd am y cyfyngiadau a'r gofynion sy'n angenrheidiol i ddiogelu yn erbyn y risgiau i iechyd y cyhoedd sy'n deillio o'r coronafeirws.

## 2. Materion o ddiddordeb arbennig i'r Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

Gwneir y Rheoliadau hyn o dan y weithdrefn frys y darperir ar ei chyfer yn adran 45R o Ddeddf Iechyd y Cyhoedd (Rheoli Clefydau) 1984 (p. 22) ("Deddf 1984"). Caiff y Rheoliadau eu gwneud heb fod drafft wedi'i osod gerbron y Senedd a'i gymeradwyo ganddi. Mae Gweinidogion Cymru o'r farn, oherwydd brys, ei bod yn angenrheidiol gwneud y Rheoliadau heb i ddrafft gael ei osod a'i gymeradwyo fel y gellir gweithredu mesurau iechyd y cyhoedd er mwyn ymateb yn gyflym i'r bygythiad a berir i iechyd pobl gan y coronafeirws. Mae Gweinidogion Cymru o'r farn bod y cyfyngiadau bellach wedi'i penodi yn y Rheoliadau hyn yn angenrheidiol ac yn gymesur fel ymateb iechyd y cyhoedd i'r bygythiad presennol a achosir gan y coronafeirws.

Mae'r Rheoliadau hyn yn cynnwys 'darpariaeth fachlud' sy'n golygu y byddant yn dod i ben ar ddiwedd 8 Tachwedd 2020.

### Y Confensiwn Ewropeaidd ar Hawliau Dynol

Er bod y Rheoliadau yn cyffwrdd â hawliau unigol o dan y Ddeddf Hawliau Dynol 1998 a Siarter Hawliau Sylfaenol Ewrop, mae'r Llywodraeth yn credu bod modd eu cyfiawnhau er mwyn atal lledaeniad clefydau heintus a/neu y caniateir yr ymyrraeth gan fod nod dilys i'r ymyrraeth honno, sef diogelu iechyd y cyhoedd. Mae'r Llywodraeth hefyd yn credu bod y Rheoliadau yn gymesur.

Mae'r Rheoliadau hyn yn cyffwrdd ag Erthygl 5 (yr hawl i ryddid), Erthygl 8 (yr hawl i barch at fywyd preifat a theuluol), Erthygl 9 (rhyddid meddwl, cydwybod a chrefydd), Erthygl 11 (rhyddid i ymgynnull a chymdeithasu) ac Erthygl 1 o'r Protocol Cyntaf (diogelu eiddo).

Mae pob un o'r rhain yn hawliau amodol, sy'n caniatáu i Weinidogion Cymru ymyrryd ag arfer yr hawliau os yw hynny'n angenrheidiol mewn cymdeithas ddemocrataidd er budd diogelwch y cyhoedd neu er mwyn diogelu iechyd. Rhaid i bob cyfyngiad a gofyniad o'r fath gael eu cyfiawnhau ar y sail bod iddynt nod dilys, sef diogelu iechyd y cyhoedd, a'u bod yn gymesur. Mae angen i unrhyw ymyrraeth yn yr hawliau hyn hefyd gael ei gydbwysu yn erbyn rhwymedigaethau cadarnhaol y Wladwriaeth o dan Erthygl 2 (yr hawl i fywyd). Mae gweithredu'r cyfyngiadau cenedlaethol newydd am gyfnod cyfyngedig o 17 diwrnod o dan y Rheoliadau hyn yn ymateb cymesur i ledaeniad cynyddol y coronafeirws dros yr wythnosau diwethaf. Mae'n cydbwysu'r angen i gynnal ymateb priodol i'r bygythiad a achosir gan y coronafeirws yn erbyn hawliau unigolion a busnesau, mewn modd sy'n dal i fod yn gymesur â'r angen i

leihau'r cynnydd yng nghyfradd drosglwyddo'r coronafeirws, gan ystyried y dystiolaeth wyddonol.

### **3. Y cefndir deddfwriaethol**

Gwneir y Rheoliadau o dan adrannau 45C(1) a (3)(c), 45F(2) a 45P o Ddeddf 1984.

Mae Deddf 1984 a'r Rheoliadau a wneir o dan y Ddeddf honno yn darparu fframwaith deddfwriaethol ar gyfer diogelu iechyd yng Nghymru a Lloegr. Mewnosodwyd Rhan 2A o Ddeddf 1984 gan Ddeddf Iechyd a Gofal Cymdeithasol 2008, ac mae'n darparu sail gyfreithiol i ddiogelu'r cyhoedd rhag bygythiadau sy'n deillio o glefydau heintus.

Mae adran 45C o Ddeddf 1984 yn rhoi pŵer i'r Gweinidog priodol wneud rheoliadau er mwyn atal, diogelu rhag, rheoli neu ddarparu ymateb iechyd y cyhoedd i fynychder neu ledaeniad haint neu halogiad. Mae'n cynnwys pwerau i osod cyfyngiadau neu ofynion ar neu mewn perthynas â phersonau, pethau neu fangreoeedd os bydd bygythiad i iechyd y cyhoedd, neu mewn ymateb iddo. Mae adran 45F yn galluogi gwneud darpariaeth atodol gan gynnwys darpariaeth ar gyfer gorfodi cyfyngiadau a gofynion a osodir o dan y Rheoliadau a chreu troseddau.

Rhoddir y swyddogaethau o dan yr adrannau hyn i "the appropriate Minister" ("y Gweinidog priodol"). O dan adran 45T(6) o Ddeddf 1984, ystyr y Gweinidog priodol, mewn perthynas â Chymru, yw Gweinidogion Cymru.

### **4. Diben y ddeddfwriaeth a'r effaith y bwriedir iddi ei chael**

Gwneir y Rheoliadau mewn ymateb i'r bygythiad difrifol ac uniongyrchol i iechyd y cyhoedd o ganlyniad i fynychder a lledaeniad coronafeirws syndrom anadlol aciwt difrifol 2 (SARS-CoV-2) sy'n achosi'r clefyd a adwaenir fel COVID-19 neu "coronafeirws".

Ers i'r cyfyngiadau a'r gofynion a osodwyd gan Rheoliadau Diogelu Iechyd (Cyfyngiadau Coronafeirws) (Rhif 2) (Cymru) 2020 gael eu hadolygu ddiwethaf, mae'r duedd yng Nghymru wedi parhau i waethygu o ran nifer yr achosion o COVID-19. Amcangyfrifir bod lefel yr heintiau heddiw yn 2,500, ac ar y gyfradd dwf bresennol, byddai nifer yr heintiau erbyn diwedd mis Hydref yn fwy na'r lefel brig ym mis Mawrth. Am y tro cyntaf yn ystod yr ail don hon o heintiau, mae nifer yr achosion yng Nghymru yn uwch na 100 o achosion fesul 100,000 o bobl, a mae'r canlyniadau profion positif yng Nghymru yn uwch na 7.5%. Mae'r dystiolaeth wyddonol a ddefnyddir i asesu'r risg i iechyd y cyhoedd yn cael ei darparu gan [Gell Cyngor Technegol](#) Llywodraeth Cymru ac mae ar gael ar wefan [llyw.cymru](http://llyw.cymru).

I gydnabod hyn, ac fel rhan o'r adolygiad parhaus o'r cyfyngiadau a'r gofynion yn Rheoliadau Diogelu Iechyd (Cyfyngiadau Coronafeirws) (Rhif 2) (Cymru) 2020, mae Gweinidogion Cymru wedi penderfynu gosod cyfyngiadau a gofynion am gyfnod byr, gyda'r nod o leihau'r gyfradd drosglwyddo yn gyflym a dod â'r feirws yn ôl o dan reolaeth. Gellir hefyd gael gwybodaeth am y cyfyngiadau blaenorol a'r asesiadau effaith cysylltiedig ar wefan [llyw.cymru](http://llyw.cymru).

Cyngor Prif Swyddog Meddygol Cymru yw bod angen cymryd camau nawr os ydym am atal y GIG yng Nghymru rhag profi straen ac o bosibl gael ei orlethu. Bwriad y Rheoliadau hyn yw atal marwolaethau o ganlyniad uniongyrchol i COVID-19, a marwolaethau oherwydd nad yw gwasanaethau'r GIG ar gael gan fod y feirws wedi trosglwyddo'n eang yn y gymuned.

Mae'r Rheoliadau hyn yn gwneud darpariaeth mewn pedwar maes allweddol:

- a) cyfyngu ar symud a theithio drwy ei gwneud yn ofynnol i bobl aros gartref oni bai bod ganddynt esgus rhesymol;
- b) cyfyngu ar ymgynnull gyda phobl eraill;
- c) cau mathau penodol o fusnesau a mangreoedd;
- d) gosod rhwymedigaethau ar bersonau sy'n gyfrifol am fangreoedd sy'n agored i'r cyhoedd, neu am waith sy'n cael ei gynnal mewn unrhyw fangre.

Mae'r Rheoliadau hefyd yn darparu ar gyfer gorfodi'r gofynion a'r cyfyngiadau hyn.

Mae Rhan 1 o'r Rheoliadau yn darparu bod y Rheoliadau hyn yn dod i rym am 6pm ar 23 Hydref 2020 ac yn dod i ben ddiwedd y dydd ar 8 Tachwedd 2020.

Mae Rhan 2 o'r Rheoliadau yn gosod cyfyngiadau ar symud a theithio. Mae rheoliad 3 yn ei gwneud yn ofynnol i bobl sy'n byw yng Nghymru aros gartref, oni bai bod ganddynt esgus rhesymol dros adael. Yn ogystal, o dan yr amgylchiadau cyfyngedig pan y caniateir i bobl adael eu cartrefi, mae cyfyngiad ar bobl yn ymgynnull heb esgus rhesymol gydag unrhyw un nad yw'n rhan o'u haelwyd. Mae Gweinidogion Cymru yn cydnabod bod llai o risg i'r coronafeirws gael ei drosglwyddo yn yr awyr agored. Serch hynny, mae difrifoldeb y sefyllfa bresennol o ran iechyd y cyhoedd yn golygu na chaniateir i bobl nad ydynt yn rhan o'r un aelwyd ymgynnull yn yr awyr agored neu wneud gweithgareddau wedi'u trefnu yn yr awyr agored, am y cyfnod byr pan fo'r Rheoliadau hyn mewn grym. Mae'r Rheoliadau'n gwneud darpariaeth benodol bod mynd i ddiwyddiadau Sul y Cofio yn esgus rhesymol dros ymgynnull ag eraill, yn amodol ar amodau penodol. Effaith gyffredinol y darpariaethau hyn yw cyfyngu ar bobl yn symud o fewn Cymru er mwyn lleihau trosglwyddiad y coronafeirws yn y gymuned. Er mwyn peidio â thanseilio effeithiolrwydd y cyfyngiadau ar symud a theithio o fewn Cymru, mae'r Rheoliadau hefyd yn ei gwneud yn ofynnol bod angen esgus rhesymol ar bobl sy'n byw y tu allan i Gymru i deithio i Gymru. Mae rheoliadau 6 a 7 yn cyfyngu ar yr amgylchiadau pan fo gan ddisgybl neu fyfyrwr esgus rhesymol dros fynd i fangre ysgol neu sefydliad addysg bellach. Mae rheoliad 9 yn gwneud darpariaeth bellach sy'n ei gwneud yn drosedd (a gosbir drwy gosb uwch) trefnu diwyddiadau cerddorol mawr sy'n annog pobl i ymgynnull yn anghyfreithlon.

Mae Rhan 3 o'r Rheoliadau yn ei gwneud yn ofynnol i fusnesau a gwasanaethau penodol y mae eu mangreoedd ar agor i'r cyhoedd fel arfer, gau. Mae Pennod 2 o'r Rhan honno yn cyfeirio at y busnesau a'r gwasanaethau hynny y mae'n rhaid i'w mangreoedd gael eu cau i'r cyhoedd, sy'n cael eu rhestru'n fanylach yn Rhan 1 o Atodlen 1 (ond mae rheoliad 11 yn ei gwneud yn glir nad yw hyn yn atal

gweithgareddau penodol rhag cael eu cynnal yn y fangre). Mae Pennod 3 yn gwneud darpariaeth ar gyfer y busnesau a'r gwasanaethau hynny y mae'n rhaid iddynt gael eu cau, ond y gall mynediad cyfyngedig iddynt gael ei ganiatáu, ac fe'u rhestrir yn fanylach yn Rhan 2 o Atodlen 1; mangreoedd sy'n gwerthu bwyd a diod (y caniateir mynediad cyfyngedig iddynt yn unol â rheoliad 12); mangreoedd sy'n cynnig llety gwesty neu lety gwyliau (y caniateir mynediad cyfyngedig iddynt yn unol â rheoliad 13); a manau addoli a manau eraill (y caniateir mynediad cyfyngedig iddynt yn unol â rheoliad 14). Mae rheoliad 15 yn darparu ar gyfer eithriad i'r gofyniad i gau sy'n gymwys i fangre busnes neu wasanaethau a restrir yn Rhan 3 o Atodlen 1. Mae rheoliad 16 yn ei gwneud yn glir na chaniateir i'r busnesau hynny a waherddir gan rheoliad 11 (ac a restrir yn Rhan 1 o Atodlen 1) barhau, pan fo mwyn nag un math o fusnes neu wasanaeth yn cael ei ddarparu yn yr un fangre.

Mae'r angen brys i reoli lledaeniad y coronafeirws yn ei gwneud yn ofynnol i fusnesau sy'n ymwneud yn uniongyrchol â chwsmeriaid a'r rheini lle y daw pobl i gyswllt agos â'i gilydd, gau. Mae'r rhain yn cynnwys y busnesau sy'n gwerthu nwyddau nad ydynt yn angenrheidiol, gwasanaethau cyswllt agos, twristiaeth, y sector digwyddiadau a lletygarwch (ac eithrio gwystai a mathau eraill o lety y bydd gofyn iddynt gau ond y gallai eu mangreoedd gael eu defnyddio at ddibenion eraill drwy gais neu awdurdod Gweinidogion Cymru neu awdurdodau lleol (er enghraifft i letya pobl a fyddai fel arall yn ddigartref; pobl sy'n ffoi rhag trais domestig; gweithwyr allweddol a'r rheini sy'n gweithio mewn sectorau y caniateir iddynt aros ar agor ond nad yw gweithio o gartref yn ymarferol iddynt, megis chwaraeon proffesiynol)). O dan y Rheoliadau hyn, gall y diwydiant adeiladu, gweithgynhyrchu a busnesau eraill nad ydynt yn ymwneud yn uniongyrchol â chwsmeriaid barhau i weithredu, gan gynnwys y rheini yn y gadwyn gyflenwi megis cyflenwyr adeiladwyr. Mae'r rhain yn ddiwydiannau hanfodol na ellid eu dadgyfuno, ond sy'n darparu seilwaith a gwasanaethau hanfodol ar gyfer cadwyni cyflenwi bwyd ac ynni, neu sy'n hanfodol er mwyn ymateb i argyfyngau. Bydd disgwyl i weithwyr ym mhob sector weithio o gartref lle y bo hynny'n bosibl. Yn yr un modd, caniateir i fferyllfeydd, gwasanaethau deintyddol a gwasanaethau meddygol neu iechyd eraill (gan gynnwys gwasanaethau sy'n ymwneud ag iechyd meddwl) barhau ar agor yn ystod y cyfnod pan fo'r Rheoliadau mewn grym.

Mae Rhan 4 o'r Rheoliadau yn gosod rhwymedigaethau penodol ar bersonau sy'n gyfrifol am fangreoedd sydd ar agor i'r cyhoedd, neu am waith sy'n cael ei wneud mewn unrhyw fangreoedd, er mwyn lleihau'r risg o ddod i gysylltiad â'r coronafeirws. Mae rheoliad 17 yn gymwys i "mangre reoleiddiedig" (unrhyw fan sydd ar agor i'r cyhoedd neu lle y gwneir gwaith) ac yn ei gwneud yn ofynnol: (1) i bob mesur rhesymol gael ei gymryd i sicrhau y cedwir pellter o 2 fetr rhwng personau yn y fangre; (2) i unrhyw fesurau rhesymol eraill gael eu cymryd – er enghraifft er mwyn cyfyngu ar ryngweithio wyneb yn wyneb agos a chynnal hylendid; a (3) i wybodaeth gael ei darparu i'r rheini sy'n mynd i fangre neu sy'n gweithio ynddi ynghylch sut i leihau'r risg o ddod i gysylltiad â'r coronafeirws. Mae Rhan 4 yn pennu y gall peidio â gwneud gweithgaredd, cau rhan o fangre a chasglu gwybodaeth gyswllt oddi wrth y rheini yn y fangre fod yn fesurau rhesymol. Mae rheoliadau 18 ac 19 yn darparu bod rhaid gwisgo gorchuddion wyneb ar drafnidiaeth gyhoeddus (gan gynnwys tacsis) ac mewn manau penodol o dan do, yn ddarostyngedig i esemptiadau ac eithriadau a restrir. Mae rheoliad 20 yn darparu i ganllawiau gael eu cyhoeddi ynghylch



cymhwyso'n ymarferol y gofynion a osodir gan y Rhan hon, a rhaid i'r rheini y mae'r gofynion yn gymwys iddynt roi sylw i'r canllawiau hynny.

Mae Rhan 5 o'r Rheoliadau'n ymwneud â gorfodi'r cyfyngiadau a'r gofynion. Mae rheoliad 21 yn gwneud darpariaeth ynghylch y rheini a gaiff gymryd camau gorfodi, mae rheoliad 22 yn gwneud darpariaeth bellach (yn Atodlenni 2 a 3) ynghylch gorfodi'r angen i gymryd mesurau ataliol o dan reoliad 17; mae rheoliad 23 yn ymwneud â hysbysiadau cydymffurfio, ac mae rheoliad 24 yn ymwneud â phwerau i waredu neu wasgaru. Mae rheoliad 25 yn ymwneud yn benodol â gorfodi'r gofyniad i wisgo gorchudd wyneb, ac mae rheoliad 26 yn ymwneud â phlant. Mae rheoliad 27 yn cynnwys pŵer i fynd i fangre ac mae rheoliad 28 yn caniatáu defnyddio grym rhesymol o dan amgylchiadau penodol.

Mae Rhan 6 o'r Rheoliadau yn gwneud darpariaeth ynghylch troseddau a chosbau. Mae rheoliad 29 yn darparu bod person sy'n torri'r gofynion (a restrir) yn y Rheoliadau hyn heb esgus rhesymol, yn cyflawni trosedd. Y gosb am y drosedd honno yw dirwy diderfyn. Mae rheoliad 30 yn ymwneud â throseddau gan gyrrff corfforedig. Mae rheoliad 31 yn caniatáu i droseddau gael eu cosbi drwy hysbysiadau cosb benodedig ac mae rheoliad 32 yn ymwneud ag erlyn troseddau o dan y rheoliadau.

Yn olaf, mae Rhan 7 yn cynnwys termau wedi'u diffinio ac yn dirymu Rheoliadau Diogelu Iechyd (Cyfyngiadau Coronafeirws) (Cymru) (Rhif 2) 2020 a'r offerynnau diwygio cysylltiedig. Mae rheoliad 33 hefyd yn gwneud darpariaeth sy'n addasu'r cyfyngiadau niferus ar unigolion yn y Rheoliadau sy'n cyfyngu ar ryngweithio ag unrhyw un nad yw'n aelod o'u haelwyd. Yn yr un modd ag yn achos yr ardaloedd diogelu iechyd lleol blaenorol a sefydlwyd o dan y Rheoliadau blaenorol, o dan y Rheoliadau hyn, caniateir i berson sy'n byw ar ei ben ei hun neu gyda phlant yn unig ffurfio aelwyd estynedig gydag aelwyd arall, sy'n golygu y gall aelodau'r ddwy aelwyd ryngweithio gyda'i gilydd fel pe baent yn aelodau o'r un aelwyd. Bydd hyn yn helpu i leihau'r effeithiau ar aelwydydd un oedolyn o ran teimlo'n ynysig neu'n unig.

Mae'n hollbwysig cymryd pob cam rhesymol i reoli'r cynnydd yn nhrosglwyddiad y coronafeirws. Mae Gweinidogion Cymru o'r farn bod y cyfyngiadau a'r gofynion a osodir gan y Rheoliadau hyn yn gymesur â'r hyn y maent yn ceisio ei gyflawni, sef ymateb i fygythiad difrifol ac uniongyrchol i iechyd y cyhoedd.

## **5. Ymgynghori**

O ystyried y bygythiad difrifol ac uniongyrchol sy'n codi o'r coronafeirws a'r angen am ymateb iechyd y cyhoedd brys, ni fu ymgynghoriad cyhoeddus mewn perthynas â'r Rheoliadau hyn.

Fodd bynnag, wrth benderfynu ar yr angen am y cyfyngiadau a'r gofynion a amlinellir yn y Rheoliadau hyn, a'u manylion, cymerais i, ynghyd â Gweinidogion eraill a swyddogion Llywodraeth Cymru, ran mewn cyfres o drafodaethau brys gyda sectorau a rhanddeiliaid allweddol, gan gynnwys llywodraeth leol ac arweinwyr busnes ac undebau llafur yng Nghymru. Cyhoeddais yn fy nghynhadledd i'r wasg ar 19 Hydref fwrriad Llywodraeth Cymru i gyflwyno'r newidiadau a gyflawnir yn y Rheoliadau hyn, ac adroddwyd am hynny yn eang wedyn.

## **6. Asesiad Effaith Rheoleiddiol ac eraill**

Ni luniwyd asesiad effaith rheoleiddiol mewn perthynas â'r Rheoliadau hyn oherwydd yr angen i'w rhoi ar waith ar fyrder i ddelio â bygythiad difrifol ac uniongyrchol i iechyd y cyhoedd.

Mae crynodeb o'r asesiad effaith integredig wedi'i baratoi a bydd yn cael ei gyhoeddi ar wefan LLYW.cymru.



Elin Jones AS  
Llywydd  
Senedd Cymru  
Bae Caerdydd  
CF99 1SN

21 Hydref 2020

Annwyl Elin

### **Rheoliadau Diogelu Iechyd (Cyfyngiadau Coronafeirws) (Rhif 3) (Cymru) 2020**

Heddiw, rwyf wedi gwneud Rheoliadau Diogelu Iechyd (Cyfyngiadau Coronafeirws) (Rhif 3) (Cymru) 2020 o dan adrannau 45C(1) a (3)(c), 45F(2) a 45P o Ddeddf Iechyd y Cyhoedd (Rheoli Clefydau) 1984. Daw'r Rheoliadau hyn i rym am 6.00y.h. ar 23 Hydref 2020. Rwy'n amgáu copi o'r offeryn statudol ac yr wyf yn bwriadu gosod yr offeryn a'r memorandwm esboniadol cysylltiedig pan fydd yr offeryn statudol wedi'i gofrestru.

Yn unol â'r weithdrefn frys a nodwyd yn adran 45R o Ddeddf Iechyd y Cyhoedd (Rheoli Clefydau) 1984, mae'n rhaid i'r Senedd gymeradwyo'r offeryn hwn erbyn 24 Tachwedd 2020 er mwyn iddo barhau i fod mewn grym. Yn yr amgylchiadau hyn, rwy'n deall bod rheol sefydlog 21.4A yn berthnasol ac y caiff y Pwyllgor Busnes sefydlu a chyhoeddi amserlen ar gyfer adroddiad y pwyllgor neu'r pwyllgorau perthnasol. Rwyf wedi trefnu'r Rheoliadau hyn i'w trafod yn y Cyfarfod Llawn ar 3 Tachwedd 2020.

Bydd y Rheoliadau hyn yn dirymu Rheoliadau Diogelu Iechyd (Cyfyngiadau Coronafeirws) (rhif 2) (Cymru) 2020, a'r Rheoliadau diwygio dilynol. Bydd hyn yn golygu na fydd angen cymeradwyaeth y Senedd ar gyfer Rheoliadau Diogelu Iechyd (Cyfyngiadau Coronafeirws) (rhif 2) (Cymru) (Diwygio) (Rhif 19). Bydd diwygiadau priodol yn cael eu gwneud i'r Datganiad Busnes.

Bae Caerdydd • Cardiff Bay  
Caerdydd • Cardiff  
CF99 1NA

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:  
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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.

Rwy'n anfon copi o'r llythyr hwn at y Gweinidog Cyllid a'r Trefnydd, Mick Antoniw AS fel Cadeirydd y Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad, Sian Wilkins, Pennaeth Gwasanaethau'r Siambr a'r Pwyllgorau, a Julian Luke, Pennaeth Gwasanaeth y Pwyllgorau Polisi a Deddfwriaeth.

Yn gywir

A handwritten signature in black ink that reads "Mark Drakeford". The signature is written in a cursive, slightly slanted style.

**MARK DRAKEFORD**



Llywodraeth Cymru  
Welsh Government

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## DATGANIAD YSGRIFENEDIG GAN LYWODRAETH CYMRU

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**TEITL** Cyfnod atal byr y coronafeirws  
**DYDDIAD** 19 Hydref 2020  
**GAN** Mark Drakeford AS, Y Prif Weinidog

Heddiw, mae'r Cabinet wedi penderfynu cyflwyno cyfnod atal byr pythefnos o hyd i helpu i gael rheolaeth dros y coronafeirws yng Nghymru.

Bydd y cyfnod hwn yn dechrau am 6pm ddydd Gwener 23 Hydref ac yn dod i ben am 9pm ddydd Llun 9 Tachwedd. Mae'n cynnwys y gwyliau hanner tymor ar gyfer llawer o blant yng Nghymru.

Rydym yn wynebu sefyllfa ddifrifol iawn yng Nghymru oherwydd bod y coronafeirws wedi cynyddu'n sylweddol ym mhob rhan o'r wlad. Neges glir ein cynghorwyr meddygol a gwyddonol yw y bydd cyfnod atal byr, llym yn gyfle inni adnewyddu a sicrhau bod gan y Gwasanaeth Iechyd Gwladol (GIG) y capasiti i ymateb i'r pandemig, achosion brys a phwysau'r gaeaf.

Gellir gweld cyngor gwyddonol y Gell Cyngor Technegol, sy'n llywio penderfyniad y Cabinet, a gyhoeddwyd heddiw yn: <https://llyw.cymru/grwp-cyngor-technegol-cyfnod-atal-byr>

Rydym wedi pennu cyfnod atal sydd mor fyr â phosibl ond mae hyn yn golygu bod rhaid i'r mesurau rydym yn eu cymryd fod yn llym i gael cymaint o effaith â phosibl ar y feirws.

O 6pm ddydd Gwener 23 Hydref:

- Ar wahân at ddibenion cyfyngedig iawn, er enghraifft i gael ymarfer corff, rhaid i bobl aros gartref
- Rhaid i bobl weithio gartref lle bynnag y bo hynny'n bosibl
- Ni chaiff pobl ymweld ag aelwydydd eraill na chyfarfod â phobl nad ydynt yn byw gyda nhw, o dan do nac yn yr awyr agored
- Ni fydd cynulladau yn yr awyr agored yn cael eu caniatáu
- Rhaid i bob busnes nad yw'n gwerthu bwyd, busnesau lletygarwch, gwasanaethau cysylltiad agos a digwyddiadau a busnesau twristiaeth, fel gwestai, gau
- Bydd yn ofynnol hefyd i ganolfannau cymunedol, llyfrgelloedd a chanolfannau ailgylchu gau

Wrth i'r feirws gydio, rydym wedi dweud sawl gwaith mai plant fyddai ein prif flaenoriaeth pe bai angen cyfyngiadau pellach a bod rhaid i addysg barhau.

O ganlyniad, bydd gofal plant yn aros ar agor. Bydd ysgolion cynradd ac arbennig yn ailagor fel arfer ar ôl y gwyliau hanner tymor. Bydd ysgolion uwchradd yn ailagor ar ôl y gwyliau hanner tymor ar gyfer plant ym mlynnyddoedd saith ac wyth. Bydd disgyblion yn gallu dod i mewn i sefyll arholiadau ond bydd disgyblion eraill yn parhau i ddysgu gartref am wythnos arall.

Bydd prifysgolion yn parhau i ddarparu cyfuniad o ddysgu wyneb yn wyneb ac arlein.

Bydd pecyn o bron i £300m ar gael i gefnogi'r busnesau hynny y bydd raid iddynt gau, gan atgeu'r cynlluniau cymorth cyflogau sydd ar gael oddi wrth Lywodraeth y DU.

- Bydd pob busnes a gwmpesir gan y cynllun rhyddhad ardrethi i fusnesau bach yn cael taliad o £1,000
- Bydd busnesau manwerthu, hamdden a lletygarwch bach a chanolig eu maint, y mae rhaid iddynt gau, yn cael taliad untro o hyd at £5,000
- Bydd grantiau dewisol ychwanegol a chymorth i fusnesau llai hefyd, sy'n cael pethau'n anodd
- Bydd y gronfa o £80m a gyhoeddwyd yr wythnos diwethaf i helpu busnesau i ddatblygu yn y tymor hwy yn cynyddu i £100m, sy'n cynnwys £20m sydd wedi'i neilltuo ar gyfer twristiaeth a lletygarwch
- Bydd busnesau hefyd yn gallu cael gafael ar y cymorth sydd ar gael drwy'r Cynllun Cadw Swyddi presennol neu'r Cynllun Cefnogi Swyddi newydd sydd wedi cael ei ehangu.

Bydd rhagor o fanylion am y pecyn cymorth ar gael yr wythnos hon a byddwn yn sicrhau bod y cyllid ar gael cyn gynted â phosibl i'r rheini sydd ei angen.

Mae set o gwestiynau cyffredin ar gael arlein yn: <https://llyw.cymru/cyfnod-atal-y-coronafeirws-cwestiynau-cyffredin>

Rydym yn cynnig cyflwyno dadl yfory yn ystod amser y llywodraeth ynglŷn â'r angen am gyfnod atal byr.

## **SL(5)607 - Rheoliadau Diogelu Iechyd (Cyfyngiadau Coronafeirws) (Rhif 2) (Cymru) (Diwygio) (Rhif 8) (Caerffili) 2020**

### **Cefndir a Diben**

Mae'r Rheoliadau hyn yn diwygio Rheoliadau Diogelu Iechyd (Cyfyngiadau Coronafeirws) (Rhif 2) (Cymru) 2020 (y "prif Reoliadau") i gyflwyno cyfyngiadau mewn perthynas ag 'ardal diogelu iechyd leol' ac i roi'r cyfyngiadau hynny ar waith yn ardal Cyngor Bwrdeistref Sirol Caerffili. Y diwygiadau hyn:

Mae'r Rheoliadau hyn yn diwygio'r prif Reoliadau i gyflwyno cyfyngiadau mewn perthynas ag 'ardal diogelu iechyd leol', a rhoi'r cyfyngiadau hynny ar waith yn ardal Cyngor Bwrdeistref Sirol Caerffili. Effaith hyn yw:

- darparu na chaiff unrhyw aelwyd o fewn yr ardal gael ei thrin fel pe bai'n rhan o aelwyd estynedig a gwaherddir aelwydydd rhag ffurfio aelwydydd estynedig;
- gwahardd personau sy'n byw yn yr ardal rhag gadael yr ardal neu aros i ffwrdd o'r ardal heb esgus rhesymol;
- ei gwneud yn ofynnol i drigolion yr ardal weithio gartref, oni bai nad yw'n rhesymol ymarferol iddynt wneud hynny;
- gwahardd pobl o'r tu allan i'r ardal rhag mynd i'r ardal heb esgus rhesymol;
- ei gwneud yn ofynnol i bobl yn yr ardal wisgo gorchudd wyneb (yn ddarostyngedig i rai esemptiadau ac eithriadau) os ydynt mewn mangreoedd agored; ac
- ei gwneud yn ofynnol i'r cyfyngiadau a'r gofynion sy'n cael eu cyflwyno gan y diwygiadau hyn ar gyfer ardal Cyngor Bwrdeistref Sirol Caerffili gael eu hadolygu ar 24 Medi neu cyn y dyddiad hwnnw, ac o leiaf unwaith bob saith diwrnod ar ôl hynny.

### **Gweithdrefn**

Gweithdrefn "gwneud cadarnhaol".

Gwnaed y Rheoliadau gan Weinidogion Cymru cyn iddynt gael eu gosod gerbron y Senedd. Rhaid i'r Senedd gymeradwyo'r Rheoliadau o fewn 28 diwrnod (ac eithrio unrhyw ddiwrnodau pan fo'r Senedd: (i) wedi'i diddymu neu (ii) ar doriad am fwy na phedwar diwrnod) i'r dyddiad y'u gwnaed er mwyn iddynt barhau i gael effaith.



## Materion technegol: craffu

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

### **1. Rheol Sefydlog 21.2(vii) - ei bod yn ymddangos bod anghysondebau rhwng ystyr testun Cymraeg a thestun Saesneg yr offeryn neu'r drafft.**

Mae'r Rheoliadau hyn, yn rheoliad 2(6)(b)(iii), yn cyfeirio at reoliadau 18(6) a 18(6ZA)(a) yn y fersiwn Saesneg ond mae'r fersiwn Gymraeg ond yn cyfeirio at y paragraffau yn y rheoliad hwnnw; '(6) neu (6ZA)(a)'. Mae'r rheoliad hwn yn diwygio rheoliad 20(3)(a) o'r prif Reoliadau. Mae'r anghysondeb yn golygu nad yw fersiwn Gymraeg y rheoliad diwygiedig mor eglur â'r fersiwn Saesneg.

## Rhinweddau: craffu

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

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

Ni chynhaliwyd ymgynghoriad cyhoeddus nac asesiad effaith rheoleiddiol mewn perthynas â'r Rheoliadau hyn. Yn ôl y Memorandwm Esboniadol:

*"Mae'r Prif Weinidog, ynghyd â Gweinidogion eraill a Llywodraeth Cymru, wedi parhau i roi'r wybodaeth ddiweddaraf i unigolion a busnesau gydol y newidiadau dilynol i'r Rheoliadau. Rhoddodd y Gweinidog Iechyd a Gwasanaethau Cymdeithasol wybod i Aelodau'r Senedd, mewn datganiad ysgrifenedig a gyhoeddwyd yn ystod prynhawn 7 Medi, o'r bwriad i osod y cyfyngiadau a gyflawnir drwy'r Rheoliadau a wneir heddiw. Cafodd y newidiadau arfaethedig hyn gyhoeddusrwydd eang wedyn gan y cyfryngau."*

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

Mae'r Pwyllgor yn nodi bod y Rheoliadau hyn yn tynhau'r cyfyngiadau sy'n ymwneud â Covid-19 yn ardal Cyngor Bwrdeistref Sirol Caerffili. O'r herwydd, mae'r Rheoliadau hyn yn dod o fewn ystyriaethau hawliau dynol eto ar gyfer hawliau unigol o dan Ddeddf Hawliau Dynol 1998 / Siarter Hawliau Sylfaenol Ewropeaidd ac yn erbyn y prawf 'cymesuredd' angenrheidiol.

Yn ychwanegol, mae'r Pwyllgor yn nodi bod Llywodraeth Cymru, yn y Memorandwm Esboniadol, wedi ystyried hawliau dynol ymhellach a rhoi eglurhad, ac mae'n fodlon gweld, yn benodol, fod Llywodraeth Cymru wedi cynnwys cyfnod adolygu ar gyfer y cyfyngiadau a osodwyd gan y Rheoliadau hyn, a hynny yn ôl yr amserlen a nodir yn y Memorandwm Esboniadol isod:





*"Bydd, neu gall, y cyfyngiadau a'r gofynion hyn gyffwrdd â hawliau o dan Erthygl 8 (yr hawl i barch am y teulu a bywyd preifat); Erthygl 9 (rhyddid crefydd, cydwybod a chred); Erthygl 11 (rhyddid gwybodaeth); Erthygl 14 (gwahardd gwahaniaethu) ac Erthygl 1 o'r Protocol Cyntaf (Diogelu Eiddo). Mae Gweinidogion Cymru o'r farn y gellir cyfiawnhau'r ymyrraeth, i'r graddau bod y cyfyngiadau a'r gofynion a orfodir gan y Rheoliadau yn ymwneud â'r hawliau hynny neu'n ymyrryd arnynt, gan fod yr ymyrraeth yn anelu at y nod dilys i ddarparu ymateb iechyd y cyhoedd i'r bygythiad a berir gan yr achosion cynyddol o'r coronafeirws a'i ledaeniad ym Mwrdeistref Sirol Caerffili, a'i bod yn gymesur i'r nod hwnnw. Mae'r gofynion i beidio â gadael yr ardal neu fynd iddi yn ddarostyngedig i esgus rhesymol gan berson i wneud hynny, sy'n cynnwys gallu defnyddio gwasanaethau hanfodol a gwasanaethau cyhoeddus a darparu gofal i bobl sy'n agored i niwed. Mae'r gofyniad i wisgo gorchudd wyneb mewn mangreoedd agored yn ddarostyngedig i nifer o esemptiadau ac eithriadau. Yn ychwanegol, rhaid i Weinidogion Cymru, erbyn 24 Medi, adolygu'r angen am y cyfyngiadau a'r gofynion a osodir gan y Rheoliadau a'u cymesuredd o ran yr hyn y maent yn ceisio ei gyflawni, a'u hadolygu o leiaf unwaith bob saith diwrnod ar ôl y dyddiad hwnnw."*

## Y goblygiadau yn sgil ymadael â'r Undeb Ewropeaidd

Dim

### Ymateb Llywodraeth Cymru

Mae angen ymateb gan Lywodraeth Cymru i'r pwynt adrodd technegol, ond nid oes angen ymateb i'r ddau bwynt ynghylch rhinweddau.

### Trafodaeth y Pwyllgor

Trafododd y Pwyllgor yr offeryn yn ei gyfarfod ar 21 Medi 2020 ac mae'n cyflwyno adroddiad i'r Senedd yn unol â'r pwyntiau adrodd uchod.



**YMATEB Y LLYWODRAETH: RHEOLIADAU DIOGELU IECHYD (CYFYNGIADAU CORONAFEIRWS) (RHIF 2) (CYMRU) (DIWYGIO) (RHIF 8) (CAERFFILI) 2020**

1. Dyma ymateb y Llywodraeth i adroddiad drafft y Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad.

**Pwyntiau craffu technegol:**

*Anghysondebau rhwng y testun Cymraeg a'r testun Saesneg*

2. Mae adroddiad drafft y Pwyllgor yn nodi bod y cyfeiriad yn rheoliad 2(6)(b)(iii) at reoliadau 18(6) a (6ZA)(a) yn wahanol yn y testun Cymraeg a'r testun Saesneg.
3. Mae rheoliad 2(6)(b)(iii) yn diwygio rheoliad 20(3)(a) o Reoliadau Diogelu Iechyd (Cyfyngiadau Coronafeirws) (Rhif 2) (Cymru) 2020 ("y prif Reoliadau"). Mae'r testun Saesneg yn darparu "for "or 18(6)" substitute ", 18(6) or 18(6ZA)(a)". Mae'r testun Cymraeg yn darparu "yn lle "neu (6)" rhodder ", (6) neu (6ZA)(a)".
4. Mae'r gwahaniaeth o ganlyniad i fân wahaniaeth, nad yw'n un o sylwedd, yn nhestunau Cymraeg a Saesneg rheoliad 20(3)(a) o'r prif Reoliadau. Tra bo testun Saesneg y rheoliad hwnnw yn cyfeirio at "regulation 18(4), 18(5)(a) or 18(6)", mae'r testun Cymraeg yn cyfeirio at "reoliad 18(4), (5)(a) neu (6)".
5. Mae testunau Cymraeg a Saesneg rheoliad 2(6)(b)(iii) wedi eu drafftio ychydig yn wahanol oherwydd y gwahaniaeth yn nhestunau Cymraeg a Saesneg rheoliad 20(3)(a) o'r prif Reoliadau. Nid yw'r Llywodraeth yn ystyried bod y testun Cymraeg yn llai eglur na'r testun Saesneg.

## SL(5)611 – Rheoliadau Diogelu Iechyd (Cyfyngiadau Coronafeirws) (Swyddogaethau Awdurdodau Lleol) (Cymru) 2020

### Cefndir a Diben

Mae'r Rheoliadau hyn yn rhoi pwerau ychwanegol i awdurdodau lleol ledled Cymru mewn ymateb i'r bygythiad difrifol ac uniongyrchol i iechyd y cyhoedd o ganlyniad i fynychder a lledaeniad coronafeirws syndrom anadlol aciwt difrifol 2 (SARS-CoV-2) yng Nghymru. Mae'r Rheoliadau hyn yn cynnwys pwerau i awdurdodau lleol, drwy gyhoeddi cyfarwyddiadau i bobl berthnasol, wneud y canlynol:

- cau mangre unigol, neu osod cyfyngiadau neu ofynion mewn perthynas â defnyddio'r fangre, mynediad ati, neu nifer y bobl ynddi;
- gwahardd digwyddiadau penodol (neu fathau o ddigwyddiad) rhag cael eu cynnal neu osod cyfyngiadau neu ofynion mewn perthynas â chynnal y digwyddiad, mynediad ato, neu nifer y bobl sy'n ei fynychu; a
- chyfyngu mynediad at fannau cyhoeddus awyr agored (neu fathau o fannau cyhoeddus awyr agored), neu eu cau.

Mae'r Rheoliadau hyn hefyd yn parhau â dyletswydd a osodwyd eisoes ar awdurdodau lleol, awdurdod Parc Cenedlaethol, Cyfoeth Naturiol Cymru a'r Ymddiriedolaeth Genedlaethol i gau llwybrau cyhoeddus a thir sy'n hygyrch i'r cyhoedd yng Nghymru lle gallai pobl ymgynnull, gan beri risg uchel o ddod i gysylltiad â'r coronafeirws.

### Gweithdrefn

Gwneud cadarnhaol.

Gwnaed y Rheoliadau hyn gan Weinidogion Cymru cyn iddynt gael eu gosod gerbron y Senedd. Rhaid i'r Senedd gymeradwyo'r Rheoliadau o fewn 28 diwrnod (ac eithrio unrhyw ddiwrnodau pan fo'r Senedd: (i) wedi'i diddymu neu (ii) ar doriad am fwy na phedwar diwrnod) i'r dyddiad y'u gwnaed er mwyn iddynt barhau i gael effaith.

### Materion technegol: craffu

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 y gwaith drafftio yn ddiffygiol neu ei fod yn methu â bodloni gofynion statudol.**



Un o'r pwerau galluogi a nodwyd yn y rhaglith i'r Rheoliadau hyn yw adran 45C o Ddeddf Iechyd y Cyhoedd (Rheoli Clefydau) 1984 (Deddf 1984). Yn ddarostyngedig i adran 45R o Ddeddf 1984, ni chaniateir gwneud offeryn sy'n cynnwys rheoliadau o dan adran 45C o Ddeddf 1984 oni bai bod drafft o'r offeryn wedi'i osod gerbron y Senedd, a'i gymeradwyo drwy benderfyniad ganddi.

Mae'r Rheoliadau hyn yn cadarnhau iddynt gael eu gwneud o dan adran 45R o Ddeddf 1984. Yn rhinwedd adran 45R(2) o Ddeddf 1984, gellir gwneud offeryn heb i ddrafft gael ei osod a'i gymeradwyo fel sy'n ofynnol gan adran 45C(4) o Ddeddf 1984 os yw'r offeryn yn cynnwys datganiad bod y person sy'n ei wneud o'r farn, oherwydd bod brys, ei bod yn angenrheidiol gwneud y gorchymyn heb osod a chymeradwyo drafft yn y ffordd hon. Er bod y Memorandwm Esboniadol i'r Rheoliadau yn cynnwys datganiad o'r fath, nid yw'r datganiad wedi'i gynnwys yn y Rheoliadau fel sy'n ofynnol gan adran 45R(2) o Ddeddf 1984.

Mae'r offeryn yn honni ei fod yn cael ei wneud gan ddibynnu'n rhannol ar ddarpariaeth (adran 45R(2) o Ddeddf 1984) sy'n ei gwneud yn ofynnol i'r datganiad gael ei gynnwys yn yr offeryn ac felly na chydymffurfiwyd â'r gofynion statudol o gynnwys datganiad yn yr offeryn.

## **2. Rheol Sefydlog 21.2(vi) – ei bod yn ymddangos bod y gwaith drafftio yn ddiffygiol neu ei fod yn methu â bodloni gofynion statudol.**

Yn rheoliad 2(g), mae cyfeiriad at reoliad 7(1), a ddylai gynnwys y diffiniad o "man cyhoeddus". Mae hyn yn anghywir ac yn hytrach dylai gyfeirio at reoliad 7(2). Mae'r cyfeiriad cywir wedi'i gynnwys yn fersiwn Gymraeg y Rheoliadau hyn.

## **3. Rheol Sefydlog 21.2(vi) – ei bod yn ymddangos bod y gwaith drafftio yn ddiffygiol neu ei fod yn methu â bodloni gofynion statudol.**

Yn rheoliad 16(9), mae cyfeiriad at baragraff (9), sy'n cyfeirio at swyddog gorfodi fel bod â sail resymol dros amau bod person yn torri rheoliad 14(4), neu ar fin ei dorri. Mae hyn yn anghywir ac yn hytrach dylai gyfeirio at baragraff (8). Mae'r cyfeiriad cywir wedi'i gynnwys yn y fersiwn Gymraeg.

## **Rhinweddau: craffu**

Nodwyd y pwyntiau a ganlyn i gyflwyno adroddiad arnynt 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 debyg o fod o ddiddordeb i'r Senedd**

Mae Rheoliad 9 yn ei gwneud yn ofynnol i awdurdod lleol roi sylw i unrhyw ganllawiau a gyhoeddir gan Weinidogion Cymru ynghylch cyfarwyddydau o dan Ran 2. Mae yna nifer o ddarpariaethau yr ymddengys eu bod yn elwa o esboniad pellach a fyddai'n cael eu nodi mewn canllawiau o'r fath, er enghraifft arwydd o beth yw "seilwaith allweddol" at ddibenion rheoliad 5(3), "nwyddau a gwasanaethau cyhoeddus hanfodol" at ddibenion rheoliad 5(5) neu "esgus rhesymol" dros fynd yn groes i gyfarwyddyd.



Adeg ysgrifennu hyn, mae adran "Gorfodaeth a dirwyon" rheoliadau y Coronafeirws: tudalen cwestiynau cyffredin ar wefan Llywodraeth Cymru yn cyfeirio at y drefn o orfodaeth a dirwyon o dan Reoliadau Diogelu Iechyd (Cyfyngiadau Coronafirws) (Rhif 2) (Cymru) Rheoliadau 2020, ond nid y Rheoliadau hyn. Mae'r dudalen yn nodi iddi gael ei diweddaru ddiwethaf ar 14 Medi 2020.

Nid yw'n ymddangos bod y canllawiau mewn perthynas â'r Rheoliadau hyn yn cael eu cyhoeddi ar wefan Llywodraeth Cymru, neu o leiaf nad yw'n hawdd eu hadnabod.

Credwn y byddai sicrhau bod y canllawiau ar gael, neu'n fwy hygyrch, o gymorth i awdurdodau lleol ac aelodau o'r cyhoedd sy'n dymuno deall effaith y Rheoliadau hyn.

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

Mae'r Rheoliadau hyn yn ei gwneud yn ofynnol i awdurdod lleol gymryd camau rhesymol i roi hysbysiad ymlaen llaw o gyfarwyddyd mangre, cyfarwyddyd digwyddiad neu gyfarwyddyd man cyhoeddus. Rhaid rhoi hysbysiad ymlaen llaw:

- mewn perthynas â chyfarwyddyd mangre, i berson sy'n cynnal busnes o'r fangre ac, os yw'n wahanol, unrhyw berson sy'n berchen ar y fangre neu'n ei meddiannu;
- mewn perthynas â chyfarwyddyd digwyddiad, i berson sy'n ymwneud â threfnu'r digwyddiad ac, os yw'n wahanol, unrhyw berson sy'n berchen ar y fangre neu'n meddiannu'r fangre lle bydd y digwyddiad yn cael ei gynnal; ac
- mewn perthynas â chyfarwyddyd man cyhoeddus, i bersonau sy'n cynnal busnes o fangre yn y man cyhoeddus a sicrhau ei fod yn cael ei ddwyn at sylw unrhyw berson sy'n berchen ar unrhyw fangre yn y man cyhoeddus, yn ei meddiannu neu'n gyfrifol amdani.

Mae Rheoliad 11 yn ei gwneud yn ofynnol i awdurdod lleol roi cyfarwyddyd i'r canlynol:

- yn achos cyfarwyddyd mangre, person sy'n cynnal busnes o'r fangre ac, os yw'n wahanol, person sy'n berchen ar y fangre neu'n ei meddiannu, neu fel arall yn gyfrifol amdani;
- yn achos cyfarwyddyd digwyddiad, person sy'n ymwneud â threfnu'r digwyddiad ac, os yw'n wahanol, person sy'n berchen ar y fangre, yn meddiannu'r fangre, neu fel arall yn gyfrifol amdani lle bydd y digwyddiad yn cael ei gynnal neu y cynigir y bydd yn cael ei gynnal; ac
- yn achos cyfarwyddyd man cyhoeddus, person sy'n cynnal busnes o fangre yn y man cyhoeddus a phob person sy'n berchen ar unrhyw fangre yn y man cyhoeddus, yn ei meddiannu neu fel arall yn gyfrifol amdani.



Mae Rheoliad 12 yn darparu i berson â buddiant wneud apêl i'r Llys Ynadon yn erbyn cyfarwyddyd neu gyflwyno achos am y cyfarwyddyd i Weinidogion Cymru. Y diffiniad o "person â buddiant" yw:

- yn achos cyfarwyddyd mangre, person sy'n cynnal busnes o'r fangre ac, os yw'n wahanol, person sy'n berchen ar y fangre neu'n ei meddiannu;
- yn achos cyfarwyddyd digwyddiad, person sy'n ymwneud â threfnu'r digwyddiad ac, os yw'n wahanol, person sy'n berchen ar y fangre lle mae'r digwyddiad yn cael ei gynnal neu y cynigir y bydd yn cael ei gynnal, neu'n meddiannu'r fangre; ac
- yn achos cyfarwyddyd man cyhoeddus, person sy'n cynnal busnes o fangre yn y man cyhoeddus a pherson sy'n berchen ar unrhyw fangre yn y man cyhoeddus, yn ei meddiannu neu'n gyfrifol amdani.

Defnyddir yr ymadrodd "fel arall yn gyfrifol am y fangre" mewn rhai rheoliadau sy'n ymwneud â gwneud cyfarwyddiadau, ond nid ym mhob un. Mae'n ymddangos bod defnyddio'r ymadrodd hwnnw mewn rhai rheoliadau, ond nid ym mhob un, yn awgrymu bod gwahaniaeth rhwng unigolion sy'n berchen ar fangre ac yn ei meddiannu, a'r rheini sy'n gyfrifol am fangre. Os yw hynny'n wir, bydd person sy'n gyfrifol am fangre, ond nad yw'n berchen ar y fangre honno nac yn ei meddiannu:

- yn cael hysbysiad ymlaen llaw mewn perthynas â chyfarwyddyd man cyhoeddus yn unig;
- yn cael cyfarwyddyd mangre, cyfarwyddyd digwyddiad neu gyfarwyddyd man cyhoeddus; ac
- yn cael gwneud apel neu gyflwyno achos mewn perthynas â chyfarwyddyd man cyhoeddus yn unig.

Mae'n ymddangos bod hyn yn awgrymu gwahaniaeth mewn triniaeth rhwng y mathau o hysbysiad mewn perthynas â phob un o'r materion hyn, ond nid yw'n glir pam mae angen gwahaniaethu fel hyn.

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

Yn y trydydd paragraff o Ran 4 o'r Memorandwm Esboniadol, mae cyfeiriad at "policy officer", sy'n ymddangos fel gwall argraffyddol a ddylai yn lle hynny ddarllen "police officer". Mae'r un gwall yn ymddangos yn y fersiwn Gymraeg, lle defnyddir "swyddog polisi".

## **Y goblygiadau yn sgil ymadael â'r Undeb Ewropeaidd**

Dim.



## Ymateb Llywodraeth Cymru

O ystyried yr amgylchiadau presennol o ran y coronafeirws, mae angen ymateb gan Lywodraeth Cymru cyn gynted ag sy'n rhesymol ymarferol.

## Trafodaeth y Pwyllgor

Trafododd y Pwyllgor yr offeryn yn ei gyfarfod ar 21 Medi 2020 ac mae'n cyflwyno adroddiad i'r Senedd yn unol â'r pwyntiau adrodd uchod. Yn ogystal, nododd y Pwyllgor fod yr offeryn wedi'i ddirymu gan y Rheoliadau Diogelu Iechyd (Cyfyngiadau Coronafeirws) (Swyddogaethau Awdurdodau Lleol etc.) (Cymru) 2020, a osodwyd gerbron y Senedd ar 18 Medi 2020.



## YMATEB Y LLYWODRAETH: RHEOLIADAU DIOGELU IECHYD (CYFYNGIADAU CORONAFEIRWS) (SWYDDOGAETHAU AWDURDODAU LLEOL) (CYMRU) 2020

1. Dyma ymateb y Llywodraeth i adroddiad drafft y Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad dyddiedig 17 Medi 2020.

### **Pwyntiau craffu technegol:**

*Pwynt 1: datganiad sy'n ofynnol o dan adran 45R(2) o Ddeddf Iechyd y Cyhoedd (Rheoli Clefydau) 1984*

2. Mae'r Adroddiad drafft yn nodi nad yw'r Rheoliadau yn cynnwys y datganiad sy'n ofynnol gan adran 45R(2) o Ddeddf 1984.
3. Mae Gweinidogion Cymru wedi dirymu'r Rheoliadau a'u disodli<sup>1</sup>. Mae hyn oherwydd y methiant i gofnodi'n briodol ddatganiad Gweinidogion Cymru bod y Rheoliadau yn rhai brys, yn unol ag adran 45R(2) o Ddeddf 1984. Rydym yn ddiolchgar am Adroddiad y Pwyllgor ar y pwynt hwn.

*Pwyntiau 2 a 3: cyfeiriad yn rheoliadau 2(g) ac 16(9)*

4. Mae'r Adroddiad drafft yn nodi bod y croesyfeiriad yn nhestun Saesneg rheoliad 2(g) yn cyfeirio at reoliad 7(1) yn lle 7(2), a bod y croesyfeiriad yn nhestun Saesneg rheoliad 16(9) yn cyfeirio at baragraff (9) yn lle paragraff (8).
5. Ymddengys fod y gwallau hyn wedi codi o broblemau fformatio'r templed pan grëwyd y fersiwn pdf o'r ddogfen Word a lofnodwyd. Roedd yr offeryn fel y'i gwnaed yn gywir. Byddwn yn codi hyn gyda'r Archifau Gwladol fel rhywbeth i'w ystyried yn y dyfodol, ond gan fod y Rheoliadau penodol hyn wedi eu dirymu a'u disodli bellach, ni chymerir unrhyw gamau pellach (er enghraifft, ceisio slip cywiro) yn hyn o beth.

### **Pwyntiau craffu ar rinweddau:**

*Pwynt 4: canllawiau*

6. Mae'r Adroddiad drafft yn nodi nifer o faterion sy'n ymwneud â'r Rheoliadau a fyddai'n elwa ar ganllawiau pellach, neu ddiweddaru'r canllawiau presennol.
7. Mae swyddogion iechyd y cyhoedd Llywodraeth Cymru wedi cydweithio'n agos â Chyfarwyddwyr Diogelu'r Cyhoedd (Cymru) i ddatblygu gweithdrefnau ar gyfer defnyddio'r pwerau newydd. Caiff y gweithdrefnau eu cyflwyno fel dogfen ganllawiau maes o law.

*Pwynt 5: personau sy'n berchen ar fangre ac yn ei meddiannu, a'r rheini sy'n gyfrifol am fangre*

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<sup>1</sup> Gweler Rheoliadau Diogelu Iechyd (Cyfyngiadau Coronafeirws) (Swyddogaethau Awdurdodau Lleol etc.) (Cymru) 2020 (O.S. 2020/1011 (Cy. 225)).



8. Mae'r Adroddiad drafft yn ceisio deall a oes gwahaniaeth yn y ffordd y caiff hysbysiadau eu trin ac, os felly, pam y mae gwahaniaeth o'r fath yn ofynnol.
9. Mewn cysylltiad â chyfarwyddydau mangreoedd a chyfarwyddydau digwyddiadau, dim ond yn rheoliad 11 y mae'r ymadrodd "fel arall yn gyfrifol am y fangre" yn ymddangos. Mae hyn er mwyn caniatáu i'r cam gweithdrefnol o roi'r cyfarwyddyd gael ei gwblhau pan fo'n ymddangos i'r person sy'n rhoi'r cyfarwyddyd fod rhywun yn y fangre sy'n gyfrifol am y fangre honno ar adeg rhoi'r cyfarwyddyd ond nad y perchennog na'r meddiannydd yw'r person hwnnw o bosibl. Er hynny, ystyrir ei bod yn briodol y dylai camau i roi rhybudd ymlaen llaw a hawliau apelio mewn cysylltiad â'r mathau hynny o gyfarwyddydau 'gael eu hanelu at y rheini a chanddynt fuddiant clir yn y cyfarwyddyd (h.y. personau sy'n cynnal busnesau yn y fangre o dan sylw, y rheini sy'n trefnu digwyddiad y mae cyfarwyddyd digwyddiad wedi ei anelu ato neu berchennog neu feddiannydd y fangre y mae'r naill fath o gyfarwyddyd neu'r llall yn ymwneud â hi).
10. Mae cyfarwyddydau mannau cyhoeddus yn gymwys yn fwy cyffredinol i unrhyw dir y mae gan y cyhoedd fynediad iddo. Felly, ymddengys ei bod yn briodol bod categori ehangach o bersonau a ddylai gael rhybudd ymlaen llaw (pan fo'n rhesymol ymarferol) ac a gaiff apelio yn erbyn cyfarwyddyd sy'n gymwys yn gyffredinol i fan a all gynnwys nifer o fangreoedd.

*Pwynt 6: gwall yn y Memorandwm Esboniadol*

11. Mae'r Adroddiad drafft yn nodi bod y term "swyddog polisi"/"policy officer" wedi ei ddefnyddio yn lle "swyddog heddlu"/ "police officer".
12. Mae'r Llywodraeth yn cytuno mai camgymeriad oedd hyn, ond yn cynnig na chymerir unrhyw gamau pellach gan fod y Rheoliadau hyn wedi eu dirymu a'u disodli.

# Eitem 8.3

## SL(5)616 - Rheoliadau Diogelu Iechyd (Cyfyngiadau Coronafeirws) (Swyddogaethau Awdurdodau Lleol etc.) (Cymru) 2020

### Cefndir a Diben

Mae'r Rheoliadau hyn yn rhoi pwerau i awdurdodau lleol ledled Cymru, drwy roi cyfarwyddiadau i bobl berthnasol, i:

- gau mangreoedd unigol neu osod cyfyngiadau neu ofynion mewn perthynas â defnyddio'r mangreoedd, mynediad iddynt neu nifer y bobl ynddynt;
- wahardd digwyddiadau penodol (neu fathau o ddigwyddiadau) rhag cael eu cynnal neu osod cyfyngiadau neu ofynion mewn perthynas â chynnal y digwyddiad, mynediad iddo neu nifer y bobl a fydd yn bresennol;
- gyfyngu ar fynediad i fannau cyhoeddus yn yr awyr agored neu eu cau (neu fathau o fannau cyhoeddus yn yr awyr agored).

Mae'r Rheoliadau hyn hefyd yn parhau â dyletswydd sydd wedi ei rhoi yn flaenorol ar awdurdodau lleol, awdurdod Parc Cenedlaethol, Cyfoeth Naturiol Cymru a'r Ymddiriedolaeth Genedlaethol i gau llwybrau troed cyhoeddus a thir sy'n hygyrch i'r cyhoedd yng Nghymru a allai ddenu nifer o bobl gan arwain at risg uchel o ddod i gysylltiad â'r coronafeirws.

Mae'r Rheoliadau hyn yn dirymu ac yn disodli Rheoliadau Diogelu Iechyd (Cyfyngiadau Coronafeirws) (Swyddogaethau Awdurdodau Lleol) (Cymru) 2020 (y Rheoliadau Gwreiddiol) oherwydd methiant i gofnodi'n briodol (yn yr offeryn ei hun) ddatganiad Gweinidogion Cymru bod y Rheoliadau Gwreiddiol ar frys, yn unol ag adran 45R(2) o Ddeddf Iechyd y Cyhoedd (Rheoli Clefydau) 1984 (Deddf 1983).

### Gweithdrefn

Gwneud cadarnhaol.

Gwnaed y Rheoliadau hyn gan Weinidogion Cymru cyn iddynt gael eu gosod gerbron y Senedd. Rhaid i'r Senedd gymeradwyo'r Rheoliadau o fewn 28 diwrnod (ac eithrio unrhyw ddiwrnodau pan fo'r Senedd: (i) wedi'i diddymu neu (ii) ar doriad am fwy na phedwar diwrnod) i'r dyddiad y'u gwnaed er mwyn iddynt barhau i gael effaith.

### Materion technegol: craffu

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



## Rhinweddau: craffu

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

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

Daeth y Rheoliadau hyn i rym cyn iddynt gael eu gosod gerbron y Senedd. Rydym yn nodi'r esboniad a ddarparwyd gan Mark Drakeford AS, y Prif Weinidog, mewn llythyr at y Llywydd dyddiedig 17 Medi 2020, sy'n nodi:

*"Heddiw, rwyf wedi gwneud Rheoliadau Diogelu Iechyd (Cyfyngiadau Coronafeirws) (Swyddogaethau Awdurdodau Lleol etc.) (Cymru) 2020, a ddaw i rym ddechrau 18 Medi 2020. Rwy'n amgáu copi o'r offeryn statudol ac yr wyf yn bwriadu gosod yr offeryn a'r Memorandwm Esboniadol cysylltiedig pan fydd yr offeryn statudol wedi'i gofrestru."*

Nid yw'r llythyr yn cynnwys esboniad o ran pam y mae angen i'r Rheoliadau hyn ddod i rym cyn iddynt gael eu gosod, er ein bod yn cydnabod bod hyn yn debygol o fod er mwyn cywiro'r sefyllfa o dan y Rheoliadau Gwreiddiol ar frys a sicrhau bod y swyddogaethau sydd wedi'u cynnwys yn y Rheoliadau hyn ar gael yn gyflym i awdurdodau lleol.

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

Mae'r Memorandwm Esboniadol yn ddefnyddiol wrth egluro:

*"Mae Llywodraeth Cymru yn cadw cysylltiad agos ag awdurdodau lleol ar weithredu a gorfodi'r cyfyngiadau coronafeirws, ac ar ôl gwirio gyda hwy nid ydynt yn ymwybodol o unrhyw gyfarwyddiadau sy'n cael eu rhoi o dan y Rheoliadau gwreiddiol ers iddynt ddod i rym. Yn ogystal, nid yw Gweinidogion Cymru wedi cael unrhyw hysbysiadau o gyfarwyddiadau, fel sy'n ofynnol o dan y Rheoliadau hynny."*

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

Mae Rheoliad 9 yn ei gwneud yn ofynnol i awdurdod lleol roi sylw i unrhyw ganllawiau a ddyroddir gan Weinidogion Cymru ynghylch cyfarwyddiadau o dan Ran 2. Mae nifer o ddarpariaethau y mae'n ymddangos y byddent yn elwa o gael esboniad pellach a fyddai'n cael eu nodi mewn canllawiau o'r fath, er enghraifft, arwydd o'r hyn sy'n gyfystyr â "seilwaith allweddol" at ddibenion rheoliad 5(3), "nwyddau a gwasanaethau cyhoeddus hanfodol" at ddibenion rheoliad 5(5) neu "esgus rhesymol" dros weithredu yn groes i gyfarwyddyd.

Ar adeg ysgrifennu'r adroddiad hwn, mae adran "Gorfodi a dirwyon" o'r rheoliadau Coronafeirws: cwestiynau cyffredin gwefan Llywodraeth Cymru yn cyfeirio at y drefn gorfodi a dirwyon o dan Reoliadau Diogelu Iechyd (Cyfyngiadau Coronafeirws) (Rhif 2) (Cymru) 2020,



ond nid y Rheoliadau hyn. Mae'r dudalen yn nodi y cafodd ei diweddarau ddiwethaf ar 14 Medi 2020.

Nid yw'n ymddangos bod y canllawiau mewn perthynas â'r Rheoliadau hyn wedi cael eu cyhoeddi ar wefan Llywodraeth Cymru, neu o leiaf nad ydynt yn hawdd eu canfod.

Credwn y byddai sicrhau bod y canllawiau ar gael, neu'n haws i'w canfod, yn gymorth defnyddiol i awdurdodau lleol a'r cyhoedd sydd am ddeall effaith y Rheoliadau hyn.

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

Mae'r Rheoliadau hyn yn ei gwneud yn ofynnol i awdurdod lleol gymryd camau rhesymol i roi rhybudd ymlaen llaw o gyfarwyddyd mangre, cyfarwyddyd digwyddiad neu gyfarwyddyd man cyhoeddus. Rhaid rhoi'r rhybudd ymlaen llaw hwnnw:

- mewn perthynas â chyfarwyddyd mangre, i berson sy'n cynnal busnes o'r fangre ac, os yw'n wahanol, unrhyw berson sy'n berchen ar y fangre neu sy'n meddiannu'r fangre;
- mewn perthynas â chyfarwyddyd digwyddiad, i berson sy'n ymwneud â threfnu'r digwyddiad ac, os yw'n wahanol, unrhyw berson sy'n berchen ar y fangre neu sy'n meddiannu'r fangre lle y mae'r digwyddiad yn digwydd; ac
- mewn perthynas â chyfarwyddyd man cyhoeddus, i bersonau sy'n cynnal busnes o'r fangre o fewn y man cyhoeddus a chan sicrhau y dygir y cyfarwyddyd i sylw unrhyw berson sy'n berchen ar unrhyw fangre yn y man cyhoeddus, sy'n meddiannu unrhyw fangre ynddo neu sy'n gyfrifol am unrhyw fangre ynddo.

Mae Rheoliad 11 yn ei gwneud yn ofynnol i awdurdod lleol roi cyfarwyddyd:

- yn achos cyfarwyddyd mangre, i berson sy'n cynnal busnes o'r fangre ac, os yw'n wahanol, person sy'n berchen ar y fangre, sy'n meddiannu'r fangre neu sydd fel arall yn gyfrifol am y fangre;
- yn achos cyfarwyddyd digwyddiad, i berson sy'n ymwneud â threfnu'r digwyddiad ac, os yw'n wahanol, person sy'n berchen ar y fangre lle y mae'r digwyddiad yn digwydd neu lle y bwriedir iddo ddigwydd, sy'n meddiannu'r fangre honno neu sydd fel arall yn gyfrifol am y fangre honno; ac
- yn achos cyfarwyddyd man cyhoeddus, i berson sy'n cynnal busnes o fangre o fewn y man cyhoeddus a phob person sy'n berchen ar unrhyw fangre yn y man cyhoeddus, sy'n meddiannu unrhyw fangre yn y man cyhoeddus neu sydd fel arall yn gyfrifol am unrhyw fangre yn y man cyhoeddus.

Mae Rheoliad 12 yn darparu ar gyfer person â chanddo fuddiant i apelio i Lys yr Ynadon yn erbyn cyfarwyddyd neu i gyflwyno sylwadau i Weinidogion Cymru ynghylch y cyfarwyddyd. Y diffiniad o "berson a chanddo fuddiant" yw:



- yn achos cyfarwyddyd mangre, person sy'n cynnal busnes o'r fangre ac, os yw'n wahanol, person sy'n berchen ar y fangre neu sy'n meddiannu'r fangre;
- yn achos cyfarwyddyd digwyddiad, person sy'n ymwneud â threfnu'r digwyddiad ac, os yw'n wahanol, person sy'n berchen ar y fangre lle y mae'r digwyddiad yn digwydd neu lle y bwriedir iddo ddigwydd neu sy'n meddiannu'r fangre honno; ac
- yn achos cyfarwyddyd man cyhoeddus, person sy'n cynnal busnes o fangre o fewn y man cyhoeddus a phob person sy'n berchen ar unrhyw fangre yn y man cyhoeddus, sy'n meddiannu unrhyw fangre yn y man cyhoeddus neu sydd fel arall yn gyfrifol am unrhyw fangre yn y man cyhoeddus.

Defnyddir yr ymadrodd "neu sydd fel arall yn gyfrifol am y fangre" mewn rhai, ond nid pob un, o'r rheoliadau sy'n ymwneud â gwneud rheoliadau. Mae'n ymddangos bod defnyddio'r ymadrodd hwnnw mewn rhai rheoliadau yn awgrymu bod gwahaniaeth rhwng personau sy'n berchen ar fangre ac yn ei meddiannu, a'r rhai sy'n gyfrifol am fangre. Os felly, gall person sy'n gyfrifol am fangre, ond nad yw'n berchen ar y fangre neu'n meddiannu'r fangre honno:

- gael hysbysiad ymlaen llaw dim ond mewn perthynas â chyfarwyddyd man cyhoeddus;
- cael cyfarwyddyd mangre, cyfarwyddyd digwyddiad neu gyfarwyddyd man cyhoeddus; a
- dim ond apelio neu gyflwyno sylwadau mewn perthynas â chyfarwyddyd man cyhoeddus.

Mae'n ymddangos bod hyn yn awgrymu gwahaniaeth yn y modd yr ymdrinnir â'r mathau o rybudd mewn perthynas â phob un o'r materion hyn, ond nid yw'n glir pam mae'r gwahaniaethu hwn yn angenrheidiol.

## Y goblygiadau yn sgil ymadael â'r Undeb Ewropeaidd

Dim.

## Ymateb Llywodraeth Cymru

O ystyried yr amgylchiadau presennol o ran y coronafeirws, mae angen ymateb gan Lywodraeth Cymru cyn gynted ag sy'n rhesymol ymarferol.

## Trafodaeth y Pwyllgor

Trafododd y Pwyllgor yr offeryn yn ei gyfarfod ar 28 Medi 2020 ac mae'n cyflwyno adroddiad i'r Senedd yn unol â'r pwyntiau adrodd uchod. At hynny, cytunodd y Pwyllgor i ysgrifennu at Lywodraeth Cymru i ofyn am eglurhad o ran yr angen i'r rheoliadau ddod i rym cyn iddyn nhw gael eu gosod gerbron y Senedd, sy'n un o ofynion Deddf Offerynnau Statudol 1946.



## YMATEB Y LLYWODRAETH: RHEOLIADAU DIOGELU IECHYD (CYFYNGIADAU CORONAFEIRWS) (SWYDDOGAETHAU AWDURDODAU LLEOL ETC.) (CYMRU) 2020

1. Dyma ymateb y Llywodraeth i adroddiad drafft y Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad dyddiedig 24 Medi 2020.

### **Pwyntiau craffu ar rinweddau:**

#### *Pwynt 3: canllawiau*

2. Mae'r Adroddiad drafft yn nodi nifer o faterion sy'n ymwneud â'r Rheoliadau a fyddai'n elwa ar ganllawiau pellach, neu ddiweddarur'r canllawiau presennol.
3. Mae swyddogion iechyd y cyhoedd Llywodraeth Cymru wedi cydweithio'n agos â Chyfarwyddwyr Diogelu'r Cyhoedd (Cymru) i ddatblygu gweithdrefnau ar gyfer defnyddio'r pwerau newydd. Caiff y gweithdrefnau eu cyflwyno fel dogfen ganllawiau maes o law.

#### *Pwynt 4: personau sy'n berchen ar fangre ac yn ei meddiannu, a'r rheini sy'n gyfrifol am fangre*

4. Mae'r Adroddiad drafft yn ceisio deall a oes gwahaniaeth yn y ffordd y caiff hysbysiadau eu trin ac, os felly, pam y mae gwahaniaeth o'r fath yn ofynnol.
5. Mewn cysylltiad â chyfarwyddydau mangreoedd a chyfarwyddydau digwyddiadau, dim ond yn rheoliad 11 y mae'r ymadrodd "fel arall yn gyfrifol am y fangre" yn ymddangos. Mae hyn er mwyn caniatáu i'r cam gweithdrefnol o roi'r cyfarwyddyd gael ei gwblhau pan fo'n ymddangos i'r person sy'n rhoi'r cyfarwyddyd fod rhywun yn y fangre sy'n gyfrifol am y fangre honno ar adeg rhoi'r cyfarwyddyd ond nad y perchennog na'r meddiannydd yw'r person hwnnw o bosibl. Er hynny, ystyrir ei bod yn briodol y dylai camau i roi rhybudd ymlaen llaw a hawliau apelio mewn cysylltiad â'r mathau hynny o gyfarwyddydau gael eu hanelu at y rheini a chanddynt fuddiant clir yn y cyfarwyddyd (h.y. personau sy'n cynnal busnesau yn y fangre o dan sylw, y rheini sy'n trefnu digwyddiad y mae cyfarwyddyd digwyddiad wedi ei anelu ato neu perchennog neu feddiannydd y fangre y mae'r naill fath o gyfarwyddyd neu'r llall yn ymwneud â hi).
6. Mae cyfarwyddydau manau cyhoeddus yn gymwys yn fwy cyffredinol i unrhyw dir y mae gan y cyhoedd fynediad iddo. Felly, ymddengys ei bod yn briodol bod categori ehangach o bersonau a ddylai gael rhybudd ymlaen llaw (pan fo'n rhesymol ymarferol) ac a gaiff apelio yn erbyn cyfarwyddyd sy'n gymwys yn gyffredinol i fan a all gynnwys nifer o fangreoedd.

## **SL(5)630 – Rheoliadau Mabwysiadu a Maethu (Cymru) (Diwygiadau Amrywiol) (Coronafeirws) 2020**

### **Cefndir a Diben**

Mae Rheoliadau Mabwysiadu a Maethu (Cymru) (Diwygiadau Amrywiol) (Coronafeirws) 2020 ("y Rheoliadau") yn cael eu gwneud o dan y pwerau a roddwyd i Weinidogion Cymru gan adrannau 9(1)(a), 140(7) ac (8) a 142(5) o Ddeddf Mabwysiadu a Phlant 2002 ac adrannau 87 a 196(2) o Ddeddf Gwasanaethau Cymdeithasol a Llesiant (Cymru) 2014.

Mae'r Rheoliadau yn gwneud diwygiadau i ddwy set o Reoliadau i lacio a diwygio gofynion a osodir oddi tanynt:

#### 1. Rheoliadau Asiantaethau Mabwysiadu (Cymru) 2005 (O.S. 2005/1313 (Cy. 95)) ("Rheoliadau 2005")

Mae Rheoliadau 2005 yn nodi'r broses ar gyfer asesu addasrwydd pobl i fabwysiadu plentyn ac addasrwydd plant i gael eu mabwysiadu.

Mae rheoliadau 3 i 8 o'r Rheoliadau yn gwneud diwygiadau i Reoliadau 2005; dyma'r newidiadau a gaiff eu gwneud:

- Diwygiadau i'r broses gymeradwyo ar gyfer darpar fabwysiadwyr er mwyn galluogi cam 1 a cham 2 o'r broses asesu i redeg ar yr un pryd. Mae hyn yn golygu y gellir casglu gwybodaeth y mae'n rhaid ei chasglu ar hyn o bryd yn ystod cam 1 o'r broses gymeradwyo yn ystod cam 2.
- Llacio'r amserlen ar gyfer cymryd camau penodol. Mae amserlenni ar gyfer cam un a cham dau o'r broses o 2 fis (cam 1) a 4 mis (cam 2) yn parhau i fod ar waith ond dim ond pan fo'n rhesymol ymarferol y mae'n ofynnol i asiantaethau fodloni'r amserlenni.
- Mae'r terfyn o 6 mis ar yr amser y gall darpar fabwysiadwr ei adael rhwng cam 1 a cham 2 yn parhau, ond dim ond pan fo'n rhesymol ymarferol y mae'n ofynnol i fabwysiadwyr gadw at y terfyn amser.

#### 2. Rheoliadau Cynllunio Gofal, Lleoli ac Adolygu Achosion (Cymru) 2015 (O.S. 2015/1818 (W. 261)) ("Rheoliadau 2015")

Mae Rheoliadau 2015 yn gwneud darpariaeth ynghylch rhwymedigaethau awdurdod lleol mewn perthynas â chynllunio, lleoli ac adolygu'r gofal a'r cymorth a ddarperir i blentyn sy'n derbyn gofal gan yr awdurdod hwnnw yn unol â Rhan 6 o Ddeddf Gwasanaethau Cymdeithasol a Llesiant (Cymru) 2014.



Mae rheoliad 8 o'r Rheoliadau yn diwygio Rheoliadau 2015 i ymestyn y cyfnod (o 16 i 24 wythnos) pan gaiff person sy'n perthyn i blentyn neu sy'n gysylltiedig â phlentyn fel arall gael cymeradwyaeth dros dro i weithredu fel rhiant maeth awdurdod lleol ar gyfer y plentyn hwnnw.

Yn ddarostyngedig i reoliadau 9 a 10, mae'r diwygiadau a wneir gan y Rheoliadau yn peidio â bod yn effeithiol ar 31 Mawrth 2021.

## Gweithdrefn

Negyddol.

## Materion technegol: craffu

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

## Rhinweddau: craffu

Mae'r pedwar pwynt canlynol wedi'u nodi i gyflwyno adroddiad arnynt o dan Reol Sefydlog 21.3 mewn perthynas â'r offeryn hwn.

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

Mewn perthynas â hawliau plant, mae'r Memorandwm Esboniadol yn nodi fel a ganlyn:

*"Ni nodwyd unrhyw wrthdaro â Chonfensiwn y Cenhedloedd Unedig ar Hawliau'r Plentyn ac nid oes unrhyw effeithiau negyddol ar blant a phobl ifanc; mae'r rhan fwyaf o'r darpariaethau'n effeithio'n gyfan gwbl neu'n bennaf ar wasanaethau i oedolion. Cynhyrchwyd Asesiad o'r Effaith ar Hawliau Plant (CRIA) ar yr adeg y cymeradwywyd y hawddfrait dros dro i Reoliadau Asiantaethau Mabwysiadu (Cymru) 2005 ar ddechrau'r pandemig."*

Ymddengys nad yw'r Asesiad o'r Effaith ar Hawliau Plant y cyfeirir ato uchod ar gael yn gyhoeddus ac er y nodir y sylwadau uchod gan Lywodraeth Cymru, nid yw'n bosibl canfod a sefydlodd yr asesiad yn llawn nad oes ymyrraeth â hawliau plant a phobl ifanc o dan y Confensiwn. Byddai'n ddymunol gweld yr asesiad yn cael ei gyhoeddi cyn gynted ag y bo modd.

Ymhellach, i fodloni'r rhwymedigaethau a osodwyd gan adran 1 o Fesur Hawliau Plant a Phobl Ifanc (Cymru) 2011 ac oherwydd bod y broses ddiwygiedig wedi bod yn rhedeg yn anffurfiol ers yr hawddfrait dros dro, byddai'n briodol cynnal a chyhoeddi asesiad pellach yn benodol i'r Rheoliadau hyn i sefydlu na effeithir ar yr hawliau perthnasol.

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

Mae Adran 5 o'r Memorandwm Esboniadol yn nodi manylion yr ymgynghoriad a gynhaliwyd ar y Rheoliadau hyn dros bedair wythnos rhwng 27 Gorffennaf a 24 Awst 2020. Fodd bynnag,





nodir nad yw canlyniadau'r ymgynghoriad wedi'u cyhoeddi eto ac, o'r herwydd, nid yw'n eglur sut yr ystyriwyd y canlyniadau hynny, os oeddent ar gael, wrth ddatblygu'r polisi sy'n sail i'r Rheoliadau hyn. Byddai'r Pwyllgor yn croesawu eglurhad ar y pwynt hwn ac awgrymir y dylid cyhoeddi'r canlyniadau cyn gynted ag y bo modd.

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

Mae'r diwygiad i Reoliadau 2015 yn estyn uchafswm y cyfnod, o 16 i 24 o wythnosau, pan ganiateir i blentyn gael ei roi gyda pherthynas neu berson cysylltiedig i gael gofal maeth dan gymeradwyaeth dros dro. Nid yw'n glir a oedd yr Asesiad o'r Effaith ar Hawliau Plant y cyfeirir ato ym mhwynt 1 uchod yn ystyried y risg uwch i blentyn o fod mewn cyfnod estynedig o ofal maeth mewn sefyllfa o'r fath. Nodir bod yr ymgynghoriad (gweler pwynt 2 uchod) yn cyfeirio at y terfyn amser uwch ond nad yw fel arall yn mynd i'r afael â mater y risg. Gan nad yw canlyniadau'r ymgynghoriad ar gael ar hyn o bryd, nid yw'n bosibl asesu a ystyriwyd unrhyw ymatebion perthnasol wrth ddatblygu'r Rheoliadau. Fodd bynnag, mae'r Pwyllgor yn nodi'r mesurau diogelwch a gynhwysir yn rheoliad 26(2) o Reoliadau 2015. Dylid cyhoeddi canlyniadau'r ymgynghoriad cyn gynted ag y bo modd.

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

Ni pharatowyd asesiad effaith rheoleiddiol mewn perthynas â'r Rheoliadau hyn. Fodd bynnag, nodir yr esboniad a ganlyn gan Lywodraeth Cymru yn y Memorandwm Esboniadol:

*"Mae'r angen am y Rheoliadau wedi'i nodi fel rhan o'r cynllunio wrth gefn ar gyfer materion a allai godi o ledaeniad COVID-19. Oherwydd yr amser cyfyngedig sydd ar gael i baratoi Rheoliadau Mabwysiadu a Maethu (Cymru) (Diwygiadau Amrywiol) (Coronafeirws) 2020 a bod y newidiadau a wnaed yn rhai dros dro (llai na 6 mis), ni luniwyd Asesiad Effaith Rheoleiddiol.*

*Er mai awdurdodau lleol sy'n gyfrifol am y system gofal cymdeithasol i blant, ni ragwelir y bydd y newidiadau arfaethedig yn arwain at unrhyw gostau ychwanegol helaeth na newidiadau sylweddol i arferion gwaith.*

*Mae anghenion busnesau yn y sector gofal cymdeithasol ar hyn o bryd wedi'u hystyried wrth baratoi'r Rheoliadau; bydd y diwygiadau'n lleihau neu'n dileu beichiau ar asiantaethau a'u bwriad yw cefnogi gwasanaethau gofal cymdeithasol plant i gyflawni eu rhwymedigaethau statudol yn fwy hyblyg yn ystod y pandemig."*

## **Y goblygiadau yn sgil ymadael â'r Undeb Ewropeaidd**

Dim.

## **Ymateb Llywodraeth Cymru**

Mae angen ymateb gan Lywodraeth Cymru i'r pwyntiau rhinweddau 1, 2 a 3 uchod.



## Trafodaeth y Pwyllgor

Trafododd y Pwyllgor yr offeryn yn ei gyfarfod ar 19 Hydref 2020 ac mae'n cyflwyno adroddiad i'r Senedd yn unol â'r pwyntiau adrodd uchod.



Senedd Cymru

**Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad**

—

Welsh Parliament

Tudalen y pecyn 274

**Legislation, Justice and Constitution Committee**

## **Ymateb y Llywodraeth: Rheoliadau Mabwysiadu a Maethu (Cymru) (Diwygiadau Amrywiol) (Coronafeirws) 2020**

### **Pwynt Craffu ar Rinweddau 1:**

Cynhaliwyd Asesiad o'r Effaith ar Hawliau Plant (CRIA) i gefnogi'r gofynion gweinyddol cychwynnol mwy llac a oedd yn gymwys i Reoliadau Asiantaethau Mabwysiadu (Cymru) 2005 o fis Ebrill 2020. Mae'r CRIA hwn ar gael i'r cyhoedd drwy restr CRIA ganolog Llywodraeth Cymru. Ar adeg llunio'r CRIA nid oedd yn fandadol cyhoeddi pob CRIA. Fodd bynnag, mae Llywodraeth Cymru wrthi'n cyhoeddi'r CRIA hwn a bydd ar gael ar wefan Llywodraeth Cymru yn yr ychydig wythnosau nesaf.

Cynhaliodd Llywodraeth Cymru Asesiad Effaith Integredig llawn wrth ddatblygu Rheoliadau Mabwysiadu a Maethu (Cymru) (Diwygiadau Amrywiol) (Coronafeirws) 2020 a oedd yn cynnwys CRIA. Cadarnhaodd y broses hon fod yr asesiad a amlinellir yn y CRIA a grybwyllir uchod yn parhau i fod yn berthnasol. Unwaith eto, mae'r adrannau perthnasol o'r Asesiad Effaith Integredig wrthi'n cael eu cyhoeddi.

### **Pwynt Craffu ar Rinweddau 2:**

Fel y'i datgenir yn y Memorandwm Esboniadol, cynhaliwyd ymgynghoriad 4 wythnos rhwng 27 Gorffennaf a 24 Awst 2020. Roedd yr ymgynghoriad hwn yn sail i gynnwys Rheoliadau Mabwysiadu a Maethu (Cymru) (Diwygiadau Amrywiol) (Coronafeirws) 2020 o ran y ffaith bod y newid arfaethedig i Reoliadau Paneli Maethu (Sefydlu a Swyddogaethau) (Cymru) 2018, i gynnwys mynediad at broses feddygol hunanddatgan yn ystod y pandemig, wedi ei ddileu yng ngoleuni'r ymatebion a gafwyd gan randdeiliaid yn ystod y broses ymgynghori.

Fel y'i hamlinellir yn y Memorandwm Esboniadol, mae Llywodraeth Cymru wrthi'n cyhoeddi'r crynodeb o'r ymatebion i'r ymgynghoriad ar hyn o bryd.

### **Pwynt Craffu ar Rinweddau 3:**

Mae Llywodraeth Cymru yn ystyried nad yw'r diwygiad sy'n estyn y cyfnod y caiff asiantaeth wneud cymeradwyaeth dros dro i berson cysylltiedig / gofalwr sy'n berthynas o 16 o wythnosau i 24 o wythnosau yn darparu unrhyw risg ychwanegol i blentyn. Mae hyn oherwydd y bydd angen o hyd i'r awdurdod lleoli lynu wrth ofynion Rheoliadau 2015 a sicrhau trefniadau a fydd yn diogelu ac yn hybu llesiant plentyn ac yn diwallu'r anghenion fel y'u nodir yn y cynllun gofal a chymorth. Mae pob un o'r dyletswyddau sy'n weddill mewn cysylltiad â'r gymeradwyaeth dros dro honno yn parhau i fod ac fe'u nodir yn rheoliad 26(2).

I gefnogi'r Rheoliadau, cynhaliwyd Asesiad Effaith Integredig llawn ac mae wrthi'n cael ei gyhoeddi. Mae Llywodraeth Cymru wrthi'n cyhoeddi'r crynodeb o'r ymatebion i'r ymgynghoriad ar hyn o bryd.

# Eitem 9.1

## **SL(5)635 – Rheoliadau'r Cynllun Seibiant Dyledion (Moratoriwm Lle i Anadlu a Moratoriwm Argyfwng Iechyd Meddwl) (Cymru a Lloegr) 2020 (Cyflwynwyd yn Saesneg yn unig)**

### **Cefndir a Diben**

Mae'r Rheoliadau hyn yn sefydlu cynllun seibiant dyledion ar gyfer pobl sydd â phroblemau dyled.

O dan y cynllun, caiff pobl gymwys sydd â phroblemau dyled ac sy'n cael cyngor proffesiynol ar ddyled gyfnod o 60 diwrnod pan fydd llog, ffioedd a thaliadau yn cael eu rhewi a bydd camau gorfodi yn destun saib. Yn aml, cyfeirir at y cyfnod moratoriwm hwn yn foratoriwm 'Lle i Anadlu'.

Mewn perthynas â phobl sy'n cael triniaeth ar gyfer argyfwng iechyd meddwl, mae'r cynllun yn sefydlu llwybr arall lle gellir cael mynediad at fesurau diogelu moratoriwm, ac yn sicrhau bod y mesurau diogelu ar waith drwy gydol eu triniaeth argyfwng.

### **Gweithdrefn**

Gwneir y Rheoliadau hyn gan y Trysorlys, ond rhaid eu gosod gerbron Senedd Cymru a dau Dŷ Senedd y DU, a'u cymeradwyo drwy benderfyniad ym mhob un o'r Senedd-dai hynny.

### **Gwaith craffu o dan Reol Sefydlog 21.7**

Rydym yn nodi ac yn croesawu bwriad y Rheoliadau hyn, sef cymell mwy o bobl â phroblemau dyled i gael cyngor proffesiynol ar ddyled, ac i wneud hynny'n gynt, a'u galluogi hefyd i gael mynediad at y datrysiad dyled mwyaf priodol iddynt, o ystyried eu hamgylchiadau unigol.

Rydym hefyd yn nodi bod y Rheoliadau hyn yn cael eu gwneud gan y Trysorlys o dan Ran 1 o Ddeddf Canllawiau Ariannol a Hawliadau 2018, y rhoddodd y Cynulliad ei gydsyniad deddfwriaethol iddi ar 13 Chwefror 2018. Yn ystod y ddadl ar gydsyniad a gynhaliwyd gan y Cynulliad, dywedodd Rebecca Evans AS, y Gweinidog Tai ac Adfywio ar y pryd, y geiriau a ganlyn mewn perthynas ag unrhyw gynllun seibiant dyledion yn y dyfodol:

*Mae ffordd bell i fynd, ond byddwn yn parhau i weithio'n agos gyda Llywodraeth y DU a'r SFGB, pan gaiff ei sefydlu, yn ogystal â darparwyr cyngor a rhanddeiliaid eraill, i ddylanwadu ar ddatblygiad unrhyw gynllun a phenderfynu a yw'n diwallu anghenion Cymru.*

Byddem yn ddiolchgar pe gallai Llywodraeth Cymru:



- (a) nodi sut mae'r cynllun seibiant dyledion wedi cael ei ddatblygu i fodloni gofynion Cymru;
- (b) cadarnhau a yw'n fodlon nad yw'r Rheoliadau hyn yn dod i rym yn gyffredinol tan 4 Mai 2021.

## Y goblygiadau yn sgil ymadael â'r Undeb Ewropeaidd

Dim.

## Ymateb y Llywodraeth

Mae angen ymateb gan Lywodraeth Cymru.

### Cynghorwyr Cyfreithiol

### Y Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

27 Hydref 2020



*Draft Regulations laid before Parliament and Senedd Cymru under section 7(8)(a) and (b) of the Financial Guidance and Claims Act 2018, for approval by resolution of each House of Parliament and of Senedd Cymru.*

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DRAFT STATUTORY INSTRUMENTS

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**2020 No.**

**DEBT MANAGEMENT AND RELIEF, ENGLAND AND WALES**

**The Debt Respite Scheme (Breathing Space Moratorium and Mental Health Crisis Moratorium) (England and Wales) Regulations 2020**

*Made* - - - - - **\*\*\***

*Coming into force in accordance with regulation 1(2) to (7)*

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The Treasury<sup>(a)</sup> in exercise of the powers conferred by section 7(2), (5)(a), (5)(c), (5)(d) and (6)(a) of the Financial Guidance and Claims Act 2018<sup>(b)</sup> make the following Regulations.

In accordance with section 7(8)(a) and (b) of that Act, a draft of this instrument has been laid before and approved by a resolution of each House of Parliament and Senedd Cymru.

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(a) In accordance with section 26(2) of the Financial Guidance and Claims Act 2018, the reference to the Secretary of State in section 7(2) of that Act is to be read as a reference to the Secretary of State or the Treasury.

(b) 2018 c. 10.

In accordance with section 7(2) and (3) of that Act, the Treasury have received advice from the single financial guidance body on the establishment of a debt respite scheme and have taken that advice into account in making these Regulations.

## PART 1

### General provisions

#### Citation, commencement, extent and application

1.—(1) These Regulations may be cited as the Debt Respite Scheme (Breathing Space Moratorium and Mental Health Crisis Moratorium) (England and Wales) Regulations 2020.

(2) With the exception of the provisions referred to in paragraphs (3) to (7), these Regulations come into force on 4th May 2021.

(3) Sub-paragraph (b) of the definition of “lease” and the definition of “occupation contract” in regulation 2(1) come into force on the day that section 7 of the Renting Homes (Wales) Act 2016(a) comes into force.

(4) Regulation 7(7)(k)(i) comes into force on the day that section 157 of the Renting Homes (Wales) Act 2016 comes into force.

(5) Regulation 7(7)(k)(ii) comes into force on the day that section 181 of the Renting Homes (Wales) Act 2016 comes into force.

(6) Regulation 7(7)(k)(iii) comes into force on the day that section 187 of the Renting Homes (Wales) Act 2016 comes into force.

(7) Regulation 29(1)(j) and (k) comes into force on the day that Schedule AA1 to the Mental Capacity Act 2005(b) comes into force.

(8) These Regulations extend to England and Wales only.

(9) These Regulations apply in respect of debtors domiciled or ordinarily resident in England or Wales.

#### Interpretation

2.—(1) In these Regulations—

“additional debt” has the meaning given in regulation 15(1);

“agent” is to be construed in accordance with regulation 12(6);

“approved mental health professional” means—

- (a) in relation to acting on behalf of a local social services authority whose area is in England, a person approved under section 114(1) of the Mental Health Act 1983(c) by any local social services authority whose area is in England, and
- (b) in relation to acting on behalf of a local social services authority whose area is in Wales, a person approved under that subsection by any local social services authority whose area is in Wales;

“arrears” means any sum other than capitalised mortgage arrears payable to a creditor by a debtor which has fallen due and which the debtor has not paid at the date of the application for a moratorium in breach of the agreement between the creditor and debtor or in breach of the legislation or rules under which the debtor incurred the debt or liability;

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(a) 2016 anaw 1.

(b) 2005 c. 9.

(c) 1983 c. 20. Section 114 was substituted by the Mental Health Act 2007 (c. 20), section 18.



“bank holiday” means any day which is a bank holiday in England and Wales under the Banking and Financial Dealings Act 1971(a);

“bankruptcy petition” means a petition for a bankruptcy order made under Chapter 1 of Part 9 of the Insolvency Act 1986(b) by one or more of an individual’s creditors;

“breathing space moratorium” means a moratorium under Part 2;

“business day” means any day except a Saturday, Sunday, bank holiday, Christmas Day or Good Friday;

“capitalised mortgage arrears” means any arrears in relation to a mortgage that have been added to the outstanding balance to be paid over the duration of the mortgage;

“care co-ordinator” means—

- (a) an individual with responsibility for co-ordinating care for a person with a mental disorder, as specified in the code of practice prepared by the Secretary of State in accordance with section 118(1) of the Mental Health Act 1983(c), and
- (b) in relation to acting on behalf of a mental health services provider, an individual appointed in accordance with section 14(1) of the Mental Health (Wales) Measure 2010(d);

“conditional sale agreement” means an agreement for the sale of goods under which the purchase price or part of it is payable by instalments, and the property in the goods is to remain in the seller (notwithstanding that the buyer is to be in possession of the goods) until such conditions as to the payment of instalments or otherwise as may be specified in the agreement are fulfilled;

“creditor by assignment” is to be construed in accordance with regulation 13(1);

“debt advice provider” has the meaning given in regulation 3;

“debt relief order” means an order under Part 7A of the Insolvency Act 1986(e);

“debt solution” means an arrangement, scheme or procedure, whether statutory or not, the aim of which is to pay, discharge or liquidate some or all of a debtor’s debts;

“debtor” means—

- (a) in relation to a mental health crisis moratorium, the applicant or the person in relation to whom an application for a moratorium has been made,
- (b) in relation to a breathing space moratorium, the applicant;

“enforcement action” is to be construed in accordance with regulation 7(7);

“enforcement agent” means—

- (a) an individual authorised by section 63(2) of the Tribunals, Courts and Enforcement Act 2007(f) to act as an enforcement agent, or
- (b) an individual authorised in accordance with paragraph 2(1) of Schedule 7 to the Courts Act 2003(g) to act as an enforcement officer;

“eligibility criteria” is to be construed in accordance with regulations 24(3) and 30(3);

“FSMA” means the Financial Services and Markets Act 2000(h);

“hire-purchase agreement” means an agreement, other than a conditional sale agreement, under which—

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(a) 1971 c. 80.

(b) 1986 c. 45.

(c) 1983 c. 20. Section 118(1) was substituted by the Mental Health Act 2007 (c. 12), Schedule 2, paragraph 9.

(d) 2010 nawm 7.

(e) 1986 c. 45. Part 7A was amended by the Tribunals, Courts and Enforcement Act 2007 (c. 15), Schedule 17, paragraph 1.

(f) 2007 c. 15.

(g) 2003 c. 39.

(h) 2000 c. 8.

- (a) goods are bailed or (in Scotland) hired in return for periodical payments by the person to whom they are bailed or hired, and
- (b) the property in the goods will pass to that person if the terms of the agreement are complied with and one or more of the following occurs—
  - (i) the exercise of an option to purchase by that person,
  - (ii) the doing of any other specified act by any party to the agreement,
  - (iii) the happening of any other specified event;

“individual voluntary arrangement” means a voluntary arrangement under Part 8 of the Insolvency Act 1986;

“interest” means any interest charged by a creditor in relation to a moratorium debt;

“interim order” means an interim order under section 252(1) of the Insolvency Act 1986;

“joint debtor” means—

- (a) except where sub-paragraph (b) applies, a person who is—
  - (i) jointly or severally liable, or
  - (ii) jointly and severally liable,

with a debtor for a moratorium debt;

- (b) this paragraph applies where the liability referred to in sub-paragraph (a) arises solely as a result of an indemnity or guarantee provided by the person and the person has no other liability in relation to the moratorium debt;

“lease” means—

- (a) a lease, under-lease or other tenancy, assignment operating as a lease or under-lease, or an agreement for such lease, under-lease tenancy, or assignment, or
- (b) an occupation contract;

“mental disorder” means any disorder or disability of the mind;

“mental health crisis moratorium” means a moratorium under Part 3;

“mental health crisis treatment” is to be construed in accordance with regulation 28(2);

“mental health nurse” means a person registered in Sub-Part 1 of the Nurses’ Part of the register maintained under article 5 of the Nursing and Midwifery Order 2001(a) and who is so registered with an entry indicating their field of practice is mental health or learning disabilities nursing;

“mental health services provider” means—

- (a) the Welsh Ministers,
- (b) a local health board established under section 11 of the National Health Service (Wales) Act 2006(b) for an area which includes a principal area in Wales within the meaning of section 20 of the Local Government Act 1972(c),
- (c) a county council in Wales, or
- (d) a county borough council in Wales;

“midway review” means a review of a breathing space moratorium carried out under regulation 27(1);

“moratorium” means, unless otherwise stated, a breathing space moratorium or a mental health crisis moratorium;

“moratorium debt” is to be construed in accordance with regulation 6;

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(a) S.I. 2002/253. Article 5(1) was amended by S.I. 2018/838, Schedule 1, paragraphs 1 and 4(a).

(b) 2006 c. 42.

(c) 1972 c. 70. Section 20 was amended by the Local Government (Wales) Act 1994 (c. 19), section 1(1).

“moratorium period” means the period from the start of a moratorium to the end of the moratorium;

“nominated point of contact” means—

- (a) an approved mental health professional,
- (b) a care co-ordinator, or
- (c) a mental health nurse,

who can provide the confirmation required in regulation 33(1);

“non-eligible debt” has the meaning given in regulation 5(4);

“occupation contract” has the meaning given in section 7 of the Renting Homes (Wales) Act 2016(a);

“ongoing liabilities” means any payment, other than in respect of a payment shortfall, which is due in relation to—

- (a) a secured credit agreement where the obligation of the debtor to repay is secured by a mortgage on land used by the debtor as their primary residence,
- (b) a lease in relation to a property used by a debtor as their primary residence,
- (c) an insurance agreement,
- (d) taxes, duties and national insurance contributions,
- (e) local taxes to fund local authority expenditure and rates, or
- (f) the supply of water, sewerage, electricity, gas, heating oil or solid fuel;

“qualifying debt” is to be construed in accordance with regulation 5;

“register” means, unless otherwise indicated in this paragraph, the register of matters relating to moratoria maintained by the Secretary of State under regulation 35(1)(b);

“representative” means—

- (a) a person who has been granted—
  - (i) an enduring power of attorney in accordance with such of the regulations mentioned in paragraph 2 of Schedule 4 to the Mental Capacity Act 2005 as applied when the enduring power of attorney was executed, or
  - (ii) a lasting power of attorney in respect of the debtor’s property and affairs in accordance with section 9(1)(b) of the Mental Capacity Act 2005,
- (b) a deputy appointed by the court in respect of the debtor’s property and affairs in accordance with section 16(2)(b) of the Mental Capacity Act 2005, or
- (c) a person appointed as a guardian under the Guardianship (Missing Persons) Act 2017(b);

“secured credit agreement” means an agreement under which a creditor provides credit to a debtor and the agreement provides for the obligation of the debtor to repay to be secured—

- (a) by a mortgage on land,
- (b) on assets whose value at least equals the amount of debt, or
- (c) on a letter of credit or guarantee;

“secured debt” means—

- (a) a secured credit agreement,
- (b) a hire-purchase agreement, or
- (c) a conditional sale agreement;

“social worker” means—

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(a) 2016 anaw 1. Section 7 is not yet in force.  
(b) 2017 c. 27.

- (a) a social worker registered in the register of social workers in England maintained under section 39(1) of the Children and Social Work Act 2017<sup>(a)</sup>, or
  - (b) a social worker registered in the register of social workers in Wales maintained under section 80(1) of the Regulation and Inspection of Social Care (Wales) Act 2016<sup>(b)</sup>;
- “universal credit” means universal credit under Part 1 of the Welfare Reform Act 2012<sup>(c)</sup>.
- (2) In these Regulations references to a debtor include the debtor’s representative.

### **Meaning of debt advice provider**

- 3.**—(1) In these Regulations a “debt advice provider” is—
- (a) an authorised person who has Part 4A permission to carry on any regulated activity of the kind specified in article 39E (debt-counselling) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001<sup>(d)</sup>, or
  - (b) an exempt person in relation to such activity.
- (2) In this regulation—
- (a) “authorised person” means a person who is authorised for the purposes of FSMA;
  - (b) “exempt person” has the meaning given in section 417(1) of FSMA;
  - (c) “Part 4A permission” has the meaning given in section 55A(5) of FSMA;
  - (d) “regulated activity” is to be construed in accordance with section 22 of FSMA.

### **Debt advice provider fees and referrals**

- 4.**—(1) A debt advice provider must not charge a debtor a fee in connection with a moratorium.
- (2) A debt advice provider may refer a debtor to another debt advice provider, if the debt advice provider considers it is appropriate to do so.
- (3) Where a debt advice provider accepts a referral of a debtor they must, by the end of the following business day, provide a notification that they have accepted the referral to—
- (a) the Secretary of State, and
  - (b) the debtor or (as the case may be) the debtor’s nominated point of contact.
- (4) Where the Secretary of State receives a notification from a debt advice provider in accordance with paragraph (3)(a), the Secretary of State must, by the end of the following business day, send a notification of the referral to each creditor and agent who received notification of a moratorium in relation to the debtor under these Regulations.
- (5) A referral of a debtor to a debt advice provider takes effect in relation to the obligations of the debt advice provider under these Regulations on the first business day following the day on which the debt advice provider accepts the referral.

### **Qualifying debt**

- 5.**—(1) A “qualifying debt” means any debt or liability other than non-eligible debt.
- (2) A debt is a qualifying debt for the purpose of these Regulations whether or not it is entered into, or due to be paid or repaid, before these Regulations come into force.
- (3) A qualifying debt includes—
- (a) any amount which a debtor is liable to pay under or in relation to—
    - (i) an order or warrant for possession of the debtor’s place of residence or business,

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(a) 2017 c. 16.  
(b) 2016 anaw 2.  
(c) 2012 c. 5.  
(d) S.I. 2001/544. Article 39E was inserted by S.I. 2013/1881, article 5.

- (ii) a court judgment, or
  - (iii) a controlled goods agreement;
  - (b) any debt owed or liability payable to the Crown.
- (4) In these Regulations “non-eligible debt” means—
- (a) secured debt which does not amount to arrears in respect of secured debt,
  - (b) non-eligible business debt,
  - (c) any debt which a debtor incurred by means of any fraud or fraudulent breach of trust by the debtor,
  - (d) any liability in respect of a fine imposed by a court for an offence or from any liability under a recognisance except, in the case of a penalty imposed for an offence under an enactment relating to the public revenue or of a recognisance, with the consent of the Treasury,
  - (e) any obligation arising under a confiscation order made under—
    - (i) section 1 of the Drug Trafficking Offences Act 1986(a) or that Act as it continues in force by virtue of any savings made in connection with its repeal by the Drug Trafficking Act 1994(b),
    - (ii) section 2 of the Drug Trafficking Act 1994(c) or that Act as it continues in force by virtue of any savings made in connection with its repeal by the Proceeds of Crime Act 2002(d),
    - (iii) section 1 of the Criminal Justice (Scotland) Act 1987(e) or that Act as it continues in force by virtue of any savings made in connection with its repeal by the Criminal Procedure (Consequential Provisions) (Scotland) Act 1995(f),
    - (iv) section 71 of the Criminal Justice Act 1988(g) or that Act as it continues in force by virtue of any savings made in connection with its repeal by the Proceeds of Crime Act 2002, or
    - (v) Parts 2, 3 or 4 of the Proceeds of Crime Act 2002,
  - (f) any obligation (including an obligation to pay a lump sum or to pay costs) arising under an order made in family proceedings or any obligation arising under a maintenance assessment or maintenance calculation made under the Child Support Act 1991(h),
  - (g) any obligation arising from a payment out of the social fund by way of crisis loan or budgeting loan under section 138(1)(b) of the Social Security Contributions and Benefits Act 1992(i) or that Act as it continues in force by virtue of any savings made in connection with its repeal by the Welfare Reform Act 2012,
  - (h) any debt or liability to which a debtor is or may become subject in respect of any sum paid or payable to the debtor as a student loan and which the debtor receives whether before or after the moratorium starts,
  - (i) any debt which consists of a liability to pay damages for negligence, nuisance or breach of a statutory, contractual or other duty, or to pay damages by virtue of Part 1 of the

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(a) 1986 c. 32. Section 1 was repealed by the Drug Trafficking Act 1994 (c.37), Schedule 3, paragraph 1 but saved by the Drug Trafficking Act 1994 (c. 37), Schedule 2, paragraph 2.

(b) 1994 c. 37.

(c) 1994 c. 37. Section 2 was repealed by the Proceeds of Crime Act 2002 (c. 29), Schedule 12, paragraph 1 but saved by S.I. 2003/333, articles 10(1)(e) and 13(b).

(d) 2002 c. 29.

(e) 1987 c. 41. Section 1 was repealed by the Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 (c. 40), Schedule 5, paragraph 1 but saved by Schedule 3 to that Act.

(f) 1995 c. 40.

(g) 1988 c. 33. Section 71 was repealed by the Proceeds of Crime Act 2002 (c. 29), Schedule 12, paragraph 1 but saved by S.I. 2003/333, articles 10(1)(a) and 13(a).

(h) 1991 c. 48. “maintenance calculation” was substituted for “maintenance assessment” by section 1(2) of the Child Support, Pensions and Social Security Act 2000 (c. 19) in relation to certain cases in accordance with S.I. 2003/192.

(i) 1992 c. 4.

Consumer Protection Act 1987(a), being in either case damages in respect of the death of or personal injury (including any disease or other impairment of physical or mental condition) to any person,

- (j) an advance payment of universal credit under regulation 32 of the Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Claims and Payments) Regulations 2013(b),
- (k) any liability in respect of council tax for a financial year, except where—
  - (i) all the instalments for that year have fallen due and any of those instalments has not been paid, or
  - (ii) a reminder notice has been served on the debtor under regulation 23(1) of the Council Tax (Administration and Enforcement) Regulations 1992(c),
- (l) any liability in respect of non-domestic rates for a financial year, except where—
  - (i) all the instalments for that year have fallen due and any of those instalments has not been paid, or
  - (ii) a further notice has been served on the debtor under regulation 8(1) of the Non-Domestic Rating (Collection and Enforcement) (Local Lists) Regulations 1989(d).

(5) In paragraph (4)(c), fraud includes any amounts owed by a debtor as a result of supplies taken illegally of gas under paragraph 9 of Schedule 2B to the Gas Act 1986(e) or electricity under paragraph 4 of Schedule 6 to the Electricity Act 1989(f).

(6) In this regulation—

- (a) “controlled goods agreement” means an agreement under paragraph 13(4) of Schedule 12 to the Tribunals, Courts and Enforcement Act 2007;
- (b) “family proceedings” means—
  - (i) proceedings in the family court, and
  - (ii) family proceedings within the meaning of Part V of the Matrimonial and Family Proceedings Act 1984(g);
- (c) “fine” includes—
  - (i) any pecuniary penalty or pecuniary forfeiture or pecuniary compensation payable under a conviction, and
  - (ii) in relation to a fine imposed for an offence, a reference to a charge ordered to be paid under section 21A of the Prosecution of Offences Act 1985(h) (criminal courts charge), whether on conviction or otherwise,and includes any interest on the fine and any penalties or charges incurred in connection with it;
- (d) “non-eligible business debt” means debt incurred in connection with a business carried on by a debtor where the debtor at the point of the application for a moratorium and for the purpose of that business—
  - (i) is registered under the Value Added Tax Act 1994(i), or
  - (ii) is a partner in a partnership with any other person,

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(a) 1987 c. 43.

(b) S.I. 2013/380.

(c) S.I. 1992/613. Regulation 23 was amended by S.I. 1994/505, regulation.3 and S.I. 1997/393.

(d) S.I. 1989/1058. Regulation 8 was amended by S.I. 1992/1512, S.I. 1993/616, S.I. 2010/1656, S.I. 2010/2222, S.I. 2011/1665, and S.I. 2012/24.

(e) 1986 c. 44. Paragraph 9 of Schedule 2B was inserted by the Gas Act 1995 (c. 45), Schedule 2 and amended by the Utilities Act 2000 (c. 27), Schedule 6, Part 1, paragraph 2(1) subject to transitional provisions in S.I. 2001/3266, articles 3 to 20.

(f) 1989 c. 29. Paragraph 4 of Schedule 6 was substituted by the Utilities Act 2000 (c. 27), Schedule 4, paragraph 1 subject to transitional provisions in S.I. 2001/3266, articles 3 to 20.

(g) 1984 c. 42.

(h) 1985 c. 23. Section 21A was inserted by the Criminal Justice and Courts Act 2015 (c. 2), section 54(1).

(i) 1994 c. 23.

and the debt solely relates to the business carried on by the debtor;

- (e) “partnership” means any relation which subsists between persons carrying on a business in common with a view of profit other than any relation between members of any company or association which is—
  - (i) registered under the Companies Act 2006(a), or
  - (ii) formed or incorporated by or in pursuance of any other Act of Parliament or letters patent, or Royal Charter;
- (f) “student loan” means a loan made under –
  - (i) regulations made under section 22(1) of the Teaching and Higher Education Act 1998(b), or
  - (ii) the Education (Student Loans) Act 1990(c), or that Act as it continues in force by virtue of any savings made, in connection with its repeal by the Teaching and Higher Education Act 1998, by an order made under section 46(4) of that Act.

### **Moratorium debt**

6. A “moratorium debt” is any qualifying debt—
- (a) that was incurred by a debtor in relation to whom a moratorium is in place,
  - (b) that was owed by the debtor at the point at which the application for the moratorium was made, and
  - (c) about which information has been provided to the Secretary of State by a debt advice provider under these Regulations.

### **Effect of a moratorium**

7.—(1) A moratorium has the effect specified in this regulation in relation to moratorium debt during a moratorium period.

(2) Subject to paragraph (3), during a moratorium period a creditor may not, in relation to any moratorium debt, take any of the steps specified in paragraph (6) in respect of the debt unless—

- (a) these Regulations specify otherwise, or
- (b) the county court or any other court or tribunal where legal proceedings concerning the debt have been or could be issued or started has given permission for the creditor to take the step.

(3) A court or tribunal may not give permission for a creditor or agent to take any of the steps specified in paragraph (6)(a) or (b).

(4) Subject to paragraph (5), for the purposes of paragraph (2)(b), a court or tribunal may—

- (a) determine an application for permission to take a step specified in paragraph (6)(c) or (d) in any way that it thinks fit,
- (b) give permission subject to such conditions as it thinks fit, and
- (c) make such orders as may be necessary to give effect to the determination of the application.

(5) A court or tribunal may only grant permission under paragraph 2(b) for a creditor or agent to take a step specified in paragraph (6)(c) or for a creditor to instruct an agent to take a step specified in paragraph (6)(c) where the court considers that—

- (a) it is reasonable to allow the creditor or their agent to take the step, and
- (b) the step will not—

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(a) 2006 c. 46.  
(b) 1998 c. 30.  
(c) 1990 c. 6.

- (i) be detrimental to the debtor to whom the moratorium relates, or
  - (ii) significantly undermine the protections of the moratorium.
- (6) The steps mentioned in paragraph (2) that a creditor is prevented from taking are any steps to—
- (a) require a debtor to pay interest that accrues on a moratorium debt during a moratorium period,
  - (b) require a debtor to pay fees, penalties or charges in relation to a moratorium debt that accrue during a moratorium period,
  - (c) take any enforcement action in respect of a moratorium debt (whether the right to take such action arises under a contract, by virtue of an enactment or otherwise), or
  - (d) instruct an agent to take any of the actions mentioned in sub-paragraphs (a) to (c).
- (7) A creditor or agent takes enforcement action if they take any of the following steps in relation to a moratorium debt—
- (a) take a step to collect a moratorium debt from a debtor,
  - (b) take a step to enforce a judgment or order issued by a court or tribunal before or during a moratorium period regarding a moratorium debt,
  - (c) enforce security held in respect of a moratorium debt,
  - (d) obtain a warrant,
  - (e) subject to regulation 12(4)(d), sell or take control of a debtor’s property or goods,
  - (f) start any action or legal proceedings against a debtor relating to or as a consequence of non-payment of a moratorium debt,
  - (g) make an application for a default judgment in respect of a claim for money against the debtor,
  - (h) take steps to install a pre-payment meter under paragraph 7(3)(a) of Schedule 2B to the Gas Act 1986(a) or paragraph 2(1)(a) of Schedule 6 to the Electricity Act 1989(b) to take payments in respect of a moratorium debt, or use a pre-payment meter already installed to take such payments, unless a debtor had provided their consent for the installation of the pre-payment meter before the moratorium started,
  - (i) take steps to disconnect a debtor’s premises from a supply of gas under paragraph 7(3)(b) of Schedule 2B to the Gas Act 1986 or electricity under paragraph 2(1)(b) of Schedule 6 to the Electricity Act 1989 unless the debtor had taken the supply of gas or electricity illegally,
  - (j) serve a notice to take possession of a dwelling-house let to a debtor on grounds 8, 10 or 11 in Schedule 2 to the Housing Act 1988(c) or take possession of a dwelling-house let to a debtor having served such a notice,
  - (k) serve a notice to take possession of a dwelling let to a debtor or take possession of a dwelling let to a debtor having served such a notice—
    - (i) on the ground of breach of contract specified in section 157 of the Renting Homes (Wales) Act 2016(d) where that breach relates to rent arrears, or
    - (ii) on the grounds specified in section 181(2) of the Renting Homes (Wales) Act 2016(e), or
    - (iii) on the grounds specified in section 187(2) of the Renting Homes (Wales) Act 2016(f),

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(a) 1986 c. 44. Schedule 2B was inserted by the Gas Act 1995 (c. 45), Schedule 2.  
 (b) 1989 c. 29.  
 (c) 1988 c. 50.  
 (d) 2016 anaw 1. Sections 157 is not yet in force.  
 (e) 2016 anaw 1. Section 181 is not yet in force.  
 (f) 2016 anaw 1. Section 187 is not yet in force.



- (l) contact a debtor for the purpose of enforcement of a moratorium debt,
  - (m) make an application in respect of a debtor for commitment to prison under regulation 16 of the Non-Domestic Rating (Collection and Enforcement) (Local Lists) Regulations 1989(a) or regulation 47 of the Council Tax (Administration and Enforcement) Regulations 1992(b), or
  - (n) take any of the steps in this paragraph in relation to a joint debtor.
- (8) For the purposes of paragraph (7)(f), legal proceedings against a debtor includes a bankruptcy petition.
- (9) Where a moratorium debt is a secured debt, paragraph (6)(a) applies only to interest that accrues on any arrears on the debt during a moratorium period.
- (10) After the end of a moratorium period, neither a creditor nor their agent is entitled to—
- (a) require a debtor to pay interest, fees, penalties or charges referred to in paragraph (6)(a) and (b) that accrued during the moratorium period, or
  - (b) treat the non-payment during the moratorium period by the debtor of interest, fees, penalties or charges as a default by the debtor under, or a breach of, the agreement between the debtor and the creditor.
- (11) Subject to paragraph (13)(c), to the extent it applies to a moratorium debt, during a moratorium period, the Secretary of State and the Commissioners for Revenue and Customs must not direct that a new arrangement should be put in place for a debtor's benefit to be paid, wholly or in part, to a third party under regulation 35 of the Social Security (Claims and Payments) Regulations 1987(c).
- (12) Any action taken contrary to this regulation shall be null and void.
- (13) Nothing in this regulation affects the following to the extent that they relate to a debtor—
- (a) a charging order made before the start of the moratorium under the Charging Orders Act 1979(d) or regulations 50 and 51 of the Council Tax (Administration and Enforcement) Regulations 1992,
  - (b) an attachment of earnings order made before the start of the moratorium under the Attachment of Earnings Act 1971(e) or regulation 37 of the Council Tax (Administration and Enforcement) Regulations 1992,
  - (c) a deduction from earnings made under—
    - (i) Parts 8 or 8A of the Social Security (Payments on account, Overpayments and Recovery) Regulations 1988(f),
    - (ii) Part 3 of the Social Security Administration Act 1992(g), or
    - (iii) Part 6 of the Social Security (Overpayments and Recovery) Regulations 2013(h), where a deduction notice has been served before the start of the moratorium under that Act or those Regulations, or
  - (d) the debtor's universal credit paid, wholly or in part, to a third party under regulation 60 of and Schedules 6 and 7 to the Universal Credit, Personal Independence Payment,

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(a) S.I. 1989/1058. Regulation 16 was amended by S.I. 1992/474, regulation 3(2)(a), S.I. 1993/616, Schedule 2(2), paragraph 1, S.I. 1998/3089, regulation 5(1) and S.I. 2014/600, Schedule 1(1), paragraph 2(1)(d).

(b) S.I. 1992/613. Regulation 47 was amended by S.I. 1994/505, regulation 6, S.I. 2014/600, Schedule (1), paragraph 3(e) and S.I. 2019/220, regulation 2(2).

(c) S.I. 1987/1968.

(d) 1979 c. 53.

(e) 1971 c. 32.

(f) S.I. 1988/664. Regulation 29A was inserted by S.I. 2013/384, article 31(9).

(g) 1992 c. 5. Section 75(1) was amended by the Social Security Administration (Fraud) Act 1997 (c. 47). Part 3 was amended by the Welfare Reform Act 2012 (c. 5) but some of those amendments are not yet in force.

(h) S. I. 2013/384. Part 6 was amended by S. I. 2015/499.

Jobseeker's Allowance and Employment and Support Allowance (Claims and Payments) Regulations 2013(a).

(14) In this regulation, "benefit" means any payment made to a debtor under the Social Security Contributions and Benefits Act 1992, the Jobseekers Act 1995(b), the Welfare Reform Act 2007(c) or the Welfare Reform Act 2012.

(15) This regulation is subject to regulation 11.

### **Extension of limitation periods because of a moratorium**

**8.**—(1) This regulation applies where—

- (a) a limitation time limit relates to a right of action in respect of a moratorium debt,
- (b) a moratorium in relation to the debt starts before the limitation time limit expires, and
- (c) if not extended by this regulation, the limitation time limit would expire before the end of the period of eight weeks beginning with the day on which the moratorium ends.

(2) For the purposes of bringing an action in respect of a moratorium debt, the limitation time limit expires instead at the end of the period of eight weeks beginning with the day on which the moratorium ends.

(3) Where more than one limitation time limit applies in relation to a right of action in respect of a moratorium debt, the extension by paragraph (2) of one of those time limits does not affect the others.

(4) In this regulation, "limitation time limit" means any time limit applicable, whether under the Limitation Act 1980(d) or any other enactment, to the bringing of an action.

### **Extension of other deadlines because of a moratorium**

**9.**—(1) This regulation applies where—

- (a) an enforcement time limit relates to the taking of enforcement action in respect of a moratorium debt by a creditor or an agent acting by or on behalf of a creditor,
- (b) a moratorium in relation to the debt starts before the enforcement time limit expires, and
- (c) if not extended by this regulation, the enforcement time limit would expire before the end of the period of eight weeks beginning with the day on which the moratorium ends.

(2) For the purposes of taking enforcement action in respect of the debt, the enforcement time limit expires instead at the end of the period of eight weeks beginning with the day on which the moratorium ends.

(3) In this regulation, "enforcement time limit" means a time limit—

- (a) by which a creditor or (as the case may be) an agent is legally obliged to take enforcement action in respect of a moratorium debt (or would be so obliged but for the existence of the moratorium in relation to the debt), and
- (b) which is not a limitation time limit (within the meaning of regulation 8) relating to a right of action in respect of the debt.

### **Existing legal proceedings at the start of a moratorium**

**10.**—(1) If at the start of a moratorium a creditor to whom a moratorium debt is owed has a bankruptcy petition or any other action or other proceeding in any court or tribunal pending in

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(a) S.I. 2013/380. Regulation 60 was amended by S.I. 2017/725, Schedule 5(1), paragraph 8(b) subject to transitional provisions in regulations 19, 19A and 20 of that instrument.

(b) 1995 c. 18.

(c) 2007 c. 5.

(d) 1980 c. 58.

relation to a moratorium debt, then the creditor must notify the court or tribunal of the moratorium.

(2) After a court or tribunal has received a notification referred to in paragraph (1) or is otherwise made aware of a moratorium—

- (a) any bankruptcy petition in relation to a moratorium debt must be stayed by the court until the moratorium ends or is cancelled, and
- (b) the court or tribunal must deal with any other action or proceeding in relation to a moratorium debt in accordance with this regulation.

(3) Subject to paragraph (5), if at the start of a moratorium any action or proceeding that relates to a moratorium debt is pending in a court or tribunal then such action or proceeding may continue until the court or tribunal makes an order or judgment in conclusion of such action or proceeding.

(4) Where a debtor makes an admission before or during a moratorium in connection with an action or other proceeding relating to a moratorium debt, a creditor who is a party to the action or proceeding may enter judgment in that action or proceeding during the moratorium if they would otherwise be entitled to do so.

(5) Subject to paragraph (7), during a moratorium a court or tribunal must take all necessary steps to ensure that any action or proceeding to enforce a court order or judgment concerning a moratorium debt does not progress during the moratorium period.

(6) For the purpose of paragraph (5), the progression of an action or proceeding includes (but is not limited to)—

- (i) holding a hearing during a moratorium period,
- (ii) making or serving an order or warrant, writ of control, writ of execution or judgment summons, and
- (iii) instructing an enforcement agent to serve an order, warrant, writ of control, writ of execution or judgment summons.

(7) This regulation does not prevent a court or tribunal from sending notices or correspondence to a debtor in relation to an action or proceeding.

(8) This regulation is subject to regulation 7(2)(b).

### **Contact between creditor or agent and debtor during a moratorium**

**11.**—(1) During a moratorium period neither a creditor nor the creditor's agent must contact a debtor in relation to the enforcement of a moratorium debt, including to demand payment or as a precursor to starting any legal proceedings against the debtor in connection with the moratorium debt, save as provided for in paragraph (2).

(2) This regulation does not prevent a creditor or an agent during a moratorium period from contacting or engaging with—

- (a) a debtor's debt advice provider regarding a moratorium debt or a debt solution in respect of the debtor,
- (b) a debtor—
  - (i) for purposes unrelated to a moratorium debt including in relation to ongoing liabilities or non-eligible debt,
  - (ii) at the debtor's request regarding a moratorium debt or a debt solution,
  - (iii) in response to a query or complaint raised by the debtor,
  - (iv) in relation to any action or legal proceedings in a court or tribunal permitted under regulation 10, or
  - (v) if the creditor or agent is otherwise required to do so under—

- (aa) the Consumer Credit Act 1974<sup>(a)</sup>, or
- (bb) any rules made under Part 9A of FSMA<sup>(b)</sup>.

### **Agent appointed by creditor**

**12.**—(1) A creditor who has appointed an agent to act on their behalf in relation to a moratorium debt and who receives a notification under these Regulations must notify the agent of the moratorium and its effect.

(2) Subject to paragraph (3), any creditor who fails to notify their agent in accordance with paragraph (1), or fails to do so as soon as reasonably practicable, will be responsible for any losses incurred by a debtor or the agent as a result of the creditor's failure.

(3) If an agent of a creditor receives a notification of a moratorium under these Regulations, the creditor will not be liable for any losses incurred by the agent that the agent could have avoided after the earliest of the date on which the agent actually receives, or the agent is deemed to have received, the notification.

(4) During a moratorium period, an enforcement agent appointed in relation to a moratorium debt who is notified of a moratorium or is otherwise aware that a moratorium is in place in relation to a debtor must not in relation to any moratorium debt—

- (a) give notice to the debtor under paragraph 7 of Schedule 12 to the Tribunals, Courts and Enforcement Act 2007,
- (b) visit the debtor's place of residence or business for the purpose of taking control of goods,
- (c) take control of goods,
- (d) sell goods belonging to the debtor unless the enforcement agent took possession of the goods prior to the start of the moratorium, or
- (e) require the debtor to pay fees, penalties or charges that accrue during a moratorium period relating to the storage of goods seized before the start of the moratorium.

(5) After the end of a moratorium period, an enforcement agent is not entitled to require a debtor to pay the fees, penalties or charges referred to in paragraph (4)(e) that accrued during the moratorium period.

(6) For the purpose of these Regulations, "agent" includes—

- (a) an enforcement agent,
- (b) a solicitor, or
- (c) a person appointed to collect a moratorium debt on behalf of a creditor.

(7) In this regulation "take control of goods" is to be construed in accordance with paragraph 13(1) of Schedule 12 to the Tribunals, Courts and Enforcement Act 2007.

### **Meaning of creditor by assignment**

**13.**—(1) In these Regulations references to a creditor as a person to whom a qualifying debt is owed by a debtor include a reference to any person who, by assignment or operation of law, before or after the date of the application for a moratorium has—

- (a) assumed or has the right to exercise the rights and duties of the creditor, or
- (b) to whom the right to claim the whole or any part of the debt has passed,

(a "creditor by assignment").

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(a) 1974 c. 39.

(b) 2000 c. 8. Section 137A was substituted by section 24 of the Financial Services Act 2012 (c. 21), section 24(1) and amended by S.I. 2018/1115, regulation 7(6).

(2) In these Regulations, “assignment”, in relation to Scotland, means assignment and “assigned” shall be construed accordingly.

#### **Creditor search for additional debt**

**14.**—(1) A creditor who receives a notification of the start of a moratorium under these Regulations must as soon as reasonably practicable undertake a reasonable search of their records to identify—

- (a) debt owed to the creditor by the debtor to whom the moratorium relates, and
- (b) any creditor by assignment.

(2) Where a creditor search identifies a debt owed by the debtor that was not included in the notification referred to in paragraph (1), the creditor must provide details of the debt to the debtor’s debt advice provider.

(3) Where a creditor search identifies a creditor by assignment, the creditor must—

- (a) notify the creditor by assignment of the moratorium, and
- (b) provide contact details of the creditor by assignment to the debtor’s debt advice provider.

(4) Any creditor who fails to comply with paragraph (2) or (3) as soon as reasonably practicable will be liable for any losses caused to the debtor or (as the case may be) the creditor by assignment as a result.

(5) A debt advice provider who receives details of a debt from a creditor in accordance with paragraph (2) must take the relevant steps specified in regulation 15.

(6) Where a debt advice provider receives contact details of a creditor by assignment in accordance with paragraph (3)(b) the debt advice provider must, by the end of the following business day, provide the contact details to the Secretary of State.

#### **Application of moratorium to additional debt**

**15.**—(1) This regulation applies where a debt advice provider has initiated a moratorium under these Regulations and subsequently—

- (a) receives details under regulation 14(2) of a debt not specified as a moratorium debt in a notification from the Secretary of State referred to in regulation 14(1), or
- (b) otherwise becomes aware of a debt that is owed by a debtor in relation to whom a moratorium is in place but which was not included in the information provided to the Secretary of State under regulations 25(1)(b) or (c) or 31(1)(b) or (d),

(an “additional debt”).

(2) Where this regulation applies, a debt advice provider must consider whether an additional debt is a qualifying debt.

(3) Subject to paragraph (4), if a debt advice provider considers that an additional debt is a qualifying debt, the debt advice provider must provide to the Secretary of State details of the additional debt, including contact details of the creditor to whom the debt is owed.

(4) For a breathing space moratorium, if a debt advice provider receives details, or becomes aware, of an additional debt after the period of 45 days beginning with the day on which a moratorium started, the debt advice provider may provide to the Secretary of State the information required under paragraph (3) in relation to the additional debt if the debt advice provider considers it appropriate for the moratorium to apply in respect of the additional debt.

(5) Where the Secretary of State receives information under paragraphs (3) or (4), the Secretary of State must, by the end of the following business day, provide a notification of the moratorium to those creditors whose contact details have been provided to the Secretary of State in accordance with those paragraphs.

(6) Paragraph (5) is subject to regulation 38.

(7) A moratorium has the effect specified in regulation 7 in relation to an additional debt from the earliest of the date that the creditor to whom the additional debt is owed—

- (a) received a notification of the moratorium under paragraph (5), or
- (b) is deemed under regulation 37(4) to receive the notification under paragraph (5).

(8) This regulation does not affect the date on which a moratorium starts or ends under these Regulations.

### **Applicant and debtor obligations**

**16.**—(1) Any person who makes an application for a moratorium under these Regulations must—

- (a) take reasonable care to provide accurate information to the debt advice provider, and
- (b) not deliberately withhold relevant information from the application.

(2) During a breathing space moratorium a debtor must—

- (a) inform their debt advice provider if there is any material change in the debtor's circumstances or financial position,
- (b) make any payment due in relation to an ongoing liability as it falls due to be paid during the moratorium period,
- (c) not obtain additional credit, either alone or jointly with any other person, that at any one point in time collectively exceeds £500, and
- (d) engage with the debt advice provider in such a way as the debt advice provider considers to be appropriate.

(3) The reference in paragraph (2)(c) to the debtor obtaining additional credit includes where goods are bailed to a debtor under a hire-purchase agreement or agreed to be sold to the debtor under a conditional sale agreement.

### **Creditor's request for review of a moratorium**

**17.**—(1) Subject to paragraph (4), a creditor who receives notification of a moratorium under these Regulations may request that the debt advice provider who initiated the moratorium or (as the case may be) the debt advice provider to whom the debtor has been referred since the start of the moratorium reviews the moratorium to determine whether it should continue or be cancelled in respect of some or all of the moratorium debts on one or both of the following grounds, namely that—

- (a) the moratorium unfairly prejudices the interests of the creditor, or
- (b) there has been some material irregularity in relation to any of the matters specified in paragraph (2).

(2) The matters in relation to which a creditor may request a review on the ground of material irregularity are that—

- (a) the debtor did not meet the relevant eligibility criteria when the application for the moratorium was made,
- (b) a moratorium debt is not a qualifying debt, or
- (c) the debtor has sufficient funds to discharge or liquidate their debt as it falls due.

(3) A request under paragraph (1) must be made within the period of 20 days beginning with the day on which the moratorium started.

(4) Where an additional debt is included in a moratorium in accordance with regulation 15, the creditor to whom the additional debt is owed may request a review of the moratorium in relation to the additional debt in accordance with this regulation.

(5) A request under paragraph (4) must be made within the period of 20 days beginning with the day on which the moratorium took effect in relation to the additional debt under regulation 15(7).

- (6) Any request made under this regulation must—
- (a) be made in writing to the debtor's debt advice provider, and
  - (b) contain the following—
    - (i) a statement of the ground or grounds on which the review is requested, and
    - (ii) evidence which supports the statement.

### **Review and cancellation of a moratorium as a result of a creditor request**

**18.**—(1) Having received a request for a review in accordance with regulation 17, a debt advice provider must conduct the review and carry out the steps in paragraph (4) before the end of the period of 35 days beginning with—

- (a) the day on which the moratorium started, or
- (b) in respect of an additional debt, the day on which the moratorium took effect in relation to the additional debt under regulation 15(7).

(2) Subject to paragraph (3), having carried out a review in response to a request from a creditor, a debt advice provider must cancel a moratorium in respect of some or all of the moratorium debts if the debt advice provider considers that the creditor has provided sufficient evidence that—

- (a) the moratorium unfairly prejudices the interests of the creditor, or
- (b) there has been some material irregularity in relation to any of the matters specified in regulation 17(2).

(3) A debt advice provider is not required to cancel a moratorium under paragraph (2) in respect of a moratorium debt if the debt advice provider considers that the debtor's personal circumstances would make the cancellation unfair or unreasonable.

(4) The steps referred to in paragraph (1) are that a debt advice provider must—

- (a) inform the creditor who requested a review of the outcome of the review, and
- (b) if the debt advice provider considers that a moratorium should be cancelled in respect of some or all of the moratorium debts—
  - (i) consult the debtor to whom the moratorium relates prior to doing so to the extent that the debt advice provider is able to do so, and
  - (ii) if, after acting in accordance with paragraph (i), the debt advice provider remains of the view that the moratorium should be cancelled in respect of some or all of the moratorium debts, notify the Secretary of State and the debtor of the cancellation.

(5) Where the Secretary of State receives a notification under paragraph (4)(b)(ii), the Secretary of State must, by the end of the following business day—

- (a) cause an entry to be made on the register, and
- (b) send a notification of the cancellation of the moratorium to each creditor and agent in respect of whom the cancellation takes effect.

(6) Paragraph (5) is subject to regulation 38.

(7) The cancellation takes effect on the day following the day on which the Secretary of State causes an entry to be made on the register in accordance with paragraph (5)(a).

(8) A notification sent to a creditor or agent in accordance with paragraph (5)(b) must—

- (a) state the reason for the cancellation, and
- (b) specify the date on which the cancellation takes effect.

(9) A review carried out under this regulation in respect of a breathing space moratorium may be carried out as part of a midway review.

### **Court application by creditor for cancellation of a moratorium**

**19.**—(1) If a debt advice provider has carried out a review of a moratorium following a request made by a creditor under regulation 17 and the moratorium has not been cancelled under regulation 18 in respect of some or all of the moratorium debts as a result, then the creditor may make an application to the county court on one or both of the grounds in regulation 17(1).

(2) An application under this regulation must be made before the end of the period of 50 days beginning with—

- (a) the day on which the moratorium started, or
- (b) in respect of an additional debt, the day on which the moratorium took effect in relation to the additional debt under regulation 15(7).

(3) Where on an application under this regulation the court is satisfied as to either of the grounds in regulation 17(1), it may do either or both of the following, namely—

- (a) cancel the moratorium in relation to a moratorium debt owed to the creditor who made the application to the court,
- (b) cancel the moratorium in respect of any other moratorium debt.

(4) Where a court has cancelled a moratorium in relation to a moratorium debt under paragraph (3), the court can require the debtor to pay any interest, fees or charges that accrued during the moratorium period in respect of the debt.

(5) In any case where a court cancels a moratorium in relation to a moratorium debt under paragraph (3) or requires a debtor to pay interest, fees or charges under paragraph (4), the court—

- (a) may give such supplemental directions as it thinks fit, and
- (b) must notify the creditor, the debtor and the Secretary of State that the moratorium has been cancelled in relation to the moratorium debt.

(6) Where the Secretary of State receives a notification under paragraph (5)(b), the Secretary of State must, by the end of the following business day—

- (a) cause an entry to be made on the register, and
- (b) send a notification of the cancellation of the moratorium to each creditor and agent in respect of whom the cancellation takes effect.

(7) Where a court cancels a moratorium under paragraph (3) the cancellation takes effect on the day following the day on which the Secretary of State causes an entry to be made on the register in accordance with paragraph (6)(a).

### **Provision of updated information to the Secretary of State to correct mistakes and inaccuracies**

**20.**—(1) If a debt advice provider becomes aware that the information in paragraph (2) contains a mistake or inaccuracy the debt advice provider must provide updated information to the Secretary of State.

(2) A debt advice provider must provide updated information to the Secretary of State in accordance with paragraph (1) in relation to information—

- (a) provided by a debt advice provider to the Secretary of State in accordance with these Regulations, or
- (b) on the register.

(3) Where the Secretary of State receives updated information from a debt advice provider in accordance with paragraph (1), the Secretary of State must, by the end of the following business day—

- (a) cause an entry to be made on the register to reflect the updated information, and
- (b) send a notification to any relevant creditor and agent.

(4) The obligation to send a notification to a creditor and agent under paragraph (3)(b) only applies in relation to updated information concerning—



- (a) a debtor's name, date of birth and usual residential address, and
- (b) the trading name or names and address of any business carried on by the debtor.

### **Death of debtor during a moratorium period**

**21.**—(1) Where a debtor dies during a moratorium period, the moratorium ends on the day after the day on which the debtor died.

(2) A debt advice provider must, as soon as reasonably practicable after being informed or becoming aware of the death of the debtor, notify the Secretary of State of the death.

(3) Where the Secretary of State receives a notification under paragraph (2), the Secretary of State must, by the end of the following business day—

- (a) cause an entry to be made on the register, and
- (b) send a notification of the end of the moratorium to each creditor and agent who received notification of the moratorium under these Regulations.

(4) Paragraph (3) is subject to regulation 38.

(5) A notification sent to a creditor or agent in accordance with paragraph (3)(b) must—

- (a) specify the date on which the moratorium ended, and
- (b) state the reason for the end of the moratorium.

### **Disclosure of information**

**22.**—(1) This regulation applies to a duty or power to disclose or use information where the duty or power is imposed or conferred by or under these Regulations.

(2) A duty or power to which this regulation applies does not operate to require or authorise the disclosure or use of information which would contravene the data protection legislation (but the duty or power is to be taken into account in determining whether the disclosure or use would contravene that legislation).

(3) In this regulation, “data protection legislation” has the meaning given in section 3(9) of the Data Protection Act 2018(a).

## **PART 2**

### **Breathing space moratorium**

#### **Application for a breathing space moratorium**

**23.**—(1) A debtor may apply to a debt advice provider for a breathing space moratorium.

(2) An application may not be made unless the debtor has first obtained advice, whether in person, over the telephone or by electronic means.

(3) The application must be made to the debt advice provider who has provided the advice referred to in paragraph (2).

(4) The application must include the following information—

- (a) the debtor's full name, date of birth and usual residential address, and
- (b) the trading name or names and address of any business carried on by the debtor.

(5) The application must include the following information to the extent that the information is known by the debtor and relevant—

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(a) 2018 c. 12. Section 3(9) is amended by S.I. 2019/419, Schedule 2, paragraph 4(3) but that amendment is not yet in force.

- (a) details of the debts to which the debtor is subject at the date of the application and contact details of the creditor to whom each debt is owed, and
- (b) details of any enforcement agent or other agent instructed by a creditor for the purpose of collection or enforcement of the debt including the agent's contact details.

(6) An application to a debt advice provider under this regulation may include an application for non-disclosure of the debtor's usual residential address under regulation 38.

(7) In paragraph (2) "advice" means advice as to the suitability, conditions and consequences of a breathing space moratorium for the debtor.

### **Debtor eligibility for a breathing space moratorium and debt advice provider obligations**

**24.**—(1) A debt advice provider must consider any application for a breathing space moratorium made to them by a debtor.

(2) Having considered the application, the debt advice provider must initiate a breathing space moratorium in relation to the debtor if the debt advice provider considers that—

- (a) the debtor meets the eligibility criteria in paragraph (3),
- (b) the conditions in paragraph (4) are met, and
- (c) the debts to be included in the moratorium are qualifying debts.

(3) The eligibility criteria referred to in paragraph (2)(a) are that, on the date of the application for a breathing space moratorium, the debtor—

- (a) is an individual,
- (b) owes a qualifying debt to a creditor,
- (c) is domiciled or ordinarily resident in England or Wales,
- (d) is not subject to a debt relief order,
- (e) is not subject to an interim order or individual voluntary arrangement,
- (f) is not an undischarged bankrupt,
- (g) is not subject to another breathing space moratorium and, if they have previously been subject to a breathing space moratorium, that moratorium ended more than 12 months before the date of the application, and
- (h) is not subject to a mental health crisis moratorium.

(4) The conditions referred to in paragraph (2)(b) are that, in light of the information provided by the debtor under regulation 23 and any other information obtained by the debt advice provider—

- (a) the debtor is unable, or is unlikely to be able, to repay some or all of their debt as it falls due, and
- (b) a breathing space moratorium would be appropriate.

(5) For the purpose of paragraph (4)(b), when considering whether a breathing space moratorium is appropriate the debt advice provider—

- (a) must consider whether—
  - (i) the debtor has sufficient funds or income to discharge or liquidate their debt as it falls due,
  - (ii) it would benefit the debtor to enter into a debt solution,
  - (iii) the debtor may be eligible to enter into a debt solution during a moratorium or as soon as reasonably practicable after the moratorium ends, and
  - (iv) the moratorium period is necessary in order for the debt advice provider to assess which debt solution would be appropriate for the debtor, to advise the debtor on which debt solution would be appropriate or for a debt solution to be put in place, and

- (b) may have regard to any other factor that the debt advice provider considers relevant, including but not limited to whether—
  - (i) it is necessary for the debtor to enter into a debt solution in order to discharge or liquidate their debt,
  - (ii) it is necessary for the debtor to enter into a debt solution without delay and the debtor is in a position to do so, or
  - (iii) the debtor is already subject to an appropriate debt solution.

### **Initiation of breathing space moratorium**

**25.**—(1) In order to initiate a breathing space moratorium a debt advice provider must provide to the Secretary of State—

- (a) confirmation that—
  - (i) the debtor meets the eligibility criteria in regulation 24(3), and
  - (ii) the conditions in regulation 24(4) are met,
- (b) the information provided by the debtor under regulation 23(4) and (5) to the extent that it relates to the debtor or qualifying debt, and
- (c) information identified by the debt advice provider about any other qualifying debt.

(2) Where the Secretary of State receives the confirmation and information referred to in paragraph (1), the Secretary of State must, by the end of the following business day—

- (a) cause an entry to be made on the register, and
- (b) send a notification of the start of the breathing space moratorium to those creditors and agents whose contact details have been provided to the Secretary of State in accordance with paragraph (1)(b) and (c).

(3) Paragraph (2) is subject to regulation 38.

### **Duration of breathing space moratorium**

**26.**—(1) A breathing space moratorium starts on the day following the day on which the Secretary of State causes an entry to be made on the register in accordance with regulation 25(2)(a).

(2) A moratorium continues for 60 days beginning with the date on which it started in accordance with paragraph (1) unless—

- (a) it ends in accordance with regulation 21 as a result of the death of the debtor, or
- (b) it is cancelled in accordance with regulations 18, 19 or 27.

(3) Unless a moratorium ends as a result of the death of the debtor or is cancelled, on the day that a moratorium ends in accordance with paragraph (2) the Secretary of State must—

- (a) cause an entry to be made on the register, and
- (b) send notification that the moratorium has ended to each creditor and agent who received notification of the moratorium under these Regulations.

(4) Where a moratorium ends on a Saturday, Sunday or Bank Holiday, other than in circumstances where the debtor has died or the moratorium has been cancelled, the Secretary of State must send the notification required under paragraph (3)(b) on the next business day after the moratorium has ended.

(5) Paragraph (3) is subject to regulation 38.

### **Midway review and cancellation of breathing space moratorium**

**27.**—(1) A debt advice provider who initiated a moratorium or (as the case may be) the debt advice provider to whom a debtor has been referred since the start of the moratorium must review

the moratorium to determine whether it should continue or be cancelled in accordance with this regulation (a “midway review”).

(2) Subject to paragraph (3), a debt advice provider must complete a midway review before the end of the period of 35 days beginning with the day on which the moratorium started.

(3) A midway review must not be carried out in the period of 25 days beginning with the day on which the moratorium started.

(4) Where a creditor has requested a review of a moratorium under regulation 17, the debt advice provider may conduct the review as part of a midway review.

(5) Subject to paragraphs (6) and (7), having carried out a midway review, a debt advice provider must cancel a moratorium in respect of some or all of the moratorium debts if the debt advice provider considers that—

- (a) the debtor has failed to comply with any of the debtor’s obligations under regulation 16,
- (b) a debt solution has been put in place in respect of all the moratorium debts, or
- (c) the debt advice provider is unable to consult the debtor as required under paragraph (8)(a), including for reasons of the unavailability of the debtor.

(6) A debt advice provider is not required to cancel a moratorium in respect of a moratorium debt if the debtor’s personal circumstances would make the cancellation unfair or unreasonable.

(7) Where a debtor has failed to comply with the obligation in regulation 16(2)(b) to pay an ongoing liability, a debt advice provider is not required to cancel a moratorium in respect of a moratorium debt if the debtor does not have the financial means to pay the ongoing liability.

(8) If the debt advice provider considers it necessary to cancel a moratorium in respect of some or all of the moratorium debts, the debt advice provider must—

- (a) consult the debtor prior to doing so to the extent that the debt advice provider is able to do so, and
- (b) notify the Secretary of State and the debtor of the cancellation.

(9) Where the Secretary of State receives a notification under paragraph (8)(b), the Secretary of State must, by the end of the following business day—

- (a) cause an entry to be made on the register, and
- (b) send a notification of the cancellation of the moratorium to each creditor and agent in respect of whom the cancellation takes effect.

(10) Paragraph (9) is subject to regulation 38.

(11) The cancellation takes effect on the day following the day on which the Secretary of State causes an entry to be made on the register in accordance with paragraph (9)(a).

(12) A notification sent to a creditor or agent in accordance with paragraph (9)(b) must—

- (a) state the reason for the cancellation, and
- (b) specify the date on which the cancellation takes effect.

## PART 3

### Mental health crisis moratorium

#### Meaning of mental health crisis moratorium

**28.**—(1) A mental health crisis moratorium is a moratorium under this Part in respect of a debtor who is receiving mental health crisis treatment.

(2) In these Regulations, a debtor is receiving mental health crisis treatment when the debtor—

- (a) has been detained in hospital for assessment under sections 2 or 4 of the Mental Health Act 1983,
- (b) has been detained in hospital for treatment under section 3 of that Act,

- (c) has been removed to a place of safety by a police constable under sections 135 or 136 of that Act,
- (d) has been detained in hospital for assessment or treatment under sections 35, 36, 37, 38, 45A, 47 or 48 of that Act, or
- (e) is receiving any other crisis, emergency or acute care or treatment in hospital or in the community from a specialist mental health service in relation to a mental disorder of a serious nature.

(3) In this regulation “specialist mental health service” means a mental health service provided by a crisis home treatment team, a liaison mental health team, a community mental health team or any other specialist mental health crisis service.

### **Application for a mental health crisis moratorium**

**29.**—(1) Any of the following persons may submit an application to a debt advice provider for a mental health crisis moratorium in relation to a debtor—

- (a) the debtor,
- (b) the debtor’s carer,
- (c) an approved mental health professional,
- (d) a care co-ordinator appointed in respect of the debtor,
- (e) a mental health nurse,
- (f) a social worker,
- (g) an independent mental health advocate appointed in respect of the debtor for the purposes of arrangements made under sections 130A(1) or 130E(1) of the Mental Health Act 1983(a),
- (h) an independent mental capacity advocate appointed in respect of the debtor for the purposes of arrangements made under section 35(1) of the Mental Capacity Act 2005(b),
- (i) a relevant person’s representative,
- (j) an approved mental capacity professional approved under paragraph 39 of Schedule AA1 to the Mental Capacity Act 2005(c), or
- (k) an appropriate person as specified in paragraph 42(5) of Schedule AA1 to the Mental Capacity Act 2005(d).

(2) The application must include the following information—

- (a) sufficient information to identify the debtor, and
- (b) evidence from an approved mental health professional that the debtor is receiving mental health crisis treatment.

(3) For the purpose of paragraph (2)(b), evidence from an approved mental health professional must include the following—

- (a) sufficient information to identify the debtor,
- (b) the name and contact details of the approved mental health professional,
- (c) the name and contact details of the debtor’s nominated point of contact,

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(a) 1983 c. 20. Section 130A was inserted by the Mental Health Act 2007 (c. 12), section 30(2) and amended by the Mental Health Act (Wales) Measure 2010 (nawm 7), Schedule 1, paragraph 2 and the Health and Social Care Act 2012 (c. 7), section 43(1). Section 130E was inserted by the Mental Health Act (Wales) Measure 2010 (nawm 7), section 31.

(b) 2005 c. 9. Section 35(1) was amended by the Health and Social Care Act 2012 (c. 7), Schedule 5, paragraph 134(a) and the Mental Health Act 2007 (c. 12), Schedule 9, paragraph 3. Section 35(1) is also amended by the Mental Capacity (Amendment) Act 2019 (c. 18), Schedule 2(1), paragraph 3 but those amendments are not yet in force.

(c) 2005 c. 9. Schedule AA1 is inserted by the Mental Capacity (Amendment) Act 2019 (c. 18), Schedule 1 but that insertion is not yet in force.

(d) 2005 c. 9. Schedule AA1 is inserted by the Mental Capacity (Amendment) Act 2019 (c. 18), Schedule 1 but that insertion is not yet in force.

- (d) a declaration by the approved mental health professional that the debtor is receiving mental health crisis treatment, and
- (e) a signed statement by the approved mental health professional that the evidence is, to the best of their knowledge and belief, correct.

(4) In addition to the information specified in paragraph (2), the application may include the following information where it is known by the person submitting the application, is relevant and has not already been provided in accordance with paragraph (2)(a)—

- (a) the debtor’s full name, date of birth and usual residential address,
- (b) the trading name or names and address of any business carried on by the debtor,
- (c) details of the debts to which the debtor is subject at the date of the application and the contact details of the creditor to whom each debt is owed, and
- (d) details of any enforcement agent or other agent instructed by the creditor for the purpose of collection or enforcement of the debt including the agent’s contact details.

(5) The nominated point of contact referred to in paragraph (3)(c) may be the approved mental health professional who provided the evidence referred to in paragraph (2)(b).

(6) An application to a debt advice provider under this regulation may include an application for non-disclosure of the debtor’s usual residential address under regulation 38.

(7) In this regulation—

- (a) “adult” means a person aged 18 or over;
- (b) “carer” means an adult who—
  - (i) provides care for another adult, and
  - (ii) is in receipt of carer’s allowance or an award of universal credit of an amount under regulation 29 of the Universal Credit Regulations 2013(a);
- (c) “carer’s allowance” means an allowance paid to a person in accordance with section 70 of the Social Security Contributions and Benefits Act 1992;
- (d) “relevant person’s representative” means a person appointed in respect of the debtor in accordance with paragraph 137 of Schedule A1 to the Mental Capacity Act 2005(b) or that provision as it continues in force by virtue of any transitional or savings provisions made in connection with its repeal by the Mental Capacity (Amendment) Act 2019(c).

### **Debtor eligibility for a mental health crisis moratorium and debt advice provider obligations**

**30.**—(1) When considering an application for a mental health crisis moratorium made under regulation 29, a debt advice provider must—

- (a) assess whether the debts included in the application are qualifying debts, and
- (b) obtain information relevant to the financial standing of the debtor from at least one credit reference agency.

(2) Having considered an application for a mental health crisis moratorium, a debt advice provider must initiate a mental health crisis moratorium on behalf of a debtor if the debt advice provider considers that—

- (a) the debtor meets the eligibility criteria in paragraph (3),
- (b) the conditions in paragraph (4) are met, and
- (c) the debts to be included in the moratorium are qualifying debts.

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(a) S.I. 2013/376. Regulation 29 was amended by S.I. 2015/1754, regulation 13 and S.I. 2017/204, regulation 4(6) subject to transitional and savings provisions in Schedule 2(2) of that instrument.

(b) 2005 c. 9. Schedule A1 was inserted by the Mental Health Act 2007 (c. 12), Schedule 7, paragraph 1. Schedule A1 is also repealed by the Mental Capacity (Amendment) Act 2019 (c. 18), Schedule 2(1), paragraph 2(c) but that repeal is not yet in force.

(c) 2019 c. 18. This Act is not yet in force.

(3) The eligibility criteria referred to in paragraph (2)(a) are that the debtor—

- (a) is an individual,
- (b) owes a qualifying debt to a creditor,
- (c) is domiciled or ordinarily resident in England or Wales,
- (d) is not subject to a debt relief order,
- (e) is not subject to an interim order or individual voluntary arrangement,
- (f) is not an undischarged bankrupt, and
- (g) is not subject to a breathing space moratorium or a mental health crisis moratorium.

(4) The conditions referred to in paragraph (2)(b) are that, in light of the information provided in accordance with regulation 29(2) and (4) and any other information obtained by the debt advice provider—

- (a) the debtor is unable, or is unlikely to be able, to repay some or all of their debt as it falls due,
- (b) a mental health crisis moratorium would be appropriate, and
- (c) an approved mental health professional has provided evidence that the debtor is receiving mental health crisis treatment.

(5) For the purpose of paragraph (4)(b), when considering whether a mental health crisis moratorium is appropriate, the debt advice provider—

- (a) must consider whether the debtor has sufficient funds or income to discharge or liquidate their debt as it falls due, and
- (b) may have regard to any other factor that the debt advice provider considers relevant.

(6) In this regulation, “credit reference agency” means a person who carries on by way of business an activity of the kind specified by article 89B of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001.

### **Initiation of mental health crisis moratorium**

**31.**—(1) In order to initiate a mental health crisis moratorium a debt advice provider must provide to the Secretary of State—

- (a) confirmation that—
  - (i) the debtor meets the eligibility criteria in regulation 30(3), and
  - (ii) the conditions in regulation 30(4) are met,
- (b) the information provided in accordance with regulation 29(2)(a) and (4),
- (c) the name and contact details of the debtor’s nominated point of contact, and
- (d) information identified by the debt advice provider about any other qualifying debt.

(2) Where the Secretary of State receives the confirmation and information referred to in paragraph (1), the Secretary of State must, by the end of the following business day—

- (a) cause an entry to be made on the register, and
- (b) send a notification of the start of the mental health crisis moratorium to—
  - (i) the debtor’s nominated point of contact, and
  - (ii) those creditors and agents whose contact details have been provided to the Secretary of State in accordance with paragraph (1)(b) and (d).

(3) Paragraph (2) is subject to regulation 38.

### **Duration of mental health crisis moratorium**

**32.**—(1) A mental health crisis moratorium starts on the day following the day on which the Secretary of State causes an entry to be made on the register in accordance with regulation 31(2)(a).

(2) A mental health crisis moratorium ends on the earliest of—

- (a) the end of the period of 30 days beginning with the day on which the debtor stops receiving mental health crisis treatment,
- (b) the end of the period of 30 days beginning with the day on which a debt advice provider makes a request to the debtor's nominated point of contact in accordance with regulation 33 and during which period the debt advice provider does not receive a response,
- (c) the day on which cancellation of the mental health crisis moratorium takes effect under regulations 18, 19 or 34, or
- (d) the day on which it ends in accordance with regulation 21 as a result of the death of the debtor.

(3) Paragraph (4) applies where a debtor's nominated point of contact—

- (a) notifies the debtor's debt advice provider that the debtor has stopped receiving mental health crisis treatment, or
- (b) provides confirmation that the debtor has stopped receiving mental health crisis treatment in accordance with regulation 33.

(4) Where a debt advice provider receives a notification or confirmation under paragraph (3), the debt advice provider must, by the end of the following business day, notify the Secretary of State of the date on which the debtor stopped receiving mental health crisis treatment.

(5) Where a mental health crisis moratorium ends in accordance with paragraph (2)(b), the debt advice provider must, by the end of the following business day, notify the Secretary of State that the moratorium has ended.

(6) Where the Secretary of State receives a notification under paragraphs (4) or (5), the Secretary of State must, by the end of the following business day—

- (a) cause an entry to be made on the register, and
- (b) send a notification to each creditor and agent who received notification of a mental health crisis moratorium under this Part.

(7) Paragraph (6) is subject to regulation 38.

### **Request by a debt advice provider for information about a debtor's receipt of mental health crisis treatment**

**33.**—(1) Subject to paragraph (2), a debt advice provider must, before the end of the period of 30 days beginning with the day on which the moratorium started, request from a debtor's nominated point of contact—

- (a) confirmation of whether the debtor is still receiving mental health crisis treatment, and
- (b) if the debtor is no longer receiving mental health crisis treatment, confirmation of the date on which the treatment ended.

(2) The debt advice provider must not make the request to a nominated point of contact under paragraph (1) in the period of 20 days beginning with the day on which the moratorium started.

(3) Having made a request under paragraph (1) and subject to paragraph (4), a debt advice provider must then request from the nominated point of contact the confirmation specified in paragraph (1) every 20 to 30 days beginning with the day on which the last request was made.

(4) If a moratorium ends in accordance with regulation 32(2)(b) because a debt advice provider has not received a response to a request made under this regulation, then the debt advice provider is not required to make further requests under paragraph (3).



### **Cancellation of mental health crisis moratorium**

**34.**—(1) Subject to paragraph (2), a debt advice provider must cancel a mental health crisis moratorium if—

- (a) the debt advice provider considers that the evidence from an approved mental health professional referred to in regulation 29(2)(b) contains inaccurate, misleading or fraudulent information, or
- (b) the debtor requests that the debt advice provider cancels the moratorium.

(2) A debt advice provider is not required to cancel a mental health crisis moratorium if the debtor's personal circumstances would make the cancellation unfair or unreasonable.

(3) Paragraph (2) does not apply in circumstances where the debtor requests that the debt advice provider cancels the mental health crisis moratorium in accordance with paragraph (1).

(4) In order to cancel a mental health crisis moratorium, a debt advice provider must—

- (a) consult the debtor prior to doing so to the extent that the debt advice provider is able to do so, and
- (b) notify the Secretary of State and the debtor of the cancellation.

(5) Where the Secretary of State receives a notification under paragraph (4)(b), the Secretary of State must, by the end of the following business day—

- (a) cause an entry to be made on the register, and
- (b) send a notification of the cancellation of the moratorium to each creditor and agent in respect of whom the cancellation takes effect.

(6) Paragraph (5) is subject to regulation 38.

(7) The cancellation takes effect on the day following the day on which the Secretary of State causes an entry to be made on the register in accordance with paragraph (5)(a).

(8) A notification sent to a creditor or agent in accordance with paragraph (5)(b) must—

- (a) state the reason for the cancellation, and
- (b) specify the date on which the cancellation takes effect.

## **PART 4**

### **Debt respite scheme administration**

#### **Electronic system maintained by the Secretary of State**

**35.**—(1) The Secretary of State must maintain an electronic system for the purpose of—

- (a) giving and receiving communications and notifications in connection with moratoria, and
- (b) maintaining a register of matters relating to moratoria.

(2) The Secretary of State may send and receive communications in connection with moratoria by means of the electronic system where the Secretary of State considers it appropriate to do so.

(3) The following persons are entitled to information contained on the electronic system that concerns or is relevant to a debtor—

- (a) the Secretary of State,
- (b) the debt advice provider who initiated a moratorium on behalf of the debtor, and
- (c) the debt advice provider to whom the debtor has been referred since the start of the moratorium.

(4) The following persons are entitled to information contained on the register that concerns or is relevant to a debtor—

- (a) the debtor,

- (b) the Secretary of State,
- (c) any debt advice provider, and
- (d) those creditors who have received notification of a moratorium relating to the debtor under these Regulations.

(5) A creditor is not entitled to information contained on the register or otherwise held by the Secretary of State about—

- (a) any other creditor of the debtor,
- (b) any moratorium debt owed by the debtor to any other creditor, or
- (c) the debtor's usual residential address where regulation 38 applies.

(6) The Secretary of State must delete from the register all information concerning a moratorium where fifteen months have elapsed from the date on which the moratorium ended or was cancelled under these Regulations.

### **Information about a debtor held on the register**

**36.**—(1) The register maintained by the Secretary of State in accordance with regulation 35(1)(b) must include the following information relating to a moratorium—

- (a) information provided by a debt advice provider under these Regulations concerning—
  - (i) the identification details of the debtor to whom the moratorium relates, including the debtor's full name, date of birth and usual residential address,
  - (ii) the trading name or names and address of any business carried on by the debtor,
- (b) the date on which the moratorium started, and
- (c) where a moratorium has ended, the date on which the moratorium ended or was cancelled in accordance with these Regulations.

(2) This regulation is subject to regulation 38.

### **Notifications provided to and by the Secretary of State**

**37.**—(1) Any information provided by a debt advice provider to the Secretary of State under these Regulations must be given by means of the electronic system maintained by the Secretary of State in accordance with regulation 35(1).

(2) Any notification by the Secretary of State to a person under these Regulations must be given by one of the following methods—

- (a) transmitting it by means of electronic communication,
- (b) leaving it at the person's address, or
- (c) posting it to that address.

(3) Paragraphs (1) and (2) are subject to regulation 38.

(4) Unless the contrary is shown a notification will be deemed to have been received on the following days—

- (a) on the day the electronic communication was sent by the Secretary of State,
- (b) on the day that the notification was left at the person's address, or
- (c) at the end of the period of four business days beginning with the day on which the notification was posted by the Secretary of State.

(5) The Secretary of State may provide notification by means of electronic communication if the person to whom it has to be provided—

- (a) has indicated to the debt advice provider or the Secretary of State (and has not withdrawn the indication) that they are willing to receive notification by those means, and
- (b) has provided, to the debt advice provider or the Secretary of State for this purpose, an e-mail address or other electronic identification.

(6) An e-mail address or other electronic identification provided to the debt advice provider or the Secretary of State for receiving notifications is sufficient indication for the purpose of paragraph (5)(a).

(7) In this regulation “address” means the registered office, registered principle address or any address provided to the debt advice provider or the Secretary of State for receiving notifications.

### **Non-disclosure of a debtor’s usual residential address**

**38.**—(1) In the circumstances specified in this regulation, the Secretary of State must not include a debtor’s usual residential address—

- (a) in any entry made on the register under these Regulations relating to the debtor that is or would be available to creditors, or
- (b) in any notification sent to creditors or agents under these Regulations.

(2) A debtor, or the person applying for a moratorium on the debtor’s behalf, may make an application to a debt advice provider under this regulation for non-disclosure of the debtor’s usual residential address.

(3) An application for non-disclosure of a debtor’s usual residential address must contain—

- (a) a statement of the grounds on which the application is made,
- (b) evidence which supports the statement of the grounds on which the application is made.

(4) The grounds for non-disclosure of a debtor’s usual residential address are that disclosure of the debtor’s usual residential address might reasonably be expected to lead to violence against the debtor or against a person who normally resides with the debtor as a member of the debtor’s family.

(5) A debt advice provider must consider any application for non-disclosure of a debtor’s usual residential address and determine whether the address should be disclosed.

(6) Within 7 days beginning with the day on which a determination by a debt advice provider under paragraph (5) is made, the debt advice provider must notify the outcome of the determination to the debtor or the person who made an application for a moratorium on the debtor’s behalf.

(7) If a debt advice provider determines that the grounds specified in paragraph (4) apply, when providing information to the Secretary of State in accordance with these Regulations, the debt advice provider must notify the Secretary of State that the debtor’s usual residential address must not be included in—

- (a) any entry made on the register under these Regulations relating to the debtor that is or would be available to creditors, or
- (b) any notification sent to creditors or agents under these Regulations.

(8) Where an application under this regulation is unsuccessful, a notification under paragraph (6) must inform the debtor, or the person applying for a moratorium on the debtor’s behalf, of their right to appeal to the county court under paragraph (9).

(9) Where an application under this regulation is unsuccessful, a debtor, or the person applying for a moratorium on the debtor’s behalf, may appeal to the county court against the determination on the grounds specified in paragraph (4) before the end of the period of 28 days beginning with the day on which the debt advice provider notified the outcome of the determination under paragraph (6).

(10) Where an application is made to a debt advice provider under this regulation, the debt advice provider may not initiate a moratorium under these Regulations until the earliest of—

- (a) the day on which the debt advice provider determines that the address should not be disclosed,
- (b) where the application is unsuccessful but no appeal proceedings are brought under paragraph (9), the end of the period of 28 days beginning with the day on which the debt advice provider notified the outcome of the determination under paragraph (6), or

- (c) the conclusion of any appeal proceedings relating to the application under this regulation.

### **Electronic system malfunction**

**39.**—(1) In the event of any malfunction or error in the operation of the electronic system, the Secretary of State must inform debt advice providers that information, communications and notifications may be provided under these Regulations to the Secretary of State in such a form as the Secretary of State will specify.

(2) In the event of any malfunction or error in the operation of the electronic system, where the Secretary of State is required to send notifications under these Regulations, the Secretary of State is required to send the notifications as soon as is reasonably possible.

## **PART 5**

### **Supplemental**

#### **Review**

**40.**—(1) The Treasury must from time to time—

- (a) carry out a review of the regulatory provision contained in these Regulations, and
- (b) publish a report setting out the conclusions of the review.

(2) The first report must be published before 4 May 2026.

(3) Subsequent reports must be published at intervals not exceeding 5 years.

(4) Section 30(4) of the Small Business, Enterprise and Employment Act 2015(a) requires that a report published under this regulation 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,
- (c) assess whether those objectives remain appropriate, and
- (d) if those objectives remain appropriate, assess the extent to which they could be achieved in another way which involves less onerous regulatory provision.

(5) In this regulation, “regulatory provision” has the same meaning as in sections 28 to 32 of the Small Business, Enterprise and Employment Act 2015 (see section 32 of that Act).

	<i>Name</i>
	<i>Name</i>
Date	Two of the Lords Commissioners of Her Majesty’s Treasury

#### **EXPLANATORY NOTE**

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

These Regulations establish a debt respite scheme.

These Regulations make provision for two types of moratorium available to eligible debtors domiciled or ordinarily resident in England or Wales, namely a breathing space moratorium and a mental health crisis moratorium.

Part 1 makes provision relevant to any moratorium under these Regulations, including the effect of a moratorium and the rights of creditors to request a review of a moratorium and to apply to the county court to cancel the moratorium.

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(a) 2015 c. 26.

Parts 2 and 3 make provision concerning a breathing space moratorium and a mental health crisis moratorium respectively.

Part 4 provides for the administration of the debt respite scheme by the Secretary of State.

A full impact assessment of the effect that this instrument will have on the costs of business, the voluntary sector and the public sector is available from HM Treasury, 1 Horse Guards Road, London SW1A 2HQ and is published alongside this instrument at [www.legislation.gov.uk](http://www.legislation.gov.uk).

**HM Treasury (2019) - Breathing space impact assessment.**

**Explanatory Memorandum to the Debt Respite Scheme (Breathing Space Moratorium and Mental Health Crisis Moratorium) (England and Wales) Regulations 2020**

This Explanatory Memorandum has been prepared by HM Treasury and is laid before the Senedd Cymru in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1

## HM Treasury (2019) - Breathing space impact assessment.

### PART 1

#### Description

This instrument establishes the first part of a debt respite scheme for people in problem debt. This part gives eligible people in problem debt who receive professional debt advice access to a 60-day period in which interest, fees and charges are frozen and enforcement action is paused. This moratorium period is often referred to as 'Breathing Space'. For people receiving mental health crisis treatment, this instrument establishes an alternate route by which the protections of a moratorium may be accessed and ensures that the protections are in place for the duration of their crisis treatment.

The second part of the scheme is the Statutory Debt Repayment Plan (SDRP), a statutory agreement that will enable a person in problem debt to repay their debts to a manageable timetable, with legal protections from creditor action for the duration of their plan. As set out in the June 2019 consultation response the Government intends to implement the SDRP over a longer timeframe and has not yet set a specific implementation date for this part of the scheme.

#### **2. Matters of special interest to the Legislation, Justice and Constitution Committee**

This is the first use of the power provided by sections 6 and 7 of the Financial Guidance and Claims Act 2018.

This instrument will apply to qualifying debts and will prevent creditors from taking enforcement action and will prevent debtors being liable for certain interest, fees and charges in relation to their qualifying debts during the moratorium period.

Various parts of this instrument therefore have retrospective effect. The authority to make provisions with retrospective effect is contained in section 7(5)(d) of the Financial Guidance and Claims Act 2018.

*Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)*

## **HM Treasury (2019) - Breathing space impact assessment.**

This entire instrument applies to England and Wales only because the instrument has effect in England and Wales only (see regulation 1(8)) and applies in respect of debtors ordinarily resident or domiciled in England and Wales (see regulation 1(9)). 2 3.5. The instrument has effects outside of England and Wales which the Department considers to be minor or consequential. This is because the instrument could apply in respect of debts incurred or creditors based outside this jurisdiction.

In the view of the Department, for the purposes of Standing Order No. 83P of the Standing Orders of the House of Commons relating to Public Business, the subject matter of this entire instrument would be within the devolved legislative competence of the Northern Ireland Assembly if equivalent provision in relation to Northern Ireland were included in an Act of the Northern Ireland Assembly as a transferred matter and the Scottish Parliament if equivalent provision in relation to Scotland were included in an Act of the Scottish Parliament.

The Department has reached this view because it considers that the purpose of the instrument is the establishment of a debt respite scheme, which is within the devolved legislative competence of the Northern Ireland Assembly and the Scottish Parliament. In relation to Northern Ireland, the instrument does not deal with an excepted matter in Schedule 2 to the Northern Ireland Act 1998 and is not otherwise outside the legislative competence of the Northern Ireland Assembly (see section 6 of that Act). In relation to Scotland, the instrument does not relate to a reserved matter in Schedule 5 to the Scotland Act 1998 and is not otherwise outside the legislative competence of the Scottish Parliament (see section 29 of that Act).

### **Extent and Territorial Application**

The territorial extent of this instrument is England and Wales.

The territorial application of this instrument is England and Wales. 5.

### **European Convention on Human Rights**

4.1 The UK Economic Secretary to the UK Treasury has made the following statement regarding Human Rights:

“In my view the provisions of The Debt Respite Scheme (Breathing Space Moratorium and Mental Health Crisis Moratorium) (England and Wales) Regulations 2020 are compatible with the Convention rights.”



## HM Treasury (2019) - Breathing space impact assessment.

### Legislative background

This is the first use of the power provided by section 7(2) of the Financial Guidance and Claims Act 2018 for the establishment of a debt respite scheme. This instrument is being made to establish the first part of that scheme: a Breathing Space moratorium on enforcement action and the charging of interest and fees for eligible individuals. This instrument also provides for a moratorium in respect of individuals receiving mental health crisis treatment.

In an Oral Statement on the scheme delivered in June 2019, the Economic Secretary to the Treasury committed to implementing the moratorium in early 2021.<sup>1</sup> These regulations confirm that the scheme will start on 4 May 2021.

### Purpose and intended effect of the legislation

What is the problem under consideration?

Sections 6 and 7 of the Financial Guidance and Claims Act 2018 make provision for a debt respite scheme by secondary regulations. This instrument represents the first part of that scheme through the establishment of two types of moratorium on debt-related enforcement action and interest, fees, and charges.

People who need debt advice often do not seek to access it. Those who do receive advice often experience sub-optimal outcomes due to the circumstances in which they seek advice. Advice is often sought at a late stage, when debtors are at crisis point.<sup>2</sup> They are often driven to receive advice by creditor action, such as starting court proceedings or taking enforcement action. This creditor action compounds the stress and anxiety that problem debt causes.<sup>3</sup> Under this level of stress, debtors often take the quickest rather than the most appropriate solution, contributing to sub-optimal debt advice outcomes.

#### ***What is the policy objective and how will it be achieved?***

The policy objective is to incentivise more people in problem debt to access professional debt advice, to do so sooner, and to enable them to enter the debt solution that is most appropriate in view of their individual circumstances.

These protections are accessible only via professional debt advice providers (i.e. an authorised person who has Part 4A permission to carry on any regulated activity of the kind specified in article 39E (debt-counselling) of the

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<sup>1</sup> Official Report, 19 June 2019, Vol. 662, c. 246. Available at: <https://hansard.parliament.uk/Commons/2019-06-19/debates/252B8ABA-F40D-4848-8D59-DFB0734A78AC/BreathingSpaceScheme>

<sup>2</sup> Christians Against Poverty (2019) *Client Report: Changing Perceptions*. Available at: <https://capuk.org/fileservers/downloads/general/cap-clientreport-2019-dp.pdf>

<sup>3</sup> Money Advice Service (2017) *Better debt advice: from a moment of crisis to a lifetime of resilience*. Available at: <https://www.fincap.org.uk/en/insights/better-debt-advice-from-a-moment-of-crisis-to-a-lifetime-of-resilience>

## HM Treasury (2019) - Breathing space impact assessment.

Financial Services and Markets Act 2000 (Regulated Activities) Order 2001<sup>4</sup>, or by exempt persons in relation to that activity (such as a local authority). Any debt adviser meeting this description could offer a moratorium, via an online, telephone or face-to-face service, provided the debtor meets the eligibility criteria for the scheme. This will encourage more people to seek debt advice and to do so at an appropriate time.

The debt adviser cannot charge a fee for this service or for any service in connection with a moratorium.

A moratorium under the scheme will freeze charges and certain interest as well as pause enforcement action. This will give debtors time to engage fully with professional advice by reducing the stress caused by spiralling debt and impending enforcement action. Enhancing the engagement between debtors and their advisers will promote more positive debt advice outcomes, including by increasing creditor recoveries.

All of a person's debts can be included in a breathing space, unless it is a non-eligible debt. Non-eligible debts are set out in regulation 5(4). Arrears owed to central and local government, including council tax arrears, personal tax debts and benefit overpayments are generally included in a moratorium. 2 Christians Against Poverty (2019) Client Report: Changing Perceptions. Available at: <https://capuk.org/filesserver/downloads/general/cap-clientreport-2019-dp.pdf> 3 Money Advice Service (2017) Better debt advice: from a moment of crisis to a lifetime of resilience Available at: <https://www.fincap.org.uk/en/insights/better-debt-advice-from-a-moment-of-crisis-to-a-lifetime-of-resilience> 4 S.I. 2001/544. 4

Some specific public sector debts are excluded by regulation 5(4), mirroring the position in bankruptcy (e.g. debts incurred as a result of fraudulent behaviour; fines imposed by a court, including criminal fines; confiscation orders; child maintenance payments and debts that arise after an order made in family proceedings; social fund loans; student loans and personal injury liabilities).

Universal Credit advances and Universal Credit third party deductions are currently excluded, but will be included in the protections on a phased basis as early as possible following the start of the policy in early 2021, to ensure that IT changes required align with other requirements of the wider Universal Credit programme.

A person's business debts are not eligible if the debtor's business is registered for VAT, or if they are in partnership with anyone else and the debt they have accrued relates solely to the business. There is no limit on the amount of any individual debt, or total debts that can be protected in a moratorium.

A moratorium is not a payment holiday. The person should keep paying their debts during a moratorium. In particular, a debtor is required to keep paying certain ongoing liabilities (defined in regulation 2, including mortgage, rent, insurance, taxes and utility bills) as they fall due. If they do not keep up paying on these specific ongoing liabilities, and the debtor has the means to do so, the debt adviser must cancel their moratorium at the midway review unless the

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<sup>4</sup> S.I. 2001/544.

## **HM Treasury (2019) - Breathing space impact assessment.**

debtor's personal circumstances would make cancellation unfair or unreasonable.

Campaigners originally requested a six-week moratorium, which the Government proposed to extend to 60 days in its 2018 consultation. As set out in the 2019 consultation response, almost all consultation respondents welcomed the extension of the length of breathing space to 60 days, suggesting that this was a realistic length of time to enable an individual to seek debt advice and enter a sustainable debt solution.

Breathing space cannot be extended, as the fixed period provides certainty to creditors. The only exception to this is in the mental health crisis moratorium (see paragraph 7.14 below.)

### ***Mental health crisis moratorium***

People receiving mental health crisis treatment will receive the protections of the scheme but through different entry mechanism. This reflects the fact that while this group could benefit from the protections in the standard scheme, they may face challenges in meeting the requirement to engage with debt advice in order to meet the eligibility criteria. There is no difference in the types of debts that are eligible for a mental health crisis moratorium.

7.15 This group will be able to enter a mental health crisis moratorium without engaging with debt advice. Approved Mental Health Professionals (AMHPs) will be the professional group able to produce an assessment that an individual is receiving mental health crisis treatment. AMHPs may themselves provide this evidence to a debt adviser, or they may do so following a request by the debtor or someone else involved in the debtor's care. This assessment will be the evidence that debt advisers then use when determining an individual's eligibility for a mental health crisis moratorium and enter them into the protections of the scheme.

The policy protections will apply for the duration of their crisis treatment and then for a further 30 days. If eligible, debtors may then have access to the 60-day Breathing Space moratorium accessed via professional debt advice. As mental health problems often recur, there will be no limit on the number of times that people receiving mental health crisis treatment may enter a moratorium via this mechanism, whereas debtors in the 60-day Breathing Space moratorium will have access once in each 12-month period.

This instrument also provides for the administration of the scheme by the Secretary of State. The Secretary of State's functions will be carried out by the Insolvency Service, which is an executive agency, sponsored by the Department for Business, Energy & Industrial Strategy. The Insolvency Service will operate an electronic system to administer the scheme, including a private register of persons in moratoria. Regulation 35(4) sets out entitlements to information held on the register, and regulation 35(5) limits the information a creditor may access about debtors

## European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

This instrument does not relate to withdrawal from the European Union. 9.

### Consolidation

This regulation will not consolidate other instruments.

### Consultation

The UK Government has issued two consultations on the debt respite scheme. First, a call for evidence ran between October 2017 and January 2018. The UK Government's response was published in June 2018. Over 80 unique responses were received.<sup>5</sup> Most respondents were supportive. Many respondents suggested that individuals in problem debt should have to seek debt advice before entering a Breathing Space, although some noted that there were certain, unique cases where this could be inappropriate, with individuals experiencing mental health crises highlighted as an example.

The UK Government consulted on a policy proposal informed by responses to this call for evidence between October 2018 and January 2019, publishing its response in June 2019. Over 130 responses were received. Respondents included creditors, trade bodies, local authorities, charities, debt advice providers, credit reference agencies, utility companies, telecoms providers, and others.<sup>6</sup>

The key points raised by these respondents are summarised in the UK Government's consultation response document.<sup>7</sup> A wide range of views were expressed on a very large number of issues such as: the duration of a moratorium, the initial eligibility criteria, ongoing eligibility criteria, which debts should be included in the policy, whether there should be a public register of people in breathing space, the treatment of business debts, and other questions. Most respondents were supportive, for example of the eligibility criteria and of the proposed protections for debtors.

Further engagement with specific expert stakeholders from the creditor and debt advice sectors was undertaken in support of the drafting of this instrument. This informal exercise generated many helpful comments on the draft regulations.

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<sup>5</sup> HM Treasury (2018) *Breathing space: call for evidence*. Available at: <https://www.gov.uk/government/consultations/breathing-space-call-for-evidence>

<sup>6</sup> HM Treasury (2019) *Breathing space scheme: consultation on a policy proposal*. Available at: <https://www.gov.uk/government/consultations/breathing-space-scheme-consultation-on-a-policy-proposal>

<sup>7</sup> *Ibid.*

## HM Treasury (2019) - Breathing space impact assessment.

### Guidance

HM Treasury guidance will be prepared in due course to assist creditors, creditor agents, and debt advice providers as they apply the regulations.

Reporting on the original version of these Regulations, which were withdrawn on 9 September, the Secondary Legislation Scrutiny Committee recommended that the UK Government should consider establishing a register of authorised professional debt advisers<sup>8</sup>. The UK Government will work with the Money and Pensions Service, other Government departments, creditors and debt advice providers to raise awareness of the scheme, but does not intend to establish a register of debt advisers.

The Government will ensure that its activity includes clear signposting to debt advice providers who are able to enter people into a moratorium, including via the Money and Pensions Service's existing Debt Advice Locator and Money Navigator tools. Other forms of publicity will also be employed to raise awareness of the policy amongst potential users. This activity will take into account the advice provided to the government by the Money and Pensions Service, in accordance with section 6 of the Financial Guidance and Claims Act 2018, on raising awareness of the policy<sup>9</sup>.

### Impact

The impact on business, charities or voluntary bodies is forecast to be a total cost over the ten years from 2021-22 of £2.1bn, which includes foregone interest and charges, delayed repayments, and familiarisation, dissemination and administration costs. The economic benefits to businesses, charities and voluntary bodies (that is the business net present value) is forecast to be £6.1bn in 2016 prices, which includes higher recoveries for creditors, productivity benefits for employers and reduced negative mental and physical health outcomes amongst debtors.

The impact on the public sector is forecast to be £7m over the same period. The wider benefits on society (that is the net present social value) are forecast to be £9.2bn in 2016 prices.

A full impact assessment is included in this memorandum and published on GOV.UK.<sup>10</sup>

### Regulating small business

The legislation applies to activities that are undertaken by small businesses.

No specific action is proposed to minimise regulatory burdens on small businesses.

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<sup>8</sup> House of Lords Secondary Legislation Scrutiny Committee (2020) 24th Report of Session 2019-2021. Available at: <https://committees.parliament.uk/publications/2206/documents/20319/default/>

<sup>9</sup> Money and Pensions Service (2019) Breathing space scheme – Money and Pensions Service advice. Available at: <https://www.gov.uk/government/publications/breathing-space-scheme-money-and-pensions-service-advice>

<sup>10</sup> HM Treasury (2019) *Breathing space impact assessment*. Available at: <https://www.gov.uk/government/publications/breathing-space-impact-assessment>

## HM Treasury (2019) - Breathing space impact assessment.

The basis for the final decision on what action to take to assist small businesses is outlined in full in the Small and Micro Business Assessment in the Impact Assessment.<sup>11</sup> Exemption or mitigation for small businesses would not achieve the policy intent, so no specific action is proposed to minimise the regulatory burdens on such businesses.

Full exemption from the protections of a moratorium for small businesses would mean that the respite afforded to debtors by a moratorium was incomplete, particularly where debtors' liabilities were owed mostly or entirely to creditors exempted by virtue of their size. It would also be impractical, imposing an excessive burden on debt advice providers (often themselves small businesses, charities or civil society organisations) to identify whether a creditor qualified as a small business.

As full exemption would undermine the policy intent and would be impractical, mitigations to minimise the regulatory burden of a moratorium on small businesses were considered. The government considered three options: allowing small businesses more time to prepare for the commencement of the debt respite scheme, in recognition of their high familiarisation costs relative to larger firms; applying the protections to small businesses only in respect of enforcement action rather than enforcement action and interest and fee-charging, and reducing the duration of a moratorium in respect of debts owed to small businesses.

All three of these mitigations were discounted. The first mitigatory option was found to be disproportionate: the familiarisation costs of small businesses are only forecast to be 8% higher than those of larger businesses.<sup>12</sup> The second and third were found to undermine the policy intent by providing only incomplete respite from creditor action for debtors. In addition, these options would impose an impractical and excessive administrative burden on debt advice providers in requiring them to determine whether creditors qualified as small businesses.

### Monitoring & review

The approach to monitoring of this legislation is outlined in regulation 40 of this instrument. HM Treasury will publish a review by 4<sup>th</sup> May 2026, five years after the commencement of the instrument. In addition, subsequent evaluations will be published at five-year intervals. These evaluations will be carried out with due regard to the advice provided on this topic by the Money and Pensions Service.<sup>13</sup> Further information is set out in the impact assessment.

A statutory review clause is included in the Regulation.

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<sup>11</sup> *Ibid.*

<sup>12</sup> *Ibid.*

<sup>13</sup> Money and Pensions Service (2019)

# HM Treasury (2019) - Breathing space impact assessment.

## HM Treasury Impact Assessment below:

<b>Title:</b> Breathing Space <b>RPC Reference No:</b> RPC-4418(1)-HMT <b>Lead department or agency:</b> HM Treasury	<b>Impact Assessment (IA)</b>
	<b>Date:</b> 27/08/2019
	<b>Stage:</b> Regulations
	<b>Source of intervention:</b> Domestic
	<b>Type of measure:</b> Secondary legislation
<b>Contact for enquiries:</b> Alfie Shaw <a href="mailto:Alfie.Shaw@HMTreasury.gov.uk">Alfie.Shaw@HMTreasury.gov.uk</a> 020 7270 2492	
<b>Summary:</b> Intervention and Options	<b>RPC Opinion:</b> RPC Opinion Status

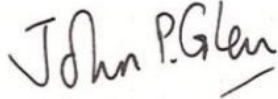
Cost of Preferred (or more likely) Option (in 2016 prices)			
Total Net Present Social Value	Business Net Present Value	Net cost to business per year	Business Impact Target Status
£9151.4m	£6132.0m	£169.3m	Qualifying Provision
<b>What is the problem under consideration? Why is government intervention necessary?</b> <p>There are an estimated 9 million overindebted people in the UK, of which only around 1.1 million receive advice each year.<sup>1</sup> An additional 0.65 to 2.9 million people would benefit from debt advice but do not seek it.<sup>2</sup> Even those that do seek help often do so at a late stage<sup>3</sup> and sometimes take the quickest rather than most sustainable solution.<sup>4</sup> Evidence suggests that people's emotions, knowledge and attitudes to their debt create barriers to accessing advice.<sup>5</sup> These internal barriers include the stress and anxiety that comes with problem debt, which can be compounded when creditors start to take enforcement action such as chasing for repayment, starting court processes or using bailiffs.</p>			
<b>What are the policy objectives and the intended effects?</b> <p>The government wants to incentivise more people to access professional debt advice and to access it sooner, helping them to reach sustainable debt solutions. The government also wants to provide debtors who engage with this advice with the headspace to find a debt solution by pausing creditor enforcement action, interest, and charges. By offering these protections in Breathing space, and by making debt advice the gateway to these protections, the policy should deliver these objectives.</p>			
<b>What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)</b> <p>To achieve these objectives, the government has considered three options:</p> <p>a) <b>Do nothing.</b> No government intervention to address the barriers that prevent or delay the people most in need of professional debt advice from seeking it.</p> <p>b) <b>A voluntary Breathing Space.</b> The government would encourage creditors to offer the protections of Breathing Space voluntarily.</p> <p>c) <b>A regulatory Breathing Space,</b> as described in the government's consultation document. This option would deliver a higher net present social value than the other two options.</p>			
<b>Will the policy be reviewed? Yes. If applicable, set review date:</b> The policy will be reviewed within five years of commencement. When a commencement date is fixed, the RPC Secretariat will be made aware.			

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Does implementation go beyond minimum EU requirements?		N/A		
Is this measure likely to impact on trade and investment		No		
Are any of these organisations in scope?	<b>Micro</b> Yes	<b>Small</b> Yes	<b>Medium</b> Yes	<b>Large</b> Yes
What is the CO2 equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)		<b>Traded</b> N/A		<b>Non-traded</b> N/A

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister, the Economic Secretary to the Treasury:

  
 27<sup>th</sup> August 2019

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1 Wyman (2018) Independent Review of the Funding of Debt Advice in England, Wales, Scotland, and Northern Ireland. Available at: [https://masassets.blob.core.windows.net/cms/files/000/000/900/original/Peter\\_Wyman\\_Review\\_of\\_Debt\\_Advice\\_Funding\\_2018.pdf](https://masassets.blob.core.windows.net/cms/files/000/000/900/original/Peter_Wyman_Review_of_Debt_Advice_Funding_2018.pdf)

2 *Ibid.*

3 Christians Against Poverty (2019) *Client Report: Changing Perceptions*. Available at: <https://capuk.org/fileserver/downloads/general/cap-client-report-2019-dp.pdf>

4 Money Advice Service (2017), 'How to use behavioural science to increase the uptake of debt advice' Available online at [https://masassets.blob.core.windows.net/cms/files/000/000/810/original/MAS0032-MAS-BehaviouralChange\\_W.PDF](https://masassets.blob.core.windows.net/cms/files/000/000/810/original/MAS0032-MAS-BehaviouralChange_W.PDF)

5 Money and Pensions Service (2019), *Debt Respite Scheme: Response to Request for Advice* to HM Treasury



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Summary: Analysis & Evidence

Policy Option 1

Description: Do nothing

FULL ECONOMIC ASSESSMENT

Price Base Year 2021	PV Base Year 2021	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low:	High:	Best Estimate: 0
<b>COSTS (£m)</b>	<b>Total Transition (Constant Price) Years</b>		<b>Average Annual (excl. Transition) (Constant Price)</b>		<b>Total Cost (Present Value)</b>
Best Estimate	0		0		0
<b>Description and scale of key monetised costs by 'main affected groups'</b>					
In the absence of intervention, no change is expected relative to the counterfactual. Debt advice supply is forecast to increase from 1.3m in 2017-18 to 2.6m in 2030-31. The supply of this debt advice comes at a cost, but doing nothing will not change this cost. There is therefore no marginal cost to doing nothing.					
<b>Other key non-monetised costs by 'main affected groups'</b>					
Nil.					
<b>BENEFITS (£m)</b>	<b>Total Transition (Constant Price) Years</b>		<b>Average Annual (excl. Transition) (Constant Price)</b>		<b>Total Benefit (Present Value)</b>
Best Estimate	0		0		0
<b>Description and scale of key monetised benefits by 'main affected groups'</b>					
As a result of the increase in debt advice supply, more people will benefit from debt advice. Doing nothing will not change the number of additional people who will benefit from debt advice in the counterfactual or the value of the debt advice that they receive, so there is no marginal benefit to doing nothing.					
<b>Other key non-monetised benefits by 'main affected groups'</b>					
Nil.					
<b>Key assumptions/sensitivities/risks</b>					<b>Discount rate (%)</b>
Nil, as doing nothing is not expected to change the counterfactual.					3.5%

BUSINESS ASSESSMENT (Option 1)

<b>Direct impact on business (Equivalent Annual) £m:</b>			<b>Score for Business Impact Target (qualifying provisions only) £m:</b>
Costs: 0	Benefits: 0	Net: 0	0

## Summary: Analysis & Evidence

## Policy Option 2

Description: Voluntary Breathing Space

### FULL ECONOMIC ASSESSMENT

Price Base Year 2021	PV Base Year 2021	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low:	High:	Best Estimate: 8029.4
<b>COSTS (£m)</b>	<b>Total Transition (Constant Price) Years</b>		<b>Average Annual (excl. Transition) (Constant Price)</b>		<b>Total Cost (Present Value)</b>
<b>Best Estimate</b>	13.7		91.4		<b>788.5</b>
<p><b>Description and scale of key monetised costs by 'main affected groups' (costs in present value)</b></p> <p>The costs of a voluntary Breathing Space would be the same as in a mandatory Breathing Space, but their scale would be reduced as a result of non-compliance. 20% of firms already deliver similar protections to those of Breathing Space for clients in problem debt. Non-regulatory intervention is expected to double this proportion. In the absence of regulation, firms will be expected to familiarise themselves with only updated guidance rather than new regulations. Only firms who voluntarily comply would be expected to make systems changes (£11.2m). Costs to creditors would therefore be lower than under a regulatory Breathing Space: foregone interest (£575.3m) and fees (£78.4m), delayed revenue (£0.5m), administrative costs (£114m), familiarisation costs (£0.2m), and dissemination costs (£1.9m). Public sector creditors would comply voluntarily, incurring similar costs (£6.9m).</p>					
<p><b>Other key non-monetised costs by 'main affected groups'</b></p> <p>Creditors may face opportunity costs as a result of the key monetised costs set out above.</p>					
<b>BENEFITS (£m)</b>	<b>Total Transition (Constant Price) Years</b>		<b>Average Annual (excl. Transition) (Constant Price)</b>		<b>Total Benefit (Present Value)</b>
<b>Best Estimate</b>	0.0		1336.7		<b>8817.9</b>
<p><b>Description and scale of key monetised benefits by 'main affected groups' (benefits in present value)</b></p> <p>The benefits of a voluntary Breathing Space would be the same as in a mandatory Breathing Space. As only some creditors are expected to comply with the protections of Breathing Space, the scale of the benefits will be lower than under a regulatory version of the scheme. The benefits of this option compared to do nothing would be: higher creditor recoveries (£5158.0m), higher employee productivity (£1796.4m), and benefits to debtors themselves (£1205.8m). In addition, debtors will benefit from economic transfers equivalent to the inverse of the costs to creditors of frozen interest and charges and delayed revenue (£657.8m).</p>					
<p><b>Other key non-monetised benefits by 'main affected groups'</b></p> <p>The same set of non-monetised benefits as identified in option 3 (regulatory Breathing Space) would apply.</p>					
<b>Key assumptions/sensitivities/risks</b>					<b>Discount rate (%)</b>
					3.5%
<p>There is a high degree of uncertainty around the relationship between the incentive to seek debt advice and the strength of the consumer protections that debt advice can provide. Debt advisers estimated that Breathing Space will increase the number of debtors who seek advice by 10% per annum. Creditor non-compliance would reduce the strength of the consumer protections accessible via Breathing Space, which would decrease the incentive to seek advice. This would reduce the forecast 10% uplift in debt advice take-up. In the absence of evidence on which to base an assumption for the extent to which the 10% assumption would fall, it has been assumed to fall to 5% per annum. Debt advice agencies suggested that Breathing Space will increase the benefit of debt advice by 14%. Debtors will not derive this full marginal benefit if not all of their creditors offer the protections of Breathing Space voluntarily. This relationship will not be direct – the benefit of Breathing Space when only 40% of creditors comply will not be 40% of 14%. Exactly how much lower the marginal benefit of debt advice will be given incomplete coverage is unclear, but it is assumed to be half that of a regulatory version of the scheme, at 7%.</p>					

### BUSINESS ASSESSMENT (Option 2)

<b>Direct impact on business (Equivalent Annual) £m:</b>			<b>Score for Business Impact Target (qualifying provisions only) £m:</b>
<b>Costs: 0</b>	<b>Benefits: 0</b>	<b>Net: 0</b>	
			0

## Summary: Analysis & Evidence

Policy Option 3

Description: Regulatory Breathing Space

### FULL ECONOMIC ASSESSMENT

Price Base Year 2021	PV Base Year 2021	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low:	High:	Best Estimate: 11577.5
<b>COSTS (£m)</b>		<b>Total Transition (Constant Price) Years</b>	<b>Average Annual (excl. Transition) (Constant Price)</b>		<b>Total Cost (Present Value)</b>
<b>Best Estimate</b>		31.7	240.2		<b>2066.8</b>
<b>Description and scale of key monetised costs by 'main affected groups' (costs in present value)</b>					
Creditors will forego interest (£1460.9m) and charges (£207.7m). Some of the debtors who would have made repayments in the counterfactual may delay their repayments under Breathing Space and some revenue derived from enforcement action will be delayed, generating costs to creditors (£1.4m). Creditors and debt advisors will face administrative costs (£358.2m), minimised through systems changes where economical (£29.1m). Creditors and debt advisers will face familiarisation (£0.4m) and dissemination costs (£1.9m). Government creditors will face similar costs (£7.1m).					
<b>Other key non-monetised costs by 'main affected groups'</b>					
Creditors may face opportunity costs as a result of the key monetised costs set out above.					
<b>BENEFITS (£m)</b>		<b>Total Transition (Constant Price) Years</b>	<b>Average Annual (excl. Transition) (Constant Price)</b>		<b>Total Benefit (Present Value)</b>
<b>Best Estimate</b>		0.0	1614.5		<b>13644.4</b>
<b>Description and scale of key monetised benefits by 'main affected groups' (benefits in present value)</b>					
Breathing Space will magnify the benefits of debt advice for those who already seek it and encourage more of those in problem debt to seek debt advice. Debt advice agencies estimated that the value of debt advice will be 14% higher under Breathing Space and it is forecast that an additional 1.3m debtors will seek advice over the assessment period as a result of Breathing Space. This will promote higher recoveries for creditors (£6109.0m), deliver productivity benefits for employers (£3708.3m), and reduce negative mental and physical health outcomes amongst debtors (£2153.4m). In addition, debtors will benefit from economic transfers equivalent to the inverse of the costs to creditors of frozen interest and charges and delayed revenue (£1673.7m).					
<b>Other key non-monetised benefits by 'main affected groups'</b>					
Non-monetised benefits to debtors include: lower dependence on state-subsidised housing; more positive education and employment outcomes, partly as a result of higher levels of parental engagement; lower risk of children being taken into care; lower rates of desperation crime; lower risk of eviction or repossession; lower risk of job loss; lower rates of relationship breakdown; increased social security take-up; higher rates of small business continuity, and more positive future credit access. Creditors will benefit from reduced risk of credit cycling, whereby debtors borrow from one creditor to pay another.					
<b>Key assumptions/sensitivities/risks</b>					<b>Discount rate (%)</b>
The costs and benefits of Breathing Space are sensitive to changes in take-up. If take-up was to be lower than forecast, the benefits and ongoing costs of the scheme would be lower. As government programmes that rely on consumer demand are often over forecast, this has been accounted for with an optimism bias adjustment to the forecast caseload of 20%. The inverse risk of take-up rising above forecast levels is low. Demand for debt advice can be volatile, but supply constraints within the debt advice sector would limit the scope for significant caseload increases.					3.5%

### BUSINESS ASSESSMENT (Option 3)

<b>Direct impact on business (Equivalent Annual) £m:</b>			<b>Score for Business Impact Target (qualifying provisions only) £m:</b>
<b>Costs:</b> 214.2	<b>Benefits:</b> 0	<b>Net:</b> 214.2	
			846.5



### 1. Problem under consideration

1.1. There are substantial benefits from the provision of professional debt advice. These benefits fall across society, including to creditors who receive higher repayments, to employers who benefit from higher employee productivity, and to individuals in problem debt.

1.2. The Money Advice Service (now the Money and Pensions Service), a financial advice and guidance body established by government, estimates the benefits of debt advice to be between £475-£1bn per annum in 2021 prices.<sup>1</sup>

1.3. There are estimated to be up to 9 million people in the UK struggling with their debts.<sup>2</sup> In 2018, Peter Wyman conducted an independent review of debt advice funding in the United Kingdom. He found that between 0.65m and 2.9m people in the UK would benefit from advice but do not seek it.

1.4. Those who seek debt advice often seek it too late. Christians Against Poverty report that most of their clients wait over a year before seeking advice, far later than when advice would be most beneficial.<sup>3</sup> The debt advice charity StepChange estimates that people who wait six months to seek advice see their debts grow 14% larger than those who seek advice at an earlier stage.<sup>4</sup>

### 2. Rationale for intervention

2.1 There are clear demand side barriers to accessing advice from the point that it would be most beneficial. The government is seizing the opportunity to address these.

2.2 Advice to the government from the Money and Pensions Service (MAPS) states that individuals in problem debt often have internal barriers where their attitudes, emotions and knowledge impact their willingness to seek advice.<sup>5</sup> MAPS suggest that people in problem debt often deny the severity of their circumstances, partly as a result of the stigma attached to being in problem debt. For others, fear, shame, embarrassment, and the hope that they will be able to resolve their problem debt without professional help cause them to delay seeking advice.<sup>6</sup>

2.3. By the time that debtors seek advice, many creditors will have progressed to taking enforcement action, such as writing to the debtor to request

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<sup>1</sup> Europe Economics (2018) *The Economic Impact of Debt Advice*. Available at: <https://www.moneyadviceservice.org.uk/en/corporate/economicimpactdebtadvice>

<sup>2</sup> Wyman (2018) *Independent Review of the Funding of Debt Advice in England, Wales, Scotland and Northern Ireland*. Available at: [https://masassets.blob.core.windows.net/cms/files/000/000/900/original/Peter\\_Wyman\\_Review\\_of\\_Debt\\_Advice\\_Funding\\_2018.pdf](https://masassets.blob.core.windows.net/cms/files/000/000/900/original/Peter_Wyman_Review_of_Debt_Advice_Funding_2018.pdf)

<sup>3</sup> Christians Against Poverty (2019) *Client Report: Changing Perceptions*. Available at: <https://capuk.org/files/server/downloads/general/cap-clientreport-2019-dp.pdf>

<sup>4</sup> StepChange (2015) *Safe Harbours* Available at: <https://www.stepchange.org/Portals/0/documents/Reports/safe-harbours-report.pdf>

<sup>5</sup> Money and Pensions Service (2019) *Debt Respite Scheme: Response to Request for Advice*. Available at: <https://www.gov.uk/government/publications/breathing-space-scheme-money-and-pensions-service-advice>

<sup>6</sup> Christians Against Poverty (2019)

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repayment, taking court action, or using bailiffs, all of which can add to the stress and anxiety that debtors experience.

2.4. Debtors who are at crisis point when they seek advice are less likely to achieve an optimum outcome from debt advice. Research by the Money Advice Service suggests that the stress and anxiety of problem debt results in people being more likely to ignore essential communication, to report feeling overwhelmed by information about debt solutions, and to choose poorer debt solutions, often opting for quick fixes over more sustainable debt solutions.<sup>7</sup>

2.5. Some creditors already offer protections similar to those of Breathing Space. Chapter 7 of the Financial Conduct Authority's (FCA) Consumer Credit Sourcebook suggests that firms consider "suspending, reducing, waiving or cancelling any further interest or charges... allowing deferment of payment of arrears... accepting token payments for a reasonable period of time in order to allow a customer to recover from an unexpected income shock... [and] refer[ing] the customer to a not-for-profit debt advice body."<sup>8</sup> These protections are referred to collectively as 'forbearance'.

2.6 Not all debtors who need it are shown this forbearance. The FCA does not mandate that the firms it regulates undertake these steps and, in any case, debtors can owe money to firms in a host of different sectors which are not FCA regulated, such as utility companies, landlords, and the public sector. The enforcement and forbearance practices that debtors experience can therefore be very varied.

### 3. Policy objective

3.1. The government wants to encourage and incentivise more people to access debt advice and to access it sooner. This will help them to achieve better, more sustainable outcomes from debt advice. This will benefit not just to debtors but creditors and employers, too.

3.2. If creditors more consistently provide forbearance and pause enforcement action for those who are in the process of engaging with debt advice, those individuals will have the headspace to engage more effectively to achieve more sustainable solutions. Making debt advice the gateway to such protections would also make debt advice more attractive to those who need it, incentivising them to seek advice and to seek it sooner.

### 4. Description of options considered

4.1. This impact assessment considers a regulatory Breathing Space against a voluntary approach and doing nothing.

4.2. First, this assessment considers doing nothing. This would see no change in counterfactual debt advice take-up or outcomes and so no additional costs or benefits. Take-up of debt advice would rise, but more slowly than under a mandatory Breathing Space. The benefits of debt advice would accrue

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<sup>7</sup> Money Advice Service (2017) *Better debt advice: from a moment of crisis to a lifetime of resilience* Available at: <https://www.fincap.org.uk/en/insights/better-debt-advice-from-a-moment-of-crisis-to-a-lifetime-of-resilience> Money Advice Service (2017) *How to use behavioural science to increase the uptake of debt advice* Available at: [https://asauk.org.uk/wp-content/uploads/2018/03/MAS0032-MASBehaviouralChange\\_W.pdf](https://asauk.org.uk/wp-content/uploads/2018/03/MAS0032-MASBehaviouralChange_W.pdf)

<sup>8</sup> FCA (2014)

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accordingly, but debt advice would be less beneficial than under Breathing Space.

4.3. Next, a voluntary approach to delivering Breathing Space is assessed. This would see the government work with creditors, trade bodies, and regulators to encourage more creditors to freeze interest, fees, and charges, to refrain from contacting debtors, and to pause enforcement action where debtors are in financial hardship. More creditors would offer these protections than do in the counterfactual, but fewer than would do so under a regulatory Breathing Space. As a result of incomplete coverage, the rate of increase in take-up of debt advice and the marginal benefit of debt advice would be lower than under a regulatory version of Breathing Space.

4.4. Finally, this assessment considers a regulatory Breathing Space. This will pause enforcement action; freeze interest, fees, and charges, and pause creditor contact with debtors where it relates to debt repayment. These protections would last for a 60-day period and be accessible via professional debt advice. This is expected to increase take-up of debt advice and the benefit of debt advice.

4.5. To support an evidence-based assessment of the costs and benefits of Breathing Space, information was requested from a range of stakeholders including: debt advice agencies; industry bodies representing the financial services sector, debt collection agencies, and enforcement agents; utility companies, and the public sector. This stakeholder engagement was in addition to a formal consultation that received over 130 responses.<sup>9</sup>

### 5. Breathing Space policy outline

5.1. Breathing Space is a 2017 manifesto commitment.<sup>10</sup> It will pause enforcement action; freeze interest, fees, and charges, and pause creditor contact with debtors where it relates to debt repayment for a 60-day period. These protections will be accessible via professional debt advice.

5.2. The strong protections of Breathing Space will incentivise debtors to seek advice sooner by providing a tangible way out of debt problems that might otherwise seem insurmountable. By pausing enforcement action and freezing interest, fees, and charges, Breathing Space will provide debtors with the headspace to engage fully with debt advice, away from the pressures of spiralling debts and ongoing enforcement action.

5.3. Breathing Space will also include a Mental Health Crisis Moratorium for those receiving mental health crisis treatment. For this group, the protections of Breathing Space will last for the duration of their crisis treatment, followed by a further 30 days. The Money and Mental Health Policy Institute estimate that the median duration of in-patient psychiatric treatment is 34 days.

This suggests that the median duration within the Mental Health Crisis Moratorium before entering the main protections of Breathing Space is 64 days.

5.4. Not all debtors will remain within the protections of Breathing Space for its full 60-day duration. Breathing Space will impose a number of obligations on

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<sup>9</sup> HM Treasury (2019) *Breathing Space scheme: response to policy proposal*. Available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/810058/17June\\_CLEAN\\_response.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/810058/17June_CLEAN_response.pdf)

<sup>10</sup> Conservative Party (2017) *Manifesto*. Available at: <https://www.conservatives.com/manifesto>

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debtors, including: not taking out further credit of £500 or more without the approval of their debt advisor, continuing to meet their ongoing liabilities where they are able to do so, and continuing to engage with debt advice with a view to finding a debt solution. Where they are notified of a failure to meet the ongoing eligibility criteria, debt advisers will administer an ongoing eligibility check at the 30-day point, removing debtors who have not met the ongoing eligibility criteria.<sup>11</sup>

### Do Nothing – option 1

6.1. In the absence of a policy intervention, debt advice take-up will continue to rise and there will be no change in debt advice outcomes. By contrast, a regulatory Breathing Space would improve both outcomes and take-up.

6.2. The Money and Pensions Service (MAPS) is the body that commissions the delivery of free to access debt advice. MAPS collects nationwide data on debt advice supply, which is represented in Table 1 below.

6.3. MAPS's best estimate, based on debt advice provider data, is that 16.7% of the debt advice sessions that are recorded annually are likely to be duplicates. That is, they are likely to record the same debtor receiving separate advice more than once in a 12-month period. Breathing Space will only be accessible once per year, so duplicates are removed from the counterfactual.

6.4. MAPS estimate that 7.5% of debt advice is supplied in Scotland and Northern Ireland.<sup>12</sup> The territorial extent of Breathing Space will be England and Wales, so debt advice supplied in Scotland and Northern Ireland will not lead to Breathing Space. Advice supplied in Scotland and Northern Ireland is therefore removed from the counterfactual.

Debt advice supply	2015-16	2016-17	2017-18
Total, UK	953,764	1,134,607	1,390,776
Total, England and Wales	882,232	1,049,511	1,286,468
Duplication adjustment	734,899	874,243	1,071,628

***Table 1: Baseline debt advice supply***

6.5. From this starting point, debt advice supply may be forecast across the assessment period. As Peter Wyman pointed out in his Independent Review of Debt Advice Funding, forecasting future take-up of debt advice is challenging given the complexity of the relationship between levels of over indebtedness and wider macroeconomic factors. Partly for this reason, there is no official forecast of debt advice supply across the period that this impact assessment examines.

6.6. In the absence of an official forecast, the three-year trend is extrapolated across the assessment period. Debt advice is supplied via three primary channels: telephone, face-to-face, and online. As Table 2, below, shows, there has been significant volatility in the supply of advice via each channel. This volatility has been most pronounced in the online advice channel. This reflects

<sup>11</sup> The 30-day check may be undertaken at any point between days 25 and 35 of Breathing Space.

<sup>12</sup> Money Advice Service (2018) Mapping the unmet demand for debt advice in the UK Available at: [https://masassets.blob.core.windows.net/cms/files/000/001/064/original/Mapping\\_the\\_unmet\\_demand\\_for\\_debt\\_advice\\_in\\_the\\_UK.pdf](https://masassets.blob.core.windows.net/cms/files/000/001/064/original/Mapping_the_unmet_demand_for_debt_advice_in_the_UK.pdf)

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a sector-wide strategy of increasing debt advice supply by reducing the unit costs of debt advice. As online advice is cheapest to supply, the debt advice sector has sought to increase supply of advice via this channel.

England and Wales debt advice supply by channel	2015-16	Change	2016-17	Change	2017-18
Total change	882,232	19%	1,049,511	23%	1,286,468
Face to face	313,115	-5%	297,954	7%	318,730
Phone	410,562	24%	510,597	-5%	485,798
Online	158,554	52%	240,961	100%	481,940
Average change excluding online		10%		1%	
Average of annual changes	5%				

***Table 2: Debt advice supply in England and Wales by channel***

6.7. As online-channel debt advice reaches an optimum point, the annual increase in online debt advice is expected to revert to a similar level as that of telephone and face-to-face advice. There is uncertainty as to when this optimum point will be reached. This forecast assumes that it is reached in 2018-19. Therefore, in this forecast of counterfactual debt advice supply across the assessment period, the baseline annual increase in debt advice supply is taken to be the mean of the annual change in debt advice supply delivered by the telephone and face-to-face channels.

6.8. As Table 2 illustrates, this suggests that debt advice supply will increase by 5% per annum from 2018-19 to 2030-31. This suggests that debt advice supply will rise from 1.6m to 2.5m over the assessment period, or 1.3m to 2.1m when duplicates are removed.

6.9. Doing nothing will not change the amount of debt advice that is supplied across the assessment period and will not increase the value of that debt advice to either creditors, employers, or debtors. It will impose no new costs. Doing nothing will therefore have no impact on society, meaning that this option's Net Present Social Value, Business Net Present Value, and Equivalent Annual Net Direct Cost to Business are all nil.

### **7. Voluntary Breathing Space – option 2**

7.1. In the absence of regulation, there is strong evidence that coverage of Breathing Space would be incomplete as a result of creditor non-compliance, limiting both the costs and benefits of this option.

7.2. Some respondents to the government's consultation on a policy proposal for Breathing Space suggested that debts owed to their sector should not be



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included in the scheme, arguing that the existing forbearance that they provide is adequate.<sup>13</sup>

7.3. A non-regulatory intervention might see the government work with regulators to encourage more creditors to deliver forbearance in a guise that is similar the protections of Breathing Space. This could be achieved by working with regulators directly to update guidance, or by collaborating with trade bodies to develop sector-wide codes of practice with recognition for firms who adhere. Such a non-regulatory intervention would increase the proportion of creditors who offer this level of forbearance, but by exactly how much is uncertain.

7.4. Recent efforts to change creditor behaviour through voluntary approaches have been only partially successful. In his independent review of debt advice funding, Peter Wyman recommended that a wider range of creditors should contribute to debt advice funding.<sup>14</sup> Wyman proposed that this objective should be achieved through the development of a code of conduct by creditor trade bodies. Over a year after the publication of Wyman's recommendation, compliance with this recommendation has been limited. This suggests that compliance with a voluntary Breathing Space would be incomplete.

7.5 Creditors responding to requests for information submitted as part of this impact assessment estimated that creditors offer forbearance similar to the protections of Breathing Space in 20% of cases in the status quo.

7.6. In the absence of outturn data, this assessment assumes that a non-regulatory intervention would double the proportion of creditors offering these protections. As fewer creditors would comply with Breathing Space than under the regulatory option, costs to creditors would be lower.

7.7. Some costs would fall below this level. For example, there would be no regulations and so firms would have to familiarise themselves with guidance alone rather than both regulations and guidance. Likewise, only the firms complying with the voluntary Breathing Space would be expected to make systems changes.

7.8. The protections offered by Breathing Space will encourage debtors to seek professional debt advice sooner. Debt advice agencies were consulted on how much this would improve debt advice outcomes. They suggested that encouraging debtors to seek advice sooner would produce financial and social benefits, which are discussed in more detail in section 9 below.

7.9. People in problem debt who delay seeking debt advice typically present to debt advisers with more significant debts. StepChange estimate that debtors who wait six months after first worrying about their debts before seeking professional advice can see their debts grow by 14% on average.<sup>15</sup>

7.10. The financial benefits alone of seeking debt advice sooner could be 14% over 6 months. The social benefits are expected be higher still, though by how much is uncertain. Breathing Space is therefore assumed to increase by 14%

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<sup>13</sup> HM Treasury (2019)

<sup>14</sup> Wyman (2018)

<sup>15</sup> StepChange (2015) *Safe Harbours: Why we need a new extended breathing space guarantee to help people in temporary financial difficulties recover from debt*. Available at: <https://www.stepchange.org/policy-and-research/breathing-space.aspx>

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the benefit to debtors of seeking advice. This is a low estimate looking only at financial benefits, so the realistic benefit is likely to be higher.

7.11. Debtors who would not have received advice in the absence of Breathing Space but who receive it under Breathing Space will derive this full benefit. Those who would have received debt advice in the counterfactual will derive only the marginal benefit.

7.12. The benefits of a voluntary Breathing Space are superior to doing nothing as some creditors would voluntarily deliver the protections of Breathing Space. However, the majority would not. The marginal benefits of Breathing Space apply per person, not per debt. Debt advice agencies estimate that debtors hold an average of 4 to 6 debts at the point of seeking advice. As a result of non-compliance in a significant minority of cases, it is unlikely that debtors will gain the headspace to engage fully with debt advice.

7.13. It is uncertain how much this would reduce the 14% marginal benefit of debt advice under Breathing Space. It is clear, though, that the relationship is not direct. Being pursued for interest, undergoing enforcement action, and being contacted by creditors seeking repayment is likely to reduce disproportionately the marginal benefits of debt advice under a mandatory Breathing Space.

7.14. Non-compliance will reduce the extent to which debtors find the best debt solutions for them and the higher creditor recoveries that this yields; it would reduce the extent to which Breathing Space counters absenteeism and presenteeism amongst employed debtors, lowering with it the benefits to employers, and most obviously, it would limit the improvement in debtor quality of life that a regulatory Breathing Space could deliver by countering debtors' sense of impending enforcement action and spiralling debts. For these reasons, it is assumed that non-compliance would reduce the marginal benefits of debt advice under Breathing Space from 14% to 7%.

7.15. In addition to reducing the marginal benefits of debt advice, creditor non-compliance is likely to reduce the incentive for debtors to seek professional advice where they would not have done in the counterfactual. The rate of increase in debt advice take-up would therefore be lower than under a regulatory version of Breathing Space, where it is assumed that the protections of Breathing Space increase by 10% the number of people who receive debt advice in each year of the assessment period.

7.16 There is significant uncertainty around the relationship between the strength of the protections of Breathing Space and marginal demand for debt advice. Given this uncertainty, it is assumed that the rate of increase in debt advice take-up under a voluntary Breathing Space would be half that of a regulatory Breathing Space. This equates to 5% per annum and 2.5% in year one to account for lag time.

7.17. The present value of this option is inherently lower than that of a regulatory Breathing Space as a result of non-compliance. Non-compliance reduces the incentive for more people in problem debt to take up debt advice and the marginal benefit of doing so relative to a regulatory option.

7.18. All of the business impacts of this option are considered indirect, as an impact arises only where businesses choose to comply with the non-regulatory Breathing Space scheme.

### **Regulatory Breathing Space – take-up – option 3**

8.1. The key determinant of the costs and benefits of a regulatory Breathing Space is take-up. Counterfactual debt advice take-up has been discussed in section 6, where it was projected that it would rise from 1.3m to 2.1m between 2021-22 and 2030-31. The Breathing Space caseload will be a subset of this counterfactual debt advice supply, as the scheme is accessible only via professional debt advice.

8.2. The initial eligibility criteria set out that the scheme is accessible only to people in problem debt who are likely to be able to access a debt solution and for whom such a solution would be in their best interests.<sup>16</sup> Engagement with debt advice agencies suggested that, on average, 60% of those who receive debt advice are advised to enter a debt solution. This group would meet the initial eligibility criteria in full. The Breathing Space caseload is therefore forecast to be 60% of the maximum caseload as set out in paragraph 8.1, which is 800,000 in 2021-22, rising to 1.3m in 2030-31.

8.3. Breathing Space will provide strong protections for people in problem debt. These protections will increase the incentive to take-up debt advice. It is uncertain by exactly how much this will increase demand for debt advice. Engagement with debt advice agencies suggested that a 10% annual increase in demand for debt advice was a central assumption. To account for a lag time in this demand increase while debtors become aware and convinced of the benefits of Breathing Space, it is forecast that marginal demand will be 5% of existing demand in 2021-22, rising to 10% per annum thereafter. This suggests that the marginal caseload – the number of people who will take-up debt advice under Breathing Space where they would not have done in the counterfactual – will be 66,000 in 2021-22 and 213,000 in 2030-31.

8.4. Not all of the people who are incentivised to take-up debt advice under Breathing Space will be eligible to enter the scheme. In the low scenario, they will be as likely to be eligible for Breathing Space as people who seek debt advice in the counterfactual. In this scenario, 60% of the marginal caseload would be eligible for Breathing Space. In reality, it is likely that they will have a higher eligibility rate than this counterfactual population, by virtue of having self-selected into debt advice as a direct result of the existence of Breathing Space. In the absence of outturn data to inform an alternative assumption, it is assumed that the eligibility rate of this population will be 80%: the midpoint of the minimum (60%) and maximum (100%) eligibility rates. This reduces the size of the marginal caseload who enter Breathing Space to 53,000 in 2021-22, rising to 170,000 in 2030-31.

8.5. The sum of the eligible static and marginal caseloads is the Breathing Space caseload, which is forecast to be 851,000 in 2021-22, rising to 1.45m in 2030-31. However, there is significant uncertainty in this forecast. Specifically, the 5% baseline annual increase in counterfactual debt advice demand (paragraph 6.7); the 60% eligibility rate (paragraph 8.2); the 10% increase in marginal debt advice demand (paragraph 8.3), and the 80% eligibility rate (paragraph 8.4), are uncertain. Recent experience with other demand-side policy interventions suggests that uncertainties in take-up forecasts often

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<sup>16</sup> HM Treasury (2019)

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manifest on the side of optimism rather than conservatism. To account for this, a 20% optimism bias adjustment is applied. This reduces the Breathing Space caseload to 681,000 in 2021-22 and 1.2m in 2030-31.

8.6 In addition to this core caseload, another cohort of people in problem debt will enter Breathing Space via the Mental Health Alternative Access mechanism. This mechanism will be accessible to people receiving mental health crisis treatment. NHS England data suggests that there are 92,300 people receiving mental health crisis treatment. NHS England estimate that this figure will rise by 150,000 between 2019-20 and 2030-31. This increase is assumed to be linear.

8.7. Within this cohort, only people in problem debt are expected to enter Breathing Space via the Alternative Access Mechanism. The Money and Mental Health Policy Institute estimates that 22% of people with severe symptoms of common mental disorders are also in problem debt.<sup>17</sup>

This suggests that the number of people entering Breathing Space via the Alternative Access Mechanism will be 27,500 in 2021-22, rising to 54,000 by 2030-31.

8.8. It is assumed that the debt compositions of each cohort are the same. This is an uncertainty and data were unavailable to inform an evidence-based position. The data that informs the costs forecast in this impact assessment is derived from the general population who seek advice in the counterfactual. Debtors who do not seek advice in the counterfactual but take-up debt advice under Breathing Space might have different types of debts or different debt levels. The same could be true of people in problem debt who are receiving mental health crisis treatment. Data is intrinsically unavailable on the former group, as they do not currently take-up debt advice. Data comparable with that of the general population was not available on the latter group.

8.9. Not all debtors will remain within the protections of Breathing Space throughout its 60-day duration. Some will be removed at the 30-day point for contravening the ongoing eligibility criteria set out in section 5 – taking out further credit worth over £500 without their debt adviser's consent, not pay ongoing bills that they have the means to pay, or failing to engage with debt advice.

8.10. In the counterfactual, debt advice agencies suggested that around 3% of those who seek debt advice take out new credit and fall behind on their ongoing liabilities two months after seeking advice. In some of these cases, that new credit will be worth over £500 and the failure to meet ongoing liabilities could be considered a choice rather than purely a product of the debtor's financial position. In the absence of evidence to inform an assumption, it is assumed that this proportion would be 50%, so that 1.5% of counterfactual debt advice recipients deliberately stop paying their ongoing liabilities and take out further credit having sought debt advice. Debt advisers suggested that, additionally, 15% to 20% of debt advice recipients fail to continue to engage with debt advice.

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<sup>17</sup> Money and Mental Health Policy Institute (2019) *Debt and mental health: a statistical update* Available at: <https://www.moneyandmentalhealth.org/wp-content/uploads/2019/03/debt-and-mental-health-policy-note.pdf>

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8.11. This data is based on the counterfactual, where there is little explicit penalty to debtors who take out further credit, fail to engage with debt advice, or who stop meeting their ongoing liabilities. Under Breathing Space, where failing to meet the ongoing eligibility criteria would lead to removal from the scheme's protections, it is reasonable to assume that debtors will alter their behaviour and so the proportion of debtors engaging in these behaviours will fall under Breathing Space relative to the counterfactual.

8.12. The extent of this fall is unknown. In the central scenario, it is assumed that the rate of removal will be 50% lower under Breathing Space than it would be in the counterfactual, suggesting that 10% of debtors will be removed from Breathing Space after 30 days.

8.13. For this group, it is assumed that one monthly debt repayment, one late payment charge, and one compounding interval falls within each 30-day period. For the remaining 90% of debtors, it is assumed that two debt repayments, two late payment charges, and two compounding intervals fall within the 60 days of Breathing Space.

8.14 This forecast assumes that debt advice supply increases with demand. This assumption is consistent with the government's intent. The government has increased funding for free professional debt advice to almost £56m this year, delivering 560,000 sessions in England. In addition, as Peter Wyman recommended in his review of debt advice funding, debt advice supply will rise as providers shift from high unit-cost advice channels to less expensive ones, increasing the number of advice sessions that may be delivered with the available funding.<sup>18</sup>

8.15 A macroeconomic deterioration could increase demand for debt advice and so take-up of Breathing Space. Likewise, a period of sustained economic growth could reduce demand for debt advice. Given the inherent uncertainty and in the interests of proportionality, this take-up forecast makes no assumption about macroeconomic change.

### **9. Regulatory Breathing Space – counterfactual benefits of debt advice**

9.1. Breathing Space will incentivise more people to seek debt advice and to do so earlier, promoting more positive debt advice outcomes. We start by looking at the benefits associated with debt advice.

9.2. In the interests of proportionality, the best available secondary evidence on the economic value of debt advice is taken as the starting point of this analysis of the benefits of Breathing Space. This research includes The Money Advice Service's *The Economic Impact of Debt Advice*<sup>19</sup> and StepChange's *The Social Cost of Problem Debt*.<sup>20</sup>

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<sup>18</sup> Footnote was missing from original document

<sup>19</sup> Europe Economics (2018) *The Economic Impact of Debt Advice A Report for the Money Advice Service* Available at: [https://masassets.blob.core.windows.net/cms/files/000/000/898/original/Economic\\_Impact\\_of\\_Debt\\_Advice\\_-\\_main\\_report.pdf](https://masassets.blob.core.windows.net/cms/files/000/000/898/original/Economic_Impact_of_Debt_Advice_-_main_report.pdf)

<sup>20</sup> Clifford, Ward, Coram, & Ross (2014) StepChange Debt Charity: Social Impact Evaluation of certain projects using Social Return on Investment Available at: [https://www.stepchange.org/Portals/0/documents/media/reports/Transforming\\_lives.pdf](https://www.stepchange.org/Portals/0/documents/media/reports/Transforming_lives.pdf)

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9.3. *Transforming Lives* is an impact evaluation conducted for StepChange by Baker Tilly. A review of the social impact of debt advice for UK individuals and families, the report uses a social return on investment methodology to identify the economic value of debt advice delivered between 2012 and 2013 to 109,397 debt advice clients. The report identifies a wide variety of areas where debt advice has delivered a societal benefit. These benefits include: increased employment, improved mental health, higher creditor recovery, reduced desperation crime, reduced debt recycling, reduced risk of children being taken into care, reduced rates of eviction, improved interpersonal relationships, increased small business survival, and higher parental engagement, amongst others.

9.4. Building on this research, Europe Economics explored *The Economic Value of Debt Advice* for the Money Advice Service. This research used a regression model to identify whether a treatment group who undertook debt advice experienced different outcomes to a control group who did not. The specific outcomes that this research examined were those where Baker Tilly identified an impact amongst StepChange clients. To mitigate the risk of sample-selection bias, Propensity Score Matching was employed.

9.5. This impact assessment only monetises benefits where Europe Economics identified a clear link between debt advice and improved outcomes. This means that many of the benefits identified in the StepChange report are not monetised here. The benefits monetised in this impact assessment are:

9.5.1. Higher employee productivity – where debt advice reduces rates of absenteeism and

presenteeism amongst employees who are in problem debt.

9.5.2. Improved debtor wellbeing, when debt advice helps people in problem debt to return to a stable financial footing, improving their wellbeing and reducing the morbidity of mental health problems such as anxiety and depression, and

9.5.3. Higher debt repayments when debt advice supports people in problem debt to enter debt solutions in which they repay more of their debts.

## 10. Regulatory Breathing Space – overview of benefits calculation methodology

10.1. Both sources express the benefits of debt advice at population level. Unit costs and benefits per advised debtor have been identified by dividing the population-level benefit by the relevant underlying population. These benefits have been uprated by CPI from the year in which they were identified to the impact assessment base year, 2021-22.

10.2 These benefits then need to be applied to the Breathing Space caseload. There are three cohorts within the Breathing Space caseload forecast. These are: debtors who receive advice in the counterfactual, who will engage more effectively with advice under Breathing Space; debtors who take-up advice under Breathing Space that they would not have taken up in the counterfactual, and people who enter Breathing Space via the Mental Health Alternative Access Mechanism, who would not have received advice in the counterfactual.

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These caseloads are summarised in table 3 below. Year 1 is 2021-22 and year 10 is 2030-31.

	1	2	3	4	5	6	7	8	9	10
<b>Receive debt advice in the counterfactual</b>	639	673	710	748	788	831	876	923	973	1026
<b>New debt advice</b>	42	89	94	99	105	110	116	122	129	136
<b>Mental Health Access Mechanism</b>	27	30	33	36	39	42	45	48	51	54
<b>Total</b>	708	792	837	883	932	983	1037	1093	1153	1216

*Table 3: Breathing Space caseload in thousands by year between 2021-22 and 2030-31*

10.3. The cohort who already receive debt advice in the counterfactual will only benefit from the marginal value of debt advice under Breathing Space. Those who take-up debt advice for the first time under Breathing Space will derive the full value of debt advice under Breathing Space.

10.4. People who join Breathing Space via the Mental Health Access Mechanism are assumed not to have received debt advice in the counterfactual. This is a reasonable assumption as they are individuals receiving mental health crisis treatment. The Mental Health Access Mechanism has been designed to deal with the fact that they are unlikely to be able to have the conversations with a debt adviser which are a requirement to meet the eligibility criteria of the main scheme.

10.5. The benefits of Breathing Space to debtors, employers, and creditors are therefore calculated by multiplying the relevant populations by either the full or marginal benefit of debt advice under Breathing Space.

### **11. Regulatory Breathing Space – benefits to employers**

11.1. Europe Economics estimated that the benefit of debt advice to employers was £3,384 per debtor in 2018. This productivity benefit to employers has been adjusted to reflect the fact that not all people in problem debt are in employment. A survey conducted by YouGov for Europe Economics suggested that the employment rate of people in problem debt was between 50% and 55%. In 2021 prices, this equated to a benefit of £1,969 at a 55% employment rate, or £1,790 at a 50% employment rate. The average of the two – £1,880 – is applied across the Breathing Space caseload.

11.2. As discussed in paragraph 7.10, debt advice agencies suggested that the value of debt advice under Breathing Space would be 14% higher than in the counterfactual. Applying this uplift to the baseline benefit per debtor, regardless of employment status, elevates the £1,879 benefit to £2,142 per debtor, a marginal benefit of £263.

11.3. Debtors who received advice in the counterfactual will benefit only from the marginal benefit of debt advice under Breathing Space. As they will receive this benefit without altering their behaviour, the benefit in respect of this cohort is considered to be direct.

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11.4. Those who take up debt advice under Breathing Space where they would not have done in the counterfactual will benefit from the full value of debt advice. The benefit in respect of this cohort is indirect, as the beneficiary debtors must alter their behaviour in order to access debt advice under Breathing Space.

11.5. The cohort who enter Breathing Space via the Mental Health Alternative Access Mechanism are excluded as they are not expected to receive debt advice during their mental health crisis treatment. This calculation is reflected in table 4, below.

	1	2	3	4	5	6	7	8	9	10
<b>Caseload Marginal benefit ('000s)</b>	639	673	710	748	788	831	876	923	973	1026
<b>Benefit/£m</b>	168	177	187	197	207	219	230	243	256	270
<b>Caseload – full benefit ('000s)</b>	42	89	94	99	105	110	116	122	129	136
<b>Benefit/£m</b>	91	191	202	212	224	236	249	262	277	291
<b>Total Benefit/£m</b>	259	368	388	409	431	455	479	505	533	561

*Table 4: Benefits of Breathing Space to employers by year between 2021-22 and 2030-31.*

## 12. Regulatory Breathing Space – benefits to debtors

12.1. Europe Economics monetise a range of benefits to debtors, both to their personal wellbeing and in terms of reducing their demand for treatment by lowering the morbidity of certain mental health problems that may be caused or exacerbated by problem debt. The sum of these benefits in the central scenario is £910, as illustrated in table 5.

<b>Benefit</b>	<b>Upper value</b>	<b>Lower value</b>	<b>Average value</b>
Lower rates of depression	£134	£71	£102.50
Lower rates of anxiety	£36	£21	£28.50
Lower rates of panic attacks	£52	£25	£38.50
Higher debtor wellbeing	£846	£635	£740.50
		<b>Sum</b>	<b>£910</b>

*Table 5: Values of debt advice to debtors*

12.2. As explained in paragraph 7.10, debt advice agencies agreed that the value of this benefit will increase by 14% under Breathing Space, to £1,037, a marginal benefit of £127.

12.3. All three cohorts will benefit. The cohort who already receive debt advice in the counterfactual will benefit by the marginal benefit of debt advice under Breathing Space. The Mental Health Access Mechanism and new debt advice



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cohorts will benefit from the full value of debt advice. This benefit has no impact on business. The size of this impact is quantified in table 6 below.

12.4. It is possible that people in the Mental Health Access Mechanism cohort will see greater improvements to their wellbeing and reductions in mental health problems than the other cohorts, given they are a cohort explicitly suffering from the intersection of both problem debt and mental health crisis. However, primary research was not available to support or quantify this possibility.

	1	2	3	4	5	6	7	8	9	10
<b>Caseload Marginal benefit ('000s)</b>	639	673	710	748	788	831	876	923	973	1026
<b>Benefit/£m</b>	81	86	90	95	100	106	112	118	124	131
<b>Caseload – full benefit ('000s)</b>	69	119	127	135	144	152	161	170	180	190
<b>Benefit/£m</b>	72	124	132	141	149	158	168	177	187	198
<b>Total Benefit/£m</b>	154	210	223	236	250	264	279	295	311	328

*Table 6: Benefits of Breathing Space to debtors by year between 2021-22 and 2030-31.*

### Regulatory Breathing Space – benefits to creditors

13.1. People in problem debt who seek debt advice repay more to their creditors. Under Breathing Space, this benefit will be more pronounced. The creditor behaviour that causes people in problem debt either to enter inappropriate debt solutions or to disengage with debt advice will be prohibited under Breathing Space. As a result, fewer debtors will enter the most readily accessible debt solution rather than the most appropriate, and fewer debtors will disengage with debt advice under the strain of impending enforcement action and spiralling debts before they manage to find a debt solution.

13.2. Not all debtors who receive debt advice will enter debt solutions. Longitudinal research conducted for the Money and Pensions Service suggests that 84% of people in problem debt who agree to undertake an action following debt advice subsequently undertake that action. As only people in problem debt who have a realistic chance of entering a debt solution are eligible for Breathing Space, it is reasonable to assume that all debtors who enter Breathing Space will be advised to enter some form of debt solution. MAPS' finding suggests that 84% will subsequently enter that solution, while 16% will not.

13.3. Europe Economics estimate that debtors who are advised to enter Debt Management Plans (DMPs) or Individual Voluntary Arrangements (IVAs) repay their creditors an additional £3,522. StepChange estimate that debtors who seek advice repay an additional £858. The difference is driven by the fact that Europe Economics look only at two types of formal debt solution, whereas StepChange look at debt solutions ranging from a formal debt solution to budgeting advice. As described in paragraph 7.10, both figures are uplifted by 14% to reflect the enhanced value of debt advice under Breathing Space. This yields a benefit to creditors of £4,015 in respect of debtors who enter debt solutions and £979 in respect of those who do not. The marginal benefit is therefore £493 or £121, respectively.

13.4. The cohorts who receive debt advice under Breathing Space but not in the counterfactual and who receive debt advice in both Breathing Space and

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the counterfactual are each divided into further cohorts. These further cohorts reflect the fact that 84% of the people in each cohort will enter debt solutions while 16% will not. This division is reflected in table 7 below.

	Code	1	2	3	4	5	6	7	8	9	10
<b>Receive debt advice in the counterfactual</b>		639	673	710	748	788	831	876	923	973	1026
<b>o/w enter a solution</b>	A	536	565	596	628	662	698	736	776	818	862
<b>o/w do not enter a solution</b>	B	102	108	114	120	126	133	140	148	156	164
<b>Do not receive debt advice in the counterfactual</b>		42	89	94	99	105	110	116	122	129	136
<b>o/w enter a solution</b>	C	36	75	79	83	88	93	98	103	108	114
<b>o/w do not enter a solution</b>	D	7	14	15	16	17	18	19	20	21	22

**Table 7:** Sub-cohort debt advice outcomes in thousands between 2021-22 and 2030-31.

13.5. As in the calculations for the other benefits of Breathing Space, the full and marginal benefits of Breathing Space are applied in respect of the relevant caseloads. In this instance, the benefit to debtors who do not take up debt advice in the counterfactual is £4,015 for debtors who enter solutions (C) and £979 for those who do not (D). In respect of debtors who do receive debt advice in the counterfactual, the relevant marginal figures – £493 (A) and £121 (B) – are applied. Applying these unit benefits to the relevant caseloads yields the benefits summarised in table 8 below.

	1	2	3	4	5	6	7	8	9	10
<b>Receive debt advice in the counterfactual</b>	277	292	308	324	342	360	380	400	422	445
<b>Do not receive debt advice in the counterfactual</b>	149	315	332	350	369	389	410	432	455	480

**Table 8:** Benefits of Breathing Space to creditors between 2021-22 and 2030-31.

13.6. Some debtors will take up debt advice under Breathing Space that they would not have taken up in the counterfactual. All of this group are forecast to repay more to their creditors than they would have done in the counterfactual. It is assumed that the proportion of this cohort who will enter debt solutions is the same as that of people who seek advice in the counterfactual. As this benefit depends upon a behavioural change, it is not inevitable and is therefore considered indirect. This benefit is expressed in the first row of table 8.

13.7. Creditors are also expected to benefit from higher repayments from debtors who were already engaging with debt advice. Within this cohort, the

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behaviour of some creditors in the counterfactual provoked some debtors either to disengage with debt advice or to enter a suboptimal debt solution. This creditor behaviour – applying the pressure of impending or actual enforcement action while allowing debts to spiral through the addition of interest and charges – will be prohibited under Breathing Space. As a result, debtors will continue along their existing pathways: having sought advice, they will enter debt solutions and so repay their creditors more than they would have done otherwise. This benefit will not be an immediate and inevitable consequence of the policy; it will depend on behavioural change on the part of creditors. It is therefore considered to be indirect.

13.8. This represents a conservative assessment of the likely benefits of Breathing Space. In addition to the benefits of debt advice that are monetised in the secondary sources, there are a wider set of benefits that are identified in the secondary source material but that are not monetised. These include lower dependence on state-subsidised housing; more positive education and employment outcomes, partly as a result of higher levels of parental engagement; lower risk of children being taken into care; lower rates of desperation crime; lower risk of eviction or repossession; lower risk of job loss; lower rates of relationship breakdown; increased social security take-up; higher rates of small business continuity, and more positive future credit access.

### **14. Regulatory Breathing Space – costs – summary – option 3**

14.1. The costs of Breathing Space are summarised below.

14.1.1. Enforcement action will be paused during Breathing Space. Some debtors will change their repayment behaviour as a result, choosing not to make debt repayments that they would have made in the counterfactual. In addition, revenue that might have been generated by enforcement action will be delayed until the end of Breathing Space, when enforcement action may continue. This will generate indirect costs to creditors who have borrowed to lend.

14.1.2. Contractual and default interest will be frozen during Breathing Space. Creditors will forego revenue as a result.

14.1.3. Late payment fees and charges that would have been added during Breathing Space will be frozen. Creditors will forego revenue as a result.

14.1.4. Creditors will be required to take administrative steps to comply with Breathing Space. These will take up administrator time at a cost to creditors.

14.1.5. Debt advisers will be required to undertake additional administrative activities to deliver Breathing Space, at a cost to debt advice agencies.

14.1.6. To reduce the cost of these administrative activities, some creditors and debt advice agencies will find it economical to make systems changes.

14.1.7. Approved Mental Health Professionals will need to complete forms to provide evidence that people are receiving mental health crisis treatment.

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14.1.8. Creditors and debt advisers will need to familiarise themselves with the Breathing Space regulations and guidance in order to deliver the scheme.

14.1.9. Debt advisers will require a deep understanding of Breathing Space. This will require debt advisers to undergo training to disseminate the contents of the Breathing Space regulations and guidance, at a cost to debt advice agencies.

14.2. The costs of a regulatory Breathing Space, like the benefits, are divided between those that directly impact business and those that indirectly impact business. This division is made on the basis of whether the impact is immediate and inevitable or not. Where a behavioural change is required for the impact to materialise, the impact is considered indirect.

14.3. Costs arising from the cohorts of debtors in Breathing Space who already receive debt advice in the counterfactual and who enter Breathing Space via the Mental Health Alternative Access Mechanism do not require behavioural change. They are therefore considered to be direct.

14.4. By contrast, costs arising from the cohort of debtors in Breathing Space who do not receive debt advice in the counterfactual are considered to be indirect as they are neither immediate nor inevitable, materialising only where debtors choose to take up debt advice that they would not have received in the counterfactual.

14.5. This segmentation of the Breathing Space caseload into sub-cohorts is illustrated in table 8 below. As explained in paragraph 8.12, not all debtors are expected to remain in Breathing Space for its full 60-day duration.

	Impact	1	2	3	4	5	6	7	8	9	10
<b>Mental Health Caseload</b>	Direct	27	30	33	36	39	42	45	48	51	54
<b>Debt advice in the counterfactual 60 days in Breathing Space</b>	Direct	573	604	637	671	708	746	786	829	874	921
<b>Debt advice in the counterfactual 30 days in Breathing Space</b>	Direct	65	69	73	77	81	85	90	95	100	105
<b>No debt advice in the counterfactual 60 days in Breathing Space</b>	Indirect	38	80	84	89	94	99	104	110	116	122
<b>No debt advice in the counterfactual 30 days in</b>	Indirect	4	9	10	10	11	11	12	13	13	14

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<b>Breathing Space</b>											
<b>Total</b>		708	793	837	884	932	984	1040	1094	1154	1217

***Table 9: Segmentation of Breathing Space cohort between 2021-22 and 2030-31 in thousands.***

### **Regulatory Breathing Space – costs – delayed revenue – option 3**

15.1. Breathing Space will pause enforcement action. Some debtors may respond by delaying repayments that they would have made in the counterfactual. In addition, revenue that creditors would have derived from enforcement action will be delayed by Breathing Space.

15.2. The value of the capital lent to debtors will vary according to its source. For all creditors, delayed repayments will drive opportunity costs. Leveraged creditors will also face the cost of borrowing. The cost to creditors of delayed revenue will be offset by a corresponding benefit to debtors of retaining money that they would otherwise have repaid, so this cost is considered to be an economic transfer.

15.3. The protections of Breathing Space do not extend to debtors' payment of ongoing bills – should they not pay these, creditors will not be prevented from taking enforcement action. Additionally, debtors in Breathing Space will be required to meet their ongoing liabilities where they are able to do so to remain in the scheme's protections. Their ongoing liabilities repayment behaviour should not, therefore, change. However, debtors will have the discretion to alter their repayment behaviour for their accrued debt or arrears, where enforcement action is prohibited for non-repayment.

15.4. To quantify the cost to creditors of delayed revenue, the counterfactual revenue is identified. This is a product of the proportion of debtors within Breathing Space who might have made debt repayments and the average value of those repayments.

15.5. Debt advisers consulted as part of this impact assessment suggested that only 40% of their clients have a surplus budget after meeting their ongoing liabilities. They estimated that the average monthly surplus amongst such clients is £294.

15.6. It is assumed that only debtors who have a surplus after paying their ongoing bills make repayments of their debts and arrears, that they repay their whole surplus to their creditors, and that all debtors who could afford to make repayments on their debts or arrears do so. These assumptions are likely to overstate the costs to creditors.

15.7. Not all of this revenue will be delayed under Breathing Space. Debt advisers suggested that they would advise debtors to delay making debt repayments only where doing so would allow them to save the money required to enter an insolvency solution.

15.8. Debt advisers suggested that they would recommend such an insolvency solution to 9.5% of the debtors that they advise. In 6.5% of those cases, debtors could save the money required to access that solution either immediately or by the end of the 60 days of their Breathing Space.

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15.9. This circumstance would account for c.0.6% of the Breathing Space caseload. In addition to this proportion of the caseload, a further proportion might change their debt repayment behaviour against the advice of their adviser. Data to inform an assumption on the size of this caseload was not available, so it is assumed that the same proportion would change their behaviour against the advice of their debt adviser as would change it on their debt adviser's advice. 1.2% of the Breathing Space caseload is therefore assumed to change their debt repayment behaviour to stop repaying these debts.

15.10. In addition to revenue delayed by changes in debtor repayment behaviour, creditors could see revenue delayed as a result of the pausing of enforcement action during Breathing Space (for instance, reductions to benefits or enforcement agent action to recover debts). Debt advisers estimated that 17.5% of their clients were subject to enforcement action at the point of seeking debt advice.

15.11. Data on the creditor revenue derived from this enforcement action was unavailable, so it is assumed that this action generated the same amount of revenue as deliberate repayments – £294 per month, with Breathing Space covering two months. We assume the repayment of these debts would stop. Not all enforcement action would have yielded revenue in the counterfactual during the 60 days of Breathing Space, so this is likely to overstate the cost to creditors.

15.12. This suggests that £29m will be delayed in 2021-22, rising to £51m in 2030-31 as the Breathing Space caseload grows. The cost to creditors of this delay will be only a fraction of the delayed revenue. The money that creditors lend could derive from a variety of sources. In the interest of proportionality, it is assumed that all creditors borrow the capital that they lend. The cost of delayed revenue will therefore be equivalent to the cost to creditors of maintaining a leveraged position. In addition, there will be an opportunity cost for creditors, but this is not monetised.

15.13. Creditors could borrow from a variety of sources. Large creditors might have access to interbank rates, whereas smaller creditors are more likely to borrow at high-street rates. To account for the uncertainty discussed in section 23 around the proportion of businesses affected by Breathing Space of each size, a sensitivity analysis across these two rates is taken.

15.14. Amongst the cheapest borrowing rate that large creditors might have access to is the 12-month GBP London Interbank Overnight Rate (LIBOR). As at Thursday 1<sup>st</sup> August, the GBP LIBOR 12-month rate stands at 0.847%. Over two months, this rate is equivalent to a 0.14% interest rate. According to the Federation of Small Business, in Q2 2019, just over half of small businesses accessing credit did so at a rate lower than 5%, or 0.83% over a two-month period.<sup>21</sup> The average of these two rates is 0.49%.

15.15. The cost to creditors of delayed revenue is therefore equivalent to 0.49% of the stock of delayed revenue, which is forecast to be £140,000 in 2021-22,

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<sup>21</sup> FSB (2019) *Voice of Small Business Index: Quarter 2, 2019*. Available at: [https://www.fsb.org.uk/docs/default-source/fsb-org-uk/fsb-sbi-q2-2019-final.pdf?sfvrsn=3d13ed21\\_0](https://www.fsb.org.uk/docs/default-source/fsb-org-uk/fsb-sbi-q2-2019-final.pdf?sfvrsn=3d13ed21_0)

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rising to £250,000 in 2030-31. No assumption is made as to changes in the assumed interest rate over the course of the assessment period.

15.16. The benefit to debtors of retaining money that they otherwise would have paid to their creditors is taken to be the inverse of the cost to creditors. On a net basis, the impact of delayed revenue to society is therefore nil and delayed revenue is therefore considered to be an economic transfer.

15.17. No distributional weighting is applied, though the benefit to debtors is likely to be higher than the cost to creditors. Applying a formal distributional weight to delayed revenue would therefore increase the marginal benefit to debtors and decrease the marginal cost to creditors. Not applying this weighting therefore understates the benefit to debtors of delayed revenue.

15.18. The entirety of this cost is considered to be indirect, as the cost materialises only where debtors choose to alter their repayment behaviour, not as an automatic consequence of the policy.

### 16. Regulatory Breathing Space – costs – interest foregone – option 3

16.1. Breathing Space will freeze interest for 60 days. This will drive a cost to some creditors who charge interest, and an equal benefit to debtors and so this impact is considered to be an economic transfer.

16.2. The first step in quantifying the amount of interest that creditors will forego during Breathing Space is to quantify the principal that will fall within the protections of Breathing Space. The principal of debt falling within Breathing Space's protections is taken to be the forecast caseload in each year multiplied by the proportion of debtors with each type of debt. These proportions are based on evidence shared by debt advice agencies on the existing debt composition of the debtors who seek advice in the counterfactual.

16.3. The product is then multiplied by debt advice agencies' evidence on the average level of each type of debt, yielding the principal that falls within the protections of Breathing Space. This process is repeated for both cohorts who remain within the protections of Breathing Space for 60 days, 30 days, and, amongst those who enter via the mental Health Crisis Moratorium, 64 days.

16.4. The next step is to identify the average Annual Percentage Rate for each type of debt. In the case of credit card debt, the best available source is the Bank of England, which publishes monthly data.<sup>22</sup> As at 30 June, this was 18.45%. Where such product-wide data is not available, and in the interests of proportionality, an indicative APR for each type of debt has been identified via open source credit comparison websites.

16.5. The amount of interest that will be foregone as a result of Breathing Space is sensitive to the frequency of the relevant compounding intervals. This will vary by debt, but, in the interests of proportionality, debts are assumed to compound monthly, with two compounding intervals falling within the 60 days of

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<sup>22</sup> Bank of England (2019) *Monthly Average of UK Resident Banks' Sterling Weighted Average Interest Rate, Credit Card Loans to Individuals and Individual Trusts* Available at: <https://www.bankofengland.co.uk/boeapps/database/fromshowcolumns.asp?Travel=NlxAZxSUx&FromSeries=1&ToSeries=50&DAT=RNG&FD=1&FM=Jan&FY=2010&TD=11&TM=May&TY=2025&FNY=Y&CSVF=TT&html.x=66&html.y=26&SeriesCodes=CFMZ6IR&UsingCodes=Y&Filter=N&title=CFMZ6IR&VPD=Y#notes>

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Breathing Space, two in the 64 days of the Mental Health Crisis Moratorium, and one in the 30 days of Breathing Space for the 10% of debtors who are removed at the 30-day checkpoint.

16.6. In the counterfactual, not all of the interest that would have been added to debt stocks during Breathing Space would have been repaid. Likewise, interest may not be added in all

16.7. Information on the specific repayment rates expected by creditors is market sensitive. In the absence of outturn data on repayment rates, an assumed repayment rate was derived from the proportion of debtors with a personal budget surplus after meeting their essential costs. Debt advisers estimated that 40% of their clients retained a budget surplus after meeting all of their ongoing liabilities. It is assumed that only debtors with a positive budget can meet their interest payments as they come due, such that the average repayment rate for interest payments across most debts is 40%.

16.8. Debt advisers suggested that the repayment rate of high cost credit products is likely to be lower than those of other forms of credit. Data shared by debt advice providers suggested that debt advice clients with high cost credit products were 33% less likely to be able to handle their debts on their own without a debt solution, or after maximising their incomes, compared to other debt advice clients. It is therefore assumed that the repayment rate of high cost credit products is 33% lower than that of other credit products, at 27%.

16.9. The amount of interest foregone is therefore expressed as the principal multiplied by the monthly interest rate, expressed to the power of the number of compounding intervals that fall within Breathing Space. This amount is then multiplied by the counterfactual repayment rate.

16.10. This process is repeated for each of the sub-cohorts of the Breathing Space caseload in order to facilitate segmentation of the overall cost into direct and indirect costs. As discussed in section 14, costs that are automatic – arising from debtors who do not change their behaviour in order to enter Breathing Space – are considered direct. Other costs are considered indirect. The breakdown of these costs is given in table 10 below.

	1	2	3	4	5	6	7	8	9	10
<b>Interest foregone – direct/£</b>	119	126	133	140	147	155	164	172	182	192
<b>Interest foregone – indirect/£</b>	8	17	18	19	20	21	22	23	24	25
<b>Total/£m</b>	127	142	150	158	167	176	185	195	206	217

*Table 10: Direct and indirect costs of interest foregone between 2021-22 and 2030-31.*

16.11. As discussed in paragraph 15.1, the cost of lending will vary by creditor. All creditors will face opportunity costs where counterfactual revenue is delayed and leveraged creditors will face additional costs of borrowing to lend. This also applies to foregone interest, where debtors' contractual interest liabilities will cover the risk taken by creditors, their profit margins, and the cost of servicing their own debts. For that reason, as in paragraph 15.14, the stock of interest foregone is multiplied by the assumed two-month cost of borrowing to lend, which is taken to be 0.49%. This increases the cost to creditors of interest



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foregone by £683,000 in 2021-22, rising to £1.2m by 2030-31. This cost is included in table 10.

16.12. This process is repeated for each of the debt types identified by debt advice agencies to identify the total cost to creditors of foregone interest in each year of the assessment period. The inverse of this cost is considered to be a benefit to debtors, so foregone interest is treated as an economic transfer. As set out in paragraph 15.16, distributional weighting is not applied, so the benefit to debtors of freezing interest is likely to be understated.

### 17. Regulatory Breathing Space – costs – charges foregone – option 3

17.1. Breathing Space will prevent the addition of new late-payment fees and charges. Creditors will therefore forego charge revenue. This will drive a cost to creditors and an equal benefit to debtors and so this impact is considered to be an economic transfer.

17.2. As with interest foregone as set out in section 16, the key drivers of the cost to creditors of freezing the addition of new late payment fees and charges are the number of charges that would have been added during Breathing Space, their average value, and the expected counterfactual repayment rate.

17.3. Debt advisers consulted as part of this Impact Assessment shared data on the number of debts held by debtors, disaggregated by debt type, and on the proportion of debtors with each type of debt. Where data on the number of debts held by each debtor was unavailable, it is <sup>23</sup> assumed that debtors hold only one of each debt. It is assumed that late payment charges are added monthly, with one charge added each 30 days during the 60 days of Breathing Space.

17.4. Not all debts will be overdue at the point of entry into Breathing Space. Arrears will, by their nature, be overdue at the point of entry into Breathing Space. However, many other debts, such as those owed to financial services creditors (e.g. personal loans) may not be. In the absence of evidence to support an alternative assumption, it is assumed that 50% of debts are overdue at the point of entry into Breathing Space.

17.5. The number of charges due during Breathing Space is calculated as the Breathing Space caseload multiplied by the proportion of debtors with each type of debt, multiplied by the average number of debts held by debtors with each debt type.

17.6. The number of late payment charges due during Breathing Space is then multiplied by their average value. In the absence of sector-scale data on the average value of late payment charges, indicative values derived from open sources have been used.

17.7. The product is then adjusted for the expected counterfactual repayment rate, yielding the amount of charge revenue that will be foregone. For

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<sup>23</sup> Bank of England (2019) *Monthly Average of UK Resident Banks' Sterling Weighted Average Interest Rate, Credit Card Loans to Individuals and Individual Trusts* Available at: <https://www.bankofengland.co.uk/boeapps/database/fromshowcolumns.asp?Travel=NlxAZxSUx&FromSeries=1&ToSeries=50&DAT=RNG&FD=1&FM=Jan&FY=2010&TD=11&TM=May&TY=2025&FNY=Y&CSVF=TT&html.x=66&html.y=26&SeriesCodes=CFMZ6IR&UsingCodes=Y&Filter=N&title=CFMZ6IR&VPD=Y#notes>

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consistency, it is assumed that the repayment rate of late-payment fees and charges is the same as that of interest.

17.8. This process is repeated for each of the sub-cohorts of the Breathing Space caseload in order to facilitate segmentation of the overall cost into direct and indirect costs. As discussed in section 14, costs that are automatic – arising from debtors who do not change their behaviour in order to enter Breathing Space – are considered direct. Other costs are considered indirect. The breakdown of these costs is given in table 11 below.

	1	2	3	4	5	6	7	8	9	10
<b>Charges foregone – direct/£</b>	16	18	19	20	21	22	24	25	26	28
<b>Charges foregone – indirect/£</b>	1	2	2	2	3	3	3	3	3	3
<b>Total/£m</b>	17	20	21	23	24	25	26	28	29	

*Table 11: Direct and indirect costs of charges foregone between 2021-22 and 2030-31.*

17.9. As in the case of interest foregone, the stock of charges foregone is multiplied by the assumed two-month cost of borrowing to lend, which is taken to be 0.49%, in order to establish the cost to leveraged creditors of foregone late-payment charge revenue. This increases the cost to creditors of charges foregone by £90,000 in 2021-22, rising to £159,000 by 2030-31. This cost is included in table 11.

17.10. This process is repeated for each of the debt types identified by debt advice agencies to derive the total cost to creditors of foregone late payment fees and charges. The inverse of this cost is considered to be a benefit to debtors. Not applying a distributional weighting is likely to understate the benefit to debtors of this economic transfer.

### **18. Regulatory Breathing Space – costs – creditor administration – option 3**

18.1. Breathing Space will impose an additional administrative burden on some creditors, who will have to freeze interest, fees, and charges and pause enforcement action throughout Breathing Space.

18.2. Many of the creditors who responded to the government’s consultation on the Breathing Space scheme pointed out that their sectors already provide similar protections to Breathing Space as part of their wider forbearance practices for some individuals, as discussed in paragraph 2.5. Trade bodies estimated that, for this reason, Breathing Space could impose no material additional administrative cost in 20% of cases.

18.3. In response to requests for information made as part of this Impact Assessment, creditors provided estimates for the number of minutes required to perform various administrative tasks, along with the average wage costs of the administrators who will perform them. In total, these actions are expected to take between 36.5 and 44 minutes. These administrative activities include:

18.3.1. Processing the notification of an entry into Breathing Space

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18.3.2. Suppressing contact relating to repayment <sup>24</sup>

18.3.3. Notifying enforcement agents to pause enforcement action, where it is ongoing

18.3.4. Suppressing the accrual of interest and addition of late payment charges

18.3.5. Reversing these actions at the conclusion of Breathing Space.

18.4. On average, debtors have numerous debts. Debt advisers consulted as part of this Impact Assessment suggested a range of between four and six debts per debtor. It may be that some debtors have multiple debts to the same creditor, in which case the creditor would be expected to incur administrative costs only once. However, no evidence was available on the extent to which debtors owe multiple debts to the same creditor, so this assessment assumes that all debts give rise to an administrative burden, rather than only a subset. This is likely to overstate the administrative costs of Breathing Space.

18.5. The cost of performing these interventions will be equivalent to the total number of hours that each type of intervention requires multiplied by the average £13 per hour wage costs of the administrators who will perform those actions, uplifted by 20.6% to reflect non-wage labour costs.

18.6. Pausing enforcement action will only be necessary in the subset of cases where it is ongoing at the point that debtors enter Breathing Space. Debt advisers estimated that it would be necessary to pause enforcement action in between 5% and 30% of cases, or 18% in the central scenario.

18.7. This process is repeated for each of the administrative interventions associated with Breathing Space as the caseload builds to derive the total administrative cost of Breathing Space. This is expected to be £26m in 2021-22, rising to £45m in 2030-31. This cost is considered to be direct as it arises automatically: compliance will be statutory.

### **19. Regulatory Breathing Space – costs – debt advisor administration – option 3**

19.1. The same approach as outlined in section 18 is taken in assessing the administrative costs of Breathing Space to debt advisers, with the exception that no adjustment is made to account for administrative actions that are taken in the counterfactual: all of the administrative actions attributed to debt advisers are additive to those undertaken in the counterfactual.

19.2. Debt advice agencies suggested that debt advisers are paid an average of between £14 and £19 per hour. The activities that will be required under Breathing Space in addition to those that are required in the baseline scenario are listed below. Debt advisers estimated that they would take between 23 and 41 minutes in total.

19.2.1. Assessing eligibility for Breathing Space

19.2.2. Registering debtors on the Breathing Space digital portal

19.2.3. Administering a check on debtor eligibility at the 30-day point

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<sup>24</sup> FCA analysis of data collected via the CCR003: Lenders regulatory return for reporting periods ending June 18 – May 19. Clearly misreported data were corrected for this analysis.

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19.2.4. Removing debtors from the Breathing Space portal

19.2.5. Informing debtors of their removal from the Breathing Space portal

19.3. The 30-day check will not be burdensome in the majority of cases. The debt adviser will have to confirm that the debtor has continued to engage in debt advice – information which should be readily available to them – and will only need to investigate whether a debtor has contravened other ongoing Breathing Space eligibility criteria where a creditor has proactively reported to them that this is the case. It is expected that the 30-day check will be administered in 10% of cases.

19.4. This suggests a debt advice provider administration cost of £5m in 2021-22, rising to £8m in 2030-31. This cost is considered to be direct as it arises automatically: compliance will be statutory.

### 20. Regulatory Breathing Space – costs – systems changes – option 3

20.1. Where creditors see a large number of their clients enter Breathing Space, it may be more economical for them to invest in IT systems changes than to comply with the policy purely via administrative workaround. Likewise, the largest debt advice agencies may choose to make IT systems changes to reduce their administrative burden.

20.2. Ahead of conducting further scoping work, creditors struggled to estimate the costs of changing their systems in order to comply with Breathing Space. The best available estimate was that systems changes would cost between £60,000 to £85,000. Given the uncertainty, only the upper estimate has been used in the calculations that follow. To account for the risk of cost escalation, the upper estimate of costs has been uplifted by 20% to account for optimism bias, leaving it at £102,000.

20.3. Firms are only expected to make systems changes where it is economical to do so. This will be a product of the number of debtors with debts owed to a firm who enter Breathing Space, which will, in turn, be a product of market concentration. This may not be the case for firms who, by virtue of their business model, depend on automation and for whom administrative workaround is either undesirable – for example where significant restructuring would be required, such as the hire of additional staff – or undeliverable – for example where the business model depends on rapid decision making. Sector-scale data was unavailable on the proportion of consumer lenders who depend on automation and so who might make systems changes where administrative workaround would nonetheless be more cost-effective.

20.4. 190 firms own 99% of outstanding consumer credit.<sup>23</sup> it is assumed that only these firms make systems changes. The remaining c.2600 firms who own 1% of outstanding consumer credit are likely to comply with Breathing Space via administrative workaround, which is likely to be more economical. In addition to these financial services creditors, representative organisations estimated that up to 60 energy firms and 25 water firms could need to make systems changes.

20.5. Some systems change costs will fall on the public sector. In particular, there will be costs associated with the development of a central digital portal

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that will act as an interface between debt advisers and creditors to facilitate implementation of Breathing Space.

20.6. Engagement with debt advice agencies suggests that only the largest nine debt advice agencies will need to make systems changes to deliver Breathing Space. For the approximately 900 smaller debt advice agencies, administrative workarounds are likely to be more economical than making systems changes. Indeed, in some cases debt advice agencies may have no bespoke systems to change.

20.7. This suggests that a total of 275 private sector creditors and 10 third sector debt advice agencies will need to make systems changes, at a cost of £102,000 per firm.

20.8. The systems change cost is therefore taken to be the cost of systems change multiplied by the number of firms making systems changes. 285 private and third sector firms are expected to make systems changes costing £102,000 each, at a present value cost of £29.1m.

20.9. In addition to the cost of private and third sector system changes, a small number of large public sector creditors are expected to make systems changes. The costs to public sector creditors of making systems changes is assumed to be the same as that which falls on private sector creditors. Work within the public sector is being undertaken to a longer timeline to reach more bespoke assessments of public sector system change costs.

20.10. This cost is considered to be indirect as systems changes will only be made where creditors or debt advice providers choose to make them. They will not be an automatic consequence of the policy.

### **21. Regulatory Breathing Space – costs – AMHP administration – option 3**

21.1. Breathing Space will offer an alternative access mechanism for people receiving mental health crisis treatment. This group will be entered into the protections of Breathing Space by a debt adviser on the basis of an application which includes evidence from an Approved Mental Health Professional (AMHP) that the individual is receiving mental health crisis treatment.

21.2. This will introduce a new burden on the time of AMHPs, at an administrative cost. This cost will be a factor of the average hourly earnings of AMHPs, the amount of time taken to enter a patient into Breathing Space and then remove them from it, and the number of patients who will enter the protections of Breathing Space via this avenue.

21.3. It is forecast that 27,500 people will enter Breathing Space via this avenue in 2021-22, rising to 54,000 by 2030-31.

21.4. The Department for Health and Social Care (DHSC) estimate that the average hourly wage of an AMHP is £20.16. This is an approximation, as AMHP remuneration varies geographically and is not set centrally. Uplifted by 20.6% to account for non-wage labour costs, the average hourly cost of AMHP time rises to £24.32.

21.5. The specific form that will be used by AMHPs to enter patients into the protections of Breathing Space has not yet been developed. DHSC identified a suitable proxy form as Form A2 under Regulation 4(1)(a)(ii) of the Mental Health Act 1983. This form is used by AMHPs to admit a patient for

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assessment.<sup>25</sup> DHSC estimated that it takes AMHPs 15 minutes to process this form.

21.6. In addition to entering patients into the Breathing Space alternative access mechanism, mental health professionals will need to inform debt advisers when treatment ends so that the breathing space can come to an end. It is estimated that this will take half as long as processing the initial entry. This suggests a total time requirement of 22.5 minutes per patient entering the mechanism. Per patient, this suggests that the administrative cost to AMHPs will be 37.5% of an hour's labour costs, which equates to an administrative cost of £9.12 per patient.

21.7. Multiplied by the forecast caseload, this suggests a 2021-22 cost of £250,000, rising to £500,000 by 2030-31. This is a cost to government and so features in the Net Present Value without a distinction being made as to whether the impact is direct or indirect.

### 22. Regulatory Breathing Space – costs – familiarisation

22.1. In order to comply with Breathing Space, firms will need to familiarise themselves with the relevant legislation and the accompanying guidance. Debt advice agencies will need to familiarise themselves with both the regulations and the government's guidance.

22.2. The costs of undertaking this familiarisation activity will vary between small and micro firms and debt advice agencies and larger ones. Small and micro firms and debt advice agencies are expected to engage consultants to assist them in familiarising themselves with the legislation and guidance. Larger firms are expected to engage the services of in-house legal and compliance professionals. The mean hourly wages of in-house compliance staff are expected to be £22 per hour, while those of external consultants are expected to be £24 per hour.<sup>26</sup> These wage costs are inflated by 20.6% to reflect non-wage labour costs. Small and micro firms and debt advice agencies are therefore expected to incur more significant familiarisation costs than larger ones. This is discussed in more detail in the small and micro business assessment.

22.3. 275 large firms and 2,600 small firms are expected to familiarise themselves with the Breathing Space regulations and guidance. This large firms figure is the sum of the 190 large consumer lenders, 60 large energy firms, and 25 large water firms. In addition, 909 large and small debt advice agencies are expected to familiarise themselves with the relevant regulations and guidance. In addition, a small number of large public-sector creditors, a small number of central government departments are expected to familiarise themselves with the relevant regulations and guidance. The costs for these bodies is assumed to be the same as for those of large creditors.

22.4. Reading speed declines with text complexity. An assessment of the complexity of the Breathing Space regulations yields a Flesch-Kinkaid readability score that suggests a reading speed of 100 words per minute. The draft regulations are currently 7,352 words long. It is assumed that the as yet unwritten guidance accompanying the regulations will be as long as the original regulations. Taken together, this suggests a reading time of 2.45 hours. The familiarisation costs to creditors and debt advice agencies will therefore be £445,000 in 2021-22, with no ongoing costs. This cost is considered to be direct as it arises automatically: compliance will be statutory.

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<sup>25</sup> An image of the form is available here: <https://blogs.kcl.ac.uk/socialcareworkforce/wp-content/blogs.dir/7/files/2017/07/Form-A2-Section-2-appl-by-AMHP-for-admiss-for-assess-page-001-724x1024.jpg>

<sup>26</sup> Office for National Statistics (2018) Annual Survey of Hours and Earnings, Table 4.5a – gross hourly pay by SIC07

### **23. Statutory Breathing Space – Costs – Dissemination**

Debt advisers will need a deep understanding of the Breathing Space regulations and guidance in order to advise their clients effectively. The exact cost of gaining this understanding will vary at an individual scale, but debt advisers consulted as part of this Impact Assessment agreed that a day of face to face training supported by one hour of e-learning would be an effective means of disseminating awareness of Breathing Space to debt advisers.

23.2. One debt advice training provider suggested that the cost of developing an e-learning package would be £17,000. They suggested that the cost of accessing that learning would be £55 per debt advisor. In addition, they suggested that the cost of delivering face to face training would be £600 per group of twelve debt advisers.

23.3. Evidence shared by a debt advice organisation suggests that there are approximately 900 professional debt advice agencies in England and Wales. National scale data is not collected on the number of debt advisers, but one large debt advice training provider estimated that a central estimate for the number of debt advisers would be 7,300. This estimate is based on that provider's assessment of their market share, which excludes the largest debt advice agencies.

23.4. Two large debt advice agencies contacted with a request for information to inform this Impact Assessment suggested that they had 116 debt advisers each. There are nine other large debt advice agencies. It is assumed that all have the same number of debt advisers, suggesting that there are 1,040 debt advisers at these firms in addition to the 7,300 debt advisers identified by the training provider. Free training is already provided for 4,250 providers per year.

23.5. This suggests that the Breathing Space dissemination cost is likely to be £1.9m, a transitional cost that will be felt only in 2021-22. This cost is considered to be direct as it arises automatically: compliance will be statutory.

23.6. Creditor administrators will not require a deep understanding of Breathing Space. They will be expected to respond reactively to notifications from the Insolvency Service notifying them of the entry of their clients into Breathing Space. As these notifications will provide clear information on the actions required of creditors, there will be no requirement for creditor administrators proactively to develop their understanding of Breathing Space policy. This is not the case with systems architects, who will need to understand the policy in great detail in order to make systems changes. This cost is treated as a familiarisation issue and is addressed in section 21.

### **24. Small and Microbusiness Assessment – sectoral composition**

24.1. The costs to creditors of Breathing Space are a result of foregone interest and charges, delayed revenue, additional administration, systems changes, dissemination, and familiarisation. Businesses will face fixed costs, such as systems changes, and variable costs, such as delayed revenue, that are proportionate to the number of customers that each creditor sees enter Breathing Space. As discussed elsewhere, the majority of the costs faced by most businesses will be variable, with the majority of the fixed costs falling on larger firms who will see a large number of clients enter Breathing Space.

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24.2. Firms with a higher risk appetite will see a larger proportion of their clients enter Breathing Space than more conservative lenders. The Breathing Space caseload will be made up of people in problem debt, who will be riskier clients for creditors: those who choose to engage with riskier clients will see a larger proportion of their client base enter Breathing Space. Information about risk appetite is commercially sensitive, so it was not available for the purposes of this impact assessment. This does not apply in the case of involuntary creditors, who do not choose which clients they lend to.

24.3. The other part of this calculation is the number of clients that each firm will have. This is a product of their market concentration, which will vary by sector. The best available source of evidence on this question is the Business Population Estimates.<sup>27</sup> This data is arranged by sector (grouped by Standard Industrial Classification) and disaggregated by business size in terms of number of employees.

24.4. Breathing Space will operate in England and Wales only. At this scale, the Business Population Estimates provide data only by 1-digit Standard Industrial Classification code, grouping utility companies with those engaged in mining and quarrying, for example. This provides a potentially misleading picture about the number of SMBs likely to be affected by Breathing Space.

24.5. For that reason, UK-scale 2-digit Standard Industrial Classification codes are used as a proxy for the sectoral compositions of England and Wales. This provides a higher level of granularity, with some risk of reduced accuracy. This data suggests that, by employment, 9.3% of businesses engaged in financial and insurance activities are SMBs. Clearly, not all of these businesses will be consumer-facing credit-issuing firms, but more granular data was not available.

24.6. The fact that 9.3% of firms by employment are SMBs does not suggest that 9.3% of the burden of Breathing Space will fall on SMBs: the number of clients of each firm will not be directly proportional to the firm's number of employees. Sector-level market concentration data is unavailable in the Business Population Estimates for this sector, but stakeholders consulted as part of this impact assessment suggested that the vast majority of borrowers engage with large creditors. FCA analysis suggests that 190 firms own 99% of outstanding consumer credit.<sup>28</sup> Some of the further c.2600 firms who own 1% of outstanding consumer credit may be SMBs, but data on the proportion of these firms who are SMBs was unavailable.

24.7. SMBs might still face a disproportionate cost if their clients were more likely than those of larger businesses to enter Breathing Space. However, stakeholders consulted as part of this impact assessment suggested that there was no reason to believe that SMBs deal with higher risk clients than larger businesses. Indeed, given SMBs' lower capacity to absorb write-offs relative to larger firms, stakeholders suggested that SMBs might be less likely to see clients enter Breathing Space than larger businesses, where SMBs are

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<sup>27</sup> Department for Business, Energy & Industrial Strategy (2019) *Business population estimates 2019* Available at: <https://www.gov.uk/government/statistics/business-population-estimates-2019>

<sup>28</sup> FCA analysis of data collected via the CCR003: Lenders regulatory return for reporting periods ending June 18 – May 19. Clearly misreported data were corrected for this analysis.



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voluntary creditors who choose which clients to issue with credit. This may not be the case for involuntary creditors.

24.8. Similar data availability issues were faced with other sectors. For example, trade bodies suggested that there are 60 consumer-facing energy companies operating in the UK, but that data was not available for England and Wales specifically, on the market concentration of each firm, and on the size of each firm by number of employees.

24.9. Likewise, a trade body reported that there are 25 water companies operating in England and Wales, eight of which serve limited geographical areas. Although these firms might be assumed to be SMBs, this could not be confirmed. In any case, their market concentration was unknown.

24.10. Data on the housing sector was more readily available. Debt advisers suggested that 13% of those presenting for debt advice would have rent arrears. Of these, data published in the Wyman Review suggested that 35% would dwell in private tenancies and 44% in social ones.<sup>29</sup> The remainder, who have rent arrears but fall into neither category, are likely to be from 'other' tenancies, such as informal ones. Such arrangements do not impact business.

24.11. Of the 44% of people in Breathing Space with rent arrears who live in the Social Rented Sector, 60% are likely to live in Housing Association-administered tenancies, with the remaining 40% in Local Authority housing.<sup>30</sup> The National Housing Federation suggested that 4% of social tenancies with Housing Associations might be with SMB associations. The Local Government Association suggested that all Local Authority social landlords would have more than 50 employees. This suggests that 1% of people in Breathing Space with rent arrears will dwell in the social rented sector and have an SMB landlord.

24.12. Of the 35% of people in Breathing Space with rent arrears who dwell in private tenancies, the English Private Landlords Survey suggests that 97% will be with landlords who own fewer than 101 rental properties.<sup>31</sup> Data on the number of employees of these landlords was unavailable, so it is assumed that all are SMBs. This suggests that 34% of people in Breathing Space with rent arrears will dwell in the private rented sector and have an SMB landlord. This suggests that there will be a disproportionate impact on SMB private landlords of any net costs of Breathing Space.

### 25. Small and Microbusiness Assessment – relative costs

25.1. Debtors in the scheme will be required to continue to meet their ongoing liabilities, such as paying their rent. As explained in paragraph 15.8, only a minority of debtors are expected to stop making arrears repayments during Breathing Space, which is not intended to be a repayment holiday. As discussed in paragraph 15.1, the cost to creditors of delayed revenue will be a

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<sup>29</sup> Wyman (2018)

<sup>30</sup> Ministry of Housing, Communities & Local Government (2019) *English Housing Survey 2017 to 2018: social rented sector* Available at: <https://www.gov.uk/government/statistics/english-housing-survey-2017-to-2018-social-rented-sector> Percentages derived from figure 3.3.

<sup>31</sup> Ministry of Housing, Communities & Local Government (2019) *English Private Landlord Survey 2018: main report* Available at: <https://www.gov.uk/government/publications/english-private-landlord-survey-2018-main-report>

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factor of the source of the money lent to debtors. In some cases, this will be the cost of borrowing to lend. If SMBs needed to access finance as a result of delayed revenue this will be, in some cases, at a higher borrowing rate than those that larger businesses will have access to. In the case of landlords and other involuntary creditors, this might arise where a landlord was forced to borrow as an opportunity cost of not receiving rent arrears payments that might have been made in the counterfactual. Conversely, people in Breathing Space will be offered specialist debt advice and support whilst on the scheme, which may help landlords recover some of the owing rent arrears.

25.2. Large businesses may be able to borrow at close to the London Inter-Bank Overnight Rate, as discussed in section 15. As at Thursday 1st August, the GBP LIBOR 12-month rate stood at 0.847%. Over two months, this rate is equivalent to a 0.14% interest rate. This rate is likely to be far below that accessible to SMBs. According to the Federation of Small Business's quarterly *Voice of Small Business Index*, 53.1% of SMBs who borrowed in Q2 2019 did so at beneath 5% APR, or 0.83% over a two-month period.<sup>32</sup>

25.3. The extent to which disproportionate costs fall on SMBs will be a factor of their market concentration and their risk appetite, which will dictate the number of debtors that SMBs are likely to see enter Breathing Space. As data to inform a specific assessment of the proportion of costs that will fall on SMBs was unavailable, a sensitivity analysis was applied: the cost of delayed revenue for all creditors in Breathing Space is assumed to be the average of 0.14% and 0.83%, which is 0.49%. This is likely to overstate the cost of delayed revenue as, in reality, the market share of SMBs in sectors affected by Breathing Space is likely to be very small, with the exception – as described above – of private landlords. For that reason, most creditors affected by Breathing Space will face lower delayed revenue costs than the level assumed by this sensitivity analysis.

25.4. SMBs are likely to face higher familiarisation costs than larger businesses. As explained in section 21, SMBs are less likely to employ in-house legal and accounting professionals than larger firms. As a result, they are expected to familiarise themselves with Breathing Space by engaging external consultants. According to the Office for National Statistics, the mean hourly gross wage of workers engaged in management consultancy activities is £2 more per hour than that of workers engaged in legal and accounting activities.<sup>33</sup> As a result, the expected cost of familiarisation is expected to be 8% higher for SMBs than for larger firms.

25.5. Not all of the additional cost of engaging management consultants is attributable to their increased labour costs, so the true additional cost is likely to be higher than 8%. Quantifying the full additional cost would require data on the costs to SMBs of engaging the services of management consultants, rather than the management consultants' hourly wage costs. This data is not

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<sup>32</sup> Federation of Small Business (2019) *FSB Voice of Small Business Index: Quarter 2, 2019* Available at: [https://www.fsb.org.uk/docs/defaultsource/ fsb-org-uk/fsb-sbi-q2-2019-final.pdf?sfvrsn=3d13ed21\\_0](https://www.fsb.org.uk/docs/defaultsource/ fsb-org-uk/fsb-sbi-q2-2019-final.pdf?sfvrsn=3d13ed21_0)

<sup>33</sup> ONS (2018) 'Annual Survey of Hours and Earnings 2018, table 4.5a: gross hourly pay for all employee jobs by industry SIC (2007)'. Available at: <https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/datasets/industry2digitsic ashetable4>

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available, but it is clear that SMB familiarisation costs will be higher than those of larger businesses.

25.6. SMBs would face higher costs of foregone interest and charges if a higher proportion of their clients entered Breathing Space, or if those clients carried larger debts than those of larger businesses, or if SMBs charged higher interest rates than larger firms. As discussed above, data on market concentration was unavailable. As credit risk appetite varies by firm and would be commercially disclosive, respondents to requests for information submitted as part of this impact assessment were not able to quantify whether SMBs operate more risk tolerant lending strategies than larger firms or whether they lend at less competitive rates. They suggested – anecdotally – that this was unlikely to be the case. Therefore, SMBs are not expected to bear disproportionate costs as a result of interest and charges foregone.

25.7. As discussed in section 20, firms are expected to make systems changes only where it is economical to do so. Whether or not this is the case will be a factor of the costs of complying with the policy manually via administrative workaround, which will be a product of the number of interventions required, which will in turn be a product of the number of people that each business sees enter Breathing Space. As discussed above, it was not possible to assess whether SMBs were more likely to see their clients enter Breathing Space than larger firms, though anecdotal evidence suggests that this is unlikely. For that reason, SMBs are not expected to face higher systems change costs than larger firms.

25.8. Some firms may be forced to make systems changes not because doing so is more economical than complying with Breathing Space via administrative intervention, but because of their business models. For example, firms that depend upon a high level of automation might not be able to hire the staff required to make administrative changes without fundamentally restructuring. Data on the extent to which firms rely on automation was not available, so it has not been possible to assess the extent to which SMBs might be forced to make systems changes.

### **26. Small and Microbusiness Assessment – exemption and mitigations**

26.1. The assessment above identified some disproportionate costs to SMBs. Although there is no evidence – save for in the housing sector – that SMBs will see more of their clients enter Breathing Space than larger firms, there is strong evidence that SMBs will face higher costs per debtor in Breathing Space than larger firms. For example, the costs to SMBs of delayed revenue and of familiarisation with the policy will be higher than those faced by larger businesses.

26.2. For that reason, the government considered full exemption for SMBs. This would mean that debts owed to SMBs would not fall within the protections of Breathing Space. The government concluded that this would undermine the wider policy intent of incentivising people in problem debt to take-up debt advice and of promoting more positive debt advice outcomes, as it would not provide genuine respite from enforcement action and spiralling debts, particularly where debtors' liabilities were mostly or entirely to creditors who were excluded from the protections of the scheme. This would mean that debtors with the same debt types and levels would be treated differently on the

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basis of the number of employees of their creditor. For debtors whose only debts were to SMBs, there would be no additional incentive to seek debt advice. For those undergoing enforcement action and continuing to accrue interest and charges on some of their debts, they would not have the headspace to identify and enter the most appropriate debt solution, rather than the most readily accessible.

26.3. Separately, full exemption would impose an excessive administrative burden on debt advice agencies or an undeliverable obligation on the Insolvency Service: either debt advice agencies or the Insolvency Service would need to verify that a creditor was an SMB. As such evidence is not readily available, this would require administratively burdensome investigation and verification, as well as introducing the risk of gaming on the part of unscrupulous creditors.

26.4. As full exemption would not achieve the policy intent and would be undeliverable, the government considered a range of mitigations.

26.4.1. In recognition of the fact that SMBs will face higher familiarisation costs, the government could provide additional time for SMB creditors to comply with Breathing Space, bringing SMB debts into Breathing Space at a later date than the commencement of the wider policy. This would not be proportionate, given that the costs to SMBs are not forecast to be significantly higher than to larger businesses. It would also undermine the policy intent for debtors who have debts only to SMBs.

26.4.2. The government could apply the protections of Breathing Space to debts owed to SMBs only in respect of pausing enforcement, allowing SMBs to continue charging interest and adding charges. This would not achieve the policy intent, as the effect on debtors undergoing enforcement action in respect of one creditor is similar to that of debtors undergoing enforcement action across a range of creditors: it would reduce their headspace to engage with debt advice, undermining the policy intent of promoting more positive debt advice outcomes. In addition, the operational difficulty set out in paragraph 25.3 would apply.

26.4.3. The government could reduce the duration of Breathing Space in respect of debts owed to SMBs. This would reduce the ongoing costs to SMB creditors, such as delayed revenue, but not the transitional costs of, for example, familiarisation. As with the mitigations discussed above, this mitigation would compromise the policy intent while delivering only a small benefit to SMBs, so this mitigation would be disproportionate. The operational challenge set out in paragraph 25.3 would apply.

26.5. All of these mitigations would significantly undermine the policy intent, so the government will not provide mitigations for SMBs. Exemption would also critically undermine the policy intent. The government does not propose to treat debts owed to SMBs differently to those owed to larger creditors.

### **27. Wider impacts**

27.1. The government's preferred option has been formulated with due regard to the Public Sector Equality Duty. Several potential disadvantages in access to Breathing Space have been identified as arising as a consequence of debtors' protected characteristics. These have been mitigated appropriately.

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27.1.1. **Age:** the Money Advice Service estimates that 1% of the overindebted population is aged over 65.<sup>34</sup> The Wyman Review suggests that 7% of debt advice clients are aged over 65.<sup>35</sup> This suggests that people in problem debt who are aged over-65 will benefit disproportionately from Breathing Space. However, evidence from Ofcom suggests that people aged over-65 may be less able to access debt advice via online or telephone channels than the general population. For example, people aged 65-74 are 15 percentage points less likely than the adult population to use a mobile phone, nine percentage points less likely to use a computer, and 16 percentage points less likely to use a tablet.<sup>36</sup> To ensure that this inequality of access to debt advice delivered via telephone or online channels does not discriminate against those aged over-65, the government will make Breathing Space accessible via either telephone, online, or face-to-face debt advice channels.

27.1.2. **Gender:** the Money Advice Service estimates that 64% of overindebted people are female.<sup>37</sup> The Wyman Review suggests that 59% of debt advice clients are female.<sup>38</sup> This suggests that Breathing Space is more likely to benefit females than males, both because females are more likely to be overindebted but also because they are more likely to take-up debt advice.

27.1.3. **Disability:** the Wyman Review estimates that 40% of debt advice clients suffer from a disability or long-term health condition.<sup>39</sup> Disability may restrict the channels through which debtors may seek advice. For example, the Money and Mental Health Policy Institute suggests that those with mental health problems are 22 percentage points more likely than the population in general to have serious difficulty carrying out essential administration over the phone.<sup>40</sup> Likewise, difficulties of physical access may make seeking face-to-face debt advice problematic for those with physical health problems.

27.1.4. To ensure that difficulties in accessing debt advice via some channels does not discriminate against disabled people accessing Breathing Space, the government will make Breathing Space accessible via a range of debt advice channels, including telephone, online, and face-to-face. The government has committed to mitigations to ensure that Breathing Space is accessible to people receiving treatment for

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<sup>34</sup> Money Advice Service (2013) *Indebted Lives: The Complexities Of Life In Debt*. Available at: [https://mascdn.azureedge.net/cms/cs-indebtedlives-the-complexities-of-life-in-debt\\_november-2013.pdf](https://mascdn.azureedge.net/cms/cs-indebtedlives-the-complexities-of-life-in-debt_november-2013.pdf)

<sup>35</sup> Wyman (2018)

<sup>36</sup> Ofcom (2017) *Adults' Media Use and Attitudes Report 2017*. Available at: [https://www.ofcom.org.uk/data/assets/pdf\\_file/0019/102772/section-5-digital-media.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0019/102772/section-5-digital-media.pdf)

<sup>37</sup> Money Advice Service (2013)

<sup>38</sup> Wyman (2018)

<sup>39</sup> *Ibid.*

<sup>40</sup> Money and Mental Health Policy Institute (2019) *Annual review 2018/19*. Available at: <https://www.moneyandmentalhealth.org/wpcontent/uploads/2019/07/Money-and-Mental-Health-Annual-Review-2018-19.pdf>

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mental health crisis. They will be able to enter Breathing Space without seeking advice from a debt adviser and will have access to its protections throughout their crisis treatment and then for a further 30 days, after which they will have the option of entering the protections of the main scheme for its full 60-day duration.

27.2. Breathing Space is accessible only via professional debt advice. The debt advice sector makes a variety of adaptations to ensure that advice is accessible to those with protected characteristics. For example, StepChange – a debt charity – has an advocacy team who provide additional practical support to vulnerable debt advice clients. This support is delivered in partnership with dedicated support organisations including Macmillan, Age UK, Dementia Friends, Mind, and Samaritans. It can involve offering supplementary debt advice sessions, referring debt advice clients to specialist third party organisations, and submitting debt write-off requests to creditors in certain circumstances - ensuring that people with protected characteristics have access to debt advice.

27.3. **Family Test:** The costs of problem debt are felt strongly by families. *StepChange*, a debt advice agency, suggest that 90% of parents in problem debt cut back on essential items for their children to help them keep up with their debts. They suggest that families in problem debt are twice as likely to argue about money than families in general, contributing to relationship strain and family breakdown. These problems are not limited to parents. Amongst children from families in problem debt, StepChange found that 60% often worried about their families' finances.

27.4. Debt advice agencies responding to requests for information submitted as part of this Impact Assessment were unanimous in reporting that Breathing Space would reduce rates of family breakdown amongst those in problem debt. They suggested that, in promoting more positive debt advice outcomes, Breathing Space would reduce the psychosocial burdens of problem debt. Amongst those who seek debt advice in the counterfactual, debt advice agencies suggested that over 50% of their clients had reported improved personal relationships after having received advice.<sup>41</sup>

## 28. Trade implications

28.1. No trade impact is expected as a result of Breathing Space.

## 29. Summary

29.1. The Net Present Value of a regulatory Breathing Space is substantially higher than that of a voluntary Breathing Space. Both options have higher net present values than doing nothing. A regulatory Breathing Space is therefore the government's preferred option.

29.2. In present value terms, the forecast benefits of Breathing Space – £13,644m – would need to fall to £2,067m for the Net Present Value of Breathing Space to be nil.

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<sup>41</sup> The Children's Society and StepChange (2014) *The Debt Trap: Exposing the impact of problem debt on children*. Available at: <https://www.childrensociety.org.uk/what-we-do/resources-and-publications/publications-library/debt-trap-exposing-impact-problem-debt-ch>

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29.3. In the worst-case scenario, the marginal increase in the benefit of debt advice under Breathing Space would be nil and, as a result, no additional debtors would take up debt advice. In this extreme scenario, the Net Present Value of Breathing Space would be -£42m. The £1,802m residual benefit would be derived from debtors receiving mental health crisis treatment. This group will benefit from improved wellbeing and from economic transfers as a result of not being charged interest or fees and, for debtors who choose to alter their repayment behaviour, from retaining money that would otherwise have been paid to their creditors. This is considered to be the floor in the Net Present Value of Breathing Space, as there is a high degree of certainty that this group will enter the mental health crisis moratorium without altering their behaviour and that they will benefit to the same degree as debtors who receive debt advice in the counterfactual.

29.4. If the costs of Breathing Space materialise but the benefits for creditors do not, there is a risk that these costs are passed through to debtors in the form of higher interest rates and more limited access to credit.

29.5. There is consensus within the debt advice sector that Breathing Space will increase the value of debt advice and that it will increase the incentive for people in problem debt to take-up debt advice. There is a strong evidence base to support the assertion that more positive debt advice outcomes generate higher recoveries for creditors and reduce debt collection costs. The risk of pass through is therefore considered to be limited.

29.6. Breathing Space may increase demand for the services of debt advice providers in the short term. In the long term, by supporting people in problem debt to enter debt solutions that are sustainable in the long term, Breathing Space should reduce demand for debt advice, all other variables remaining equal.

29.7. The costs and benefits of a regulatory Breathing Space are expressed in present value terms in table 12 below.

	Costs/£m	Impact on business
<b>Business charges foregone</b>	186.2	Direct
<b>Business charges foregone</b>	21.5	Indirect
<b>Business interest foregone</b>	1296.8	Direct
<b>Business interest foregone</b>	164.0	Indirect
<b>Govt interest and charges foregone and delayed revenue</b>	3.7	N/A
<b>Business delayed revenue</b>	1.4	Indirect
<b>Business and debt advice provider administration</b>	358.2	Direct
<b>Approved Mental Health Professional administration</b>	3.1	N/A
<b>Business and debt advice provider systems changes</b>	29.1	Indirect
<b>Government systems changes</b>	0.3	N/A
<b>Familiarisation</b>	0.4	Direct
<b>Dissemination</b>	1.9	Direct
<b>Total costs</b>	2066.8	N/A

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<b>Higher recoveries</b>	6108.9	Indirect
<b>Higher employee productivity</b>	3708.3	Indirect
<b>Higher debtor wellbeing</b>	2153.4	N/A
<b>Economic transfers</b>	1673.7	N/A
<b>Total benefits</b>	13644.4	N/A
<b>Net Present Value</b>	11577.5	N/A

*Table 12: Summary of costs and benefits of Breathing Space expressed in present value*

### 30. Description of implementation plan

30.1. This impact assessment demonstrates the significant benefit that Breathing Space will deliver. The government recognises the strong parliamentary interest in delivering the policy and its benefits as quickly as possible.

30.2. The government will lay regulations on Breathing Space before the end of 2019, and then intends to implement the policy in early 2021. The intervening period is vital in ensuring that creditors and debt advisers are prepared to deliver breathing space from the outset. HM Treasury is working closely with expert external stakeholders including debt advisers, creditors, and trade bodies to help them to prepare to deliver Breathing Space in practice.

30.3. As discussed in paragraph 14.3, creditors will be required to perform a variety of administrative tasks to comply with Breathing Space, including processing the notification of an entry into Breathing Space, suppressing contact relating to repayment, notifying enforcement agents, and pausing interest, fees and charges. Creditors will need some time to prepare to perform these actions, for example by making systems changes as accounted for in section 20.

30.4. A key element in the success of breathing space will be the development of an IT portal that will record entries into Breathing Space, notifying creditors accordingly that they should initiate the protections of Breathing Space. The portal will be developed by the Insolvency Service and used by debt advisers. HM Treasury is working closely with the Insolvency Service to ensure that the portal meets the needs of creditors, and debt advisers, as well as recording some of the management information that will be required to evaluate the policy.

30.5. The government commissioned advice from MAPS on raising awareness of Breathing Space amongst both people in problem in debt and creditors in advance of the policy's commencement.<sup>42</sup> This will be central to the policy's implementation.

30.6. MAPS recommended that the government explore a one-off awareness-raising and marketing campaign. This would seek to de-stigmatise debt advice, so that people who are either unaware of their debt problem, see their problem debt as manageable, or who are ashamed to seek advice choose to come forward.

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<sup>42</sup> Money and Pensions Service (2019) *Response to Request for Advice*. Available at: <https://www.gov.uk/government/publications/breathingspace-scheme-money-and-pensions-service-advice>



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30.7. MAPS highlighted the specific need for the benefits of Breathing Space and of debt advice to be highlighted to potential beneficiaries of the scheme. This would encourage more people to seek advice and to do so sooner, before they reach crisis point.

30.8. For people with multiple complex needs, MAPS recommended that the government ensures that Breathing Space is compatible with referral between specialist debt advice agencies so that people with specific needs receive the support that they need.

30.9. MAPS also highlighted the need for the government to ensure that creditors are prepared to comply with Breathing Space. MAPS recommended that this work is pursued via existing avenues, such as trade bodies and sector-specific forums. The government is developing its implementation plans following receipt of MAPS's advice.

### 31. Post-Implementation Review Plan

31.1. The same advice from the MAPS also covered evaluation of Breathing Space.<sup>43</sup> MAPS recommended that this work is advanced via three work streams: one evaluating the policy's operational processes, one evaluating the policy's impact, and another monitoring the evolving counterfactual.

31.2. MAPS highlighted several specific areas where monitoring of the counterfactual could focus. These included: overall levels of over-indebtedness, creditor repayments, and debt advice take-up, as well as debtor's mental wellbeing, the distribution of debt solutions that debtors choose to enter, the numbers of people entering those solutions, and the sustainability of those debt solutions.

31.3. MAPS recommended that the government establishes an advisory group of expert stakeholders to help inform the evaluation design. MAPS suggested that the group should include members drawn both from the debt advice and creditor sectors.

31.4. The government is developing on a monitoring and evaluation strategy to ensure that appropriate management information is captured in order to facilitate an effective post implementation review.

31.5. The Breathing Space scheme consists of two parts: Breathing Space, which has been assessed here, and the Statutory Debt Repayment Plan (SDRP). The government intends to implement Breathing Space in early 2021, with the SDRP developed to a slower timeline. The SDRP will extend the protections of Breathing Space to debtors who commit to fully repaying their debts to a manageable timeline. Each part of the scheme will be evaluated separately. This will require the impact of each part of the scheme to be isolated, as there will be some overlap between the two parts. The phased implementation of the two parts of the scheme will allow the government to evaluate the impacts of Breathing Space alone and then the two parts of the scheme combined.

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<sup>43</sup> *Ibid*

# Eitem 10.1

## MEMORANDWM CYDSYNIAD OFFERYN STATUDOL

### Rheoliadau Ymadael â'r Undeb Ewropeaidd (Addasiadau Canlyniadol) (Ymadael â'r UE) 2020

1. Gosodir y Memorandwm Cydsyniad Offeryn Statudol hwn o dan Reol Sefydlog ("RhS") 30A.2. Mae RhS 30A yn rhagnodi bod rhaid gosod Memorandwm Cydsyniad Offeryn Statudol ac y ceir cyflwyno Cynnig Cydsyniad Offeryn Statudol gerbron Senedd Cymru os yw un o Offerynnau Statudol (OS) y DU yn gwneud darpariaeth mewn perthynas â Chymru sy'n diwygio deddfwriaeth sylfaenol sydd o fewn cymhwysedd deddfwriaethol Senedd Cymru.
2. Mae Rheoliadau Ymadael â'r Undeb Ewropeaidd (Addasiadau Canlyniadol) (Ymadael â'r UE) 2020 yn ddarostyngedig i'r weithdrefn gadarnhaol ac fe'u gosodwyd ar ffurf ddrafft gerbron Senedd y DU ar 8 Hydref 2020. Mae'r Rheoliadau ar gael yn:

<https://www.legislation.gov.uk/uk/dsi/2020/9780348213102/>

#### Crynodeb o'r Offeryn Statudol a'i nod

3. Nod yr OS yw sicrhau bod llyfr statud y DU yn gweithio'n gydlynol ac yn effeithiol ar ôl diwedd y cyfnod pontio. Mae'n egluro sut y dylid dehongli rhai termau, gan gynnwys diffiniadau sy'n gysylltiedig â'r UE, mewn deddfwriaeth ddomestig ar ôl diwedd y cyfnod pontio.
4. Mae'r OS yn diwygio Deddf Ddehongli 1978 a'r Deddfau Dehongli cyfatebol a basiwyd gan y deddfwrfeydd datganoledig (gan gynnwys Deddf Deddfwriaeth (Cymru) 2019) mewn perthynas â dehongli cyfeiriadau at "gyfraith berthnasol y cytundebau gwahanu" Mae'r OS hefyd yn diwygio Deddf yr Undeb Ewropeaidd (Ymadael) 2018 i ddarparu ar gyfer sut y dylai cyfeiriadau presennol at offerynnau'r UE sy'n rhan o gyfraith berthnasol y cytundebau gwahanu, a chyfeiriadau annewidiadwy presennol at ddeddfwriaeth uniongyrchol yr UE, gael eu darllen ar ôl diwedd y cyfnod pontio.
5. Mae'r OS yn gwneud darpariaethau dehongli newydd yng ngoleuni Deddf yr Undeb Ewropeaidd (Cytundeb Ymadael) 2020 i gael gwared ar ansicrwydd ynghylch pa fersiwn o offeryn yr UE sy'n gymwys ac mae'n darparu glòs cyffredinol i sicrhau bod y dehongliad cywir o offeryn yr UE yn gymwys.
6. Mae'r OS hefyd yn gwneud diwygiadau canlyniadol i Reoliadau Deddf yr Undeb Ewropeaidd (Ymadael) 2018 (Addasiadau a Diddymiadau a Dirymiadau Canlyniadol) (Ymadael â'r UE) 2019 (Rheoliadau 2019) a diddymiadau technegol i ddarpariaethau segur o fewn deddfwriaeth sylfaenol sy'n deillio o Ddeddf yr Undeb Ewropeaidd (Ymadael) 2018.

7. Mae'r darpariaethau yn yr OS y mae'r Memorandwm hwn yn ymwneud â hwy yn amrywio o ran eu rychwant tiriogaethol a'u cymhwysiad. Y Deyrnas Unedig yw rychwant tiriogaethol a chymhwysiad rheoliadau 2, 3 a 4 sy'n diwygio Deddf Ddehongli 1978, Ddeddf yr Undeb Ewropeaidd (Ymadael) 2018 a Rheoliadau 2019. Mae rheoliad 8 sy'n diwygio Deddf Deddfwriaeth (Cymru) 2019 yn ymestyn i Gymru ac yn gymwys iddi. Mae rheoliad 9 a'r Atodlen sy'n diddymu ac yn dirymu nifer o ddarpariaethau a gynhwysir mewn deddfwriaeth sylfaenol yn ymestyn i'r Deyrnas Unedig ac mae'n gymwys iddi.

### **Y ddarpariaeth berthnasol sydd i'w gwneud gan yr Offeryn Statudol**

8. Mae rheoliadau 2 ac 8 yn gwneud diwygiadau canlyniadol i Ddeddf Dehongli 1978 (p. 30) a Deddf Deddfwriaeth (Cymru) 2019 (dccc 4) i wneud darpariaeth ddeongliadol ar gyfer cyfeiriadau mewn deddfwriaeth ddomestig at offerynnau'r UE sy'n rhan o gyfraith berthnasol y cytundebau gwahanu ar ôl diwedd y cyfnod pontio.
9. Mae Llywodraeth Cymru o'r farn fod y darpariaethau a ddisgrifir ym mharagraff 8 uchod yn ymwneud â materion pwnc sydd o fewn cymhwysedd deddfwriaethol Senedd Cymru. Mae gan y term "cyfraith berthnasol y cytundebau gwahanu" ddiffiniad eang yn adran 7C o Ddeddf yr Undeb Ewropeaidd (Ymadael). Mae hyn yn cynnwys deddfwriaeth ddomestig y caiff un o Weinidogion y Goron neu Weinidogion Cymru ei gwneud i weithredu materion gwahanu yn Rhan 3 o'r Cytundeb Ymadael, megis materion sy'n ymwneud â chymorth gwladwriaethol a chaffael sydd o fewn cymhwysedd deddfwriaethol y Senedd. Mae hefyd yn cynnwys deddfwriaeth ddomestig y ceir ei gwneud i weithredu'r Protocol ar Iwerddon/Gogledd Iwerddon, a allai gynnwys darpariaethau sy'n ymwneud â nifer o faterion sydd o fewn cymhwysedd deddfwriaethol y Senedd, megis pysgodfeydd a bwyd.

### **Pam y mae'n briodol i'r Offeryn Statudol wneud y ddarpariaeth hon**

2. Nid oes gwahaniaeth rhwng Llywodraeth Cymru a Llywodraeth y DU (Swyddfa'r Cabinet) o ran y diwygiadau a wneir gan yr OS. Bydd yn cael ei wneud o dan adran 23 o Ddeddf yr Undeb Ewropeaidd (Ymadael) 2018 ac adran 41 o Ddeddf yr Undeb Ewropeaidd (Cytundeb Ymadael) 2020 sy'n rhoi pwerau i un o Weinidogion y Goron wneud darpariaeth o ganlyniad i'r ddwy Ddeddf hynny. Ni roddir pwerau cyfatebol i Weinidogion Cymru i wneud darpariaeth ganlyniadol, ac felly ni allai Gweinidogion Cymru wneud OS ar wahân ar gyfer Cymru sy'n cynnwys darpariaeth ar gyfer dehongli deddfwriaeth sydd o fewn cymhwysedd deddfwriaethol y Senedd.
10. Mae'r OS yn gwneud nifer o ddiwygiadau technegol i'r Deddfau Dehongli, gyda'r bwriad o sicrhau bod y fframwaith deddfwriaethol ar gyfer y Cytundeb Ymadael a'r Protocol ar Iwerddon/Gogledd Iwerddon yn gweithredu'n effeithiol ar ôl diwedd y cyfnod pontio.

11. Yr hyn fyddai orau gennym ni, o ddigon, fyddai bod cyfreithiau a wnaed yng Nghymru yn cael eu diwygio yng Nghymru fel rhan o'r broses o ymadael â'r UE. Yn achos y newidiadau a wneir gan yr OS hwn, nid yw'r pwerau gan Weinidogion Cymru. O ganlyniad, o ystyried bod gofyn i'r diwygiadau gael eu gwneud erbyn diwedd y cyfnod pontio, yr unig ffordd arall o wneud y diwygiadau yng Nghymru fyddai mynd â deddfwriaeth sylfaenol drwy'r Senedd a chael y Cydsyniad Brenhinol erbyn diwedd y flwyddyn. Ni fyddai hyn yn ddefnydd cymesur o amser ac adnoddau.
12. Mae'r diwygiadau wedi'u hystyried yn llawn; ac nid oes unrhyw wahaniaeth barn yn eu cylch. O ystyried natur dechnegol y diwygiadau a'r angen i ddarpariaethau deongliadol fod ar waith erbyn diwedd y flwyddyn, ystyrir ei bod yn briodol i Lywodraeth y DU wneud y cywiriadau hyn mewn perthynas â Chymru ac ar ei rhan am resymau effeithlonrwydd a hwylustod. At hynny, mae gwneud y diwygiadau canlyniadol angenrheidiol mewn un offeryn yn helpu i wneud y gyfraith yn fwy hygyrch yn ystod y cyfnod hwn o newid.

### **Goblygiadau ariannol**

13. Nid oes unrhyw oblygiadau ariannol o ran cydsynio i'r darpariaethau yn yr Offeryn Statudol.

**Jeremy Miles AS**

**Y Cwnsler Cyffredinol a'r Gweinidog Pontio Ewropeaidd**

Hydref 2020

DRAFT STATUTORY INSTRUMENTS

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**2020 No. 000**

**EXITING THE EUROPEAN UNION**

**EUROPEAN UNION**

**The European Union Withdrawal (Consequential Modifications)  
(EU Exit) Regulations 2020**

*Made* - - - -

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*Coming into force in accordance with regulation 1*

The Secretary of State makes these Regulations in exercise of the powers conferred by section 23(1) and (2) of, and paragraphs 21(b) and 26 of Schedule 7 to, the European Union (Withdrawal) Act 2018<sup>(a)</sup>, and section 41(1) and (2) of the European Union (Withdrawal Agreement) Act 2020<sup>(b)</sup>.

In accordance with paragraph 15(1) of Schedule 7 to the European Union (Withdrawal) Act 2018, a draft of this instrument has been laid before Parliament and approved by a resolution of each House of Parliament.

**PART 1**

**Introduction**

**Citation, commencement, extent and interpretation**

**1.**—(1) These Regulations may be cited as the European Union Withdrawal (Consequential Modifications) (EU Exit) Regulations 2020.

(2) Regulation 1 and regulation 10 come into force immediately before IP completion day.

(3) Otherwise these Regulations come into force on IP completion day.

(4) A provision of these Regulations that amends or repeals an enactment has the same extent as the enactment amended or repealed.

(5) In these Regulations, “the 2019 Regulations” means the European Union (Withdrawal) Act 2018 (Consequential Modifications and Repeals and Revocations) (EU Exit) Regulations 2019<sup>(c)</sup>.

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(a) 2018 c. 16. Paragraph 21(b) of Schedule 7 was amended by paragraph 53(2)(b) of Schedule 5 to the European Union (Withdrawal Agreement) Act 2020 (c. 1).

(b) 2020 c. 1.

(c) S.I. 2019/628.

## PART 2

### Amendment of UK primary legislation

#### Amendment of Interpretation Act 1978

- 2.**—(1) The Interpretation Act 1978(**a**) is amended as follows.
- (2) In section 20 (references to other enactments)—
- (a) in the heading after “enactments” insert “etc.”,
  - (b) after subsection (2), insert—  
“(2A) Where—
    - (a) an Act passed on or after IP completion day refers to any treaty relating to the EU or any instrument or other document of an EU entity, and
    - (b) the treaty, instrument or document has effect by virtue of section 7A or 7B of the European Union (Withdrawal) Act 2018 (general implementation of remainder of EU withdrawal agreement etc.),the reference, unless the contrary intention appears and so far as required for the purposes of relevant separation agreement law, is a reference to the treaty, instrument or document as it so has effect (including, so far as so required, as it has effect from time to time).”
  - (c) in subsection (3), for “Where” substitute “Subject to subsection (2A), where”,
  - (d) in subsection (5)—
    - (i) for “subsection (3) or” substitute “subsections (2A) to”, and
    - (ii) for “that subsection” substitute “the subsection concerned”,
  - (e) after subsection (5), insert—  
“(6) In this section—  
“treaty” includes any international agreement (and any protocol or annex to a treaty or international agreement).”
- (3) In section 20A (references to EU instruments), in the heading, after “to” insert “certain”.
- (4) In section 22(1) (application to Acts and Measures)—
- (a) for “20(3) to (5)” substitute “20(2A) to (6)”, and
  - (b) for “in section 20(3)” substitute “in section 20(2A) or (3)”.
- (5) After paragraph 7 of Schedule 2, insert—
- “**8.** The definition in Schedule 1 of “enactment”, in so far as it relates to retained direct EU legislation, applies to subordinate legislation made at any time before the commencement of this Act as it applies to Acts passed at that time.”

#### Amendment of European Union (Withdrawal) Act 2018

- 3.**—(1) The European Union (Withdrawal) Act 2018(**b**) is amended as follows.
- (2) In Schedule 8 (consequential, transitional, transitory and saving provision)—
- (a) in paragraph 1—
    - (i) in sub-paragraph (1) for “which”, where it first appears, substitute “so far as it”, and
    - (ii) in sub-paragraph (2) for “which” substitute “so far as it”,
  - (b) after paragraph 1, insert—

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(a) 1978 c. 30.

(b) 2018 c. 16.

**“Existing ambulatory references to relevant separation agreement law**

**1A.**—(1) Any reference which, immediately before IP completion day—

- (a) exists in—
  - (i) any enactment,
  - (ii) any EU regulation, EU decision, EU tertiary legislation or provision of the EEA agreement which is to form part of domestic law by virtue of section 3, or
  - (iii) any document relating to anything falling within sub-paragraph (i) or (ii), and
- (b) is a reference to (as it has effect from time to time) any of the EU Treaties, any EU instrument or any other document of an EU entity,

is, if the treaty, instrument or document has effect on or after IP completion day by virtue of section 7A or 7B and so far as required for the purposes of relevant separation agreement law, to be read on or after that day as, or including, a reference to the treaty, instrument or document as it so has effect (including, so far as so required, as it has effect from time to time).

(2) In sub-paragraph (1) “treaty” includes any international agreement (and any protocol or annex to a treaty or international agreement).

(3) Sub-paragraphs (1) and (2) are subject to any other provision made by or under this Act or any other enactment.”

(c) in paragraph 2—

- (i) in sub-paragraph (1) for “which”, where it first appears, substitute “so far as it”, and
- (ii) in sub-paragraph (2) for “which” substitute “so far as it”.

(d) after paragraph 2, insert—

**“Existing non-ambulatory references**

**2A.**—(1) Any reference which, immediately before IP completion day—

- (a) exists in—
  - (i) any enactment, or
  - (ii) any EU regulation, EU decision, EU tertiary legislation or provision of the EEA agreement which is to form part of domestic law by virtue of section 3, and
- (b) is a reference to any of the EU Treaties, any EU instrument or any other document of an EU entity as it has effect at a particular time which is earlier than IP completion day,

is to be read, on or after IP completion day, in accordance with one or more of sub-paragraphs (2) to (4).

(2) If the treaty, instrument or document has effect by virtue of section 7A or 7B on or after IP completion day and so far as required for the purposes of relevant separation agreement law, the reference is to be read on or after that day as, or as including, a reference to the treaty, instrument or document as it so has effect (including, so far as so required, as it has effect from time to time).

(3) So far as—

- (a) the reference is a reference to—
  - (i) any EU regulation, EU decision or EU tertiary legislation,
  - (ii) any provision of the EEA agreement, or
  - (iii) any part of anything falling within sub-paragraph (i) or (ii),

- (b) what has been referred to (“the subject law”) is to form part of domestic law by virtue of section 3 or forms part of domestic law by virtue of section 1 of the Direct Payments to Farmers (Legislative Continuity) Act 2020, and
- (c) there has been no relevant modification of the subject law after the particular time and before IP completion day (or, where the subject law forms part of domestic law by virtue of section 1 of the Direct Payments to Farmers (Legislative Continuity) Act 2020, before exit day),

the reference is to be read, on or after IP completion day, as a reference to the subject law as it forms part of domestic law by virtue of section 3 or (as the case may be) section 1 of the Direct Payments to Farmers (Legislative Continuity) Act 2020.

(4) So far as the reference is not to be read in accordance with sub-paragraphs (2) and (3), the reference is to be read, on or after IP completion day, as a reference to the treaty, instrument or document as it had effect in EU law at the particular time.

(5) Sub-paragraph (3) does not determine whether, where the subject law is modified by domestic law on or after IP completion day, the reference is to be read as a reference to the subject law as modified; but, where the subject law forms part of domestic law by virtue of section 1 of the Direct Payments to Farmers (Legislative Continuity) Act 2020 and is modified by domestic law before IP completion day, the reference is to be read by virtue of sub-paragraph (3) as a reference to the subject law as so modified.

(6) This paragraph is subject to any provision made by or under this Act or any other enactment.

(7) In this paragraph—

“relevant modification” means any modification in EU law which—

- (a) is to form part of domestic law by virtue of section 3 or forms part of domestic law by virtue of section 1 of the Direct Payments to Farmers (Legislative Continuity) Act 2020, and
- (b) would, if the reference were to the subject law as modified, result in an alteration to the effect of the reference (ignoring any alteration which is irrelevant in the context concerned);

“the subject law” has the meaning given by sub-paragraph (3)(b);

“treaty” includes any international agreement (and any protocol or annex to a treaty or international agreement).”.

## PART 3

### Amendment of the 2019 Regulations

#### **Replacement of references to “exit day” with “IP completion day”**

4. In regulation 5(2) of the 2019 Regulations, for “exit day”, substitute “IP completion day”.



## PART 4

### Scotland

#### **Amendment of Interpretation and Legislative Reform (Scotland) Act 2010**

**5.**—(1) The Interpretation and Legislative Reform (Scotland) Act 2010(a) is amended as follows.

(2) In section 1 (application of Part 1 of the Act), after subsection (1) insert—

“(1A) Subsection (1) is subject to section 14(2A) and (3).”

(3) In section 12 (references to EU instruments), in the heading, after “to” insert “certain”.

(4) In section 14 (references to other legislative provisions)—

(a) after subsection (2), insert—

“(2A) Where—

(a) there is a reference in—

(i) an Act of the Scottish Parliament the Bill for which received Royal Assent on or after IP completion day, or

(ii) a Scottish instrument made on or after IP completion day,

to any treaty relating to the EU or any instrument or other document of an EU entity, and

(b) the treaty, instrument or document referred to has effect by virtue of section 7A or 7B of the European Union (Withdrawal) Act 2018 (general implementation of remainder of EU withdrawal agreement etc.),

the reference, so far as required for the purposes of relevant separation agreement law, is a reference to the treaty, instrument or document as it so has effect (including, so far as so required, as it has effect from time to time).”

(b) in subsection (3), at the beginning insert “Subject to subsection (2A).”,

(c) in subsection (5)—

(i) for “subsection (3) or” substitute “subsections (2A) to”, and

(ii) for “that subsection” substitute “the subsection concerned”,

(d) after subsection (5) insert—

“(6) In this section—

“treaty” includes any international agreement (and any protocol or annex to a treaty or international agreement).”

#### **Interpretation of “the Treaties”, “the EU Treaties” and “the Communities”**

**6.**—(1) The fact that by virtue of regulation 4(5) of the 2019 Regulations—

(a) the definitions of “the Treaties” and “the EU Treaties” (as defined by section 1(2) of the European Communities Act 1972(b)) in Schedule 2 to the 1999 Order are treated as revoked, and

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(a) 2010 asp 10. Section 14 is amended by regulation 4 of S.I. 2019/628 as amended by S.I. 2020/463. Schedule 1 is amended by S.I. 2019/628, paragraph 37 of Schedule 5 to the European Union (Withdrawal Agreement) Act 2020 (c. 1) and paragraph 4 of Schedule 1 to the Direct Payments to Farmers (Legislative Continuity) Act 2020 (c. 2). There are other amendments not relevant to this instrument.

(b) The definition of “the Treaties” and “the EU Treaties” in section 1(2) of the European Communities Act 1972 (c. 68) was amended by the European Communities (Greek Accession) Act 1979 (c. 57), section 1; the European Communities (Spanish and Portuguese Accession) Act 1985 (c. 75), section 1; the European Communities (Amendment) Act 1986 (c. 58), section 1; the European Communities (Amendment) Act 1993 (c. 32), section 1; the European Parliamentary Elections Act 1993 (c. 41), section 3; the European Economic Area Act 1993 (c. 51), section 1; the European Union (Accessions) Act 1994 (c. 38), section 1; the European Communities (Amendment) Act 1998 (c. 21), section 1; the European Communities

(b) definitions of those expressions are treated as inserted into that Schedule,

does not affect the interpretation of those expressions on and after IP completion day in relation to a time before IP completion day.

(2) In its application to Acts of the Scottish Parliament the Bills for which received Royal Assent before 19th June 2008 or to Scottish subordinate legislation made before that date, the definition of “the Communities”, which by virtue of regulation 4(5) of the 2019 Regulations is treated as inserted into Schedule 2 to the 1999 Order, has effect on and after IP completion day, in its application in relation to a time before 19th June 2008, as if the words from “but” to the end were omitted.

(3) In this regulation—

“the 1999 Order” means the Scotland Act 1998 (Transitory and Transitional Provisions) (Publication and Interpretation etc. of Acts of the Scottish Parliament) Order 1999(a);

“Scottish subordinate legislation” has the same meaning as in the 1999 Order.

## PART 5

### Northern Ireland

#### Amendment of the Interpretation Act (Northern Ireland) 1954

7. — (1) The Interpretation Act (Northern Ireland) 1954(b) is amended as follows.

(2) In section 11 (references in enactments)—

(a) for subsections (1A) and (1B), substitute—

“(1A) Except to the extent provided by subsection (1AA), subsection (1) does not apply to a reference in an enactment to retained direct EU legislation (but, for provision about references to EU legislation, see—

(a) paragraphs 1 to 2A of Schedule 8 to the European Union (Withdrawal) Act 2018,

(b) subsections (1B) to (1F), and

(c) section 11A).

(1AA) A reference in an enactment to a statutory provision which is subordinate legislation made under retained direct EU legislation is a reference to which subsection (1) applies; and “subordinate legislation” here means subordinate legislation within the meaning of the Interpretation Act 1978 (see section 21(1) of that Act).

(1B) Subsection (1C) applies to a reference in an enactment so far as the reference is to be read in accordance with paragraph 2A(3) of Schedule 8 to the European Union (Withdrawal) Act 2018 (certain references to certain EU laws to be read as referring to those laws as they form part of domestic law).”,

(b) in subsection (1C), for the words from the beginning to “referred to” substitute “The reference is not only to be read in accordance with paragraph 2A(3) of Schedule 8 to that Act but shall also be construed as referring to the subject law (within the meaning given by paragraph 2A(3)(b) of that Schedule)”,

(c) in subsection (1D)(b), after “domestic law” insert “(to any extent)”,

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(Finance) Act 2001 (c. 22), section 1; the European Communities (Amendment) Act 2002 (c. 3), section 1; the European Union (Accessions) Act 2003 (c. 35), section 1; the European Union (Accessions) Act 2006 (c. 2), section 1; the European Union (Amendment) Act 2008 (c. 7), paragraph 1, the Schedule; the European Union Act 2011 (c. 12), section 15; the European Union (Croatian Accession and Irish Protocol) Act 2013 (c. 5), section 3; the European Union (Finance) 2015 (c. 2015 (c. 32), section 1; S.I. 2011/1043.

(a) S.I. 1999/1379; revoked by article 8 of that Order but subject to savings specified in s. 55(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10).

(b) 1954 c. 33 (N.I.).

(d) in subsection (1E), at the beginning insert “Subject to section 11A,”.

(3) After section 11 insert—

**“References to EU instruments etc which have direct effect**

**11A.**—(1) Subsection (2) applies where—

- (a) an enactment passed or made on or after IP completion day refers to any treaty relating to the EU or any instrument or other document of an EU entity, and
- (b) the treaty, instrument or document has effect by virtue of section 7A or 7B of the European Union (Withdrawal) Act 2018 (general implementation of remainder of EU withdrawal agreement etc).

(2) So far as required for the purposes of relevant separation agreement law, the reference shall be construed as a reference to the treaty, instrument or document as it so has effect (including, so far as so required, as it has effect from time to time).

(3) In this section—

“EU entity” has the meaning given by section 20(1) of the European Union (Withdrawal) Act 2018;

“relevant separation agreement law” has the meaning given by section 7C(3) of the European Union (Withdrawal) Act 2018; and

“treaty” includes any international agreement (and any protocol or annex to a treaty or international agreement).”

## PART 6

### Wales

#### **Amendment of Legislation (Wales) Act 2019**

**8.**—(1) The Legislation (Wales) Act 2019(a) is amended as follows.

(2) In section 24 (references to direct EU legislation retained in domestic law after EU exit), after subsection (2)—

(a) in the English language text insert—

“(2A) But this is subject to section 25A (references to relevant separation agreement law).”;

(b) in the Welsh language text insert—

“(2A) Ond mae hyn yn ddarostyngedig i adran 25A (cyfeiriadau at gyfraith berthnasol y cytundebau gwahanu).”;

(3) After section 25—

(a) in the English language text insert—

**“References to relevant separation agreement law**

**25A.**—(1) This section applies where—

- (a) an Act of Senedd Cymru receives Royal Assent, or a Welsh subordinate instrument is made, on or after implementation period completion day, and
- (b) the Act or instrument refers to any treaty relating to the EU, or any instrument or other document of any EU entity, which has effect by virtue of section 7A or 7B of

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(a) 2019 anaw 4. Section 24 is amended by paragraph 59 of Schedule 5 to the European Union (Withdrawal Agreement) Act 2020 (c. 1) and S.I. 2020/463. There are other amendments not relevant to this instrument.

the European Union (Withdrawal) Act 2018 (c. 16) (general implementation of remainder of EU withdrawal agreement etc.).

(2) The reference is, so far as required for the purposes of relevant separation agreement law, a reference to the treaty, instrument or document as it has effect by virtue of that section (including, so far as required, as it has effect from time to time).

(3) In this section—

“EU entity” (“*endid o’r UE*”) has the meaning given by section 20(1) of the European Union (Withdrawal) Act 2018;

“relevant separation agreement law” (“*cyfraith berthnasol y cytundebau gwahanu*”) has the meaning given by section 7C(3) of the European Union (Withdrawal) Act 2018;

“treaty” (“*cytuniad*”) includes any international agreement (and any protocol or annex to a treaty or international agreement). ”

(b) in the Welsh language text insert—

### “Cyfeiriadau at gyfraith berthnasol y cytundebau gwahanu

**25A.** —(1) Mae’r adran hon yn gymwys—

(a) pan fo Deddf gan Senedd Cymru yn cael y Cydsyniad Brenhinol, neu pan fo is-offeryn Cymreig yn cael ei wneud, ar neu ar ôl diwrnod cwblhau’r cyfnod gweithredu, a

(b) pan fo’r Ddeddf neu’r offeryn yn cyfeirio at unrhyw gytuniad sy’n ymwneud â’r UE, neu unrhyw offeryn neu ddogfen arall gan unrhyw endid o’r UE, sy’n cael effaith yn rhinwedd adran 7A neu 7B o Ddeddf yr Undeb Ewropeaidd (Ymadael) 2018 (p. 16) (gweithredu gweddill y cytundeb ymadael â’r UE etc. yn gyffredinol).

(2) Mae’r cyfeiriad, i’r graddau y mae’n ofynnol at ddibenion cyfraith berthnasol y cytundebau gwahanu, yn gyfeiriad at y cytuniad, yr offeryn neu’r ddogfen fel y mae’n cael effaith yn rhinwedd yr adran honno (gan gynnwys, i’r graddau y mae’n ofynnol, fel y mae’n cael effaith o bryd i’w gilydd).

(3) Yn yr adran hon—

mae i “cyfraith berthnasol y cytundebau gwahanu” yr ystyr a roddir i “relevant separation agreement law” gan adran 7C(3) o Ddeddf yr Undeb Ewropeaidd (Ymadael) 2018;

mae “cytuniad” (“*treaty*”) yn cynnwys unrhyw gytundeb rhyngwladol (ac unrhyw brotocol neu atodiad i gytuniad neu gytundeb rhyngwladol);

mae i “endid o’r UE” yr ystyr a roddir i “EU entity” gan adran 20(1) o Ddeddf yr Undeb Ewropeaidd (Ymadael) 2018. ”

(4) In section 26 (references to EU instruments)—

(a) in the English language text—

(i) in the heading after “to” insert “certain”,

(ii) in subsection (3), for “regulation 2 of the European Union (Withdrawal) Act 2018 (Consequential Modifications and Repeals and Revocations) (EU Exit) Regulations 2019 (S.I. 2019/628)” substitute “paragraph 2A of Schedule 8 to the European Union (Withdrawal) Act 2018 (c.16)”.

(b) in the Welsh language text—

(i) in the heading for “offerynnau’r UE” substitute “offerynnau penodol gan yr UE”,

(ii) in subsection (3), for “reoliad 2 o Reoliadau Deddf yr Undeb Ewropeaidd (Ymadael) 2018 (Addasiadau Canlyniadol a Diddymiadau a Dirymiadau) (Ymadael â’r UE) 2019 (O.S. 2019/628)” substitute “baragraff 2A o Atodlen 8 i Ddeddf yr Undeb Ewropeaidd (Ymadael) 2018 (p. 16)”.

## PART 7

### Repeals and revocations

#### Repeals

9.—(1) The enactments mentioned in the Schedule are repealed to the extent specified.

(2) Where—

- (a) paragraph (1) and the Schedule repeal an enactment (“the amending enactment”) which inserts or otherwise amends another enactment, and
- (b) the inserted or amended enactment is repealed by the European Union (Withdrawal) Act 2018 and there is related transitional or saving provision,

the repeal of the amending enactment does not affect the operation of that transitional or saving provision.

#### Revocations

10. In the 2019 Regulations, regulation 2 is omitted.

## PART 8

### Amendments consequential on this instrument

#### Amendment of the Financial Services and Markets Act 2000 (Qualifying EU Provisions) Order 2013

11. In article 1 of the Financial Services and Markets Act 2000 (Qualifying EU Provisions) Order 2013(a), in paragraph (3A), for “regulation 2 of the European Union (Withdrawal) Act 2018 (Consequential Modifications and Repeals and Revocations) (EU Exit) Regulations 2019”, substitute “paragraph 2A of Schedule 8 to the European Union (Withdrawal) Act 2018”.

Date \_\_\_\_\_ *Name*  
[Minister for the Cabinet Office]  
Cabinet Office

## SCHEDULE

Regulation 9

### Repeals

<i>Short title</i>	<i>Extent of repeal</i>
Criminal Law Act 1977(b)	Section 32(3). Section 65(10)(e).
Customs and Excise Management Act 1979(c)	In Schedule 4, in paragraph 12, in Part 1 of the Table, the entries relating to section 6(5) and (6) of the European Communities Act 1972 (and the heading preceding those entries).

(a) S.I. 2013/419. Paragraph (3A) was inserted into article 1 of that Order by S.I. 2019/1416 and substituted by S.I. 2020/117.

(b) 1977 c. 45.

(c) 1979 c. 2.

Customs and Excise Duties (General Reliefs) Act 1979(a)	In Schedule 2, paragraphs 3 to 5 (and the heading preceding those paragraphs).
Agricultural Statistics Act 1979(b)	In Schedule 1, paragraph 4 (and the heading preceding that paragraph).
Criminal Procedure (Consequential Provisions) (Scotland) Act 1995(c)	In Schedule 4, paragraph 8 (and the heading preceding that paragraph).
Justice (Northern Ireland) Act 2002(d)	In Schedule 7, paragraph 1(3).
Railways and Transport Safety Act 2003(e)	In section 103(2), the words “or under section 2 of the European Communities Act 1972 (c.68) (implementation of Community obligations)”.
	In Schedule 6, in paragraph 1(1)(b), the words “or section 2 of the European Communities Act 1972 (c.68) (implementation of Community obligations)”.
	In Schedule 6, paragraph 10(b) and the “or” before that paragraph.
Criminal Justice Act 2003(f)	In Schedule 27, paragraph 3 (and the heading preceding that paragraph).
Constitutional Reform Act 2005(g)	In Schedule 9, paragraphs 97 and 110.
Legislative and Regulatory Reform Act 2006(h)	Section 20. Section 26(1). Section 27(1), (2) and (4). Section 28. Section 29.
Wales Act 2017(i)	Section 12(2)(b). Section 20.

### **EXPLANATORY NOTE**

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

These Regulations are made in exercise of the powers conferred by section 23(1) and (2) of, and paragraphs 21 and 26 of Schedule 7 to, the European Union (Withdrawal) Act 2018 (c. 16) (“the 2018 Act”) and section 41(1) and (2) of the European Union (Withdrawal Agreement) Act 2020 (c.1).

Regulation 2 amends the Interpretation Act 1978 (c. 30) and makes interpretative provision for references on or after IP completion day to EU instruments which form part of relevant separation agreement law (as defined in the 2018 Act). It also amends the Interpretation Act 1978 to make it clear that the new definition of “enactment” (i.e. including retained direct EU legislation) which was added by the 2018 Act(j) applies to the interpretation of subordinate legislation (as well as Acts) made or passed before the Interpretation Act 1978 came into force.

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(a) 1979 c. 3.  
(b) 1979 c. 13.  
(c) 1995 c. 40.  
(d) 2002 c. 26 (N.I.).  
(e) 2003 c. 20.  
(f) 2003 c. 44.  
(g) 2005 c. 4.  
(h) 2006 c. 51.  
(i) 2017 c. 4.  
(j) Paragraph 22(d) of Schedule 8 to the European Union (Withdrawal) Act 2018 amended the definition of “enactment” in Schedule 1 to the Interpretation Act 1978.

Regulation 3 amends Schedule 8 to the 2018 Act to make general provision about what happens on IP completion day to non-ambulatory cross-references to EU instruments and in respect of references to relevant separation agreement law. General provision about what happens on IP completion day to ambulatory references to EU instruments is found at paragraphs 1 and 2 of Schedule 8 to the 2018 Act.

Regulation 4 makes consequential amendments to the European Union (Withdrawal) Act 2018 (Consequential Modifications and Repeals and Revocations) (EU Exit) Regulations 2019 (S.I. 2019/628) (“the 2019 Regulations”) to change certain references to “exit day” to “IP completion day”.

Regulation 5 amends the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10) and makes interpretative provision for references on or after IP completion day to EU instruments which form part of relevant separation agreement law (as defined in the 2018 Act).

Regulation 6 makes transitional provision for certain definitions relating to the EU which were added to the Scotland Act 1998 (Transitory and Transitional Provisions) (Publication and Interpretation etc. of Acts of the Scottish Parliament) Order 1999 (S.I. 1999/1379) by regulation 4(5) of the 2019 Regulations.

Regulation 7 amends the Interpretation Act (Northern Ireland) 1954 (c. 33 (N.I.)) and makes interpretative provision for references on or after IP completion day to EU instruments which form part of relevant separation agreement law (as defined in the 2018 Act).

Regulation 8 amends the Legislation (Wales) Act 2019 (anaw 4) and makes interpretative provision for references on or after IP completion day to EU instruments which form part of relevant separation agreement law (as defined in the 2018 Act).

Regulation 9 and the Schedule to these Regulations repeal primary legislation that has become redundant in consequence of the 2018 Act or this instrument.

Regulation 10 revokes certain provisions of the 2019 Regulations where alternative provision is made in this instrument.

Regulation 11 makes a consequential amendment to the Financial Services and Markets Act 2000 (Qualifying EU Provisions) Order 2013 (S.I. 2013/419) as a result of the revocation of regulation 2 of the 2019 Regulations by regulation 10 of this instrument.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen. An Explanatory Memorandum is published alongside this instrument on [www.legislation.gov.uk](http://www.legislation.gov.uk).

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£6.90

UK202010081015 10/2020 19585

<http://www.legislation.gov.uk/id/ukdsi/2020/9780348213102>

Tudalen y pecyn 376

ISBN 978-0-34-821310-2



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**EXPLANATORY MEMORANDUM TO**  
**THE EUROPEAN UNION WITHDRAWAL (CONSEQUENTIAL MODIFICATIONS)**  
**(EU EXIT) REGULATIONS 2020**

2020 No. [XXXX]

**1. Introduction**

- 1.1 This explanatory memorandum has been prepared by the Cabinet Office and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

**2. Purpose of the instrument**

- 2.1 The purpose of this instrument is to ensure that the UK statute book works coherently and effectively following the end of the transition period.
- 2.2 It clarifies how certain terms, including EU-related definitions, should be interpreted in domestic legislation on or after IP completion day. As part of this, the instrument clarifies how cross references to EU legislation should be read.
- 2.3 The instrument makes technical repeals to redundant provisions within primary legislation arising from the European Union (Withdrawal) Act 2018 (“EUWA”). These are primarily repeals of *amending* provisions, in particular relating to the European Communities Act 1972 (“the ECA”), where EUWA has already provided for the repeal of the *amended* provisions. The purpose of the repeals in these Regulations is to tidy up the statute book and they have no substantive effect.
- 2.4 The instrument amends the Interpretation Act 1978 (and the devolved equivalents) in relation to the interpretation of references to “*relevant separation agreement law*”. The instrument also amends EUWA to provide for how existing references to EU instruments that form part of relevant separation agreement law and how existing non-ambulatory references to direct EU legislation should be read. It also makes consequential amendments to the European Union (Withdrawal) Act 2018 (Consequential Modifications and Repeals and Revocations) (EU Exit) Regulations 2019<sup>1</sup>(S.I. 2019/628) (“the 2019 Regulations”) and the Financial Services and Markets Act 2000 (Qualifying EU Provisions) Order 2013.
- 2.5 The instrument makes new interpretation provisions in light of the European Union (Withdrawal Agreement) Act 2020 (WAA), to remove uncertainty about which version of an EU instrument applies, whether the retained version or the version applied by the Withdrawal Agreement. The instrument provides a general gloss to ensure that the correct interpretation of the EU instrument applies. SIs being prepared by other departments in order to implement the Withdrawal Agreement, including the Northern Ireland Protocol are relying on these glosses. These SIs are required for IP completion day.

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<sup>1</sup> as amended by the Direct Payments to Farmers (Legislative Continuity) Act 2020 (Consequential Amendments) Regulations 2020 (S.I. 2020/463).

## *Explanations*

### What did any relevant EU law do before IP completion day?

- 2.6 This instrument does not amend retained direct EU legislation (“RDEUL”) or relevant separation agreement law, but makes general interpretative provision and makes various repeals to redundant EU-derived domestic legislation.
- 2.7 The EU-derived domestic legislation that is being repealed is domestic law rather than EU law. The provisions being repealed amended the ECA and other Acts repealed by EUWA. More detailed information on the repeals is found in section 7 of this explanatory memorandum.
- 2.8 The interpretation legislation amended by this instrument is not EU law; it is domestic legislation, which is being updated in consequence of EUWA and WAA.

### Why is it being changed?

- 2.9 Certain provisions within primary legislation are being repealed because they are redundant in consequence of EUWA. These are primarily repeals of amending provisions, in particular relating to the ECA, where EUWA has already repealed the amended provisions. The repeals are being made to ensure a clean and tidy statute book after IP Completion Day and to ensure that the UK’s legal system continues to function effectively. More information on the changes is included at section 7.
- 2.10 Domestic interpretation legislation is being amended to clarify how certain terms, including EU-related definitions, should be interpreted in domestic legislation on or after IP completion day. Transitional provision is also needed to clarify how ambulatory and non-ambulatory references to EU legislation in pre-exit legislation are to be read after IP completion day.

### What will it now do?

- 2.11 These Regulations make a further amendment to the Interpretation Act 1978 to incorporate RDEUL and relevant separation agreement law. Equivalent amendments are being made to the Interpretation and Legislative Reform (Scotland) Act 2010, the Interpretation Act (Northern Ireland) 1954 and Amendment of Legislation (Wales) Act 2019.
- 2.12 The Regulations clarify the interpretation of certain EU-related definitions included in Scottish interpretation legislation by virtue of the 2019 Regulations.
- 2.13 Ambulatory references to direct EU legislation that forms part of relevant separation agreement law are to be read as that legislation applies under the terms of the Withdrawal Agreement/EEA EFTA Separation Agreement.
- 2.14 Non-ambulatory references to direct EU legislation which does not form part of relevant separation agreement law and which are intended to relate to a time before IP completion day will continue to do so.
- 2.15 Non-ambulatory references to direct EU legislation which forms part of relevant separation agreement law are to be read as that EU legislation applies under the terms of the Withdrawal Agreement.
- 2.16 The EU-derived domestic legislation that is redundant is being repealed and will no longer have effect. It will no longer sit on the UK statute book, reflecting the UK’s status as a non-EU member state.

### **3. Matters of special interest to Parliament**

*Matters of special interest to the [Joint Committee on Statutory Instruments].*

3.1 None.

*Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)*

3.2 The territorial application of this instrument varies between provisions.

### **4. Extent and Territorial Application**

4.1 The territorial extent of this instrument is the United Kingdom, subject to the paragraphs 4.2-4.5 below.

4.2 Regulations 5 and 6 amend the Interpretation and Legislative Reform (Scotland) Act 2010 and extend and apply to Scotland.

4.3 Regulation 7 amends the Interpretation Act (Northern Ireland) 1954 and extends and applies to Northern Ireland.

4.4 Regulation 8 amends the Legislation (Wales) Act 2019 and extends and applies to Wales.

4.5 Regulation 9 and the Schedule make provision to repeal primary legislation. The extent and application of these provisions is the United Kingdom (given the extent and application of all the legislation being repealed or revoked is the United Kingdom).

### **5. European Convention on Human Rights**

5.1 The Chancellor of the Duchy of Lancaster, Michael Gove MP, at the Cabinet Office, has made the following statement regarding Human Rights:

“In my view the provisions of the European Union Withdrawal (Consequential Modifications) (EU Exit) Regulations 2020 are compatible with the Convention rights.”

### **6. Legislative Context**

6.1 The UK left the EU on 31 January 2020 at 11pm (“exit day”), following which the supremacy of the EU law over UK law came to an end. EUWA achieved this legal severance through the repeal of the ECA on exit day.

6.2 The Withdrawal Agreement agreed between the UK and the EU came into force on exit day. The Withdrawal Agreement aims to ensure an orderly withdrawal of the UK from the EU. WAA implemented the Withdrawal Agreement and provides the vehicle for the Government to give effect to the EEA EFTA Separation Agreement and the Swiss Citizens’ Rights Agreement.

6.3 The UK and the EU agreed in the Withdrawal Agreement that the UK’s exit from the EU would be followed by a time-limited transition period (“the Transition Period”). The Transition Period started on exit day and ends at 11pm on 31 December 2020 (“IP Completion Day”). Although the ECA was repealed on exit day, certain parts of the ECA are kept in force by EUWA and EU law continues to apply during the Transition Period under the terms set out in the Withdrawal Agreement.

- 6.4 To ensure that the domestic legal system continues to function correctly outside the EU, EUWA converts and saves particular elements of EU law as it stands at the end of the Transition Period. In doing so, EUWA creates a new body of domestic law, known as “retained EU law”. Retained EU law is made up of three categories, RDEUL, EU derived domestic legislation and other directly effective EU law rights.<sup>2</sup> Retained EU law was created before the Withdrawal Agreement was agreed and before WAA came into force. Retained EU law was originally due to apply from exit day. WAA amended EUWA to provide for the Transition Period and to provide that retained EU law comes into effect on IP Completion Day instead of exit day.
- 6.5 In addition, WAA establishes “relevant separation agreement law”. Relevant separation agreement law includes (1) provisions of domestic law that give effect to the Withdrawal Agreement or the EEA EFTA Separation Agreement and (2) provisions of the Withdrawal Agreement and the EEA EFTA Separation Agreement (and the EU law applied by them) which take effect directly in domestic law via the provisions of EUWA.
- 6.6 The provisions of EUWA and the amendments made to EUWA by WAA mean that it is possible for EU instruments to form part of retained EU law for some purposes and have effect as relevant separation agreement law for other purposes. This means that after IP Completion Day, references to EU instruments in domestic legislation can have a dual meaning. For example, referring to the original version of the EU instrument that has effect as relevant separation agreement law for some purposes and referring to the domesticated version of the EU instrument that forms part of RDEUL for other purposes.
- 6.7 EUWA and WAA provide temporary powers to make provisions that Ministers consider appropriate in consequence of those Acts. These Regulations are made in exercise of the consequential powers at section 23(1) and (2) of, and paragraphs 21(b) and 26 of Schedule 7 to EUWA and section 41(1) and (2) of WAA.
- 6.8 The 2019 Regulations amended the Interpretation Act 1978, the Interpretation and Legislative Reform (Scotland) Act 2010 and the Interpretation Act (Northern Ireland) 1954, which set out general rules of interpretation for legislation. That instrument also provided for how cross-references to EU legislation post-exit and non-ambulatory cross-references to EU legislation up to the point immediately before exit should be read. It added a number of words and expressions to the Interpretation and Legislative Reform (Scotland) Act 2010 and the Interpretation Act (Northern Ireland) 1954 and provided general rules of interpretation in light of the introduction of “retained EU law”. It also repealed and revoked primary and secondary legislation in consequence of the repeal of the ECA and arising from the withdrawal of the UK from the EU.
- 6.9 These Regulations make further provision relating to the interpretation of certain EU-related definitions and non-ambulatory references. In light of the introduction of “relevant separation agreement law”, these Regulations make provision for how references to EU instruments that have effect as relevant separation agreement law should be interpreted. This includes amendments to the Interpretation Act 1978 and equivalent amendments to the devolved authorities’ interpretive legislation. In addition, these Regulations make further changes to the Interpretation Act 1978 on the general rules of interpretation to ensure that the rules and definitions apply, as appropriate, to retained EU law.

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<sup>2</sup> A definition of retained EU law can be found at section 6(7) of EUWA.

- 6.10 The Regulations also make consequential amendments to the 2019 Regulations and the Financial Services and Markets Act 2000 (Qualifying EU Provisions) Order 2013. They make further repeals which are necessary to remove provisions of legislation which are redundant in consequence of EUWA and revoke provisions of the 2019 Regulations which are being replaced by provisions made by these Regulations

## 7. Policy background

### *What is being done and why?*

- 7.1 These Regulations make various consequential amendments and repeals in respect of retained EU law, relevant separation agreement law and other EU-derived domestic legislation. This is to ensure that the UK statute book operates effectively and coherently in relation to EU-derived domestic legislation, and removes from the statute book domestic legislation that is made redundant as a result of EUWA.

### *Amendment of Interpretation Act 1978*

- 7.2 As discussed above at paragraph 6.4, EUWA ensures that direct EU legislation, which applies to the UK by virtue of the ECA, is converted and saved to the UK statute book as RDEUL. An example of such legislation would be EU Regulations. To ensure that RDEUL functions effectively in UK law, the Interpretation Act 1978 was amended by EUWA to clarify that the definition of “enactment” included RDEUL.
- 7.3 In addition, WAA establishes “relevant separation agreement law” which includes (1) provisions of domestic law that give effect to the Withdrawal Agreement/EEA EFTA Separation Agreement and (2) provisions of domestic law that give effect to the Withdrawal Agreement and the EEA EFTA Separation Agreement. In light of the introduction of relevant separation agreement law, regulation 2 makes amendments to the Interpretation Act 1978 to provide for how references in UK legislation to EU instruments that have effect as relevant separation agreement law are to be interpreted after IP Completion Day. This makes it clear that after IP Completion Day, references to EU instruments that have effect as relevant separation agreement law are to be interpreted as those instruments are applied and have effect under the terms of the Withdrawal Agreement/EEA EFTA Separation Agreement.
- 7.4 As part of this, regulation 2 amends existing interpretive provisions that have already been made for references to RDEUL. This is to provide for situations where references to EU instruments in domestic legislation have a dual meaning. For example, referring to the original version of the EU instrument that has effect as relevant separation agreement law for some purposes and referring to the domesticated version of the EU instrument that forms part of RDEUL for other purposes. Where there is a dual meaning, the interpretive provision applicable to references to EU legislation that have effect as relevant separation agreement law will apply to the extent that the EU legislation takes effect as relevant separation agreement law. The interpretive provision for references that form part of RDEUL can then apply to the extent the instrument forms part of RDEUL.
- 7.5 These interpretive provisions are needed to ensure that the legislative framework for the Withdrawal Agreement and the Protocol on Ireland and Northern Ireland operates effectively. They also underpin and provide the foundation for all other SIs that are being prepared by other departments that are needed for IP completion day. Without

these provisions it would be unclear what version of an EU instrument cross references to EU legislation was being referred to.

- 7.6 These Regulations make a further amendment to the Interpretation Act 1978, to make it clear that the new definition of “enactment” (including RDEUL) applies to any statutory reference to “enactment”. Without this change, there could have been questions about whether references to “enactment” found in subordinate legislation made *prior* to the Interpretation Act 1978 were covered.

***Amendment of European Union (Withdrawal) Act 2018***

- 7.7 Regulation 3 makes amendments to EUWA to provide how existing ambulatory references to EU instruments that will have effect as relevant separation agreement law are to be interpreted after IP Completion Day. Ambulatory references are references to EU instruments that automatically update when the EU instrument is updated.
- 7.8 EUWA already makes interpretive provision for ambulatory references to EU instruments that will form part of RDEUL and those instruments that will not form part of RDEUL. The introduction of “relevant separation agreement law” by WAA means that this additional interpretive provision is needed. Regulation 3(2)(b) inserts new paragraph 1A into Schedule 8 of EUWA which sets out that existing ambulatory references to EU instruments that will take effect as relevant separation agreement law are to be read as a reference to the instrument as it has effect under the terms of the Withdrawal Agreement/EEA EFTA Separation Agreement.
- 7.9 As part of the amendments to EUWA, regulation 3 amends existing interpretive provisions for ambulatory references. This is to provide for instances where the EU instrument referred to has a dual meaning. For example, the EU instrument forms part of RDEUL for some purposes and relevant separation agreement law for other purposes. In these instances the interpretive provision for relevant separation agreement law applies to the extent that the legislation referred to takes effect as relevant separation agreement law; the interpretive provision for RDEUL can then apply to the extent that the legislation referred to forms part of RDEUL. If these provisions were not made it would be unclear what version of an EU instrument ambulatory references were referring to, the original version that has effect as relevant separation agreement law or the domestic version that forms part of RDEUL.
- 7.10 The 2019 Regulations made provision for how non-ambulatory cross-references to EU legislation up to the point immediately before “exit” should be read. Non-ambulatory references are references to an EU instrument in the form it was in when the reference was made (regardless of whether the EU instrument has been subsequently amended). This is in contrast to ambulatory references, which are references to EU instruments that automatically update when the EU instrument is updated. This provision made by the 2019 Regulations needs updating as a result of the introduction of relevant separation agreement law and as a result of RDEUL applying from IP Completion Day rather than exit day. Regulation 3(2)(d) inserts new interpretive provisions into EUWA for how non-ambulatory cross-references to EU legislation up to the point of IP Completion Day should be read. This replaces the previous provisions made by the 2019 Regulations. As part of this, regulation 10 of these Regulations revokes the provisions of the 2019 Regulations that are being replaced by these provisions.
- 7.11 Regulation 3(2)(d) inserts new paragraph 2A of Schedule 8 to EUWA to set out that after IP Completion Day, existing non-ambulatory references to EU legislation should

be read in accordance with “one or more” of the three interpretive provisions set out (new paragraph 2A(1) of EUWA). The flexibility of “one or more” of the interpretive provisions applying is built in to provide for instances where references to EU instruments have more than one meaning, for example, referring to the EU instrument as it has effect as relevant separation agreement law for some purposes and referring to the EU instrument as incorporated into RDEUL for other purposes.

- 7.12 The three interpretive provisions created by new paragraph 2A(1) of EUWA set out that following IP Completion Day, non-ambulatory cross references to EU instruments that have effect as relevant separation agreement law should be read as a reference to the version of that legislation that has effect under the terms of the Withdrawal Agreement/EEA EFTA separation agreement. Up-to-date non-ambulatory cross references to EU legislation should be read as references to the retained version of that legislation (as retained under section 3 of EUWA or as the case may be retained under section 1 of the Direct Payments to Farmers Act 2020). All other non-ambulatory cross references to EU legislation should be read as a reference to the legislation in the form it was in at the time the reference was made.

***Amendment of reference to “exit day” with “IP completion day”***

- 7.13 The 2019 Regulations were made before the Withdrawal Agreement was made and before WAA was enacted. WAA contains a number of important provisions that affect the 2019 Regulations, including amending EUWA to provide that retained EU law comes into effect on IP Completion Day instead of exit day and delaying the commencement of EU-exit SIs until IP Completion Day.
- 7.14 Regulation 5(1) of the 2019 Regulations updated the definition of “statutory provisions” in the Interpretation Act (Northern Ireland) 1954 to include retained EU law. The 2019 Regulations made it clear that this didn’t affect any references to “statutory provisions” contained in legislation made before “exit day” unless there was a contrary intention. Regulation 5 of the 2019 Regulations was originally due to come into force on exit day, but commencement was delayed by WAA to IP Completion Day.
- 7.15 Whilst the commencement of regulation 5 of the 2019 Regulations was delayed until IP Completion Day, regulation 5 still refers to “exit day” rather than IP Completion Day. Regulation 4 of these Regulations updates the reference in regulation 5 of the 2019 Regulations so that it refers to “IP Completion Day” rather than “exit day”. This is needed to ensure that the 2019 Regulations operate effectively on IP Completion Day.

***Amendment of Interpretation and Legislation Reform (Scotland) Act 2010***

- 7.16 Regulation 5 of the Regulations makes amendments to the Interpretation and Legislative Reform (Scotland) Act 2010 to create interpretive provision for “relevant separation agreement law” which was introduced by WAA. These provisions are equivalent to the interpretive provisions created for “relevant separation agreement law” in the Interpretation Act 1978 by regulation 2.
- 7.17 The amendments made to the Interpretation and Legislative Reform (Scotland) Act 2010 provide for how references in Scottish legislation to EU instruments that have effect as relevant separation agreement law are to be interpreted after IP Completion Day. This makes it clear that after IP Completion Day, references to EU instruments that have effect as relevant separation agreement law are to be read as those

instruments are applied and have effect under the terms of the Withdrawal Agreement/EEA EFTA Separation Agreement.

- 7.18 As part of this, these Regulations amend existing interpretive provisions that have already been made for references to RDEUL. Again, this is to provide for circumstances where references to EU instruments in domestic legislation have a dual meaning. Where there is a dual meaning, the interpretive provision applicable to references to EU legislation that have effect as relevant separation agreement law will apply to the extent that the EU legislation takes effect as relevant separation agreement law. The interpretive provision for references that form part of RDEUL can then apply to the extent the instrument referred to forms part of RDEUL.
- 7.19 These interpretive provisions are needed to ensure that the legislative framework for the Withdrawal Agreement and the Protocol on Ireland and Northern Ireland operates effectively. They also underpin and provide the foundation for all other SIs that are being prepared by other departments that are needed for IP completion day. Without these provisions it would be unclear what version of an EU instrument was being referred to.

*Interpretation of “the Treaties”, “the EU Treaties” and “the Communities”*

- 7.20 Regulation 6 makes transitional provision for certain definitions relating to the EU which were added to the Scotland Act 1998 (Transitory and Transitional Provisions) (Publication and Interpretation etc. of Acts of the Scottish Parliament) Order 1999, which sets out general rules of interpretation for Scottish legislation made before 4 June 2010.<sup>3</sup> In essence, this regulation saves the pre-IP Completion Day meaning of terms including “Treaties”, “EU treaties” or “Communities” for a number of limited purposes, for example as such terms may apply to pre-exit matters.
- 7.21 At present, references to EU Treaties will, after IP Completion Day, become references to the EU Treaties as they stood immediately before IP completion day. However, there are certain situations where pre-IP completion day legislation refers to “the Treaties” or “the EU treaties” and on or after IP completion day the expression will need to be interpreted in relation to a time before IP completion day. This regulation retains the existing position and ensures that the interpretation of the reference to the EU Treaties on and after IP completion day is unaffected by the new definition of EU Treaties as applying as they stood immediately before IP completion day.
- 7.22 The new definition of “the Communities” includes the words “but a reference to any or all of those Communities is to be treated as being or including (as the context requires) a reference to the EU”. Those words reflect the effect of the gloss in section 3(6) of the EU (Amendment) Act 2008. But they go wider than that gloss as the section 3(6) gloss does not apply to Acts passed or instruments made before the passing of the 2008 Act (19 June 2008) in their application to a reference to any or all of the Communities in relation to a time before the passing of that Act. Provision is needed to ensure that the “but a reference...” wording in the new definition does not apply in such a pre-19 June 2008 case.

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<sup>3</sup> Regulation 1(2)(b)(3), 4(5)(a) and (b) of the 2019 Regulations added these terms to The Scotland Act 1998 (Transitory and Transitional Provisions) (Publication and Interpretation etc. of Acts of Scottish Parliament) Order 1999 by amending section 55(2) of the Interpretation and Legislative Reform (Scotland) Act 2010. S.I. 1999/1379 was revoked by article 8 of that Order but subject to savings specified in section 55(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10).



### ***Interpretation of the Interpretation Act (Northern Ireland) 1954***

- 7.23 Regulation 7 of the Regulations makes amendments to the Interpretation Act (Northern Ireland) 1954 to create interpretive provision for “relevant separation agreement law” which was introduced by WAA. These provisions are equivalent to the interpretive provisions created for “relevant separation agreement law” in the Interpretation Act 1978 by regulation 2.
- 7.24 The amendments made to the Interpretation Act (Northern Ireland) 1954 provide for how references in Northern Ireland legislation to EU instruments that have effect as relevant separation agreement law are to be interpreted after IP Completion Day. This makes it clear that after IP Completion Day, references to EU instruments that have effect as relevant separation agreement law are to be read as those instruments are applied and have effect under the terms of the Withdrawal Agreement/EEA EFTA Separation Agreement.
- 7.25 As part of this, these Regulations amend existing interpretive provisions that have already been made for references to RDEUL. This is to provide for circumstances where references to EU instruments in domestic legislation have a dual meaning.
- 7.26 These interpretive provisions are needed to ensure that the legislative framework for the Withdrawal Agreement and the Protocol on Ireland and Northern Ireland operates effectively. They also underpin and provide the foundation for all other SIs that are being prepared by other departments that are needed for IP completion day. Without these provisions it would be unclear what version of an EU instrument was being referred to.

### ***Amendment of Legislation (Wales) Act 2019***

- 7.27 Regulation 8 of the Regulations makes amendments to the Legislation (Wales) Act 2010 to create interpretive provision for “relevant separation agreement law” which was introduced by WAA. These provisions are equivalent to the interpretive provisions created for “relevant separation agreement law” in the Interpretation Act 1978 by regulation 2(1)-(4) of these Regulations
- 7.28 The amendments made to the Legislation (Wales) Act 2010 provide for how references in Northern Ireland legislation to EU instruments that have effect as relevant separation agreement law are to be interpreted after IP Completion Day. This makes it clear that after IP Completion Day, references to EU instruments that have effect as relevant separation agreement law are to be read as those instruments are applied and have effect under the terms of the Withdrawal Agreement/EEA EFTA Separation Agreement.
- 7.29 As part of this, these Regulations amend existing interpretive provisions that have already been made for references to RDEUL. This is to provide for circumstances where references to EU instruments in domestic legislation have a dual meaning.
- 7.30 These interpretive provisions are needed to ensure that the legislative framework for the Withdrawal Agreement and the Protocol on Ireland and Northern Ireland operates effectively. They also underpin and provide the foundation for all other SIs that are being prepared by other departments that are needed for IP completion day. Without these provisions it would be unclear what version of an EU instrument was being referred to.

## *Repeals*

- 7.31 Regulation 9 and the Schedule repeal provisions within primary legislation that have become redundant as a result of EUWA. EUWA repealed a number of *amended* provisions of legislation, and these Regulations repeal the *amending* provisions that lay behind them. Their existence in the statute book has no practical effect in light of the repeals already provided for in EUWA. The purpose of the repeals in these Regulations is merely to tidy up the statute book to ensure that it is clear and effective on IP completion day.
- 7.32 Most of the amending enactments repealed by the Schedule to these Regulations amend the ECA. The ECA is repealed by section 1 of EUWA and the continuing effect of regulations made under section 2(2) of the ECA is provided for by section 2 of EUWA. These Regulations include a saving provision in regulation 3(2) to make clear that the repeals are not intended to interfere with the operation of any related saving or transitional provision where the amending enactment is repealed by EUWA.
- 7.33 The following paragraphs explain what is being repealed.
- 7.34 Section 32(3) of the Criminal Law Act 1977 amends paragraph 1(1)(d) of Schedule 2 to the ECA, which sets the maximum daily fine that regulations under section 2(2) of that Act can impose. Section 65(10)(e) sets out the territorial extent of that provision. As the ECA is being repealed, these provisions will be redundant and are being removed from the UK statute book.
- 7.35 Paragraph 12, in Part 1 of the Table, in Schedule 4 to the Customs and Excise Management Act 1979 amends sections 6(5) & (6) of the ECA (agricultural levies of the EU to be levied collected and paid etc as if they were EU customs duties), by updating references to legislation (including replacing a reference to the Customs and Excise Act 1952 with a reference to the Customs and Excise Management Act 1979). As the ECA is being repealed, these amending provisions are redundant and are therefore also being repealed.
- 7.36 Paragraphs 3 to 5 in Schedule 2 to the Customs and Excise Duties (General Reliefs) Act 1979 make several amendments to the ECA, including provisions on the form and procedure for orders made under section 5(1) or (2) of that Act (customs duties) 2 and related reporting requirements to Parliament. Again, the repeal of the ECA makes these sections redundant and so they are also being repealed.
- 7.37 Paragraph 4 of Schedule 1 to the Agricultural Statistics Act 1979 amends section 12 of the ECA (furnishing of information to Communities) by substituting a reference to the Agriculture Act 1947 with a reference to the Agricultural Statistics Act 1979. As the ECA is being repealed, this provision is redundant and is also being repealed.
- 7.38 Paragraph 8 of Schedule 4 to the Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 amends section 11 of the ECA (offence of making a false statement before the European Court). This provision updates a reference in section 11 of the ECA to the “False Oaths (Scotland) Act 1933” with a reference to the “Criminal Law (Consolidation) (Scotland) Act 1995”. This amending provision is redundant on the repeal of the ECA and so is also being repealed.
- 7.39 Paragraph 1(3) in Schedule 7 to the Justice (Northern Ireland) Act 2002 amends section 12(2) of the Northern Ireland Act 1998, which relates to the procedure to be followed where the Northern Ireland Assembly wishes to reconsider a Bill referred to the ECJ. In particular, it changes references to Northern Ireland Law Officers. As

section 12 of the Northern Ireland Act 1998 is repealed by EUWA<sup>4</sup>, this amending provision is redundant and is also being repealed.

- 7.40 Section 103(2), and paragraph 1(1)(b) and 10(b) of Schedule 6 to, the Railways and Transport Safety Act 2003 make references to section 2 of the ECA. These are redundant on the repeal of the ECA and are therefore also being repealed.
- 7.41 Paragraph 3 of Schedule 27 to the Criminal Justice Act 2003 amends para 1 of Schedule 2 to the ECA (maximum term of imprisonment section 2(2) regulations can impose). On the repeal of the ECA, this provision is redundant and is therefore also being repealed.
- 7.42 Paragraphs 97 and 110 of Schedule 9 to the Constitutional Reform Act 2005 amend section 34 of the Scotland Act 1998 and section 12 of the Northern Ireland Act 1998 respectively. These provisions substitute “Supreme Court” for “Judicial Committee” in relation to ECJ references. As section 34 of the Scotland Act 1998 and section 12 of the Northern Ireland Act 1998 are repealed by EUWA<sup>5</sup>, the amending provisions are redundant and so are also being repealed.
- 7.43 Section 20 of the Legislative and Regulatory Reform Act 2006 (“LRRRA 2006”) enables new order-making powers to be exercised together with and by the same instrument as the power to make an order under section 2(2) ECA. Section 29 provides for the procedure which applies. These sections are being repealed, as after the UK leaves the EU, powers under section 2(2) ECA will no longer apply, and the sections will therefore become redundant.
- 7.44 Section 27(1) and (2) makes consequential amendments to the ECA, changing the word “regulations” to “order, rules, regulations or scheme”. Section 28 amends the ECA by inserting a provision to allow subordinate legislation to make ambulatory references to EU legislation. As the ECA is repealed, these provisions are redundant and are also being repealed.
- 7.45 The LRRRA 2006 also amends the Interpretation Act 1978 and the Scotland Act 1998. Section 26(1) inserts definitions of the “EEA agreement” and “EEA state” into the Interpretation Act 1978. As the definitions are being repealed and replaced by EUWA<sup>6</sup>, this provision is redundant and is also being repealed. Section 27(4) makes a consequential amendment to paragraph 15(3) of Schedule 8 to the Scotland Act 1998, reflecting a change made to the ECA, so that the word “regulations” is changed to “order, rules, regulations or scheme”. Paragraph 15 of Schedule 8 to the Scotland Act 1998 is repealed by EUWA making the amending provision redundant too.<sup>7</sup>
- 7.46 Section 12(2)(b) of the Wales Act 2017 amends section 113(2)(a) of the Government of Wales Act 2006 (“GOWA 2006”), which relates to ECJ references, to replace the term “Clerk” with “Presiding Officer”. Section 20 of the Wales Act 2017 gives Welsh Ministers an automatic right to make regulations under section 2(2) of the European Communities Act 1972 implementing EU law by inserting a new section 58B into, and amending section 59 of, the GOWA 2006. Sections 113, 58B and the relevant parts of section 59 of the GOWA 2006 are repealed by Part 3 of Schedule 3 of

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<sup>4</sup> See paragraph 52 in Part 3 of Schedule 3 to EUWA.

<sup>5</sup> See paragraphs 11 and 52 of Part 3 of Schedule 3 to EUWA.

<sup>6</sup> See paragraph 22 of Schedule 8 EUWA.

<sup>7</sup> Paragraph 15 of the Scotland Act 1998 is repealed by Part 3 of Schedule 3 to EUWA.

EUWA, which makes the amending provisions contained in the Wales Act 2017 redundant and so these are also being repealed.

### ***Revocations***

- 7.47 Regulation 10 of these Regulations revokes regulation 2 of the 2019 Regulations.
- 7.48 Regulation 2 of the 2019 Regulations made interpretive provision for non-ambulatory references to direct EU legislation. Regulation 2 is not yet in force and was made before the enactment of WAA and the introduction of relevant separation agreement law. These Regulations replace the interpretive provision for non-ambulatory references provided by the 2019 Regulations with updated provisions to include interpretive provision for non-ambulatory references to relevant separation agreement law (regulation 3(2) and new paragraph 2A of Schedule 8 to EUWA).

### ***Amendment of the Financial Services and Markets Act 2000 (Qualifying EU Provisions) Order 2013.***

- 7.49 Art 1 of the Financial Services and Markets Act 2000 (Qualifying EU Provisions) Order cross refers to the interpretation provisions for non-ambulatory cross references to EU law provided by regulation 2 of the 2019 Regulations.
- 7.50 Regulation 2 of the 2019 Regulations is being revoked by regulation 10 of these Regulations and updated interpretive provision for non-ambulatory cross references to EU instruments is being provided by new paragraph 2A of Schedule 8 to EUWA introduced by regulation 3 of these Regulations.
- 7.51 Regulation 11 updates the cross reference to Article 1 of the Financial Services and Markets Act 2000 (Qualifying EU Provisions Order) to refer to the updated interpretive provisions in new paragraph 2A of Schedule 8 to EUWA.

## **8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union**

- 8.1 This instrument is not being made to address a deficiency in retained EU law but relates to the withdrawal of the United Kingdom from the European Union because it is being made under section 23(1) and (2) of, and paragraphs 21 and 26 of Schedule 7 to, EUWA and section 41(1) and 41(2) of WAA. The Minister has made any relevant statements in Part 2 of the Annex to this Explanatory Memorandum.

## **9. Consolidation**

- 9.1 This instrument is not consolidating any other provisions.

## **10. Consultation outcome**

- 10.1 No public consultation was required as the Regulations make only limited technical changes to existing legislation with no impact on businesses, charities or voluntary bodies.

## **11. Guidance**

- 11.1 Guidance is not being provided in relation to this instrument.

## **12. Impact**

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 An Impact Assessment has not been prepared for this instrument because we expect it to have no impact on businesses.

**13. Regulating small business**

- 13.1 The legislation does not apply to activities that are undertaken by small businesses.

**14. Monitoring & review**

- 14.1 No specific monitoring arrangements are needed.
- 14.2 As this instrument is made under the EU Withdrawal Act 2018 and the European Union (Withdrawal Agreement) Act 2020, no review clause is required.

**15. Contact**

- 15.1 The Transition Taskforce at the Cabinet Office, email: [tff-legislation@cabinetoffice.gov.uk](mailto:tff-legislation@cabinetoffice.gov.uk) can be contacted with any queries regarding the instrument.
- 15.2 Marianne Ainsworth-Smith, Deputy Director for Parliamentary Engagement and Legislation within the Transition Taskforce, at the Cabinet Office can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Chancellor of the Duchy of Lancaster, Michael Gove MP, at the Cabinet Office can confirm that this Explanatory Memorandum meets the required standard.

# 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 under the 2018 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(3), 3(7) and 17(3) and 17(7) of Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) to make a Negative SI	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/Sifting Committees
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly 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	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	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	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them.  State 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	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2 In addition to the statutory obligation the Government has made a political commitment to include these statements alongside all EUWA SIs	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	Ministers of the Crown exercising sections 8(1), 9, and 23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising sections 10(1), 12 and part 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority by Statutory Instrument.	State why it is appropriate to create such a sub-delegated power.
Urgency	Paragraph 34, Schedule 7	Ministers of the Crown using the urgent procedure in paragraphs 4 or 14, Schedule 7.	Statement of the reasons for the Minister's opinion that the SI is urgent.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 14, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement explaining the good reasons for modifying the instrument made under s. 2(2) ECA, identifying the relevant law before exit day, and explaining the instrument's effect on retained EU law.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 15, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement setting out: a) the steps which the relevant authority has taken to make the draft instrument published in accordance with paragraph 16(2), Schedule 8 available to each House of Parliament, b) containing information about the relevant authority's response to— (i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and (ii) any other representations made to the relevant authority about the published draft instrument, and, c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the instrument or draft instrument which is to be laid.

## Part 2

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

#### 1. Appropriateness statement

- 1.1 The Chancellor of the Duchy of Lancaster, Michael Gove MP, at Cabinet Office, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the European Union Withdrawal (Consequential Modifications) (EU Exit) Regulations 2020 does no more than is appropriate”.

- 1.2 This is the case because the instrument ensures that the UK statute book accommodates “retained EU law” coherently and effectively after the UK’s withdrawal from the EU.
- 1.3 Although the instrument repeals some primary legislation, these are of a technical and consequential nature and simply remove provisions made redundant by EUWA and in particular, by the repeal of the ECA.

#### 2. Good reasons

- 2.1 The Chancellor of the Duchy of Lancaster, Michael Gove MP, at the Cabinet Office, 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”.

- 2.2 These are that without this instrument there would be a lack of clarity about how certain EU-related terms and references to EU legislation in domestic legislation should be interpreted when the UK leave the EU. Also, many provision of EU-derived domestic legislation would remain on the UK statute book, despite being redundant as a result of EUWA

#### 3. Equalities

- 3.1 The Chancellor of the Duchy of Lancaster, Michael Gove MP, at the Cabinet Office 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. Explanations

- 4.1 The explanations statement has been made in section 2 of the main body of this explanatory memorandum.





Llywodraeth Cymru  
Welsh Government

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## DATGANIAD YSGRIFENEDIG GAN LYWODRAETH CYMRU

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<b>TEITL</b>	<b>Rheoliadau Ymadael â'r Undeb Ewropeaidd (Addasiadau Canlyniadol) (Ymadael â'r UE) 2020</b>
<b>DYDDIAD</b>	<b>14 Hydref 2020</b>
<b>GAN</b>	<b>Rebecca Evans AS, Y Gweinidog Cyllid a'r Trefnydd</b>

### **Rheoliadau Ymadael â'r Undeb Ewropeaidd (Addasiadau Canlyniadol) (Ymadael â'r UE) 2020**

#### **Y gyfraith sy'n cael ei diwygio:**

Deddf yr Undeb Ewropeaidd (Ymadael) 2018

Deddf Dehongli 1978

Deddf Deddfwriaeth (Cymru) 2019

Deddf Dehongli a Diwygio Deddfwriaethol (Yr Alban) 2010

Deddf Dehongli (Gogledd Iwerddon) 1954

Rheoliadau Deddf yr Undeb Ewropeaidd (Ymadael) 2018 (Addasiadau, Diddymiadau a Dirymiadau Canlyniadol) (Ymadael â'r UE) 2019

Gorchymyn Deddf Gwasanaethau a Marchnadoedd Ariannol 2000 (Darpariaethau Cymwys yr UE) 2013.

Mae'r Offeryn Statudol hefyd yn gwneud nifer o ddiiddymiadau technegol i ddarpariaethau diangen mewn deddfwriaeth sylfaenol o ganlyniad i ddiiddymiadau a wnaed gan Ddeddf yr Undeb Ewropeaidd (Ymadael) 2018.

#### **Diben y diwygiadau**

1. Diben y diwygiadau yw sicrhau bod llyfr statud y DU yn gweithio'n gydlynol ac yn effeithiol ar ôl diwedd y cyfnod pontio. Mae'n egluro sut y dylid dehongli rhai termau, gan gynnwys diffiniadau sy'n gysylltiedig â'r UE, mewn deddfwriaeth ddomestig ar ôl diwedd y cyfnod pontio. Mae'r OS yn diwygio Deddf Dehongli 1978 a'r Deddfau Dehongli cyfatebol a basiwyd gan y deddfwrfeydd datganoledig (gan gynnwys Deddf Deddfwriaeth (Cymru) 2019) mewn perthynas â dehongli cyfeiriadau at "gyfraith berthasol y cytundebau gwahanu". Mae'r OS hefyd yn diwygio Deddf yr Undeb Ewropeaidd (Ymadael) 2018 i ddarparu ar gyfer sut y dylai cyfeiriadau presennol at

Tudalen y pecyn 393

offerynnau'r UE sy'n rhan o gyfraith berthnasol y cytundebau gwahanu, a chyfeiriadau annewidiadwy presennol at ddeddfwriaeth uniongyrchol yr UE, gael eu darllen ar ôl diwedd y cyfnod pontio.

Mae'r Offeryn Statudol yn gwneud darpariaethau dehongli newydd yng ngoleuni Deddf yr Undeb Ewropeaidd (Cytundeb Ymadael) 2020, i gael gwared ag ansicrwydd ynghylch pa fersiwn o offeryn yr UE sy'n gymwys, ac yn darparu glòs cyffredinol i sicrhau bod y dehongliad cywir o offeryn yr UE yn gymwys. Yn olaf, mae'r OS yn gwneud diwygiadau canlyniadol i Reoliadau Deddf yr Undeb Ewropeaidd (Ymadael) 2018 (Addasiadau, Diddymiadau a Dirymiadau Canlyniadol) (Ymadael â'r UE) 2019 a diddymiadau technegol i ddarpariaethau segur mewn deddfwriaeth sylfaenol sy'n deillio o Ddeddf yr Undeb Ewropeaidd (Ymadael) 2018.

Mae'r Offeryn Statudol a'r Memorandwm Esboniadol cysylltiedig, sy'n nodi effaith pob diwygiad, ar gael yma: <https://www.legislation.gov.uk/ukdsi/2020/9780348213102/contents>

## **Unrhyw effaith y gallai'r offeryn statudol ei chael ar gymhwysedd deddfwriaethol y Senedd a/neu gymhwysedd gweithredol Gweinidogion Cymru**

Nid yw'r OS yn cael unrhyw effaith ar gymhwysedd deddfwriaethol y Senedd nac ar gymhwysedd gweithredol Gweinidogion Cymru.

### **Y gofynion o ran cydsyniad**

Bydd yr OS hwn yn cael ei wneud o dan adran 23 o Ddeddf yr Undeb Ewropeaidd (Ymadael) 2018 ac adran 41 o Ddeddf yr Undeb Ewropeaidd (Cytundeb Ymadael) 2020, sef y pwerau canlyniadol yn y naill a'r llall o'r Deddfau, sy'n arferadwy gan Weinidogion y Goron. Felly, nid yw'r OS yn cychwyn proses gydsynio ffurfiol gyda Gweinidogion y Llywodraethau Datganoledig.

Yr hyn fyddai orau gennym ni, o ddigon, fyddai bod cyfreithiau a wnaed yng Nghymru yn cael eu diwygio yng Nghymru fel rhan o'r broses o ymadael â'r UE. Fodd bynnag, nid yw'r pwerau cyfatebol wedi'u rhoi i Weinidogion Cymru. Gan fod yr OS yn gwneud diwygiadau technegol, nad oes iddynt unrhyw oblygiadau o ran polisi, ac o gofio bod yn rhaid i'r diwygiadau fod ar waith erbyn diwedd y flwyddyn, ystyrir ei bod yn hwylus i Lywodraeth y DU wneud darpariaeth ar ran holl wledydd y DU i sicrhau bod llyfr statud gweithredol ar ddiwedd y cyfnod pontio. Yr unig ddewis arall fyddai ei gwneud yn ofynnol i ddeddfwriaeth sylfaenol fynd drwy Senedd Cymru a chael ei deddfu erbyn diwedd y flwyddyn, ac ni fyddai hynny'n ddefnydd cymesur o amser ac adnoddau. At hynny, mae gwneud y diwygiadau canlyniadol angenrheidiol mewn un offeryn yn helpu i wneud y gyfraith yn fwy hygyrch yn ystod y cyfnod hwn o newid.

Cyfrannodd swyddogion Llywodraeth Cymru at y gwaith o ddrafftio'r OS ac mae'r Cwnsler Cyffredinol a'r Gweinidog Pontio Ewropeaidd wedi ysgrifennu at Ganghellor Dugiaeth Caerhirfryn i ddweud y dylid bod wedi ceisio cydsyniad ffurfiol.

Fodd bynnag, mae Memorandwm Cydsyniad Offeryn Statudol yn cael ei osod a bydd cyfle i'r Senedd gydsynio i'r newidiadau technegol i Ddeddf Deddfwriaeth (Cymru) 2019.

**GWEINIDOGION Y DU YN GWEITHREDU MEWN MEYSYDD  
DATGANOLEDIG**

**176 - Rheoliadau Ymadael â'r Undeb Ewropeaidd (Addasiadau  
Canlyniadol) (Ymadael â'r UE) 2020**

*Gosodwyd yn Senedd y DU: 08 Hydref 2020*

**Sifftio**

Yn destun gwaith sifftio yn Senedd y DU?

Na

Y weithdrefn:

Cadarnhaol drafft

Dyddiad trafod gan Bwyllgor Offerynnau Statudol Ewropeaidd Tŷ'r Cyffredin

Amh.

Dyddiad trafod gan Bwyllgor Craffu ar Is-ddeddfwriaeth Tŷ'r Arglwyddi

Amh.

Dyddiad y daw'r cyfnod sifftio i ben yn Senedd y DU

Amh.

Datganiad ysgrifenedig o dan Reol Sefydlog 30C:

Papur 46

Memorandwm Cydsyniad Offeryn Statudol (SICM) o dan Reol Sefydlog 30A (oherwydd eu bod yn diwygio deddfwriaeth sylfaenol)

SICM(5)31

**Gweithdrefn graffu**

Canlyniad y broses sifftio

Amh.

Y weithdrefn

Cadarnhaol drafft

Dyddiad trafod gan y Cydbwyllgor ar Offerynnau Statudol

Ddim yn hysbys

Dyddiad trafod gan Bwyllgor Offerynnau Statudol Ewropeaidd Tŷ'r Cyffredin

Ddim yn hysbys

Dyddiad trafod gan Bwyllgor Craffu ar Is-ddeddfwriaeth Tŷ'r Arglwyddi

20 Hydref 2020

**Cefndir**

Cynigir bod y Rheoliadau yn cael eu gwneud gan Lywodraeth y DU o dan o dan adran 23 o Ddeddf yr Undeb Ewropeaidd (Ymadael) 2018 ac adran 41 o Ddeddf yr Undeb Ewropeaidd (Cytundeb Ymadael) 2020.

**Crynodeb**

Nod yr OS yw sicrhau bod llyfr statud y DU yn gweithio'n gydllynol ac yn effeithiol ar ôl diwedd y cyfnod pontio. Mae'n egluro sut y dylid dehongli rhai termau, gan gynnwys diffiniadau sy'n gysylltiedig â'r UE, mewn deddfwriaeth ddomestig ar ôl diwedd y cyfnod pontio.

Mae'r OS yn diwygio Deddf Ddehongli 1978 a'r Deddfau Dehongli cyfatebol a basiwyd gan y deddfwrfeydd datganoledig (gan gynnwys Deddf Deddfwriaeth (Cymru) 2019) mewn perthynas â dehongli

cyfeiriadau at "gyfraith berthnasol y cytundebau gwahanu" Mae'r OS hefyd yn diwygio Deddf yr Undeb Ewropeaidd (Ymadael) 2018 i ddarparu ar gyfer sut y dylai cyfeiriadau presennol at offerynnau'r UE sy'n rhan o gyfraith berthnasol y cytundebau gwahanu, a chyfeiriadau annewidiadwy presennol at ddeddfwriaeth uniongyrchol yr UE, gael eu darllen ar ôl diwedd y cyfnod pontio.

Mae'r OS yn gwneud darpariaethau dehongli newydd yng ngoleuni Deddf yr Undeb Ewropeaidd (Cytundeb Ymadael) 2020 i gael gwared ar ansicrwydd ynghylch pa fersiwn o offeryn yr UE sy'n gymwys ac mae'n darparu glôs cyffredinol i sicrhau bod y dehongliad cywir o offeryn yr UE yn gymwys.

Mae'r OS hefyd yn gwneud diwygiadau canlyniadol i Reoliadau Deddf yr Undeb Ewropeaidd (Ymadael) 2018 (Addasiadau a Diddymiadau a Dirymiadau Canlyniadol) (Ymadael â'r UE) 2019 (Rheoliadau 2019) a diddymiadau technegol i ddarpariaethau segur o fewn Deddfwriaeth sylfaenol sy'n deillio o Ddeddf yr Undeb Ewropeaidd (Ymadael) 2018.

#### **Datganiad gan Lywodraeth Cymru**

Mae'r Cynghorwyr Cyfreithiol yn cytuno â'r datganiad a osodwyd gan Lywodraeth Cymru, dyddiedig 14 Hydref 2020, ynghylch effaith y Rheoliadau hyn.

#### **Cytundeb Rhynglywodraethol ar Fil yr Undeb Ewropeaidd (Ymadael)**

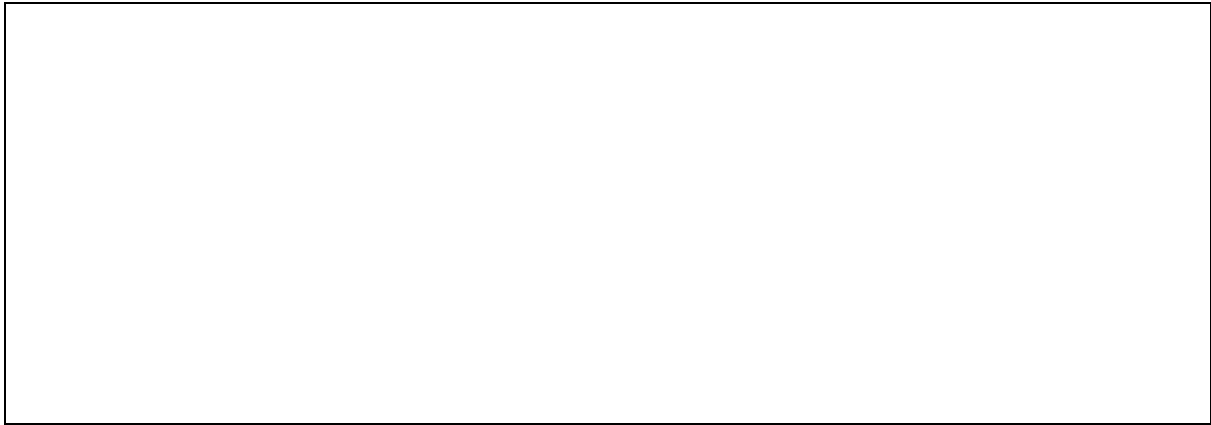
Mae'r crynodeb uchod a chynnwys y Memorandwm Esboniadol i'r Rheoliadau hyn yn cadarnhau eu heffaith.

Ym marn y Cynghorwyr Cyfreithiol, nid oes unrhyw faterion sylweddol yn codi o dan baragraff 8 o'r Memorandwm ar Fil yr Undeb Ewropeaidd (Ymadael) a sefydlu fframweithiau cyffredin mewn perthynas â'r Rheoliadau hyn.

#### **Cynnig cydsyniad o dan Reol Sefydlog 30A.10**

Gosododd Llywodraeth Cymru Femorandwm Cydsyniad Offeryn Statudol mewn perthynas â'r Rheoliadau hyn ar 14 Hydref 2020.

Disgwylir i gynnig i drafod y Memorandwm Cydsyniad Offeryn Statudol gael ei gyflwyno yn y Cyfarfod Llawn dydd Mawrth 3 Tachwedd 2020.



## MEMORANDWM CYDSYNIAD OFFERYN STATUDOL

### Rheoliadau Ansawdd a Diogelwch Organau y Bwriedir eu Trawsblannu (Diwygio) (Ymadael â'r UE) 2020

1. Gosodir y Memorandwm Cydsyniad Offeryn Statudol hwn o dan Reol Sefydlog ("RhS") 30A.2. Mae RhS 30A yn rhagnodi bod rhaid gosod Memorandwm Cydsyniad Offeryn Statudol ac y ceir cyflwyno Cynnig Cydsyniad Offeryn Statudol gerbron Senedd Cymru os yw un o Offerynnau Statudol (OS) y DU yn gwneud darpariaeth mewn perthynas â Chymru sy'n diwygio deddfwriaeth sylfaenol sydd o fewn cymhwysedd deddfwriaethol Senedd Cymru.
2. Gosodwyd Rheoliadau Ansawdd a Diogelwch Organau y Bwriedir eu Trawsblannu (Diwygio) (Ymadael â'r UE) 2020 ("Rheoliadau 2020") gerbron Senedd y DU ar 12 Hydref 2020 ac maent yn cael eu gosod gerbron Senedd Cymru yn awr. Mae Rheoliadau 2020 ar gael yn:

[The Quality and Safety of Organs Intended for Transplantation \(Amendment\) \(EU Exit\) Regulations 2020](#)

#### Crynodeb o'r Offeryn Statudol a'i nod

3. Mae'r Offeryn Statudol hwn yn diwygio Rheoliadau Ansawdd a Diogelwch Organau y Bwriedir eu Trawsblannu (Diwygio) (Ymadael â'r UE) 2019 ("Rheoliadau 2019") a wnaed y llynedd, gyda chydysyniad Gweinidogion Cymru, i gywiro diffygion mewn deddfwriaeth sy'n deillio o'r DU yn ymadael â'r Undeb Ewropeaidd mewn perthynas â diogelwch ac ansawdd organau.
4. Bydd yr OS hwn yn diwygio Rheoliadau 2019 er mwyn galluogi'r darpariaethau a ddiwygir gan y Rheoliadau hynny i barhau i weithredu'n effeithiol yng ngoleuni Protocol Gogledd Iwerddon ar ôl diwrnod cwblhau'r Cyfnod Gweithredu (11pm 31 Rhagfyr 2020).

#### Y ddarpariaeth berthnasol sydd i'w gwneud gan yr OS

5. Mae'r Offeryn Statudol yn diwygio Rheoliadau 2019. Mae Rheoliadau 2019 (rheoliad 2) yn diwygio'r ddarpariaeth yn Neddf Meinweoedd Dynol 2004. Yr effaith felly yw bod y ddarpariaeth yn Neddf Meinweoedd Dynol 2004 wedi'i diwygio o ganlyniad.
6. Diwygir Adran 32 o Ddeddf Meinweoedd Dynol 2004 i adlewyrchu Protocol Gogledd Iwerddon, lle caiff Gogledd Iwerddon ei thrin fel pe bai'n Aelod-wladwriaeth (yn amodol ar yr addasiadau i gyfraith yr UE a wneir gan Brotocol Gogledd Iwerddon), ac fel rhan gyfansoddol o'r DU.

7. Mae Llywodraeth Cymru o'r farn bod y darpariaethau a ddisgrifir ym mharagraff 6 uchod yn dod o fewn cymhwysedd deddfwriaethol Senedd Cymru i'r graddau y maent yn ymwneud â diogelwch ac ansawdd organau.

### **Pam y mae'n briodol i'r OS wneud y ddarpariaeth hon**

8. Nid oes gwahaniaeth rhwng Llywodraeth Cymru a Llywodraeth y DU (yr Adran Iechyd a Gofal Cymdeithasol) o ran y polisi ar ddiogelwch ac ansawdd organau. Mae'r OS yn diwygio Rheoliadau 2019 a wnaed ar sail Cymru a Lloegr, gyda chydysyniad Gweinidogion Cymru, fel rhan o'r ymarfer cywiriadau ar gyfer ymadael â'r UE heb gytundeb er mwyn sicrhau bod y llyfr statud yn parhau i weithredu'n gywir. Felly, byddai gwneud OSau ar wahân yng Nghymru ac yn Lloegr yn arwain at ddyblygu gwaith, a chymhlethdod diangen i'r llyfr statud. Mae cydsynio unwaith yn rhagor i OS ar gyfer y DU gyfan yn sicrhau bod un fframwaith deddfwriaethol ar draws y DU sy'n hybu eglurder a hygyrchedd i gleifion a darparwyr. O dan yr amgylchiadau eithriadol hyn, mae Llywodraeth Cymru yn ystyried ei bod yn briodol i Lywodraeth y DU ddeddfu ar ein rhan yn yr achos hwn.

**Vaughan Gething AS**

**Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol**

15 Hydref 2020



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

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**2020 No. 0000**

**EXITING THE EUROPEAN UNION**

**HUMAN TISSUE**

**The Quality and Safety of Organs Intended for Transplantation  
(Amendment) (EU Exit) Regulations 2020**

*Made* - - - -

\*\*\*

*Coming into force in accordance with regulation 1*

The Secretary of State makes these Regulations in exercise of the powers conferred by sections 8(1) and 8C of the European Union (Withdrawal) Act 2018(a).

A draft of this instrument has been approved by a resolution of each House of Parliament, in accordance with paragraphs 1 and 8F(b) of Schedule 7 to the European Union (Withdrawal) Act 2018.

**Citation and commencement**

1. These Regulations may be cited as the Quality and Safety of Organs Intended for Transplantation (Amendment) (EU Exit) Regulations 2020 and come into force immediately before IP completion day.

**Amendment of the Quality and Safety of Organs Intended for Transplantation  
(Amendment) (EU Exit) Regulations 2019**

2. The Quality and Safety of Organs Intended for Transplantation (Amendment) (EU Exit) Regulations 2019(c) are amended as follows.

**Substitution of regulation 2(2)**

3. For regulation 2(2) (amendment of the Human Tissue Act 2004(d)) substitute—

“(2) For subsection (3A) substitute—

---

(a) 2018 c. 16. The European Union (Withdrawal) Act 2018 was amended by the European Union (Withdrawal Agreement) Act 2020 (c. 1) (“the 2020 Act”); section 8C was inserted by section 21 of that Act.

(b) Paragraph 8F was inserted by paragraph 51 of Schedule 5 to the 2020 Act.

(c) S.I. 2019/483.

(d) 2004 c. 30. Section 32 was amended by S.I. 2012/1501 and 2014/1459.

“(3A) The Authority may not designate a person under subsection (3) if doing so would be incompatible with the principles set out in—

- (a) Article 12 of Directive 2004/23/EC of the European Parliament and of the Council on setting standards of quality and safety for the donation, procurement, testing, processing, preservation, storage and distribution of human tissues and cells, or
- (b) Article 13 of Directive 2010/53/EU of the European Parliament and of the Council on standards of quality and safety of human organs intended for transplantation,

and for the purposes of this subsection as it applies in relation to Great Britain, those Articles of those Directives are to be read subject to the modifications set out in subsections (3B) and (3C).”.

#### **Amendment of regulation 3(2)**

4. In regulation 3(2)—

- (a) for paragraph (b)(i) substitute—

“in the definition of “the Directive”, at the end insert “, as it applies in relation to Northern Ireland”;
- (b) for paragraph (b)(ii) substitute—

“in the definition of “the Implementing Directive”, at the end insert “, as it applies in relation to Northern Ireland”;
- (c) in the new paragraph (2) inserted by paragraph (c), after “In these Regulations,” insert “as they apply in relation to Great Britain.”.

#### **Substitution of regulation 3(3)**

5. For regulation 3(3) substitute—

“(3) For regulation 4 (designation of the competent authority) substitute—

##### **“Designation of the competent authority in relation to Northern Ireland**

4. In relation to Northern Ireland, the Authority is designated the competent authority for the purposes of the Directive.”.

#### **Amendment of regulation 3(5)**

6. In regulation 3(5), for “these Regulations” substitute “these Regulations, as they apply in relation to Great Britain, and with the Directive and the Implementing Directive, as they apply in relation to Northern Ireland”.

#### **Amendment of regulation 3(6)**

7. In regulation 3(6), for “these Regulations” substitute “these Regulations, as they apply in relation to Great Britain, and with the Directive and the Implementing Directive, as they apply in relation to Northern Ireland”.

#### **Substitution of regulation 3(8)**

8. For regulation 3(8) substitute—

“(8) For regulation 18 (organs sent to or received from another country), substitute—

“18.—(1) Where an organ is sent to a Member State from Northern Ireland, the Authority shall ensure that—

- (a) information on organ and donor characterisation that is specified in Part A of the Annex to the Directive;
  - (b) information that has been collected by a registered medical practitioner or a person acting under their supervision that is required by Part B of the Annex at the time when the organ is sent to a Member State; and
  - (c) information to ensure the traceability of the organ,
- is transmitted to that Member State in conformity with the requirements of Articles 4, 5, and 6(1) of the Implementing Directive.
- (2) Where an organ is received in Northern Ireland from a Member State, the Authority shall ensure that—
- (a) the requirements of Article 4 of the Implementing Directive in relation to information transmitted to the Authority in accordance with that Directive in respect of the organ have been complied with; and
  - (b) information to ensure the traceability of the organ is transmitted in accordance with Article 6(2) of that Directive.
- (3) Where an organ is sent from Northern Ireland to, or received in Northern Ireland from, a Member State, the Authority shall ensure the reporting of serious adverse events and reactions in conformity with the requirements of Articles 4 and 7 of the Implementing Directive.
- (4) The Authority shall ensure that any organs sent from Northern Ireland to, or received in Northern Ireland from, countries which are not in the European Union—
- (a) can be traced from the donor to the recipient; and
  - (b) meet quality and safety standards that are equivalent to those required by these Regulations.
- (5) The Authority shall ensure that any organs sent from Great Britain to, or received in Great Britain from, countries outside the United Kingdom—
- (a) can be traced from the donor to the recipient; and
  - (b) meet quality and safety standards that are equivalent to those required by these Regulations.
- (6) For the purposes of paragraphs (4) and (5), the Authority may conclude agreements with countries outside the United Kingdom.”.”.

### **Substitution of regulation 3(9)**

**9.** For regulation 3(9) substitute—

“(9) In regulation 19 (European Union network of competent authorities), after “The Authority shall,” insert “in relation to Northern Ireland,”.

### **Amendment of regulation 3(11)**

**10.** In regulation 3(11), in respect of Part 5A as inserted by that regulation—

- (a) in the title of the Part, after “Schedule 1A” insert “in relation to Great Britain”;
- (b) in the heading to regulation 24A, after “Schedule 1A” insert “in relation to Great Britain”;
- (c) in paragraph (1) of regulation 24A, for the words before sub-paragraph (a), substitute “An appropriate authority in Great Britain may by regulations amend—”;
- (d) in paragraph (2)—
  - (i) omit sub-paragraph (d);
  - (ii) for paragraph (e) substitute—
    - “(e) for the whole of Great Britain, the Secretary of State acting with the consent of the Welsh Ministers and the Scottish Ministers.”;

- (e) in regulation 24B, omit paragraph (3);
- (f) in regulation 24C, omit paragraph (4).

**Substitution of regulation 3(14)(b)**

**11.** For regulation 3(14)(b) substitute—

“(b) for paragraph 3 substitute—

“**3.** For the purpose of ensuring compliance with the requirements of Articles 4(1), 4(2), 4(3), 5(2) and 5(3) of the Implementing Directive in relation to Northern Ireland, the Authority shall specify in directions given under section 23(1) of the 2004 Act the requirements relating to the transmission of information that apply to a licence holder when an organ is sent to, or received from, a Member State.”.

Address	<i>Name</i>
Date	Parliamentary Under Secretary of State Department for Health and Social Care

**EXPLANATORY NOTE**

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

These Regulations are made in exercise of the powers in section 8(1) and 8C of the European Union (Withdrawal) Act 2018 (c. 16) in order to address failures of retained EU law to operate effectively and other deficiencies (in particular under section 8(2)(a), (f) and (g) of that Act) arising from the withdrawal of the United Kingdom from the European Union, and in order to give effect to the Protocol on Ireland/Northern Ireland in the withdrawal agreement, respectively.

They amend the Quality and Safety of Organs Intended for Transplantation (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/483) so as to enable the provision amended by those Regulations to continue to operate effectively in light of the Ireland/Northern Ireland Protocol following IP completion day.

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

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£4.90

UK202010071012 10/2020 19585

<http://www.legislation.gov.uk/id/ukdsi/2020/9780348213010>

Tudalen y pecyn 404

ISBN 978-0-34-821301-0



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**EXPLANATORY MEMORANDUM TO**

**THE BLOOD SAFETY AND QUALITY (AMENDMENT) (EU EXIT)  
REGULATIONS 2020**

**[2020] No. [XXXX]**

**THE QUALITY AND SAFETY OF ORGANS INTENDED FOR  
TRANSPLANTATION (AMENDMENT) (EU EXIT) REGULATIONS 2020**

**[2020] No. [XXXX]**

**THE HUMAN TISSUE (QUALITY AND SAFETY FOR HUMAN APPLICATION)  
(AMENDMENT) (EU EXIT) REGULATIONS 2020**

**[2020] No. [XXXX]**

**AND**

**THE HUMAN FERTILISATION AND EMBRYOLOGY (AMENDMENT) (EU EXIT)  
REGULATIONS 2020**

**[2020] No. [XXXX]**

**1. Introduction**

1.1 This Explanatory Memorandum has been prepared by the Department of Health and Social Care and is laid before Parliament by Command of Her Majesty.

**2. Purpose of the instruments**

2.1 On 31 January 2020, the United Kingdom (UK) left the European Union (EU). The Withdrawal Agreement agreed with the EU entered into force. These four instruments give effect to the Ireland/Northern Ireland Protocol ('the Protocol') in the Withdrawal Agreement, for the safety and quality of blood and blood components, organs, tissues and cells, and reproductive cells (gametes and embryos) for treating patients.

2.2 The Protocol sets out the EU law that will continue to apply to and in Northern Ireland (NI) after the end of the Implementation Period. This includes the EU Blood Directive (2002/98/EC), EU Tissues and Cells Directive (2004/23/EC), and EU Organs Directive (2010/53/EU) (including the Commission implementing directives), collectively referred to as 'the Directives' in this memorandum. This means that NI must continue to meet the requirements of the Directives for as long as the Protocol is in force. These four instruments make the changes needed to allow NI to meet these requirements.

2.3 There are four separate instruments, collectively referred to in this memorandum as 'the 2020 SIs':

- The Blood Safety and Quality (Amendment) (EU Exit) Regulations 2020 - referred to here as the 'Blood SI';

- The Quality and Safety of Organs Intended for Transplantation (Amendment) (EU Exit) Regulations 2020 - referred to here as the ‘Organs SI’;
- The Human Tissue (Quality and Safety for Human Application) (Amendment) (EU Exit) Regulations 2020 - referred to here as the ‘Tissues and Cells SI’; and
- The Human Fertilisation and Embryology (Amendment) (EU Exit) Regulations 2020 - referred to here as the ‘HFE SI’.

2.4 The 2020 SIs have been drafted separately as each amends different underlying legislation but each one brings forward very similar provisions. It is proposed that these instruments are grouped and debated together.

### *Explanations*

#### What did any relevant EU law do before exit day?

2.5 The UK law in this area transposes the EU Directives for the safety and quality of blood, organs, tissues and cells (including reproductive cells). They set a range of safety and quality standards, including:

- standards for all steps in the transfusion process for human blood and blood components, including collection, testing, processing and distribution;
- the procurement, testing, processing, and storage of tissues and cells;
- organ and donor characterisation, which sets out the information that must be collected so an organ is matched with a suitable recipient;
- traceability requirements for blood, organs, tissues and cells; and
- notification requirements in the event of a serious adverse event or reaction which may impact the safety and quality of blood, organs, tissue and cells.

2.6 Four instruments were made in 2019<sup>1</sup> (collectively referred to in this memorandum as ‘the 2019 SIs’) to ensure that, upon leaving the EU, the UK would maintain the current safety and quality standards for blood, organs, tissues and cells. The 2019 SIs also made amendments to reflect EU Member States becoming third countries to the UK.

#### Why is it being changed?

2.7 The 2019 SIs amended retained EU law across the UK as a whole and they are due to come into force at the end of the Implementation Period (11pm on 31 December 2020). Following the conclusion of the Withdrawal Agreement, NI must continue to meet the requirements of the Directives, for as long as the Protocol is in force. The 2020 SIs restrict the changes made by the 2019 SIs to Great Britain (GB) only, therefore the current law will remain in place for NI. The fact that NI will remain subject to EU law in this area, whereas GB will not, also requires some additional changes. The 2020 SIs will retain a single set of UK rules, but within them, a small number of provisions will apply to NI or GB only.

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<sup>1</sup> The Blood Safety and Quality (Amendment) (EU Exit) Regulations 2019/4; The Quality and Safety of Organs Intended for Transplantation (Amendment) (EU Exit) Regulations 2019/483; The Human Tissue (Quality and Safety for Human Application) (Amendment) (EU Exit) Regulations 2019/481; The Human Fertilisation and Embryology (Amendment) (EU Exit) Regulations 2019/482

What will it now do?

2.8 The 2020 SIs will ensure that NI continues to meet the provisions of the Directives after the end of the Implementation Period. A detailed breakdown of the changes these instruments make is included in section 7. The key changes in the 2020 SIs are to:

- allow the current regulators to continue to act as the competent authorities in relation to the EU for NI;
- make amendments to the import/export provisions;
- for tissues and cells (including reproductive cells), the Tissues and Cells SI and the HFE SI retain the requirement for NI tissue establishments to use the Single European Code for tissues and cells; and
- limit the regulation making powers introduced by the 2019 SIs to GB.

### **3. Matters of special interest to Parliament**

*Matters of special interest to the Joint Committee on Statutory Instruments*

3.1 None.

*Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)*

3.2 The territorial application of these instruments is the UK.

3.3 Legislative competence for the donation, processing and use in treatment of human reproductive cells is reserved to Westminster (i.e. legislation is dealt with by the UK Parliament). Competence in respect of all other human tissues and cells, blood and organs is devolved.

### **4. Extent and Territorial Application**

4.1 The territorial extent of these instruments is the UK.

4.2 The territorial application of these instruments is the UK.

### **5. European Convention on Human Rights**

5.1 The Minister of State for Health, Edward Argar, has made the following statement regarding Human Rights:

“In my view the provisions of The Blood Safety and Quality (Amendment) (EU Exit) Regulations 2020; The Quality and Safety of Organs Intended for Transplantation (Amendment) (EU Exit) Regulations 2020; The Human Tissue (Quality and Safety for Human Application) (Amendment) (EU Exit) Regulations 2020 and The Human Fertilisation and Embryology (Amendment) (EU Exit) Regulations 2020 are compatible with the Convention rights.”

### **6. Legislative Context**

6.1 The amendments made by these instruments are needed to give effect to the Protocol for the safety and quality of blood, organs, tissues and cells, for treating patients.

6.2 The relevant UK legislation is:

- The Blood Safety and Quality Regulations 2005;

- The Quality and Safety of Organs Intended for Transplantation Regulations 2012;
- The Human Tissue (Quality and Safety for Human Application) Regulations 2007;
- The Human Fertilisation and Embryology (Quality and Safety) Regulations 2007; and
- relevant amendments to the Human Tissue Act 2004 and the Human Fertilisation and Embryology Act 1990.

6.3 This legislation was made under powers conferred by section 2(2) of the European Communities Act 1972 in order to implement the Directives (see paragraph 2.2).

6.4 Section 2 of European Union (Withdrawal) Act 2018 (EUWA) saves EU-derived domestic legislation so that it continues to have effect in domestic law, on and after exit day. The legislation in paragraph 6.2 is retained EU law and the 2019 SIs will amend it from 1 January 2021 to ensure it functions effectively once the UK is no longer subject to EU law, in reliance on section 8 of EUWA (power to remedy deficiencies in retained EU law arising from EU exit). As NI will need to remain subject to the Directives after the end of the Implementation Period, the 2020 SIs re-exercise the power in section 8 of EUWA to restrict the changes being made by the 2019 SIs to GB. The SIs also rely on the power in section 8C of EUWA (power to implement the Protocol), for example by ensuring that movements of blood, organs, tissue and cells into NI from GB are treated the same as movements of blood, organs, tissues and cells into NI from non-EU Member States.

## 7. Policy background

### *What is being done and why?*

- 7.1 The donation of blood and blood components (red cells, platelets, and plasma) facilitate a wide range of essential, and often life-saving treatments, including blood transfusions used to deal with major surgery or trauma, and the manufacture of medicinal products such as clotting factors and immunoglobulins.
- 7.2 An organ transplant can be life-saving or life-transforming and is often the only treatment option available for the patient concerned.
- 7.3 Human tissues and cells are used in what can be life-changing therapies, such as: stem cells to treat blood cancers; corneas to restore sight; heart valves to treat heart conditions; and eggs and sperm to treat infertility. Other forms of tissue are more generic in use, for example bone products used in operations and in dental fillings.
- 7.4 The retained EU law (as set out in paragraph 6.2) sets the policy and legal framework in relation to all steps in the transfusion process for human blood and blood components and the donation, retrieval, processing, storage, transport, import and export of organs, tissues and cells used for transplantation.
- 7.5 The 2019 SIs (see paragraph 2.6) were made to amend the retained EU law so that it continues to function after leaving the EU and will be in force from 1 January 2021.
- 7.6 The 2020 SIs are needed to give effect to the Protocol. They restrict the changes being made by the 2019 SIs to GB only and therefore the current law will remain in place for NI. The fact that NI will remain subject to EU law in this area, whereas GB does not, also requires some additional changes. The 2020 SIs will retain a single set



of UK rules, but within them, a small number of provisions will apply to NI or GB only. Details of the main amendments made by these instruments are set out below.

#### Quality and safety standards

- 7.7 Neither the 2019 SIs, nor the 2020 SIs make changes to the safety and quality standards, which will remain the same across the UK from 1 January 2021. For NI these standards may be expressed by reference to EU legislation, whereas for GB they are not, however, the substance is the same in both cases. For example, to apply for a licence to make one-off imports of tissues and cells from a third country, the applicant must provide the regulator with certain information to demonstrate traceability and the one-off nature of the import. The current regulations refer to the information requirements as set out in the Tissues and Cells Directive. The 2019 SIs removed this cross-reference to the Tissues and Cells Directive for the UK; however, the 2020 SIs will now retain that cross-reference for NI. The substance of the information to be provided remains the same across the UK.

#### Regulators as competent authorities in Northern Ireland

- 7.8 The following UK regulators for blood, organs, tissues and cells will continue to act on a UK-wide basis after the end of the Implementation Period:
- the Medicines and Healthcare products Regulatory Authority (MHRA) for blood and blood components;
  - the Human Tissue Authority (HTA) for organs, tissues and cells (excluding reproductive cells); and
  - the Human Fertilisation and Embryology Authority (HFEA) for reproductive tissues and cells.
- 7.9 The Directives require an authority to be designated as the ‘competent authority’ and the UK regulators will continue to act as the competent authorities for NI. The Blood Safety and Quality Regulations 2005 and the Blood SI refer to the Secretary of State as the relevant authority but the Secretary of State’s regulatory and competent authority functions will continue to be carried out in practice by the MHRA, an executive agency of the Department of Health and Social Care.
- 7.10 The 2020 SIs make amendments to allow the competent authorities to continue to meet the same EU obligations they do now. For example, the Blood SI retains the requirement to notify the EU Commission, in respect of NI, of an epidemiological situation, such as an outbreak of a disease, which may affect the safety of blood donations. As another example, in relation to NI, the Tissues and Cells and HFE SIs retain the requirement to notify the competent authorities in the European Economic Area (EEA) States of information relating to serious adverse events and reactions so that appropriate action can be taken. The competent authorities in relation to tissues and cells will also remain under an obligation to deal with requests from EEA States to carry out inspections of third country premises from which tissues and cells have been imported into NI and then moved into the EEA.

#### Movement of goods in and out of NI - GB establishments

- 7.11 The commitment to unfettered access means there should be no additional checks or processes imposed by GB when NI goods are placed on the market in GB. Therefore, there will be no change to the requirements for GB establishments to receive blood, organs, tissues and cells from establishments in NI. Similarly, GB

establishments will not treat blood, organs, tissues and cells sent to NI as exports. This is achieved as follows:

- in the Blood SI, for the purpose of the import and export of blood or blood components by a blood establishment in GB, a third country is defined as a country other than the UK – this means that for GB blood establishments the movement of blood or blood components between NI and GB has the same requirements as other intra-UK distribution;
- in the Organs SI, for GB there are no additional requirements when organs move from one part of the UK to another; and
- in the Tissues and Cells and HFE SIs, for the purpose of import and export of tissues and cells by GB establishments, a third country is defined as any country other than the UK – this means that for GB establishments the movement of tissues and cells between NI and GB has the same requirements as other intra-UK distribution.

#### Movement of goods in and out of NI - NI establishments

- 7.12 NI establishments will continue to send blood, organs, tissues and cells to GB as they do now. NI establishments will not treat movements to GB establishments any differently to movements within NI.
- 7.13 NI establishments will be able to continue receiving blood, organs, tissues and cells from GB establishments. However, NI establishments will now consider GB the same as a non-EU Member State for this purpose. NI establishments will be required to extend the existing non-EU import provisions to blood, organs, tissues and cells received from GB:
- for blood, blood establishments in NI must update their Blood Establishment Authorisation to include import, and ensure that the blood or blood components from GB have been prepared in accordance with equivalent standards;
  - for organs, organs moving from GB to NI must be traceable from donor to recipient and meet equivalent safety and quality standards; and
  - for tissues and cells, tissue establishments in NI must ensure they hold an import licence and import agreements to receive tissues and cells from GB.

#### Traceability

- 7.14 The current legislation, in relation to tissues and cells (including reproductive cells), requires tissue establishments to use the Single European Code to facilitate the traceability of tissues and cells within the EU.
- 7.15 From 1 January 2021, GB will be considered a third country under the Directives and will no longer be required to apply the Single European Code, instead using alternative existing traceability systems. However, the Tissues and Cells and HFE SIs retain this provision for NI, and NI establishments will be required to continue applying the Single European Code to tissues and cells.
- 7.16 The Blood and Organs SIs do not include such coding systems.

### Transferred Commission tertiary powers

- 7.17 The 2019 SIs introduced some limited regulation-making powers into UK law, for each of the UK nations. These powers are similar to the EU Commission powers and ensure safety regulations can be updated in the future. The 2020 SIs limit the regulation-making powers in the 2019 SIs to GB, as EUWA now contains regulation making powers (section 8C and paragraph 11M of Schedule 2), enabling the Secretary of State and the devolved administrations to make regulations to implement the Protocol including in response to future changes in EU law.

### Six-month transition period for tissues and cells

- 7.18 The 2019 SIs amended the retained EU law (paragraph 6.2) to account for the fact that the UK will consider EU Member States as third countries. This means that from 1 January 2021 establishments will be required to extend third country import and export provisions to EU Member States.
- 7.19 For tissues and cells, the 2019 SIs provide for a six-month transition period from exit day to allow tissue establishments time to put the necessary arrangements in place for importing and exporting tissues and cells with the EU. The 2020 SIs amend the start of this transition period so that it begins after the Implementation Period.

## **8. European Union (Withdrawal) Act 2018/Withdrawal of the United Kingdom from the European Union**

- 8.1 These instruments are being made using the powers in section 8 and 8C of EUWA in order to give effect to the Protocol in the Withdrawal Agreement for the safety and quality of blood, organs, tissues and cells.
- 8.2 The Tissues and Cells and HFE SI also rely on the consequential power in section 41(1) of the European Union (Withdrawal Agreement) Act 2020 to revoke a spent provision in the legislation concerning the application of the Single European Code, and to limit the regulation-making powers introduced by the 2019 SIs to GB.
- 8.3 In accordance with the requirements of EUWA, the Minister has made the relevant statements, detailed in Part 2 of the Annex to this Explanatory Memorandum.

## **9. Consolidation**

- 9.1 These instruments do not involve consolidation and there are no plans to consolidate the legislation at this time.

## **10. Consultation outcome**

- 10.1 The amendments introduced by these instruments are technical in nature and their purpose is to give effect to the Protocol by restricting the changes made by the 2019 SIs to GB. The current law will remain in place for NI. Therefore, there was no public consultation. The changes in these instruments were discussed with the UK regulators, along with issues of operational implementation.
- 10.2 The proposed amendments have been discussed with the Scottish, Welsh and Northern Ireland devolved administrations and their views have been considered in the drafting of these instruments. The Blood, Organs and Tissues and Cells SIs are being made on a UK-wide basis with the agreement of the devolved administrations.

## **11. Guidance**

- 11.1 Guidance for establishments will be provided by the UK regulators. The regulators will work with licensed/authorised establishments in NI to support them as needed to prepare for 1 January 2021.

## **12. Impact**

- 12.1 There is no significant impact on business, charities or voluntary bodies.
- 12.2 There is no significant impact on the public sector.
- 12.3 An Impact Assessment has not been prepared for these instruments because the direct cost impact has been assessed as lower than the £5m threshold in any one year and the policy is not considered novel or contentious.
- 12.4 In practice there will be no significant changes in how blood and transplant establishments operate. There will be some minor costs for tissue establishments and fertility clinics in NI to meet the new import provisions.

### ***Blood***

- 12.5 There is one blood establishment in NI. It will be able to continue receiving blood and blood components from GB establishments; however, NI establishments will treat GB as a non-EU Member State for this purpose. The provisions for importing blood or blood components from a non-EU Member State are set out in 7.13. The NI blood establishment already has the required import authorisations in place and GB blood establishments currently prepare blood and blood components to meet the EU and UK standards, so the NI blood establishment can continue to receive blood or blood components from GB.
- 12.6 There are 10 hospital blood banks in NI. They will not need to take any action as a result of the Blood SI.
- 12.7 It is estimated that there will be no cost to businesses or to the NHS as a result of the changes in the Blood SI, therefore no Impact Assessment is required.

### ***Organs for transplant***

- 12.8 NHS Blood and Transplant (NHSBT) will continue to be responsible for organ donation and retrieval in the UK. Between April 2019 and March 2020, 32 organs from deceased donors moved from GB to NI, and 126 organs moved from NI to GB (data provided by NHSBT).
- 12.9 Organs will be able to continue moving from GB to NI, however NI based establishments will now treat GB as a non-EU Member State for this purpose. The provisions for importing organs from a non-EU Member State are set out in 7.13. These are the same provisions that currently apply to organs moving within the UK so the changes made by the 2020 SI will make no difference to how NHSBT operates in practice.
- 12.10 It is estimated that there will be no cost to businesses or to the NHS as a result of the changes introduced by the Organs SI, therefore no Impact Assessment is required.

### ***Tissues and cells and reproductive cells***

- 12.11 There are two tissue establishments and four fertility clinics in NI. They will continue to be able to receive tissues and cells from GB, however they will now treat

GB as a non-EU Member State for this purpose. The provisions for importing tissues and cells from a non-EU Member State are set out in 7.13. The regulators for the sector are working with these NI establishments to ensure the necessary actions are taken for 1 January 2021.

12.12 There will be some minor costs for these NI establishments to meet the new provisions. It is estimated that one tissue establishment in NI will need to put additional licensing arrangements in place to receive tissues and cells from GB, and that it will need to put in place two import agreements with GB establishments. It is estimated that three fertility clinics in NI will need to put additional licensing arrangements in place to receive tissues and cells from GB at no cost, and that they will need to put in place 10-15 import agreements with GB establishments between them. This represents a small administrative one-off cost in the first year of the Tissues and Cells and HFE SIs coming into force.

12.13 Information on HTA licensing fees is available at <https://www.hta.gov.uk/policies/licence-fees-and-payments-202021>

### **13. Regulating small business**

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 No specific action is proposed to minimise regulatory burdens on small business. These instruments relate to safety, quality and traceability standards for patients and no exceptions would be applied to small businesses.

### **14. Monitoring & review**

14.1 These instruments give effect to the Protocol for the safety and quality of blood, organs, tissues and cells. NI must continue to meet the requirements of the Directives for as long as the Protocol is in force. Changes to these instruments may be needed if there are changes to the Directives. It is for the elected institutions in NI to decide what happens to the Protocol alignment provisions in a consent vote that can take place every four years, with the first vote taking place in 2024.

14.2 As these instruments are made under the EUWA, no review clause is required.

### **15. Contact**

15.1 Samantha Wheelhouse, Senior Policy Advisor at the Department of Health and Social Care, telephone: 0113 254 5200 or email [samantha.wheelhouse@dhsc.gov.uk](mailto:samantha.wheelhouse@dhsc.gov.uk), can be contacted with any queries regarding these instruments.

15.2 Marina Pappa, Deputy Director for Health Ethics, at the Department of Health and Social Care, can confirm that this Explanatory Memorandum meets the required standard.

15.3 Edward Argar, Minister of State for Health, at the Department of Health and Social Care, can confirm that this Explanatory Memorandum meets the required standard.

# 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 under the 2018 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(3), 3(7) and 17(3) and 17(7) of Schedule 7	Ministers of the Crown exercising clauses 8(1), 9 and 23(1) to make a Negative SI.	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/ESIC.
Appropriateness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising clauses 8(1), 9 and 23(1) or jointly 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	Ministers of the Crown exercising clauses 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2.	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	Ministers of the Crown exercising clauses 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2.	Explain what, if any, amendment, repeals or revocations are being made to the Equality Acts 2006 and 2010 and legislation made under them.  State 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	Ministers of the Crown exercising clauses 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2 In addition to the statutory obligation the Government has made a political commitment to include these statements alongside all EUWA SIs.	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	Ministers of the Crown exercising clauses 8(1), 9, and 23(1) or jointly exercising powers in Schedule 2 to create a criminal offence.	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising clauses 10(1), 12 and part 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority by SI.	State why it is appropriate to create such a sub-delegated power.
Urgency	Paragraph 34, Schedule 7	Ministers of the Crown using the urgent procedure in paragraphs 4 or 14, Sch 7.	Statement of the reasons for the Minister's opinion that the SI is urgent.
Explanations where amending regulations under s.2(2) ECA 1972	Paragraph 13, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s.2(2) ECA 1972	Statement explaining the good reasons for modifying the instrument made under s.2(2) ECA 1972, identifying the relevant law before exit day, and explaining the instrument's effect on retained EU law.
Scrutiny	Paragraph 16, Schedule	Anybody making an SI	Statement setting out:

<p>statement where amending regulations under s.2(2) ECA 1972</p>	<p>8</p>	<p>after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s.2(2) ECA 1972</p>	<p>a) the steps which the relevant authority has taken to make the draft instrument published in accordance with paragraph 16(2), Schedule 8 available to each House of Parliament,  b) containing information about the relevant authority's response to—  (i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and  (ii) any other representations made to the relevant authority about the published draft instrument, and  c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the instrument or draft instrument which is to be laid.</p>
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## **Part 2**

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

#### **1. Appropriateness statement**

- 1.1 The Minister of State for Health, Edward Argar, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:
- “In my view The Blood Safety and Quality (Amendment) (EU Exit) Regulations 2020; The Quality and Safety of Organs Intended for Transplantation (Amendment) (EU Exit) Regulations 2020; The Human Tissue (Quality and Safety for Human Application) (Amendment) (EU Exit) Regulations 2020 and The Human Fertilisation and Embryology (Amendment) (EU Exit) Regulations 2020 do no more than is appropriate”.
- 1.2 This is the case because they do no more than amend legislation on blood, organs, tissues and cells and reproductive cells to give effect to the Ireland/Northern Ireland Protocol in the Withdrawal Agreement. They restrict the provisions in the 2019 SIs to GB only so the current law will remain in place for NI. The SIs will retain a single set of UK rules, but within them there are a small number of provisions which are stated as applying to NI or GB only. Further details, including examples of the changes included in the instruments, are detailed in section 7 of the main body of this Explanatory Memorandum.

#### **2. Good reasons**

- 2.1 The Minister of State for Health, Edward Argar, 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 these instruments, and I have concluded they are a reasonable course of action”
- 2.2 The Protocol sets out the EU law that will continue to apply to and in the UK in respect of NI, which includes the Blood, Tissues and Cells, and Organs Directives (including the Commission implementing directives). NI must continue to meet the requirements of the Directives for as long as the Protocol is in force. The instruments make the changes needed to allow NI to meet these requirements. Further details, including examples of the amendments made and reasons for making them, are set out in section 7 of the main body of this Explanatory Memorandum.

#### **3. Equalities**

- 3.1 The Minister of State for Health, Edward Argar, has made the following statement:
- “The draft instruments do not amend, repeal or revoke a provision or provisions in the Equality Act 2006, or the Equality Act 2010 or subordinate legislation made under those Acts.”
- 3.2 The Minister of State for Health, Edward Argar, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to the draft instruments, I, Edward Argar, 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.”

3.3 These instruments will have no impact on equalities.

#### **4. Explanations**

4.1 The explanations statement has been made in section 2 of the main body of this Explanatory Memorandum.



Ein cyf/Our ref: MA-VG-3307-20

Mick Antoniw AS  
Cadeirydd  
Y Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad  
Senedd Cymru  
Bae Caerdydd  
Caerdydd  
CF99 1SN

15 Hydref 2020

Annwyl Mick,

Rwy'n ysgrifennu i'ch hysbysu fy mod wedi gosod Memorandwm Cydsyniad Offeryn Statudol yn y Senedd mewn perthynas â:

- **Rheoliadau Ansawdd a Diogelwch Organau y Bwriedir eu Trawsblannu (Diwygio) (Ymadael â'r UE) 2020**

yn unol â'r gofyniad o dan Reol Sefydlog 30A (RhS30A).

Rwy'n ysgrifennu hefyd i roi gwybod ichi nad wyf yn bwriadu cyflwyno cynnig i gynnal dadl ar yr OS yn yr achos hwn. Rwyf wedi gwneud y penderfyniad hwn ar y sail bod yr OS wedi'i gyfyngu i wneud cywiriadau i'r diffygion yn y gyfraith a fydd yn codi oherwydd bod y DU yn ymadael â'r UE. Mae darpariaethau'r OS yn ymwneud â gweithredu Protocol Gogledd Iwerddon neu fel arall yn dechnegol neu'n fach eu natur, ac nid oes unrhyw wahaniaeth mewn polisi rhwng Llywodraeth Cymru a Llywodraeth y DU yn unrhyw un o'r meysydd hyn.

Mae RhS30A yn darparu y caiff unrhyw Aelod gyflwyno cynnig i gynnal dadl ar yr OS hwn. O ystyried faint o ddeddfwriaeth y mae'r Senedd yn ei ystyried, ni fyddaf yn ceisio cynnal dadl o'r fath.

Yn gywir,

**Vaughan Gething AS/MS**  
Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol  
Minister for Health and Social Services

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

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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.



Llywodraeth Cymru  
Welsh Government

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## **DATGANIAD YSGRIFENEDIG GAN LYWODRAETH CYMRU**

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**TEITL** Rheoliadau Ansawdd a Diogelwch Organau y Bwriedir eu Trawsblannu (Diwygio) (Ymadael â'r UE) 2020

**DYDDIAD** 15 Hydref 2020

**GAN** Rebecca Evans AS, Y Gweinidog Cyllid a'r Trefnydd

**Rheol Sefydlog 30C – Gosod Offeryn Statudol yn Senedd y DU sy'n diwygio deddfwriaeth mewn maes lle y mae cymhwysedd wedi ei ddatganoli**

**Rheoliadau Ansawdd a Diogelwch Organau y Bwriedir eu Trawsblannu (Diwygio) (Ymadael â'r UE) 2020 - cadarnhaol**

### **Trosolwg Polisi o'r Offeryn Statudol (OS)**

Mae'r Offeryn Statudol hwn yn diwygio Rheoliadau Ansawdd a Diogelwch Organau y bwriedir eu Trawsblannu (Diwygio) (Ymadael â'r UE) 2019 a wnaed y llynedd gyda chydysyniad Gweinidogion Cymru fel rhan o'r ymarfer cywiriadau ar gyfer Ymadael â'r UE heb gytundeb yn 2019 i sicrhau bod y llyfr statud yn parhau i weithredu'n gywir. Mae'r Offeryn Statudol yn gymwys i'r DU gyfan a disgwylir iddo ddod i rym yn union cyn dyddiad cwblhau'r broses weithredu (11pm 31 Rhagfyr 2020).

Mae'r Offeryn Statudol yn diwygio Rheoliadau 2019 er mwyn galluogi'r darpariaethau a ddiwygir gan y Rheoliadau hynny i barhau i weithredu'n effeithiol yng ngoleuni Protocol Gogledd Iwerddon ar ôl y cyfnod gweithredu.

Nid oes gwahaniaeth o ran polisi rhwng Llywodraeth Cymru a Llywodraeth y DU mewn perthynas â'r OS hwn.

### **Y Gyfraith sy'n cael ei diwygio**

- Rheoliadau Ansawdd a Diogelwch Organau y Bwriedir eu Trawsblannu (Diwygio) (Ymadael â'r UE) 2019

## **Diben y diwygiadau**

Darpariaethau perthnasol yr offeryn statudol yw gweithredu Protocol Gogledd Iwerddon, lle caiff Gogledd Iwerddon ei thrin fel pe bai'n Aelod-wladwriaeth (yn amodol ar yr addasiadau i gyfraith yr UE a wnaed gan Brotocol Gogledd Iwerddon), ac fel rhan gyfansoddol o'r DU. Mae'r darpariaethau'n cyfyngu ar y newidiadau sy'n cael eu gwneud gan Reoliadau 2019 i Brydain Fawr, sy'n golygu bod y gyfraith bresennol yn parhau i fod ar waith ar gyfer Gogledd Iwerddon.

Mae'r OS a'r Memorandwm Esboniadol cysylltiedig, sy'n nodi effaith pob un o'r diwygiadau i'w gweld yma:

[The Quality and Safety of Organs Intended for Transplantation \(Amendment\) \(EU Exit\) Regulations 2020](#)

## **Unrhyw effaith y gall yr OS ei chael ar gymhwysedd deddfwriaethol Senedd Cymru a/neu ar gymhwysedd gweithredol Gweinidogion Cymru**

Mae'r Offeryn Statudol yn diwygio Offeryn Statudol ymadael â'r UE mewn perthynas ag ansawdd a diogelwch organau. Nid yw'r OS yn cael unrhyw effaith ar gymhwysedd gweithredol Gweinidogion Cymru na chymhwysedd deddfwriaethol Senedd Cymru. Nid yw'r OS yn golygu y caiff unrhyw swyddogaethau eu trosglwyddo i nac oddi wrth Weinidogion Cymru, ac nid yw ychwaith yn rhoi unrhyw swyddogaethau newydd i Weinidogion Cymru.

## **Pam y rhoddwyd cydsyniad**

Nid oes gwahaniaeth rhwng Llywodraeth Cymru a Llywodraeth y DU (yr Adran Iechyd a Gofal Cymdeithasol) o ran y polisi ar ddiogelwch ac ansawdd organau. Mae'r OS yn diwygio Rheoliadau 2019 a wnaed ar sail Cymru a Lloegr, gyda chydysyniad Gweinidogion Cymru, fel rhan o'r ymarfer cywiriadau ar gyfer ymadael â'r UE heb gytundeb er mwyn sicrhau bod y llyfr statud yn parhau i weithredu'n gywir. Felly, byddai gwneud OS ar wahân yng Nghymru ac yn Lloegr yn arwain at ddyblygu gwaith, a chymhlethdod diangen i'r llyfr statud. Mae cydsynio unwaith yn rhagor i OS ar gyfer y DU gyfan yn sicrhau bod un fframwaith deddfwriaethol ar draws y DU sy'n hybu eglurder a hygyrchedd i gleifion a darparwyr. O dan yr amgylchiadau eithriadol hyn, mae Llywodraeth Cymru yn ystyried ei bod yn briodol i Lywodraeth y DU ddeddfu ar ein rhan yn yr achos hwn.

**GWEINIDOGION Y DU SY'N GWEITHREDU MEWN MEYSYDD  
DATGANOLEDIG**

**180 - Rheoliadau Ansawdd a Diogelwch Organau y Bwriedir eu  
Trawsblannu (Diwygio) (Ymadael â'r UE) 2020**

*Dyddiad gosod yn Senedd y DU: 8 Hydref 2020*

**Sifftio**

Yn destun sifftio yn Senedd y DU?	Nac ydy
Gweithdrefn:	Cadarnhaol drafft
Dyddiad trafod gan Bwyllgor Offerynnau Statudol Ewropeaidd Tŷ'r Cyffredin	Amh
Dyddiad trafod gan Bwyllgor Craffu ar Is-ddeddfwriaeth Tŷ'r Arglwyddi	Amh
Dyddiad y daw'r cyfnod sifftio i ben yn Senedd y DU	Amh
Datganiad ysgrifenedig o dan Reol Sefydlog 30C:	Papur 52
Memorandwm Cydsyniad Offeryn Statudol o dan Reol Sefydlog 30A (oherwydd eu bod yn diwygio deddfwriaeth sylfaenol)	Deddf Meinweoedd Dynol 2004 (adran 32) - SICM(5)32

**Gweithdrefn graffu**

Canlyniad y broses sifftio	Amh
Gweithdrefn	Cadarnhaol drafft
Dyddiad trafod gan y Cydbwyllgor ar Offerynnau Statudol	21/10/2020
Dyddiad trafod gan Bwyllgor Offerynnau Statudol Tŷ'r Cyffredin	Anhysbys
Dyddiad trafod gan Bwyllgor Craffu ar Is-ddeddfwriaeth Tŷ'r Arglwyddi	20/10/2020

**Cefndir**

Bwriedir i'r Rheoliadau hyn gael eu gwneud gan Lywodraeth y DU yn unol ag adrannau 8(1) ac 8C o Ddeddf yr Undeb Ewropeaidd (Ymadael) 2018.

**Crynodeb**

Mae'r Rheoliadau hyn yn rhan o gyfres o bedwar offeryn ('Offerynnau 2020'). Mae Offerynnau 2020 gyda'i gilydd yn rhoi effaith i Brotocol Iwerddon/Gogledd Iwerddon (y 'Protocol') yn y Cytundeb Ymadael, ar gyfer diogelwch ac ansawdd gwaed a chydannau gwaed, organau, meinweoedd a chelloedd, a chelloedd atgenhedlu (gametau ac embryonau) ar gyfer trin cleifion.

Mae'r Protocol yn nodi cyfraith yr UE a fydd yn parhau i fod yn gymwys i Ogledd Iwerddon ac yno ar ôl diwedd y Cyfnod Gweithredu. Rhaid i

Ogledd Iwerddon barhau i fodloni gofynion deddfwriaeth o'r fath cyhyd â bod y Protocol mewn grym. Mae'r gyfres o bedwar offeryn, gan gynnwys y Rheoliadau hyn, yn gwneud y newidiadau sydd eu hangen i ganiatáu i Ogledd Iwerddon fodloni'r gofynion hynny.

Gwnaed pedwar offeryn blaenorol yn 2019 ("Offerynnau 2019") i sicrhau y byddai'r DU, wrth adael yr UE, yn cynnal y safonau diogelwch ac ansawdd cyfredol ar gyfer gwaed, organau, meinweoedd a chelloedd. Gwnaed Rheoliadau 2019 gyda chydysniad Gweinidogion Cymru fel rhan o'r ymarfer cywiriadau ar gyfer Ymadael â'r UE heb gytundeb yn 2019 i sicrhau bod y llyfr statud yn parhau i weithredu'n gywir. Gwnaeth Offerynnau 2019 hefyd welliannau i adlewyrchu'r ffaith bod Aelod-wladwriaethau'r UE yn dod yn drydydd gwledydd i'r DU. Mae Offerynnau 2020 yn cyfyngu'r newidiadau a wnaed gan Offerynnau 2019 i Brydain Fawr yn unig. Felly bydd y gyfraith gyfredol yn parhau ar gyfer Gogledd Iwerddon.

Mae'r Rheoliadau hyn yn diwygio Rheoliadau Ansawdd a Diogelwch Organau y Bwriedir eu Trawsblannu (Diwygio) (Ymadael â'r UE) 2019 er mwyn galluogi'r darpariaethau a ddiwygiwyd gan y Rheoliadau hynny i barhau i weithredu'n effeithiol yng ngoleuni'r Protocol.

#### **Datganiad gan Lywodraeth Cymru**

Mae'r Cynghorwyr Cyfreithiol yn cytuno â'r datganiad a osodwyd gan Lywodraeth Cymru dyddiedig 15 Hydref 2020 ynghylch effaith y Rheoliadau hyn.

#### **Cytundeb Rhynglywodraethol ar Fil yr Undeb Ewropeaidd (Ymadael)**

Mae'r crynodeb uchod a chynnwys y Memorandwm Esboniadol i'r Rheoliadau hyn yn cadarnhau eu heffaith.

Nid yw'r Cynghorwyr Cyfreithiol o'r farn bod unrhyw faterion arwyddocaol yn codi o dan baragraff 8 o'r Memorandwm ar Fil yr Undeb Ewropeaidd (Ymadael) a Sefydlu Fframweithiau Cyffredin mewn perthynas â'r Rheoliadau hyn.

#### **Cynnig cydsyniad o dan Reol Sefydlog 30A.10**

Gosododd Llywodraeth Cymru Femorandwm Cydsyniad Offeryn Statudol mewn perthynas â'r Rheoliadau hyn ar 15 Hydref 2020, oherwydd bod y Rheoliadau'n diwygio deddfwriaeth sylfaenol o fewn cymhwysedd deddfwriaethol y Senedd (yn yr achos hwn, adran 32 o Ddeddf Meinweoedd Dynol 2004).

Fodd bynnag, nid yw Llywodraeth Cymru yn bwriadu cyflwyno cynnig i drafod y Memorandwm Cydsyniad Offeryn Statudol yn y Cyfarfod Llawn (fel y nodwyd gan y Gweinidog Iechyd a Gwasanaethau Cymdeithasol mewn llythyr at y Cadeirydd dyddiedig 15 Hydref 2020).

# Eitem 10.3

## MEMORANDWM CYDSYNIAD OFFERYN STATUDOL

### Rheoliadau Caffael Cyhoeddus (Diwygio etc.) (Ymadael â'r UE) 2020 sy'n cynnwys diwygiadau i adran 155(2) a (3) o Ddeddf Cydraddoldeb 2010

1. Mae'r Memorandwm Cydsyniad Offeryn Statudol wedi ei osod o dan Reol Sefydlog ("RhS) 30A.2. Mae RhS 30A yn rhagnodi bod rhaid i Femorandwm Cydsyniad Offeryn Statudol gael ei osod ac i Gynnig Cydsyniad Offeryn Statudol gael ei gyflwyno gerbron Senedd Cymru os yw un o Offerynnau Statudol y Deyrnas Unedig yn gwneud darpariaeth o ran Cymru, sy'n diwygio deddfwriaeth sylfaenol sydd ar fater o fewn cymhwysedd deddfwriaethol y Senedd.
2. Cafodd Rheoliadau Caffael Cyhoeddus (Diwygio etc.) (Ymadael â'r UE) 2020 eu gosod gerbron Senedd y Deyrnas Unedig ar 7 Hydref 2020 Gellir gweld yr Offeryn Statudol a'r Memorandwm Esboniadol yma:  
<https://www.legislation.gov.uk/ukdsi/2020/9780348212952>

### Crynodeb o'r Offeryn Statudol a'i amcan

3. Amcan yr Offeryn Statudol, ar y cyfan, yw cywiro diffygion yn y ddeddfwriaeth sy'n deillio o'r ffaith fod y Deyrnas Unedig yn ymadael â'r Undeb Ewropeaidd fel y darperir ar eu cyfer gan Ddeddf yr Undeb Ewropeaidd (Ymadael) 2018.
4. Mae'r Offeryn Statudol yn gwneud cyfres o ddeddfwriaethau sy'n ymwneud â chaffael, ond mae'r diwygiadau y mae'r Memorandwm Cydsyniad Offeryn Statudol yn ymwneud â nhw yn ddiwygiadau technegol i adran 155(2) a (3) o Ddeddf Cydraddoldeb 2010. Mae angen i'r diwygiadau hyn gael eu gwneud er mewn sicrhau y gall y ddarpariaeth hon o Ddeddf Cydraddoldeb 2010 barhau i weithredu'n effeithiol ar ddiwedd y cyfnod pontio.
5. Mae'r Offeryn Statudol y mae'r Memorandwm Cydsyniad Offeryn Statudol hwn yn ymwneud ag ef wedi cael ei osod gerbron Senedd y Deyrnas Unedig o dan y weithdrefn gadarnhaol drafft, ac ni ellir gwneud yr Offeryn Statudol oni bai bod drafft wedi cael ei osod gerbron dau Dŷ'r Senedd a'i gymeradwyo ganddynt. Byddai'r darpariaethau yn yr Offeryn Statudol, sy'n diwygio'r ddeddfwriaeth sylfaenol y cyfeirir ati yn y Memorandwm hwn, yn dod i rym ar ddiwrnod cwblhau'r cyfnod gweithredu, sef 31 Rhagfyr 2020 am 11.00 p.m.

### Y darpariaethau sydd i'w gwneud gan yr Offeryn Statudol y ceisir cydsyniad yn ei gylch

6. Adran 155(2) a (3) o Ddeddf Cydraddoldeb 2010 yw'r ddeddfwriaeth sylfaenol sydd yn dod o fewn cymhwysedd deddfwriaethol y Senedd ac i'w ddiwygio gan yr Offeryn Statudol hwn, sy'n cael ei ddiwygio gan reoliad 4 o'r Offeryn Statudol. Mae'n darparu ar gyfer diffinio telerau wrth gyfeirio at Reoliadau Contractau Cyhoeddus 2015, yn hytrach na chyfeirio at Gyfarwyddeb y Sector Cyhoeddus (2014/24/EU). Mae Rheoliadau Contractau Cyhoeddus 2015 yn rheoliadau domestig sy'n rhoi effaith i Gyfarwyddeb y Sector Cyhoeddus.



7. Mae Llywodraeth Cymru o'r farn bod y darpariaethau sy'n cael eu disgrifio uchod yn dod o fewn cymhwysedd deddfwriaethol Senedd Cymru a gallent fod yn destun Bil Senedd Cymru.

### **Pam mae'n briodol i'r Offeryn Statudol wneud y ddarpariaeth hon**

8. Mae'r diwygiad hwn yn gymharol fach, ac mae'n dechnegol ei natur, o gofio ei fod yn darparu ar gyfer telerau penodol sydd i'w diffinio drwy gyfeirio at gyfres o reoliadau domestig sy'n rhoi effaith i Gyfarwyddeb yr UE, yn hytrach na chyfeirio at y Gyfarwyddeb honno. Nid oes gwahaniaeth rhwng polisi Llywodraeth Cymru a Llywodraeth y Deyrnas Unedig mewn perthynas â'r cywiriad. Byddai gwneud dau Offeryn Statudol, y naill yng Nghymru, a'r llall yn Lloegr i gywiro'r cyfeiriad dan sylw yn arwain at ddyblygu'r gwaith ac yn creu cymhlethdod diangen ar y llyfr statud. O dan yr amgylchiadau eithriadol sy'n ein hwynebu oherwydd ymadael â'r Undeb Ewropeaidd, mae Llywodraeth Cymru o'r farn ei bod yn briodol i Lywodraeth y Deyrnas Unedig ddeddfu ar ein rhan yn yr achos hwn.

### **Goblygiadau ariannol**

9. Nid oes goblygiadau ariannol disgwylidig i Lywodraeth Cymru mewn cysylltiad â'r Offeryn Statudol.

**Jane Hutt**

**Y Dirprwy Weinidog a'r Prif Chwip**

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

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**2020 No.**

**EXITING THE EUROPEAN UNION**

**PUBLIC PROCUREMENT**

**The Public Procurement (Amendment etc.) (EU Exit)  
Regulations 2020**

*Made* - - - - *\*\*\**

*Coming into force in accordance with regulation 1*

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The Minister for the Cabinet Office makes these Regulations in exercise of the powers conferred by sections 8(1) and 8B(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018(a).

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(a) 2018 c. 16; section 8 was amended, and section 8B was inserted, by the European Union (Withdrawal Agreement) Act 2020 (c. 1), sections 27 and 18 respectively.

In accordance with paragraph 1(1) of Schedule 7 to that Act, a draft of this instrument has been laid before Parliament and approved by a resolution of each House of Parliament.

## PART 1

### GENERAL

#### Citation, commencement and transitional etc. provision

1.—(1) These Regulations may be cited as the Public Procurement (Amendment etc.) (EU Exit) Regulations 2020.

(2) Except for regulations 2, 7, 9, 11 and 26, these Regulations come into force on IP completion day.

(3) Regulation 2 comes into force on the day after the day on which these Regulations are made.

(4) Regulations 7, 9, 11 and 26 come into force 12 months after the day on which IP completion day falls.

(5) The Schedule—

- (a) makes provision in relation to procurements that are ongoing on IP completion day, including provision—
  - (i) disapplying in relation to such procurements certain amendments etc. made or to be made (whether by these Regulations or otherwise) in relation to public procurement;
  - (ii) modifying various references in certain regulations that apply to such procurements;
- (b) makes other savings in relation to certain provisions of these Regulations.

#### Revocation of superseded EU exit regulations

2. The following are revoked—

- (a) the Public Procurement (Amendment etc.) (EU Exit) Regulations 2019(a);
- (b) the Public Procurement (Amendment etc.) (EU Exit) (No. 2) Regulations 2019(b).

## PART 2

### AMENDMENT OF PRIMARY LEGISLATION

#### The Greater London Authority Act 1999

3.—(1) The Greater London Authority Act 1999(c) is amended as follows.

(2) In section 355 (duties of waste collection authorities etc.), in subsection (8)—

- (a) in paragraph (b)—
  - (i) for “sends” substitute “submits”;
  - (ii) for “Publications Office of the European Union” substitute “UK e-notification service”;

---

(a) S.I. 2019/560. Those Regulations, which are prospectively amended by the other Regulations that are also revoked by this paragraph, are not yet in force and, by virtue of this revocation, will never come into force. As modified by the European Union (Withdrawal Agreement) Act 2020 (c. 1), Schedule 5, paragraph 1(1), the provisions of those Regulations would have come into force on IP completion day (or in some cases after IP completion day) but are wholly superseded by the provision made by these Regulations.

(b) S.I. 2019/623, modified by the European Union (Withdrawal Agreement) Act 2020 (c. 1), Schedule 5, paragraph 1(1).

(c) 1999 c. 29; sections 355(8), 356(3A) and 358(1ZA) and (1BA) were inserted by S.I. 2015/102 and amended by S.I. 2016/275; section 358(1A) and (1C) were respectively substituted and inserted by the Greater London Authority Act 2007 (c. 24), section 39(1) to (3) and amended by S.I. 2015/102.

- (b) in paragraph (c), for “sends” substitute “submits”.
- (3) In section 356 (directions by the Mayor), in subsection (3A)(b)—
  - (a) for “sent” substitute “submitted”;
  - (b) for “Publications Office of the European Union” substitute “UK e-notification service”.
- (4) In section 358 (information about new waste contracts)—
  - (a) in subsection (1ZA)(a)—
    - (i) for “send” substitute “submit”;
    - (ii) for “Publications Office of the European Union” substitute “UK e-notification service”;
  - (b) in subsection (1A), in the words before paragraph (a) and in paragraph (a), for “send” substitute “submit”;
  - (c) in subsection (1BA)—
    - (i) in paragraph (a), for “send” substitute “submit”;
    - (ii) in paragraph (b)—
      - (aa) for “send” substitute “submit”;
      - (bb) for “Publications Office of the European Union” substitute “UK e-notification service”;
  - (d) in subsection (1C), in the words before paragraph (a) and in paragraph (a), for “send” substitute “submit”.
- (5) In section 360 (interpretation of sections 353 to 359), in subsection (2), after the definition of “treatment” insert—
  - ““the UK e-notification service” has the same meaning as in the Public Procurement Regulations”.

### **The Equality Act 2010**

- 4.—(1) The Equality Act 2010(a) is amended as follows.
- (2) In section 155 (power to impose specific duties: supplementary)—
  - (a) in subsection (2), for “Public Sector Directive” substitute “Public Contracts Regulations”;
  - (b) in subsection (3), for the definitions substitute—
    - ““Public Contracts Regulations” means the Public Contracts Regulations 2015 (S.I. 2015/102) or, in Scotland, the Public Contracts (Scotland) Regulations 2015 (S.S.I. 2015/446), as amended from time to time;
    - “public procurement functions” means functions the exercise of which is regulated by Part 2 of the Public Contracts Regulations 2015 (S.I. 2015/102) or by the Public Contracts (Scotland) Regulations 2015 (S.S.I. 2015/446), as amended from time to time.””.

### **The Public Services (Social Value) Act 2012**

- 5.—(1) The Public Services (Social Value) Act 2012(b) is amended as follows.
- (2) In section 1 (contracts of relevant authorities)—
  - (a) in subsection (2)(a), for “sending a notice to the Publications Office of the European Union” substitute “submitting a notice to the UK e-notification service”;
  - (b) in subsection (15), after the definition of “sub-central contracting authority” insert—

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(a) 2010 c. 15; section 155(3) was amended by S.I. 2016/275.  
 (b) 2012 c. 3; section 1(2)(a) was amended by S.I. 2015/102; in section 1(15), the definition of “sub-central contracting authority” was inserted by S.I. 2016/275.

“the UK e-notification service” has the same meaning as in the Regulations (whether or not the Regulations apply)”.

**PART 3**  
**AMENDMENT OF SECONDARY LEGISLATION**  
**CHAPTER 1**  
**THE PUBLIC CONTRACTS REGULATIONS 2015**

**Amendments commenced on IP completion day**

- 6.—**(1) The Public Contracts Regulations 2015**(a)** are amended as follows.
- (2) In regulation 2 (definitions), in paragraph (1)—
- (a) omit the definition of “the Commission”;
  - (b) in the definition of “common technical specification”, after “Council” insert “as it has effect in EU law”;
  - (c) after the definition of “Contracts Finder” insert—
    - “covered by regulation 3(2)”, in relation to an element, a part of a contract, or procurement, means that regulation 3(2)—
    - (a) applies to that element, part or procurement; or
    - (b) would do so if this Part applied;”;
  - (d) after the definition of “design contests” insert—
    - ““devolved Northern Ireland authority” means a contracting authority whose functions are wholly or mainly functions which could be conferred by provision included in an Act of the Northern Ireland Assembly made without the consent of the Secretary of State (see sections 6 to 8 of the Northern Ireland Act 1998**(b)**);
    - “devolved Welsh authority” has the meaning given by section 157A of the Government of Wales Act 2006**(c)**;”;
  - (e) omit the definitions of “ESPD” and “EU Publications Office”;
  - (f) in the definition of “GPA”, after “amended” insert “before IP completion day”;
  - (g) in the definition of “innovation”, omit “the Europe 2020 strategy for smart;”;
  - (h) omit the definition of “qualified certificate for electronic signature”;
  - (i) before the definition of “selection criteria” insert—
    - ““the Retained Treaties” means anything which is retained EU law by virtue of section 4 of the European Union (Withdrawal) Act 2018 because of the effect which the Treaty on European Union or TFEU had immediately before IP completion day in giving rise to any of the rights, powers, liabilities, obligations, restrictions, remedies and procedures mentioned in that section;
    - “SPD” means the Single Procurement Document referred to in regulation 59(1);”;
  - (j) omit the definition of “the Treaties”;

---

(a) S.I. 2015/102, amended by S.I. 2016/275, 696, 2019/624; there are other amending instruments but none is relevant.

(b) 1998 c. 47; section 6 was amended by S.I. 2011/1053, by the European Union (Withdrawal) Act 2018 (c. 16) (“the 2018 Act”), section 12(5), and by the European Union (Withdrawal Agreement) Act 2020 (c. 1) (“the 2020 Act”), paragraphs 1 and 2; section 6A was inserted by the 2018 Act, section 12(6) and amended by the 2020 Act, Schedule 5, paragraphs 22 and 23; section 7 was amended by the Justice (Northern Ireland) Act 2002 (c. 26), section 84(1) and Schedule 13, by the Northern Ireland (Miscellaneous Provisions) Act 2006 (c. 33), Schedule 4, paragraph 10 by the 2018 Act, Schedule 3, paragraphs 50 and 51, and by the 2020 Act, Schedule 5, paragraphs 22 and 24; section 7A was inserted by the Northern Ireland (Miscellaneous Provisions) Act 2014 (c. 13), section 6(1) and (3).

(c) 2006 c. 32; section 157A was inserted by the Wales Act 2017 (c. 4), section 4(1).

(k) before the definition of “VAT” insert—

““the UK e-notification service” has the meaning given by regulation 51(5), and references (in whatever terms) to the submission of notices to that service are to be construed in accordance with regulation 51(7);”.

(3) In regulation 3 (subject-matter and scope of Part 2), for paragraph (2) substitute the following—

“(2) This Part—

- (a) does not oblige the United Kingdom to supply information the disclosure of which it considers contrary to the essential interests of its security;
- (b) does not preclude the United Kingdom from taking such measures as it considers necessary for the protection of the essential interests of its security which are connected with the production or trade in arms, munitions and war material, provided that such measures do not adversely affect the conditions of competition regarding products which are not intended for specifically military purposes.

(3) The arms, munitions and war material to which paragraph (2)(b) applies are, subject to paragraph (5), those included in the 1958 List.

(4) Subject to the effect of any regulations made under paragraph (5), any measures which, if they had been taken immediately before IP completion day, would have been covered by Article 346 of TFEU shall be regarded as measures covered by paragraph (2).

(5) The Secretary of State may make regulations providing that the 1958 List is to be treated for the purposes of this Part as if it were changed in respects specified in the regulations.

(6) In this regulation, “the 1958 List” means the list of arms, munitions and war material adopted by the Council of the European Economic Community in its decision 255/58 of 15th April 1958.”.

(4) In regulation 4 (mixed procurement), in paragraph (3), for “Article 346 of TFEU” substitute “regulation 3(2)”.

(5) In regulation 5 (threshold amounts)—

(a) in paragraph (1)—

- (i) in sub-paragraph (a), for “the sum specified in Article 4(a) of the Public Contracts Directive” substitute “£4,733,252”;
- (ii) in sub-paragraph (b), for “the sum specified in Article 4(b) of the Public Contracts Directive” substitute “£122,976”;
- (iii) in sub-paragraph (c), for “the sum specified in Article 4(c) of the Public Contracts Directive” substitute “£189,330”;
- (iv) in sub-paragraph (d), for “the sum specified in Article 4(d) of the Public Contracts Directive” substitute “£663,540”;

(b) in paragraph (2), for “Article 4(c) of the Public Contracts Directive” substitute “paragraph (1)(c)”;

(c) omit paragraphs (3) and (4).

(6) After regulation 5 insert—

#### **“Review and amendment of certain thresholds**

**5A.**—(1) Every two years the Minister for the Cabinet Office must review the thresholds mentioned in regulation 5(1)(a), (b) and (c) (“the reviewable thresholds”) to verify whether they correspond with the thresholds established for those purposes in the GPA.

(2) The Minister must do so by calculating the sterling value of each of the reviewable thresholds on the basis of the average daily value of sterling in terms of the special drawing rights mentioned in the GPA over a period of 24 months ending with 31st August.

(3) The Minister must make that calculation using the applicable conversion rates in the monthly International Financial Statistics published from time to time by the International Monetary Fund.

(4) If the sterling value of a reviewable threshold so calculated differs from the sum for the time being mentioned in regulation 5(1) in respect of that threshold, the Minister must make regulations amending regulation 5(1) so as to substitute for that sum the sum equal to that value.

(5) Such regulations—

(a) must be made and laid before Parliament before 1st November following the end of the 24-month period covered by the review; and

(b) must provide for the substitution to come into force on the following 1st January.

(6) The first review under this regulation must relate to the 24-month period ending with 31st August 2021.”.

(7) In regulation 6 (methods for calculating the estimated value of procurement)—

(a) in paragraph (7), for “sent” substitute “submitted”;

(b) in paragraph (14)(a), for “80,000 euro” substitute “£70,778”;

(c) in paragraph (14)(b), for “1 million euro” substitute “£884,720”.

(8) In regulation 9 (public contracts awarded, and design contests organised, pursuant to international rules), in paragraph (1)(a)—

(a) before “Treaties” insert “Retained”;

(b) for “a member State and one or more third” substitute “the United Kingdom and one or more other”.

(9) In regulation 10 (specific exclusions for service contracts)—

(a) in paragraph (1)(d)—

(i) in paragraph (i)—

(aa) in the words before sub-paragraph (aa), omit the words from “within” to “to time,”;

(bb) in sub-paragraph (aa), for “a member State, a third” substitute “the United Kingdom, another”;

(cc) in sub-paragraph (bb), for “a member State or a third” substitute “the United Kingdom or another”;

(ii) in paragraph (ii), in the words after sub-paragraph (bb), omit the words from “within” to “to time”;

(iii) in both paragraph (iv) and (v), for “member State concerned” substitute “United Kingdom”;

(b) in paragraph (2), after sub-paragraph (a) insert—

“(aa) “lawyer” means a person practising as an advocate, barrister or solicitor in any part of the United Kingdom or in Gibraltar;”.

(10) In regulation 11 (service contracts awarded on the basis of an exclusive right), for “TFEU” substitute “anything which is retained EU law by virtue of section 4 of the European Union (Withdrawal) Act 2018 because of the effect which TFEU had immediately before IP completion day in giving rise to any of the rights, powers, liabilities, obligations, restrictions, remedies and procedures mentioned in that section”.

(11) In regulation 12 (public contracts between entities within the public sector), in paragraphs (1)(c), (2) and (4)(c), before “Treaties” insert “Retained”.

(12) In regulation 13 (contracts subsidised by contracting authorities)—

(a) in paragraph (1)—



- (i) in sub-paragraph (a), for “Article 13(a) of the Public Contracts Directive” substitute “regulation 5(1)(a)”;
  - (ii) in sub-paragraph (b), for “Article 13(b) of the Public Contracts Directive” substitute “regulation 5(1)(c)”;
- (b) omit paragraph (2).
- (13) In regulation 15 (defence and security), in paragraph (2)(a), omit “or another member State”.
- (14) In regulation 16 (mixed procurement involving defence or security aspects)—
- (a) in paragraphs (1) and (5)(a), for “Article 346 of TFEU” substitute “regulation 3(2)”;
  - (b) in paragraph (8), for “to which Article 346 of TFEU applies” substitute “covered by regulation 3(2)”.
- (15) In regulation 17 (public contracts and design contests involving defence or security aspects which are awarded or organised pursuant to international rules), in paragraph (1)—
- (a) in sub-paragraph (a)—
    - (i) before “Treaties” insert “Retained”;
    - (ii) for “a member State” substitute “the United Kingdom”;
    - (iii) for “third” substitute “other”;
  - (b) in sub-paragraph (b), for “a member State or a third” substitute “the United Kingdom or another”.
- (16) In regulation 19 (economic operators), omit paragraph (1).
- (17) In regulation 20 (reserved contracts), in paragraph (2), for “Article 20 of the Public Contracts Directive” substitute “this regulation”.
- (18) In regulation 22 (rules applicable to communication)—
- (a) in paragraph (15)(a)(i)—
    - (i) for “in the Official Journal” substitute “on the UK e-notification service”;
    - (ii) for “sent” substitute “submitted”;
  - (b) in paragraph (17)(c), for the words from “accept” to the end substitute “act in accordance with Article 27 of that Regulation(a) (and for this purpose the submission of the tender or request is to be treated as the use of an online service to which that Article applies)”;
  - (c) in paragraph (20), for the words from “the Public” to the end substitute “this Part”;
  - (d) in paragraph (21)—
    - (i) in the words before sub-paragraph (a), for the words from “in accordance” to “Decision 2011/130/EU” substitute “in a format other than those referred to in Article 1 of Commission Implementing Decision (EU) 2015/1506(b) laying down specifications relating to formats of advanced electronic signatures and advanced seals to be recognised by public sector bodies”;
    - (ii) in sub-paragraph (b), for the words from “allow” to the end substitute “comply with the requirements of Article 2(1)(b) of that Decision (or would comply with those requirements if the person seeking to validate the signature were a public sector body within the meaning of that Article)”.
- (19) After regulation 22 insert—

**“Powers to amend regulation 22**

*Exceptions to obligation to require use of electronic means of communication*

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(a) Article 27 of EUR 2014/910 was amended (from IP completion day) by S.I. 2019/89.  
 (b) EUDN 2015/1506, amended (from IP completion day) by S.I. 2019/89.

**22A.**—(1) The Minister for the Cabinet Office may make regulations amending paragraph (3) of regulation 22 by—

- (a) omitting any of the situations described in that paragraph where the Minister considers that technological developments render it inappropriate for that situation to continue to be an exception from the obligation to require electronic means of communication, or
- (b) inserting a description of a new situation where, exceptionally, the Minister considers that it must become a new exception because of technological developments.

(2) Where the Minister considers that technological developments render it inappropriate for there to continue to be any exceptions from the obligation to require electronic means of communication, the Minister may make regulations omitting paragraph (3) from regulation 22.

(3) Where regulations have been made under paragraph (2) and, exceptionally, the Minister considers that a new exception must be provided for because of technological developments, the Minister may make regulations re-inserting paragraph (3) into regulation 22 in terms which give effect to that new exception (and the powers conferred by paragraphs (1) and (2) of this regulation may subsequently be exercised in relation to paragraph (3) as re-inserted).

*Requirements relating to tools and devices for electronic receipt of documents*

(4) The Minister for the Cabinet Office may make regulations amending the technical details and characteristics set out in regulation 22(16) if the Minister considers it appropriate to do so to take account of technical developments.”.

(20) In regulation 25 (conditions relating to the GPA and other international agreements)—

- (a) in the body of the regulation, the text of the existing regulation becomes paragraph (1) and is amended as follows—
  - (i) for “is bound” substitute “was, immediately before IP completion day, bound”;
  - (ii) for “of the EU” substitute “of the United Kingdom”;
- (b) after that paragraph (1) insert—

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

  - (a) each country that was a member State immediately before IP completion day is deemed to be a signatory to the GPA; and
  - (b) the EU’s Appendix 1 to the GPA has effect as if each such country were referred to in the same way that Iceland is referred to in the following places in that Appendix—
    - (i) paragraph 2(a) of Annex 1;
    - (ii) Annex 6.”.

(21) In regulation 26 (choice of procedures), in paragraph (2), omit “and the Public Contracts Directive”.

(22) In regulation 27 (open procedure)—

- (a) in paragraph (2), for “sent” substitute “submitted”;
- (b) in paragraph (4)—
  - (i) in sub-paragraph (a), for “for the contract notice in section I of part B of Annex V to the Public Contracts Directive” substitute “by regulation 48(2)”;
  - (ii) in sub-paragraph (b), for “sent” (in both places) substitute “submitted”;
- (c) in paragraph (5), for “sent” substitute “submitted”.

(23) In regulation 28 (restricted procedure)—

- (a) in paragraph (2)(a), for “sent” substitute “submitted”;
- (b) in paragraph (6)—

- (i) in sub-paragraph (a), for “in section I of part B of Annex V to the Public Contracts Directive” substitute “by regulation 48(2)”;
  - (ii) in sub-paragraph (b), for “sent” (in both places) substitute “submitted”;
  - (c) in paragraph (10)(a), for “sent” substitute “submitted”.
- (24) In regulation 29 (competitive procedure with negotiation)—
- (a) in paragraph (4)(a), for “sent” substitute “submitted”;
  - (b) in paragraph (6)—
    - (i) in sub-paragraph (a), for “in section 1 of part B of Annex V to the Public Contracts Directive” substitute “by regulation 48(2)”;
    - (ii) in sub-paragraph (b), for “sent” (in both places) substitute “submitted”;
    - (c) in paragraph (10)(a), for “sent” substitute “submitted”.
- (25) In regulation 30 (competitive dialogue), in paragraph (2), for “sent” substitute “submitted”.
- (26) In regulation 31 (innovation partnership), in paragraph (5), for “sent” substitute “submitted”.
- (27) In regulation 32 (use of the negotiated procedure without prior publication), in paragraph (2)(a), for the words from “and that” to the end substitute—
- “and that—
- (i) a report is sent to the Cabinet Office if it so requests;
  - (ii) where the contracting authority is a devolved Welsh authority, a report is sent to the Welsh Ministers if they so request (whether or not the Cabinet Office also makes a request under paragraph (i));
  - (iii) where the contracting authority is a devolved Northern Ireland authority, a report is sent to a Northern Ireland department if that department so requests (whether or not the Cabinet Office also makes a request under paragraph (i));”
- .
- (28) In regulation 34 (dynamic purchasing systems)—
- (a) in paragraph (9)(a), for “sent” substitute “submitted”;
  - (b) in paragraph (25), for “ESPD” substitute “SPD”;
  - (c) for paragraph (28) substitute the following—
 

“(28) Where the period of validity is changed without terminating the dynamic purchasing system, the contracting authority shall submit for publication on the UK e-notification service a notice of the kind used initially for the call for competition for the dynamic purchasing system.

(28A) Where a dynamic purchasing system is terminated before the end of the period of validity that had most recently been indicated under paragraph (27) or (28), the contracting authority shall submit for publication on the UK e-notification service a contract award notice under regulation 50.”.
- (29) Omit regulation 39 (procurement involving contracting authorities from other member States).
- (30) In regulation 42 (technical specifications)—
- (a) in paragraph (9), for “adopted by a legal act of the EU” substitute “imposed by retained EU law”;
  - (b) in paragraph (11), in the words before sub-paragraph (a), after “compatible with” insert “retained”.
- (31) In regulation 48 (prior information notices)—
- (a) in paragraph (2), after “Directive” insert—
 

“, but as if—

- (a) in paragraph 2, “the second and third subparagraph of Article 53(1)” were a reference to regulation 53(3) and (4) of these Regulations; and
  - (b) in paragraph 9, “date of dispatch” were a reference to the date on which the notice is submitted to the UK e-notification service for the purposes of these Regulations”  
;
  - (b) in paragraph (3)(a), for “send” substitute “submit”;
  - (c) in paragraph (4)—
    - (i) for “send” substitute “submit”;
    - (ii) after “Directive” insert “, but as if, in paragraph 6, “date of dispatch” were a reference to the date on which the notice is submitted to the UK e-notification service for the purposes of these Regulations”;
  - (d) in paragraph (5)—
    - (i) in sub-paragraph (c)—
      - (aa) for “set out in section 1 of part B of Annex V to the Public Contracts Directive” substitute “required by paragraph (2)”;
      - (bb) for “that part” substitute “part B of Annex 5 to the Public Contracts Directive, but as if paragraph 12 of that part (financing by EU funds) were omitted”;
    - (ii) in sub-paragraph (d), for “been sent” substitute “been submitted”.
- (32) For regulation 49 (contract notices) substitute—

**“Contract notices**

**49. Contract notices—**

- (a) shall contain the information set out in part C of Annex 5 to the Public Contracts Directive, but as if—
  - (i) in paragraph 2, “the second and third subparagraphs of Article 53(1)” were a reference to regulation 53(3) and (4) of these Regulations;
  - (ii) paragraph 24 (financing by EU funds) were omitted;
  - (iii) in paragraph 26, “in the *Official Journal of the European Union*” read “on the UK e-notification service (within the meaning of the Public Contracts Regulations 2015)”;
  - (iv) in paragraph 28, “date of dispatch” were a reference to the date on which the notice is submitted to the UK e-notification service for the purposes of these Regulations; and
- (b) shall be submitted for publication in accordance with regulation 51.”.

(33) In regulation 50 (contract award notices)—

- (a) in paragraphs (1), (4) and (5)(a) and (b), for “send” substitute “submit”;
- (b) for paragraph (2) substitute—
 

“(2) Such notices—

  - (a) shall contain the information set out in part D of Annex 5 to the Public Contracts Directive, but as if—
    - (i) in paragraph 9, “Article 67” were a reference to regulation 67 of these Regulations;
    - (ii) in paragraph 11(b), the words “Member State or from a third” were omitted;
    - (iii) paragraph 15 (financing by EU funds) were omitted;
    - (iv) in paragraph 17, “in the *Official Journal of the European Union*” read “on the UK e-notification service (within the meaning of the Public Contracts Regulations 2015)”;

- (v) in paragraph 18, “date of dispatch” were a reference to the date on which the notice is submitted to the UK e-notification service for the purposes of these Regulations; and
  - (b) shall be submitted for publication in accordance with regulation 51.”.
- (34) In regulation 51 (form and manner of sending notices for publication at EU level)—
- (a) for the heading, substitute “Publication on the UK e-notification service”;
  - (b) in paragraph (1)—
    - (i) in the words before sub-paragraph (a)—
      - (aa) after “regulations” insert “34,”;
      - (bb) for “sent” substitute “submitted”;
      - (cc) after “notices)” insert “shall be submitted to the UK e-notification service for publication.”;
    - (ii) omit sub-paragraphs (a) and (b);
  - (c) in paragraph (2), for “sent to the EU Publications Office” substitute “submitted to the UK e-notification service”;
  - (d) in paragraph (3)—
    - (i) for “EU Publications Office” substitute “provider of the UK e-notification service”;
    - (ii) omit “the receipt of the notice and of”;
    - (iii) for “sent” substitute “submitted”;
  - (e) in paragraph (4)—
    - (i) for “send” substitute “submit”;
    - (ii) for “EU Publications Office” substitute “UK e-notification service”;
    - (iii) omit the words from “, provided” to the end;
  - (f) after paragraph (4) insert—
 

“(5) In these Regulations, “the UK e-notification service” means a single web-based portal which is provided, for purposes which include the purposes of this Part, by or on behalf of the Cabinet Office.

(6) The Minister for the Cabinet Office must make arrangements under which—

    - (a) notices that are submitted to the UK e-notification service for publication are published in an area of the portal that is freely accessible to the public; and
    - (b) confirmations are issued for the purposes of paragraph (3).

(7) For the purposes of these Regulations, a notice of any description is submitted to the UK e-notification service if the information comprising the notice is entered in the portal in such form or manner as the portal may elicit it and in compliance with any specific instructions that are given within the portal about how the information, or any particular element of it, is to be entered.”.
- (35) In regulation 52 (publication at national level)—
- (a) in the heading, for “at national level” substitute “otherwise than on the UK e-notification service”;
  - (b) in paragraph (1)—
    - (i) after “regulations” insert “34,”;
    - (ii) for “by the EU Publications Office” substitute “on the UK e-notification service”;
  - (c) in paragraph (3)—
    - (i) after “regulations” insert “34,”;
    - (ii) for the words from “at national level” to the end substitute “otherwise than on the UK e-notification service before they are published on that service”;

- (d) in paragraph (4)—
  - (i) for “at national level” substitute “otherwise than on the UK e-notification service”;
  - (ii) for the words from “by the EU” to the end substitute “on that service within 48 hours after the notice was submitted to that service”;
- (e) in paragraph (5)—
  - (i) for “at national level” substitute “otherwise than on the UK e-notification service”;
  - (ii) for “sent to the EU Publications Office” substitute “submitted to that service”;
  - (iii) for “sending of the notice to the EU Publications Office” substitute “submission of the notice to that service”;
- (f) in paragraph (6)—
  - (i) in sub-paragraph (a), for “sent to the EU Publications Office” substitute “submitted to the UK e-notification service”;
  - (ii) in sub-paragraph (b), for “sending” substitute “submission”.

(36) In regulation 53 (electronic availability of procurement documents), in paragraph (1), for “in the Official Journal of a notice sent” substitute “on the UK e-notification service of a notice submitted”.

(37) In regulation 56 (general principles in awarding contracts etc)—

- (a) in paragraph (2)—
  - (i) omit “EU law,”;
  - (ii) after “agreements or” insert “, subject to paragraphs (2A) and (2B),”;
- (b) after paragraph (2) insert—
 

“(2A) Where—

  - (a) the United Kingdom has ratified an international agreement establishing obligations in any of the fields mentioned in paragraph (2), and
  - (b) the agreement is not already listed,

the Minister for the Cabinet Office may make regulations providing that paragraph (2) is to have effect as if the agreement were listed.

(2B) Where the United Kingdom has ceased to ratify an international agreement that is already listed, the Minister for the Cabinet Office may make regulations providing that paragraph (2) is to have effect as if the agreement were not listed.

(2C) In paragraphs (2A) and (2B)—

  - (a) “listed” means listed as described in paragraph (2); and
  - (b) where paragraph (2) already has effect as if an agreement were listed, “already listed” includes that agreement.”.

(38) In regulation 57 (exclusion grounds), in paragraph (1)—

- (a) omit sub-paragraph (e);
- (b) in sub-paragraph (n), in the words before paragraph (i), for “Article 57(1)” substitute “Article 57(1)(a), (b), (d), (e) or (f)”.

(39) In regulation 58 (selection criteria), omit paragraph (5).

(40) In regulation 59 (European Single Procurement Document)—

- (a) in the heading, omit “European”;
- (b) in paragraph (1), omit “European”;
- (c) in each of paragraphs (2) to (7), for “ESPD” substitute “SPD”;
- (d) in paragraph (11)(a), for “any member State” substitute “the United Kingdom”.

(41) In regulation 60 (means of proof)—

- (a) in paragraph (4)(a) and (b), omit “member State or”;

- (b) in paragraph (5)—
  - (i) omit “member State or” in both places;
  - (ii) omit “member States or”.
- (42) Omit regulation 61 (recourse to e-Certis).
- (43) In regulation 62 (quality assurance standards and environmental management standards)—
  - (a) omit paragraph (2);
  - (b) in paragraph (4)—
    - (i) omit sub-paragraphs (a) and (b);
    - (ii) in sub-paragraph (c), omit “other”;
    - (iii) omit the words after sub-paragraph (c).
- (44) Omit regulation 64 (recognition of official lists of approved economic operators and certification by certification bodies).
- (45) In regulation 68 (life-cycle costing)—
  - (a) in paragraph (3)(c)—
    - (i) omit ‘third’;
    - (ii) for “is bound” substitute “was, immediately before IP completion day, bound”;
  - (b) omit paragraphs (5) and (6).
- (46) In regulation 69 (abnormally low tenders)—
  - (a) in paragraph (2), omit sub-paragraph (f);
  - (b) omit paragraphs (6) and (7).
- (47) In regulation 71 (subcontracting), in paragraph (5), for “ESPDs” substitute “SPDs”.
- (48) In regulation 72 (modification of contracts during their term)—
  - (a) in paragraph (3), for “send” substitute “submit”;
  - (b) in paragraph (4), after “Directive” insert—
    - “, but as if—
      - (a) paragraph 9 (financing by EU funds) were omitted;
      - (b) in paragraph 11, “in the *Official Journal of the European Union*” read “on the UK e-notification service (within the meaning of the Public Contracts Regulations 2015)”; and
      - (c) in paragraph 12, “date of dispatch” were a reference to the date on which the notice is submitted to the UK e-notification service for the purposes of these Regulations”
- (49) In regulation 73 (termination of contracts), in paragraph (1)—
  - (a) after paragraph (a), insert “or”;
  - (b) after paragraph (b), omit “; or”;
  - (c) omit paragraph (c).
- (50) In regulation 75 (publication of notices)—
  - (a) in paragraph (4), for “sending” substitute “submitting”;
  - (b) in paragraph (5), for “send” substitute “submit”.
- (51) In regulation 77 (reserved contracts for certain services), in paragraph (5), for “Article 77 of the Public Contracts Directive” substitute “this regulation”.
- (52) In regulation 79 (notices)—
  - (a) in paragraph (2)—
    - (i) in sub-paragraph (a), after “Directive” insert—
      - “, but as if—

- (i) in paragraph 2, “the second and third subparagraphs of Article 53(1)” were a reference to regulation 53(3) and (4) of these Regulations;
- (ii) in paragraph 16, “date of dispatch” were a reference to the date on which the notice is submitted to the UK e-notification service for the purposes of these Regulations”;
- (ii) in sub-paragraph (b), for “sent” substitute “submitted”;
- (b) in paragraph (3)—
  - (i) for “send” substitute “submit”;
  - (ii) for “of dispatch” substitute “on which the notice was submitted to the UK e-notification service”;
- (c) in paragraph (4), after “Directive” insert—
  - “, but as if—
    - (a) paragraph 12 (financing by EU funds) were omitted;
    - (b) in paragraph 13, “in the *Official Journal of the European Union*” read “on the UK e-notification service (within the meaning of the Public Contracts Regulations 2015)”; and
    - (c) in paragraph 14, “date of dispatch” were a reference to the date on which the notice is submitted to the UK e-notification service for the purposes of these Regulations”

(53) In regulation 80 (rules on the organisation of design contests and the selection of participants), omit paragraph (2).

(54) In regulation 83 (retention of contract copies)—

- (a) in paragraph (1)—
  - (i) in sub-paragraph (a), for “1,000,000 EUR” substitute “£884,720”;
  - (ii) in sub-paragraph (b), for “10,000,000 EUR” substitute “£8,847,200”;
- (b) in paragraph (2), for “applicable EU or national rules on access to documents and data protection” substitute “rules on access to documents and data protection applicable in the relevant part of the United Kingdom”.

(55) In regulation 84 (reporting and documentation requirements)—

- (a) for paragraph (4) substitute—
  - “(4) A contracting authority shall communicate the report, or its main elements—
    - (a) to the Cabinet Office if it so requests;
    - (b) where the contracting authority is a devolved Welsh authority, to the Welsh Ministers if they so request (whether or not the Cabinet Office also makes a request under sub-paragraph (a));
    - (c) where the contracting authority is a devolved Northern Ireland authority, to a Northern Ireland department if that department so requests (whether or not the Cabinet Office also makes a request under sub-paragraph (a)).”;
- (b) omit paragraph (5);
- (c) omit paragraph (6) and the italic heading preceding it.

(56) After regulation 84 insert—

#### “CHAPTER 4A

#### REGULATIONS UNDER THIS PART

#### **General provisions about regulations under this Part**

**84A.**—(1) Regulations under this Part are to be made by statutory instrument.



(2) A statutory instrument containing regulations under regulation 3(5) (whether alone or with other provision) may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.

(3) Any other statutory instrument containing regulations under this Part is subject to annulment in pursuance of a resolution of either House of Parliament.

(4) Subject to paragraph (5), Regulations may not be made under regulations 22A or 56 without the consent of the Welsh Ministers and a Northern Ireland Department.

(5) Regulations (“the amending regulations”) may be made under regulation 22A or 56 without such consent, but in such cases the amending regulations must amend regulation 22 or, as the case may be, make provision under regulation 56, in such a way as to avoid altering the effect of that regulation in so far as it applies to—

- (a) devolved Welsh authorities, where the Welsh Ministers have not consented to the making of the amending regulations;
- (b) devolved Northern Ireland authorities, where no Northern Ireland Department has consented to the making of the amending regulations.

(6) Without prejudice to paragraph (7), to the extent that the amending regulations are being made under regulation 22A, the duty imposed by paragraph (5) may be complied with by—

- (a) restructuring regulation 22 (so that, for example, different paragraphs apply to devolved Welsh authorities and other contracting authorities or utilities respectively, where the Welsh Ministers have not consented to the making of the amending regulations); and
- (b) amending the powers conferred by regulation 22A so that they refer to the relevant provisions in regulation 22 as so restructured.

(7) Regulations under this Part may make supplementary, incidental, transitional, transitory or saving provision.”.

(57) In regulation 89 (duty owed to economic operators from EEA states)—

- (a) in the heading, for “EEA states” substitute “the United Kingdom and Gibraltar”;
- (b) in paragraph (1)(b), for “enforceable EU obligation” substitute “retained EU obligation that is enforceable by virtue of section 4 of the European Union (Withdrawal) Act 2018”;
- (c) in paragraph (2), for “another EEA state” substitute “Gibraltar”.

(58) In regulation 90 (duty owed to economic operators from certain other states)—

- (a) in paragraph (1)—
  - (i) in sub-paragraph (a)—
    - (aa) for “GPA state” substitute “country other than the United Kingdom”;
    - (bb) for “the GPA” substitute “Condition 1, Condition 2 or Condition 3”;
  - (ii) omit sub-paragraph (b) and the preceding “; and”;
- (b) for paragraph (2) substitute—

“(2) Condition 1 is that—

  - (a) at the relevant time the economic operator is from a GPA state;
  - (b) the procurement may result in the award of a contract of any description; and
  - (c) immediately before IP completion day that GPA state had agreed with the EU that the GPA shall apply to a contract of that description.

(2A) Condition 2 is that—

- (a) at the relevant time the economic operator is from a country which, immediately before IP completion day, was a member State other than the United Kingdom;
- (b) the procurement may result in the award of a contract of any description; and

- (c) immediately before IP completion day the EU had agreed with a GPA state that the GPA shall apply to a contract of that description.”;
  - (c) in paragraph (3)—
    - (i) for the words from the beginning to “applies if” substitute “Condition 3 is that”;
    - (ii) in sub-paragraph (a)—
      - (aa) for “there is” substitute “immediately before IP completion day there was”;
      - (bb) for “is bound” substitute “was bound”;
  - (d) after paragraph (3) insert—
 

“(3A) Paragraph (3)(b) is to be applied as if the United Kingdom were a member State.”;
  - (e) in paragraph (4)—
    - (i) in the definition of “GPA state”, for “, other than an EEA state, which at the relevant time is” substitute “which immediately before IP completion day was”;
    - (ii) in the definition of “relevant time”—
      - (aa) for “sent” substitute “submitted”;
      - (bb) for “EU Publications Office” substitute “UK e-notification service”.
- (59) In regulation 93 (special time limits for seeking a declaration of ineffectiveness), in paragraph (3), for “in the Official Journal”, substitute “on the UK e-notification service”.
- (60) In regulation 99 (grounds for ineffectiveness)—
- (a) in paragraphs (3)(b) and (c), for “in the Official Journal” substitute “on the UK e-notification service”;
  - (b) in paragraph (4), in the words before sub-paragraph (a), omit the words from “is in” to “and which”.
- (61) In regulation 106 (publication of information on Contracts Finder where contract notices are used)—
- (a) in paragraph (1)—
    - (i) for “sends” substitute “submits”;
    - (ii) for “EU Publications Office” substitute “UK e-notification service”;
  - (b) in paragraph (4), for “by the EU Publications Office” substitute “on the UK e-notification service”;
  - (c) in paragraph (5)—
    - (i) for “sending” substitute “submitting”;
    - (ii) for “EU Publications Office” substitute “UK e-notification service”.
- (62) In regulation 108 (publication of information on Contracts Finder about contracts awarded)—
- (a) in paragraph (1)(a)—
    - (i) for “sends” substitute “submits”;
    - (ii) for “EU Publications Office” substitute “UK e-notification service”;
  - (b) in paragraph (5)—
    - (i) for “sends, or intends to send” substitute “submits, or intends to submit”;
    - (ii) for “EU Publications Office” substitute “UK e-notification service”;
    - (iii) for the words from “earlier than” to the end substitute “before the notice is published on the UK e-notification service”;
  - (c) in paragraph (7), for “by the EU Publications Office” substitute “on the UK e-notification service”;
  - (d) in paragraph (8)—
    - (i) for “sending” substitute “submitting”;

(ii) for “EU Publications Office” substitute “UK e-notification service”.

(63) In regulation 112 (publication of information on Contracts Finder about contracts awarded), in paragraph (4), in the definition of “SME”, for the words from “the Commission” to the end substitute “Annex 1 to Regulation (EU) No 651/2014”.

(64) Omit Schedule 5 (professional and trade registers etc.).

### **Amendments commenced 12 months after IP completion day**

7.—(1) The Public Contracts Regulations 2015 (as amended by regulation 6) are further amended as follows.

(2) Omit regulation 25 (conditions relating to the GPA).

(3) In regulation 68 (life-cycle costing), in paragraph (3)(c), omit the words from “, including” to the end.

(4) Omit regulation 90 (duty owed to economic operators from certain other states).

## **CHAPTER 2**

### **THE CONCESSION CONTRACTS REGULATIONS 2016**

### **Amendments commenced on IP completion day**

8.—(1) The Concession Contracts Regulations 2016(a) are amended as follows.

(2) In regulation 2 (definitions), in paragraph (1)—

(a) omit the definition of “the Commission”;

(b) after the definition of “contracting authorities” insert—

““covered by regulation 7(3)”, in relation to an activity, an element, a part of a contract, or procurement, means that regulation 7(3)—

(a) applies to that activity, element, part or procurement, or

(b) would do so if these Regulations applied;”;

(c) after the definition of “CPV” insert—

““devolved Northern Ireland authority” means a contracting authority whose functions are wholly or mainly functions which could be conferred by provision included in an Act of the Northern Ireland Assembly made without the consent of the Secretary of State (see sections 6 to 8 of the Northern Ireland Act 1998);

“devolved Welsh authority” has the meaning given by section 157A of the Government of Wales Act 2006;”;

(d) in the definition of “exclusive right”, before “Treaties” insert “Retained”;

(e) after the definition of “execution of works” insert—

““GPA” means the Agreement on Government Procurement between certain parties to the World Trade Organisation signed in Marrakesh on 15th April 1994 as amended before IP completion day(b);”;

(f) after the definition of “prior information notice” insert—

““the Retained Treaties” means anything which is retained EU law by virtue of section 4 of the European Union (Withdrawal) Act 2018 because of the effect which the Treaty on European Union or TFEU had immediately before IP completion day in giving rise to any of the rights, powers, liabilities, obligations, restrictions, remedies and procedures mentioned in that section;”;

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(a) S.I. 2016/273, amended by S.I. 2019/624.

(b) All the substantive provisions of the Agreement were substituted by the Protocol which was approved, on behalf of the EU, by Council Decision 2014/115/EU (OJ No L 68, 7.3.2014, p 1), to which the text of the Protocol is attached (at OJ No L 68, 7.3.2014, p 2).

(g) omit the definition of “the Treaties”;

(h) before the definition of “utilities” insert—

“the UK e-notification service” has the meaning mentioned in regulation 33(5), and references (in whatever terms) to the submission of notices to that service are to be construed in accordance with the provisions applied (and adapted) by regulation 33(5);”

(3) In regulation 5 (meaning of “utilities”), in paragraph (4)(b), before “Treaties” insert “Retained”.

(4) In regulation 7 (subject-matter and scope of these Regulations), for paragraph (3) substitute—

“(3) These Regulations—

(a) do not oblige the United Kingdom to supply information the disclosure of which it considers contrary to the essential interests of its security;

(b) do not preclude the United Kingdom from taking such measures as it considers necessary for the protection of the essential interests of its security which are connected with the production or trade in arms, munitions and war material, provided that such measures do not adversely affect the conditions of competition regarding products which are not intended for specifically military purposes.

(4) The arms, munitions and war material to which paragraph (3)(b) applies are, subject to paragraph (6), those included in the 1958 List.

(5) Subject to the effect of any regulations made under paragraph (6), any measures which, if they had been taken immediately before IP completion day, would have been covered by Article 346 of TFEU shall be regarded as measures covered by paragraph (3).

(6) The Secretary of State may make regulations providing that the 1958 List is to be treated for the purposes of these Regulations as if it were changed in respects specified in the regulations.

(7) In this regulation, “the 1958 List” means the list of arms, munitions and war material adopted by the Council of the European Economic Community in its decision 255/58 of 15th April 1958.”.

(5) In regulation 9 (threshold amounts and methods for calculating the estimated value of concession contracts)—

(a) in paragraph (1), for the words from “the sum” to the end substitute “£4,733,252”;

(b) omit paragraph (2);

(c) in paragraph (4), for “sent” substitute “submitted”.

(6) After regulation 9 insert—

#### **“Review and amendment of the threshold in regulation 9(1)**

**9A.**—(1) Every two years the Minister for the Cabinet Office must review the threshold mentioned in regulation 9(1) to verify whether it corresponds with the threshold established in the GPA for works concessions.

(2) The Minister must do so by calculating the sterling value of the threshold on the basis of the average daily value of sterling in terms of the special drawing rights mentioned in the GPA over a period of 24 months ending with 31st August.

(3) The Minister must make that calculation using the applicable conversion rates in the monthly International Financial Statistics published from time to time by the International Monetary Fund.

(4) If the sterling value of the threshold so calculated differs from the sum for the time being mentioned in regulation 9(1) in respect of the threshold, the Minister must make regulations amending regulation 9(1) so as to substitute for that sum the sum equal to that value.

- (5) Such regulations—
- (a) must be made and laid before Parliament before 1st November following the end of the 24-month period covered by the review; and
  - (b) must provide for the substitution to come into force on the following 1st January.
- (6) The first review under this regulation must relate to the 24-month period ending with 31st August 2021.”
- (7) In regulation 10 (general exclusions)—
- (a) in paragraph (2), for the words from “in accordance” to “applicable to” substitute “for the exercise of one of the”;
  - (b) in paragraph (3), for the words from “EU” to “for” substitute “exclusive right was not granted following the application of”;
  - (c) in paragraph (4)(a), for “granting of an operating licence” substitute “economic operator’s status as a qualifying air carrier<sup>(a)</sup>”;
  - (d) in paragraph (5)(a)—
    - (i) before “Treaties” insert “Retained”;
    - (ii) for “a member State and one or more third” substitute “the United Kingdom and one or more other”;
  - (e) in paragraph (9)—
    - (i) in sub-paragraph (a)—
      - (aa) for “one or more member States” substitute “the United Kingdom”;
      - (bb) for “third” substitute “other”;
    - (ii) in sub-paragraph (b), for “a member State or a third” substitute “the United Kingdom or another”;
    - (iii) in sub-paragraph (c), for “a member State” substitute “the United Kingdom”;
    - (iv) in sub-paragraph (g)—
      - (aa) for “third country” substitute “country other than the United Kingdom or Gibraltar”;
      - (bb) for “territory of the EU” substitute “United Kingdom and Gibraltar”;
  - (f) in paragraph (10), omit “or another member State”;
  - (g) in paragraph (11)(d)—
    - (i) in paragraph (i)—
      - (aa) in the words before sub-paragraph (aa), omit the words from “within” to “to time,”;
      - (bb) in sub-paragraph (aa), for “a member State, a third” substitute “the United Kingdom, another”;
      - (cc) in sub-paragraph (bb), for “a member State or a third” substitute “the United Kingdom or another”;
    - (ii) in paragraph (ii), in the words after sub-paragraph (bb), omit the words from “within” to “to time”;
    - (iii) in both paragraph (iv) and (v), for “member State concerned” substitute “United Kingdom”;
  - (h) in paragraph (12), after sub-paragraph (a) insert—
    - “(aa) “lawyer” means a person practising as an advocate, barrister or solicitor in any part of the United Kingdom or in Gibraltar;”.

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(a) See the definition in Article 2(11A) which is inserted into EUR 2008/1008, on IP completion day, by S.I. 2018/1392, Schedule 2, paragraph 4(6).

- (i) in paragraph (14)—
  - (i) for “third country” substitute “country other than the United Kingdom”;
  - (ii) for “EU” substitute “United Kingdom”.
- (8) In regulation 13 (concession contracts awarded to an affiliated undertaking), in paragraph (5)—
  - (a) in sub-paragraph (a), for the words from “Directive” to “Council” substitute “Part 15 of the Companies Act 2006(a)”;
  - (b) in sub-paragraph (b), in the words before paragraph (i), for “Directive” substitute “Part”.
- (9) Omit regulation 15 (notification of information by utilities).
- (10) In regulation 17 (concession contracts between entities within the public sector) in paragraphs (1)(c), (2) and (4)(c), before “Treaties” insert “Retained”.
- (11) In regulation 20 (mixed contracts), in paragraph (5), for “Article 346 of TFEU” substitute “regulation 7(3)”.
- (12) In regulation 21 (mixed procurement contracts involving defence or security aspects)—
  - (a) in paragraphs (1), (2) and (in both places in) (6)(a), for “Article 346 of TFEU” substitute “regulation 7(3)”;
  - (b) in paragraph (8), for “to which Article 346 of TFEU applies” substitute “covered by regulation 7(3)”.
- (13) In regulation 22 (contracts covering both activities listed in Schedule 2 and other activities), in paragraph (6), for “Article 346 of TFEU” substitute “regulation 7(3)”.
- (14) In regulation 23 (contracts covering both activities listed in Schedule 2 and activities involving defence or security aspects), in paragraphs (1), (5)(a) and (7), for “Article 346 of TFEU” substitute “regulation 7(3)”.
- (15) In regulation 24 (reserved concession contracts), in paragraph (2), for “Article 24 of the Concessions Directive” substitute “this regulation”.
- (16) In regulation 26 (economic operators), omit paragraph (1).
- (17) In regulation 31 (concession notices)—
  - (a) in paragraph (2)(a), after “Directive,” insert—
    - “but as if—
      - (i) in paragraph 3, “Article 34(2)” were a reference to regulation 34(3) of these Regulations;
      - (ii) in paragraph 10, “date of dispatch” were a reference to the date on which the notice is submitted to the UK e-notification service for the purposes of these Regulations; and
      - (iii) paragraph 15 (financing by EU funds) were omitted,”;
  - (b) in paragraph (5), for “send” substitute “submit”;
  - (c) in paragraph (6)(a), for the words from “and that” to the end substitute—
    - “and that—
      - (i) a report is sent to the Minister for the Cabinet Office if the Minister so requests;
      - (ii) where the contracting authority or utility is a devolved Welsh authority, a report is sent to the Welsh Ministers if they so request (whether or not the Minister for the Cabinet Office also makes a request under paragraph (i));
      - (iii) where the contracting authority or utility is a devolved Northern Ireland authority, a report is sent to a Northern Ireland department if that department

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(a) 2006 c. 46.

so requests (whether or not the Minister for the Cabinet Office also makes a request under paragraph (i));”.

(18) In regulation 32 (concession award notices)—

- (a) in paragraphs (1) and (2), for “send” substitute “submit”;
- (b) in paragraph (3), for “A concession award” substitute “Subject to paragraph (4), a concession award”;
- (c) after paragraph (3) insert—
  - “(4) In paragraph (3), the reference to Annex VII is a reference to that Annex, but as if—
    - (i) in paragraph 7, “Article 41” were a reference to regulation 41 of these Regulations;
    - (ii) in paragraph 11(c), “Article 8(3)” were a reference to regulation 9(6) and (7) of these Regulations;
    - (iii) paragraph 12 (financing by EU funds) were omitted;
    - (iv) in paragraph 14, “in the *Official Journal of the European Union*” read “on the UK e-notification service (within the meaning of the Concession Contracts Regulations 2016)”; and
    - (v) in paragraph 15, “date of dispatch” were a reference to the date on which the notice is submitted to the UK e-notification service for the purposes of these Regulations.”.

(19) In regulation 33 (form and manner of publication of notices)—

- (a) in paragraph (1)—
  - (i) in the words before sub-paragraph (a)—
    - (aa) for “sent” substitute “submitted”;
    - (bb) after “notices)” insert “shall be submitted to the UK e-notification service for publication.”;
  - (ii) omit sub-paragraphs (a) and (b);
- (b) in paragraph (2)—
  - (i) for “EU Publications Office” substitute “provider of the UK e-notification service”;
  - (ii) omit “the receipt of the notice and of”;
- (c) in paragraph (3)—
  - (i) for “at national level” substitute “otherwise than on the UK e-notification service”;
  - (ii) for “by the EU Publications Office” substitute “on that service”;
  - (iii) for “by that Office” substitute “on that service”;
  - (iv) for the words from “it confirms” to the end substitute “the notice was submitted to that service”;
- (d) in paragraph (4)—
  - (i) for “at national level” substitute “otherwise than on the UK e-notification service”;
  - (ii) for “sent to the EU Publications Office” substitute “submitted to that service”;
  - (iii) for “sending of the notice to that Office” substitute “submission of the notice to that service”;
- (e) after paragraph (4) insert—
  - “(5) In these Regulations, “the UK e-notification service” has the meaning given by regulation 51(5) of the Public Contracts Regulations 2015, and regulation 51(6) and (7) of those Regulations apply for the purposes of these Regulations as if the reference to “paragraph (3)” in regulation 51(6)(b) were a reference to paragraph (2) of this regulation.”.

(20) In regulation 34 (electronic availability of concession documents), in paragraph (1), for “in the Official Journal” substitute “on the UK e-notification service”.

- (21) In regulation 38 (selection of and qualitative assessment of candidates)—
- (a) in paragraph (8)—
    - (i) omit sub-paragraph (e);
    - (ii) in sub-paragraph (o), in the words before paragraph (i), for “Article 38(4)” substitute “Article 38(4)(a), (b), (d), (e) or (f)”;
  - (b) in paragraph (16)(a)—
    - (i) omit “EU law,”;
    - (ii) after “agreements or” insert “, subject to paragraphs (26) and (27),”;
  - (c) after paragraph (25) insert—
 

*“Power to modify effect of paragraph (16)(a)*

(26) Where—

    - (a) the United Kingdom has ratified an international agreement establishing obligations in any of the fields mentioned in paragraph (16)(a), and
    - (b) the agreement is not already listed,

the Minister for the Cabinet Office may make regulations providing that paragraph (16)(a) is to have effect as if the agreement were listed.

(27) Where the United Kingdom has ceased to ratify an international agreement that is already listed, the Minister for the Cabinet Office may make regulations providing that paragraph (16)(a) is to have effect as if the agreement were not listed.

(28) In paragraphs (26) and (27)—

    - (a) “listed” means listed as described in paragraph (16)(a); and
    - (b) where paragraph (16)(a) already has effect as if an agreement were listed, “already listed” includes that agreement.”.
- (22) In regulation 39 (time limits for receipt of applications and tenders for the concession contract), in paragraph (3), for “sent” substitute “submitted”.
- (23) In regulation 41 (award criteria), in paragraph (9), omit “the Europe 2020 strategy for smart,”.
- (24) In regulation 43 (modification of concession contracts during their term)—
- (a) in paragraph (3), for “send” substitute “submit”;
  - (b) in paragraph (4), after “Directive” insert—
 

“, but as if—

    - (a) paragraph 9 (financing by EU funds) were omitted;
    - (b) in paragraph 11, “in the *Official Journal of the European Union*” read “on the UK e-notification service (within the meaning of the Concession Contracts Regulations 2016)”;
    - (c) in paragraph 12, “date of dispatch” were a reference to the date on which the notice is submitted to the UK e-notification service for the purposes of these Regulations”
- (25) In regulation 44 (termination of concession contracts), in paragraph (1)—
- (a) after paragraph (a), insert “or”;
  - (b) after paragraph (b), omit “; or”;
  - (c) omit paragraph (c).
- (26) In regulation 47 (notices of decisions to award a concession contract), in paragraph (5)(a), for “in the Official Journal” substitute “on the UK e-notification service”.
- (27) In regulation 50 (duty owed to economic operators from EEA states)—
- (a) in the heading, for “EEA states” substitute “the United Kingdom and Gibraltar”;



- (b) in paragraph (1)(b), for “enforceable EU obligation” substitute “retained EU obligation that is enforceable by virtue of section 4 of the European Union (Withdrawal) Act 2018”;
- (c) in paragraph (2), for “another EEA state” substitute “Gibraltar”.

(28) In regulation 51 (duty owed to economic operators from certain other states)—

- (a) in paragraph (1)—
  - (i) in sub-paragraph (a)—
    - (aa) for “GPA state” substitute “country other than the United Kingdom”;
    - (bb) for “the GPA” substitute “Condition 1, Condition 2 or Condition 3”;
  - (ii) omit sub-paragraph (b) and the preceding “; and”;
- (b) for paragraph (2) substitute—
 

“(2) Condition 1 is that—

  - (a) at the relevant time the economic operator is from a GPA state;
  - (b) the procurement may result in the award of a concession contract of any description; and
  - (c) immediately before IP completion day that GPA state had agreed with the EU that the GPA shall apply to a concession contract of that description.

(2A) Condition 2 is that—

  - (a) at the relevant time the economic operator is from a country which, immediately before IP completion day, was a member State other than the United Kingdom;
  - (b) the procurement may result in the award of a concession contract of any description; and
  - (c) immediately before IP completion day the EU had agreed with a GPA state that the GPA shall apply to a concession contract of that description.”;
- (c) in paragraph (3)—
  - (i) for the words from the beginning to “applies if” substitute “Condition 3 is that”;
  - (ii) in sub-paragraph (a)—
    - (aa) for “there is” substitute “immediately before IP completion day there was”;
    - (bb) for “is bound” substitute “was bound”;
- (d) after paragraph (3) insert—
 

“(3A) Paragraph (3)(b) is to be applied as if the United Kingdom were a member State.”;
- (e) in paragraph (4)—
  - (i) omit sub-paragraph (a);
  - (ii) in sub-paragraph (b), for “, other than an EEA state, which at the relevant time is” substitute “which immediately before IP completion day was”;
  - (iii) in sub-paragraph (c)—
    - (aa) for “sent” substitute “submitted”;
    - (bb) for “Publications Office of the European Union” substitute “UK e-notification service”.

(29) In regulation 54 (special time limits for seeking a declaration of ineffectiveness), in paragraphs (3) and (4)(a) and (b), for “in the Official Journal” substitute “on the UK e-notification service”.

(30) In regulation 60 (grounds for ineffectiveness)—

- (a) in paragraphs (2) and (3)(a), (b) and (c), for “in the Official Journal” substitute “on the UK e-notification service”;
- (b) in paragraph (4), in the words before sub-paragraph (a), omit the words from “is in” to “and which”.

(31) In Part 6, before regulation 65 insert—

**“General provisions about regulations under these Regulations**

**65ZA.**—(1) Regulations under these Regulations are to be made by statutory instrument.

(2) A statutory instrument containing regulations under regulation 7(6) (whether alone or with other provision) may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.

(3) Any other statutory instrument containing regulations under these Regulations is subject to annulment in pursuance of a resolution of either House of Parliament.

(4) Subject to paragraph (5), Regulations may not be made under regulation 38 without the consent of the Welsh Ministers and a Northern Ireland Department.

(5) Regulations (“the amending regulations”) may be made under regulation 38 without such consent, but in such cases the amending regulations must make provision in such a way as to avoid altering the effect of that regulation in so far as it applies to—

- (a) devolved Welsh authorities, where the Welsh Ministers have not consented to the making of the amending regulations;
- (b) devolved Northern Ireland authorities, where no Northern Ireland Department has consented to the making of the amending regulations.

(6) Regulations under these Regulations may make supplementary, incidental, transitional, transitory or saving provision.”.

**Amendment commenced 12 months after IP completion day**

**9.**—(1) The Concession Contracts Regulations 2016 (as amended by regulation 8) are further amended as follows.

- (2) Omit regulation 51 (duty owed to economic operators from certain other states).

CHAPTER 3

THE UTILITIES CONTRACTS REGULATIONS 2016

**Amendments commenced on IP completion day**

**10.**—(1) The Utilities Contracts Regulations 2016(a) are amended as follows.

(2) In regulation 2 (definitions), in paragraph (1)—

- (a) omit the definition of “the Commission”;
- (b) after the definition of “contracting authorities” insert—
  - “covered by regulation 3(2)”, in relation to an activity, an element, a part of a contract, or procurement, means that regulation 3(2)—
  - (a) applies to that activity, element, part or procurement, or
  - (b) would do so if these Regulations applied;”;
- (c) after the definition of “design contests” insert—
  - ““devolved Northern Ireland authority” means a contracting authority whose functions are wholly or mainly functions which could be conferred by provision included in an Act of the Northern Ireland Assembly made without the consent of the Secretary of State (see sections 6 to 8 of the Northern Ireland Act 1998);
  - “devolved Welsh authority” has the meaning given by section 157A of the Government of Wales Act 2006;”;

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(a) S.I. 2016/274, amended by S.I. 2016/696, 2019/624.

- (d) omit the definition of “EU Publications Office”;
  - (e) in the definition of “GPA”, after “amended” insert “before IP completion day”;
  - (f) in the definition of “innovation”, omit “the Europe 2020 strategy for smart.”;
  - (g) omit the definition of “qualified certificate for electronic signature”;
  - (h) before the definition of “selection criteria” insert—
    - ““the Retained Treaties” means anything which is retained EU law by virtue of section 4 of the European Union (Withdrawal) Act 2018 because of the effect which the Treaty on European Union or TFEU had immediately before IP completion day in giving rise to any of the rights, powers, liabilities, obligations, restrictions, remedies and procedures mentioned in that section.”;
  - (i) omit the definition of “the Treaties”;
  - (j) before the definition of “Utilities Contracts Directive” insert—
    - ““the UK e-notification service” has the meaning mentioned in regulation 71(6), and references (in whatever terms) to the submission of notices to that service are to be construed in accordance with the provisions applied (and adapted) by regulation 71(6);”
- (3) In regulation 3 (subject-matter and scope), for paragraph (2) substitute—
- “(2) Parts 1 to 4—
- (a) do not oblige the United Kingdom to supply information the disclosure of which it considers contrary to the essential interests of its security;
  - (b) do not preclude the United Kingdom from taking such measures as it considers necessary for the protection of the essential interests of its security which are connected with the production or trade in arms, munitions and war material, provided that such measures do not adversely affect the conditions of competition regarding products which are not intended for specifically military purposes.
- (2A) The arms, munitions and war material to which paragraph (2)(b) applies are, subject to paragraph (2C), those included in the 1958 List.
- (2B) Subject to the effect of any regulations made under paragraph (2C), any measures which, if they had been taken immediately before IP completion day, would have been covered by Article 346 of TFEU shall be regarded as measures covered by paragraph (2).
- (2C) The Secretary of State may make regulations providing that the 1958 List is to be treated for the purposes of Parts 1 to 4 as if it were changed in respects specified in the regulations.
- (2D) In this regulation, “the 1958 List” means the list of arms, munitions and war material adopted by the Council of the European Economic Community in its decision 255/58 of 15th April 1958.”.
- (4) In regulation 6 (mixed procurement covering the same activity), in paragraph (3), for “Article 346 of TFEU” substitute “regulation 3(2)”.
- (5) In regulation 7 (procurement covering several activities), in paragraph (4), for “Article 346 of TFEU” substitute “covered by regulation 3(2)”.
- (6) In regulation 16 (threshold amounts)—
- (a) in paragraph (1)(a), for “the sum specified in Article 15(a) of the Utilities Contracts Directive” substitute “£378,660”;
  - (b) in paragraph (1)(b), for “the sum specified in Article 15(b) of the Utilities Contracts Directive” substitute “£4,733,252”;
  - (c) in paragraph (1)(c), for “the sum specified in Article 15(c) of the Utilities Contracts Directive” substitute “£884,720”;
  - (d) omit paragraphs (3) and (4).
- (7) After regulation 16 insert—

## **“Review and amendment of certain thresholds**

**16A.**—(1) Every two years the Minister for the Cabinet Office must review the thresholds mentioned in regulation 16(1)(a) and (b) (“the reviewable thresholds”) to verify whether they correspond with the thresholds established for those purposes in the GPA.

(2) The Minister must do so by calculating the sterling value of each of the reviewable thresholds on the basis of the average daily value of sterling in terms of the special drawing rights mentioned in the GPA over a period of 24 months ending with 31st August.

(3) The Minister must make that calculation using the applicable conversion rates in the monthly International Financial Statistics published from time to time by the International Monetary Fund.

(4) If the sterling value of a reviewable threshold so calculated differs from the sum for the time being mentioned in regulation 16(1) in respect of that threshold, the Minister must make regulations amending regulation 16(1) so as to substitute for that sum the sum equal to that value.

(5) Such regulations—

(a) must be made and laid before Parliament before 1st November following the end of the 24-month period covered by the review; and

(b) must provide for the substitution to come into force on the following 1st January.

(6) The first review under this regulation must relate to the 24-month period ending with 31st August 2021.”.

(8) In regulation 17 (methods for calculating the estimated value of the procurement)—

(a) in paragraph (7), for “sent” substitute “submitted”;

(b) in paragraph (14)—

(i) in sub-paragraph (a), for “EUR 80,000” substitute “£70,778”;

(ii) in sub-paragraph (b), for “EUR 1 million” substitute “£884,720”.

(9) In regulation 18 (contracts awarded for the purpose of resale or lease to third parties), omit paragraph (2).

(10) In regulation 19 (contracts and design contests awarded or organised for purposes other than the pursuit of a covered activity or for the pursuit of such an activity in a third country)—

(a) in the heading, for “in a third country” substitute “outside the United Kingdom”;

(b) in paragraph (1)(b)—

(i) for “in a third country” substitute “outside the United Kingdom”;

(ii) for “EU” substitute “United Kingdom”;

(c) omit paragraph (2).

(11) In regulation 20 (contracts awarded and design contests organised pursuant to international rules), in paragraph (1)(a)—

(a) before “Treaties” insert “Retained”;

(b) for “a member State and one or more third” substitute “the United Kingdom and one or more other”.

(12) In regulation 21 (specific exclusions for service contracts)—

(a) in paragraph (1)(c)—

(i) in paragraph (i)—

(aa) in the words before sub-paragraph (aa), omit the words from “within” to “to time.”;

(bb) in sub-paragraph (aa), for “a member State, a third” substitute “the United Kingdom, another”;

- (cc) in sub-paragraph (bb), for “a member State or a third” substitute “the United Kingdom or another”;
- (ii) in paragraph (ii), in the words after sub-paragraph (bb), omit the words from “within” to “to time.”;
- (iii) in both paragraph (iv) and (v), for “member State concerned” substitute “United Kingdom”;
- (b) in paragraph (2), before sub-paragraph (a) insert—
  - “(za) “lawyer” means a person practising as an advocate, barrister or solicitor in any part of the United Kingdom or in Gibraltar.”.
- (13) In regulation 22 (service contracts awarded on the basis of an exclusive right), for “TFEU” substitute “anything which is retained EU law by virtue of section 4 of the European Union (Withdrawal) Act 2018 because of the effect which TFEU had immediately before IP completion day in giving rise to any of the powers, rights etc. mentioned in that section”.
- (14) In regulation 24 (defence and security), in paragraph (2)(a), omit “or another member State”.
- (15) In regulation 25 (mixed procurement covering the same activity and involving defence or security aspects)—
  - (a) in paragraphs (1) and (5)(a), for “Article 346 of TFEU” substitute “regulation 3(2)”;
  - (b) in paragraph (8), for “to which Article 346 of TFEU applies” substitute “covered by regulation 3(2)”.
- (16) In regulation 26 (procurement covering several activities and involving defence or security aspects), in paragraphs (5)(b) and (7), for “Article 346 of TFEU” substitute “regulation 3(2)”.
- (17) In regulation 27 (contracts and design contests involving defence or security aspects which are awarded or organised pursuant to international rules), in paragraph (1)—
  - (a) in sub-paragraph (a)—
    - (i) before “Treaties” insert “Retained”;
    - (ii) for “a member State” substitute “the United Kingdom”;
    - (iii) for “third” substitute “other”;
  - (b) in sub-paragraph (b), for “a member State or a third” substitute “the United Kingdom or another”.
- (18) In regulation 28 (contracts between contracting authorities), in paragraphs (1)(c), (2) and (4)(c), before “Treaties” insert “Retained”.
- (19) In regulation 29 (contracts awarded to an affiliated undertaking), in paragraph (5)—
  - (a) in sub-paragraph (a), for the words from “Directive” to “Council” substitute “Part 15 of the Companies Act 2006”;
  - (b) in sub-paragraph (b), in the words before paragraph (i), for “Directive” substitute “Part”.
- (20) Omit regulation 31 (notification of information).
- (21) In regulation 33 (contracts subject to special arrangements)—
  - (a) in paragraph (b), for the words from “EUR” in the words before sub-paragraph (i) to the end of sub-paragraph (xiii) substitute “£4,423,600, submit, within 48 days of the award, a contract award notice for publication, and regulation 70(2) shall apply in relation to such a notice as it applies to notices under regulation 70(1)”;
  - (b) in paragraph (c)—
    - (i) in the words before sub-paragraph (i)—
      - (aa) for “400,000 euro” substitute “£353,890”;
      - (bb) for “5,000,000 euro” substitute “£4,423,600”;
    - (ii) in sub-paragraph (i), for the words from “the information” to the end substitute “, for not less than 4 years from the date on which the contract is awarded, the information

that would have been required to be included in a contract award notice if paragraph (b) had applied”;

(iii) in sub-paragraph (ii)—

(aa) omit “, either”;

(bb) for the words from “Commission” to the end substitute “Minister for the Cabinet Office”.

(22) In regulation 34 (activities directly exposed to competition), in paragraph (2), omit sub-paragraph (b) and the preceding “; or”.

(23) Omit regulation 35 (procedure for establishing whether regulation 34(2)(b) is applicable).

(24) In regulation 37 (economic operators), omit paragraph (1).

(25) In regulation 38 (reserved contracts), in paragraph (2), for “Article 38 of the Utilities Contracts Directive” substitute “this regulation”.

(26) In regulation 40 (rules applicable to communication)—

(a) in paragraph (15)(a)(i)—

(i) for “in the Official Journal” substitute “on the UK e-notification service”;

(ii) for “sent” substitute “submitted”;

(b) in paragraph (17)(c), for the words from “accept” to the end substitute “act in accordance with Article 27 of that Regulation (and for this purpose the submission of the tender or request is to be treated as the use of an online service to which that Article applies)”;

(c) in paragraph (21)—

(i) in the words before sub-paragraph (a), for the words from “in accordance” to “Decision 2011/130/EU” substitute “in a format other than those referred to in Article 1 of Commission Implementing Decision (EU) 2015/1506 laying down specifications relating to formats of advanced electronic signatures and advanced seals to be recognised by public sector bodies”;

(ii) in sub-paragraph (b), for the words from “allow” to the end substitute “comply with the requirements of Article 2(1)(b) of that Decision (or would comply with those requirements if the person seeking to validate the signature were a public sector body within the meaning of that Article)”;

(d) in paragraph (20), in the words after sub-paragraph (b), for the words from “Utilities” to the end substitute “these Regulations”.

(27) After regulation 40 insert—

#### **“Powers to amend regulation 40**

##### *Exceptions to obligation to require use of electronic means of communication*

**40A.**—(1) The Minister for the Cabinet Office may make regulations amending paragraph (3) of regulation 40 by—

(a) omitting any of the situations described in that paragraph where the Minister considers that technological developments render it inappropriate for that situation to continue to be an exception from the obligation to require electronic means of communication, or

(b) inserting a description of a new situation where, exceptionally, the Minister considers that it must become a new exception because of technological developments.

(2) Where the Minister considers that technological developments render it inappropriate for there to continue to be any exceptions from the obligation to require electronic means of communication, the Minister may make regulations omitting paragraph (3) from regulation 40.

(3) Where regulations have been made under paragraph (2) and, exceptionally, the Minister considers that a new exception must be provided for because of technological developments, the Minister may make regulations re-inserting paragraph (3) into regulation 40 in terms which give effect to that new exception (and the powers conferred by paragraphs (1) and (2) of this regulation may subsequently be exercised in relation to paragraph (3) as re-inserted).

*Requirements relating to tools and devices for electronic receipt of documents*

(4) The Minister for the Cabinet Office may make regulations amending the technical details and characteristics set out in regulation 40(16) if the Minister considers it appropriate to do so to take account of technical developments.”.

(28) In regulation 43 (conditions relating to the GPA and other international agreements)—

(a) in the body of the regulation, the text of the existing regulation becomes paragraph (1) and is amended as follows—

(i) for “is bound” substitute “was, immediately before IP completion day, bound”;

(ii) for “of the EU” substitute “of the United Kingdom”;

(b) after that paragraph insert—

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

(a) each country that was a member State immediately before IP completion day is deemed to be a signatory to the GPA; and

(b) the EU’s Appendix 1 to the GPA has effect as if each such country were referred to in the same way that Iceland is referred to in the following places in that Appendix—

(i) paragraph 2(a) of Annex 1;

(ii) Annex 6.”.

(29) In regulation 44 (choice of procedures), in paragraph (2), omit “and the Utilities Contracts Directive”.

(30) In regulation 45 (open procedure)—

(a) in paragraph (2), for “sent” substitute “submitted”;

(b) in paragraph (4)—

(i) in sub-paragraph (a), for “Section I and II of Part A of Annex VI to the Utilities Contracts Directive” substitute “regulation 67(2) and (5)(c)”;

(ii) in sub-paragraph (b), for “sent” (in both places) substitute “submitted”;

(c) in paragraph (5), for “sent” substitute “submitted”.

(31) In regulation 46 (restricted procedure), in paragraph (2)(a), for “sent” substitute “submitted”.

(32) In regulation 47 (negotiated procedure with prior call for competition), in paragraph (2)(a), for “sent” substitute “submitted”.

(33) In regulation 48 (competitive dialogue), in paragraph (2)(a), for “sent” substitute “submitted”.

(34) In regulation 49 (innovation partnership), in paragraph (5), for “sent” substitute “submitted”.

(35) In regulation 52 (dynamic purchasing systems)—

(a) in paragraph (9)(a), for “sent” substitute “submitted”;

(b) for paragraph (29) substitute the following—

“(29) Where the period of validity is changed without terminating the dynamic purchasing system, the utility shall submit for publication on the UK e-notification service a notice of the kind used initially for the call for competition for the dynamic purchasing system.

(29A) Where a dynamic purchasing system is terminated before the end of the period of validity that had most recently been indicated under paragraph (28) or (29), the utility shall submit for publication on the UK e-notification service a contract award notice under regulation 70.”.

- (36) Omit regulation 57 (procurement involving utilities from other member States).
- (37) In regulation 60 (technical specifications)—
- (a) in paragraph (8), for “adopted by a legal act of the EU” substitute “imposed by retained EU law”;
  - (b) in paragraph (10), after “compatible with” insert “retained”;
  - (c) in paragraph (16), in the definition of “common technical specification”, after “Council” insert “as it has effect in EU law”.
- (38) In regulation 67 (periodic indicative notices)—
- (a) in paragraph (2), after “Directive” insert “, but as if both references to “dispatch of the notice” in paragraph 4 were references to the submission of the notice to the UK e-notification service for the purposes of these Regulations”;
  - (b) in paragraph (3)(a), for “send” substitute “submit”;
  - (c) in paragraph (4)—
    - (i) for “send” substitute “submit”;
    - (ii) after “Directive” insert “, but as if “date of dispatch” in paragraph 5 were a reference to the date on which the notice is submitted to the UK e-notification service for the purposes of these Regulations”;
  - (d) in paragraph (5)—
    - (i) in sub-paragraph (c)—
      - (aa) for “set out section I of Part A of Annex VI to the Utilities Contracts Directive” substitute “required by paragraph (2)”;
      - (bb) after “II of Part A” insert—

“of Annex 6 to the Utilities Contracts Directive, but as if—

        - (i) in paragraph 7, “the third and fourth subparagraph of Article 73(1)” were a reference to regulation 73(4) and (5) of these Regulations”; and
        - (ii) in paragraph 21—
          - (aa) “Article 82” were a reference to regulation 82 of these Regulations; and
          - (bb) “point (b) of Article 67(2)” were a reference to regulation 67(5)(b) of these Regulations”;
    - (ii) in sub-paragraph (d), for “been sent” substitute “been submitted”.
- (39) In regulation 68 (notices on the existence of a qualification system)—
- (a) in paragraph (1), omit the words from “which” to “Directive.”;
  - (b) after paragraph (1) insert—

“(1A) Such a notice shall include the information set out in Annex 10 to the Utilities Contracts Directive, but as if, in paragraph 10, “Article 82” were a reference to regulation 82 of these Regulations.”;
  - (c) in paragraph (3)—
    - (i) in the words before sub-paragraph (a)—
      - (aa) for “notify the EU Publications Office” substitute “give notice”;
      - (bb) for “, using the following standard forms” substitute “by submitting to the UK e-notification service”;
    - (ii) in sub-paragraph (a), for “the form for notices” substitute “a notice”.
- (40) For regulation 69 (contract notices) substitute—



## “Contract notices

69.—(1) Contract notices shall contain the information set out in the relevant part of Annex 11 to the Utilities Contracts Directive, but as if—

- (a) in paragraph 10 of Part A, “the third and fourth subparagraph of Article 73(1)” were a reference to regulation 73(4) and (5) of these Regulations;
- (b) in—
  - (i) paragraph 19 of Part A,
  - (ii) paragraph 16 of Part B, and
  - (iii) paragraph 15 of Part C,“Article 82” were a reference to regulation 82 of these Regulations;
- (c) in—
  - (i) paragraph 20 of Part A,
  - (ii) paragraph 18 of Part B, and
  - (iii) paragraph 18 of Part C,“in the *Official Journal of the European Union*” read “on the UK e-notification service (within the meaning of the Utilities Contracts Regulations 2016)”; and
- (d) in—
  - (i) paragraph 22 of Part A,
  - (ii) paragraph 20 of Part B, and
  - (iii) paragraph 20 of Part C,“date of dispatch” were a reference to the date on which the notice is submitted to the UK e-notification service for the purposes of these Regulations.

(2) Such notices shall be submitted for publication in accordance with regulation 71.”.

(41) In regulation 70 (contract award notices)—

- (a) in paragraph (1), for “send” substitute “submit”;
- (b) for paragraph (2) substitute—

“(2) Such notices shall—

  - (a) contain the information set out in Annex 12 to the Utilities Contracts Directive, but as if—
    - (i) in paragraph 5(b), “in the *Official Journal of the European Union*” read “on the UK e-notification service (within the meaning of the Utilities Contracts Regulations 2016)”;
    - (ii) in paragraph 5(c), “Article 50” were a reference to regulation 50(1) of these Regulations;
    - (iii) in paragraph 9, “Article 50(h)” were a reference to regulation 50(1)(h) of these Regulations;
    - (iv) in paragraph 17, the words in brackets were omitted;
    - (v) in paragraph 19, “Article 64(1)” were a reference to regulation 64(1) of these Regulations;
    - (vi) in paragraph 20, “Article 84” were a reference to regulation 84 of these Regulations; and
    - (vii) in paragraph 21, “date of transmission” were a reference to the date on which the notice is submitted to the UK e-notification service for the purposes of these Regulations; and
  - (b) be submitted for publication in accordance with regulation 71.”;
- (c) in paragraphs (4) and (5)(a) and (b), for “send” substitute “submit”.

- (42) In regulation 71 (form and manner of sending notices for publication at EU level)—
- (a) for the heading substitute “Publication on the UK e-notification service”;
  - (b) in paragraph (1)—
    - (i) after “regulations” insert “52,”;
    - (ii) for “sent” (in both places) substitute “submitted”;
    - (iii) for “by electronic means to the EU Publications Office” substitute “to the UK e-notification service”;
  - (c) in paragraph (2), for “sent to the EU Publications Office” substitute “submitted to the UK e-notification service”;
  - (d) in paragraph (3)—
    - (i) for “EU Publications Office” substitute “the provider of the UK e-notification service”;
    - (ii) omit “the receipt of the notice and of”;
  - (e) in paragraph (4)—
    - (i) for “send” substitute “submit”;
    - (ii) for “EU Publications Office” substitute “UK e-notification service”;
    - (iii) omit the words from “, provided” to the end;
  - (f) omit paragraph (5);
  - (g) at the end insert—
 

“(6) In these Regulations, “the UK e-notification service” has the meaning given by regulation 51(5) of the Public Contracts Regulations 2015, and regulation 51(6) and (7) of those Regulations apply for the purposes of these Regulations as if the reference to “paragraph (3)” in regulation 51(6)(b) were a reference to paragraph (3) of this regulation.”.
- (43) In regulation 72 (publication at national level)—
- (a) in the heading, for “at national level” substitute “otherwise than on the UK e-notification service”;
  - (b) in paragraph (1)—
    - (i) after “regulations” insert “52,”;
    - (ii) for “by the EU Publications Office” substitute “on the UK e-notification service”;
  - (c) in paragraph (3)—
    - (i) after “regulations” insert “52,”;
    - (ii) for the words from “at the national level” to the end substitute “otherwise than on the UK e-notification service before they are published on that service.”;
  - (d) in paragraph (4)—
    - (i) for “at national level” substitute “otherwise than on the UK e-notification service”;
    - (ii) for the words from “by the EU” to the end substitute “on that service within 48 hours after the notice was submitted to that service”;
  - (e) in paragraph (5)—
    - (i) for “at national level” substitute “otherwise than on the UK e-notification service”;
    - (ii) for “sent to the EU Publications Office” substitute “submitted to that service”;
    - (iii) for “sending of the notice to the EU Publications Office” substitute “submission of the notice to that service”;
  - (f) in paragraph (6)—
    - (i) in sub-paragraph (a), for “sent to the EU Publications Office” substitute “submitted to the UK e-notification service”;
    - (ii) in sub-paragraph (b), for “sending” substitute “submission”.

- (44) In regulation 73 (electronic availability of procurement documents), in paragraph (1), for “in the Official Journal” substitute “on the UK e-notification service”.
- (45) In regulation 76 (general principles), in paragraph (6)—
- (a) omit “EU law,”;
  - (b) after “agreements or” insert “, subject to paragraphs (6A) and (6B)”;
  - (c) after paragraph (6) insert—
    - “(6A) Where—
      - (a) the United Kingdom has ratified an international agreement establishing obligations in any of the fields mentioned in paragraph (6), and
      - (b) the agreement is not already listed,
 the Minister for the Cabinet Office may make regulations providing that paragraph (6) is to have effect as if the agreement were listed.
    - (6B) Where the United Kingdom has ceased to ratify an international agreement that is already listed, the Minister for the Cabinet Office may make regulations providing that paragraph (6) is to have effect as if the agreement were not listed.
    - (6C) In paragraphs (6A) and (6B)—
      - (a) “listed” means listed as described in paragraph (6), and
      - (b) where paragraph (6) already has effect as if an agreement were listed, “already listed” includes that agreement.”.
- (46) In regulation 81 (quality assurance standards and environmental management standards)—
- (a) omit paragraph (2);
  - (b) in paragraph (4)—
    - (i) omit sub-paragraphs (a) and (b);
    - (ii) in sub-paragraph (c), omit “other”;
    - (iii) omit the words after sub-paragraph (c).
- (47) In regulation 83 (life-cycle costing)—
- (a) in paragraph (3)(c)—
    - (i) omit “third”;
    - (ii) for “is bound” substitute “was, immediately before IP completion day, bound”;
  - (b) omit paragraphs (5) and (6).
- (48) In regulation 84 (abnormally low tenders)—
- (a) in paragraph (2), omit sub-paragraph (f);
  - (b) omit paragraphs (6) and (7).
- (49) In regulation 85 (tenders comprising products originating in third countries)—
- (a) in paragraph (1), after “has not” insert “, before IP completion day,”;
  - (b) in paragraph (2)—
    - (i) in sub-paragraph (a), for the words from “in accordance” to “time to time” substitute “as it would be determined for the purposes of Part 1 of the Taxation (Cross-border Trade) Act 2018(a) if the products were chargeable goods within the meaning of that Part”;
    - (ii) in sub-paragraph (c), after “Directive has” insert “, before IP completion day,”.
- (50) In regulation 87 (subcontracting), in paragraph (5), for “ESPDs” substitute “SPDs”.
- (51) In regulation 88 (modification of contracts during their term)—

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(a) 2018 c. 22. See section 17 (place of origin of chargeable goods).

- (a) in paragraph (2), for “send” substitute “submit”;
  - (b) in paragraph (3), after “Directive” insert “, but as if paragraph 10 (financing by EU funds) were omitted”.
- (52) In regulation 89 (termination of contracts), in paragraph (1), omit sub-paragraph (c).
- (53) In regulation 91 (publication of notices)—
- (a) in paragraph (4), for “send” substitute “submit”;
  - (b) in paragraph (5), after “Directive” insert “, but as if, in paragraph 4 of part D, “in the *Official Journal of the European Union*” read “on the UK e-notification service (within the meaning of the Utilities Contracts Regulations 2016)”;
  - (c) in paragraph (6), for “send” substitute “submit”.
- (54) In regulation 93 (reserved contracts for certain services), in paragraph (5), for “Article 94 of the Utilities Contracts Directive” substitute “this regulation”.
- (55) In regulation 95 (notices)—
- (a) in paragraph (2)—
    - (i) in sub-paragraph (a), after “Directive” insert “, but as if, in paragraph 15, “date of dispatch” were a reference to the date on which the notice is submitted to the UK e-notification service for the purposes of these Regulations”;
    - (ii) in sub-paragraph (b), for “sent” substitute “submitted”;
  - (b) in paragraph (3), in the words before sub-paragraph (a), for “sent” substitute “submitted”;
  - (c) in paragraph (4), after “Directive” insert “, but as if, in paragraph 11, “date of dispatch” were a reference to the date on which the notice is submitted to the UK e-notification service for the purposes of these Regulations”.
- (56) In regulation 96 (rules on the organisation of design contests and the selection of participants and the jury), omit paragraph (2).
- (57) In regulation 98 (retention of contract copies)—
- (a) in paragraph (1)—
    - (i) in sub-paragraph (a), for “1,000,000 EUR” substitute “£884,720”;
    - (ii) in sub-paragraph (b), for “10,000,000 EUR” substitute “£8,847,200”;
  - (b) in paragraph (2), for “applicable EU or national rules on access to documents and data protection” substitute “rules on access to documents and data protection applicable in the relevant part of the United Kingdom”.
- (58) In regulation 99 (information and documentation requirements)—
- (a) in paragraph (3), after “regulation” insert “33(b),”;
  - (b) for paragraph (7) substitute—
    - “(7) A utility shall communicate the report, or its main elements—
      - (a) to the Minister for the Cabinet Office if the Minister so requests;
      - (b) where the utility is a devolved Welsh authority, to the Welsh Ministers if they so request (whether or not the Minister for the Cabinet Office also makes a request under sub-paragraph (a));
      - (c) where the utility is a devolved Northern Ireland authority, to a Northern Ireland department if that department so requests (whether or not the Minister for the Cabinet Office also makes a request under sub-paragraph (a)).”;
  - (c) omit paragraph (8);
  - (d) omit paragraph (9) and the italic heading preceding it.
- (59) In regulation 104 (duty owed to economic operators from EEA States)—
- (a) in the heading, for “EEA States” substitute “the United Kingdom and Gibraltar”;

- (b) in paragraph (1)(b), for “enforceable EU obligation” substitute “retained EU obligation that is enforceable by virtue of section 4 of the European Union (Withdrawal) Act 2018”;
  - (c) in paragraph (2), for “another EEA state” substitute “Gibraltar”.
- (60) In regulation 105 (duty owed to economic operators from certain other States)—
- (a) in paragraph (1)—
    - (i) in sub-paragraph (a)—
      - (aa) for “GPA state” substitute “country other than the United Kingdom”;
      - (bb) for “the GPA” substitute “Condition 1, Condition 2 or Condition 3”;
    - (ii) omit sub-paragraph (b) and the preceding “; and”;
  - (b) for paragraph (2) substitute—
 

“(2) Condition 1 is that—

    - (a) at the relevant time the economic operator is from a GPA state;
    - (b) the procurement may result in the award of a contract of any description; and
    - (c) immediately before IP completion day that GPA state had agreed with the EU that the GPA shall apply to a contract of that description.

(2A) Condition 2 is that—

    - (a) at the relevant time the economic operator is from a country which, immediately before IP completion day, was a member State other than the United Kingdom;
    - (b) the procurement may result in the award of a contract of any description; and
    - (c) immediately before IP completion day the EU had agreed with a GPA state that the GPA shall apply to a contract of that description.”;
  - (c) in paragraph (3)—
    - (i) for the words from the beginning to “applies if” substitute “Condition 3 is that”;
    - (ii) in sub-paragraph (a)—
      - (aa) for “there is” substitute “immediately before IP completion day there was”;
      - (bb) for “is bound” substitute “was bound”;
  - (d) after paragraph (3) insert—
 

“(3A) Paragraph (3)(b) is to be applied as if the United Kingdom were a member State.”;
  - (e) in paragraph (4)—
    - (i) in the definition of “GPA state”, for “, other than an EEA state, which at the relevant time is” substitute “which immediately before IP completion day was”;
    - (ii) in the definition of “relevant time”—
      - (aa) for “sent” (in both places) substitute “submitted”;
      - (bb) for “EU Publications Office” (in both places) substitute “UK e-notification service”;
      - (cc) for “sending” substitute “submitting”.
- (61) In regulation 108 (special time limits for seeking a declaration of ineffectiveness), in paragraphs (3) and (4)(a), for “in the Official Journal” substitute “on the UK e-notification service”.
- (62) In regulation 114 (grounds for ineffectiveness)—
- (a) in paragraphs (2) and (3)(b) and (c), for “in the Official Journal” substitute “on the UK e-notification service”;
  - (b) in paragraph (4)—
    - (i) in the words before sub-paragraph (a), omit the words from “is in” to “and which”;
    - (ii) in sub-paragraph (c), for “in the Official Journal” substitute “on the UK e-notification service”.

(63) After regulation 119 insert—

## “PART 5A AMENDING THESE REGULATIONS

### **General provisions about regulations under these Regulations**

**119A.**—(1) Regulations under these Regulations are to be made by statutory instrument.

(2) A statutory instrument containing regulations under regulation 3(2C) (whether alone or with other provision) may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.

(3) Any other statutory instrument containing regulations under these Regulations is subject to annulment in pursuance of a resolution of either House of Parliament.

(4) Subject to paragraph (5), Regulations may not be made under regulations 40A or 76 without the consent of the Welsh Ministers and a Northern Ireland Department.

(5) Regulations (“the amending regulations”) may be made under regulation 40A or 76 without such consent, but in such cases the amending regulations must amend regulation 40 or, as the case may be, make provision under regulation 76, in such a way as to avoid altering the effect of that regulation in so far as it applies to—

- (a) devolved Welsh authorities, where the Welsh Ministers have not consented to the making of the amending regulations;
- (b) devolved Northern Ireland authorities, where no Northern Ireland Department has consented to the making of the amending regulations.

(6) Without prejudice to paragraph (7), to the extent that the amending regulations are being made under regulation 40A, the duty imposed by paragraph (5) may be complied with by—

- (a) restructuring regulation 40 (so that, for example, different paragraphs apply to devolved Welsh authorities and other utilities respectively, where the Welsh Ministers have not consented to the making of the amending regulations); and
- (b) amending the powers conferred by regulation 40A so that they refer to the relevant provisions in regulation 22 as so restructured.

(7) Regulations under this Part may make supplementary, incidental, transitional, transitory or saving provision.”.

### **Amendments commenced 12 months after IP completion day**

**11.**—(1) The Utilities Contracts Regulations 2016 (as amended by regulation 10) are further amended as follows.

(2) Omit regulation 43 (conditions relating to the GPA).

(3) In regulation 83 (life-cycle costing), in paragraph (3)(c), omit the words from “, including” to the end.

(4) Omit regulation 85 (tenders comprising products originating in third countries).

(5) Omit regulation 105 (duty owed to economic operators from certain other States).

CHAPTER 4  
AMENDMENT OF OTHER SUBORDINATE LEGISLATION

**The Public Contracts Regulations 2006**

**12.**—(1) To the extent that the Public Contracts Regulations 2006(a) (“the 2006 Regulations”) continue to have prospective effect, their effect is modified as follows.

(2) The 2006 Regulations have prospective effect as if the following were omitted—

- (a) regulation 14(2) (which requires certain reports to be supplied to the European Commission on request);
- (b) regulation 32(16) (which provides for the provision of certain reports requested by the European Commission);
- (c) regulation 40(2) (which requires certain information to be provided for the European Commission).

(3) Where—

- (a) immediately before IP completion day, a procurement has been commenced,
- (b) on or after IP completion day, a contract is awarded or any other act is done, pursuant to that procurement, and
- (c) that award or other act would, if it had occurred before IP completion day, have been covered by an exemption from requirements of the 2006 Regulations by virtue of any provision in those Regulations,

that award or other act is covered by that exemption on and after IP completion day regardless of whether the terms used to define that exemption in the 2006 Regulations would otherwise have been apt to continue to achieve that effect on and after IP completion day.

**The Utilities Contracts Regulations 2006**

**13.**—(1) To the extent that the Utilities Contracts Regulations 2006(b) (“the 2006 Regulations”) continue to have prospective effect, their effect is modified as follows.

(2) The 2006 Regulations have prospective effect as if—

- (a) regulation 7(7) (which relates to information requested by the European Commission) were omitted;
- (b) in regulation 8(3) (which provides for certain information to be sent to or for the European Commission)—
  - (i) in sub-paragraph (a), the words from “5,000,000 euro” in the words before sub-paragraph (i) to the end of paragraph (xiii) read “£4,101,850, submit, within 48 days of the award, a contract award notice to the UK e-notification service for publication, containing the information referred to in regulation 70(2)(a) of the Utilities Contracts Regulations 2016”;
  - (ii) in sub-paragraph (b)—
    - (aa) “400,000 euro” read “£328,150”;
    - (bb) “5,000,000 euro” read “£4,101,850”;
    - (cc) paragraph (ii) read as follows—

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(a) S.I. 2006/5. The Regulations were revoked by S.I. 2015/102 but subject to savings. Before being revoked, the Regulations had been amended by S.I. 2007/3542, 2008/2256, 2683, 2848, 2009/1307, 2992, 2010/133, 976, 2011/1043, 1848, 2053, 2581, 3058, 2013/252, 1431, 2014/834 and by the Enterprise and Regulatory Reform Act 2013 (c. 24), Schedule 20, paragraph 2.

(b) S.I. 2006/6. The Regulations were revoked by S.I. 2016/274 but subject to savings. Before being revoked, the Regulations had been amended by S.I. 2007/2157, 3542, 2008/2256, 2848, 2009/3100, 2011/1043, 1441, 2053, 1848, 2012/1659, 2013/610, 2015/102.

“(ii) if the Minister requests that information in relation to any such contract, forthwith send it to the Minister;”;

(c) regulation 38(2) (which provides for the provision of certain reports requested by the European Commission) were omitted.

(3) Where—

- (a) immediately before IP completion day, a procurement has been commenced,
- (b) on or after IP completion day, a contract is awarded or any other act is done, pursuant to that procurement, and
- (c) that award or other act would, if it had occurred before IP completion day, have been covered by an exemption from requirements of the 2006 Regulations by virtue of any provision in those Regulations,

that award or other act is covered by that exemption on and after IP completion day regardless of whether the terms used to define that exemption in the 2006 Regulations would otherwise have been apt to continue to achieve that effect on and after IP completion day.

### **The Service Charges (Consultation Requirements) (England) Regulations 2003**

**14.**—(1) The Service Charges (Consultation Requirements) (England) Regulations 2003(a) are amended as follows.

(2) In regulation 2 (interpretation), in paragraph (1), in the definition of “public notice”, for the words from “published” to the end substitute “published, pursuant to the Public Contracts Regulations 2015, on the UK e-notification service (as defined by those Regulations)”.

### **The Provision of Services Regulations 2009**

**15.**—(1) The Provision of Services Regulations 2009(b) are amended as follows.

(2) In regulation 31 (certificates and other documents), in paragraph (5)(g), omit “(read with regulation 58(5))”.

### **The Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013**

**16.**—(1) The Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013(c) are amended as follows.

(2) In Schedule 2 (application of the Utilities Contracts Regulations 2016), in Part 1, in the entry relating to regulation 99 (information and documentation requirements), in the second column—

- (a) for ““the Commission”, in the first place it occurs,” substitute ““the Minister for the Cabinet Office” in sub-paragraph (a)”;
- (b) for “, in the second place it occurs,” substitute “as if the subsequent reference to “the Minister” in sub-paragraph (a)”;
- (c) for “(3), (8) and (9)” substitute “(3) and (7)(b) and (c).”

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(a) S.I. 2003/1987, amended by S.I. 2006/5, 2015/102; there are other amending instruments but none is relevant.

(b) S.I. 2009/2999, amended by S.I. 2015/102; there are other amending instruments but none is relevant.

(c) S.I. 2013/1582, amended by S.I. 2016/275; there are other amending instruments but none is relevant.



## PART 4

### AMENDMENT OF RETAINED DIRECT EU LEGISLATION

#### **Annex 16 to the EEA Agreement**

17. In Annex 16 to the EEA Agreement, omit point 6g (application of Commission Implementing Regulation (EU) 2015/1986).

#### **Regulation 2195/2002 of the European Parliament and of the Council**

18.—(1) Regulation 2195/2002 of the European Parliament and of the Council of 5th November 2002 on the Common Procurement Vocabulary (CPV) is amended as follows.

(2) For Articles 2 and 3 substitute the following—

##### *“Article 2*

1. The Minister for the Cabinet Office may make regulations amending the Annexes to this Regulation.
2. Regulations under this Article are to be made by statutory instrument.
3. A statutory instrument containing regulations under this Article is subject to annulment in pursuance of a resolution of either House of Parliament.
4. Regulations under this Article may make consequential, supplementary, incidental, transitional, transitory or saving provision.”.

(3) In Article 4, omit the second paragraph.

#### **Commission Decision 2006/211/EC**

19.—(1) Commission Decision 2006/211/EC of 8th March 2006 establishing that Article 30(1) of Directive 2004/17/EC of the European Parliament and of the Council coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors applies to electricity generation in England, Scotland and Wales is amended as follows.

(2) In Article 1, for “Directive 2004/17/EC” substitute “the Utilities Contracts Regulations 2016 and the Utilities Contracts (Scotland) Regulations 2016(a)”.

(3) Omit Articles 2 and 3.

#### **Commission Decision 2007/141/EC**

20.—(1) Commission Decision 2007/141/EC of 26th February 2007 establishing that Article 30(1) of Directive 2004/17/EC of the European Parliament and of the Council coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors applies to the supply of electricity and gas in England, Scotland and Wales is amended as follows.

(2) In Article 1, for “Directive 2004/17/EC” substitute “the Utilities Contracts Regulations 2016 and the Utilities Contracts (Scotland) Regulations 2016”.

(3) Omit Articles 2 and 3.

#### **Commission Decision 2010/192/EU**

21.—(1) Commission Decision 2010/192/EU of 29th March 2010 exempting exploration for and exploitation of oil and gas in England, Scotland and Wales from the application of Directive

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(a) S.S.I. 2016/49.

2004/17/EC of the European Parliament and of the Council coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors is amended as follows.

(2) In Article 1, for “Directive 2004/17/EC” substitute “the Utilities Contracts Regulations 2016 and the Utilities Contracts (Scotland) Regulations 2016”.

(3) Omit Article 2.

### **Commission Implementing Regulation (EU) 2015/1986**

22. Commission Implementing Regulation (EU) No 2015/1986 of 11th November 2015 establishing standard forms for the publication of notices in the field of public procurement and repealing Implementing Regulation (EU) No 842/2011 is revoked.

### **Commission Implementing Regulation (EU) 2016/7**

23.—(1) Commission Implementing Regulation (EU) No 2016/7 of 5th January 2016 establishing the standard form for the European Single Procurement Document is amended as follows.

(2) In Article 1—

- (a) for the words from the beginning to “2016, the” substitute “The”;
- (b) for “European single procurement document” substitute “Single Procurement Document”;
- (c) for “Article 59 of Directive 2014/24/EU” substitute “regulation 59 of the Public Contracts Regulations 2006 and regulation 60 of the Public Contracts (Scotland) Regulations 2015(a).

### **Commission Implementing Decision (EU) 2017/1870**

24.—(1) Commission Implementing Decision (EU) 2017/1870 of 16th October 2017 on the publication of the reference of the European standard on electronic invoicing and the list of its syntaxes pursuant to Directive 2014/55/EU of the European Parliament and of the Council is amended as follows.

(2) After Article 1 insert—

#### *“Article 1A*

1. The Minister for the Cabinet Office may make regulations—
  - (a) amending Article 1 so as to substitute—
    - (i) a reference to a different standard;
    - (ii) a different reference to the same standard;
  - (b) amending Article 1 and the Annex so as to substitute, add or remove references to syntaxes.
2. Regulations under this Article are to be made by statutory instrument.
3. A statutory instrument containing regulations under this Article is subject to annulment in pursuance of a resolution of either House of Parliament.
4. Regulations under this Article may make consequential, supplementary, incidental, transitional, transitory or saving provision.”.

(3) Omit Article 2.

(4) In the Annex, for “3(2) of Directive 2014/55/EU” substitute “1”.

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(a) S.S.I 2015/446, amended by S.S.I 2019/112; there are other amending instruments but none is relevant.

## PART 5

### CESSATION OF RIGHTS ETC.

#### **Cessation of certain prohibitions on the grounds of nationality**

**25.** Any rights, powers, liabilities, obligations, restrictions, remedies and procedures in the field of public procurement which—

- (a) continue by virtue of section 4(1) of the European Union (Withdrawal) Act 2018(a); and
- (b) are derived from—
  - (i) Article 18 of the Treaty on the Functioning of the European Union;
  - (ii) Article 4 of the EEA Agreement;
  - (iii) Article 9 of the Agreement establishing an Association between the European Economic Community and Turkey signed in Ankara on 12th September 1963(b),

cease to be recognised and available in domestic law (and to be enforced, allowed and followed accordingly) when this regulation comes into force, to the extent that they do not so cease by virtue of regulation 4 of the Freedom of Establishment and Free Movement of Services (EU Exit) Regulations 2019(c).

#### **Cessation of rights etc. under certain international agreements**

**26.—**(1) Any rights, powers, liabilities, obligations, restrictions, remedies and procedures in the field of public procurement which—

- (a) continue by virtue of section 4(1) of the European Union (Withdrawal) Act 2018; and
- (b) are derived from any of the agreements specified in paragraph (2),

cease to be recognised and available in domestic law (and to be enforced, allowed and followed accordingly) when this regulation comes into force.

(2) The agreements are—

- (a) Agreement in the form of an exchange of letters between the European Community and the United States of America on government procurement signed in Washington and Brussels on 30th May 1995(d);
- (b) Agreement between the European Community and the State of Israel on government procurement signed in Brussels on 10th July 1997(e);
- (c) Interim Agreement on trade and trade-related matters between the European Community, of the one part, and the United Mexican States, of the other part signed in Brussels on 8th December 1997(f);
- (d) Agreement between the European Community and the Swiss Confederation on certain aspects of government procurement signed in Luxembourg on 21st June 1999(g);
- (e) Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the former Yugoslav Republic of Macedonia, of the other part signed by exchange of letters in Luxembourg on 9th April 2001(h);

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(a) 2018 c. 16; section 4(1) is prospectively amended by section 25(3) of the European Union (Withdrawal Agreement) Act 2020 (c. 1).

(b) This Agreement was concluded, approved and confirmed on behalf of the Community by Council Decision 64/732/EEC of 23 December 1963, and is a pre-accession treaty falling within paragraph 7 of Part 1 of Schedule 1 to the European Communities Act 1972 (c. 68).

(c) S.I. 2019/1401.

(d) OJ No L 134, 20.6.95, p 26.

(e) OJ No L 202, 30.7.97, p 85.

(f) OJ No L 226, 13.8.98, p 25.

(g) OJ No L 114, 30.4.2002, p 430.

(h) OJ No L 84, 20.3.2004, p 3 (the exchange of letters begins at p 3, the text of the Agreement begins at p 13).

- (f) Agreement establishing an association between the European Community and its Member States, of the one part, and the Republic of Chile, of the other part signed in Brussels on 11th May 2002**(a)**;
- (g) Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Albania, of the other part signed in Luxembourg on 12th June 2006**(b)**;
- (h) Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Montenegro, of the other part signed in Luxembourg on 15th October 2007**(c)**;
- (i) Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Serbia, of the other part signed in Luxembourg on 29th April 2008**(d)**;
- (j) Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and Bosnia and Herzegovina, of the other part signed in Luxembourg on 16th June 2008**(e)**;
- (k) Economic Partnership Agreement between the CARIFORUM States, of the one part, and the European Community and its Member States, of the other part signed in Bridgetown, Barbados on 15th October 2008**(f)**;
- (l) Free Trade Agreement between the European Union and its Member States, of the one part, and the Republic of Korea, of the other part signed in Brussels on 6th October 2010**(g)**;
- (m) Partnership and Cooperation Agreement between the European Union and its Member States, of the one part, and the Republic of Iraq, of the other part signed in Brussels on 11th May 2012**(h)**;
- (n) Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part signed in Brussels on 21st March 2014**(i)**;
- (o) Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Georgia, of the other part signed in Brussels on 27th June 2014**(j)**;
- (p) Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Moldova, of the other part signed in Brussels on 27th June 2014**(k)**;
- (q) Stabilisation and Association Agreement between the European Union and the European Atomic Energy Community, of the one part, and Kosovo, of the other part signed in Strasbourg on 27th October 2015**(l)**;
- (r) Comprehensive and Enhanced Partnership Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Armenia, of the other part signed in Brussels on 24th November 2017**(m)**.

(3) Where applicable, the specification of an agreement by paragraph (2) includes that agreement as amended before IP completion day.

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- (a) OJ No L 352, 30.12.2002, p 3.
  - (b) OJ No L 107, 28.4.2008, p 166.
  - (c) OJ No L 108, 29.4.2010, p 3.
  - (d) OJ No L 278, 18.10.2013, p 16.
  - (e) OJ No L 164, 30.6.2015, p 2.
  - (f) OJ No L 289/I, 30.10.2008, p 3.
  - (g) OJ No L 127, 14.5.2011, p 6.
  - (h) OJ No L 204, 31.7.2012, p 20.
  - (i) OJ No L 161, 29.5.2014, p 3.
  - (j) OJ No L 261, 30.8.2014, p 4.
  - (k) OJ No L 260, 30.8.2014, p 4.
  - (l) OJ No L 71, 16.3.2016, p 3.
  - (m) OJ No L 23, 26.1.2018, p 4.

Date

*Name*  
Minister for the Cabinet Office

## SCHEDULE TRANSITIONAL ETC. PROVISION

Regulation 1(5)

### PART 1 INTERPRETATION

#### Interpretation of Schedule

1.—(1) In this Schedule—

“amendment” includes modification and revocation;

“the Procurement Regulations” means the following and, in relation to any procedure, means whichever of the following applies to that procedure—

- (a) the Public Contracts Regulations 2006;
- (b) the Utilities Contracts Regulations 2006;
- (c) the Public Contracts Regulations 2015;
- (d) the Concession Contracts Regulations 2016;
- (e) the Utilities Contracts Regulations 2016;

“the second commencement date” is defined by paragraph 10;

“steady state amendments” is defined by paragraph 2.

(2) In this Schedule, the following have the same meaning as in the Procurement Regulations—

- (a) contracting authority;
- (b) design contest;
- (c) dynamic purchasing system;
- (d) economic operator;
- (e) framework agreement;
- (f) notice on the existence of a qualification system;
- (g) periodic indicative notice;
- (h) prior information notice;
- (i) utility;
- (j) voluntary transparency notice.

(3) None of the savings in this Schedule implies any limitation of the scope of any of the other savings in this Schedule(a).

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(a) For example, regulation 60(2) of the Concession Contracts Regulations 2016 is mentioned only in paragraph 8, which saves its previous wording in certain cases, but that does not prevent the more general saving in paragraph 3 from applying to save the previous wording of regulation 60(2) in other cases; nor does the slight overlap between those paragraphs (in cases in which a contract might, before IP completion day, have been awarded but not yet ‘finalised’ as defined in paragraph (3) affect the interpretation of either saving.

## PART 2

### PROCUREMENTS PENDING ETC. ON IP COMPLETION DAY

#### Meaning of “steady state amendments”

2. In this Part, “steady state amendments” means—
- (a) amendments made by these Regulations; and
  - (b) any other amendments, including future amendments, to the Procurement Regulations that—
    - (i) come into force on, or begin to apply from, IP completion day or any time after IP completion day; and
    - (ii) are not made by or under any of sections 7A, 7B, 7C, 8B and 8C of the European Union (Withdrawal) Act 2018(a).

#### Saving for procedures launched, but not finalised, before IP completion day

3.—(1) Steady state amendments do not affect any procedure launched by a contracting authority or a utility under the Procurement Regulations if the procedure —

- (a) was launched before IP completion day, and
- (b) was not yet finalised by IP completion day.

(2) But regulation 61 (recourse to e-Certis) of the Public Contracts Regulations 2015 (which is omitted by regulation 6(42) of these Regulations) ceases to be saved at the beginning of the day that is 9 months after the day on which IP completion day falls.

#### *Meaning of ‘procedure’*

- (3) In sub-paragraph (1), “procedure” includes—
- (a) a procedure using a dynamic purchasing system;
  - (b) a procedure for which the call for competition takes the form of—
    - (i) a prior information notice;
    - (ii) a periodic indicative notice; or
    - (iii) a notice on the existence of a qualification system.

#### *Meaning of ‘launched’*

- (4) For the purposes of sub-paragraph (1), a procedure is launched—
- (a) when a call for competition or any other invitation to submit applications has been made in accordance with the Procurement Regulations;
  - (b) where the Procurement Regulations do not require such a call or invitation, when the contracting authority or utility contacted economic operators in relation to the specific procedure.

#### *Meaning of ‘finalised’*

- (5) For the purposes of sub-paragraph (1), a procedure is finalised—
- (a) upon publication of a contract award notice in accordance with the Procurement Regulations;
  - (b) where the Procurement Regulations do not require the publication of such a notice, upon conclusion of the relevant contract;

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(a) 2018 c. 16; sections 7A, 7B, 7C, 8B and 8C were inserted by the European Union (Withdrawal Agreement) Act 2020 (c. 1), sections 5, 6, 26(2), 18 and 21 respectively.

- (c) where the contracting authority or utility decided not to award a contract, upon informing the tenderers, or persons otherwise entitled to submit applications, of the reasons why the contract was not awarded.

#### **Saving for call-off procedures under certain framework agreements**

4.—(1) If the condition in sub-paragraph (2) is met, steady state amendments do not affect any procedure relating to the performance of a framework agreement, including the award of contracts based on such an agreement, under—

- (a) regulation 33(4) to (11) of the Public Contracts Regulations 2015;
  - (b) regulation 51(4) to (6) of the Utilities Contracts Regulations 2016.
- (2) The condition is that the framework agreement—
- (a) was concluded before IP completion day and had neither expired nor been terminated before IP completion day; or
  - (b) was concluded after IP completion day in accordance with a procedure to which paragraph 3 applied.

#### **Transitional modification of the Procurement Regulations**

5.—(1) In relation to a procedure to which paragraph 3 or 4 applies, the Procurement Regulations are to be read, on and after IP completion day, and so far as the context permits or requires, as if—

- (a) any reference (however expressed) to a member State or EEA state included the United Kingdom;
  - (b) any reference (however expressed) to—
    - (i) EU law;
    - (ii) any particular EU Treaty or any part of it;
    - (iii) any EU instrument, or other document of an EU entity or of the EU, or any part of any such instrument or document;
    - (iv) any part of EU law not falling within sub-paragraph (ii) or (iii);
    - (v) any tax, duty, levy or interests of the EU, or
    - (vi) any arrangements involving, or otherwise relating to, the EU of a kind not falling within sub-paragraph (i), (ii), (iii), (iv) or (v),were a reference to any such thing (including any such thing as may have existed previously) so far as it is applicable to and in the United Kingdom by virtue of the relevant withdrawal provisions;
  - (c) any reference (however expressed) to the area of the EU or of the EEA included the United Kingdom;
  - (d) any reference (however expressed) to a citizen of the EU or a national of the EEA included a United Kingdom national (within the meaning given by Article 2(d) of the withdrawal agreement);
  - (e) any reference to an enforceable EU obligation were a reference to an obligation that is enforceable by virtue of section 7A or 7B of the European Union (Withdrawal) Act 2018; and
  - (f) such other modifications were made as are necessary for any purpose of the relevant withdrawal provisions and are capable of being ascertained from any such purpose or otherwise from those provisions.
- (2) In sub-paragraph (1), “relevant withdrawal provisions” means—
- (a) Title 8 of Part 3 of the withdrawal agreement (ongoing public procurement and similar procedures);

- (b) Title 5 of Part 3 of the EEA EFTA separation agreement (ongoing public procurement and similar procedures).

## PART 3

### PROVISIONS COMMENCED ON IP COMPLETION DAY

#### **Procurement involving contracting authorities or utilities from other member States**

- 6.—(1) This paragraph applies in relation to the omission, by these Regulations, of—
- (a) regulation 39 of the Public Contracts Regulations 2015 (procurement involving contracting authorities from other member States);
  - (b) regulation 57 of the Utilities Contracts Regulations 2016 (procurement involving utilities from other member States).
- (2) Those omissions do not imply—
- (a) any prohibition of the activities authorised by the omitted regulations (which activities might, accordingly, be carried on to any extent that would have been lawful if the omitted regulations had never existed); or
  - (b) that any matters provided for in those regulations are necessarily to have a different effect unless so required by applicable law (including rules for resolving any conflicts between the laws of different jurisdictions).

#### **Saving of implied power to terminate contracts**

- 7.—(1) This paragraph applies where—
- (a) a contract was awarded before IP completion day; and
  - (b) immediately before IP completion day, the contract contained a power—
    - (i) implied by regulation 73(3) of the Public Contracts Regulations 2015 to terminate the contract on the ground mentioned in regulation 73(1)(c) of those Regulations;
    - (ii) implied by regulation 44(3) of the Concession Contracts Regulations 2016 to terminate the contract on the ground mentioned in regulation 44(1)(c) of those Regulations; or
    - (iii) implied by regulation 89(3) of the Utilities Contracts Regulations 2016 to terminate the contract on the ground mentioned in regulation 89(1)(c) of those Regulations.
- (2) On and after IP completion day, that power continues despite the omission, by these Regulations, of regulation 73(1)(c), 44(1)(c) or 89(1)(c), as the case may be.

#### **Saving of regulation 60(2) of the Concession Contracts Regulations 2016**

8. The amendment made by these Regulations to regulation 60(2) of the Concession Contracts Regulations 2016 (application of the first ground of ineffectiveness) does not apply where the contract referred to in regulation 60(2) was awarded before IP completion day.

#### **Saving in relation to voluntary transparency notices**

- 9.—(1) This paragraph applies in relation to the amendments made by these Regulations to—
- (a) regulation 99(3) and (4) of the Public Contracts Regulations 2015;
  - (b) regulation 114(3) and (4) of the Utilities Contracts Regulations 2016;
  - (c) regulation 60(3) and (4) of the Concession Contracts Regulations 2016.



(2) Those amendments do not apply in relation to a voluntary transparency notice that was published in the Official Journal of the European Union if the notice was sent, before IP completion day, to be so published.

## PART 4

### PROVISIONS COMMENCED 12 MONTHS AFTER IP COMPLETION DAY

#### **Saving in relation to procurements commenced before regulations 7, 9 and 11 come into force**

**10.** The amendments made by regulations 7, 9 and 11 do not affect any procurement commenced before the date on which those amendments come into force (“the second commencement date”).

**11.** For the purposes of this Part, a procurement has been commenced before the second commencement date if, before that date—

- (a) a notice has been sent to the UK e-notification service in accordance with applicable Procurement Regulations in order to—
  - (i) invite offers or requests to be selected to tender for or to negotiate in respect of a proposed contract, framework agreement or dynamic purchasing system; or
  - (ii) publicise an intention to hold a design contest;
- (b) the contracting authority or utility has had published any form of advertisement seeking offers or expressions of interest in a proposed contract, framework agreement or dynamic purchasing system; or
- (c) the contracting authority or utility has contacted any economic operator in order to—
  - (i) seek expressions of interest or offers in respect of a proposed contract, framework agreement or dynamic purchasing system; or
  - (ii) respond to an unsolicited expression of interest or offer received from that economic operator in relation to a proposed contract, framework agreement or dynamic purchasing system.

**12.** For the purposes of this Part, a procurement covers the whole of the procedures which stem from that commencement.

**13.** Accordingly, for example, if a contract notice in relation to a proposed framework agreement under the Public Contracts Regulations 2015 has, before the second commencement date, been sent as described in paragraph 11(a), paragraph 10 applies to the award of any contracts based on that framework agreement regardless of whether the relevant specific procedure for the award of any such contract under regulation 33(7) to (11) of the Public Contracts Regulations 2015 had itself been commenced before the second commencement date.

**14.** Procedures taken for the purpose of modifying a contract or framework agreement are not to be regarded, for the purposes of paragraph 12, as stemming from the commencement of the procurement from which the award of that contract or framework agreement had itself stemmed.

**15.** A procedure commenced as described in paragraph 11(a)(i), (b) or (c) is not to be regarded, for the purposes of paragraph 11, as stemming from the commencement of any design contest that had previously been held in relation to the subject-matter of the procurement.

#### **EXPLANATORY NOTE**

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

These Regulations revoke and replace the Public Procurement (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/560 – “the first exit SI”) and the Public Procurement (Amendment

etc.) (EU Exit) (No. 2) Regulation 2019 (S.I. 2019/623 – “the second exit SI”) which amended the first exit SI. As a result, the revoked Regulations will not come into force.

These Regulations are made partly in exercise of the powers conferred by section 8(1) of the European Union (Withdrawal) Act 2018 (c. 16) (“the 2018 Act”) in order to address failures of retained EU law to operate effectively and other deficiencies (in particular under paragraphs (a), (b), (d), (e), (f) and (g) of section 8(2)) arising from the withdrawal of the UK from the European Union. Many of the provisions in these Regulations are unchanged from the first exit SI (as amended by the second exit SI), but additional deficiencies are addressed and some of the original provisions are changed.

These Regulations make amendments in the field of public procurement. Part 2 amends primary legislation. Part 3 amends subordinate legislation. In particular, Chapters 1, 2 and 3 of Part 3 amend the Public Contracts Regulations 2015 (S.I. 2015/102), the Concession Contracts Regulations 2016 (S.I. 2016/273) and the Utilities Contracts Regulations 2016 (S.I. 2016/274), respectively, and Chapter 4 amends other subordinate legislation. Part 4 amends, and in one case revokes, retained direct EU legislation. Part 5 provides for certain rights etc. derived from certain international agreements to cease.

These Regulations are also made partly in exercise of the powers conferred by section 8B(1) of the 2018 Act in order to implement Title 8 (ongoing public procurement and similar procedures) of Part 3 of the withdrawal agreement and the corresponding Title 5 of Part 3 of the EEA EFTA separation agreement<sup>(a)</sup>. In particular, the Schedule to these Regulations differs markedly from the Schedule to the first exit SI in providing for procedures that are ongoing on IP completion day to continue without being subject to any substantive changes in the procurement rules applicable to them. The Schedule also contains various other savings that are unconnected with those agreements.

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

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(a) Section 8B was inserted by section 18 of the European Union (Withdrawal Agreement) Act 2020 (c. 1). For the meaning of “withdrawal agreement”, “EEA EFTA separation agreement” and “IP completion day” see section 39(1) of the latter Act.

**EXPLANATORY MEMORANDUM TO**  
**THE PUBLIC PROCUREMENT (AMENDMENT ETC.) (EU EXIT) REGULATIONS**  
**2020**

**2020 No. [XXXX]**

**1. Introduction**

- 1.1 This explanatory memorandum has been prepared by the Cabinet Office and is laid before Parliament by Command of Her Majesty.

**2. Purpose of the instrument**

- 2.1 This instrument is being made in order to address deficiencies in retained EU law in relation to public procurement arising from the withdrawal of the United Kingdom (UK) from the European Union (EU) and to give effect to Title 8 of Part 3 of the Withdrawal Agreement and Title 5 of Part 3 of the EEA EFTA Separation Agreement (together, the relevant withdrawal provisions), to ensure that retained EU law in the field of public procurement operates effectively after the Implementation Period ends on 31 December 2020.
- 2.2 This instrument revokes the Public Procurement (Amendment etc.) (EU Exit) Regulations 2019 (2019/560) (the 2019 EU Exit Regulations) and the Public Procurement (Amendment etc.) (EU Exit) (No. 2) Regulations 2019 (2019/623) (which amends the 2019 EU Exit Regulations) before they come into force. Those Regulations were made before the UK and EU had entered into the Withdrawal Agreement or the EEA EFTA Separation Agreement.

***Explanations***

***What did any relevant EU law do before exit day?***

- 2.3 The EU legal framework for the regulation of public procurement by public authorities and utilities consists of a package of directives (the EU Procurement Directives) that govern procedures for the award of public contracts over specified financial thresholds to suppliers of works, goods and services. They are aimed at ensuring that the EU public procurement market is open and competitive and that suppliers are treated equally and fairly.
- 2.4 The EU Procurement Directives were implemented for England, Wales and Northern Ireland by the Public Contracts Regulations 2015, the Utilities Contracts Regulations 2016 and the Concession Contracts Regulations 2016 (the Regulations).
- 2.5 This instrument also relates to certain treaty provisions and directly applicable EU legislation in the field of public procurement, such as Regulation 2195/2002 on the Common Procurement Vocabulary that aims to standardise the references used by contracting authorities and entities to describe procurement contracts. Further information on this legislation can be found in paragraphs 7.19 to 7.22 and 7.36 to 7.42 below of this Memorandum

Why is it being changed?

- 2.6 This instrument implements the UK's obligations in respect of ongoing public procurement and procedures relating to the performance of ongoing framework agreements under Withdrawal Agreement and the EEA EFTA Separation Agreement.
- 2.7 It also fixes deficiencies under the power in section 8 of the European Union (Withdrawal) Act 2018. It addresses deficiencies in retained EU law that arise as a result of the withdrawal of the UK from the EU. It amends or removes provisions that are inoperable, inappropriate or would otherwise prevent the legislation from functioning effectively after exit day within the meaning of section 8 of European Union (Withdrawal) Act 2018. For example, provisions that relate to the publication of notices in the Official Journal of the EU (OJEU) and to the submission of reports to the European Commission (the Commission) would no longer be appropriate because they impose requirements and confer functions in respect of EU entities that no longer have such functions in relation to the UK after exit. These have been removed or replaced with provisions that relate to the functions of 'domestic' bodies and entities. Other examples are given in section 7 below.

What will it now do?

- 2.8 In most respects, the framework and principles underlying the procurement regime remain unchanged. Changes have been limited to those that are appropriate to reflect the UK's new status outside the EU, and to give effect to the Withdrawal Agreement. Changes are made only to the extent permitted to correct deficiencies.

### **3. Matters of special interest to Parliament**

*Matters of special interest to the [Joint Committee on Statutory Instruments]*

- 3.1 None.

*Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)*

- 3.2 The territorial application of this instrument varies between provisions.
- 3.3 Parts 2 and 3 of the instrument make amendments to primary and secondary legislation. Those amendments are of the same territorial application as the underlying provision being amended so that, for example, the amendments to the Greater London Authority Act 1999 made by regulation 3 apply only in respect of England and Wales; the amendments to the Equality Act 2010 made by regulation 4 apply to England, Wales and Scotland; and the amendments to the Public Contracts Regulations 2015 effected by regulations 6 and 7 apply principally in respect of England, Wales and Northern Ireland only (the exception being paragraphs (61) to (63) of regulation 6 which amend provisions which extend to Scotland and apply in respect of contracting whose functions are not wholly or mainly Scottish devolved functions). Part 4 of the instrument makes amendments to retained direct EU legislation for the whole of the United Kingdom and therefore applies to England, Wales, Northern Ireland and Scotland (the exception being regulation 23 which does not extend to Scotland). The same is the case in respect of Part 5.

### **4. Extent and Territorial Application**

- 4.1 The territorial extent of this instrument is the United Kingdom.

4.2 The territorial application of this instrument is set out in section 3.3 under “Matters relevant to Standing Orders No. 83P of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)”.

## **5. European Convention on Human Rights**

5.1 The Minister for the Cabinet Office has made the following statement regarding Human Rights:

“In my view the provisions of the Public Procurement (Amendments etc.)(EU Exit) Regulations 2020 are compatible with the Convention rights.”

## **6. Legislative Context**

### *Background*

- 6.1 The EU legal framework for the regulation of public procurement by public authorities and utilities consists of a package of directives (Directive 2014/24/EU on public procurement, Directive 2014/25/EU on procurement by entities operating in the water, energy, transport and postal services sectors (utilities), Directive 2014/23/EU on the award of concession contracts and Directive 89/665/EEC and Directive 92/13/EEC, as amended, on remedies and review procedures for public procurement and on the procurement procedures of entities operating in the water, energy, transport and telecommunication sectors).
- 6.2 The EU Procurement Directives govern the procedures for the award of contracts over specified financial thresholds, subject to certain exclusions from their scope. The legal framework is based on the principles of transparency, non-discrimination, equal treatment and proportionality. Its intention is to create an open public procurement market that supports the free movement of supplies, services and works within the EU. The EU is a member of the WTO Agreement on Government Procurement (GPA), and is party to a number of international agreements with countries outside the EU that contain procurement provisions. The EU Procurement Directives reflect the obligations arising out of membership of these agreements as well as the EEA Agreement.
- 6.3 The EU Procurement Directives were implemented for England, Wales and Northern Ireland by the Public Contracts Regulations 2015, the Utilities Contracts Regulations 2016 and the Concession Contracts Regulations 2016 (the Regulations).
- 6.4 The Regulations apply principally to England, Wales and Northern Ireland. The Scottish Ministers transposed the EU Procurement Directives separately, in parallel sets of regulations. The Defence and Security Public Contract Regulations 2011 (the 2011 Regulations), implements a related EU scheme for Defence procurement and are outside the scope of the present instrument. (A separate draft instrument making further amendments to the Defence and Security Public Contracts (Amendment) (EU Exit) Regulations 2019, to be made by the Secretary of State for Defence, is being laid on the same day as this instrument). The Public Contracts Regulations 2015 also include (in Part 4), a package of rules that are domestic in origin. Part 4 does not apply to contracting authorities with functions that are wholly or mainly devolved to Wales, Scotland and Northern Ireland.
- 6.5 In addition, Directive 2014/55/EU of the European Parliament and of the Council of 16th April 2014 on electronic invoicing in public procurement (the E-invoice Directive), requires member States to adopt the necessary provisions to ensure that

contracting authorities and other contracting entities are precluded from refusing electronic invoices issued as a result of the performance of contracts which fall within the scope of the EU Procurement Directives, where those electronic invoices comply with the European Standard on electronic invoicing. The Public Procurement (Electronic Invoices etc.) Regulations 2019 implements the E-invoicing Directive, including in respect of the Regulations.

*The 2019 EU Exit Regulations and how the present instrument differs*

- 6.6 The 2019 EU Exit Regulations were made to fix certain deficiencies in retained EU law relating to public procurement. Those Regulations were subsequently amended in intricate ways. Rather than making further amendments to the 2019 EU Exit Regulations, the present instrument revokes them and starts again. Section 7 below explains ‘what is being and done and why’ in relation to the whole instrument. Most of what is being done is unchanged from the 2019 EU Exit Regulations (as already amended). The main changes are as follows.
- 6.7 The relevant withdrawal provisions require major changes to the transitional approach (see section 7, paragraphs 7.62 to 7.65 below). This means that the Schedule to this instrument is very different from the Schedule to the 2019 EU Exit Regulations. For the same reason, the amendments made to the Public Contract Regulations 2006 and the Utilities Contract Regulations 2006 (the 2006 Regulations), most of the provisions of which apply only to transitional cases, are very different from those made by the 2019 EU Exit SI (see section 7, paragraphs 7.55 to 7.57 below).
- 6.8 Additional, or altered, fixes are made to various provisions of the Regulations concerning common technical specifications (see paragraph 7.51 below), the sterling amounts of various thresholds (see paragraph 7.35 below), exemptions for the procurement of legal services (see paragraph 7.33 below), advanced electronic signatures (see paragraph 7.52 below), exemptions relating to the award of concession contracts (on the basis of special or exclusive rights, or for air transport services (see paragraph 7.53 below)), tenders comprising products originating in third countries (see paragraph 7.54 below).
- 6.9 Certain amendments to the Regulations that would otherwise have come into force 18 months after the end of the Implementation Period will now do so 12 months after its end (see paragraphs 7.27 to 7.32 below).
- 6.10 Amendments are made to retained direct EU legislation concerning the European Single Procurement Document and electronic invoicing in the public procurement context (see paragraph 7.41 below in relation to electronic invoicing). A new technical amendment is also made to Article 16 of the EEA Agreement. Certain rights etc derived from treaty provisions that were not switched off by the 2019 EU Exit Regulations are now switched off (see paragraphs 7.19 to 7.22 below).
- 6.11 The opportunity has also been taken to make various minor drafting improvements.

## **7. Policy background**

***What is being done and why?***

- 7.1 This instrument corrects deficiencies arising as a result of the UK’s withdrawal from the EU. Changes have been made where they are appropriate and within the scope of section 8 of the European Union (Withdrawal) Act 2018. The aim is for the Regulations to reflect the UK’s status as a non-Member State at the same time as

ensuring they continue to facilitate a functioning UK internal market and comply with the requirements of the GPA (which the UK intends to join in its own right). Where possible, amendments support a level playing field between economic operators established outside the UK, whether or not they are member States.

'Steady state' amendments and the relevant withdrawal provisions

- 7.2 The 'steady state' amendments apply to new procurement procedures commenced after the end of the Implementation Period to ensure the Regulations operate effectively. For example, provisions that relate to the publication of notices in the Official Journal of the EU (OJEU), and to the submission of reports to the European Commission (the Commission), have been removed or replaced with provisions that relate to the functions of 'domestic' bodies and entities; retained direct EU legislation that contains deficiencies arising out of the UK's withdrawal is amended or revoked; in respect of procurement procedures commenced under these which concluded before the end of the Implementation Period, the steady state amendments remove any ongoing obligations on contracting authorities and entities to report to the Commission. These and other examples are detailed further in paragraphs 7.5 to 7.61 below.
- 7.3 The relevant withdrawal provisions provide for the continued application of the general principles of Union law applicable to the award of public contracts, the EU Procurement Directives and certain direct EU legislation governing public procurement procedures. These procedures include those which, before the end of the Implementation Period, were launched but not yet finalised (normally when a contract has been awarded and the fact published or notified to those involved), and, in respect of live framework agreements (and the award of contracts based on such agreements), those concluded before the end of the Implementation Period.
- 7.4 The Schedule to the instrument provides certain savings and modifications to the Regulations to ensure that the Regulations are applied in accordance with the relevant withdrawal provisions (see paragraph 7.62 below).

The UK e-notification service

- 7.5 This instrument replaces the requirement to send notices to the EU Publications Office (for publication in OJEU via Tenders Electronic Daily (TED)), with a requirement to submit notices to a new UK e-notification service. This is intended to reflect the publication requirements in the GPA.
- 7.6 Contract opportunities that would have been published on OJEU/TED will be published on the new UK e-notification service. Publication will take place electronically and the service will be free for all users.
- 7.7 The instrument makes no substantive changes to the restriction on the publication of notices at a local level, for example, on Contracts Finder, Sell2Wales or e-TendersNI. Notices must not be published on such national portals before they are published on the UK e-notification service.

Transfer of functions

- 7.8 The EU Procurement Directives provide the Commission with a number of functions to fulfil its supervisory role over EU public procurement that are reflected in retained EU law and that it would not be appropriate to retain after the end of the Implementation Period. There are also a number of delegated powers to make tertiary

legislation whose effects it is appropriate to recreate in the Regulations by conferring those powers on UK public authorities.

- 7.9 This instrument transfers the Commission's function to revalue the main financial thresholds to the Minister for the Cabinet Office (Minister for the Cabinet Office). The EU Procurement Directives require the Commission to review these thresholds every two years to establish whether they continue to correspond to the relevant thresholds laid down by the GPA (see, for example, Article 6 of Directive 2014/24/EU). If they do not correspond, the Commission, by delegated act, makes the necessary amendment to the euro figures set out in the EU Directive to bring them back into line. At the same time, the Commission also determines the sterling value of these thresholds. The Regulations currently make ambulatory reference to the thresholds laid down in the relevant EU Directive (as determined in sterling by the Commission). This instrument replaces these ambulatory cross-references with the actual sterling figures (see paragraph 7.35 below), and confers on Minister the power to make regulations following a biennial review. The Minister for the Cabinet Office will be required to conduct the reviews on the same basis as the Commission, however, rather than adopting the Commission's two-stage process, the Minister for the Cabinet Office must value the GPA thresholds, which are expressed in special drawing rights, directly into the equivalent sterling values. The conversion rates to be used for this purpose are those published in the monthly International Financial Statistics published by the International Monetary Fund, which is the methodology applicable under the GPA.
- 7.10 The Commission has the power to update the exceptions to the circumstances in which contracting authorities are obliged to require the use of electronic means of communication in light of technological developments and to update the technical requirements relating to tools and devices for the electronic receipt of tenders and requests to participate to take account of technological developments. The instrument transfers these powers to the Minister for the Cabinet Office. The scope of the Minister for the Cabinet Office's powers to amend the Regulations has been closely based on the scope of the Commission's existing powers to amend the corresponding passages of the EU Procurement Directives (for example, new regulation 22A which this instrument inserts into the Public Contracts Regulations 2015, is based on the powers conferred by Article 22(7) of Directive 2014/24/EU). Regulations made pursuant to the Minister for the Cabinet Office's powers will be subject to the prior consent of Welsh Ministers or the relevant Northern Ireland Department in respect of devolved Welsh or Northern Ireland authorities.
- 7.11 Provision has been made to confer on the Minister for the Cabinet Office the power to treat the list of international agreements in the field of environmental, social and labour law set out in the annexes to the EU Directives as though certain international agreements were removed and others that are not covered were listed. An equivalent, delegated power to amend the list of international agreements in these annexes currently rests with the Commission.
- 7.12 This is relevant to the ability of a contracting authority to refuse to award a contract to the bidder submitting the most economically advantageous tender where the contracting authority has established that the bidder does not comply with certain applicable obligations in the field of social, environmental and labour law. The power can only be exercised by the Minister for the Cabinet Office in relation to devolved



authorities with the prior consent of Welsh Ministers or, as the case may be, the relevant Northern Ireland Department.

- 7.13 Requirements to provide the Commission with reports have been either removed or converted into an obligation to provide reports to the Minister for the Cabinet Office. Where the power to request reports has been transferred, a similar power has been created for the Welsh Ministers and the relevant Northern Ireland Department in respect of devolved Welsh and Northern Ireland authorities.

Article 346 of the Treaty on the Functioning of the European Union (TFEU)

- 7.14 The Regulations do not apply to contracts that fall within the scope of the 2011 Regulations. In addition, the Regulations are subject to the derogation set out in Article 346 of TFEU that has the effect of overriding the obligation to comply with the Regulations or particular requirements in them, where this would undermine EU member States' essential security interests.
- 7.15 To ensure that contracting authorities can continue to override particular requirements of the Regulations where necessary, this instrument inserts provisions (which correspond to amendments made to the 2011 Regulations by the Defence and Security Public Contracts (Amendment) (EU Exit) Regulations 2019), which replace the cross-reference to Article 346 TFEU with the text of Article 346 (with some minor adjustments to make it operable).
- 7.16 It is arguable that Article 346 TFEU has direct effect through section 2(1) of the European Communities Act 1972, and so is retained through section 4 of the European Union (Withdrawal) Act 2018 in some circumstances. However, given the Regulations are made under the alternative implementing powers in section 2(2) of the European Communities Act 1972, inserting the text of Article 346 is considered to provide the most legal certainty in ensuring the continued effect of Article 346 after exit.
- 7.17 Consideration was also given to whether Article 346(1)(a) should be replicated in the instrument. Regulation 15(2)(b) of the Public Contracts Regulations 2015 and parallel provisions in the Utilities Contracts Regulations 2016 and the Concession Contracts Regulations 2016 (the parallel provisions), (which permit procurements to be excluded from the application of the Regulations where they would oblige a contracting authority to supply information which would be contrary to the UK's essential security interests), arguably already replicate its effect. However, the courts have not clarified the interaction between Article 346(1)(a) TFEU and regulation 15(2)(b) (or the parallel provisions) and a strict application of regulation 15(2)(b) (or the parallel provisions), disapplying the entirety of the Regulations in all circumstances could be considered disproportionate, so it was considered prudent to make the position entirely clear by replicating Article 346(1)(a) in the Regulations.
- 7.18 Article 346(1)(b) provides that a member State may take such measures as it considers necessary for the protection of the essential interests of its security that are connected with the production of, or trade in, arms, munitions and war material. The scope of products referred to is determined by a list that was drawn up by the Council of Ministers of the EEC (as it then was), in 1958 (the 1958 List). The amendments made by this instrument reproduce the significance of the 1958 List (for example, the new paragraphs (2) to (6) that this instrument substitutes for regulation 3(2) of the Public Contracts Regulations 2015). Article 346(2) empowers the Council to make changes to the 1958 List. This instrument confers an equivalent regulation-making power on

the Secretary of State for the purposes of the Regulations (as the new paragraph (5) in the example quoted above). Given the nature of this power, and its potential to affect the scope of the Regulations, its exercise is made subject to the affirmative procedure (see, for example, the new regulation 84A(2) which this instrument inserts into the Public Contracts Regulations 2015).

Directly Effective Treaty Rights

- 7.19 Article 18 TFEU prohibits any discrimination on grounds of nationality within the scope of the application of EU Treaties and without prejudice to any special provisions contained therein. It comes into play where a national of one member State suffers discriminatory treatment in relation to nationals of another member State solely on the basis of nationality in connection with a right in the TFEU or another EU Treaty.
- 7.20 The Freedom of Establishment and Free Movement of Services (EU Exit) Regulations 2019, disappplied Article 18 TFEU so far as it relates to the cessation of directly effective rights arising out of the provisions in TFEU relating the freedom of establishment and free movement of services.
- 7.21 Since the policy intent is to treat non-UK economic operators equally, this instrument disapplies for the whole of the UK, rights derived from Article 18 of TFEU and parallel provisions in Article 4 of the EEA Agreement and Article 9 of the Ankara Agreement in the field of public procurement to the extent that these are not disappplied by the Freedom of Establishment and Free Movement of Services (EU Exit) Regulations 2019.
- 7.22 Retaining these rights would leave a lack of clarity as to whether EU parties within the scope of the Article 18 TFEU would have additional rights in the UK compared to other non-EU countries. Economic operators from, for example, the EU, may be provided with additional rights compared to third country economic operators.

Scope of duty owed by contracting authorities

- 7.23 The instrument includes amendments to Regulation 89 of the Public Contracts Regulations 2015 (and parallel provisions in the Utilities Contracts Regulations 2016 and the Concession Contracts Regulations 2016). It would no longer make sense to provide remedies for breaches of ‘enforceable EU obligations’, so the amendment refers instead to any retained EU obligation that is saved under section 4 of the European Union (Withdrawal) Act 2018. This would include directly effective rights and obligations that previously flowed through section 2(1) of the European Communities Act 1972 and which continue to be recognised in domestic law after the end of the Implementation Period (see however, paragraphs 7.19 to 7.22 above).
- 7.24 It would also be inappropriate to retain the obligations under Part 2 and 3 of the Public Contracts Regulations 2015 in respect of economic operators from EEA States in circumstances where the UK is likely to be treated as a third country by contracting authorities in member States. After the end of the Implementation Period, and save in respect of procurements within the scope of the relevant withdrawal provisions and subject to the extension of existing duties towards economic operators from GPA parties and parties from states which have relevant international agreements (see paragraphs 7. 27 to 7.32 below), this duty is owed only to economic operators from the UK.

- 7.25 For the avoidance of doubt, Cabinet Office have added Gibraltar as an express reference to make clear that the duty owed to economic operators in the UK extends to those in Gibraltar. Prior to the end of the Implementation Period, Gibraltar came within the territorial scope of the EU Treaties in accordance with Article 355(3) of TFEU that applies the Treaties to European territories for whose external relations, a member State is responsible, subject to some exceptions that are material to public procurement (such as in relation to the Channel Islands), set out elsewhere in Article 355 but which are not relevant to Gibraltar. Since the UK is responsible for Gibraltar's external relations, the UK and Gibraltar are effectively treated as one member State under EU law. Contracting authorities in other member States owe the same duties to economic operators from Gibraltar as economic operators from the UK.
- 7.26 After the end of the Implementation Period, Gibraltar will no longer come within the scope of the EU Treaties. It may therefore, be treated by member States as having the same third country status as the UK. In order to preserve continuity and to reflect the UK's special relationship with Gibraltar, it is appropriate to continue to include Gibraltarian economic operators in the duties owed by contracting authorities.

*The GPA and other international agreements*

- 7.27 It is the intention of the UK to join the GPA in its own right rather than in the capacity as an EU member State. If the UK does not accede to the GPA by the end of the Implementation Period, as a matter of international law economic operators established in territories and states which are GPA parties would no longer have the guaranteed access (and associated remedies) that they currently have in relation to UK public procurements. It has been decided that for procurements within the scope of the Regulations, economic operators established in territories and states which are party to the GPA (including EEA states), as at the end of the Implementation Period should continue to be afforded the same rights and remedies as the UK currently gives to economic operators established in territories and states which are party the GPA, on the basis of the EU's coverage schedules.
- 7.28 In addition, as a member State, the UK was party to a number of international agreements with non-EU countries containing provisions relating to public procurement. After the end of the Implementation Period, these agreements will cease to apply to the UK. The Government's intention is that the UK should continue to reap the economic benefits of these agreements. The UK has, therefore, sought to replicate, or 'transition', these bilateral trade agreements so that they will apply to the UK after the end of the Implementation Period.
- 7.29 In order to ratify, and give full effect to, these transitioned international agreements, the UK needs to ensure that its domestic legislation, in particular the Regulations, reflects the obligations by which the UK will be bound.
- 7.30 The Trade Bill which is currently before Parliament, once it comes into force, will provide the necessary powers to enable UK Ministers and devolved authorities to implement both the obligations in the GPA and the transitioned international agreements on behalf of the UK as an independent party, specifically, clauses 1 and 2 respectively. Due to delays to the Bill's passage through Parliament, secondary legislation under these powers is highly unlikely to have completed its parliamentary passage and have been made in time to come into force before the end of the Implementation Period.

- 7.31 The Minister considers it appropriate, via this instrument, to preserve in Regulations, the duties owed, and remedies currently afforded, to economic operators from GPA parties and countries with which the EU has entered into an international agreement which contain provisions relating to public procurement and by which the EU is, before the end of the Implementation Period, bound. This preservation of existing obligations, for a period of twelve months, will enable the UK to demonstrate compliance with the GPA and the procurement provisions contained in the newly transitioned international agreements, pending appropriate secondary legislation being brought forward to implement them. That is because the Government has sought to replicate the EU's coverage schedules under the GPA and its international agreements in a form that is as close to the form of the EU's agreements as possible.
- 7.32 Once the powers under the Trade Bill are available, it is likely that the extension of existing duties towards economic operators from GPA parties and parties from states which have relevant international agreements will be revoked and replaced. In the meantime, these contingency provisions will expire twelve months from the end of the Implementation Period (but will continue to apply to procurements commenced before the expiry, by virtue of Part 4 of the Schedule to the instrument).

Specific exclusions for service contracts

- 7.33 The Regulations exclude certain legal services by a 'lawyer' within the meaning of the Lawyers' Services Directive. To maintain the exclusion of lawyers from member States practising under their domestic designation would be to provide preferential treatment to EU lawyers compared to lawyers from third countries. Accordingly, the instrument amends the definition of 'lawyer' to mean a person practising as an advocate, barrister or solicitor in any part of the United Kingdom or in Gibraltar. This includes those Swiss lawyers entitled to practice under their domestic designation in accordance with the Swiss Citizens' Rights Separation Agreement.

Exclusion grounds

- 7.34 In respect of procurement procedures commenced after the end of the Implementation Period, contracting authorities and other entities, will not be bound by the mandatory requirement to exclude an economic operator established as having a conviction where the offence relates to fraud affecting the European Communities' financial interests as defined by Article 1 of the Convention on the protection of the financial interests of the European Communities.

Thresholds

- 7.35 The financial thresholds which govern the award of public contracts in the Regulations were updated in October 2019 and came into effect in the UK on 1 January 2020. In amending the Regulations to substitute sterling figures (see paragraph [7.9] above) this instrument (unlike the 2019 EU Exit Regulations) takes account of the new figures.

Retained direct EU legislation

- 7.36 Section 3 of the European Union (Withdrawal) Act 2018 provides that, so far as it is operative immediately before the end of the Implementation Period, direct EU legislation, with certain exemptions, forms part of domestic law on and after the end of the Implementation Period. It incorporates legislation into domestic law that had legal effect through s. 2(1) of the European Communities Act 1972.

- 7.37 This instrument modifies and in one case, revokes, for the whole of the UK, direct EU legislation in respect of which the Cabinet Office is the lead department.
- 7.38 The instrument modifies Regulation 2195/2002 of the European Parliament and of the Council on the Common Procurement Vocabulary (CPV), to transfer the powers of the Commission to amend the annexes to the Regulation to the Minister for the Cabinet Office.
- 7.39 The instrument also modifies Commission Decision 2006/211/EC (electricity generation in England, Scotland and Wales), Commission Decision 2007/141/EC (supply of electricity and gas in England, Scotland and Wales), and Commission Decision 2010/192/EC (exploration for and exploitation of oil and gas in England, Scotland and Wales). It replaces references to the application of Directive 2004/17/EC with references to the relevant provisions of domestic law and omits redundant Articles.
- 7.40 The instrument revokes Commission Implementing Regulation (EU) No 2015/1986 establishing standard forms for the publication of notices in the field of public procurement. That Regulation sets out the forms required for the publication of notices in OJEU. The forms will not be required for the purposes of the new UK e-notification service. The service itself will be designed to elicit the information in the form and manner in which it is to be submitted. Accordingly, the instrument also modifies Annex 16 to the EEA Agreement by removing the reference to the regulation in point 6g.
- 7.41 The instrument amends Commission Implementing Regulation (EU) (EU) No 2016/7 establishing the standard form for the European Single Procurement Document to replace this reference with the domestic Single Procurement Document. Article 1 is also amended so that rather than reference to Article 59 of Directive 2014/24/EU, it refers to regulation 59 of the Public Contracts Regulations 2015. The amendment of (EU) No 2016/7 does not extend to Scotland. The Scottish Government plans to undertake their own amendments of (EU) No 2016/7 in a separate instrument.
- 7.42 The instrument amends Commission Implementing Decision (EU) 2017/1870 on the publication of the reference of the European standard on electronic invoicing and the *list of its syntaxes pursuant to Directive 2014/55/EU*. It confers on the Minister for the Cabinet Office, the power to make regulations to substitute a reference to a different standard, a different reference to the same standard or to amend Article 1 and the Annex so as to substitute, add or remove references to syntaxes. This is to ensure technological developments and full and ongoing interoperability in electronic invoicing in public procurement.

*Consequential amendments to primary and secondary legislation*

- 7.43 The instrument makes a number of amendments to primary and secondary legislation that arise as a consequence of the amendments to the Regulations.
- 7.44 The Greater London Authority Act 1999 is amended to replace references to the sending of notices to the Publications Office of the EU with references to the submission of notices to the new UK e-notification service. Section 355(8) now provides that where the Mayor revises the provisions of the London Environment Strategy dealing with municipal waste management after an authority has submitted a contract notice relating to the award of that contract to the UK e-notification service, then, in discharging their obligations under section 355, authorities are to disregard the amendments made to the London Environment Strategy. However, under the

general principles of the transitional provisions in the Schedule to this instrument, the amendment will not apply to the extent that section 355 of that Act relates to the sending of a notice before Implementation Period completion. Similar considerations apply in respect of the power in section 356 for the Mayor to give directions to a waste collection or waste disposal authority.

- 7.45 The instrument amends the definition in the Equality Act 2010 of ‘public procurement functions’, reflecting the fact that after the Implementation Period, public procurement functions exercised by UK contracting authorities will not be regulated by the EU Directive to which the Act currently refers. Instead, ‘public procurement functions’ will be defined by reference to the domestic legislation that implements the Directive in the different parts of the UK. The statement in Part 2 Annex A confirms that these amendments have no wider policy impact on the Equality Act 2010.
- 7.46 The instrument amends the Social Value (Public Services) Act 2012 to replace a reference to a notice being sent to the Publications Office of the EU with a reference to a notice being submitted to the UK e-notification service.
- 7.47 This instrument amends the definition of 'public notice' in regulation 2 of the Service Charges (Consultation Requirements) (England) Regulations 2003 so as to refer to the UK e-notification service.
- 7.48 The amendment to the Provision of Services Regulations 2009 reflects the omission of regulation 58(5) of, and Schedule 5 to, the Public Contracts Regulations 2015 relating to requirements on economic operators to be enrolled in one of the professional or trade registers kept in their member State of establishment, as described in Schedule 5 or to comply with any other request set out in that Schedule.
- 7.49 The instrument amends Schedule 2 to the Water Industry (Specified Infrastructure Projects)(English Undertakers) Regulations 2013. The 2013 Regulations modify specific provisions of the Utilities Contracts Regulations 2016 in their extended application for the purposes of the 2013 Regulations. The amendments that this instrument makes to Schedule 2 take account of the amendments that this Instrument makes to some of those specific provisions.

#### Specific amendments

- 7.50 The definition of affiliated undertaking in both the Utilities Contracts Regulations 2016 and the Concession Contracts Regulations 2016 by reference to the requirements in Directive 2013/34/EU has been replaced with a reference to the domestic legislation which implements the Directive, namely, Part 15 of the Companies Act 2006.
- 7.51 In respect of procurements with an information and communication technology (ICT) component, the Public Contracts Regulations 2015 and the Utilities Contracts Regulations 2016, permit contracting authorities and utilities to define their technical specifications by reference to common technical specifications. These are defined as technical specifications in the field of ICT laid down in accordance with Articles 13 and 14 of Regulation (EU) No 1025/2012 on European standardisation. The instrument makes clear by express reference that this is a reference to the EU law version of Regulation (EU) No 1025/2012. Common technical specifications recognised by the Commission via Commission Implementing Decisions after the end of the Implementation Period may be referred to by contracting authorities and utilities.

- 7.52 The instrument amends the Public Contracts Regulations 2015 and the Utilities Contracts Regulations 2016 in respect of advanced electronic signatures. This is to reflect the Electronic Identification and Trust Services for Electronic Transactions (Amendment etc.) (EU Exit) Regulations 2019, in particular in respect of amendments to Regulation (EU) No 910/2014 on electronic identification and trust services for electronic transactions in the internal market (the eIDAS Regulation), in connection with the use of advanced electronic signatures. Where contracting authorities or utilities consider that the security risks associated with electronic communications may make it appropriate to use advanced electronic signatures, they are to continue to be required to accept advanced electronic signatures supported by a qualified certificate for electronic signature (including a certificate which would have qualified status for the purpose of EU law); and are required to establish the required advanced electronic signature format on the basis of the formats referred to in Commission Implementing Decision 2015/1506 (which is to be retained as direct EU legislation). In case a different format of electronic signature is used, it must be a signature which complies with Commission Implementing Decision 2015/1506.
- 7.53 Regulation 10(2) and (3) of the Concession Contracts Regulations 2016 is amended to exclude references to TFEU and EU legal acts laying down common rules on access to the market. Services concession contracts awarded to an economic operator on the basis of an exclusive right are excluded in relation to an activity listed in Schedule 2. Regulation 10(4) is amended so that the exclusion for air transport services will now be based on the economic operator's status as a qualifying air carrier within the meaning of Regulation (EC) No 1008/2008 (as amended, as retained direct EU legislation, by the Operation of Air Services (Amendment etc.) (EU Exit) Regulations 2018).
- 7.54 Regulation 85 of the Utilities Contracts Regulations 2016 applies to tenders relating to products originating in third countries with which the EU has not concluded, whether multilaterally or bilaterally, an agreement ensuring comparable and effective access for EU undertakings to the markets of those third countries. Utilities are entitled to reject any tender submitted for the award of a supply contract where the proportion of the products originating in third countries exceeds 50% of the total value of the products constituting the tender. The instrument retains this provision for a time-limited period to reflect the obligations owed by UK contracting authorities and other entities towards economic operators established in territories and states which are party to the GPA and non-UK suppliers under international agreements signed by the EU immediately before the end of the Implementation Period. However, the instrument replaces the applicable rules for determining the origin of the products. Rather than in accordance with Council Regulation (EEC) No 2913/92 of 12 October 1992, these are amended to be in accordance with Part 1 of the Taxation (Cross-border Trade) Act 2018.

*The 2006 Regulations*

- 7.55 The effect of the original transitional provisions in the Regulations means that the 2006 Regulations continue to apply to contract award procedures commenced in accordance with the Public Contracts Regulations 2006 before 26th February 2015; to contract award procedures or design procedures commenced in accordance with the Utilities Contracts Regulations 2006 before 18 April 2016; and to concession contract award procedures commenced in accordance with the Public Contract Regulations 2006 before 18 April 2016.

- 7.56 The Schedule to the instrument provides that the steady state amendments do not affect those procurement procedures launched and finalised before the end of the Implementation Period, including under the 2006 Regulations. In respect of such procurements, effectively, concluded contracts, the instrument amends the 2006 Regulations to remove, or transfer to the Minister for the Cabinet Office, ongoing reporting obligations to the Commission. Technical provision is also made to preserve the effect of existing exemptions from the 2006 Regulations.
- 7.57 In respect of procurement procedures which launched before the end of the Implementation Period but are not yet finalised, these come within the scope of the relevant withdrawal provisions and are subject to the transitional provisions in the Schedule to the instrument, notably the modifications made by paragraph 5 of the Schedule.

*Abnormally low tenders and State aid*

- 7.58 In respect of abnormally low tenders submitted by bidders who may have been in receipt of State aid, the intention is to treat non-UK economic operators on a level playing field. Under regulation 69 of the Public Contracts Regulations 2015, and of regulation 84 of the Utilities Contracts Regulations, a contracting authority or utility can investigate an abnormally low tender and ask further questions of the economic operator. Where the contracting authority or utility establishes that the tender is abnormally low because the economic operator has obtained State aid, it may (not must), following consultation with the tenderer and only if the tenderer is unable to meaning of Article 107 TFEU, reject the tender on that ground alone. Any such rejections have to be reported to the EU Commission. From the end of the IP there is not a policy justification to either continue to effectively use the procurement regulations to treat EU economic operators differently to those from other third countries, or 'police' state aid given by other member States. Accordingly, the provisions in the Regulations relating to State aid have been removed (for example, regulation 69(2)(f), (6) and (7) of the Public Contracts Regulations 2015).
- 7.59 Guidance is to be provided in respect of the Commission's ongoing jurisdiction in respect of State aid granted before the end of the Implementation Period and aid granted in breach of Article 10 of the Northern Ireland Protocol under the Withdrawal Agreement.

*E-Certis*

- 7.60 E-Certis is the EU's free, online database that lists the eligibility criteria and documentary evidence needed in each EEA country to take part in public procurement. It helps companies and contracting authorities cope with the different forms of documentary evidence required for cross-border tenders for EU public contracts. It provides links to the bodies providing certificates and evidence that a supplier has not breached an exclusion ground such as for non-payment of taxes. After the end of the Implementation Period, it would be inappropriate to continue to require UK contracting authorities to have recourse to e-Certis.

*Joint procurement*

- 7.61 The provisions in the Regulations relating to procurement involving contracting authorities or other contracting entities from other member States (for example, regulation 39 of the Public Contracts Regulations 2015), reflect rules introduced by the Commission to encourage cross-border joint procurements between member States. The omission of these provisions is not intended to imply that joint procedures



should not be undertaken or that there should be any disruption to existing arrangements. However, these provisions are premised on recognition by all the member States of the contracting authorities concerned that the contracting authorities' mutual rights and obligations will be as laid down by, or in accordance with, the arrangements referred to in these provisions (for example, that all the member States will respect the choice of national law made by contracting authorities who procure jointly under these provisions). After the end of the Implementation Period, this common recognition will not necessarily apply. The corresponding provisions of the Directives (for example, Article 39 of Directive 2004/18/EC), which will continue to apply to member States, refers only to "contracting authorities from member States", a category that will no longer include contracting authorities from the UK. It is therefore appropriate to omit these provisions. Cross-border joint procedures may continue to be undertaken (as, in practice, they were to some extent before the Regulations were made, as the previous Procurement Directives and their transposing regulations did not contain such provisions), but on the same basis as cross-border joint procedures with contracting authorities from non-member States, without the legal clarity provided by these provisions which would be impossible to enforce after the end of the Implementation Period.

*The relevant withdrawal provisions*

- 7.62 The relevant withdrawal provisions seek to ensure a level of continuity for procurement procedures which began before the end of the Implementation Period. The Schedule to this instrument contains transitional and saving provisions to ensure that the steady state amendments made to the Regulations by this instrument do not affect any ongoing procedure which straddles the end of the Implementation Period launched by a contracting authority or a utility under the Regulations or under the 2006 Regulations. In addition, framework agreements launched before the end of the Implementation Period which have not expired or been terminated, and call-off procedures under these, are not affected by the steady state amendments. So, for example, notices must continue to be sent to the EU Publications Office and such procedures will continue to be subject to the obligations to provide the Commission with reports.
- 7.63 As an exception, regulation 61 of the Public Contracts Regulations 2015 relating to e-Certis (which is revoked for new procedures launched after the end of the Implementation Period) will cease to apply 9 months after the end of the Implementation Period, even in relation to procedures that remain unfinalised at that point. This 9-month cut-off for e-Certis is specifically provided for in the relevant withdrawal provisions.
- 7.64 The Schedule provides certain modifications to the Regulations and savings to ensure that, in respect of such procedures, the Regulations operate effectively. For example modifications are made to the Regulations so that any reference to member state or EEA state is to be read to include the UK and any reference to a citizen of the EU or EEA includes a UK national.
- 7.65 The definition of 'steady state amendments' in paragraph 2 of the Schedule has been designed to minimise the risk that any future amendments that may be made to the Regulations do not inadvertently bite on transitional procurements in a way that would infringe relevant withdrawal provisions.

## **8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union**

8.1 This instrument is being made using the power in section 8 of the European Union (Withdrawal) Act 2018 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. The instrument is also made under section 8B(1) of that Act in order to implement the public procurement provisions of Part 3 of the withdrawal agreement. 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.

## **9. Consolidation**

9.1 There are no current plans to consolidate the legislation amended by this instrument.

## **10. Consultation outcome**

10.1 There has been no consultation on how to rectify the deficiencies arising from withdrawal. The changes made are intended to maintain the current legislative and policy framework, in so far as this is possible after the end of the Implementation Period and are within the extent permitted by the European Union (Withdrawal) Act 2018 to correct deficiencies.

10.2 Regular discussions on the content of this instrument have been held with the devolved administrations throughout the drafting process in accordance with the Intergovernmental Agreement. In so far as this instrument makes provision that could be made by the Welsh Ministers, Scottish Ministers and a Northern Ireland Department, there has been regular engagement with the Welsh Government, Scottish Government and Northern Ireland Civil Service throughout the drafting process and in accordance with the terms of the Intergovernmental Agreement on the EUWA.

## **11. Guidance**

11.1 Guidance will be available for stakeholders by the time this instrument comes into force.

## **12. Impact**

12.1 There is no impact, or significant impact on business, charities or voluntary bodies.

12.2 The impact, or significant impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument because the framework and principles underlying the Regulations have not been substantially amended. Modifications contained in this instrument have been made to ensure the Regulations function effectively, after the end of the Implementation Period. Contracting authorities and other contracting entities as well as private sector businesses will have to familiarise themselves with the amended provisions and the new UK e-notification service. UK economic operators will have to monitor opportunities on the new UK e-notification service on which above-threshold UK procurement opportunities will be advertised. These impacts are, however, expected to be low and are below the threshold required to carry out a full impact assessment. It will be open to UK economic operators to continue to respond to contract notices published on OJEU by member states. The most significant cost to the public sector

that arises directly from this instrument relates to the development of the IT system for the UK e-notification service.

**13. Regulating small business**

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 We propose no specific action to minimise regulatory burdens on small businesses. The impact on small businesses arising from this instrument is expected to be low. Further guidance on the introduction of the UK e-notification service and in respect of on-going procurement procedures will be published.

**14. Monitoring & review**

- 14.1 As this instrument is made under the EU Withdrawal Act 2018, no review clause is required.

**15. Contact**

- 15.1 Lois Devey at the Cabinet Office Telephone: 07834172021 or email: [lois.devey@cabinetoffice.gov.uk](mailto:lois.devey@cabinetoffice.gov.uk) can be contacted with any queries regarding the instrument.
- 15.2 Edward Green at the Cabinet Office can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Minister Lopez at the Cabinet Office can confirm that this Explanatory Memorandum meets the required standard.



Llywodraeth Cymru  
Welsh Government

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## DATGANIAD YSGRIFENEDIG GAN LYWODRAETH CYMRU

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**TEITL** Rheoliadau Caffael Cyhoeddus (Diwygio etc.) (Ymadael â'r UE)  
2020

**DYDDIAD** 12 Hydref 2020

**GAN** Rebecca Evans AS, Y Gweinidog Cyllid a'r Trefnydd

### Rheoliadau Caffael Cyhoeddus (Diwygio etc.) (Ymadael â'r UE) 2020

#### Y Gyfraith sy'n cael ei diwygio

- Rheoliadau Caffael Cyhoeddus (Diwygio etc.) (Ymadael â'r UE) 2019 (2019/560)
- Rheoliadau Caffael Cyhoeddus (Diwygio etc.) (Ymadael â'r UE) 2019 (2019/623)
- Deddf Awdurdod Llundain Fwyaf 1999
- Deddf Cydraddoldeb 2010
- Deddf Gwasanaethau Cyhoeddus (Gwerth Cymdeithasol) 2012
- Rheoliadau Contractau Cyhoeddus 2015
- Rheoliadau Contractau Consesiwn 2016
- Rheoliadau Contractau Cyfleustodau 2016
- Rheoliadau Contractau Cyhoeddus 2006
- Rheoliadau Contractau Cyfleustodau 2006
- Rheoliadau Taliadau Gwasanaeth (Gofynion Ymgynghori) (Lloegr) 2003
- Rheoliadau Darparu Gwasanaethau 2009
- Rheoliadau'r Diwydiant Dŵr (Prosiectau Seilwaith Penodedig) (Ymgymrwyr yn Lloegr) 2013
- Atodiad 16 i Gytundeb yr Ardal Economaidd Ewropeaidd
- Rheoliad 2195/2002 Senedd Ewrop a'r Cyngor ar yr Eirfa Gaffael Gyffredin
- Penderfyniad gan y Comisiwn 2006/211/EC
- Penderfyniad gan y Comisiwn 2007/141/EC
- Penderfyniad gan y Comisiwn 2010/192/EU
- Rheoliad Gweithredu gan y Comisiwn (EU) Rhif 2015/1986
- Rheoliad Gweithredu gan y Comisiwn (EU) 2016/7
- Penderfyniad Gweithredu gan y Comisiwn (EU) 2017/1870

## **Unrhyw effaith y gall yr OS ei chael ar gymhwysedd deddfwriaethol y Senedd a/neu ar gymhwysedd gweithredol Gweinidogion Cymru**

Mae'r OS yn cynnwys darpariaethau sy'n ei gwneud hi'n bosibl i Weinidog Swyddfa'r Cabinet arfer swyddogaethau. Mae angen caniatâd ymlaen llaw gan Weinidogion Cymru ar gyfer rhai ohonynt, a hynny mewn perthynas ag Awdurdodau Cymreig Datganoledig. Mae'r OS hefyd yn cynnwys darpariaethau sy'n ei gwneud hi'n bosibl i un ai Swyddfa'r Cabinet neu Weinidog Swyddfa'r Cabinet arfer swyddogaethau, a Gweinidogion Cymru ar yr un pryd mewn perthynas ag Awdurdodau Cymreig Datganoledig.

Byddai'r swyddogaethau hyn (Gweinidog Swyddfa'r Cabinet/Swyddfa'r Cabinet) yn gyfystyr â swyddogaethau un ai Weinidog y Goron neu awdurdod cyhoeddus (Swyddfa'r Cabinet) at ddibenion Atodlen 7B Deddf Llywodraeth Cymru 2006, a bydd hyn o'r herwydd yn ystyriaeth berthnasol o fewn cyd-destun cymhwysedd y Senedd i ddeddfu yn y meysydd hyn yn y dyfodol.

Mae gan effaith y swyddogaethau cydamserol a geir yn yr offeryn statudol hwn botensial i gynnwys y gofynion cydsyniad yn Atodlen 7B i Ddeddf Llywodraeth Cymru ac felly gallant gyfyngu o bosibl ar gymhwysedd y Senedd yn y dyfodol. Fodd bynnag, rydym yn cynnal trafodaethau gyda Swyddfa Ysgrifennydd Gwladol Cymru mewn perthynas â Gorchymyn a.109 i ddiwygio Atodlen 7B er mwyn negyddu'r cyfyngiad posibl ar gymhwysedd y Senedd yn y dyfodol.

### **Diben y diwygiadau**

Mae dau ddiben i'r diwygiadau. Yn gyntaf, maent yn cywiro diffygion mewn deddfwriaeth mewn perthynas â chaffael cyhoeddus (yn cynnwys diwygiadau canlyniadol i ddeddfwriaeth nad yw'n gysylltiedig â chaffael) sy'n deillio o'r ffaith bod y Deyrnas Unedig yn ymadael â'r Undeb Ewropeaidd. Yn ail, mae'r Rheoliadau yn rhoi effaith i Deitl 8 o Ran 3 o'r Cytundeb Ymadael (sy'n cynnwys Protocol Gogledd Iwerddon) a Theitl 5 o Ran 3 o Gytundeb Gwahanu EFTA yr AEE (gyda'i gilydd, y darpariaethau ymadael perthnasol) i sicrhau u bydd cyfraith yr UE a ddargedwir ym maes caffael cyhoeddus yn gweithio'n effeithiol ar ôl i'r Cyfnod Pontio ddod i ben ar 31 Rhagfyr 2020.

Mae'r Rheoliadau hefyd yn diwygio adran 155(2) a (3) o Ddeddf Cydraddoldeb 2010 er mwyn diffinio term drwy gyfeirio at Reoliadau Contractau Cyhoeddus 2015, yn hytrach na thrwy gyfeirio at y Gyfarwydddeb Sector Cyhoeddus (2014/24/EU). Mae'r diwygiad hwn yn un technegol ei natur ac mae'n ofynnol er mwyn i'r ddarpariaeth hon weithredu'n effeithiol ar ôl i'r Cyfnod Pontio ddod i ben.

Mae Rheoliadau Caffael Cyhoeddus (Diwygio etc.) (Ymadael â'r UE) 2019 (2019/560) a Rheoliadau Caffael Cyhoeddus (Diwygio etc.) (Ymadael â'r UE) 2019 (2019/623) wedi'u dirymu ac mae'r Rheoliadau hyn yn eu disodli.

Mae'r OS a'r Memorandwm Esboniadol sy'n mynd gydag ef, ac sy'n nodi effaith pob un o'r diwygiadau, ar gael yma: <https://tudalen.y.parliament.wales.gov.uk/2020/9780348212952>

## **Materion o ddiddordeb arbennig i'r Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad**

Ni nodwyd unrhyw rai.

### **Pam y rhoddwyd cydsyniad**

Nid oes gwahaniaeth rhwng Llywodraeth Cymru a Llywodraeth y DU o ran y polisi ar gyfer y cywiriad. Felly, byddai gwneud OSau ar wahân yng Nghymru ac yn Lloegr yn arwain at ddyblygu gwaith a chymhlethdod diangen i'r llyfr statud. Mae cydsynio i OS ar draws Cymru a Lloegr a Gogledd Iwerddon yn sicrhau bod un fframwaith deddfwriaethol ar draws y DU sy'n hybu eglurder a hygyrchedd yn ystod y cyfnod hwn o newid. O dan yr amgylchiadau eithriadol hyn, mae Llywodraeth Cymru yn ystyried ei bod yn briodol i Lywodraeth y DU ddeddfu ar ein rhan yn yr achos hwn. Mae'r cyfarwydddebau hynny wedi'u trosi ar wahân, ac i raddau yn wahanol, i gyfraith yr Alban, felly bydd Gweinidogion yr Alban yn cyflwyno offeryn diwygio ar wahân mewn perthynas â rheoliadau cyfatebol yr Alban.

Mae Memorandwm Cydsyniad Offeryn Statudol hefyd wedi'i osod yn y Senedd mewn perthynas â'r diwygiadau i Ddeddf Cydraddoldeb 2010

**GWEINIDOGION Y DU SY'N GWEITHREDU MEWN MEYSYDD  
DATGANOLEDIG**

**173 - Rheoliadau Caffael Cyhoeddus (Diwygio etc.) (Ymadael â'r UE)  
2020**

*Dyddiad gosod yn Senedd y DU: 7 Hydref 2020*

**Sifftio**

Yn destun sifftio yn Senedd y DU?	Nac ydy
Gweithdrefn:	Cadarnhaol drafft
Dyddiad trafod gan Bwyllgor Offerynnau Statudol Ewropeaidd Tŷ'r Cyffredin	Amh
Dyddiad trafod gan Bwyllgor Craffu ar Is-ddeddfwriaeth Tŷ'r Arglwyddi	Amh
Dyddiad y daw'r cyfnod sifftio i ben yn Senedd y DU	Amh
Datganiad ysgrifenedig o dan Reol Sefydlog 30C:	Papur 57
Memorandwm Cydsyniad Offeryn Statudol o dan Reol Sefydlog 30A (oherwydd eu bod yn diwygio deddfwriaeth sylfaenol)	SICM(5)33

**Gweithdrefn graffu**

Canlyniad y broses sifftio	Amh
Gweithdrefn	Cadarnhaol drafft
Dyddiad trafod gan y Cydbwyllgor ar Offerynnau Statudol	21 Hydref 2020
Dyddiad trafod gan Bwyllgor Offerynnau Statudol Tŷ'r Cyffredin	Anhysbys
Dyddiad trafod gan Bwyllgor Craffu ar Is-ddeddfwriaeth Tŷ'r Arglwyddi	20 Hydref 2020

**Cefndir**

Bwriedir i'r Rheoliadau hyn gael eu gwneud gan Lywodraeth y DU yn unol ag adrannau 8 ac 8B(1) o Ddeddf yr Undeb Ewropeaidd (Ymadael) 2018, a pharagraff 21 o Atodlen 7 iddi.

**Crynodeb**

Caiff yr offeryn hwn ei wneud er mwyn mynd i'r afael â diffygion yng nghyfraith yr UE a ddargedwir mewn perthynas â chaffael cyhoeddus, sy'n deillio o ymadawiad y Deyrnas Unedig (DU) â'r Undeb Ewropeaidd (UE), ac i weithredu Teitl 8 o Ran 3 o'r Cytundeb Ymadael a Theitl 5 o Ran 3 o Gytundeb Gwahanu EFTA yr EEA, er mwyn sicrhau bod cyfraith yr UE a ddargedwir, ym maes caffael cyhoeddus, yn gweithredu'n effeithiol ar ôl i'r Cyfnod Gweithredu ddod i ben ar 31 Rhagfyr 2020.

Mae'r offeryn hwn yn dirymu'r ddeddfwriaeth ganlynol, cyn i'r offerynnau ddod i rym:

- Rheoliadau Caffael Cyhoeddus (Diwygio etc.) (Ymadael â'r UE) 2019 (2019/560); a
- Rheoliadau Caffael Cyhoeddus (Diwygio) (Ymadael â'r UE) (Rhif 2) 2019 (2019/623).

Gwnaed y ddau o'r Reoliadau hynny cyn i'r DU a'r UE ymrwymo i'r Cytundeb Ymadael na Chytundeb Gwahanu EFTA yr EEA.

Mae rheoliad 4 o'r Rheoliadau hefyd yn diwygio adran 155(2) a (3) o Ddeddf Cydraddoldeb 2010. Mae'r diwygiadau yn darparu ar gyfer diffinio term drwy gyfeirio at Reoliadau Contractau Cyhoeddus 2015, yn hytrach na thrwy gyfeirio at Gyfarwyddeb y Sector Cyhoeddus (2014/24/EU). Mae angen y diwygiadau hyn er mwyn i'r ddarpariaeth hon weithredu'n effeithiol ar ôl diwedd y cyfnod pontio.

### **Datganiad gan Lywodraeth Cymru**

Mae'r Cynghorwyr Cyfreithiol yn cytuno â'r datganiad a osodwyd gan Lywodraeth Cymru dyddiedig 12 Hydref 2020 ynghylch effaith y Rheoliadau hyn.

Yn benodol, rydym yn cytuno bod y Rheoliadau yn cynnwys darpariaethau sy'n galluogi swyddogaethau i gael eu harfer naill ai gan Swyddfa'r Cabinet neu Weinidog ar gyfer Swyddfa'r Cabinet a Gweinidogion Cymru ar yr un pryd mewn perthynas ag Awdurdodau Datganoledig Cymru. Byddai'r swyddogaethau hyn yn gyfystyr â swyddogaethau naill ai un o Weinidogion y Goron neu awdurdod cyhoeddus (Swyddfa'r Cabinet) at ddibenion Atodlen 7B i Ddeddf Llywodraeth Cymru 2006, ac y byddai hyn yn ystyriaeth berthnasol yng nghyd-destun cymhwysedd y Senedd i ddeddfu yn y meysydd hyn yn y dyfodol.

Mae posibilrwydd i effaith y swyddogaethau cydamserol a gynhwysir yn y Rheoliadau hyn gynnwys y gofynion cydsynio yn Atodlen 7B, ac o'r herwydd maent yn cynrychioli cyfyngiad posibl ar gymhwysedd y Senedd yn y dyfodol.

Mae datganiad Llywodraeth Cymru yn nodi ei bod yn trafod â Swyddfa Ysgrifennydd Gwladol Cymru mewn perthynas â Gorchymyn a.109 i ddiwygio Atodlen 7B er mwyn negyddu'r cyfyngiad posibl ar gymhwysedd y Senedd yn y dyfodol.

### **Cytundeb Rhynglywodraethol ar Fil yr Undeb Ewropeaidd (Ymadael)**

Mae'r crynodeb uchod a chynnwys y Memorandwm Esboniadol i'r Rheoliadau hyn yn cadarnhau eu heffaith.



Nid yw'r Cynghorwyr Cyfreithiol o'r farn bod unrhyw faterion arwyddocaol yn codi o dan baragraff 8 o'r Memorandwm ar Fil yr Undeb Ewropeaidd (Ymadael) a Sefydlu Fframweithiau Cyffredin mewn perthynas â'r Rheoliadau hyn.

**Cynnig cydsyniad o dan Reol Sefydlog 30A.10**

Gosododd Llywodraeth Cymru Femorandwm Cydsyniad Offeryn Statudol mewn perthynas â'r Rheoliadau hyn ar 21 Hydref 2020.

# Eitem 10.4

## MEMORANDWM CYDSYNIAD OFFERYN STATUDOL

### Rheoliadau Polisi Pysgodfeydd Cyffredin (Diwygiadau etc) (Ymadael â'r UE) 2020

1. Gosodir y Memorandwm Cydsyniad Offeryn Statudol hwn o dan Reol Sefydlog ("RhS") 30A.2. Mae RhS 30A yn rhagnodi bod rhaid gosod Memorandwm Cydsyniad Offeryn Statudol, ac y ceir cyflwyno cynnig Cydsyniad Offeryn Statudol, gerbron Senedd Cymru os yw Offeryn Statudol (OS) y DU yn gwneud darpariaeth mewn perthynas â Chymru sy'n diwygio deddfwriaeth sylfaenol sydd o fewn cymhwysedd deddfwriaethol Senedd Cymru.
2. Gosodwyd Rheoliadau Polisi Pysgodfeydd Cyffredin (Diwygiadau etc) (Ymadael â'r UE) 2020 gerbron Senedd y DU ar 14 Hydref 2020. Cewch weld y Rheoliadau yn:

<https://www.legislation.gov.uk/ukdsi/2020/9780348213379>

### Crynodeb o'r Offeryn Statudol a'i amcanion

3. Amcan yr OS yw mynd i'r afael â methiant cyfraith yr UE a ddargedwir i weithredu'n effeithiol a diffygion eraill sy'n codi o ymadawiad y DU â'r Undeb Ewropeaidd fel y darperir ar eu cyfer gan Ddeddf yr Undeb Ewropeaidd (Ymadael) 2018. Mae hefyd yn cywiro hen gyfeiriadau at ddeddfwriaeth yr UE.
4. Mae'r OS yn diwygio'r ddeddfwriaeth a ganlyn:
  - Deddf y Môr a Mynediad i'r Arfordir 2009

### Darpariaeth berthnasol i'w gwneud trwy'r OS

5. Roedd angen y newidiadau a wnaed gan y Rheoliadau hyn gan fod deddfwriaeth berthnasol yr UE wedi'i newid a bod deddfwriaeth UE newydd wedi'i mabwysiadu ers gwneud yr OSau Ymadael â'r UE presennol. Mae angen ailwladoli pwerau i'r DU ac roedd angen rhai newidiadau oherwydd Protocol Gogledd Iwerddon.
6. Mae'r Rheoliadau'n sicrhau bod deddfwriaeth bresennol y Polisi Pysgodfeydd Cyffredin yn cael eu trosi'n gyfraith yr UE a ddargedwir ar ddiwrnod cwblhau'r cyfnod gweithredu. Mae Rheoliadau 2020 yn sicrhau bod y rheolau perthnasol yn y ddeddfwriaeth yn parhau i fod yn gymwys i gychod pysgota'r DU pa le bynnag y maent, yn amodol ar reolau gwahanol sy'n deillio o gytundebau rhyngwladol, a bod yr un rheolau hynny'n parhau i fod yn gymwys i'r holl gychod pysgota sy'n gweithredu yn nyfroedd y DU.
7. Cafodd adrannau 30, 238 a 278 Deddf y Môr a Mynediad i'r Arfordir 2009 eu diwygio gan Reoliadau Pysgodfeydd (Diwygio) (Ymadael â'r UE) 2019

er mwyn ychwanegu'r diffiniad "cyfyngiadau'r UE a ddargedwir"; fel cyfyngiad a grëwyd neu a godwyd gan neu o dan Gytuniadau'r UE cyn y diwrnod ymadael, ac sy'n ffurfio rhan o gyfraith yr UE a ddargedwir, ac a newidir o dro i dro. Roedd yn destun Memorandwm Cydsyniad Offeryn Statudol pan gafodd ei gyflwyno.

8. Mae Rheoliadau 2020 yn newid y diffiniad hwn yn y tair adran fel bod "exit day" yn cael ei ddileu a bod "IP completion day" yn cael ei roi yn ei le. Diffinnir "IP completion day" yn adran 39(1) i (5) Deddf yr Undeb Ewropeaidd (Cytundeb Ymadael) 2020 i olygu 31 Rhagfyr 2020 am 11pm.
9. Mae'r diwygiadau i adrannau 238 a 278 Deddf y Môr a Mynediad i'r Arfordir 2009 yn ymwneud â phwerau gorfodi Swyddogion Gorfodi Morol mewn perthynas â chyfyngiadau'r UE neu rwymedigaethau o dan y PPC, a rheolau ynghylch fforffedu pysgod neu gêr pysgota yn dilyn euogfarniad am drosedd pysgota môr. Swyddogaeth Gweinidogion Cymru yw penodi Swyddogion Gorfodi Morol yng Nghymru.
10. Mae Adran 108A Deddf Llywodraeth Cymru 2006 yn galluogi Senedd Cymru i ddeddfu ar unrhyw bwnc heblaw am y rheini sydd wedi'u cadw'n benodol ar gyfer Senedd y DU yn Atodlen 7A i Ddeddf Llywodraeth Cymru 2006. O ran rheoli pysgodfeydd, Senedd Cymru sydd â'r cymhwysedd deddfwriaethol mewn perthynas â Chymru.
11. Mae pwnc y diwygiadau a wneir o dan baragraffau 7 ac 8 yn ymwneud â meysydd sydd o fewn cymhwysedd deddfwriaethol Senedd Cymru, a allai fod yn destun Bil Senedd Cymru.

### **Pam ei bod yn briodol gwneud y ddarpariaeth hon trwy'r OS**

12. Nid oes gwahaniaeth rhwng Llywodraeth Cymru a Llywodraeth y DU ynghylch polisi'r cywiriad. Byddai gwneud OSau ar wahân yng Nghymru a Lloegr i gywiro'r cyfeiriad dan sylw yn arwain at ddyblygu gwaith, ac at gymhlethu'r llyfr statud yn ddiangen. Trwy gydsynio i'r OS hwn, sicrhair bod un fframwaith deddfwriaethol yn bod ar draws Cymru a Lloegr. Mae hynny'n annog eglurder a hygyrchedd yn ystod y cyfnod hwn o newid. O dan yr amgylchiadau eithriadol hyn, mae Llywodraeth Cymru o'r farn ei bod yn briodol i Lywodraeth y DU ddeddfu ar ein rhan yn yr achos hwn.

**Lesley Griffiths AS**

**Ysgrifennydd y Cabinet dros Ynni, Cynllunio a Materion Gwledig**

Hydref 2020

*This Statutory Instrument has been made in part to correct errors in S.I. 2019/739 and 2019/1312 and is being issued free of charge to all known recipients of those Statutory Instruments.*

*Draft Regulations laid before Parliament under paragraph 1(1) of Schedule 7 to the European Union (Withdrawal) Act 2018, for approval by resolution of each House of Parliament.*

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## DRAFT STATUTORY INSTRUMENTS

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**2020 No. 0000**

# **EXITING THE EUROPEAN UNION SEA FISHERIES**

## **The Common Fisheries Policy (Amendment etc.) (EU Exit) Regulations 2020**

*Made* - - - - *\*\*\**

*Coming into force in accordance with regulation 1*

The Secretary of State, in exercise of the powers conferred by section 8(1) of, and paragraph 21(b) of Schedule 7 to, the European Union (Withdrawal) Act 2018<sup>(1)</sup> and section 41(1) of the European Union (Withdrawal Agreement) Act 2020<sup>(2)</sup>, makes the following Regulations.

In accordance with paragraph 1(1) of Schedule 7 to that Act, a draft of this instrument has been laid before Parliament and approved by a resolution of each House of Parliament.

### **PART 1**

#### **INTRODUCTORY**

##### **Citation and commencement**

**1.—**(1) These Regulations may be cited as the Common Fisheries Policy (Amendment etc.) (EU Exit) Regulations 2020.

(2) Subject to paragraph (3), these Regulations come into force immediately before IP completion day.

(3) Regulations 2, 5, 6, 7, 9 and 10 and the Schedule come into force on IP completion day.

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<sup>(1)</sup> 2018 c. 16. Section 8 was amended by section 27 of the European Union (Withdrawal Agreement) Act 2020 (c. 1) (“the 2020 Act”) and paragraph 21 of Schedule 7 was amended by paragraph 53 of Schedule 5 to the 2020 Act.

<sup>(2)</sup> 2020 c. 1.

## **Revocations**

2. The legislation listed in the Schedule to these Regulations is revoked so far as specified in the Schedule.

## **PART 2**

### **UPDATED ANNUAL EU FISHERIES LEGISLATION**

#### **CHAPTER 1**

##### **UPDATING EU EXIT REGULATIONS IN CONSEQUENCE OF THE REVOCATION OF THE 2019 DISCARD PLANS AND THE 2019 TAC AND QUOTA REGULATION**

#### **The Common Fisheries Policy (Amendment etc.) (EU Exit) (No. 2) Regulations 2019**

3. In the Common Fisheries Policy (Amendment etc.) (EU Exit) (No. 2) Regulations 2019(3), omit regulations 2 and 3 and Part 4.

#### **The Common Fisheries Policy and Animals (Amendment etc.) (EU Exit) Regulations 2019**

4. In the Common Fisheries Policy and Animals (Amendment etc.) (EU Exit) Regulations 2019(4), omit regulation 10.

#### **CHAPTER 2**

##### **AMENDMENT OF THE 2020 DISCARD PLANS**

#### **Commission Delegated Regulation (EU) 2019/2238 specifying details of implementation of the landing obligation for certain demersal fisheries in the North Sea for the period 2020-2021**

5.—(1) Commission Delegated Regulation (EU) 2019/2238 specifying details of implementation of the landing obligation for certain demersal fisheries in the North Sea for the period 2020-2021 is amended as follows.

(2) In Article 1—

- (a) for “Union” substitute “United Kingdom”;
- (b) for “divisions 2a, 3a” substitute “division 2a”; and
- (c) for “for the period 2020-2021” substitute “until the end of 2021”.

(3) In Article 3(1)—

- (a) for “Union” substitute “United Kingdom”; and
- (b) for “divisions 2a, 3a” substitute “division 2a”.

(4) In Article 4(1), for “Union” substitute “United Kingdom”.

(5) In Article 5(1)—

- (a) for “Union” substitute “United Kingdom”; and
- (b) omit “ICES division 3a and”.

(6) In Article 6—

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(3) [S.I. 2019/848](#), amended by [S.I. 2019/1312](#).

(4) [S.I. 2019/1312](#).

- (a) for “Union” in each place it occurs, substitute “United Kingdom”;
  - (b) in paragraph 1, omit “division 3a and”; and
  - (c) in paragraph 2, omit point (a).
- (7) In Article 7—
- (a) in paragraph 1—
    - (i) for “Union” substitute “United Kingdom”,
    - (ii) in point (a), omit “or” in the second place it occurs, and
    - (iii) omit point (b); and
  - (b) omit paragraph 3.
- (8) In Article 8(1), for “Union” substitute “United Kingdom”.
- (9) In Article 9—
- (a) in paragraph 1—
    - (i) for “Union” substitute “United Kingdom”, and
    - (ii) for “divisions 2a, 3a” substitute “division 2a”; and
  - (b) omit paragraph 2.
- (10) In Article 10—
- (a) for “Union” in each place it occurs, substitute “United Kingdom”;
  - (b) in point (a), for “divisions 2a and 3a” substitute “division 2a”;
  - (c) omit points (c), (d) and (g); and
  - (d) in point (m)—
    - (i) omit “ICES division 3a and” in the first place it occurs, and
    - (ii) for “mesh sizes above 35 mm in ICES division 3a and” substitute “a mesh size above”.
- (11) Omit Articles 11 and 13.
- (12) For Article 14 substitute—  
“Article 14

#### *Application*

This Regulation applies until the end of 31 December 2021.”.

#### **Commission Delegated Regulation (EU) 2019/2239 specifying details of the landing obligation for certain demersal fisheries in North-Western waters for the period 2020-2021**

6.—(1) Commission Delegated Regulation (EU) 2019/2239 specifying details of the landing obligation for certain demersal fisheries in North-Western waters for the period 2020-2021 is amended as follows.

- (2) In Article 1—
  - (a) for “ICES Subareas 5 (excluding 5a and including only Union waters of 5b),” substitute “United Kingdom waters of ICES Subarea 5b and in United Kingdom and International waters of ICES Subareas”; and
  - (b) for “for the period 2020-2021” substitute “until the end of 2021”.
- (3) In Article 5, omit paragraph 2.
- (4) In Article 6(1)—

- (a) in point (c) for “7a to 7k” substitute “7a and 7d to 7j”; and
  - (b) in point (d) for “7a to 7k” substitute “7a and 7d to 7j”.
- (5) In Article 7(1), for “ICES Subareas 5 (excluding 5a and including only Union waters of 5b),” substitute “United Kingdom waters of ICES Subarea 5b and in United Kingdom and International waters of ICES Subareas”.
- (6) In Article 8(1)—
- (a) in point (a), for “7b to 7k” substitute “7d to 7j”;
  - (b) in point (d), for “7b, 7c and 7e to 7k” substitute “7e to 7j”;
  - (c) in point (e), for “7b to 7k” substitute “7d to 7j”;
  - (d) in point (f), for “7b to 7k” substitute “7d to 7j”;
  - (e) in point (g), for “7a, 7j and 7k” substitute “7a and 7j”;
  - (f) in point (i), for “7b, 7c and 7f to 7k” substitute “7f to 7j”; and
  - (g) in point (j) for “EU” substitute “United Kingdom”.
- (7) In Article 9(5), for “the STECF” substitute “a fisheries administration”.
- (8) In Article 10(5), for “the STECF” substitute “a fisheries administration”.
- (9) In Article 11—
- (a) in paragraph 1, for “Union” substitute “United Kingdom”; and
  - (b) in paragraph 2, for “the STECF” substitute “a fisheries administration”.
- (10) In Article 12, omit the first sentence.
- (11) For Article 13 substitute—  
“Article 13

### *Application*

This Regulation applies until the end of 31 December 2021.”.

## CHAPTER 3

### AMENDMENT OF THE 2020 TAC AND QUOTA REGULATION

#### **Council Regulation (EU) 2020/123 fixing for 2020 the fishing opportunities for certain fish stocks and groups of fish stocks, applicable in Union waters and, for Union fishing vessels, in certain non-Union waters**

7.—(1) Council Regulation (EU) 2020/123 fixing for 2020 the fishing opportunities for certain fish stocks and groups of fish stocks, applicable in Union waters and, for Union fishing vessels, in certain non-Union waters is amended as follows.

- (2) Omit Article 1.
- (3) In Article 2(1), for “Union” in both places it occurs, substitute “United Kingdom”.
- (4) In Article 3—
  - (a) omit points (d) to (f); and
  - (b) omit points (h) and (i).
- (5) In Article 4—
  - (a) omit points (b) to (m); and
  - (b) omit points (o) to (v).

- (6) In the heading to Title 2, for “Union” substitute “United Kingdom”.
- (7) Omit Articles 5 to 9.
- (8) In Article 10—
  - (a) in paragraph 1—
    - (i) for “It shall be” in the first place it occurs, substitute “Until the end of 2021 it is”,
    - (ii) for “Union” substitute “United Kingdom”, and
    - (iii) for “It shall be” in the second place it occurs, substitute “During that period it is”;
  - (b) in paragraph 2—
    - (i) in the words before point (a)—
      - (aa) for “in January 2020” substitute “until the end of January 2021”, and
      - (bb) for “1 April to 31 December 2020” substitute “1st April to the end of December 2021”,
    - (ii) for “Union” in each place it occurs, substitute “United Kingdom”, and
    - (iii) in the final subparagraph—
      - (aa) omit “shall”, and
      - (bb) for “Member States” substitute “a fisheries administration”;
  - (c) in paragraph 3—
    - (i) for “shall not be” substitute “are not”,
    - (ii) for “Union” substitute “United Kingdom”, and
    - (iii) omit the words from “Member States” to the end;
  - (d) omit paragraph 4;
  - (e) in paragraph 5—
    - (i) in the words before point (a), for “7a to 7k” substitute “7a and 7d to 7j”,
    - (ii) in point (a)—
      - (aa) for “from 1 January to 29 February” substitute “until the end of February 2021”,
      - (bb) for “from 1 to 31 December 2020” substitute “for the whole of December 2021”,
      - (cc) for “shall be allowed” substitute “is permitted”, and
      - (dd) for “shall be” in the second place it occurs, substitute “is”,
    - (iii) in point (b)—
      - (aa) for “1 March to 30 November 2020” substitute “1st March to the end of November 2021”, and
      - (bb) for “retained shall be” substitute “which may be retained is”, and
    - (iv) in the final subparagraph, for “shall” substitute “does”; and
  - (f) omit paragraphs 6 and 7.
- (9) For Article 11 substitute—  
“Article 11



*Measures on European eel fisheries in United Kingdom waters*

Any targeted, incidental and recreational fishery of European eel is prohibited in United Kingdom waters and brackish waters such as estuaries, coastal lagoons and transitional waters until the end of February 2021.”.

- (10) Omit Article 12.
- (11) In Article 12a—
- (a) for “shall be” substitute “is”;
  - (b) for “divisions 2a, 3a” substitute “division 2a”;
  - (c) omit “from 1 August to 31 December 2020 and”; and
  - (d) for “31 March” substitute “the end of March”.
- (12) In Article 13—
- (a) for “Union” in each place it occurs, substitute “United Kingdom fishing”;
  - (b) in point (b) of paragraph 1, for “the STECF” substitute “a similar independent scientific body recognised at international level”;
  - (c) in paragraph 2—
    - (i) for “2018/2034” substitute “2019/2239”,
    - (ii) for “7k” substitute “7j”, and
    - (iii) for “the STECF” substitute “an independent scientific body recognised at international level”; and
  - (d) in paragraph 4, for “the STECF” substitute “an independent scientific body recognised at international level”.
- (13) In Article 14—
- (a) in paragraph 2—
    - (i) omit “and 4b or at least 90mm in 3a,”,
    - (ii) for “Union” in the first place it occurs, substitute “United Kingdom”, and
    - (iii) omit the words from “and in Union waters of ICES divisions 3a.20” to the end;
  - (b) in paragraph 3—
    - (i) in point (b), for “STECF; in the case of a negative evaluation by STECF” substitute “an independent scientific body recognised at international level; where such evaluation concludes that the gears in question do not result in the 30% or greater reduction claimed”,
    - (ii) in point (d), omit “and 90mm in 3a”, and
    - (iii) in point (e)—
      - (aa) for the words from “STECF” to “third countries” substitute “an independent scientific body recognised at international level”, and
      - (bb) for “assessments consider” substitute “assessment considers”; and
  - (c) in paragraph 4, for “Member States shall” substitute “A fisheries administration must”.
- (14) Omit Article 15.
- (15) In Article 16(1)—
- (a) in the words before point (a), for “Union” substitute “United Kingdom”;
  - (b) in point (a), for “Union” substitute “United Kingdom”;
  - (c) in point (b)—

- (i) for “Union” in the first place it occurs, substitute “United Kingdom”, and
    - (ii) omit “Union and”;
  - (d) in point (c)—
    - (i) for “Union” in the first place it occurs, substitute “United Kingdom”, and
    - (ii) omit “Union and”;
  - (e) in point (d)—
    - (i) for “Union” in the first place it occurs, substitute “United Kingdom”, and
    - (ii) omit “Union and”;
  - (f) in point (e)—
    - (i) for “Union” in the first place it occurs, substitute “United Kingdom”, and
    - (ii) omit “Union and”;
  - (g) in point (f)—
    - (i) for “Union” substitute “United Kingdom”, and
    - (ii) for “3, 4, 6, 7, 8, 9 and 10” substitute “4, 6, 7 and 8”;
  - (h) in point (g)—
    - (i) for “Union” in the first place it occurs, substitute “United Kingdom”, and
    - (ii) omit “Union and”;
  - (i) in point (h), for “Union” in both places it occurs, substitute “United Kingdom”;
  - (j) omit point (j);
  - (k) in point (k)—
    - (i) for “Union” substitute “United Kingdom”, and
    - (ii) for “subareas 6 and 10” substitute “subarea 6”;
  - (l) omit point (m); and
  - (m) in point (n)—
    - (i) for “Union” substitute “United Kingdom”, and
    - (ii) for the words from “subareas” to the end, substitute “subareas 2, 4, 5, 6, 7 and 8”.
- (16) Omit Article 17.
- (17) Omit Chapter 2 of Title 2.
- (18) Omit Section 1 of Chapter 3 of Title 2.
- (19) Omit Articles 20 and 21.
- (20) Omit Section 3 of Chapter 3 of Title 2.
- (21) Omit Article 26.
- (22) In Article 27—
- (a) in paragraph 4—
    - (i) omit “, all flying the flag of a Member State”, and
    - (ii) for “to Member States using only one supply vessel” substitute “where only one supply vessel is used”;
  - (b) in paragraph 5, omit “flying the flag of a Member State”; and
  - (c) in paragraph 6, for “The Union shall” substitute “A fisheries administration must”.
- (23) In Article 28(2)—

- (a) after “except for” insert “United Kingdom fishing”;
  - (b) for “the exclusive economic zone (EEZ) of Member State whose flag they fly” substitute “United Kingdom waters”; and
  - (c) for “local” substitute “United Kingdom”.
- (24) In Article 28a, for “Union” substitute “United Kingdom”.
- (25) Omit Sections 5 to 10 of Chapter 3 of Title 2.
- (26) Omit Titles 3 and 4.
- (27) Omit the List of Annexes.
- (28) Omit Annexes 1 to 3.
- (29) In the Table for time-limited closures in Annex 4—
- (a) in row 1 (the entry for the area named “Stanhope ground”), in the “Period” column, for “30” substitute “the end of”;
  - (b) in row 2 (the entry for the area named “Long Hole”), in the “Period” column, for “31” substitute “the end of”;
  - (c) omit row 3 (the entry for the area named “Coral edge”);
  - (d) in row 4 (the entry for the area named “Papa Bank”), in the “Period” column, after “to” insert “the end of”;
  - (e) in row 5 (the entry for the area named “Foula Deeps”), in the “Period” column, for “31” substitute “the end of”;
  - (f) omit row 6 (the entry for the area named “Egersund Bank”);
  - (g) in row 7 (the entry for the area named “East of Fair Isle”), in the “Period” column, after “to” insert “the end of”;
  - (h) omit row 8 (the entry for the area named “West Bank”);
  - (i) omit row 9 (the entry for the area named “Revet”); and
  - (j) omit row 10 (the entry for the area named “Rabarberen”).
- (30) Omit Annexes 5 to 9.

## PART 3

### AMENDMENT OF THE DATA COLLECTION FRAMEWORK MEASURES

#### CHAPTER 1

#### UPDATING AND AMENDING EU EXIT REGULATIONS

#### **The Common Fisheries Policy (Amendment etc.) (EU Exit) Regulations 2019**

**8.—(1)** The Common Fisheries Policy (Amendment etc.) (EU Exit) Regulations 2019<sup>(5)</sup> are amended as follows.

- (2) In regulation 16—
  - (a) in paragraph (6)—
    - (i) in sub-paragraph (b), for paragraph (ii) substitute—

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(5) [S.I. 2019/739](#), amended by [S.I. 2019/1312](#).

- “(ii) in point (b), for “a list of mandatory” substitute “requirements in relation to”, and
- (iii) in point (c), for the words from “for Member States” to the end, substitute “to collect data based on fishing and aquaculture activities”,”; and
- (ii) in sub-paragraph (f), before paragraph (i) insert—
  - “(zi) in the words before point (a), for “list of mandatory” substitute “requirements in relation to”, and”;
- (b) in paragraph (8)—
  - (i) for sub-paragraph (a) substitute—
    - “(a) in paragraph 1—
      - (i) for “their current data collection obligations under Union law, Member States shall” substitute “other legal obligations to collect data, a fisheries administration must”,
      - (ii) omit “an operational programme, as referred to in Article 18 of Regulation (EU) No 508/2014, and”,
      - (iii) omit “Union” in the second place it occurs, and
      - (iv) omit “and pursuant to Article 21 of Regulation (EU) No 508/2014”,”;
    - (ii) omit “and” at the end of sub-paragraph (c),
    - (iii) for the full stop at the end of sub-paragraph (d) substitute “; and”, and
    - (iv) after sub-paragraph (d) insert—
      - “(e) after the omitted paragraph 4 insert—
        - “5. The work plan for data collection of the United Kingdom approved under Commission Implementing Decision C(2019) 9493 of 19th December 2019 on approving the work plan of the United Kingdom for data collection in the fisheries and aquaculture sector for the period 2020-2021 is, until such time as it is replaced or amended under paragraph 6, the national work plan referred to in paragraph 1.
        - 6. Subject to paragraph 7, the Secretary of State may amend or replace the national work plan provided that the plan continues to comply with the requirements of this Article.
        - 7. Where, in the circumstances described in paragraph 8, the exercise of the power to amend or replace the national work plan under paragraph 6 would be outside the jurisdiction of the Secretary of State under Article 1(7) of Regulation (EU) 1380/2013, before amending or replacing the work plan the Secretary of State must obtain the consent of—
          - (a) the Scottish Ministers, to the extent that the exercise of the power would be within their jurisdiction under Article 1(3) of Regulation (EU) 1380/2013 in the circumstances described in paragraph 8;
          - (b) the Welsh Ministers, to the extent that the exercise of the power would be within their jurisdiction under Article 1(4) of Regulation (EU) 1380/2013 in the circumstances described in paragraph 8;

- (c) the Department of Agriculture, Environment and Rural Affairs, in Northern Ireland, to the extent that the exercise of the power would be within its jurisdiction under Article 1(5) of Regulation (EU) 1380/2013 in the circumstances described in paragraph 8.

8. The circumstances referred to in paragraph 7 are circumstances where the power in paragraph 6 is treated as a power to amend or replace the national work plan by “a fisheries administration” instead of a power exercisable by the Secretary of State.

9. The Secretary of State must publish any amended or replacement versions of the national work plan together with a notice of the date on which any amendments or replacement versions take effect.”.”.

- (3) Omit regulation 17.

## CHAPTER 2

### AMENDMENT OF THE 2020 DATA COLLECTION MULTIANNUAL PROGRAMME

**Commission Implementing Decision (EU) 2019/909 establishing the list of mandatory research surveys and thresholds for the purposes of the multiannual Union programme for the collection and management of data in the fisheries and aquaculture sectors**

9.—(1) Commission Implementing Decision (EU) 2019/909 establishing the list of mandatory research surveys and thresholds for the purposes of the multiannual Union programme for the collection and management of data in the fisheries and aquaculture sectors is amended as follows.

- (2) In Article 1—
  - (a) omit “Union” in the first place it occurs;
  - (b) for “list of mandatory” substitute “requirements in relation to”;
  - (c) omit “for Member States”;
  - (d) omit “their”; and
  - (e) for the words from “or carry out surveys” to the end, substitute “are those set out in the national work plan referred to in Article 6 of Regulation (EU) 2017/1004”.
- (3) Omit Articles 2 and 3 and the Annex.

**Commission Delegated Decision (EU) 2019/910 establishing the multiannual Union programme for the collection and management of biological, environmental, technical and socioeconomic data in the fisheries and aquaculture sectors**

10.—(1) Commission Delegated Decision (EU) 2019/910 establishing the multiannual Union programme for the collection and management of biological, environmental, technical and socioeconomic data in the fisheries and aquaculture sectors is amended as follows.

- (2) In Article 1, omit “Union”.
- (3) Omit Article 2.
- (4) In the Annex—
  - (a) in Chapter 1—
    - (i) in point (6), for “Union and its Member States” substitute “United Kingdom”, and

- (ii) in point (10), for “21 of Regulation (EU) No 508/2014” substitute “6 of Regulation (EU) 2017/1004”;
- (b) in Chapter 2, for “the common fisheries policy” substitute “fishing activity”;
- (c) in Chapter 3—
  - (i) in point 1.1—
    - (aa) in the words before point (a), for the words from “Under the workplans” to “establish” substitute “The national work plan referred to in Article 6 of Regulation (EU) 2017/1004 establishes”, and
    - (bb) for points (a) to (c) substitute—
      - “(a) biological data, by catch fraction, on stocks caught by United Kingdom commercial fisheries within and outside United Kingdom waters and by recreational fisheries within United Kingdom waters;
      - (b) data to assess the impact of fisheries in United Kingdom waters on the marine ecosystem within and outside United Kingdom waters;
      - (c) detailed data on the activity of United Kingdom fishing vessels within and outside United Kingdom waters as reported under Regulation (EC) No 1224/2009”;
  - (ii) in point 1.2, omit the words from “taking into account” to the end,
  - (iii) in point 2—
    - (aa) for the heading substitute—

*“Biological data on stocks caught by United Kingdom fishing vessels in commercial fisheries within and outside United Kingdom waters and in recreational fisheries within United Kingdom waters”, and*
    - (bb) omit “, 1B” in each place it occurs,
  - (iv) in point 3, for the heading substitute—

*“Data to assess the impact of United Kingdom fisheries on marine ecosystems within and outside United Kingdom waters”,*
  - (v) in point 3(a)—
    - (aa) for “Union” substitute “relevant”, and
    - (bb) for “Member States” substitute “a fisheries administration”,
  - (vi) in point 3(b), for “in Union waters and outside Union waters” substitute “within and outside United Kingdom waters”,
  - (vii) in point 3(c), for “Member States shall” substitute “a fisheries administration must”,
  - (viii) in point 4—
    - (aa) for the heading substitute—

*“Detailed data on the activity of United Kingdom fishing vessels within and outside United Kingdom waters as recorded under Regulation (EC) No 1224/2009”,*

- (bb) for the first sentence substitute “Data to assess the activity of United Kingdom fishing vessels within and outside United Kingdom waters consist of the variables as indicated in Table 4.”, and
- (cc) for “workplans” substitute “work plan”,
- (ix) in point 5—
  - (aa) in the heading, for “Union” substitute “United Kingdom”, and
  - (bb) in point (a), for the second subparagraph substitute—
 

“The population must be all active and inactive vessels registered in the United Kingdom Fishing Fleet Register, as defined in Commission Implementing Regulation (EU) 2017/218, on 31 December of the reporting year and vessels that do not appear on the Register at that date but have fished at least one day during the reporting year.”, and
- (x) in point 6—
  - (aa) in the heading, for “Union” substitute “United Kingdom”, and
  - (bb) in point (c), for “Member State” substitute “United Kingdom”;
- (d) in the heading for Table 1A, for “Union” substitute “United Kingdom”;
- (e) omit Table 1B;
- (f) in Table 1D—
  - (i) in the entry for “Cetaceans — all species” in the final column, before “Council [Directive 92/43/EEC](#)” insert “Legislation implementing”,
  - (ii) before “[Directive 92/43/EEC](#)” in each place it occurs, except the entry referred to in paragraph (i) and in table note (8), insert “Legislation implementing”,
  - (iii) before “[Directive 2009/147/EEC](#)” in each place it occurs, except table note (10), insert “Legislation implementing”, and
  - (iv) in table note (5) for “Council Regulation ([EC](#)) No 2347/2002 of 16 December 2002 establishing specific access requirements and associated conditions applicable to fishing for deep-sea stocks (OJ L 351, 28.12.2002, P. 6)” substitute “Regulation (EU) 2016/2336 of the European Parliament and of the Council establishing specific conditions for fishing for deep-sea stocks in the north-east Atlantic and provisions for fishing in international waters of the north-east Atlantic”;
- (g) in Table 4, for “Euro” in each place it occurs, substitute “Pounds sterling”;
- (h) in Table 5A, for “Euro” in each place it occurs, substitute “Pounds sterling”;
- (i) in Table 7, for “Euro” in each place it occurs, substitute “Pounds sterling”;
- (j) in Table 8, in table note (3), before “Council [Directive 2006/88/EC](#)” insert “legislation implementing”; and
- (k) in Table 10, for “Euro” in each place it occurs, substitute “Pounds sterling”.

## PART 4

### OTHER AMENDMENTS TO EU EXIT REGULATIONS

#### **The Common Fisheries Policy (Amendment etc.) (EU Exit) Regulations 2019**

**11.**—(1) The Common Fisheries Policy (Amendment etc.) (EU Exit) Regulations 2019<sup>(6)</sup> are amended as follows.

(2) In regulation 3—

- (a) in paragraph (2), in the new Article 1 to be substituted by that paragraph, for “exit day” in each place it occurs, substitute “IP completion day”; and
- (b) in paragraph (4)(1), in the new point (40) to be inserted by that paragraph, for “has the same meaning as “British Fishery Limits” as contained in section 1 of the Fishery Limits Act 1976” substitute “means the sea within British fishery limits<sup>(7)</sup> but excluding the territorial sea adjacent to the Isle of Man”.

(3) In regulation 4—

(a) in paragraph (8)—

(i) in sub-paragraph (c)—

(aa) at the end of paragraph (i) omit “and”,

(bb) for the semicolon at the end of paragraph (ii) substitute “, and”, and

(cc) after paragraph (ii) insert—

“(iii) omit “in accordance with Article 45(4) of Regulation (EC) No 1005/2008”,”; and

(ii) in sub-paragraph (d)—

(aa) at the end of paragraph (i) omit “and”, and

(bb) after paragraph (ii) insert—

“(iii) omit “in accordance with Article 45(4) of Regulation (EC) No 1005/2008”; and”; and

(b) in paragraph (82), for sub-paragraph (b) substitute—

“(b) in paragraph 2—

(i) for “Member States shall” substitute “A fisheries administration must”, and

(ii) omit “the range of sanctions and measures provided for in”;

(4) In regulation 19—

(a) in paragraph (7), for sub-paragraph (b) substitute—

“(b) in paragraph (2)—

(i) in point (a), for “Member States” substitute “a fisheries administration”, and

(ii) omit point (c).”;

(b) in paragraph (31)—

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<sup>(6)</sup> S.I. 2019/739, amended by S.I. 2019/1312.

<sup>(7)</sup> By virtue of section 1(1) of the Fishery Limits Act 1976 (c. 86), “British fishery limits” are designated by S.I. 2013/3161; section 1 of the Fishery Limits Act 1976 was amended (in relation to England and Wales) by paragraph 2(2) and (3) of Schedule 4, and Part 1 of Schedule 22, to the Marine and Coastal Access Act 2009 (c. 23).



- (i) in sub-paragraph (b)(ii), for “exit day” substitute “IP completion day”, and
- (ii) in sub-paragraph (c)(ii), for “exit day” substitute “IP completion day”; and
- (c) after paragraph (33) insert—
  - “(34) Omit Annex 2.”.
- (5) Omit Part 9.
- (6) In the Schedule, omit paragraphs (n) to (q) and (s) to (z).

### **The Fisheries (Amendment) (EU Exit) Regulations 2019**

- 12.**—(1) The Fisheries (Amendment) (EU Exit) Regulations 2019<sup>(8)</sup> are amended as follows.
- (2) In regulation 4—
- (a) in paragraph 2(b), in the new definition of “retained EU restriction” to be inserted by that paragraph, for “exit day” substitute “IP completion day”;
  - (b) in paragraph 4(b)(ii), in the new definition of “retained EU restriction” to be inserted by that paragraph, for “exit day” substitute “IP completion day”; and
  - (c) in paragraph 5(b), in the new definition of “retained EU restriction” to be inserted by that paragraph, for “exit day” substitute “IP completion day”.
- (3) For regulation 13 substitute—

#### **“The Grants for Fishing and Aquaculture Industries Regulations 2015**

**13.** In regulation 2 of the Grants for Fishing and Aquaculture Industries Regulations 2015<sup>(9)</sup>, in paragraph (a), for “as amended from time to time” substitute “as it had effect in EU law immediately before IP completion day”.

### **The European Structural and Investment Funds Common Provisions (Amendment) (EU Exit) Regulations 2019**

**13.**—(1) The European Structural and Investment Funds Common Provisions (Amendment) (EU Exit) Regulations 2019<sup>(10)</sup> are amended as follows.

- (2) In regulation 4—
- (a) in paragraph (1)—
    - (i) in sub-paragraph (a), in the new first paragraph to be substituted by that sub-paragraph, omit “and support under Regulation (EU) No 508/2014”,
    - (ii) omit sub-paragraph (c),
    - (iii) in sub-paragraph (d), omit paragraph (iii), and
    - (iv) for sub-paragraph (e) substitute—
      - “(e) for the fifth paragraph substitute—

“Part Two of this Regulation applies to support for rural development except when it explicitly allows for derogations. The Fund-specific Regulations may establish complementary rules to Part Two of this Regulation. The complementary rules in the Fund-specific Regulations must be read consistently with Part Two of

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<sup>(8)</sup> S.I. 2019/746.

<sup>(9)</sup> S.I. 2015/1711.

<sup>(10)</sup> S.I. 2019/785, amended by the Agriculture (Payments) (Amendment, etc) (EU Exit) Regulations 2020 (S.I. 2020/XXX).

this Regulation. In case of doubt about the application between provisions, Part Two of this Regulation prevails over the Fund-specific Regulations.”; and

- (b) in paragraph (2)—
  - (i) in sub-paragraph (b), in the new point (4) to be substituted by that sub-paragraph, omit—
    - (aa) “Part Four of this Regulation or”, and
    - (bb) “or Regulation (EU) No 508/2014”,
  - (ii) in sub-paragraph (d), in the new point (6) to be substituted by that sub-paragraph, for “an ‘operational programme’ as referred to in Part Four of this Regulation and in Regulation (EU) No 508/2014, and” substitute “a”,
  - (iii) in sub-paragraph (e), in the new point (8) to be substituted by that sub-paragraph—
    - (aa) for “Parts Two and Four” substitute “Part Two”, and
    - (bb) omit “or a priority for support under Regulation (EU) No 508/2014”,
  - (iv) in sub-paragraph (g), in the new point (15) to be substituted by that sub-paragraph, omit “or the European Maritime and Sustainable Fisheries Fund”,
  - (v) in sub-paragraph (o), omit “or priority for support under Regulation (EU) No 508/2014”,
  - (vi) in sub-paragraph (q), in the new point (36) to be substituted by that sub-paragraph, omit “or support under Regulation (EU) No 508/2014”,
  - (vii) in sub-paragraph (r), in the new point (37) to be substituted by that sub-paragraph, omit “or support under Regulation (EU) No 508/2014”,
  - (viii) omit sub-paragraph (s),
  - (ix) in sub-paragraph (t)—
    - (aa) in the new point (43) to be inserted by that sub-paragraph, omit the words from “and, in the context of support under Regulation 508/2014” to the end,
    - (bb) in the new point (44) to be inserted by that sub-paragraph, omit paragraph (b), and
    - (cc) omit the new point (46) to be inserted by that sub-paragraph.
- (3) In regulation 5—
  - (a) in paragraph (1) omit “and support under Regulation (EU) No 508/2014”;
  - (b) in paragraph (2) omit “and support under Regulation (EU) No 508/2014”;
  - (c) in paragraph (3)—
    - (i) in sub-paragraph (a), in the new paragraph 1 to be substituted by that sub-paragraph, omit “and support under Regulation (EU) No 508/2014”,
    - (ii) in sub-paragraph (b), in the new paragraph 2 to be substituted by that sub-paragraph, omit “and support under Regulation (EU) No 508/2014”,
    - (iii) in sub-paragraph (e), omit “and support under Regulation (EU) No 508/2014”, and
    - (iv) in sub-paragraph (g)(ii), omit “and support under Regulation (EU) No 508/2014”;
  - (d) in paragraph (5), in the new Article 6 to be substituted by that paragraph, omit “and support under Regulation (EU) No 508/2014”; and
  - (e) in paragraph (7)—
    - (i) in sub-paragraph (a)(i), omit “and support under Regulation (EU) No 508/2014”, and

- (ii) in sub-paragraph (b), in the new second paragraph to be substituted by that sub-paragraph, omit—
  - (aa) “and support under Regulation (EU) No 508/2014”, and
  - (bb) “and in the case of support under Regulation (EU) No 508/2014 to measures set out in that Regulation”.
- (4) In regulation 6—
  - (a) in paragraph (1)—
    - (i) in sub-paragraph (a), in the new first paragraph to be substituted by that sub-paragraph, omit “and support under Regulation (EU) No 508/2014”,
    - (ii) in sub-paragraph (b), omit the words from “and for “(for the EMFF)”” to the end,
    - (iii) in sub-paragraph (c), omit “and support under Regulation (EU) No 508/2014”, and
    - (iv) in sub-paragraph (d), omit “and support under Regulation (EU) No 508/2014”;
  - (b) in paragraph (2)—
    - (i) in sub-paragraph (a), in the new paragraph 1 to be substituted by that sub-paragraph, omit “and support under Regulation (EU) No 508/2014,”, and
    - (ii) in sub-paragraph (b), in the new paragraph 2 to be substituted by that sub-paragraph, omit “and support under Regulation (EU) No 508/2014,”; and
  - (c) in paragraph (3)(b), omit “and support under Regulation (EU) No 508/2014”.
- (5) In regulation 7—
  - (a) in paragraph (1), in the new Article 26 to be substituted by that paragraph, omit “and support under Regulation (EU) No 508/2014”;
  - (b) in paragraph (2)—
    - (i) in sub-paragraph (b), omit “and support under Regulation (EU) No 508/2014”, and
    - (ii) in sub-paragraph (c)(i), omit “and support under Regulation (EU) No 508/2014”;
  - (c) in paragraph (6)—
    - (i) in sub-paragraph (a), in the new paragraph 1 to be substituted by that sub-paragraph, omit the words from “The relevant authority may provide support” to the end,
    - (ii) in sub-paragraph (b), for “the support concerned” substitute “support for rural development”, and
    - (iii) in sub-paragraph (d), for “the support concerned” substitute “support for rural development”;
  - (d) in paragraph (7), in sub-paragraph (a)(ii), for “the support concerned” substitute “support for rural development”; and
  - (e) in paragraph (10), for “The support concerned” substitute “for rural development”.
- (6) In regulation 8—
  - (a) in paragraph (1)—
    - (i) in sub-paragraph (b), omit “and support under Regulation (EU) No 508/2014”,
    - (ii) in sub-paragraph (c), omit “and support under Regulation (EU) No 508/2014”, and
    - (iii) in sub-paragraph (e), omit “and support under Regulation (EU) No 508/2014”;
  - (b) in paragraph (2)(d)—
    - (i) in paragraph (i), in the new point (a) to be substituted by that paragraph, omit “and support under Regulation (EU) No 508/2014,”, and

- (ii) in paragraph (ii)(dd), omit “and support under Regulation (EU) No 508/2014”;
  - (c) in paragraph (5), omit “and support under Regulation (EU) No 508/2014”;
  - (d) in paragraph (6)(a), omit “and support under Regulation (EU) No 508/2014”;
  - (e) in paragraph (7)(a)(i), omit “and support under Regulation (EU) No 508/2014”;
  - (f) in paragraph (8)—
    - (i) in sub-paragraph (a), omit “and support under Regulation (EU) No 508/2014”, and
    - (ii) in sub-paragraph (b), omit “or support under Regulation (EU) No 508/2014”;
  - (g) in paragraph (9)(b), omit “and support under Regulation (EU) No 508/2014”; and
  - (h) in paragraph (10)(b), omit “and support under Regulation (EU) No 508/2014”.
- (7) In regulation 9—
- (a) in paragraph (3)(b), omit “and support under Regulation (EU) No 508/2014”;
  - (b) in paragraph (4)(d), omit “and support under Regulation (EU) No 508/2014”;
  - (c) in paragraph (6)(a)(i), omit “and support under Regulation (EU) No 508/2014”; and
  - (d) in paragraph (8)(c)(i), omit “and support under Regulation (EU) No 508/2014”.
- (8) In regulation 10(2)(a)—
- (a) in paragraph (ii), omit “and support under Regulation (EU) No 508/2014”; and
  - (b) in paragraph (iii), omit “and support under Regulation (EU) No 508/2014”.
- (9) In regulation 11—
- (a) in paragraph (2)—
    - (i) in sub-paragraph (a), omit “and support under Regulation (EU) No 508/2014”, and
    - (ii) in sub-paragraph (f)(ii), omit sub-paragraph (bb);
  - (b) in paragraph (3), omit “or support under Regulation (EU) No 508/2014”;
  - (c) in paragraph (4)(b), omit “or support under Regulation (EU) No 508/2014”;
  - (d) in paragraph (5)(a)(i), omit “and support under Regulation (EU) No 508/2014”;
  - (e) in paragraph (6)—
    - (i) omit sub-paragraph (a),
    - (ii) in sub-paragraph (b)(i), omit “or support under Regulation (EU) No 508/2014”,
    - (iii) in sub-paragraph (c), for “3, 5 and 7” substitute “3 and 5”,
    - (iv) after sub-paragraph (c) insert—
      - “(ca) in paragraph 6, for “the ESI funds” substitute “support for rural development”;
      - (cb) omit paragraph 7;”;
    - (v) in sub-paragraph (d)—
      - (aa) in paragraph (i), omit “or support under Regulation (EU) No 508/2014”,
      - (bb) in paragraph (ii), omit sub-paragraph (bb),
    - (vi) in sub-paragraph (e), omit paragraph (iii), and
    - (vii) in sub-paragraph (g), in the new paragraph 11 to be substituted by that sub-paragraph, omit “or support under Regulation (EU) No 508/2014 or both of them”;
  - (f) in paragraph (7)(a), omit “and support under Regulation (EU) No 508/2014”;
  - (g) in paragraph (8), omit sub-paragraph (a);

- (h) in paragraph (12)—
    - (i) in sub-paragraph (a)(i)(aa), omit “and support under Regulation (EU) No 508/2014”, and
    - (ii) in sub-paragraph (b)(i), omit “and support under Regulation (EU) No 508/2014”;
  - (i) in paragraph (13)—
    - (i) in sub-paragraph (a)(i), omit “and support under Regulation (EU) No 508/2014”, and
    - (ii) in sub-paragraph (b)(ii), in the new point (b) to be substituted by that sub-paragraph, omit “or support under Regulation (EU) No 508/2014”; and
  - (j) in paragraph (14)—
    - (i) in sub-paragraph (a), omit “and support under Regulation (EU) No 508/2014”, and
    - (ii) in sub-paragraph (d), in the new paragraph 3 to be substituted by that sub-paragraph, omit “or support under Regulation (EU) No 508/2014”.
- (10) Omit regulations 15 and 16.
- (11) In regulation 18—
- (a) in paragraph (2), omit “and support under Regulation (EU) No 508/2014”;
  - (b) in paragraph (3), omit “and support under Regulation (EU) No 508/2014”;
  - (c) in paragraph (4), in the new paragraph 1 to be substituted by that paragraph, omit “and support under Regulation (EU) No 508/2014”;
  - (d) in paragraph (6)(c)(iv), in the new point 4 to be substituted by that paragraph, omit “and, where appropriate, in its programme for support under Regulation (EU) No 508/2014”; and
  - (e) in paragraph (9)(b)(i), omit “and priorities for sustainable fisheries”.
- (12) In regulation 20—
- (a) in paragraph (2)(d), omit “and support under Regulation (EU) No 508/2014”; and
  - (b) in paragraph (3), omit “and support under Regulation (EU) No 508/2014”.
- (13) In regulation 22(3)—
- (a) in sub-paragraph (a), omit “and support under Regulation (EU) No 508/2014”; and
  - (b) in sub-paragraph (c), omit “or support under Regulation (EU) No 508/2014”.

#### **The Agriculture (Legislative Functions) (EU Exit) Regulations 2019**

- 14.** In regulation 74 of the Agriculture (Legislative Functions) (EU Exit) Regulations 2019(11)—
- (a) in the new point (47) to be inserted by that regulation, omit paragraph (a); and
  - (b) omit the new point (48) to be inserted by that regulation.

#### **The Common Fisheries Policy and Aquaculture (Amendment etc.) (EU Exit) Regulations 2019**

**15.**—(1) The Common Fisheries Policy and Aquaculture (Amendment etc.) (EU Exit) Regulations 2019(12) are amended as follows.

- (2) In regulation 26, for paragraph (2) substitute—
- “(2) In Article 15 for paragraph 6 substitute—

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(11) [S.I. 2019/748](#), to which there are amendments not relevant to these Regulations.

(12) [S.I. 2019/753](#), amended by [S.I. 2019/1312](#).

“6. A fisheries administration may make regulations laying down a specific discard plan for a particular fishery containing the specifications referred to in points (a) to (e) of paragraph 5 of this Article.

**6A.** Subject to paragraph 6B, the Secretary of State may make regulations laying down a specific discard plan for a particular fishery containing the specifications referred to in points (a) to (e) of paragraph 5 of this Article.

**6B.** Where the exercise of the power to make regulations under paragraph 6 would be outside the jurisdiction of the Secretary of State under Article 1(7), before making such regulations under the power in paragraph 6A the Secretary of State must obtain the consent of—

- (a) the Scottish Ministers, to the extent that the exercise of the power would be within their jurisdiction under Article 1(3);
- (b) the Welsh Ministers, to the extent that the exercise of the power would be within their jurisdiction under Article 1(4);
- (c) the Department of Agriculture, Environment and Rural Affairs, in Northern Ireland, to the extent that the exercise of the power would be within its jurisdiction under Article 1(5).”.

(3) Omit Chapter 8 of Part 5.

#### **The Common Fisheries Policy (Amendment etc.) (EU Exit) (No. 2) Regulations 2019**

**16.** In regulation 5 of the Common Fisheries Policy (Amendment etc.) (EU Exit) (No. 2) Regulations 2019(13)—

- (a) in paragraph (3)(a), for paragraph (ii) substitute—  
“(ii) omit point (b),”;
- (b) in paragraph (4), for “5” substitute “6”; and
- (c) omit paragraph (5).

#### **The Common Fisheries Policy and Animals (Amendment etc.) (EU Exit) Regulations 2019**

**17.—(1)** The Common Fisheries Policy and Animals (Amendment etc.) (EU Exit) Regulations 2019(14) are amended as follows.

(2) In regulation 5(34)(b), for paragraph (i) substitute—

“(i) in point 1.1, omit “or at least 90mm in Skagerrak and Kattegat”.”.

(3) In regulation 6(13)—

- (a) omit “and” at the end of sub-paragraph (b); and
- (b) after sub-paragraph (b) insert—

“(ba) after paragraph 1 insert—

“**1A.** Subject to paragraph 1B, for all stocks of species in the Western Waters to which the landing obligation applies under Article 15(1) of Regulation (EU) No. 1380/2013, the Secretary of State may make regulations in order to supplement this Regulation by specifying details of that obligation as provided for in points (a) to (e) of Article 15(5) of Regulation (EU) No 1380/2013.

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(13) S.I. 2019/848, amended by S.I. 2019/1312.

(14) S.I. 2019/1312.

**1B.** Where the exercise of the power to make regulations under paragraph 1 would be outside the jurisdiction of the Secretary of State under Article 1(7) of Regulation (EU) No 1380/2013, before making such regulations under the power in paragraph 1A the Secretary of State must obtain the consent of—

- (a) the Scottish Ministers, to the extent that the exercise of the power would be within their jurisdiction under Article 1(3) of that Regulation;
- (b) the Welsh Ministers, to the extent that the exercise of the power would be within their jurisdiction under Article 1(4) of that Regulation;
- (c) the Department of Agriculture, Environment and Rural Affairs, in Northern Ireland, to the extent that the exercise of the power would be within its jurisdiction under Article 1(5) of that Regulation.”; and”.

(4) In regulation 7(5)—

- (a) omit “and” at the end of sub-paragraph (b); and
- (b) after sub-paragraph (b) insert—

“(ba) after paragraph 1 insert—

“**1A.** Subject to paragraph 1B, for all stocks of species in the North Sea to which the landing obligation applies under Article 15(1) of Regulation (EU) No. 1380/2013, the Secretary of State may make regulations in order to supplement this Regulation by specifying details of that obligation as provided for in points (a) to (e) of Article 15(5) of Regulation (EU) No 1380/2013.

**1B.** Where the exercise of the power to make regulations under paragraph 1 would be outside the jurisdiction of the Secretary of State under Article 1(7) of Regulation (EU) No 1380/2013, before making such regulations under the power in paragraph 1A the Secretary of State must obtain the consent of—

- (a) the Scottish Ministers, to the extent that the exercise of the power would be within their jurisdiction under Article 1(3) of that Regulation;
- (b) the Welsh Ministers, to the extent that the exercise of the power would be within their jurisdiction under Article 1(4) of that Regulation;
- (c) the Department of Agriculture, Environment and Rural Affairs, in Northern Ireland, to the extent that the exercise of the power would be within its jurisdiction under Article 1(5) of that Regulation.”; and”.

(5) In regulation 8, omit paragraph (7).

Date

*Name*  
Parliamentary Under Secretary of State  
Department for Environment, Food and Rural  
Affairs



## SCHEDULE

Regulation 2

## Revocations

## PART 1

## Revocations

The following legislation is revoked—

- (a) Commission Delegated Regulation (EU) 2020/3 establishing a discard plan for Venus shells (*Venus spp.*) in certain Italian territorial waters.
- (b) Commission Delegated Regulation (EU) 2019/2201 supplementing Regulation (EU) 2019/1241 of the European Parliament and of the Council with detailed rules for the implementation of real-time closures for Northern prawn fisheries in the Skagerrak.
- (c) Council Regulation (EU) 2019/124 fixing for 2019 the fishing opportunities for certain fish stocks and groups of fish stocks, applicable in Union waters and, for Union fishing vessels, in certain non-Union waters.
- (d) Commission Implementing Decision (EU) 2018/1283 laying down rules on the format and timetables for the submission of annual data collection reports in the fisheries and aquaculture sectors.
- (e) Council Regulation (EC) No 601/2004 laying down certain control measures applicable to fishing activities in the area covered by the Convention on the conservation of Antarctic marine living resources.
- (f) Council Regulation (EC) No 600/2004 laying down certain technical measures applicable to fishing activities in the area covered by the Convention on the conservation of Antarctic marine living resources.

## PART 2

## Revocation of legislation so far as it forms part of retained EU law

The following legislation, so far as it forms part of domestic law by virtue of section 3(1) of the European Union (Withdrawal) Act 2018<sup>(15)</sup>, is revoked—

- (a) so far as relating to the European Maritime and Fisheries Fund, Regulation (EU) No 1303/2013 of the European Parliament and of the Council laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund.
- (b) Commission Implementing Decision 2014/372/EU setting out the annual breakdown by Member State of the global resources of the European Maritime and Fisheries Fund available in the framework of shared management for the period 2014-2020.

(15) 2018 c. 16 (“the 2018 Act”). Section 3 was amended by section 25(2) of the European Union (Withdrawal Agreement) Act 2020 (c. 1) (“the 2020 Act”); section 7A was inserted by section 5 of the 2020 Act. By virtue of Article 138 of the EU withdrawal agreement and section 7A of the 2018 Act, EU law in the field of the European Maritime and Fisheries Fund continues to apply to the United Kingdom in respect of the 2014-2020 EU multiannual financial framework. So far as provisions of that EU law fall outside of the purposes of Article 138 of the EU withdrawal agreement they are revoked by this instrument.

- (c) Commission Implementing [Decision 2014/464/EU](#) identifying the priorities of the Union for enforcement and control policy in the framework of the European Maritime and Fisheries Fund.
- (d) Regulation (EU) No 508/2014 of the European Parliament and of the Council on the European Maritime and Fisheries Fund.
- (e) Commission Implementing Regulation (EU) 763/2014 laying down rules for applying Regulation (EU) No 508/2014 of the European Parliament and of the Council on the European Maritime and Fisheries Fund as regards the technical characteristics of information and publicity measures and instructions for creating the Union emblem.
- (f) Commission Implementing Regulation (EU) No 771/2014 laying down rules pursuant to Regulation (EU) No 508/2014 of the European Parliament and of the Council on the European Maritime and Fisheries Fund with regard to the model for operational programmes, the structure of the plans for compensation of additional costs incurred by operators in the fishing, farming, processing and marketing of certain fishery and aquaculture products from the outermost regions, the model for the transmission of financial data, the content of the ex ante evaluation reports and the minimum requirements for the evaluation plan to be submitted under the European Maritime and Fisheries Fund.
- (g) Commission Delegated Regulation (EU) No 1014/2014 supplementing Regulation (EU) No 508/2014 of the European Parliament and of the Council on the European Maritime and Fisheries Fund with regards to the content and construction of a common monitoring and evaluation system for the operations funded under the European Maritime and Fisheries Fund.
- (h) Commission Delegated Regulation (EU) No 1046/2014 supplementing Regulation (EU) No 508/2014 of the European Parliament and of the Council on the European Maritime and Fisheries Fund with regards to the criteria for the calculation of the additional costs incurred by operators in the fishing, farming, processing and marketing of certain fishery and aquaculture products from the outermost regions.
- (i) Commission Implementing Regulation (EU) No 1242/2014 laying down rules pursuant to Regulation (EU) No 508/2014 of the European Parliament and of the Council on the European Maritime and Fisheries Fund with regard to the presentation of relevant cumulative data on operations.
- (j) Commission Implementing Regulation (EU) No 1243/2014 laying down rules pursuant to Regulation (EU) No 508/2014 of the European Parliament and of the Council on the European Maritime and Fisheries Fund with regard to the information to be sent by Member States, as well as on data needs and synergies between potential data sources.
- (k) Commission Implementing Regulation (EU) No 1362/2014 laying down rules on a simplified procedure for the approval of certain amendments to operational programmes financed under the European Maritime and Fisheries Fund and rules concerning the format and presentation of the annual reports on the implementation of those programmes.
- (l) Commission Delegated Regulation (EU) 2015/288 supplementing Regulation (EU) No 508/2014 of the European Parliament and of the Council on the European Maritime and Fisheries Fund with regard to the period of time and the dates for the inadmissibility of applications.
- (m) Commission Delegated Regulation (EU) 2015/531 supplementing Regulation (EU) No 508/2014 of the European Parliament and of the Council by identifying the costs eligible for support from the European Maritime and Fisheries Fund in order to improve hygiene, health, safety and working conditions of fishermen, protect and restore marine biodiversity and ecosystems, mitigate climate change and increase the energy efficiency of fishing vessels.

- (n) Commission Delegated Regulation (EU) 2015/852 supplementing Regulation (EU) No 508/2014 of the European Parliament and of the Council as regards the cases of non-compliance and the cases of serious non-compliance with the rules of the Common Fisheries Policy that may lead to an interruption of a payment deadline or suspension of payments under the European Maritime and Fisheries Fund.
- (o) Commission Delegated Regulation (EU) 2015/1930 supplementing Regulation (EU) No 508/2014 of the European Parliament and of the Council on the European Maritime and Fisheries Fund as regards the criteria for establishing the level of financial corrections and for applying flat rate financial corrections.
- (p) Commission Delegated Regulation (EU) 2015/2252 amending Delegated Regulation (EU) 2015/288 as regards the period of inadmissibility of applications for support from the European Maritime and Fisheries Fund.
- (q) Commission Implementing Decision C(2015) 8628 on approving the operational programme “European Maritime and Fisheries Fund – Operational Programme for the United Kingdom” for support from the European Maritime and Fisheries Fund in the United Kingdom.

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## EXPLANATORY NOTE

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

These Regulations are made in exercise of the powers conferred by section 8(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018 (c. 16) in order to address failures of retained EU law to operate effectively and other deficiencies (in particular, under section 8(2)(b), (c), (d) and (g)) arising from the withdrawal of the United Kingdom from the European Union.

These Regulations are also made in exercise of the power conferred by section 41(1) of the European Union (Withdrawal Agreement) Act 2020 (c. 1), in particular, in order to update references to “exit day” in EU Exit Statutory Instruments to “IP Completion day” as a result of the creation of the implementation period by that Act.

These Regulations make amendments to EU Exit Statutory Instruments in order to update provisions in consequence of new EU legislation. They also make amendments to the new retained direct EU legislation that this new EU legislation will give rise to. The new EU legislation all applies in the field of the common fisheries policy of the European Union.

Other amendments made by these Regulations to EU Exit Statutory Instruments include the following: amendments to take account of the implementation period (for example, by changing references to “exit day” into references to “IP completion day” as mentioned above); amendments to make necessary changes which result from the EU withdrawal agreement (for example, where previously the European Union (Withdrawal) Act 2018 would have created retained direct EU legislation in a particular area but the EU withdrawal agreement now provides for the EU legislation in question to apply in the UK directly); and amendments to correct minor errors.

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

An Explanatory Memorandum is published alongside this instrument on [www.legislation.gov.uk](http://www.legislation.gov.uk).



**EXPLANATORY MEMORANDUM TO**  
**THE COMMON FISHERIES POLICY (AMENDMENT ETC.) (EU EXIT)**  
**REGULATIONS 2020**

**2020 No. [XXXX]**

**1. Introduction**

- 1.1 This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs (“Defra”) and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

**2. Purpose of the instrument**

- 2.1 The Common Fisheries Policy (“CFP”) imposes a common approach to the sustainable management of fisheries across the EU and its waters. A number of statutory instruments made in 2019 under powers in the European Union (Withdrawal) Act 2018 made amendments to EU CFP legislation that was scheduled to become ‘retained EU law’ on exit day. The amendments were intended to ensure the retained CFP legislation would operate effectively upon the UK’s withdrawal from the EU. Following ratification of the EU withdrawal agreement, EU CFP legislation will now become retained EU law at the end of the Transition Period and this instrument is required to ensure retained EU law operates effectively from that point.
- 2.2 This instrument is required in relation to three categories of amendments:
  - a) Amendments required to account for new EU CFP legislation which has come into force since the previous amending statutory instruments were drafted in preparation for exit day.
  - b) Amendments required in consequence of the EU withdrawal agreement.
  - c) Amendments to previous amending statutory instruments, including amendments to correct minor errors.

***Explanations***

*What did any relevant EU law do before exit day?*

- 2.3 The CFP regulates fishing activities and the enforcement of those activities in EU waters, as well as implementing the requirements of international agreements that the European Union has entered into on behalf of Member States. This instrument will amend the following aspects of retained EU law:
  - a) Demersal discard plans – Regulations (EU) 2019/2238 and 2019/2239. These Regulations (also known as ‘discard plans’) set out exemptions from the landing obligation (as set out in the Common Fisheries Policy Regulation (1380/2013)), as recommended by the North-Western Waters (NWW) or North Sea (NS) Regional Groups, in order to facilitate full implementation of the landing obligation from 1<sup>st</sup> January 2019.

- b) 2020 TAC and quota regulation - Regulation (EU) 2020/123. This Regulation sets fishing opportunities (the total allowable catch (TAC) and each Member State's allocated quota for certain fish stocks) in EU waters and certain non-EU waters.
- c) 2020-21 data collection multiannual programme – Decisions (EU) 2019/909 and (EU) 2019/910. These Decisions set out detailed requirements for the collection, management and use of fisheries data, in particular, scientific data relating to fish stocks.

2.4 Additionally, this instrument will revoke a number of items of EU legislation from retained EU law and amend the following EU Exit statutory instruments, with the detail describing the revocations and amendments found in the table at Annex B:

- a) The Common Fisheries Policy (Amendment etc.) (EU Exit) Regulations 2019
- b) The Fisheries (Amendment) (EU Exit) Regulations 2019
- c) The European Structural and Investment Funds Common Provisions (Amendment) (EU Exit) Regulations 2019
- d) The Agriculture (Legislative Functions) (EU Exit) Regulations 2019
- e) The Common Fisheries Policy and Aquaculture (Amendment etc.) (EU Exit) Regulations 2019
- f) The Common Fisheries Policy (Amendment etc.) (EU Exit) (No. 2) Regulations 2019
- g) The Common Fisheries Policy and Animals (Amendment etc.) (EU Exit) Regulations 2019

Why is it being changed?

- 2.5 The technical changes made by this instrument are necessary to ensure that the rules contained in the CFP continue to operate effectively, so that fishing within UK waters continues to be regulated in a sustainable manner.
- 2.6 The functions transferred by this instrument will ensure that fisheries management in the UK can continue to operate efficiently. UK fisheries administrations require this ability to ensure they can keep abreast of the latest scientific evidence and make changes where necessary.
- 2.7 Annex B to this explanatory memorandum contains further detail on the amendments made by this instrument.

What will it now do?

- 2.8 This instrument ensures there is immediate continuity in the regulation of UK waters at the end of the Transition Period. Although some changes are required where provisions would no longer operate effectively or make sense outside of the EU structure, no policy changes are made to the effect of the legislation amended by this instrument.

### **3. Matters of special interest to Parliament**

#### *Matters of special interest to the Joint Committee on Statutory Instruments*

- 3.1 This instrument includes amendments which correct minor errors in earlier EU exit statutory instruments (in S.I. 2019/739 and 2019/1312) and this instrument is being published under the free issue procedure.

#### *Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)*

- 3.2 The territorial application of this instrument includes Scotland and Northern Ireland.

### **4. Extent and Territorial Application**

- 4.1 The territorial extent of this instrument is the United Kingdom.
- 4.2 The territorial application of this instrument is the United Kingdom.

### **5. European Convention on Human Rights**

- 5.1 The Parliamentary Under Secretary of State at the Department for Environment, Food and Rural Affairs, Victoria Prentis MP, has made the following statement regarding Human Rights:

“In my view the provisions of the Common Fisheries Policy (Amendment etc.) (EU Exit) Regulations 2020 are compatible with the Convention rights.”

### **6. Legislative Context**

- 6.1 Section 8(1) of the European Union (Withdrawal) Act 2018 provides that a Minister of the Crown may by regulations make such provision as the Minister considers appropriate to prevent, remedy or mitigate any failure of retained EU law to operate effectively or any other deficiency in retained EU law arising from the withdrawal of the United Kingdom from the EU. This instrument is made in exercise of these powers.
- 6.2 Paragraph 21 of Schedule 7 to that Act specifies that the power to modify retained EU law includes a power to make supplementary, incidental and consequential provision and the power to restate retained EU law in a clearer or more accessible way.
- 6.3 Section 41(1) of the European Union (Withdrawal Agreement) Act 2020 provides that a Minister of the Crown may make such provision as the Minister considers appropriate in consequence of the Act. In this instrument, this power is exercised to make amendments which relate to the implementation of the Transition Period (for example, updating references from ‘exit day’ to ‘IP completion day’).
- 6.4 This instrument operates together with five other instruments, which work together to amend the suite of fisheries management legislation that applies to the UK. These are:
- a) The Common Fisheries Policy (Amendment etc.) (EU Exit) Regulations 2019
  - b) The Common Fisheries Policy and Aquaculture (Amendment etc.) (EU Exit) Regulations 2019
  - c) The Common Fisheries Policy (Amendment etc.) (EU Exit) (No.2) Regulations 2019

- d) The Common Fisheries Policy and Animals (Amendment etc.) (EU Exit) Regulations 2019
- e) The Fisheries (Amendment) (EU Exit) Regulations 2019, which provided technical corrections to deficiencies in domestic legislation.

## 7. Policy background

### *What is being done and why?*

- 7.1 The Government remains committed to maintaining existing standards of effective fisheries management. This instrument is required to ensure that after the end of the Transition Period there is immediate continuity in regulation, and the same environmental standards are met. In accordance with the provisions of section 8 of the European Union (Withdrawal) Act 2018, all amendments to the CFP have arisen as a result of the UK's departure from the EU and therefore the amendments do not represent any changes in policy regarding fisheries management. Over time, the fisheries administrations will amend retained EU law in order to implement their own policies.
- 7.2 Fisheries management is largely devolved to Scotland, Wales and Northern Ireland in relation to their vessels and their waters. Therefore, where provisions place obligations on EU member States to do something, these references are mostly changed to "a fisheries administration", which is a term defined in amendments made by the Common Fisheries Policy (Amendment etc.) (EU Exit) Regulations 2019 that applies to all of the retained CFP Regulations.
- 7.3 The definition ensures that "a fisheries administration" means the Secretary of State, a devolved fisheries administration or the Marine Management Organisation, and "a devolved fisheries administration" means the Scottish Ministers, the Welsh Ministers or, in Northern Ireland, the Department of Agriculture, Environment and Rural Affairs. This definition has the effect of preserving the status quo, so that the administration which currently carries out the function in question, or which exercises the power in question, continues to do so. New functions which have not previously been exercisable at member State level have been transferred in accordance with the joint decision-making framework agreed with the Devolved Administrations to complement the current position.
- 7.4 Further examples of the technical changes that are made by this instrument include amending references from the "European Union" to the "United Kingdom"; and "Union" or "Member State vessels and waters" to "UK vessels and waters".
- 7.5 In addition to amending retained EU law, this instrument also amends previous EU exit statutory instruments in consequence of the ratification of the EU withdrawal agreement. In particular, the EU withdrawal agreement contains provisions which apply elements of EU legislation directly in the UK after the end of the Transition Period. EU exit statutory instruments made prior to the EU withdrawal agreement were drafted on the basis that such EU legislation would form part of retained EU law. However, the European Union (Withdrawal Agreement) Act 2020 ensures that there will not be duplication of retained EU law and EU law which applies directly by virtue of the EU withdrawal agreement. As such, the amendments made in this instrument in consequence of the EU withdrawal agreement revoke previous deficiency corrections to retained EU law in this area as the retained EU law will no longer be created by operation of the European Union (Withdrawal) Act 2018.



## **8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union**

8.1 This instrument is being made using the power in section 8 of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018 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 Annex A to this explanatory memorandum.

## **9. Consolidation**

9.1 There are no plans to consolidate the legislation.

## **10. Consultation outcome**

10.1 The Devolved Administrations (the Scottish Government, Department of Agriculture, Environment and Rural Affairs in Northern Ireland, and the Welsh Government) were involved in the drafting of the proposed amendments.

10.2 A targeted engagement was carried out on the approach, involving key stakeholders from the fisheries sector, food industry and environment non-governmental bodies. In addition, a ten-week consultation was conducted through the Fisheries White Paper which described future fisheries policy. Stakeholders were broadly supportive of the approach being taken in the White Paper.

## **11. Guidance**

11.1 As these are technical changes to existing legislation there is no associated guidance.

## **12. Impact**

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument because no significant changes to what the public sector, or business, will have to do under the regulations are envisaged. The amendments made by the instrument will ensure UK vessels are subject to largely the same rules they are now. The impact of each set of regulations made using the powers transferred by this instrument will be assessed separately, as and when the powers are exercised.

## **13. Regulating small business**

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 As the legislation will continue to operate substantially as it did before EU Exit, it will not disproportionately affect small business.

13.3 The effect on small businesses of each set of regulations made using the powers transferred in this instrument will be assessed separately, as and when the powers are exercised.

#### **14. Monitoring & review**

- 14.1 The approach to monitoring of this legislation is that Defra, as well as the Devolved Administrations in relation to devolved matters, will monitor and review the impact of the instrument as part of their standard policy-making procedures.
- 14.2 As this instrument is made under the European Union (Withdrawal) Act 2018, no review clause is required.

#### **15. Contact**

- 15.1 Jack Mitchell at the Department for Environment, Food and Rural Affairs, telephone: 020 8720 2848 or email: Jack.Mitchell@defra.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Anne Freeman, Deputy Director for Domestic Fisheries and Reform at the Department for Environment, Food and Rural Affairs can confirm that this explanatory memorandum meets the required standard.
- 15.3 Victoria Prentis MP, Parliamentary Under Secretary of State at the Department for Environment, Food and Rural Affairs can confirm that this explanatory memorandum meets the required standard.

# Annex A

## 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 under the 2018 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(3), 3(7) and 17(3) and 17(7) of Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) to make a Negative SI.	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/Sifting Committees.
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly 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	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2.	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	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2.	Explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them.  State 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	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. In addition to the statutory obligation the Government has made a political commitment to include these statements alongside all EUWA SIs.	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	Ministers of the Crown exercising sections 8(1), 9, and	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.

		23(1) or jointly exercising powers in Schedule 2 to create a criminal offence.	
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising sections 10(1), 12 and part 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority by Statutory Instrument.	State why it is appropriate to create such a sub-delegated power.
Urgency	Paragraph 34, Schedule 7	Ministers of the Crown using the urgent procedure in paragraphs 4 or 14, Schedule 7.	Statement of the reasons for the Minister's opinion that the SI is urgent.
Explanations where amending regulations under s2(2) ECA 1972	Paragraph 13, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA 1972.	Statement explaining the good reasons for modifying the instrument made under s. 2(2) ECA 1972, identifying the relevant law before exit day, and explaining the instrument's effect on retained EU law.
Scrutiny statement where amending regulations under s2(2) ECA 1972	Paragraph 16, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA 1972.	Statement setting out: a) the steps which the relevant authority has taken to make the draft instrument published in accordance with paragraph 16(2), Schedule 8 available to each House of Parliament, b) containing information about the relevant authority's response to— (i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and (ii) any other representations made to the relevant authority about the published draft instrument, and c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the instrument or draft instrument which is to be laid.

## Part 2

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

#### 1. Appropriateness statement

- 1.1 The Parliamentary Under Secretary of State at the Department for Environment, Food and Rural Affairs, Victoria Prentis MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Common Fisheries Policy (Amendment etc.) (EU Exit) Regulations 2020 do no more than is appropriate”.

- 1.2 This is the case because: this instrument corrects deficiencies in legislation that arise from the withdrawal of the UK from the EU, to ensure the UK has functional and operable fisheries legislation after EU Exit.

#### 2. Good reasons

- 2.1 The Parliamentary Under Secretary of State at the Department for Environment, Food and Rural Affairs, Victoria Prentis MP, 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”.

- 2.2 These are: correcting deficiencies as necessary to ensure we continue to have operable fisheries legislation after EU Exit and provisions for the powers to make changes to regulations to enable a sustainable approach to fisheries management.

#### 3. Equalities

- 3.1 The Parliamentary Under Secretary of State at the Department for Environment, Food and Rural Affairs, Victoria Prentis MP, has made the following statement:

“The draft 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”.

- 3.2 The Parliamentary Under Secretary of State at the Department for Environment, Food and Rural Affairs, Victoria Prentis MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to the draft instrument, I, Victoria Prentis MP, 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. Explanations

- 4.1 The explanations statement has been made in section 2 of the main body of this explanatory memorandum.

## **5. Legislative sub-delegation**

5.1 The Parliamentary Under Secretary of State at the Department for Environment, Food and Rural Affairs, Victoria Prentis MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view it is appropriate to create a relevant sub-delegated power in the Common Fisheries Policy (Amendment etc.) (EU Exit) Regulations 2020.”

5.2 This is appropriate because: the power to amend the data collection work plan which sits under the data collection framework regulation should be exercisable administratively rather than by statutory instrument (as set out in Annex B to this explanatory memorandum). The data collection work plan itself is not a statutory instrument and the amendment power contains a safeguard to ensure that the document cannot be amended in a manner which is inconsistent with the legislation it sits under, as well as an obligation to publish any amendments.

# Annex B to the Explanatory Memorandum

## Summary of amendments made in the Common Fisheries Policy (Amendment etc.) (EU Exit) Regulations 2020

Discard Plans	
<p>Commission Delegated Regulation (EU) 2019/2238 specifying details of implementation of the landing obligation for certain demersal fisheries in the North Sea for the period 2020-2021</p>	<p>References to the 'Union' have been amended to the 'United Kingdom', and ICES area references have been amended so that they generally apply to UK waters but, in particular, exclude areas which exclusively fall within EU waters.</p> <p>As the UK is now an independent coastal state, the amendments remove legal requirements for all EU member states to provide data annually to STECF for review, on the impact of a number of the discarding exemptions (flexibilities), which are in force until the end of 2021. Despite the removal of these requirements, the UK still plans to ensure the relevant data is collated and reviewed, but will no longer submit the data to STECF for review.</p> <p>The EU Regulation is due to expire at the end of 2021. The amendments made by this instrument do not change the expiry date and therefore the Regulation in UK retained EU law (and all of the discarding exemptions outlined) will also expire at the end of 2021.</p>
<p>Commission Delegated Regulation (EU) 2019/2239 specifying details of the landing obligation for certain demersal fisheries in North-Western waters for the period 2020-2021</p>	<p>References to the 'Union' have been amended to the 'United Kingdom', and ICES area references have been amended so that they generally apply to UK waters but, in particular, exclude areas which exclusively fall within EU waters.</p> <p>As the UK is now an independent coastal state, the amendments remove legal requirements for all EU member states to provide data annually to STECF for review, on the impact of a number of the discarding exemptions (flexibilities), which are in force until the end of 2021. Despite the</p>

	<p>removal of these requirements, the UK still plans to ensure the relevant data is collated and reviewed, but will no longer submit the data to STECF for review.</p> <p>Additionally, some of the discarding exemptions are only available when fishers are using particular selective gear types. STECF (an EU body) may assess other gear types, not specified in this regulation, as being as equally selective as those specified in the regulation, and therefore equivalent. We have replaced this reference to STECF with 'a fisheries administration' who in the future will be responsible for determining equivalence in gear types, and other fishing equipment.</p> <p>The EU Regulation is due to expire at the end of 2021. The amendments made by this instrument do not change the expiry date and therefore the Regulation in UK retained EU law (and all of the discarding exemptions outlined) will also expire at the end of 2021.</p>
<p>The Common Fisheries Policy (Amendment etc.) (EU Exit) (No. 2) Regulations 2019 and the Common Fisheries Policy and Animals (Amendment etc.) (EU Exit) Regulation 2019</p>	<p>Amendments to these two statutory instruments in Chapter 1 of Part 2 to this instrument revoke previous deficiency corrections which related to previous discard plans which have since been repealed at EU level.</p>
<p><b>TAC and Quota Regulations</b></p>	
<p>Council Regulation (EU) 2020/123 fixing for 2020 the fishing opportunities for</p>	<p>This instrument removes all of the provisions relating to quota (total allowable catch or TAC) as UK quota will in future be set by the Secretary of State.</p>



<p>certain fish stocks and groups of fish stocks, applicable in Union waters and, for Union fishing vessels, in certain non-Union waters</p>	<p>References to ‘Union’ in remaining provisions are amended to ‘United Kingdom’, ensuring that UK boats are required to fish under the same management measures as EU boats, for instance prohibiting UK boats fishing for European seabass in ICES divisions 4b and 4c, and in ICES subarea 7.</p> <p>In relation to the seabass fishing management measures in Article 10, this instrument amends the time periods for the fishing restrictions and derogations as these are written into the EU text specifically for 2020 with a transitional provision in Article 54 which states that the provisions continue into 2021 until replaced by next year’s quota regulation. As the UK will not be subject to next year’s quota regulation, the relevant provisions will instead be extended by this instrument to apply in 2021 in the same way they applied in 2020. The provisions will then be reviewed after the end of the Transition Period and amended or replaced as necessary.</p> <p>We have replaced references to STECF, an EU body, with references to ‘an independent body recognised at international level’, ensuring flexibility in seeking the best scientific advice.</p> <p>References to areas of the sea which fall solely within EU waters have also been removed.</p>
<p>The Common Fisheries Policy (Amendment etc.) (EU Exit) (No. 2) Regulations 2019 and the Common Fisheries Policy and Animals (Amendment etc.) (EU Exit) Regulations 2019</p>	<p>Amendments to these two statutory instruments in Chapter 1 of Part 2 to this instrument revoke previous deficiency corrections which related to the previous EU TAC and quota regulation which has now been superseded by the 2020 version.</p>
<p><b>Data Collection Framework</b></p>	

<p>Commission Implementing Decision (EU) 2019/909 establishing the list of mandatory research surveys and thresholds for the purposes of the multiannual Union programme for the collection and management of data in the fisheries and aquaculture sectors</p>	<p>The Commission Implementing Decision sets out the list of mandatory research surveys for the purposes of the data collection framework regulation and the thresholds below which it is not mandatory to collect data. This list is an EU-wide list whereby the specific surveys are split across the various member States (often including individually split surveys and cost-sharing arrangements). The Decision, however, makes it clear that it is each member State's individual data collection work plan which sets out the surveys that a member State will be responsible for. As such, this instrument amends the Decision to remove the EU-wide list of mandatory research surveys and the thresholds and instead confirm that the relevant surveys are those specified in the UK's data collection work plan.</p>
<p>Commission Delegated Decision (EU) 2019/910 establishing the multiannual Union programme for the collection and management of biological, environmental, technical and socioeconomic data in the fisheries and aquaculture sectors</p>	<p>The amendments made to this Commission Implementing Decision are technical deficiency correction. For example, they will remove a reference to examining the methods and result of studies to verify that they are appropriate for the management of the common fisheries policy and replaced it so that examination must ensure that they are appropriate for the management of fishing activity.</p> <p>The amendments replace references to 'Union waters' and 'fisheries' with 'UK waters' etc. These ensures that surveys are required to be carried out within UK waters, and on UK fishing boats fishing within and outside of UK waters where appropriate.</p> <p>They also change references to Euro to Pounds Sterling.</p> <p>This instrument also makes amendments to the Commission Implementing Decision to complement the amendments made elsewhere by this instrument – for example, amendment to an outdated reference to Article 21 of Regulation (EU) 508/2014 (see immediately below).</p>
<p>The Common Fisheries Policy (Amendment etc.) (EU Exit) Regulations 2019</p>	<p>This instrument makes a number of amendments to a previous EU Exit SI (2019/739) as follows:</p> <p>It deletes previous deficiency corrections to the 2017/2019 data collection multiannual programme as this Commission Implementing Decision was revoked by the EU and replaced with the 2020-2021 multiannual programme amended above.</p>

	<p>It updates previous amendments to the data collection framework regulation (2017/1004) to complement the amendments made to the new data collection multiannual programme – the amendments which provide for the relevant research surveys and thresholds to be those set out in the data collection work plan.</p> <p>It also adds new provisions to the data collection framework regulation which were previously added to regulation (EU) 508/2014 (the European Maritime and Fisheries Fund “EMFF” Regulation). The provisions in question are provisions which provide the Secretary of State with the power to amend the data collection work plan (with the consent of the devolved administrations where necessary). These were previously amendments to Article 21 of the EMFF Regulation but following the EU withdrawal agreement there will no longer be a retained EU law version of the EMFF Regulation to amend. As the data collection work plan will continue to be used outside the framework of the 2014-2020 EMFF, the most appropriate place to put these amendment powers is in the data collection framework regulation itself. As the data collection work plan is not a statutory instrument, the power to amend it will be an administrative rather than a legislative power.</p>
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Amendments to existing EU Exit Regulations	
<p>The Common Fisheries Policy (Amendment etc.) (EU Exit) Regulations 2019</p>	<p>This instrument makes a number of amendments to a previous EU exit statutory instrument (2019/739) as follows:</p> <p>An amendment is made to change references to ‘exit day’ to ‘IP completion day’ which has the legal meaning of 11pm 31<sup>st</sup> December 2020 as found in section 39(1) of the European Union (Withdrawal Agreement) Act 2020.</p> <p>It amends the original deficiency corrections to the Common Fisheries Policy Regulation (1380/2013) to correct an error in the original definition of ‘British fishery limits’ which was</p>

	<p>inserted into the Regulation. This is required because the previous definition only set an outer limit and not an area of the sea; and, secondly, on the assumption that it would be interpreted as the sea within BFL, it does not exclude Isle of Man territorial waters from scope. The replacement definition made by this amendment resolves both of these issues.</p> <p>Amendments are made to the original deficiency corrections to the Control Regulation (1224/2009) to account for the fact that Article 45 of the IUU regulation (2008/1005) was revoked but, in error, corresponding references to it in the control regulation were not. Similarly, an amendment is made to the original deficiency corrections to the CMO Regulation (1379/2013) to account for the fact that Articles 30 and 31 have been revoked but, in error, a reference to these Articles was not.</p> <p>Part 9 of the previous EU exit statutory instrument is revoked by this instrument in its entirety. Part 9 contained the original deficiency corrections to the European Maritime and Fisheries Fund “EMFF” Regulation. Following the ratification of the EU withdrawal agreement, the EMFF Regulation and associated provisions will no longer form part of retained EU law. This is due to Article 138 of the EU withdrawal agreement which provides that the relevant EMFF legislation will continue to apply directly in the United Kingdom to govern the wind down of the 2014-2020 EMFF programme. As such, this instrument revokes all previous deficiency corrections to the EMFF suite of legislation as there will no longer be retained EU law in this area to amend. For the same reason, this instrument also revokes a number of entries in the Schedule to the previous EU exit SI. The entries deleted are all items of EMFF legislation that will no longer form part of retained EU law.</p>
<p>The Fisheries (Amendment) (EU Exit) Regulations 2019</p>	<p>Amendments are made to previous amendments made to domestic legislation in consequence of EU exit to change references to ‘exit day’ to ‘IP completion day’ which has the legal meaning of 11pm 31<sup>st</sup> December 2020 as found in section 39(1) of the European Union (Withdrawal Agreement) Act 2020.</p>

	<p>Previous amendments to the Grants for Fishing and Aquaculture Industries Regulations 2015 are also replaced with a new amendment in consequence of the changes to the EMFF suite of legislation mentioned above. Whereas previously the amendments made changes to the 2015 Regulations in consequence of deficiency corrections made to the retained EU law, now those deficiency corrections will be revoked so those consequential changes should also be undone. Furthermore, as the EMFF Regulation is being repealed and replaced at the EU level on 1<sup>st</sup> January, the cross reference in the 2015 Regulations for the purposes of the MMO grant making power is amended to ensure there is no ambiguity and that the purposes for which grants can continue to be made are those set out in the EMFF Regulation as it has effect immediately before IP completion day.</p>
<p>The European Structural and Investment Funds Common Provisions (Amendment) (EU Exit) Regulations 2019</p>	<p>These previous EU exit amendment Regulations made amendments to the ‘common provisions regulation’ (1303/2013) which governs the operation of EU structural and investment funds. In particular, they made amendments in relation to the aspects of the common provisions regulation which govern the EMFF. This instrument amends the previous EU exit amendment Regulations to remove deficiency corrections which relate to the EMFF now that the EMFF aspects of the common provisions regulation will not form part of retained EU law. This instrument does not remove the other previous deficiency corrections made to the common provisions regulation in relation to funding for rural development because those provisions will be treated differently due to other provisions contained in relevant rural development legislation.</p>
<p>The Agriculture (Legislative Functions) (EU Exit) Regulations 2019</p>	<p>These amendments are as above – removing references to the EMFF from previous deficiency corrections to the common provisions Regulation (1303/2013) because of the effect of Article 138 of the EU Withdrawal Agreement combined with the European Union (Withdrawal) Act 2018 providing for the EMFF legislation to no longer form part of retained EU law.</p>
<p>The Common Fisheries Policy and Aquaculture (Amendment etc) (EU Exit) Regulations 2019</p>	<p>This previous EU exit amendment SI is amended to alter the powers available to create, or amend existing, discard exemptions from the landing obligation (‘discard plans’). The original approach to these powers was for each of the fisheries administrations to be able to exercise them independently within their area of competence. However, following further consultation with the devolved administrations, it was agreed that there would be benefits if the Secretary of State also</p>

	<p>had the ability to exercise this power for the whole of the UK (provided the devolved administrations consent where the exercise of the power would fall within devolved competence). As such, this instrument amends the previous deficiency corrections to maintain the previous powers but also add in this additional UK-wide power for the Secretary of State.</p> <p>Omitting Chapter 8 of Part 5 also removes previous deficiency corrections which relate to the EMFF for the reasons set out above.</p>
<p>The Common Fisheries Policy (Amendment etc.) (EU Exit) (No. 2) Regulations 2019</p>	<p>This previous EU exit amendment SI made deficiency corrections to Regulation 2018/2025. This instrument makes minor amendments to those deficiency corrections to revoke Article 6 and the associated definitions in Article 2 for consistency with the new approach taken to similar measures in the TAC and Quota Regulation.</p>
<p>The Common Fisheries Policy and Animals (Amendment etc.) (EU Exit) Regulations 2019</p>	<p>This previous EU exit amendment SI is amended as follows:</p> <p>The first amendment corrects an error, where an entire provision was deleted when only the part which specifies a minimum mesh size for the Skagerrak and Kattegat should have been deleted.</p> <p>A further amendment takes the same approach as above with the discard plan powers. The powers in question here also relate to discard exemptions from the landing obligation. As above, whereas these powers were originally created in the deficiency corrections to be exercisable by the fisheries administrations individually, they are amended to allow the Secretary of State to exercise them (to make amendments to the (or create a new) North Sea discard plan (currently 2019/2238)) for the whole of the UK with the consent of the DAs where necessary. This mirrors the change made to the Common Fisheries Policy and Aquaculture (Amendment etc) (EU Exit) Regulations 2019.</p> <p>Additionally, an identical amendment will allow the Secretary of State to make amendments to the (or create a new) North Western Waters discard plan (currently 2019/2239) for the whole of the UK with the consent of the DAs where necessary, again as per the similar changes made elsewhere.</p>

	Finally, a correction to the EMFF amendments is revoked in line with the above.
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## Retained EU law revoked by the instrument: Part 1

Regulation	Reason for Revocation
(a) Commission Delegated Regulation (EU) 2020/3 establishing a discard plan for Venus shells (Venus spp.) in certain Italian territorial waters.	Revoking as this Regulation applies to Italian waters.
(b) Commission Delegated Regulation (EU) 2019/2201 supplementing Regulation (EU) 2019/1241 of the European Parliament and of the Council with detailed rules for the implementation of real-time closures for Northern prawn fisheries in the Skagerrak.	Revoking as this Regulation applies to the Skagerrak.

<p>(c) Council Regulation (EU) 2019/124 fixing for 2019 the fishing opportunities for certain fish stocks and groups of fish stocks, applicable in Union waters and, for Union fishing vessels, in certain non-Union waters.</p>	<p>This Regulation is revoked because it has been superseded by the 2020 TAC and Quota Regulation.</p>
<p>(d) Commission Implementing Decision (EU) 2018/1283 laying down rules on the format and timetables for the submission of annual data collection reports in the fisheries and aquaculture sectors.</p>	<p>This Decision is being revoked because Article 11 of the Data Collection Framework Regulation has already been revoked (see regulation 16(9) of SI 2019/739). There will no longer be a requirement to produce an annual report and this Decision sets out the requirements for annual reports so it should also be revoked.</p>
<p>(e) Council Regulation (EC) No 601/2004 laying down certain control measures applicable to fishing activities in the area covered by the Convention on the conservation of Antarctic marine living resources.</p>	<p>A replacement regime will be put in place under domestic powers in the Antarctic Act 1994.</p>
<p>(f) Council Regulation (EC) No 600/2004 laying down certain technical measures applicable to fishing activities in the area covered by the Convention on the conservation of Antarctic marine living resources.</p>	<p>A replacement regime will be put in place under domestic powers in the Antarctic Act 1994.</p>



## Legislation revoked by the instrument so far as it forms part of retained EU law: Part 2

Regulation	Reason for Revocation
<p>(a) so far as relating to the European Maritime and Fisheries Fund, Regulation (EU) No 1303/2013 of the European Parliament and of the Council laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund.</p>	<p>As above, following the ratification of the EU withdrawal agreement, the EMFF Regulation and associated provisions will no longer form part of retained EU law. By virtue of Article 138 of the EU withdrawal agreement and section 7A of the European Union (Withdrawal) Act 2018, the EMFF Regulation and associated provisions will apply directly in their EU law form in the United Kingdom in respect of 2014-2020 EU multiannual financial framework. However, whilst each legislative instrument will not be carried across into retained EU law in its full form, an individual provision of such an instrument could form part of retained EU law to the extent that the purpose of the provision falls outside the purposes of Article 138 of the EU withdrawal agreement. As such, the revocations contained in Part 2 of the Schedule to this instrument provide legal certainty by revoking any individual provisions of the listed legislation which exist in retained EU law. This approach not only provides legal certainty but also clarity on the statute book.</p> <p>In the case of Regulation (EU) No 1303/2013, the revocation of the regulation so far as it forms part of retained EU law is limited to just the EMFF aspects of the Regulation and not the provisions which apply to other funds.</p>

<p>(b) Commission Implementing Decision 2014/372/EU setting out the annual breakdown by Member State of the global resources of the European Maritime and Fisheries Fund available in the framework of shared management for the period 2014-2020.</p>	<p>As above, each item of listed legislation is revoked so far as it forms part of retained EU law, thereby ensuring that any relevant articles or aspects of the legislation that may be said to fall outside of the scope of Article 138 of the EU withdrawal agreement do not sit in retained EU law and are revoked for legal certainty and clarity on the statute book.</p>
<p>(c) Commission Implementing Decision 2014/464/EU identifying the priorities of the Union for enforcement and control policy in the framework of the European Maritime and Fisheries Fund.</p>	<p>As above, each item of listed legislation is revoked so far as it forms part of retained EU law, thereby ensuring that any relevant articles or aspects of the legislation that may be said to fall outside of the scope of Article 138 of the EU withdrawal agreement do not sit in retained EU law and are revoked for legal certainty and clarity on the statute book.</p>
<p>(d) Regulation (EU) No 508/2014 of the European Parliament and of the Council on the European Maritime and Fisheries Fund.</p>	<p>As above, each item of listed legislation is revoked so far as it forms part of retained EU law, thereby ensuring that any relevant articles or aspects of the legislation that may be said to fall outside of the scope of Article 138 of the EU withdrawal agreement do not sit in retained EU law and are revoked for legal certainty and clarity on the statute book.</p>
<p>(e) Commission Implementing Regulation (EU) 763/2014 laying down rules for applying Regulation (EU) No 508/2014 of the European Parliament and of the Council on the European Maritime and Fisheries Fund as regards the technical characteristics of information and publicity measures and instructions for creating the Union emblem.</p>	<p>As above, each item of listed legislation is revoked so far as it forms part of retained EU law, thereby ensuring that any relevant articles or aspects of the legislation that may be said to fall outside of the scope of Article 138 of the EU withdrawal agreement do not sit in retained EU law and are revoked for legal certainty and clarity on the statute book.</p>

<p>(f) Commission Implementing Regulation (EU) No 771/2014 laying down rules pursuant to Regulation (EU) No 508/2014 of the European Parliament and of the Council on the European Maritime and Fisheries Fund with regard to the model for operational programmes, the structure of the plans for compensation of additional costs incurred by operators in the fishing, farming, processing and marketing of certain fishery and aquaculture products from the outermost regions, the model for the transmission of financial data, the content of the ex ante evaluation reports and the minimum requirements for the evaluation plan to be submitted under the European Maritime and Fisheries Fund.</p>	<p>As above, each item of listed legislation is revoked so far as it forms part of retained EU law, thereby ensuring that any relevant articles or aspects of the legislation that may be said to fall outside of the scope of Article 138 of the EU withdrawal agreement do not sit in retained EU law and are revoked for legal certainty and clarity on the statute book.</p>
<p>(g) Commission Delegated Regulation (EU) No 1014/2014 supplementing Regulation (EU) No 508/2014 of the European Parliament and of the Council on the European Maritime and Fisheries Fund with regards to the content and construction of a common monitoring and evaluation system for the operations funded under the European Maritime and Fisheries Fund.</p>	<p>As above, each item of listed legislation is revoked so far as it forms part of retained EU law, thereby ensuring that any relevant articles or aspects of the legislation that may be said to fall outside of the scope of Article 138 of the EU withdrawal agreement do not sit in retained EU law and are revoked for legal certainty and clarity on the statute book.</p>

<p>(h) Commission Delegated Regulation (EU) No 1046/2014 supplementing Regulation (EU) No 508/2014 of the European Parliament and of the Council on the European Maritime and Fisheries Fund with regards to the criteria for the calculation of the additional costs incurred by operators in the fishing, farming, processing and marketing of certain fishery and aquaculture products from the outermost regions.</p>	<p>As above, each item of listed legislation is revoked so far as it forms part of retained EU law, thereby ensuring that any relevant articles or aspects of the legislation that may be said to fall outside of the scope of Article 138 of the EU withdrawal agreement do not sit in retained EU law and are revoked for legal certainty and clarity on the statute book.</p>
<p>(i) Commission Implementing Regulation (EU) No 1242/2014 laying down rules pursuant to Regulation (EU) No 508/2014 of the European Parliament and of the Council on the European Maritime and Fisheries Fund with regard to the presentation of relevant cumulative data on operations.</p>	<p>As above, each item of listed legislation is revoked so far as it forms part of retained EU law, thereby ensuring that any relevant articles or aspects of the legislation that may be said to fall outside of the scope of Article 138 of the EU withdrawal agreement do not sit in retained EU law and are revoked for legal certainty and clarity on the statute book.</p>
<p>(j) Commission Implementing Regulation (EU) No 1243/2014 laying down rules pursuant to Regulation (EU) No 508/2014 of the European Parliament and of the Council on the European Maritime and Fisheries Fund with regard to the information to be sent by Member States, as well as on data needs and synergies between potential data sources.</p>	<p>As above, each item of listed legislation is revoked so far as it forms part of retained EU law, thereby ensuring that any relevant articles or aspects of the legislation that may be said to fall outside of the scope of Article 138 of the EU withdrawal agreement do not sit in retained EU law and are revoked for legal certainty and clarity on the statute book.</p>

<p>(k) Commission Implementing Regulation (EU) No 1362/2014 laying down rules on a simplified procedure for the approval of certain amendments to operational programmes financed under the European Maritime and Fisheries Fund and rules concerning the format and presentation of the annual reports on the implementation of those programmes.</p>	<p>As above, each item of listed legislation is revoked so far as it forms part of retained EU law, thereby ensuring that any relevant articles or aspects of the legislation that may be said to fall outside of the scope of Article 138 of the EU withdrawal agreement do not sit in retained EU law and are revoked for legal certainty and clarity on the statute book.</p>
<p>(l) Commission Delegated Regulation (EU) 2015/288 supplementing Regulation (EU) No 508/2014 of the European Parliament and of the Council on the European Maritime and Fisheries Fund with regard to the period of time and the dates for the inadmissibility of applications.</p>	<p>As above, each item of listed legislation is revoked so far as it forms part of retained EU law, thereby ensuring that any relevant articles or aspects of the legislation that may be said to fall outside of the scope of Article 138 of the EU withdrawal agreement do not sit in retained EU law and are revoked for legal certainty and clarity on the statute book.</p>
<p>(m) Commission Delegated Regulation (EU) 2015/531 supplementing Regulation (EU) No 508/2014 of the European Parliament and of the Council by identifying the costs eligible for support from the European Maritime and Fisheries Fund in order to improve hygiene, health, safety and working conditions of fishermen, protect and restore marine biodiversity and ecosystems, mitigate climate change and increase the energy efficiency of fishing vessels.</p>	<p>As above, each item of listed legislation is revoked so far as it forms part of retained EU law, thereby ensuring that any relevant articles or aspects of the legislation that may be said to fall outside of the scope of Article 138 of the EU withdrawal agreement do not sit in retained EU law and are revoked for legal certainty and clarity on the statute book.</p>

<p>(n) Commission Delegated Regulation (EU) 2015/852 supplementing Regulation (EU) No 508/2014 of the European Parliament and of the Council as regards the cases of non-compliance and the cases of serious non-compliance with the rules of the Common Fisheries Policy that may lead to an interruption of a payment deadline or suspension of payments under the European Maritime and Fisheries Fund.</p>	<p>As above, each item of listed legislation is revoked so far as it forms part of retained EU law, thereby ensuring that any relevant articles or aspects of the legislation that may be said to fall outside of the scope of Article 138 of the EU withdrawal agreement do not sit in retained EU law and are revoked for legal certainty and clarity on the statute book.</p>
<p>(o) Commission Delegated Regulation (EU) 2015/1930 supplementing Regulation (EU) No 508/2014 of the European Parliament and of the Council on the European Maritime and Fisheries Fund as regards the criteria for establishing the level of financial corrections and for applying flat rate financial corrections.</p>	<p>As above, each item of listed legislation is revoked so far as it forms part of retained EU law, thereby ensuring that any relevant articles or aspects of the legislation that may be said to fall outside of the scope of Article 138 of the EU withdrawal agreement do not sit in retained EU law and are revoked for legal certainty and clarity on the statute book.</p>
<p>(p) Commission Delegated Regulation (EU) 2015/2252 amending Delegated Regulation (EU) 2015/288 as regards the period of inadmissibility of applications for support from the European Maritime and Fisheries Fund.</p>	<p>As above, each item of listed legislation is revoked so far as it forms part of retained EU law, thereby ensuring that any relevant articles or aspects of the legislation that may be said to fall outside of the scope of Article 138 of the EU withdrawal agreement do not sit in retained EU law and are revoked for legal certainty and clarity on the statute book.</p>
<p>(q) Commission Implementing Decision C(2015) 8628 on approving the</p>	<p>As above, each item of listed legislation is revoked so far as it forms part of retained EU law, thereby ensuring that any relevant articles or aspects of the legislation that may be said to fall</p>

<p>operational programme “European Maritime and Fisheries Fund – Operational Programme for the United Kingdom” for support from the European Maritime and Fisheries Fund in the United Kingdom.</p>	<p>outside of the scope of Article 138 of the EU withdrawal agreement do not sit in retained EU law and are revoked for legal certainty and clarity on the statute book.</p>
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Ein cyf/Our ref MA-L/LG/3410/20

Mick Antoniw AS  
Cadeirydd Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad  
Senedd Cymru

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22 Hydref 2020

Annwyl Mick

Rwy'n ysgrifennu atoch i'ch hysbysu fy mod wedi gosod memorandwm cydsyniad offeryn statudol ("y memorandwm") sy'n ymwneud â Rheoliadau Polisi Pysgodfeydd Cyffredin (Diwygiadau etc) (Ymadael â'r UE) 2020 ("y Rheoliadau") a wnaed gan yr Is-Ysgrifennydd Gwladol Seneddol dros yr Amgylchedd ar 14 Hydref. Mae'r Rheoliadau'n cynnwys diwygiadau i Ddeddf y Môr a Mynediad i'r Arfordir 2009 sy'n cynnwys darpariaeth ar gyfer Cymru.

Pwrpas y Rheoliadau fydd sicrhau bod deddfwriaeth sy'n ymwneud â'r Polisi Pysgodfeydd Cyffredin yn cael eu trosi'n gyfraith yr UE a ddargedwir ar ddiwrnod cwblhau'r cyfnod gweithredu. Mae Rheoliadau 2020 yn sicrhau bod y rheolau perthnasol yn y deddfwriaeth yn parhau i fod yn gymwys i gychod pysgota'r DU pa le bynnag y maent, yn amodol ar reolau gwahanol sy'n deillio o gytundebau rhyngwladol, a bod yr un rheolau hynny'n parhau i fod yn gymwys i'r holl gychod pysgota sy'n gweithredu yn nyfroedd y DU.

Rwyf wedi gosod y memorandwm yn unol â'r gofyn o dan Reol Sefydlog (RhS) 30A. Yn fy marn i, mae'r Rheoliadau'n offeryn statudol perthnasol gan eu bod yn gwneud darpariaeth ar gyfer Cymru sy'n diwygio deddfwriaeth sylfaenol o fewn cymhwysedd deddfwriaethol Senedd Cymru nad yw'n ddarpariaeth gysylltiedig, canlyniadol, trosiannol, darfodol, ategol nac arbed sy'n ymwneud â materion nad ydynt o fewn cymhwysedd deddfwriaethol Senedd Cymru.

Cofion

Lesley Griffiths AS/MS  
Gweinidog yr Amgylchedd, Ynni a Materion Gwledig  
Minister for Environment, Energy and Rural Affairs

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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.

Tudalen y pecyn 552  
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.





Llywodraeth Cymru  
Welsh Government

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## **DATGANIAD YSGRIFENEDIG GAN LYWODRAETH CYMRU**

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**TEITL** Rheoliadau'r Polisi Pysgodfeydd Cyffredin (Diwygio etc)  
(Ymadael â'r ue) 2020

**DYDDIAD** 16 Hydref 2020

**GAN** Rebecca Evans AS, Y Gweinidog Cyllid a'r Trefnydd

**Rheoliadau'r Polisi Pysgodfeydd Cyffredin (Diwygio etc) (Ymadael â'r ue) 2020**

**Y gyfraith sy'n cael ei diwygio**

Offerynnau Ewropeaidd sy'n Uniongyrchol Gymwys

- Rheoliad Dirprwyedig y Comisiwn (UE) 2019/2238 sy'n pennu manylion y rhwymedigaeth lanio ar gyfer rhai pysgodfeydd gwely'r môr ym Môr y Gogledd ar gyfer y cyfnod 202-2021.
- Rheoliad Dirprwyedig y Comisiwn (UE) 2019/2239 sy'n pennu manylion y rhwymedigaeth lanio ar gyfer rhai pysgodfeydd gwely'r môr yn nyfroedd y Gogledd-orllewin ar gyfer y cyfnod 202-2021.
- Rheoliad y Cyngor (UE) 2020/123 sy'n gosod ar gyfer 2020 y cyfleoedd pysgota am rai stociau pysgod a grwpiau o stociau pysgod sy'n gymwys o fewn dyfroedd yr Undeb, ac ar gyfer cychod pysgota'r Undeb mewn rhai dyfroedd y tu allan i rai'r Undeb.
- Penderfyniad Gweithredu'r Comisiwn (UE) 2019/909 sy'n sefydlu'r rhestr o arolygon a throthwyon ymchwil gorfodol at ddiben rhaglen amflynyddol yr Undeb ar gyfer casglu a rheoli data yn y sectorau pysgodfeydd a dyframaethu.
- Penderfyniad Dirprwyedig y Comisiwn (UE) 2019/910 sy'n sefydlu rhaglen amflynyddol yr Undeb ar gyfer casglu a rheoli data biolegol, amgylcheddol, technegol a chymdeithasol-economaidd yn y sectorau pysgodfeydd a dyframaethu.

### Deddfwriaeth Ddomestig (OSau Ymadael â'r UE)

- Rheoliadau'r Polisi Pysgodfeydd Cyffredin (Diwygio etc) (Ymadael â'r UE) (Rhif 2) 2019;
- Rheoliadau'r Polisi Pysgodfeydd Cyffredin ac Anifeiliaid (Diwygio etc.) (Ymadael â'r UE) 2019
- Rheoliadau Pysgodfeydd (Diwygio) (Ymadael â'r UE) 2019;
- Rheoliadau Darpariaethau Cyffredin y Cronfeydd Strwythurol a Buddsoddi Ewropeaidd (Diwygio) (Ymadael â'r UE) 2019;
- Rheoliadau Amaethyddiaeth (Swyddogaethau Deddfwriaethol) (Ymadael â'r UE) 2019, a
- Rheoliadau'r Polisi Pysgodfeydd Cyffredin a Dyframaethu (Diwygio etc.) (Ymadael â'r UE) 2019

### Is-ddeddfwriaeth arall

- Rheoliadau Grantiau ar gyfer Pysgota a Diwydiannau Dyframaethu 2015

### Deddfwriaeth Ewropeaidd i'w dirymu

Rheoliad Dirprwyedig y Comisiwn (UE) 2020/3 sy'n sefydlu cynllun gwaredu ar gyfer cregyn Venus (Venus spp.) yn rhai o ddyfroedd tiriogaethol yr Eidal.

Rheoliad Dirprwyedig y Comisiwn (UE) 2019/2201 sy'n ategu Rheoliad (UE) 2019/1241 Senedd Ewrop a'r Cyngor â rheolau manwl ar gyfer gweithredu cyfnodau cau amser real pysgodfeydd corgimychiaid y Gogledd yn y Skagerrak.

Rheoliad y Cyngor (UE) 2019/124 sy'n gosod ar gyfer 2019 y cyfleoedd pysgota am rai stociau pysgod a grwpiau o stociau pysgod sy'n gymwys o fewn dyfroedd yr Undeb, ac ar gyfer cychod pysgota'r Undeb mewn rhai dyfroedd y tu allan i rai'r Undeb.

Penderfyniad Gweithredu'r Comisiwn (UE) 2018/1283 sy'n gosod y rheolau ar fformat ac amserlenni ar gyfer cyflwyno adroddiadau ar gasglu data blynyddol yn y sectorau pysgodfeydd a dyframaethu.

Rheoliad y Cyngor (CE) rhif 601/2004 sy'n gosod mesurau rheoli penodol sy'n berthnasol i weithgareddau pysgota yn yr ardal a ddaw o dan y Confensiwn ar warchod adnoddau byw morol yr Antartig.

Rheoliad y Cyngor (CE) rhif 600/2004 sy'n gosod mesurau technegol penodol sy'n berthnasol i weithgareddau pysgota yn yr ardal a ddaw o dan y Confensiwn ar warchod adnoddau byw morol yr Antartig.

## **Unrhyw effaith y gall yr offeryn statudol ei chael ar gymhwysedd deddfwriaethol y Senedd Cymru a/neu gymhwysedd gweithredol Gweinidogion Cymru**

Mae pysgodfeydd yn bwnc datganoledig ac mae gan Senedd Cymru ("y Senedd") gymhwysedd deddfwriaethol eang yn y maes mewn perthynas â Chymru.

Mae'r offeryn hwn yn rhoi swyddogaethau gweinyddol a deddfwriaethol i Weinidogion Cymru heb lyffethair. Mae'r offeryn hwn yn rhoi swyddogaeth hefyd i'r Ysgrifennydd Gwladol i arfer swyddogaethau mewn perthynas â Chymru gyda chydysyniad Gweinidogion Cymru. Yn ogystal, mae'r offeryn hwn yn rhoi swyddogaethau i'r Ysgrifennydd Gwladol a arferir yn gydamserol â Gweinidogion Cymru.

Mae gan y swyddogaethau cydamserol a geir yn yr OS hwn y potensial i sbarduno'r gofynion cydsynio yn Atodlen 7B Deddf Llywodraeth Cymru ac y gallent felly fod yn gyfyngiad ar gymhwysedd y Senedd yn y dyfodol. Fodd bynnag, mae Llywodraeth Cymru'n cynnal trafodaethau gyda Swyddfa Ysgrifennydd Gwladol Cymru mewn perthynas â Gorchymyn a.109 i ddiwygio Atodlen 7B i negyddu'r cyfyngiad posibl ar gymhwysedd Senedd Cymru yn y dyfodol.

Mae swyddogaethau a drosglwyddir fel y gallai'r Ysgrifennydd Gwladol eu harfer, ar ei ben ei hun neu gyda chydysyniad Gweinidogion Cymru, yn gyfystyr â swyddogaethau Gweinidog y Goron at ddiben Atodlen 7B Deddf Llywodraeth Cymru 2006. Gallai Bil gan y Senedd yn y dyfodol i ddiwyo neu newid y swyddogaethau hyn sbarduno gofyniad i ymgynghori â Llywodraeth y DU.

### **Diben y diwygiadau**

Mae'r offeryn hwn yn gwneud newidiadau o ran gallu gweithredu o dan adran 8(1) ac o dan baragraff 21 o Atodlen 7, o Ddeddf yr Undeb Ewropeaidd (Ymadael) 2018 ac adran 41(1) o Ddeddf yr Undeb Ewropeaidd (Cytuniad Ymadael) 2020 i'r offerynnau y cyfeirir atynt uchod, er mwyn mynd i'r afael â diffygion o fewn deddfwriaeth y Polisi Pysgodfeydd Cyffredin (PPC), o ganlyniad i ymadawiad y DU â'r UE. Bydd y newidiadau hyn yn sicrhau y parheir i reoleiddio gweithgareddau pysgota yn nyfroedd y DU mewn ffordd gynaliadwy ar ôl ymadael â'r UE ond ni wnânt newidiadau ymarferol i effaith y PPC nac i'r ffordd y bydd pysgotwyr yn cynnal eu gweithgareddau.

Mae'r Rheoliadau a'r Memorandwm Esboniadol cysylltiedig, sy'n nodi effaith y diwygiadau, ar gael yma:

<https://www.legislation.gov.uk/ukdsi/2020/9780348213379>

### **Pam y cafodd cydsyniad ei roi**

Mae cydsyniad wedi'i roi i Lywodraeth y DU i wneud y cywiriadau hyn mewn cysylltiad ag ac ar ran Cymru er sicrhau effeithlonrwydd a hwylustod ac oherwydd natur dechnegol y diwygiadau. Ar ôl ystyried y diwygiadau dan sylw yn llawn ac yn ofalus, asesu'r cyfarwyddiadau polisi a dadansoddi'r drafftio o ran y gyfraith, gwelir nad yw'r diwygiadau'n

newid polisi. Bydd y diwygiadau hyn yn sicrhau bod y llyfr statud yn parhau'n ymarferol ar ddiwedd y Cyfnod Gweithredu.

**GWEINIDOGION Y DU SY'N GWEITHREDU MEWN MEYSYDD  
DATGANOLEDIG**

**185 - Rheoliadau'r Polisi Pysgodfeydd Cyffredin (Diwygiadau etc)  
(Ymadael â'r UE) 2020**

*Dyddiad gosod yn Senedd y DU: 14 Hydref 2020*

**Sifftio**

Yn destun sifftio yn Senedd y DU?	Nac ydy
Gweithdrefn:	Cadarnhaol drafft
Dyddiad trafod gan Bwyllgor Offerynnau Statudol Ewropeaidd Tŷ'r Cyffredin	Amh
Dyddiad trafod gan Bwyllgor Craffu ar Is-ddeddfwriaeth Tŷ'r Arglwyddi	Amh
Dyddiad y daw'r cyfnod sifftio i ben yn Senedd y DU	Amh
Datganiad ysgrifenedig o dan Reol Sefydlog 30C:	Papur 63
Memorandwm Cydsyniad Offeryn Statudol o dan Reol Sefydlog 30A (oherwydd eu bod yn diwygio deddfwriaeth sylfaenol)	SICM(5)34
<b>Gweithdrefn graffu</b>	
Canlyniad y broses sifftio	Amh
Gweithdrefn	Cadarnhaol drafft
Dyddiad trafod gan y Cydbwyllgor ar Offerynnau Statudol	Anhysbys
Dyddiad trafod gan Bwyllgor Offerynnau Statudol Tŷ'r Cyffredin	Anhysbys
Dyddiad trafod gan Bwyllgor Craffu ar Is-ddeddfwriaeth Tŷ'r Arglwyddi	Anhysbys

**Cefndir**

Bwriedir y bydd y Rheoliadau hyn yn cael eu gwneud gan Lywodraeth y DU yn unol ag adran 8(1) o Ddeddf yr Undeb Ewropeaidd (Ymadael) 2018 a pharagraff 21(b) o Atodlen 7 i'r Ddeddf honno, ac adran 41(1) o Ddeddf yr Undeb Ewropeaidd (Y Cytundeb Ymadael) 2020.

**Crynodeb**

Mae'r Rheoliadau hyn yn mynd i'r afael â diffygion yn neddfwriaeth y Polisi Pysgodfeydd Cyffredin, sy'n deillio o ganlyniad i ymadawiad y DU â'r Undeb Ewropeaidd. Bydd y newidiadau hyn yn sicrhau bod pysgota yn nyfroedd y DU yn parhau i gael ei reoleiddio mewn modd cynaliadwy ar ôl ymadael â'r UE.

Mae'r Polisi Pysgodfeydd Cyffredin yn gosod dull cyffredin o reoli pysgodfeydd yn gynaliadwy ar draws yr UE a'i ddyfroedd. Gwnaed nifer o offerynnau statudol yn 2019 o dan bwerau yn Neddf yr Undeb Ewropeaidd (Ymadael) 2018 a ddiwygiodd ddeddfwriaeth Polisi Pysgodfeydd Cyffredin yr UE a fyddai'n dod yn 'gyfraith yr UE a ddargedwir' ar y diwrnod ymadael. Diben y diwygiadau oedd sicrhau y byddai deddfwriaeth y Polisi Pysgodfeydd Cyffredin a ddargedwir yn gweithredu'n effeithiol ar ôl i'r DU ymadael â'r UE. Ar ôl i'r cytundeb ymadael â'r UE gael ei gadarnhau, bydd deddfwriaeth Polisi Pysgodfeydd Cyffredin yr UE bellach yn dod yn gyfraith yr UE a ddargedwir ar ddiwedd y Cyfnod Pontio ac mae'n ofynnol i'r Rheoliadau hyn sicrhau bod cyfraith yr UE a ddargedwir yn gweithredu'n effeithiol o'r adeg honno ymlaen.

Mae angen y Rheoliadau mewn perthynas â thri chategori o welliannau:

1. Mae angen gwneud diwygiadau i gyfrif am ddeddfwriaeth Polisi Pysgodfeydd Cyffredin newydd yr UE sydd wedi dod i rym ers i'r offerynnau statudol diwygio blaenorol gael eu drafftio i baratoi ar gyfer diwrnod ymadael.
2. Mae angen gwneud diwygiadau o ganlyniad i'r cytundeb ymadael â'r UE.
3. Mae angen gwneud diwygiadau i offerynnau statudol diwygio blaenorol, gan gynnwys diwygiadau i gywiro mân wallau.

### **Datganiad gan Lywodraeth Cymru**

Mae'r Cynghorwyr Cyfreithiol wedi gwneud y sylwadau a ganlyn mewn perthynas â datganiad Llywodraeth Cymru, dyddiedig 16 Hydref 2020, am effaith y Rheoliadau hyn:

Mae'r Rheoliadau hyn yn creu swyddogaethau y gall Gweinidogion Cymru a Gweinidogion y DU eu harfer ar yr un pryd. O dan Atodlen 7B i Ddeddf Llywodraeth Cymru 2006 (Deddf 2006), ni chaiff y Senedd ddileu nac addasu swyddogaethau cydredol o'r fath (i'r graddau y maent yn cael eu harfer gan Weinidogion y DU) heb gydsyniad Llywodraeth y DU. Mae datganiad ysgrifenedig Llywodraeth Cymru yn dweud bod Llywodraeth Cymru mewn trafodaethau â Llywodraeth y DU mewn perthynas â Gorchymyn adran 109 i ddiwygio Atodlen 7B o Ddeddf 2006 er mwyn negyddu'r cyfyngiad posibl ar gymhwysedd Senedd Cymru yn y dyfodol.

### **Cytundeb Rhynglywodraethol ar Fil yr Undeb Ewropeaidd (Ymadael)**

Mae'r crynodeb uchod a chynnwys y Memorandwm Esboniadol i'r Rheoliadau hyn yn cadarnhau eu heffaith.

Nid yw'r Cynghorwyr Cyfreithiol o'r farn bod unrhyw faterion arwyddocaol yn codi o dan baragraff 8 o'r Memorandwm ar Fil yr Undeb Ewropeaidd

(Ymadael) a Sefydlu Fframweithiau Cyffredin mewn perthynas â'r Rheoliadau hyn.

**Cynnig cydsyniad o dan Reol Sefydlog 30A.10**

Gosododd Llywodraeth Cymru Femorandwm Cydsyniad Offeryn Statudol gerbron y Senedd ar 22 Hydref 2020, ar y sail bod y Rheoliadau yn diwygio deddfwriaeth sylfaenol o fewn cymhwysedd deddfwriaethol y Senedd (yn yr achos hwn, adrannau 30, 238 a 278 o Ddeddf y Môr a Mynediad i'r Arfordir 2009).

Mewn [llythyr](#) at y Pwyllgor, dyddiedig 22 Hydref 2020, dywedodd Gweinidog yr Amgylchedd, Ynni a Materion Gwledig fod Memorandwm Cydsyniad Offeryn Statudol wedi'i osod, ond soniodd ynghylch a fyddai Llywodraeth Cymru yn cyflwyno cynnig i drafod y Memorandwm.

# Eitem 10.5

## MEMORANDWM CYDSYNIAD OFFERYN STATUDOL

### Rheoliadau Iechyd Planhigion (Diwygio etc) (Ymadael â'r UE) 2020

1. Gosodir y Memorandwm Cydsyniad Offeryn Statudol hwn o dan Reol Sefydlog ("RhS") 30A.2. Mae RhS 30A yn rhagnodi bod rhaid gosod Memorandwm Cydsyniad Offeryn Statudol, ac y ceir cyflwyno cynnig Cydsyniad Offeryn Statudol, gerbron Senedd Cymru os yw Offeryn Statudol (OS) y DU yn gwneud darpariaeth mewn perthynas â Chymru sy'n diwygio deddfwriaeth sylfaenol sydd o fewn cymhwysedd deddfwriaethol Senedd Cymru.
2. Gosodwyd Rheoliadau Iechyd Planhigion (Diwygio etc) (Ymadael â'r UE) 2020 gerbron Senedd y DU ar 14 Hydref 2020. Cewch weld y Rheoliadau yn:

<https://www.legislation.gov.uk/ukdsi/2020/9780348213775/introduction>

### Crynodeb o'r Offeryn Statudol a'i amcanion

3. Amcan y Rheoliadau yw cynnal bioddiogelwch a chefnogi masnach trwy sicrhau bod mesurau effeithiol ar gyfer diogelu iechyd planhigion yn parhau o fewn Prydain Fawr a rhwng Prydain Fawr a'r UE ar ddiwedd y Cyfnod Pontio ar 31 Rhagfyr 2020. Bydd y polisi cyfredol a gymhwysir o dan ddeddfwriaeth yr UE o weithredu mesurau rheoli iechyd planhigion sy'n seiliedig ar risg yn parhau. Bydd y drefn fodd bynnag yn canolbwyntio ar risgiau i Brydain Fawr yn hytrach na risgiau i'r UE er mwyn sicrhau bod modd ei gyfiawnhau'n dechnegol yn unol â rhwymedigaethau Sefydliad Masnach y Byd a Rheoliadau'r UE. Bydd yr asesiad risg Prydeinig yn dilyn yr un dulliau a'r egwyddorion a gydnabyddir yn rhyngwladol a ddefnyddiwyd gan yr UE i ddadansoddi Risg Plâu.

### Darpariaeth berthnasol i'w gwneud gan yr OS

4. Mae Rhan 2 y Rheoliadau'n diwygio adrannau 2(1) a 3(1) o Ddeddf Iechyd Planhigion 1967 i hepgor y geiriau "or called for by any EU obligation" ("y ddarpariaeth beerthnasol").

### Pam ei bod yn briodol gwneud y ddarpariaeth hon trwy'r OS

5. Nid oes gwahaniaeth rhwng Llywodraeth Cymru a Llywodraeth y DU ynghylch polisi'r ddarpariaeth berthnasol, sy'n fân ddiwygiad o ganlyniad i ymadael â'r UE. Byddai gwneud OSau ar wahân felly yng Nghymru a Lloegr i gywiro'r adrannau dan sylw yn arwain at ddyblygu gwaith, ac at gymhlethu'r llyfr statud yn ddiangen. O dan yr amgylchiadau eithriadol hyn, mae Llywodraeth Cymru o'r farn ei bod yn briodol i Lywodraeth y DU ddeddfu ar



ein rhan yn yr achos hwn a bod y ddarpariaeth berthnasol yn cael ei gwneud trwy Reoliadau.

**Lesley Griffiths AS**  
**Ysgrifennydd y Cabinet dros Ynni, Cynllunio a Materion Gwledig**

Hydref 2020

*Draft Regulations laid before Parliament under paragraph 1(1) of Schedule 7 to the European Union (Withdrawal) Act 2018, for approval by resolution of each House of Parliament.*

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DRAFT STATUTORY INSTRUMENTS

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**2020 No. 000**

**EXITING THE EUROPEAN UNION  
PLANT HEALTH**

**The Plant Health (Amendment etc.) (EU Exit) Regulations 2020**

*Made* - - - - *\*\*\**

*Coming into force in accordance with regulation 1(2)*

The Secretary of State makes these Regulations in exercise of the powers conferred by section 8(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018<sup>(1)</sup>.

A draft of this instrument has been laid before, and approved by a resolution of, each House of Parliament in accordance with paragraph 1(1) of Schedule 7 to that Act.

**PART 1**

**Introductory**

**Citation and commencement**

1.—(1) These Regulations may be cited as the Plant Health (Amendment etc.) (EU Exit) Regulations 2020.

(2) They come into force—

- (a) as regards this Part and regulation 55(a) and (b), immediately before IP completion day;
- (b) as regards Parts 2 and 3 and regulations 53, 54, 55(c) and 56, on IP completion day.

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(1) 2018 c. 16; section 8 was amended by section 27 of the European Union (Withdrawal Agreement) Act 2020 (c. 1) and paragraph 21 of Schedule 7 was amended by section 41(4) of, and paragraph 53(2) of Schedule 5 to, that Act.

## PART 2

### Amendment of primary and secondary legislation

#### **The Plant Health Act 1967**

2. In sections 2(1) and 3(1) of the Plant Health Act 1967(2), omit “or called for by any EU obligation”.

#### **The Plant Health (Fees) (Forestry) (England and Scotland) Regulations 2015**

3.—(1) The Plant Health (Fees) (Forestry) (England and Scotland) Regulations 2015(3) are amended as follows.

(2) In regulation 1A—

(a) in paragraph (1)—

(i) in the definition of “controlled consignment”, for paragraph (b) substitute—

“(b) consists of, or includes, isolated bark or wood of a type that is described in Part A of Annex 11, or Annex 12, to Commission Implementing Regulation (EU) 2019/2072 establishing uniform conditions for the implementation of Regulation (EU) 2016/2031 of the European Parliament and the Council, as regards protective measures against pests of plants(4);”;

(ii) in the definition of “the EU Plant Health Regulation”, omit “EU”, in the first place where it occurs;

(iii) omit the definition of “Phytosanitary Conditions Regulation”;

(iv) in the definition of “plant passport authority” omit “EU”;

(v) in the definition of “WPM authorisation” omit “EU”;

(b) in paragraph (2), omit “EU”, in the first and third places where it occurs.

#### **The Plant Health etc. (Fees) (England) Regulations 2018**

4.—(1) The Plant Health etc. (Fees) (England) Regulations 2018(5) are amended as follows.

(2) In regulation 2—

(a) in paragraph (1), omit “EU”, in the first place where it occurs;

(b) in paragraph (2), omit “EU”, in the first and third places where it occurs;

(3) In regulation 3—

(a) in paragraph (1), for the words from “the lists” to “Regulation”, in the second place where it occurs, substitute “Part A of Annex 11, or Annex 12, to Commission Implementing Regulation (EU) 2019/2072 establishing uniform conditions for the implementation of Regulation (EU) 2016/2031 of the European Parliament and the Council, as regards protective measures against pests of plants”;

(b) in paragraph (3)—

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(2) 1967 c. 8; section 2(1) was amended by paragraph 8(2)(a) of Schedule 4 to the European Communities Act 1972 (c. 68) and S.I. 2011/1043. Section 3(1) was amended by paragraph 8(2)(a) and (b) of Schedule 4 to the European Communities Act 1972 and S.I. 2011/1043.

(3) S.I. 2015/350, amended by S.I. 2019/1488, 1517; there are other amending instruments but none is relevant.

(4) EUR 2019/2072.

(5) S.I. 2018/289, amended by S.I. 2019/1257, 1488, 2020/9; there are other amending instruments but none is relevant.

- (i) in sub-paragraph (a), for the definition of “controlled plant pest” substitute—  
““controlled plant pest” means a GB quarantine pest, a provisional GB quarantine pest, a PFA quarantine pest or a GB regulated non-quarantine pest;”;
- (ii) omit sub-paragraph (aba).
- (4) In regulation 4(6)(a), after “issue” insert “UK”.
- (5) In regulation 5A(5), in the definition of “pre-export service”—
  - (a) omit “to a third country”;
  - (b) for the “phytosanitary requirements of the third country” substitute “relevant phytosanitary import requirements within the meaning of Article 99a of the Plant Health Regulation”.
- (6) In regulation 6—
  - (a) in paragraph (1), omit the words from “whether” to “Decision,”;
  - (b) omit paragraph (2).
- (7) Omit regulation 6A.
- (8) In Schedule 2, in the table, omit the entries in the first, second and third columns relating to *Citrus, Mangifera and Passiflora*.

### **The Official Controls (Plant Health and Genetically Modified Organisms) (England) Regulations 2019**

5. The Official Controls (Plant Health and Genetically Modified Organisms) (England) Regulations 2019(6) are amended in accordance with regulations 6 to 25.

#### **Part 1**

- 6.—(1) Part 1 is amended as follows.
- (2) In regulation 2—
  - (a) in paragraph (1)—
    - (i) in the definition of “controlled consignment”—
      - (aa) for “the Union territory”, in each place where it occurs, substitute “Great Britain”;
      - (bb) omit sub-paragraph (ii) of paragraph (a);
      - (cc) in paragraph (a)(iii), omit “EU”, in both places where it occurs;
    - (ii) in the definition of “controlled plant pest”—
      - (aa) in paragraph (a), after “2,” insert “2A,”;
      - (bb) omit paragraph (b);
      - (cc) in paragraph (c), omit “EU”;
    - (iii) omit the definition of “EU emergency decision”;
    - (iv) in the definition of “EU Plant Health Regulation”, at the end insert “as it has effect in EU law”;
    - (v) omit the definition of “EU plant health rule”;
    - (vi) in the definition of “Official Controls Regulation”, in the second place where it occurs, omit “EU”;

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(6) [S.I. 2019/1517](#), amended by [S.I. 2020/381](#), 1014; there are other amending instruments but none is relevant.

- (vii) after the definition of “plant health inspector”, insert—
  - ““Plant Health Regulation” means Regulation (EU) 2016/2031 of the European Parliament and of the Council on protective measures against pests of plants<sup>(7)</sup>;
  - “plant health rule” means a rule of a kind mentioned in Article 1(2)(g) of the Official Controls Regulation;”;
- (viii) in the definition of “plant pest”, omit “EU”;
- (ix) in the definition of “regulated item”, for “an EU” substitute “a”;
- (b) in paragraph (2), omit “EU”, in both places where it occurs.
- (3) Omit regulations 3 and 4.
- (4) In regulation 5—
  - (a) in the heading, omit “EU”;
  - (b) in paragraphs (1) and (2), omit “EU”, in each place where it occurs.

**Part 2**

- 7.—(1) Part 2 is amended as follows.
- (2) In regulation 6(3)—
  - (a) in the definition of “forestry professional operator”—
    - (i) in the words before paragraph (a), omit “EU”;
    - (ii) in paragraph (b), for “the Union territory”, in both places where it occurs, substitute “Great Britain or a CD territory”;
    - (iii) after paragraph (c), insert—
      - “(ca) the introduction of forestry material into Northern Ireland from England;”;
  - (b) omit the definition of “official controls”.

**Part 3**

- 8.—(1) Part 3 is amended as follows.
- (2) In regulation 7—
  - (a) in paragraph (1), after “by air” insert “or into a RoRo port in England”;
  - (b) in paragraph (4)—
    - (i) in the definition of “responsible operator”, for “the Union” substitute “Great Britain”;
    - (ii) after that definition insert—
      - ““RoRo port” means a RoRo listed location within the meaning of regulation 130 of the Customs (Import Duty) (EU Exit) Regulations 2018<sup>(8)</sup>”.
- (3) In regulation 8—
  - (a) in paragraph (1), for “an EU”, in both places where it occurs, substitute “a”;
  - (b) in paragraph (2)(b), for “the Union territory” substitute “Great Britain”.

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(7) EUR 2016/2031.

(8) S.I. 2018/1248 to which there are amendments not relevant to these Regulations.

- (4) In regulation 10(1)—
  - (a) in sub-paragraphs (a) and (b), for “an EU”, in both places where it occurs, substitute “a”;
  - (b) in sub-paragraph (c), for “the Union territory” substitute “Great Britain”.
- (5) In regulation 11(1)(c), for “the Union territory” substitute “Great Britain”.
- (6) In regulation 12—
  - (a) in paragraph (1)(a) and (b), omit the words from “, consignments which” to “Schedule 1”, in both places where they occur;
  - (b) omit paragraph (1A).

#### **Part 4**

- 9.—(1) Part 4 is amended as follows.
- (2) In regulation 14(2), in the definition of “prohibited material”—
  - (a) in sub-paragraph (b)—
    - (i) for “the Union territory or England” substitute “Great Britain”;
    - (ii) for “an EU” substitute “a”;
    - (iii) omit “or Part 1 of Schedule 1”;
  - (b) in sub-paragraph (c)—
    - (i) omit “within the Union territory, or”;
    - (ii) for “an EU” substitute “a”;
    - (iii) omit “or Part 2 of Schedule 1”.
- (3) In regulation 16(4), omit “(including representatives of the European Commission)”.

#### **Part 5**

- 10. Omit regulation 18.

#### **Part 6**

- 11.—(1) Part 6 is amended as follows.
- (2) In regulation 19, omit “EU”.
- (3) In regulation 20—
  - (a) in paragraph (1)—
    - (i) in sub-paragraph (b), omit “EU”;
    - (ii) in sub-paragraph (c)—
      - (aa) for the comma substitute “or”;
      - (bb) omit “or a pre-export certificate”;
  - (b) in paragraph (2)—
    - (i) omit “EU”, in the first place where it occurs;
    - (ii) omit “an EU emergency decision”;
    - (iii) omit “EU”, in the final place where it occurs.
- (4) In regulation 21—
  - (a) in paragraph (1)(c)—

- (i) after “under” insert “, or by virtue of”;
- (ii) omit “EU”;
- (iii) after “Regulation”, in the second place where it occurs, insert “, any regulations made under the Plant Health Regulation or the Official Controls Regulation,”;
- (b) in paragraph (3)—
  - (i) in the definition of “plant health derogation”—
    - (aa) omit “EU”, in the first and second places where it occurs;
    - (bb) for “an implementing or delegated act adopted by the European Commission” substitute “retained EU law or regulations made”;
    - (cc) omit sub-paragraph (b), and the “or” which precedes it;
  - (ii) in the definition of “potential quarantine plant pest”, for the words from “Union” to “Regulation”, in the first place where it occurs, substitute “GB quarantine pest or a provisional GB quarantine pest”.
- (5) In regulation 22(1)—
  - (a) omit “EU”;
  - (b) for the comma substitute “or”;
  - (c) after “Regulation or” insert “for the purposes of, or under,”.

**Part 8**

- 12.**—(1) Part 8 is amended as follows.
- (2) Omit regulations 24 and 25.
  - (3) In regulation 26—
    - (a) in paragraph (1)—
      - (i) omit “any of the following plants or plant products”;
      - (ii) after “into England” insert “any solid fuel wood from a third country to which Article 47(1) of the Official Controls Regulation does not apply”;
      - (iii) for “an appropriate” substitute “a”;
      - (iv) omit sub-paragraphs (a) to (c);
    - (b) in paragraph (2)—
      - (i) in sub-paragraph (c), omit “plants or”;
      - (ii) in sub-paragraph (d)—
        - (aa) omit “plants or”;
        - (bb) for “have been, or are” substitute “has been, or is”;
      - (iii) omit sub-paragraph (e);
      - (iv) for sub-paragraph (f) substitute—
        - “(f) the address of the consignor; and
        - (g) details of any phytosanitary treatments applied to the wood.”;
    - (c) in paragraph (3), omit the definition of “appropriate plant health inspector”.

**Part 9**

- 13.**—(1) Part 9 is amended as follows.

- (2) In regulation 27(1) and (2), omit “EU”, in each place where it occurs.
- (3) In regulation 28—
  - (a) in paragraph (1)—
    - (i) in sub-paragraph (a)—
      - (aa) in paragraph (ii), omit “EU”;
      - (bb) in paragraph (iv), for the words from “an EU” to the end substitute “a plant health rule comply with that rule”;
    - (ii) in sub-paragraphs (b), (c) and (e), omit “EU”, in each place where it occurs;
  - (b) in paragraph (6), for sub-paragraph (a) substitute—
    - “(a) be accompanied by such persons as the inspector considers necessary; and”;
  - (c) omit paragraph (7);
  - (d) in paragraph (8), in the words before sub-paragraph (a), omit “(ii)”.
- (4) In regulation 31(4)—
  - (a) omit “other”;
  - (b) omit “(including representatives of the European Commission)”.
- (5) In regulation 34(1), omit “EU”.
- (6) In regulation 35(1)—
  - (a) in sub-paragraph (a), omit “EU”;
  - (b) in sub-paragraph (b)—
    - (i) for “another part of the Union territory” substitute “United Kingdom or to a CD territory”;
    - (ii) omit “EU”.

## **Part 11**

- 14.—(1) Part 11 is amended as follows.
- (2) In regulation 38(1)—
  - (a) in sub-paragraph (a), omit “24(1), 25(1) or”;
  - (b) omit sub-paragraph (b);
  - (c) in sub-paragraph (d), omit “EU”;
  - (d) in sub-paragraph (e), for “an EU” substitute “a”;
  - (e) in sub-paragraph (f), after “other” insert “retained direct”;
  - (f) omit sub-paragraph (g).
- (3) In regulation 41, for “plant passport or” substitute “UK plant passport or a”;
- (4) In regulation 42—
  - (a) in the heading, after “of” insert “UK”;
  - (b) in paragraph (1), in sub-paragraphs (a) to (c), for “plant passport”, in each place where it occurs, substitute “UK plant passport”.
- (5) In regulation 43—
  - (a) in paragraph (1)(a) and (c), omit “EU”, in both places where it occurs;
  - (b) for paragraph (2) substitute—



“(2) In paragraph (1)—

- (a) “authorised person” means a person authorised by an appropriate authority;
- (b) a reference to the Plant Health Regulation or the Official Controls Regulation includes retained EU law adopted, or regulations made, under the Plant Health Regulation or the Official Controls Regulation and any other retained EU law relating to plant health.”.

#### Part 14

15. In regulation 56(4), omit “EU”.

#### Schedule 1

16. Omit Schedule 1.

#### Schedule 2

17. Schedule 2 is amended in accordance with regulations 18 to 23.

#### Part 1

18.—(1) Part 1 is amended as follows.

(2) In paragraph 1—

- (a) omit the definitions of “[Directive 93/85/EEC](#)”, “[Directive 98/57/EC](#)” and “[Directive 2007/33/EC](#)”;
- (b) before the definition of “premises” insert—

““EPPO PM 7/21” means the standard describing a diagnostic protocol for *Ralstonia solanacearum*, *R. pseudosolanacearum* and *R. syzygii* approved by the European and Mediterranean Plant Protection Organization(9);

“EPPO PM 7/40” means the standard describing a diagnostic protocol for *Globodera rostochiensis* and *Globodera pallida* approved by the European and Mediterranean Plant Protection Organization(10);

“EPPO PM 7/59” means the standard describing a diagnostic protocol for *Clavibacter michiganensis* subsp. *sepedonicus* approved by the European and Mediterranean Plant Protection Organization(11);

“EPPO PM 7/119” means the standard describing the procedures for nematode extraction approved by the European and Mediterranean Plant Protection Organization(12);”.

(9) First approved by the European and Mediterranean Plant Protection Organization in September 2003 and available from its Secretariat at 21 Boulevard Richard Lenoir, 75011, Paris, France and at [https://www.eppo.int/RESOURCES/eppo\\_standards/pm7\\_diagnostics](https://www.eppo.int/RESOURCES/eppo_standards/pm7_diagnostics).

(10) First approved by the European and Mediterranean Plant Protection Organization in September 2003 and available from its Secretariat at 21 Boulevard Richard Lenoir, 75011, Paris, France and at [https://www.eppo.int/RESOURCES/eppo\\_standards/pm7\\_diagnostics](https://www.eppo.int/RESOURCES/eppo_standards/pm7_diagnostics).

(11) Approved by the European and Mediterranean Plant Protection Organization in September 2005 and available from its Secretariat at 21 Boulevard Richard Lenoir, 75011, Paris, France and at [https://www.eppo.int/RESOURCES/eppo\\_standards/pm7\\_diagnostics](https://www.eppo.int/RESOURCES/eppo_standards/pm7_diagnostics).

(12) Approved by the European and Mediterranean Plant Protection Organization in September 2013 and available from its Secretariat at 21 Boulevard Richard Lenoir, 75011, Paris, France and at [https://www.eppo.int/RESOURCES/eppo\\_standards/pm7\\_diagnostics](https://www.eppo.int/RESOURCES/eppo_standards/pm7_diagnostics).

## Part 2

19.—(1) Part 2 is amended as follows.

(2) In paragraph 2—

- (a) in sub-paragraph (1)(a), for “, other than Switzerland” substitute “to which the prohibition in Article 40(1) of the Plant Health Regulation applies”;
- (b) in sub-paragraph (2)—
  - (i) in paragraph (a) for “an officially approved programme in the European Union or Switzerland” substitute “a programme for the certification of potatoes which has been officially approved by a competent authority or a CD authority”;
  - (ii) in paragraph (b), for “Annex 1 to [Directive 93/85/EEC](#)” substitute “EPPO PM 7/21”;
  - (iii) in paragraph (c), for “Annex 2 to [Directive 98/57/EC](#)” substitute “EPPO PM 7/59”.

## Part 4

20.—(1) Part 4 is amended as follows.

(2) In paragraph 8—

- (a) in the definition of “field” for “Article 3 of [Directive 2007/33/EC](#)” substitute “this Part”;
- (b) after the definition of “Potato cyst nematode” insert—

““specified measures” means—

- (a) for the purposes of paragraph 10(2), the official re-sampling of the field and official testing of the samples, carried out at least three years after appropriate officially approved control measures have been taken in the field or, in any other case, at least five years after the year in which the Potato cyst nematodes were found or potatoes were last grown in the field;
- (b) for the purposes of paragraphs 12(3) and 16—
  - (i) the disinfection of the bulbs or plants by appropriate methods that ensure that there is no identifiable risk of Potato cyst nematodes spreading;
  - (ii) the removal of soil from the bulbs or plants by washing or brushing them until they are practically free of soil, so as to ensure that there is no identifiable risk of Potato cyst nematodes spreading;”.

(3) After paragraph 8 insert—

### “Official testing

8A. Any official testing of samples for the purposes of this Part must be carried out in accordance with EPPO PM 7/40 and EPPO PM 7/119.”.

(4) In paragraph 9—

- (a) in paragraph (a), for “Articles 4 and 5 of [Directive 2007/33/EC](#)” substitute “this Part”;
- (b) in paragraph (b), for “Article 6 of [Directive 2007/33/EC](#)” substitute “this Part”.

(5) Paragraph 9 becomes paragraph 9(1) and after that sub-paragraph insert—

“(2) An official investigation of a field for the purposes of paragraph 9(1)(a) must be carried out—

- (a) prior to the proposed planting or storing; and

- (b) unless there is documentary evidence of a previous official investigation confirming that no Potato cyst nematodes were found during the investigation and that potatoes or host plants were not present at the time of that investigation and have not been grown in the field since that investigation, between the harvesting of the last crop in the field and the proposed planting of seed potatoes or other susceptible material.
- (3) In the case of a field in which seed potatoes or host plants intended for the production of plants for planting are to be planted or stored, an official investigation for the purposes of paragraph 9(1)(a) must include soil sampling of the field at the appropriate sampling rate and official testing of the samples.
- (4) In the case of a field in which susceptible bulbs or susceptible plants, intended for the production of plants for planting, are to be planted or stored, an official investigation for the purposes of paragraph 9(1)(a) must include—
- (a) soil sampling of the field at the appropriate sampling rate and official testing of the samples; or
  - (b) verification, based on the results of appropriate officially approved testing, that Potato cyst nematodes have not been present in the field during the previous 12 years or verification, based on the known cropping history of the field, that no potatoes or host plants have been grown in the field in the previous 12 years.
- (5) An official survey for the purposes of paragraph 9(1)(b) must include soil sampling of the field at the appropriate sampling rate on at least 0.5% of the acreage used for the production of potatoes in the relevant year and official testing of the samples.
- (6) Paragraph 9(1)(a) does not apply where the Secretary of State has established that there is no risk of Potato cyst nematodes spreading and—
- (a) any susceptible material intended for the production of plants for planting is to be used within the same place of production situated within an officially defined area;
  - (b) seed potatoes are to be used within the same place of production situated within an officially defined area; or
  - (c) in the case of any susceptible bulbs or susceptible plants intended for the production of plants for planting, the harvested plants are to be subject to officially approved measures.
- (7) For the purposes of sub-paragraphs (3) to (5)—
- (a) “the appropriate sampling rate”, in relation to a field, is the minimum sampling rate specified in the following table—

<i>Sub-paragraph</i>	<i>Field</i>	<i>Rate</i>
(3) and (4)	Field $\leq$ 8 hectares	1,500 ml of soil per hectare collected from at least 100 cores/hectare
	Field > 8 hectares	First 8 1,500 ml of soil per hectare Each additional 400 ml of soil per hectare

<i>Sub-paragraph</i>	<i>Field</i>	<i>Rate</i>
	Field $\leq$ 4 hectares that meets at least one of the criteria in paragraph (b)	400 ml of soil per hectare
	Field $>$ 4 hectares that meets at least one of the criteria in paragraph (b)	First 4 400 ml of soil per hectare Each additional 200 ml of soil per hectare hectare
(5)	Field $\leq$ 4 hectares	Any of the following:  —400 ml of soil per hectare  —targeted sampling of at least 400 ml of soil following the visual examination of roots with visual symptoms; or  —where the harvested potatoes can be traced to the field in which they were grown, 400 ml of soil associated with the harvested potatoes.

(b) the criteria are—

- (i) documentary evidence exists to show that potatoes or host plants have not been grown or were not present in the field in the six years prior to the official investigation;
- (ii) no Potato cyst nematodes have been found during the last two successive official investigations in samples of 1,500 ml soil/hectare and no potatoes or host plants, other than those for which the official investigation is required, have been grown in the field since the first of those two investigations;
- (iii) no Potato cyst nematodes or Potato cyst nematodes without live content have been found in the last official investigation which consisted of a sample size of at least 1,500 ml soil/hectare and no potatoes or host plants, other than those for which the official investigation is required, have been grown in the field since the last official investigation.”.

(6) In paragraph 10(2), for the words from “officially” to “2007/33/EC” substitute “relevant specified measures”.

(7) In paragraphs 12(3) and 16, for “the measures set out in Section 3(A) of Annex 3 to [Directive 2007/33/EC](#)” substitute “one of the relevant specified measures”.

## Part 5

21.—(1) Part 5 is amended as follows.

(2) In paragraph 18—

- (a) in the definitions of “contaminated” and “first growing year”, for “for the purposes of Article 5(1)(a) of [Directive 93/85/EEC](#)” substitute “pursuant to paragraph 20(1)(a)”;
  - (b) in the definition of “possibly contaminated”, for “for the purposes of Article 5(1)(b) of [Directive 93/85/EEC](#)” substitute “pursuant to paragraph 20(1)(b)”.
- (3) In paragraph 19—
- (a) in sub-paragraph (1), omit “, in accordance with Article 2(1) of [Directive 93/85/EEC](#)”;
  - (b) after sub-paragraph (1) insert—
    - “(1A) In the case of tubers of *Solanum tuberosum* L., those surveys must include official testing of samples of seed and other potatoes in accordance with EPPO PM 7/59.
    - (1B) In the case of plants of *Solanum tuberosum* L., those surveys must be carried out according to appropriate methods and include appropriate official testing of samples.
    - (1C) The collection of samples for the purposes of sub-paragraphs (1A) and (1B) must be based on sound scientific and statistical principles and the biology of Potato ring rot and take into account relevant potato production systems.”;
  - (c) in sub-paragraph (2)(a), for the words from “Annex” to “93/85/EEC” substitute “EPPO PM 7/59”.
- (4) In paragraph 20(1)—
- (a) in paragraph (b), for “taking into account the matters set out in point 1 of Annex 3 to [Directive 93/85/EEC](#)” substitute—
    - “having regard to the following factors—
    - (i) the susceptible material grown at the contaminated place of production;
    - (ii) places of production with some production link to that susceptible material, including those sharing production equipment and facilities directly or through a common contractor;
    - (iii) the production or presence of other susceptible material at the contaminated place of production;
    - (iv) the premises handling potatoes from the contaminated place of production and the places of production mentioned in sub-paragraph (ii);
    - (v) any object that may have come into contact with the contaminated susceptible material;
    - (vi) any susceptible material stored in, or in contact with, any object prior to its disinfection;
    - (vii) any susceptible material with a sister or parental clonal relationship to the contaminated susceptible material and the places of production of that susceptible material.”;
  - (b) in paragraph (c), for “matters set out in point 2 of Annex 3 to [Directive 93/85/EEC](#)” substitute “proximity of other places of production growing potatoes or other host plants and the common production and use of seed potato stocks”;
  - (c) after paragraph (1), insert—
    - “(1A) When making a designation or determination under sub-paragraph (1), an inspector must have regard to sound scientific principles, the biology of Potato ring rot and relevant production, marketing and processing systems.”.
- (5) In paragraph 21—
- (a) in sub-paragraph (2)—

- (i) in paragraph (a), for “any other measure that complies with point 1 of Annex 4 to [Directive 93/85/EEC](#)” substitute “an officially approved disposal method that ensures that there is no identifiable risk of Potato ring rot spreading”;
  - (ii) in paragraph (b), for “in accordance with point 2 of Annex 4 to [Directive 93/85/EEC](#)” substitute “in a manner that ensures that there is no identifiable risk of Potato ring rot spreading”;
  - (b) in sub-paragraph (3), for “[Directive 93/85/EEC](#)” substitute “this Part”.
- (6) In paragraph 22—
- (a) in sub-paragraphs (2)(c), (3)(c) and (4)(d), for “Annex 1 to [Directive 93/85/EEC](#)” substitute “EPPO PM 7/59”;
  - (b) in sub-paragraph (8), for “Article 2 of [Directive 93/85/EEC](#)” substitute “EPPO PM 7/59”.
- (7) In paragraph 24(7)(b), for “Article 2 of [Directive 93/85/EEC](#)” substitute “EPPO PM 7/59”.

## Part 6

22.—(1) Part 6 is amended as follows.

(2) In paragraph 25—

- (a) in the definitions of “contaminated” and “first growing year”, for “for the purposes of Article 5(1)(a)(ii) of [Directive 98/57/EC](#)” substitute “pursuant to paragraph 27(2)(c)”;
- (b) in the definition of “possibly contaminated”, for “for the purposes of Article 5(1)(a)(iii) or (c)(iii) of [Directive 98/57/EC](#)” substitute “pursuant to paragraph 27(2)(d)”.

(3) In paragraph 26—

- (a) in sub-paragraph (1), omit “in accordance with Article 2 of [Directive 98/57/EC](#)”;
- (b) after sub-paragraph (1) insert—

“(1A) Those surveys must be based on a risk assessment to identify other possible sources of contamination threatening the production of susceptible material and include targeted official surveys in production areas, based on the relevant risk assessment, to identify the presence of Potato brown rot on—

- (a) relevant material, other than susceptible material;
- (b) surface water which is used for irrigation or spraying of susceptible material; and
- (c) liquid waste discharged from industrial processing or packaging premises handling susceptible material.

(1B) Those surveys must also be based on the biology of Potato brown rot and the relevant production systems and must include—

- (a) in the case of susceptible material comprising plants of *Solanum tuberosum* L., visual inspection of the growing crop at appropriate times, or the sampling of both seed and other potatoes in the growing season or in store, which must include official visual inspection by cutting of tubers;
- (b) in the case of seed potatoes and, where appropriate, other potatoes, official testing of samples using the method set out in EPPO PM 7/21;
- (c) in the case of susceptible material comprising plants of *Solanum lycopersicum* L., visual inspection at appropriate times of at least the growing crop of plants intended for replanting for professional use;
- (d) for host plants, other than susceptible material, and for water including liquid waste, official testing.

- (1C) The collection of samples for the purposes of sub-paragraph (1B) must be based on sound scientific and statistical principles and the biology of Potato brown rot and take into account relevant potato production systems of susceptible material and other host plants of Potato brown rot.”;
- (c) in sub-paragraph (2)—
- (i) in paragraph (a)(i), for the words from “Annex”, in the first place where it occurs, to the end substitute “EPPO PM 7/21”;
  - (ii) in paragraph (b), for the words from “specified” to “98/57/EC” substitute “referred to in EPPO PM 7/21”.
- (4) In paragraph 27—
- (a) in sub-paragraph (2)—
- (i) in paragraph (a), for “in accordance with Annex 4 to [Directive 98/57/EC](#)” substitute—
 

“which includes investigation of the following—

    - (i) potatoes which are growing or have been harvested that are clonally related to any contaminated potatoes;
    - (ii) tomatoes which are growing or have been harvested that are from the same source as any contaminated tomatoes;
    - (iii) potatoes or tomatoes which are growing or have been harvested that are under official control and are suspected to be contaminated with Potato brown rot;
    - (iv) potatoes which are growing or have been harvested that are clonally related to any potatoes that have been grown at the contaminated place of production;
    - (v) potatoes or tomatoes which are growing nearby the contaminated place of production, including those sharing production equipment and facilities directly or through a common contractor;
    - (vi) surface water used for irrigation and spraying from any source confirmed or suspected to be contaminated with Potato brown rot;
    - (vii) surface water used for irrigation and spraying from a source used in common with the contaminated and possibly contaminated places of production;
    - (viii) places of production which are flooded or have been flooded with contaminated or possibly contaminated surface water;
    - (ix) surface water used for irrigation or spraying of the contaminated place of production or flooded fields at the contaminated place of production;”;
  - (ii) in paragraph (e), for “in accordance with point 2(i) of Annex 5 to [Directive 98/57/EC](#)” substitute “having regard to the relevant factors”;
- (b) in sub-paragraph (3)—
- (i) in paragraph (a), for “in accordance with Annex 4 to [Directive 98/57/EC](#)” substitute “which includes an investigation of the things referred to in sub-paragraph (2)(a)(i) to (ix)”;
  - (ii) in paragraph (d), for “in accordance with point 2(i) of Annex 5 to [Directive 98/57/EC](#)” substitute “having regard to the relevant factors”;
- (c) in sub-paragraph (4)(d), for “in accordance with point 2(ii) of Annex 5 to [Directive 98/57/EC](#)” substitute “having regard to the relevant factors”;
- (d) at the end insert—
- “(5) The “relevant factors” are—

- (a) for the purposes of sub-paragraphs (2)(e) and (3)(d)—
    - (i) the proximity of other places of production growing susceptible material;
    - (ii) the common production and use of seed potato stocks;
    - (iii) places of production using surface water for irrigation or spraying of susceptible material where there is or has been a risk of surface water run-off from the contaminated place of production;
  - (b) for the purposes of sub-paragraph (4)(d)—
    - (i) places of production producing susceptible material adjacent to, or which are at risk from flooding by, contaminated surface water;
    - (ii) any discrete irrigation basin associated with the contaminated surface water;
    - (iii) water bodies connected with the contaminated surface water having regard to the direction and rate of flow of the contaminated surface water and the presence of wild solanaceous host plants.”.
- (5) In paragraph 28—
- (a) in sub-paragraph (2)—
    - (i) in paragraph (a), for “measure that complies with point 1 of Annex 6 to [Directive 98/57/EC](#)” substitute “officially approved disposal method that ensures that there is no identifiable risk of Potato brown rot spreading”;
    - (ii) in paragraph (b), for “in accordance with point 2 of Annex 6 to [Directive 98/57/EC](#)” substitute “by an officially approved disposal method that ensures that there is no identifiable risk of Potato brown rot spreading”;
  - (b) in sub-paragraph (3), for “[Directive 98/57/EC](#)” substitute “this Part”.
- (6) In paragraph 29, in sub-paragraphs (2)(c), (3)(c) and (4)(g), for “Annex 2 to [Directive 98/57/EC](#)”, in each place where it occurs, substitute “EPPO PM 7/21”.
- (7) In paragraph 31—
- (a) in sub-paragraph (7)—
    - (i) in paragraph (a), for “Article 5(1)(a)(iv) of [Directive 98/57/EC](#)” substitute “paragraph 27(3)(d)”;
    - (ii) in paragraph (b), for “Article 5(1)(c)(iii) of [Directive 98/57/EC](#)” substitute “paragraph 27(4)(d)”;
  - (b) in sub-paragraph (8)(b), for “Article 2 to [Directive 98/57/EC](#)” substitute “EPPO PM 7/21”.

## Part 7

23. In paragraph 32(1)—
- (a) for the heading substitute “**Additional measures relating to Egyptian potatoes**”;
  - (b) for “the Union territory” substitute “Great Britain”;
  - (c) for “Commission Implementing [Decision 2011/787/EC](#)” substitute “Article 41(1) of the Plant Health Regulation”.

## Schedule 3

- 24.—(1) Schedule 3 is amended as follows.



- (2) In the heading, for “the EU Regulations” substitute “retained direct EU legislation”.
- (3) In Part 1—
- (a) in the heading, omit “EU”;
  - (b) in the table—
    - (i) in the heading to the first column, omit “EU”;
    - (ii) in the entry relating to Article 5(1)—
      - (aa) for “Union quarantine”, in each place where it occurs, substitute “GB quarantine”;
      - (bb) for “the Union territory”, in each place where it occurs, substitute “Great Britain”;
    - (iii) in the entry relating to Article 9(3)—
      - (aa) for “Union”, in the first place where it occurs, substitute “GB”;
      - (bb) for “pest subject to measures adopted pursuant to Article 30(1)” substitute “provisional GB quarantine pest”;
      - (cc) for “the Union territory”, in both places where it occurs, substitute “Great Britain”;
      - (dd) for “protected zone”, in the first place where it occurs, substitute “PFA”;
      - (ee) for “respective protected zone” substitute “GB pest-free area established in respect of that pest”;
    - (iv) in the entry relating to Article 14(1)—
      - (aa) for “Union” to “Article 30(1)” substitute “GB quarantine pest or provisional GB quarantine pest”;
      - (bb) for “protected zone”, in the first place where it occurs, substitute “PFA”;
      - (cc) for “respective protected zone” substitute “GB pest-free area established in respect of that pest”;
    - (v) in the entry relating to Article 14(3) for “Union” substitute “GB”;
    - (vi) in the entry relating to Article 15(1)—
      - (aa) for “Union” substitute “GB”;
      - (bb) for “protected zone”, in the first place where it occurs, substitute “PFA”;
      - (cc) for “respective protected zone” substitute “GB pest-free area established in respect of that pest”;
    - (vii) in the entry relating to Article 32(2)—
      - (aa) for “protected zone quarantine”, in each place where it occurs, substitute “PFA quarantine”;
      - (bb) for “respective protected zone”, in each place where it occurs, substitute “GB pest-free area established in respect of that pest”;
    - (viii) in the entry relating to Article 37(1)—
      - (aa) for “the Union territory”, in both places where it occurs” substitute “Great Britain”;
      - (bb) for “Union”, in the second and third places where it occurs, substitute “GB”;
    - (ix) in the entry relating to Article 40(1) for “the Union territory” substitute “Great Britain”;
    - (x) for the entry relating to Article 41(1) substitute—

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| “Article 41(1) (as read with Articles 47 and 48(1)) | Prohibits the introduction into Great Britain of certain plants, plant products or other objects from third countries unless the special requirements in respect of those plants, plant products or other objects are fulfilled. |
| Article 41(1A) (as read with Article 48(1))         | Prohibits the introduction into Great Britain of certain plants, plant products or other objects from CD territories unless the special requirements in respect of those plants, plant products or other objects are fulfilled.  |
| Article 41(1B) (as read with Article 48(1))         | Prohibits the movement within Great Britain of certain plants, plant products or other objects unless the special requirements in respect of those plants, plant products or other objects are fulfilled.”                       |
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- (xi) in the entries relating to Articles 42(2) and 43(1), for “the Union territory”, in both places where it occurs, substitute “Great Britain”;
  - (xii) in the entry relating to Article 53(1)—
    - (aa) for “certain protected zones”, in the first place where it occurs, substitute “GB pest-free areas”;
    - (bb) for “within the Union territory into certain protected zones” substitute “in Great Britain or a CD territory into GB pest-free areas”;
  - (xiii) in the entry relating to Article 54(1)—
    - (aa) for “certain protected zones”, in both places where it occurs, substitute “GB pest-free areas”;
    - (bb) for “those protected zones”, in both places where it occurs, substitute “those GB pest-free areas”;
  - (xiv) in the entry relating to Article 59—
    - (aa) for “the Union territory”, in both places where it occurs, substitute “Great Britain”;
    - (bb) for “Union quarantine” to “Article 30(1)” substitute “GB quarantine pests or provisional GB quarantine pests”;
    - (cc) for “the protected zones” substitute “GB pest-free areas”;
    - (dd) for “protected zones”, in the second place where it occurs, substitute “GB pest-free areas”;
    - (ee) for “respective protected zone” substitute “PFA”;
    - (ff) at the end insert “relating to those areas”;
  - (xv) in the entry relating to Article 62(1), for “Union” to the end substitute “GB quarantine pests and provisional GB quarantine pests”;
  - (xvi) in the entry relating to Article 62(2), for “Union” to “Article 30(1)” substitute “GB quarantine pest or a provisional GB quarantine pest”;
  - (xvii) in the entry relating to Articles 72(1) and 73—
    - (aa) in the first column, omit the words from “(as read” to the end;

- (bb) in the second column, for “the Union territory” substitute “Great Britain”;
- (xviii) in the entry relating to Article 74(1), for “protected zones” substitute “GB pest-free areas”;
- (xix) in the entry relating to Article 79(1)—
- (aa) in the first column, for “and 83” substitute “, 83 and 92a”;
- (bb) in the second column, for “the Union territory without a plant passport” substitute “Great Britain or the introduction of certain plants, plant products and other objects into Great Britain from a CD territory without a UK plant passport”;
- (xx) in the entry relating to Article 80(1)—
- (aa) in the first column, for “and 83” substitute “, 83 and 92a”;
- (bb) in the second column, for “certain protected zones”, in both places where it occurs, substitute “GB pest-free areas”, and after “a” insert “UK”;
- (xxi) in the entries relating to Article 84(1) and (3), after “issuing”, in each place where it occurs, insert “UK”;
- (xxii) in the entry relating to Article 85—
- (aa) in the first column, omit “and paragraph 4(2) and (3) of Schedule 1”;
- (bb) in the second column, after “issuing” insert “UK”;
- (xxiii) in the entry relating to Article 86(1)—
- (aa) after “issuing” insert “UK”;
- (bb) for “protected zone” substitute “GB pest-free area”;
- (xxiv) after the entry relating to Article 86(1) insert—

“Article 86a	Prohibits authorised professional operators from issuing UK plant passports for plants, plant products or other objects to be introduced into a CD territory unless the specified requirements are fulfilled in respect of those plants, plant products or other objects.”;
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- (xxv) in the entry relating to Article 88, after “attach” insert “UK”;
- (xxvi) in the entry relating to Article 90(1), after “a” insert “UK”;
- (xxvii) in the entries relating to Article 93(1) and 93(5), after “replacement” insert “UK”;
- (xxviii) in the entry relating to Article 96(1), for “the Union territory” substitute “Great Britain”.

(4) In Part 2, in the entries relating to Articles 47(5) and 56(4), for “the Union”, in each place where it occurs, substitute “Great Britain”.

(5) In Part 3, in the entry relating to Article 22(4) of Commission Delegation Regulation (EU) 2019/2124, for “the Union territory” substitute “Great Britain”.

#### **Schedule 4**

25. Omit Schedule 4.

## PART 3

### Amendment of retained direct EU legislation

#### **Regulation (EU) 2016/2031 of the European Parliament and of the Council on protective measures against pests of plants**

26. Regulation (EU) 2016/2031 of the European Parliament and of the Council on protective measures against pests of plants is amended in accordance with regulations 27 to 43.

#### **Chapter 1**

27.—(1) Chapter 1 is amended as follows.

(2) In Article 1—

- (a) in paragraph 2, for “the Union territory” substitute “Great Britain”;
- (b) omit paragraph 3.

(3) In Article 2—

- (a) in the definition of ‘plant products’ in point (2), for the words from “implementing” to “41” substitute “Phytosanitary Conditions Regulation, other retained EU law relating to plant health or regulations made under Article 28(1) or 30(1)”;

(b) for point (6) substitute—

“(6) ‘competent authority’ means:

- (a) in relation to England, the Secretary of State or the Forestry Commissioners;
- (b) in relation to Scotland, the Scottish Ministers; and
- (c) in relation to Wales, the Welsh Ministers;”;

(c) at the end insert—

“(23) ‘Regulation (EU) 2017/625’ means Regulation (EU) 2017/625 of the European Parliament and of the Council on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products<sup>(13)</sup>;

(24) ‘appropriate authority’ has the meaning given in Article 2a;

(25) ‘appropriate computerised information management system’ means the computerised information management system for official controls referred to in Article 131 of Regulation (EU) 2017/625;

(26) ‘CD authority’, in relation to a CD territory, means the authority that is officially responsible in that territory for the implementation of rules in relation to protective measures against pests of plants;

(27) ‘CD pest-free area’ means a CD territory or an area in that territory which has been established as a pest-free area in accordance with ISPM4 in respect of a CD quarantine pest;

(28) ‘CD quarantine pest’ means a pest which:

- (i) is present in Great Britain, but not in a CD territory that is recognised as free from that pest in accordance with ISPM4; and
- (ii) may not, under the relevant CD legislation, be introduced into the CD territory;

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(13) EUR 2017/625.

(29) ‘CD territory’ means the Bailiwick of Guernsey, the Bailiwick of Jersey or the Isle of Man;

(30) ‘Commission Delegated Regulation (EU) 2019/1702’ means Commission Delegated Regulation (EU) 2019/1702 establishing a list of priority pests(14);

(31) ‘GB pest-free area’ means an area in Great Britain which has been established as a pest-free area in accordance with ISPM4 in respect of a PFA quarantine pest;

(32) ‘GB quarantine pest’ has the meaning given in Article 4;

(33) ‘GB regulated non-quarantine pest’ has the meaning given in Article 36;

(34) ‘IPPC’ means the International Plant Protection Convention 1951(15);

(35) ‘ISPM4’ 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(16);

(36) ‘ISPM15’ means International Standard for Phytosanitary Measures No. 15 of March 2002 on guidelines for regulating wood packaging material in international trade, prepared by the Secretariat of the IPPC established by the Food and Agriculture Organisation of the United Nations(17);

(37) ‘PFA quarantine pest’ has the meaning given in Article 32(1);

(38) ‘the Phytosanitary Conditions Regulation’ means Commission Implementing Regulation (EU) 2019/2072 establishing uniform conditions for the implementation of Regulation (EU) 2016/2031 of the European Parliament and the Council, as regards protective measures against pests of plants(18);

(39) ‘priority pest’ has the meaning given in Article 6(1);

(40) ‘provisional GB quarantine pest’ has the meaning given in Article 30(A1);

(41) ‘relevant CD legislation’, in relation to a CD territory, means legislation on protective measures against pests of plants that is in force in that CD territory;

(42) ‘relevant legislation on the marketing of seeds and other propagating material’ means retained EU law that implemented:

(a) in relation to fodder plant seed, Council [Directive 66/401/EEC](#) on the marketing of fodder plant seed(19);

(b) in relation to cereal seed, Council [Directive 66/402/EEC](#) on the marketing of cereal seed(20);

(c) in relation to propagating material of ornamental plants, Council [Directive 98/56/EC](#) on the marketing of propagating material of ornamental plants(21);

(d) in relation to forest reproductive material, Council [Directive 1999/105/EC](#) on the marketing of forest reproductive material(22);

(14) EUR 2019/1702.

(15) Adopted in 1951 (Treaty Series No.16 (1954), Cmd 9077) and last revised in 1997 (Miscellaneous Series No.15 (2003), Cmd 5945).

(16) Available from the IPPC Secretariat, AGPP-FAO, Viale Delle Terme di Caracalla, 00153, Rome, Italy and at <https://www.ippc.int/int>.

(17) Available from the IPPC Secretariat, AGPP-FAO, Viale Delle Terme di Caracalla, 00153, Rome, Italy and at <https://www.ippc.int/int>.

(18) EUR 2019/2072.

(19) OJ No 125, 11.7.1966, p.2298, as last amended by Commission Implementing Directive (EU) 2020/177 (OJ No. L 41, 13.2.2020, p.1).

(20) OJ No 125, 11.7.1966, p.2309, as last amended by Commission Implementing Directive (EU) 2020/177.

(21) OJ No. L 226, 13.8.1998, p.16, as last amended by Regulation (EU) No 652/2014 (OJ No. L 189, 27.6.2014, p.1).

(22) OJ No. L 11, 15.1.2000, p.17.

- (e) in relation to beet seed, Council [Directive 2002/54/EC](#) on the marketing of beet seed(23);
  - (f) in relation to vegetable seed, Council [Directive 2002/55/EC](#) on the marketing of vegetable seed(24);
  - (g) in relation to seed potatoes, Council [Directive 2002/56/EC](#) on the marketing of seed potatoes(25);
  - (h) in relation to seed of oil and fibre plants, Council [Directive 2002/57/EC](#) on the marketing of seed of oil and fibre plants(26);
  - (i) in relation to vegetable propagating and plant material, other than seed, Council [Directive 2008/72/EC](#) on the marketing of vegetable propagating and plant material, other than seed(27);
  - (j) in relation to fruit plant propagating material and fruit plants intended for fruit production, Council [Directive 2008/90/EC](#) on the marketing of fruit plant propagating material and fruit plants intended for fruit production(28);
- (43) ‘UK NPPO’ means the national plant protection organisation of the United Kingdom;
- (44) ‘UK plant passport’ has the meaning given in Article 78.”.

(4) After Article 2 insert—  
“Article 2a

*Meaning of appropriate authority*

1. In this Regulation, ‘the appropriate authority’ means:
  - (a) in the case of regulations applying in relation to England, the Secretary of State;
  - (b) in the case of regulations applying in relation to Wales, the Welsh Ministers;
  - (c) in the case of regulations applying in relation to Scotland, the Scottish Ministers.
2. But ‘the appropriate authority’ is the Secretary of State:
  - (a) if consent is given:
    - (i) in the case of regulations applying in relation to Wales, by the Welsh Ministers;
    - (ii) in the case of regulations applying in relation to Scotland, by the Scottish Ministers; or
  - (b) in relation to any provision in regulations applying in relation to Great Britain which is outside devolved competence.
3. For the purposes of paragraph 2, a provision is “outside devolved competence”:
  - (a) in relation to Wales, if it would not be within the legislative competence of the Senedd Cymru if it were contained in an Act of the Senedd Cymru (assuming, in the case of provision that could only be made with the consent of a Minister of the

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(23) OJ No. L 226, 13.8.1998, p.16, as last amended by Regulation (EU) No 652/2014 (OJ No. L 189, 27.6.2014, p. ).

(24) OJ No. L 193, 20.7.2002, p.33, as last amended by Commission Implementing Directive (EU) 2020/432 (OJ No. L 88, 24.3.2020, p.3).

(25) OJ No. L 193, 20.7.2002, p.60, as last amended by Commission Implementing Directive (EU) 2020/177.

(26) OJ No. L 193, 20.7.2002, p.74, as last amended by Commission Implementing Directive (EU) 2020/177.

(27) OJ No. L 205, 1.8.2008, p.28, as last amended by Commission Implementing Directive (EU) 2019/990 (OJ No. L 160, 18.6.2019, p.14).

(28) OJ No. L 267, 8.10.2008, p.8, as last amended by Commission Implementing Decision (EU) 2019/120 (OJ No L 24, 28.1.2019, p.27).

Crown within the meaning of the Ministers of the Crown Act 1975, that such consent were given);

- (b) in relation to Scotland, if it would not be within the legislative competence of the Scottish Parliament if it were contained in an Act of that Parliament.

Article 2b

*Meaning of third country and related expressions*

**1.** In this Regulation:

‘third country’ means any country or territory outside the British Islands;

‘EU Member State’ means a member State.

- 2.** For the purposes of this Regulation, any reference to the territory of an EU Member State or the European Union is not to be treated as including the Canary Islands, Ceuta, Melilla or the French Overseas Departments.”.

**Chapter 2**

**28.**—(1) Chapter 2 is amended as follows.

(2) In Section 2, in the heading, for “**Union**” substitute “**GB**”.

(3) In Article 4—

(a) in the heading, for “**Union**” substitute “**GB**”;

(b) in the unnumbered paragraph—

(i) for “Union”, in the first place where it occurs, substitute “GB”;

(ii) for “the Union territory” substitute “Great Britain”;

(iii) for “referred to in Article 5(2)” substitute “in Annex 2 to the Phytosanitary Conditions Regulation”.

(4) In Article 5—

(a) in the heading, for “**Union**” substitute “**GB**”;

(b) in paragraph 1—

(i) for “Union”, in the first place where it occurs, substitute “GB”;

(ii) for “the Union territory” substitute “Great Britain”;

(c) omit paragraph 2.

(d) for paragraph 3 substitute—

“**3.** The appropriate authority may by regulations modify the list of GB quarantine pests in Annex 2 to the Phytosanitary Conditions Regulation where the results of an assessment show, in respect of Great Britain, that a pest which is not included in that list fulfils the conditions listed in Article 3, or that a pest which is included in that list no longer fulfils one or more of those conditions.”;

(e) omit paragraph 4.

(5) In Article 6—

(a) in paragraph 1—

(i) in the words before point (a), for “Union” substitute “GB”;

(ii) in points (a) and (b), for “the Union territory”, in both places where it occurs, substitute “Great Britain”;

- (iii) in point (c), for “listed in accordance with paragraph 2 of this Article” substitute “included in the list in the Annex to Commission Delegated Regulation (EU) 2019/1702”;
- (b) for paragraph 2 substitute—
  - “2. The appropriate authority may by regulations amend the list of priority pests in the Annex to Commission Delegated Regulation (EU) 2019/1702 where the results of an assessment show that a GB quarantine pest which is not included in that list fulfils the conditions referred to in points (a) and (b) of paragraph 1, or that a pest which is included in that list no longer fulfils either of those conditions.”.
- (6) In Article 7, for the words from “Commission” to “amending” substitute “appropriate authority may by regulations amend”.
- (7) In Article 8—
  - (a) in the heading, for “**Union**” substitute “**GB**”;
  - (b) in paragraph 1—
    - (i) in the first subparagraph—
      - (aa) for “Member States” substitute “a competent authority”;
      - (bb) for the words from “their territory” to “Article 30(1)” substitute “in the relevant territory of GB quarantine pests or provisional GB quarantine pests”;
    - (ii) in the second subparagraph, for “Union” substitute “relevant”;
  - (c) in paragraph 2—
    - (i) in point (a), in point (i), for “authorities consider” substitute “authority considers”;
    - (ii) in point (d), for “Union” substitute “relevant”;
  - (d) in paragraph 3—
    - (i) in the first subparagraph—
      - (aa) for “Authorisations”, in the first place where it occurs, substitute “An authorisation”;
      - (bb) for “are” substitute “is”;
      - (cc) for “Authorisations”, in the second place where it occurs, substitute “The authorisation”;
    - (ii) in the second subparagraph—
      - (aa) for “Authorisations” substitute “An authorisation”;
      - (bb) for the words from “respective” to the end substitute “GB quarantine pest or provisional GB quarantine pest to which the authorisation relates”;
  - (e) in paragraph 5—
    - (i) in the words before point (a), for the words from “Commission” to “laying” substitute “appropriate authority may by regulations lay”;
    - (ii) omit point (a).
- (8) In Article 9—
  - (a) omit paragraphs 1 and 2;
  - (b) for paragraph 3 substitute—
    - “3. Where a professional operator has any evidence concerning an imminent danger of the entry of a GB quarantine pest or a provisional GB quarantine pest into Great



Britain, or into a part of Great Britain where it is not yet present, the professional operator must immediately notify the competent authority.”.

- (9) In Article 10—
- (a) in the heading, for “**Union**” substitute “**GB**”;
  - (b) in the first subparagraph—
    - (i) for the words from “Union quarantine pest” to “Member State” substitute “GB quarantine pest or a provisional GB quarantine pest in a part of its territory”;
    - (ii) for “the Union territory” substitute “Great Britain”;
  - (c) in the second subparagraph, for “Member States concerned” substitute “competent authority”.
- (10) In Article 11—
- (a) for the heading substitute “**Notification of GB quarantine pests by competent authorities**”;
  - (b) for the words before point (a) substitute—
    - “**1.** A competent authority that officially confirms any of the situations described in paragraph 2 must immediately provide details of the situation to the other competent authorities.
    - “**2.** The situations are:”;
  - (c) in points (a) and (b), in both places where it occurs, for “Union” substitute “GB”;
  - (d) in point (c)—
    - (i) for “Union”, in the first place where it occurs, substitute “GB”;
    - (ii) for “the Union territory” substitute “Great Britain”;
  - (e) omit the final paragraph.
- (11) In Article 12—
- (a) in the heading, for “**Union**” substitute “**GB**”;
  - (b) in paragraph 1—
    - (i) for “Article 11” substitute “Article 11(2)”;
    - (ii) for “Union” substitute “GB”;
  - (c) omit paragraph 2.
- (12) In Article 13, for “the first paragraph of Article 11” substitute “Article 11(2)”.
- (13) In Article 14—
- (a) in paragraph 1, for the words from “Union” to “Article 30(1)” substitute “GB quarantine pest or a provisional GB quarantine pest”;
  - (b) in paragraph 2, for the second sentence substitute—
    - “The competent authority must promptly publish any decision made under this paragraph in such manner as the competent authority considers is appropriate to bring it to the attention of the professional operators who may be affected by the decision.”;
  - (c) in paragraph 3, for “Union” substitute “GB”.
- (14) In Article 15—
- (a) in paragraph 1, for “Union” substitute “GB”;
  - (b) after paragraph 2 insert—

- “2A. The competent authority must promptly publish any decision made under paragraph 2 in such manner as the competent authority considers is appropriate to bring the decision to the attention of the public.”.
- (15) In Article 16, for “Union”, in both places where it occurs, substitute “GB”.
- (16) In Article 17—
- (a) in the heading, for “**Union**” substitute “**GB**”;
  - (b) in paragraph 1—
    - (i) in the first subparagraph—
      - (aa) for “the first paragraph of Article 11” substitute “Article 11(2)”;
      - (bb) for “Union” substitute “GB”;
    - (ii) in the second subparagraph, for the words from “an implementing” to “provides” substitute “retained direct EU legislation relating to plant health provides or regulations made under Article 28(1) provide”;
  - (c) in paragraph 2, for “Union” substitute “GB”;
  - (d) omit paragraph 3.
- (17) In Article 18—
- (a) in paragraph 1, for “the first paragraph of Article 11” substitute “Article 11(2)”;
  - (b) omit paragraphs 5 and 6.
- (18) In Article 19—
- (a) in paragraph 1, for “Competent” substitute “The competent”;
  - (b) omit paragraph 2;
  - (c) in paragraph 3—
    - (i) for “Competent” substitute “Where appropriate, the competent”;
    - (ii) for “infested zones, buffer zones and demarcated areas, where appropriate” substitute “the infested zones, the buffer zones and the demarcated areas”;
  - (d) in paragraph 4, for “Competent” substitute “The competent”;
  - (e) in paragraph 6, in point (b), for “the containment measures referred to in Article 28(2)” substitute “containment measures, where applicable”;
  - (f) in paragraph 7, for the words from the beginning to “supplementing” substitute “The appropriate authority may by regulations supplement”.
- (19) Omit Article 20.
- (20) In Article 21, for the words from the beginning to “amending” substitute “The appropriate authority may by regulations amend”.
- (21) In Article 22—
- (a) in the heading, for “**Union**”, in both places where it occurs, substitute “**GB**”;
  - (b) in paragraph 1—
    - (i) in the words before point (a)—
      - (aa) for “Member States” substitute “The competent authorities”;
      - (bb) after “surveys” insert “in the territories for which they are responsible”;
    - (ii) in point (a), for “Union” substitute “GB”;
    - (iii) in point (b), for the words from “pest” to the end substitute “provisional GB quarantine pest or any pest which has been provisionally assessed, in accordance

- with Article 29(2), as fulfilling the criteria set out in Subsection 1 of Section 3 of Annex 1”;
- (iv) omit the final subparagraph;
- (c) in paragraph 2, in the first subparagraph, after “authority” insert “carrying out the survey”;
- (d) omit paragraph 3.
- (22) In Article 23—
- (a) in paragraph 1, for “Member States” substitute “The competent authorities”;
- (b) omit paragraphs 2 and 3.
- (23) In Article 24—
- (a) in paragraph 1—
- (i) in the first subparagraph, for “Member States” substitute “the competent authorities”;
- (ii) omit the second subparagraph;
- (b) omit paragraph 2.
- (24) In Article 25—
- (a) in paragraph 1—
- (i) in the first subparagraph—
- (aa) for “Member State” substitute “competent authority”;
- (bb) for “its territory, or a part thereof,” substitute “Great Britain”;
- (ii) in the second subparagraph, for “Member States” substitute “The competent authorities”;
- (iii) omit the third subparagraph.
- (b) in paragraph 2—
- (i) in point (a)—
- (aa) for “competent authorities” substitute “the competent authority”;
- (bb) omit the words from “, including” to the end;
- (ii) in points (b) and (c), for “competent authorities”, in both places where it occurs, substitute “the competent authority”;
- (iii) in point (d), omit “the Commission, the other Member States,”;
- (iv) in point (f), omit the words from “and any” to the end;
- (v) in point (j), for “authorities”, in the first place where it occurs, substitute “authority”;
- (c) in paragraph 4—
- (i) for the first subparagraph substitute—
- “4. The competent authorities must, before 1st January 2023, establish contingency plans for the priority pests included in the list of priority pests in the Annex to Commission Delegated Regulation (EU) 2019/1702, as it has effect on IP completion day.”;
- (ii) after that subparagraph insert—
- “4A. Paragraph 4 does not apply in relation to any priority pest that is removed from that list before 1st January 2023.”;
- (iii) the second subparagraph of the existing text becomes paragraph 4B;

- (iv) in that paragraph—
    - (aa) for “Member States” substitute “the competent authorities”;
    - (bb) for “a contingency plan” substitute “contingency plans”;
    - (v) the third subparagraph of the existing text becomes paragraph 4C;
    - (vi) in that paragraph, for “Member States” substitute “The competent authorities”;
  - (d) omit paragraph 5.
- (25) In Article 26—
- (a) in paragraph 1—
    - (i) in the first subparagraph—
      - (aa) for “Member States” substitute “The competent authorities”;
      - (bb) after “exercises” insert “in the territories for which they are responsible”;
    - (ii) in the third subparagraph—
      - (aa) omit “the Member State concerned has recently taken”;
      - (bb) at the end insert “have recently been taken”;
  - (b) omit paragraphs 2 and 3.
- (26) In Article 27—
- (a) in paragraph 1, in the first subparagraph—
    - (i) for “the territory of a Member State” substitute “Great Britain”;
    - (ii) after “competent authority” insert “for the territory in which it has been found to be present”;
    - (iii) omit “, as provided for in Articles 17, 18, and 19,”;
    - (iv) omit “, as provided for in Article 28(2)”;
  - (b) omit paragraph 2.
- (27) In Article 28—
- (a) in the heading, for “**Union**”, in both places where it occurs, substitute “**GB**”;
  - (b) in paragraph 1—
    - (i) for the words before point (a) substitute—

“The appropriate authority may by regulations set out measures against specific GB quarantine pests. The provision that may be made in those regulations may include, in relation to a specific GB quarantine pest, provision.”;
    - (ii) in point (a)—
      - (aa) omit “Article 10”;
      - (bb) after “concerning” insert “the”;
      - (cc) for “Union” substitute “GB”;
    - (iii) in point (b)—
      - (aa) omit “Article 14”;
      - (bb) after “concerning” insert “the”;
    - (iv) in point (c)—
      - (aa) omit “Article 15”;
      - (bb) after “concerning” insert “the”;

- (v) for point (d) substitute—
  - “(d) concerning the eradication of that GB quarantine pest;”;
- (vi) after point (d) insert—
  - “(da) concerning the containment of that GB quarantine pest;”;
- (vii) in point (e)—
  - (aa) omit “Article 18”;
  - (bb) after “concerning” insert “the”;
- (viii) in point (f), omit “Article 19”;
- (ix) for point (g) substitute—
  - “(g) concerning surveys of that GB quarantine pest;”;
- (x) after point (g) insert—
  - “(ga) concerning prevention measures in areas outside demarcated areas where necessary to prevent the establishment of that GB quarantine pest in those areas;”;
- (xi) for point (h) substitute—
  - “(h) in the case of a GB quarantine pest which is a priority pest:
    - (i) concerning surveys for that priority pest, as regards the number of visual examinations, samples and tests for the priority pest;
    - (ii) concerning contingency plans for that priority pest;
    - (iii) concerning simulation exercises for that priority pest;
    - (iv) concerning action plans for that priority pest.”;
- (xii) omit points (i) to (k);
- (xiii) omit the final subparagraph;
- (c) for paragraph 2 substitute—
  - “2. Regulations under paragraph 1 may only make provision under point (da) of that paragraph if the appropriate authority has concluded, on the basis of surveys or other evidence, that the eradication of the GB quarantine pest in a demarcated area is not possible.”;
- (d) omit paragraph 3;
- (e) for paragraph 4 substitute—
  - “4. Regulations made under paragraph 1 may include any of the measures specified in Annex 2, taking into account the specific risks of the GB quarantine pest to which the regulations relate and any specific eco-climatic conditions and risks as regards any part of Great Britain.”;
- (f) omit paragraphs 5 to 7.
- (28) In Article 29—
  - (a) in the heading—
    - (i) for “**Member States**” substitute “**competent authorities**”;
    - (ii) for “**Union**” substitute “**GB**”;
  - (b) in paragraph 1—
    - (i) in the first subparagraph—

- (aa) for the first sentence substitute—

“Where the presence of a pest that is not included in Annex 2 or 2A to the Phytosanitary Conditions Regulation is officially confirmed to be present in a part of Great Britain, and the competent authority considers that the pest may fulfil the conditions for inclusion in Annex 2 to the Phytosanitary Conditions Regulation, the competent authority must immediately assess whether the pest fulfils the criteria set out in Subsection 1 of Section 3 of Annex 1 and notify the other competent authorities of its conclusion.”;
- (bb) in the third sentence, for “20” substitute “19”;
- (ii) in the third subparagraph—
  - (aa) for “the territory of a Member State, that Member State” substitute “Great Britain, the competent authority”;
  - (bb) for “the Union territory” substitute “the territory for which it is responsible”;
- (iii) in the fourth subparagraph, for “Member State” substitute “competent authority”;
- (iv) in the fifth subparagraph, for “Member State” substitute “competent authority”;
- (c) for paragraph 2 substitute—

“**2.** The competent authority must notify the other competent authorities of the measures that it has taken pursuant to paragraph 1 and the competent authorities must promptly assess whether the pest concerned fulfils the criteria for quarantine pests set out in Section 1 of Annex 1.”;
- (d) after paragraph 2 insert—

“**2A.** Each competent authority must ensure that interim measures are taken in relation to the pest where it is present in its territory or in a consignment of plants, plant products or other objects introduced into, or moved within, its territory until:

  - (a) a risk assessment has been carried out which shows that the pest does not fulfil the criteria set out in Subsection 1 of Section 3 of Annex 1; or
  - (b) regulations in relation to the pest have been made under Article 30(1).

**2B.** In paragraph 2A, ‘interim measures’, in relation to a pest which has been provisionally assessed, in accordance with paragraph 2, as fulfilling the criteria set out in Subsection 1 of Section 3 of Annex 1, means any of the following measures insofar as they are relevant:

  - (a) official confirmation of the presence of the pest where its presence is suspected;
  - (b) pending official confirmation of the presence of the pest, phytosanitary measures to mitigate the risk of the pest spreading;
  - (c) where the pest is officially confirmed to be present, eradication measures equivalent to the measures specified in Articles 17 to 19 in relation to GB quarantine pests or, if it is concluded, on the basis of the surveys referred to in Article 19 or other evidence, that the eradication of the pest in a demarcated area is not possible, containment measures; and
  - (d) any other measures which are necessary or appropriate to prevent the entry of that pest into Great Britain, or its establishment or spread within Great Britain, including risk-based surveys to check for signs and symptoms of that pest.”;
- (e) omit paragraph 3.

(29) In Article 30—

(a) for the heading substitute “**Measures concerning provisional GB quarantine pests**”;

(b) before paragraph 1 insert—

“**A1.** In this Article, ‘provisional GB quarantine pest’ means a pest which is not included in the list of GB quarantine pests in Annex 2 to the Phytosanitary Conditions Regulation, but which, according to an appropriate assessment, meets the criteria set out in Subsection 2 of Section 3 of Annex 1 and is listed in Annex 2A to the Phytosanitary Conditions Regulation.

**A2.** A provisional GB quarantine pest may not be introduced into, moved within, or held, multiplied or released in, Great Britain.”;

(c) for paragraph 1 substitute—

“**1.** The appropriate authority may by regulations:

(a) modify Annex 2A to the Phytosanitary Conditions Regulation where the results of an assessment show, in respect of Great Britain, that a pest which is not included in that Annex fulfils the criteria set out Subsection 2 of Section 3 of Annex 1, or that a pest which is included in that Annex no longer fulfils those criteria or fulfils the criteria in Article 3;

(b) make temporary provision for the purposes of preventing the introduction of a provisional GB quarantine pest into Great Britain, or the spread of a provisional GB quarantine pest within Great Britain.”;

(d) after paragraph 1 insert—

“**1A.** Regulations under paragraph 1 may include, in relation to a pest which is listed, or is to be listed, in Annex 2A, provision concerning:

(a) measures to be taken in the event of suspicion and official confirmation by competent authorities of the presence of that pest;

(b) measures to be taken immediately by professional operators;

(c) measures to be taken by persons other than professional operators;

(d) the eradication of that pest;

(e) the containment of that pest;

(f) the establishment of demarcated areas;

(g) surveys and modifications of demarcated areas and lifting of restrictions;

(h) surveys of that pest;

(i) prevention measures in areas outside demarcated areas where necessary to protect the establishment of that pest in those areas.”;

(e) omit paragraph 2;

(f) for paragraph 3 substitute—

“**3.** Regulations under paragraph 1 may only make provision under point (e) of paragraph 1A if the appropriate authority has concluded, on the basis of the surveys or other evidence, that the eradication of the pest in a demarcated area is not possible.”;

(g) omit paragraph 4;

(h) for paragraph 5 substitute—

“**5.** Regulations under paragraph 1 may include any of the measures specified in Annex 2, taking into account the specific risks of the pest.”;

- (i) omit paragraphs 6 to 8.
- (30) In Article 31—
  - (a) in the heading, omit “**adopted by Member States**”;
  - (b) in paragraph 1—
    - (i) in the first subparagraph, for the words from the beginning to “(4)” substitute “The competent authorities may apply within their respective territories more stringent measures than those specified in regulations made under Article 28(1) or 30(1)”;
    - (ii) in the second subparagraph—
      - (aa) for “the Union territory” substitute “Great Britain”;
      - (bb) after “by” insert “, or under,”;
      - (cc) for “102” substitute “101”;
  - (c) omit paragraph 2.
- (31) In the heading of Section 3, for “**Protected zone**” substitute “**PFA**”;
- (32) In Article 32—
  - (a) in the heading, for “**protected zones**” substitute “**GB pest-free areas**”;
  - (b) for paragraph 1 substitute—
    - “1. ‘A PFA quarantine pest’ is a pest which:
      - (a) is present in Great Britain but not in a part of Great Britain that is recognised as free of that pest in accordance with ISPM4; and
      - (b) is listed in column (1) of the table in Annex 3 to the Phytosanitary Conditions Regulation.”;
  - (c) in paragraph 2—
    - (i) for the first subparagraph substitute—

“A PFA quarantine pest may not be introduced into, moved within, or held, multiplied or released in, any GB pest-free area established in respect of that PFA quarantine pest, and described in the corresponding entry in column (2) of the table in Annex 3 to the Phytosanitary Conditions Regulation.”;
    - (ii) in the second subparagraph, for “protected zones of protected zone quarantine pests” substitute “a GB pest-free area of the PFA quarantine pest in respect of which the area was established”;
  - (d) in paragraph 3—
    - (i) omit the first subparagraph;
    - (ii) for the second subparagraph substitute—

“The appropriate authority may by regulations modify Annex 3 to the Phytosanitary Conditions Regulation where:
      - (a) a pest is no longer recognised as a PFA quarantine pest;
      - (b) any additional GB pest-free area is recognised in relation to a PFA quarantine pest;
      - (c) the extent of an existing GB pest-free area has been altered; or
      - (d) an existing GB pest-free area is no longer recognised as free from the PFA quarantine pest in respect of which the area was established.”;
    - (iii) omit the third and fourth subparagraphs;



- (e) omit paragraphs 4 to 7.
- (33) In Article 33—
- (a) in the heading, for “**protected zones**” substitute “**GB pest-free areas**”;
- (b) in paragraph 1—
- (i) for “protected zone”, in the first place where it occurs, substitute “GB pest-free area”;
- (ii) for “respective protected zone” substitute “relevant PFA”;
- (c) for paragraph 2—
- “2. Where a PFA quarantine pest is found to be present in a GB pest-free area established in respect of that PFA quarantine pest and the competent authority has established a demarcated area in response to its presence, any plant, plant product or other object originating in the demarcated area may only be moved from that demarcated area into the remaining part of that GB pest-free area or into any other GB pest-free area established in respect of that PFA quarantine pest if its movement has been authorised by, or on behalf of, the competent authority by notice.
- 2A. By way of derogation from paragraph 2, a plant, plant product or other object may be moved out of that demarcated area and through and out of the GB pest-free area concerned if it is packed and moved in such a way that there is no risk of spreading the relevant PFA quarantine pest within the GB pest-free area.”;
- (d) omit paragraph 3.
- (34) In Article 34—
- (a) in the heading, for “**protected zone**” substitute “**PFA**”;
- (b) in paragraph 1—
- (i) for the first subparagraph, substitute—
- “1. The competent authorities must carry out annual surveys of each GB pest-free area within their respective territories as regards the presence of the PFA quarantine pests in respect of which those areas have been established.”;
- (ii) for the second subparagraph substitute—
- “1A. The appropriate authority may by regulations supplement this Regulation by laying down detailed rules for the preparation and the content of the surveys referred to in paragraph 1.”;
- (c) omit paragraph 2.
- (35) Omit Article 35.

### Chapter 3

- 29.—(1) Chapter 3 is amended as follows.
- (2) In the heading of that Chapter, for “**Union**” substitute “**GB**”.
- (3) In Article 36—
- (a) in the heading, for “**Union**” substitute “**GB**”;
- (b) in the unnumbered paragraph—
- (i) in the words before point (a)—
- (aa) for “Union” substitute “GB”;
- (bb) for “the list referred to in Article 37” substitute “column (1) of the tables in Annex 4 to the Phytosanitary Conditions Regulation”;

- (ii) in point (b), for “the Union territory” substitute “Great Britain”;
- (iii) in point (c)—
  - (aa) for “Union” substitute “GB”;
  - (bb) for “pest subject to measures adopted pursuant to Article 30(1)” substitute “provisional GB quarantine pest”.
- (4) In Article 37—
  - (a) in the heading for “**Union**” substitute “**GB**”;
  - (b) in paragraph 1, for the first subparagraph substitute—

“A professional operator may not introduce a GB regulated non-quarantine pest into Great Britain, or move a GB regulated non-quarantine pest within, Great Britain on the plants for planting through which it is transmitted, as specified in the entries in respect of that pest in column (2) of the tables in Annex 4 to the Phytosanitary Conditions Regulation, if the presence of that pest on those plants for planting exceeds the thresholds specified in those tables in respect of that pest and those plants for planting.”;
  - (c) omit paragraphs 2 to 4;
  - (d) before paragraph 5 insert—

“**4A.** A professional operator may not introduce into Great Britain, or move within Great Britain, any plants for planting referred to in Annex 5 to the Phytosanitary Conditions Regulation, unless the measures specified in that Annex in respect of those plants for planting to prevent the presence of the GB regulated non-quarantine pests have been taken.
  - (e) for paragraph 5 substitute—

“**5.** The appropriate authority may by regulations modify Annex 4 or 5 to the Phytosanitary Conditions Regulation where the results of an assessment show that:

    - (a) a pest not listed in column (1) of the tables in Annex 4 to the Phytosanitary Conditions Regulation fulfils the conditions referred to in Article 36;
    - (b) a pest listed in column (1) of the tables in Annex 4 to the Phytosanitary Conditions Regulation no longer fulfils one or more of the conditions referred to in Article 36; or
    - (c) amendments to Annex 4 or 5 to the Phytosanitary Conditions Regulation are necessary as regards the categories referred to in paragraph 7 of this Article or the thresholds referred to in paragraph 8 of this Article.”;
    - (f) after paragraph 5 insert—

“**5A.** The appropriate authority may by regulations modify Annex 5 to the Phytosanitary Conditions Regulation to make provision as to the measures to be taken to prevent the presence of a GB regulated non-quarantine pest on the plants for planting concerned.

**5B.** Regulations under paragraph 5A may specify whether the measures are to apply to the introduction of the plants for planting into Great Britain, the movement of those plants for planting within Great Britain, or both.

**5C.** Any measures specified in regulations under paragraph 5A must be consistent with the principles set out in Section 2 of Annex 2 to this Regulation and are to apply in addition to the measures specified in the relevant legislation on the marketing of seeds and other propagating material.”;

- (g) omit paragraph 6;
- (h) in paragraph 7—
  - (i) after “of the” insert “categories of”;
  - (ii) for the words from “Directives” to “set out” substitute “the relevant legislation on the marketing of seeds and other propagating material, the tables in Annex 4 to the Phytosanitary Conditions Regulation must include”;
  - (iii) omit the words from “stating” to the end.
- (i) in paragraph 8—
  - (i) in the first subparagraph, for the words from “the list” to the end substitute “the tables in Annex 4 to the Phytosanitary Conditions Regulation must include that threshold”;
  - (ii) in the second subparagraph—
    - (aa) in the words before point (a), for “set” substitute “included”;
    - (bb) in point (a), for “Union” substitute “GB”;
- (j) in paragraph 9—
  - (i) for “Member States” substitute “competent authorities”;
  - (ii) after “concerning” insert “GB”.
- (5) In Article 38, for the words from “Commission” to “amending” substitute “appropriate authority may by regulations amend”.
- (6) In Article 39—
  - (a) in the heading, for “**Union**” substitute “**GB**”;
  - (b) in the unnumbered paragraph, for “Union” substitute “GB”.

#### Chapter 4

- 30.**—(1) Chapter 4 is amended as follows.
- (2) In the heading to Section 1, for “**the entire Union territory**” substitute “**Great Britain**”.
  - (3) In Article 40—
    - (a) in the heading, for “**the Union territory**” substitute “**Great Britain**”;
    - (b) for paragraph 1 substitute—
 

“**1.** Plants, plant products or other objects of a description specified in any entry in column (1) of the tables in Parts A and C of Annex 6 to the Phytosanitary Conditions Regulation may not be introduced into Great Britain if they originate from any third country listed in the corresponding entry in column (2) of those tables.”;
    - (c) omit paragraph 2;
    - (d) for paragraph 3 substitute—
 

“**3.** The appropriate authority may by regulations amend Parts A and C of Annex 6 to the Phytosanitary Conditions Regulation where the amendment is appropriate in the light of a risk assessment in relation to a plant, plant product or other object originating in or dispatched from a third country.

**3A.** For the purposes of paragraph 3, an amendment is appropriate if, on the basis of the risk assessment, it is concluded:

      - (a) in the case of a plant, plant product or other object which is not included in Part A or C of Annex 6 to the Phytosanitary Conditions Regulation, that the plant, plant product or other object poses a pest risk of an unacceptable level

which cannot be reduced to an acceptable level by applying one or more of the measures set out in points (2) and (3) of Section 1 of Annex 2; or

- (b) in the case of a plant, plant product or other object which is included in Part A or C of Annex 6 to the Phytosanitary Conditions Regulation, that the plant, plant product or other object no longer poses a pest risk of an unacceptable level, or that it continues to pose a risk of an unacceptable level, but that the risk can be reduced to an acceptable level by applying one or more of the measures set out in points (2) and (3) of Section 1 of Annex 2.

**3B.** A plant, plant product or other object may only be regarded as posing a pest risk of an unacceptable level for the purposes of paragraph 3A if the risk assessment shows that the plant, plant product or other object may host a GB quarantine pest and, in determining the acceptability of the level of pest risk, the risk assessment was carried out in accordance with the principles set out in Section 2 of Annex 2, where appropriate with regard to one or more specific third countries.”;

- (e) omit paragraph 4.

(4) In Article 41—

- (a) for paragraph 1 substitute—

“**1.** Plants, plant products or other objects of a description specified in column (1) of the tables in Parts A and B of Annex 7 to the Phytosanitary Conditions Regulation, and which originate in a third country listed in the corresponding entry in column (2) of those tables may only be introduced into, or moved within, Great Britain if the special requirements specified in the corresponding entry in column (3) of those tables are fulfilled.

**1A.** Plants, plant products or other objects of a description specified in any entry in column (1) of the tables in Parts A and B of Annex 8 to the Phytosanitary Conditions Regulation, and which originate in a CD territory, may only be introduced into Great Britain if the special requirements specified in the corresponding entry in column (2) of those tables are fulfilled.

**1B.** Plants, plant products or other objects of a description specified in any entry in column (1) of the tables in Parts A and B of Annex 8 to the Phytosanitary Conditions Regulation, and which originate in Great Britain or a CD territory, may only be moved within Great Britain if the special requirements specified in the corresponding entry in column (2) of those tables are fulfilled.”;

- (b) omit paragraph 2;

- (c) for paragraph 3 substitute—

“**3.** The appropriate authority may by regulations amend Annex 7 or 8 to the Phytosanitary Conditions Regulation where the amendment is appropriate in the light of a risk assessment in relation to a plant, plant product or other object.

**3A.** For the purposes of paragraph 3, an amendment is appropriate if, on the basis of the risk assessment, it is concluded:

- (a) in the case of a plant, plant product or other object which originates in a third country and is not included in Part A or B of Annex 7 to the Phytosanitary Conditions Regulation, that the plant, plant product or other object poses a pest risk of an unacceptable level which can be reduced to an acceptable level by applying one or more of the measures set out in points (2) and (3) of Section 1 of Annex 2;

- (b) in the case of a plant, plant product or other object which originates in a third country and is included in Part A or B of Annex 7 to the Phytosanitary Conditions Regulation, that the plant, plant product or other object poses a pest risk of an unacceptable level which can no longer be reduced to an acceptable level by applying one or more of the measures set out in points (2) and (3) of Section 1 of Annex 2, or that the pest risk can continue to be reduced to an acceptable level by applying alternative measures to those specified in relation to the plant, plant product or other object in Annex 7 to the Phytosanitary Conditions Regulation;
- (c) in the case of a plant, plant product or other object which originates in Great Britain or a CD territory and is not included in Annex 8 to the Phytosanitary Conditions Regulation, that the plant, plant product or other object poses a pest risk of an unacceptable level which can be reduced to an acceptable level by applying one or more of the measures set out in points (2) and (3) of Section 1 of Annex 2; or
- (d) in the case of a plant, plant product or other object which originates in Great Britain or a CD territory and is included in Annex 8 to the Phytosanitary Conditions Regulation (“Annex 8”), that the plant, plant product or other object poses a pest risk of an unacceptable level which can no longer be reduced to an acceptable level by applying one or more of the measures set out in points (2) and (3) of Section 1 of Annex 2, or that the pest risk can continue to be reduced to an acceptable level by applying alternative measures to those specified in relation to the plant, plant product or other object in Annex 8.

**3B.** A plant, plant product or other object may only be regarded as posing a pest risk of an unacceptable level for the purposes of paragraph 3A if the risk assessment shows that the plant, plant product or other object may host a GB quarantine pest and, in determining the acceptability of the level of pest risk and the measures to reduce that risk to an acceptable level, the risk assessment was carried out in accordance with the principles set out in Section 2 of Annex 2, where appropriate with regard to one or more specific third countries or parts of specific third countries.”;

- (d) in paragraph 4—
  - (i) in the first subparagraph—
    - (aa) for “the Union territory” substitute “Great Britain”;
    - (bb) for “Member States” substitute “the competent authority”;
    - (cc) omit the words from “, and shall notify” to the end;
  - (ii) omit the second subparagraph.
- (5) In Article 42—
  - (a) in the heading, for “**the Union territory**” substitute “**Great Britain**”;
  - (b) in paragraph 1—
    - (i) in the first subparagraph—
      - (aa) omit the words from “and which is” to “Article 49 and”;
      - (bb) for “the Union territory” substitute “Great Britain”;
    - (ii) in the second subparagraph, after “concerned,” insert “any existing prohibitions or requirements that apply to that plant, plant product or object by virtue of Article 40, or 41 or any measures in regulations made under Article 49(1), and”;
  - (c) for paragraph 2 substitute—

“2. High-risk plants, plant products or other objects listed in Part B of Annex 6 to the Phytosanitary Conditions Regulation may not be introduced into Great Britain from the third countries, groups of third countries or specific areas of third countries of origin specified in respect of those plants, plant products or other objects in that list.”;

(d) in paragraph 3—

(i) for the first subparagraph substitute—

“The appropriate authority may by regulations amend Part B of Annex 6 to the Phytosanitary Conditions Regulation to include at the appropriate taxonomic level, pending the risk assessment referred to in paragraph 4, additional high-risk plants, plant products or other objects and, where appropriate, the third countries, groups of third countries or specific areas of third countries of origin in respect of those plants, plant products or other objects.”;

(ii) omit the second and third subparagraphs;

(e) for paragraph 4 substitute—

“4. Where a risk assessment in relation to a high-risk plant, plant product or other object originating in any third country has been completed, the appropriate authority must by regulations amend the list of high-risk plants, plant products or other objects in Part B of Annex 6 to the Phytosanitary Conditions Regulation to remove the third country from the entry in that list relating to the plant, plant product or other object.

4A. Regulations under paragraph 4 may amend Part A or C of Annex 6, or Part A or B of Annex 7, to the Phytosanitary Conditions Regulation, where appropriate, in the light of the risk assessment.”;

(f) in paragraph 5, in the first subparagraph, for “the implementing act provided for in paragraph 3” substitute “Part B of Annex 6 to the Phytosanitary Conditions Regulation”;

(g) in paragraph 6, for the words “Commission may, by means of implementing acts,” substitute “the appropriate authority may by regulations”;

(h) omit paragraph 7.

(6) In Article 43—

(a) in the heading, for “**the Union territory**” substitute “**Great Britain**”;

(b) in paragraph 1—

(i) in the words before point (a), for “the Union territory” substitute “Great Britain from a third country”;

(ii) in point (a), for the words from “the International Standard” to the end, substitute “ISPM15”;

(c) for paragraph 2 substitute—

“2. The appropriate authority may by regulations:

(a) amend the requirements set out in paragraph 1 of this Article to take into account the development of international standards, and in particular of ISPM15; or

(b) specify derogations from paragraph 1 for the purpose of exempting other wood packaging material which is not subject to the exemptions provided for in ISPM15 from the requirements of paragraph 1 of this Article, or for the purpose of imposing less stringent requirements on wood packaging material which is subject to the exemptions provided for in ISPM15.”.

(7) In Article 44—

- (a) for paragraph 1 substitute—
- “1. The appropriate authority may by regulations make provision for the purpose of giving effect to a relevant decision.
- 1A.** Regulations under paragraph 1 may in particular:
- (a) amend any of the special requirements in column (3) of the table in Part A or B of Annex 7 to the Phytosanitary Conditions Regulation to set out the equivalent requirements that apply to the plant, plant product or other object in question; or
- (b) specify the conditions under which the decision of the UK NPPO applies.
- 1B.** In paragraph 1, ‘relevant decision’ means a decision of the UK NPPO confirming that specific measures which are applied in the third country in relation to a particular plant, plant product or other object from that third country provide a level of phytosanitary protection which is equivalent to the measures included in the special requirements in relation to that plant, plant product or other object in Annex 7 to the Phytosanitary Conditions Regulation.”;
- (b) omit paragraph 2.
- (8) In Article 45—
- (a) in paragraph 1—
- (i) for the first subparagraph substitute—
- “The competent authorities and seaport, airport and international transport operators must make information available to passengers concerning the prohibitions referred to in Article 40(1) and 42(2), the requirements referred to in Article 41(1) and any exemption which applies by virtue of Article 75(1) as regards the introduction of plants, plant products and other objects into Great Britain from a third country.”;
- (ii) in the second subparagraph, at the end insert “, in the standardised format published by the appropriate authority (if any)”;
- (iii) for the fourth subparagraph substitute—
- “The appropriate authority may publish, in such manner as the appropriate authority considers appropriate, a standardised format for any poster or brochure which must be used for the purposes of the first subparagraph of this paragraph.”;
- (b) omit paragraph 2.
- (9) Omit Article 46.
- (10) In Article 47—
- (a) in paragraph 1—
- (i) in the words before point (a), for “the Union territory” substitute “Great Britain”;
- (ii) in point (b)—
- (aa) for “Union” substitute “GB”;
- (bb) for “the Union territory” substitute “Great Britain”;
- (b) in paragraph 2, for “Competent authorities” substitute “The competent authority”.
- (11) In Article 48—
- (a) in paragraph 1—
- (i) in the first subparagraph—
- (aa) for “Member States” substitute “a competent authority”;

- (bb) for “their territory” substitute “the territory for which it is responsible”;
    - (ii) in the second subparagraph, for the words from “Union” to “Article 30(1)” substitute “GB quarantine pest or provisional GB quarantine pest”;
  - (b) in paragraph 2—
    - (i) in point (a), for “authorities” substitute “authority”;
    - (ii) in point (d), for “Union territory” substitute “territory in question”;
  - (c) in paragraph 3, in the second subparagraph, for the words from “Union” to the end, substitute “GB quarantine pest or provisional GB quarantine pest”;
  - (d) in paragraph 5—
    - (i) in the words before point (a), for the words from “Commission” to “supplementing” substitute “appropriate authority may by regulations supplement”;
    - (ii) omit point (a).
- (12) In Article 49—
- (a) in paragraph 1, in the first subparagraph—
    - (i) in the words before point (a)—
      - (aa) for “Commission may adopt, by means of implementing acts,” substitute “appropriate authority may by regulations impose”;
      - (bb) for “the Union territory” substitute “Great Britain”;
    - (ii) in point (a), for the words for “Union measures” to the end substitute “existing measures and are not linked, or cannot yet be linked to, GB quarantine pests or provisional GB quarantine pests”;
    - (iii) in point (c), for “the Union territory” substitute “Great Britain”;
    - (iv) omit the final subparagraph;
  - (b) in paragraph 2—
    - (i) in the second subparagraph, in points (a) and (c), in both places where it occurs, for “the Union territory” substitute “Great Britain”;
    - (ii) in the final subparagraph—
      - (aa) for “the implementing act referred to in” substitute “regulations made under”;
      - (bb) for “the Union territory” substitute “Great Britain”;
  - (c) omit paragraph 4;
  - (d) in paragraph 5, for “the Union territory” substitute “Great Britain”;
  - (e) omit paragraph 6.
- (13) Omit Article 50.
- (14) In Article 51, for the words from “Commission” to “amending” substitute “appropriate authority may by regulations amend”.
- (15) Omit Article 52.
- (16) In the heading of Section 2, for “**protected zones**” substitute “**GB pest-free areas**”.
- (17) In Article 53—
- (a) in the heading, for “**protected zones**” substitute “**GB pest-free areas**”;
  - (b) for paragraph 1 substitute—



“1. Any plants, plant products or other objects of a description specified in any entry in column (1) of the table in Annex 9 to the Phytosanitary Conditions Regulation, whether originating in a third country, Great Britain or a CD territory, may not be introduced into, or moved within, a GB pest-free area listed in the corresponding entry in column (2) of the table.”;

(c) for paragraph 2 substitute—

“2. The appropriate authority may by regulations amend Annex 9 to the Phytosanitary Conditions Regulation where the amendment is appropriate in the light of a risk assessment in relation to a plant, plant product or other object.”;

(d) for paragraph 3 substitute—

“3. For the purposes of paragraph 2, an amendment is appropriate if, on the basis of the risk assessment, it is concluded:

- (a) in the case of a plant, plant product or other object which is not included in Annex 9 to the Phytosanitary Conditions Regulation, that the plant, plant product or other object poses a pest risk of an unacceptable level which cannot be reduced to an acceptable level by applying one or more of the measures set out in points (2) and (3) of Section 1 of Annex 2; or
- (b) in the case of any plant, plant product or other object which is included in Annex 9 to the Phytosanitary Conditions Regulation, that the plant, plant product or other object no longer poses a pest risk of an unacceptable level, or that it continues to pose a risk of an unacceptable level, but that the risk can be reduced to an acceptable level by applying one or more of the measures set out in points (2) and (3) of Section 1 of Annex 2.

**3A.** A plant, plant product or other object may only be regarded as posing a pest risk of an unacceptable level for the purposes of paragraph 3 if the risk assessment shows that the plant, plant product or other object may host a PFA quarantine pest and, in determining the acceptability of the level of pest risk to the GB pest-free area which relates to the PFA quarantine pest, the risk assessment was carried out in accordance with the principles set out in Section 2 of Annex 2.”;

(e) omit paragraph 4.

(18) In Article 54—

(a) in the heading, for “**protected zones**” substitute “**GB pest-free areas**”;

(b) for paragraph 1 substitute—

“1. Plants, plant products or other objects of a description specified in column (1) of the table in Annex 10 to the Phytosanitary Conditions Regulation, whether originating in a third country, Great Britain or a CD territory, may only be introduced into, or moved within, a GB pest-free area listed in the corresponding entry in column (3) of the table if the special requirements specified in the corresponding entry in column (2) of the table are fulfilled.”;

(c) omit paragraph 2;

(d) for paragraph 3 substitute—

“3. The appropriate authority may by regulations amend Annex 10 to the Phytosanitary Conditions Regulation where the amendment is appropriate in the light of a risk assessment in relation to a plant, plant product or other object.

**3A.** For the purposes of paragraph 3, an amendment is appropriate if, on the basis of the risk assessment, it is concluded:

- (a) in the case of a plant, plant product or other object which is not included in Annex 10 to the Phytosanitary Conditions Regulation, that the plant, plant product or other object poses a pest risk of an unacceptable level which can be reduced to an acceptable level by applying one or more of the measures set out in points (2) and (3) of Section 1 of Annex 2; or
- (b) in the case of a plant, plant product or other object which is included in Annex 10 to the Phytosanitary Conditions Regulation, that the plant, plant product or other object poses a pest risk of an unacceptable level which can no longer be reduced to an acceptable level by applying one or more of the measures set out in points (2) and (3) of Section 1 of Annex 2, or that the pest risk can continue to be reduced to an acceptable level by applying alternative measures to those specified in Annex 10 to the Phytosanitary Conditions Regulation.

**3B.** A plant, plant product or other object may only be regarded as posing a pest risk of an unacceptable level for the purposes of paragraph 3A if the risk assessment shows that the plant, plant product or other object may host a PFA quarantine pest and, in determining the acceptability of the level of pest risk to the GB pest-free area which relates to the PFA quarantine pest and the measures to reduce that risk to an acceptable level, the risk assessment was carried out in accordance with the principles set out in Section 2 of Annex 2.”;

(e) omit paragraph 4.

(19) In Article 55—

- (a) in the heading, for “**protected zones**” substitute “**GB pest-free areas**”;
- (b) in the unnumbered paragraph, for “protected zones” substitute “GB pest-free areas”;

(20) Omit Article 56.

(21) In Article 57—

- (a) in the heading, for “**protected zones**” substitute “**GB pest-free areas**”;
- (b) in the unnumbered paragraph, for the words from “listed” to the end substitute “of a description specified in any entry in column (1) of the tables in Annex 9 and 10 to the Phytosanitary Conditions Regulation through the GB pest-free areas related to those plants, plant products or other objects.”.

(22) In Article 58—

- (a) in the heading, for “**protected zones**” substitute “**GB pest-free areas**”;
- (b) in the unnumbered paragraph—
  - (i) omit “the prohibitions and requirements provided for in”;
  - (ii) for the words from “protected” to “54(2) and (3)” substitute “a GB pest-free area of plants, plant products and other objects of a description specified in any entry in column (1) of the tables in Annex 9 or 10 to the Phytosanitary Conditions Regulation which relate to that GB pest-free area”.

(23) In Article 59—

- (a) for paragraph 1 substitute—

“1. Vehicles, machinery and packaging material used for plants, plant products or other objects of a description specified in any entry in Annex 6, 7 or 8 to the Phytosanitary Conditions Regulation, or in any regulations made under Article 28(1), 30(1) or 49(1), and moving into or within Great Britain, or through Great Britain pursuant to Article 47, must be free from GB quarantine pests and GB provisional quarantine pests.”;

- (b) in paragraph 2—
  - (i) for “protected zones” substitute “any GB pest-free area”;
  - (ii) for “the respective protected zone pests” substitute “a PFA quarantine pest relating to that GB pest-free area”.
- (24) In Article 60—
  - (a) in paragraph 1—
    - (i) in the words before point (a), for “Member States” substitute “the competent authorities”;
    - (ii) in point (a), for “their territory” substitute “the territories for which they are responsible”;
    - (iii) omit point (b);
    - (iv) in point (c), after “persons” insert “in the territories for which they are responsible”;
  - (b) omit paragraph 2.
- (25) In Article 61—
  - (a) in paragraph 1—
    - (i) in the words before point (a), for “Union” substitute “GB”;
    - (ii) in point (e), for the words from “Union” to “Article 30(1)” substitute “GB quarantine pests and provisional GB quarantine pests”;
  - (b) in paragraph 2—
    - (i) in the first subparagraph, for “Commission may, by means of implementing acts,” substitute “appropriate authority may by regulations”;
    - (ii) omit the second subparagraph.
- (26) In Article 62, in paragraph 1, for the words from “Union” to the end substitute “GB quarantine pests and provisional GB quarantine pests”.
- (27) In Article 63—
  - (a) in paragraph 1—
    - (i) in the first subparagraph—
      - (aa) for “authority” substitute “authorities”;
      - (bb) after “facilities” insert “which they have designated”;
    - (ii) in the second subparagraph, for “It” substitute “They”;
  - (b) in paragraph 2—
    - (i) in the first subparagraph—
      - (aa) for “On the basis of the inspection referred to in paragraph 1”; substitute “Where corrective actions to ensure compliance with Articles 61 and 62 are considered by a competent authority to be necessary”;
      - (bb) after “implement” insert “those”;
      - (cc) omit “to ensure compliance with Articles 61 and 62”;
    - (ii) in the second subparagraph—
      - (aa) after “facility” insert “does not comply with Articles 61 and 62”;
      - (bb) for “fails” substitute “has failed”.
- (28) In Article 64—
  - (a) in paragraph 1—

- (i) for “the quarantine stations or confinement facilities” substitute “a quarantine station or a confinement facility”;
- (ii) for “authorities” substitute “authority”;
- (iii) for the words from “Union” to “zone” substitute “GB quarantine pests and provisional GB quarantine pests, or, where applicable, PFA”;
- (b) in paragraph 2, for the words from “Union” to “Article 30(1)” substitute “GB quarantine pest or provisional GB quarantine pest”;
- (c) in paragraph 3—
  - (i) in the first subparagraph, for “Commission may, by means of implementing acts,” substitute “appropriate authority may by regulations”;
  - (ii) omit the second subparagraph.

## Chapter 5

### 31.—(1) In Article 65—

- (a) in paragraph 1—
    - (i) in the first subparagraph, in the words before point (a)—
      - (aa) for “authority” substitute “authorities”;
      - (bb) for the “territory of the Member State concerned” substitute “Great Britain”;
    - (ii) in point (a)—
      - (aa) for “the Union” substitute “Great Britain”;
      - (bb) for “plant passport” substitute “UK plant passport”;
      - (cc) omit “on the basis of the implementing acts adopted”;
    - (iii) in point (c), for “, 101 and 102” substitute “and 101”;
    - (iv) in point (d), omit the words from “introducing” to “Article 56,”;
    - (v) in point (e), for the words from “an implementing act” to the end substitute “the special requirements in Annex 7, 8 or 10 or by regulations made under Article 28(1), 30(1) or 49(1)”;
    - (vi) omit the second subparagraph;
  - (b) in paragraph 2, for the first sentence substitute “The competent authorities must ensure that a professional operator is registered only once”;
  - (c) in paragraph 3—
    - (i) omit point (a);
    - (ii) omit the second subparagraph;
  - (d) in paragraph 4—
    - (i) for the words before point (a) substitute “The appropriate authority may by regulations”;
    - (ii) in point (a), for “amending” substitute “amend”;
    - (iii) in point (b), for “supplementing” substitute “supplement”;
    - (iv) omit point (c).
- (2) In Article 66—
- (a) in paragraph 2—
    - (i) in point (a), for “the Member State of registration” substitute “Great Britain”;

- (ii) in point (d), omit “in the Member State concerned”;
  - (b) omit paragraph 4;
  - (c) in paragraph 6, for “the”, in the second place where it occurs, substitute “a”.
- (3) In Article 67, in point (a), for the words from “, which shall” to the end substitute “for the professional operator”.
- (4) In Article 68—
- (a) omit paragraph 1;
  - (b) in paragraph 2—
    - (i) for “Member State keeping the register” substitute “competent authority”;
    - (ii) for “the Union” substitute “Great Britain”;
  - (c) in paragraph 3, omit “national and Union”.
- (5) In Article 69—
- (a) in paragraph 1, for the words from “points” to “Article 79(1)” substitute “, or under, Article 28(1), 30(1), 37(1), 41(1), 48(1), 49(1), 54(1), 57, 58 or 79(1)”;
  - (b) in paragraph 2, for the words from “points” to “Article 79(1)” substitute “, or under, Article 28(1), 30(1), 37(1), 41(1), 47(1), 48(1), 49(1), 54(1), 57, 58 or 79(1)”;
  - (c) in paragraph 3, for “plant passport”, in each place where it occurs, substitute “UK plant passport”;
  - (d) in paragraph 5—
    - (i) in the first subparagraph, in the words before point (a), for “Commission may, by means of implementing acts,” substitute “appropriate authority may by regulations”;
    - (ii) omit the second subparagraph.

## Chapter 6

**32.**—(1) Chapter 6 is amended as follows.

- (2) In the heading to Section 1, for “**the Union territory**” substitute “**Great Britain**”.
- (3) In Article 71—
- (a) in the heading, for “**the Union territory**” substitute “**Great Britain**”;
  - (b) in paragraph 1—
    - (i) in the words before point (a), for “the Union territory” substitute “Great Britain”;
    - (ii) in point (a), for the words from “Union” to the end substitute “GB quarantine pests and provisional GB quarantine pests”;
    - (iii) in point (b), for “Union” substitute “GB”;
    - (iv) in point (c), for “(2) and (3)”, in both places where it occurs, substitute “(1)”;
    - (v) in point (d), for the words from “rules” to the end substitute “any requirements specified in regulations made under Article 28(1) or 30(1)”;
  - (c) in paragraph 2, in the first sentence—
    - (i) for “The” substitute “Where one or more options are specified for the purposes of meeting any such requirements, the”;
    - (ii) omit the words from “, whenever” to the end;
  - (d) in paragraph 3—
    - (i) for “applicable” substitute “required by regulations made under Article 44(1)”;

- (ii) after “recognised” insert “for the purposes of those regulations”;
    - (iii) omit the words from “, pursuant to Article 44” to the end;
  - (e) in paragraph 4, for the words from “Commission” to “amending” substitute “appropriate authority may by regulations amend”.
- (4) In Article 72—
  - (a) in paragraph 1—
    - (i) for the first subparagraph substitute—

“1. Plants, plant products and other objects of a description specified in any entry in columns (1) and (2) of the table in Part A of Annex 11 to the Phytosanitary Conditions Regulation which originate in any third country listed in the corresponding entry in column (3) of that table may not be introduced into Great Britain unless they are accompanied by a phytosanitary certificate.”;
    - (ii) omit the second, third and fourth subparagraphs;
  - (b) omit paragraph 2;
  - (c) in paragraph 3—
    - (i) for the words from the beginning to “paragraph 1” substitute “The appropriate authority may by regulations amend Part A of Annex 11 to the Phytosanitary Conditions Regulation”;
    - (ii) for the words from “that act”, in the first place where it occurs, to “Article 30(1)” substitute “that Part hosts a GB quarantine pest or provisional GB quarantine pest”;
    - (iii) for “that act”, in the second place where it occurs, substitute “that Part”;
  - (d) omit paragraph 4;
  - (e) in paragraph 5—
    - (i) omit “, 2”;
    - (ii) for “Articles 46, 47 and 48 and Article 75(1)” substitute “Articles 47, 48 and 75(1)”.
- (5) In Article 73—
  - (a) for the first unnumbered paragraph substitute—

“1. Plants of a description specified in columns (1) and (2) of Part B of Annex 11 to the Phytosanitary Conditions Regulation, may not be introduced into Great Britain from third countries unless they are accompanied by a phytosanitary certificate.”;
  - (b) the second unnumbered paragraph of the existing text becomes paragraph 2 and in that paragraph for the words from “However” to “those plants” substitute “The appropriate authority may by regulations amend Part C of Annex 11 to the Phytosanitary Conditions Regulation”;
  - (c) omit the remaining unnumbered paragraphs.
- (6) In Article 74—
  - (a) in the heading for “**protected zone**” substitute “**GB pest-free area**”;
  - (b) for paragraph 1 substitute—

“1. Any plants, plant products and other objects of a description specified in an entry (if any) in columns (1) and (2) of the table in Annex 12 to the Phytosanitary Conditions Regulation, which originate in a third country specified in the corresponding entry in column (3) of the table and are destined for a GB pest-free area established in respect of

those plants, plant products or other objects, may not be introduced into Great Britain unless they are accompanied by a phytosanitary certificate.”;

- (c) omit paragraph 2;
- (d) for paragraph 3 substitute—

“3. The appropriate authority may by regulations amend Annex 12 to the Phytosanitary Conditions Regulation in accordance with the principles set out in Section 2 of Annex 2, where there is a risk that a plant, plant product or other object not listed in Annex 11 or in Annex 12 to the Phytosanitary Conditions Regulation hosts a PFA quarantine pest, or where, for a plant, plant product or other object listed in Annex 11 or 12 to the Phytosanitary Conditions Regulation, that risk no longer exists.”;

- (e) after paragraph 3 insert—

“3A. Regulations under paragraph 3 may apply in relation to a plant, plant product or other object originating in, or dispatched from, all third countries or particular third countries or regions.”;

- (f) omit paragraph 4;
- (g) in paragraph 5—
  - (aa) omit “, 2”;
  - (bb) for “Articles 56, 57 and 58 and Article 75(1)” substitute “Article 57, 58 or 75(1)”.

- (7) After Article 74 insert—  
“Article 74a

#### *Commodity classification*

The appropriate authority may by regulations amend Annex 11 to the Phytosanitary Conditions Regulation to:

- (a) remove the references to any CN codes used in those Annexes to identify the plants plant products and other objects listed; or
- (b) identify the plants, plant products and other objects listed in those Annexes by any alternative commodity code classification system that the appropriate authority considers appropriate.”.
- (8) In Article 75—
  - (a) in paragraph 1—
    - (i) in the words before point (a), omit “accordance with”;
    - (ii) in point (a), for “the Union territory” substitute “Great Britain”;
    - (iii) in point (c), for “an implementing act provided for in” substitute “regulations made under”;
  - (b) in paragraph 2—
    - (i) in the first subparagraph, for “Commission shall, by means of implementing acts,” substitute “appropriate authority may by regulations”;
    - (ii) omit the final subparagraph.
- (9) In Article 76—
  - (a) in paragraph 1, in the first subparagraph, for “International Plant Protection Convention (IPPC)” substitute “IPPC”;
  - (b) in paragraph 2—

- (i) in point (a), for “at least one of the official languages of the Union” substitute “English”;
    - (ii) in point (b), for “a Member State” substitute “the United Kingdom”;
  - (c) in paragraph 4—
    - (i) in the first subparagraph—
      - (aa) in the first sentence, for “Commission” substitute “UK NPPO”;
      - (bb) omit the second sentence;
    - (ii) in the second subparagraph, for the words from “Commission” to “Article 105, to” substitute “appropriate authority may by regulations supplement”;
  - (d) in paragraph 5, for the words from “IMSOC” to the end substitute “appropriate computerised information management system”.
- (10) In Article 77—
- (a) in paragraph 1, in the second subparagraph—
    - (i) in the first sentence—
      - (aa) for “certificate cancelled” substitute “CERTIFICATE CANCELLED”;
      - (bb) omit “respective”;
    - (ii) omit the second sentence;
  - (b) omit paragraph 2;
  - (c) in paragraph 3—
    - (i) in the first sentence, for “Commission may, by means of implementing acts,” substitute “appropriate authority may by regulations”;
    - (ii) omit the second sentence.
- (11) In Section 2, in the heading—
- (a) at the beginning, for “**Plant**” substitute “**UK plant**”;
  - (b) for “**the Union territory**” substitute “**or into Great Britain**”.
- (12) In Article 78—
- (a) in the heading, for “**Plant**” substitute “**UK plant**”;
  - (b) for the unnumbered paragraph substitute—
    - “**1.** A UK plant passport shall be an official label to be used for:
      - (a) the movement of plants, plant products and other objects described in Articles 79 and 80 (including the introduction of plants, plant products and other objects into Great Britain from a CD territory); and
      - (b) the movement of plants, plant products and other objects from Great Britain to a CD territory.
    - 2.** Articles 83 to 92 and 93 to 95 apply in relation to any UK plant passport issued in Great Britain.
    - 3.** Article 92a applies to any UK plant passport issued in a CD territory that accompanies plants, plant products or other objects that are introduced into Great Britain from that CD territory and are subsequently moved within Great Britain.”
- (13) In Article 79—
- (a) in the heading—
    - (i) after “**a**” insert “**UK**”;



- (ii) for “**the Union territory**” substitute “**or into Great Britain**”;
- (b) for paragraph 1 substitute—
  - “**1.** Plants, plant products and other objects listed in Annex 13 to the Phytosanitary Conditions Regulation may not be moved within Great Britain or introduced into Great Britain from a CD territory, unless they are accompanied by a UK plant passport.”;
- (c) after that paragraph insert—
  - “**1A.** Paragraph 1 is subject to Articles 81 and 82.”;
- (d) omit paragraph 2;
- (e) for paragraph 3 substitute—
  - “**3.** The appropriate authority may by regulations amend Annex 13 to the Phytosanitary Conditions Regulation in accordance with the principles set out in Section 2 of Annex 2:
    - (a) to include a plant, plant product or other object that is not included in Annex 13 to the Phytosanitary Conditions Regulation, where there is a risk that the plant, plant product or other object hosts a GB quarantine pest;
    - (b) to remove a plant, plant product or other object listed in that Annex, where the risk that it hosts a GB quarantine pest no longer exists.”;
- (f) omit paragraph 4;
- (g) in paragraph 5—
  - (aa) omit “, 2”;
  - (bb) for “Articles 46, 47, 48 and 75” substitute and “Article 47, 48 or 75(1)”;
- (h) omit paragraph 6.
- (14) In Article 80—
  - (a) in the heading—
    - (i) after “**a**” insert “**UK**”;
    - (ii) for “**protected zones**” substitute “**GB pest-free areas**”;
  - (b) for paragraph 1 substitute—
    - “**1.** Any plants, plant products and other objects described in any entry in column (1) of the table in Annex 14 to Phytosanitary Conditions Regulation may not be introduced into, or moved within, a GB pest-free area specified in the corresponding entry in column (2) of the table unless they are accompanied by a UK plant passport.”;
  - (c) after paragraph 1 insert—
    - “**1A.** Paragraph 1 is subject to Articles 81 and 82.”;
  - (d) omit paragraph 2;
  - (e) for paragraph 3 substitute—
    - “**3.** The appropriate authority may by regulations amend Annex 14 to the Phytosanitary Conditions Regulation in accordance with the principles set out in Section 2 of Annex 2:
      - (a) to include a plant, plant product or other object which is not listed in Annex 14 to the Phytosanitary Conditions Regulation, where there is a risk that the plant, plant product or other object hosts a PFA quarantine pest; or

- (b) to remove a plant, plant product or other object from the list in Annex 14 to the Phytosanitary Conditions Regulation where the risk that it hosts a PFA quarantine pest no longer exists.”;
  - (f) omit paragraph 4;
  - (g) in paragraph 5—
    - (aa) omit “, 2”;
    - (bb) for “Articles 56, 57 and 58” substitute “Article 57 or 58”.
- (15) In Article 81—
- (a) at the beginning insert—

“**A1.** This Article applies to the movement of plants, plant products or other objects in Great Britain and the introduction of plants, plant products or other objects into Great Britain from a CD territory.”;
  - (b) in paragraph 1—
    - (i) in the first subparagraph—
      - (aa) after “No” insert “UK”;
      - (bb) after “objects” insert “which are”;
    - (ii) the second subparagraph of the existing text becomes paragraph 1A and in that paragraph, in point (b), for the words from “for” to the end, substitute “described in an entry (if any) in column (1) of the table in Annex 14 to Phytosanitary Conditions Regulation, who are situated in a GB pest-free area specified in the corresponding entry in column (2) of the table”;
    - (iii) for the third subparagraph substitute—

“**1B.** The appropriate authority may by regulations specify that point (b) of paragraph 1A only applies to particular PFA quarantine pests and plants, plant products or other objects.”;
  - (c) in paragraph 2—
    - (i) in the first sentence, for the words from “Commission” to “supplementing” substitute “appropriate authority may by regulations supplement”;
    - (ii) in the second sentence, for “delegated acts shall” substitute “regulations must”.
- (16) In Article 82—
- (a) in the first subparagraph, after “No” insert “UK”;
  - (b) omit the second and third subparagraphs.
- (17) In Article 83—
- (a) in the heading, after “**the**” insert “**UK**”;
  - (b) in paragraph 1, in the first subparagraph—
    - (i) for “The” substitute “A UK”;
    - (ii) for “referred to in paragraph 2” substitute “set out in Part A, B, C or D of Annex 7”;
  - (c) in paragraph 2—
    - (i) in the first subparagraph—
      - (aa) for “The”, in the first place where it occurs, substitute “A UK”;
      - (bb) omit “for movement within the Union territory”;
      - (cc) at the end insert “, except where paragraph 4 or 5 applies”;

- (ii) in the second subparagraph—
  - (aa) in the words before point (a), after “required” insert “on a UK plant passport for the movement of plants for planting in Great Britain, or the introduction of plants for planting into Great Britain from a CD territory,” and after “where” insert “the”;
  - (bb) in point (a), for the words from “Union” to the end substitute “GB quarantine pests or provisional GB quarantine pests”;
  - (cc) in point (b), for “listed in an implementing act provided for in” substitute “specified in regulations made under”;
- (d) in paragraph 3—
  - (i) for “Commission shall by means of implementing acts,” substitute “the appropriate authority may by regulations”;
  - (ii) omit the second sentence;
- (e) in paragraph 4—
  - (i) for “The” substitute “A UK”;
  - (ii) for “protected zone” substitute “GB pest-free area or CD pest-free area”;
- (f) in paragraph 5—
  - (i) in the first subparagraph—
    - (aa) for the words from “Directives” to “the plant passport” substitute “the relevant legislation on the marketing of seeds and other propagating material, a UK plant passport”;
    - (bb) for “those Directives” substitute “the relevant retained EU law”;
  - (ii) for the second and third subparagraphs substitute—
 

“Where this paragraph applies, a UK plant passport must contain:

    - (a) the elements set out in Part C of Annex 7; or
    - (b) in the case of plants, plant products or objects which are to be introduced into a GB pest-free area or CD pest-free area, the elements set out in Part D of Annex 7.”;
- (g) in paragraph 6, for the words from “Commission” to “amending” substitute “appropriate authority may by regulations amend”;
- (h) for paragraph 7 substitute—
 

“7. A UK plant passport must comply with the requirements set out in Commission Implementing Regulation (EU) 2017/2313 setting out the format specifications of the plant passport for movement within the Union territory and the plant passport for introduction into, and movement within, a protected zone(29).”;
- (i) after paragraph 7 insert—
 

“7A. The appropriate authority may by regulations make provision relating to the format or size of UK plant passports.”;
- (j) in paragraph 8—
  - (i) in the first subparagraph—
    - (aa) after “A” insert “UK”;

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(29) EUR 2017/2313.

- (bb) for “referred to in paragraph 2” substitute “set out in Part A, B, C or D of Annex 7 (as the case may be)”;
  - (cc) for “through the implementing acts referred to in the second subparagraph of this paragraph” substitute “in regulations made under paragraph 9”;
  - (ii) for the second subparagraph substitute—
    - “9. The appropriate authority may by regulations set out technical arrangements for the issuance of electronic UK plant passports to ensure an appropriate credible and effective mode for their issuance.”.
- (18) In Article 84—
- (a) in the heading, after “**of**” insert “**UK**”;
  - (b) in paragraph 1—
    - (i) in the first subparagraph, for “Plant” substitute “UK plant”;
    - (ii) in the second subparagraph, after “issue” insert “UK”;
  - (c) in paragraphs 2 and 3, after “issue”, in both places where it occurs, insert “UK”.
- (19) In Article 85—
- (a) in the heading—
    - (i) after “**a**” insert “**UK**”;
    - (ii) omit “**for movement within the UK territory**”;
  - (b) in the words before point (a)—
    - (i) for “plant passport shall be issued for movement within the Union territory for” substitute “UK plant passport may only be issued for the movement of”;
    - (ii) for “which” substitute “within Great Britain if the plant, plant product or other object”;
  - (c) in point (a), for the words from “Union” to the end substitute “GB quarantine pests and provisional GB quarantine pests”;
  - (d) in point (b)—
    - (i) for “Union” substitute “GB”;
    - (ii) for “37(4)” substitute “37(4A)”;
  - (e) in point (c)—
    - (i) omit “concerning its movement within the Union as”;
    - (ii) for “(2) and (3)” substitute “(1B)”;
  - (f) in point (d), for the words from “rules” to the end substitute “any requirements specified in regulations made under Article 28(1) or 30(1)”;
  - (g) in point (e)—
    - (i) after “with” insert “any”;
    - (ii) for “authorities” substitute “authority”;
    - (iii) for “Union”, in the first place where it occurs, substitute “GB”;
    - (iv) for the words from “pests”, in the second place where it occurs, to the end substitute “the eradication of provisional GB quarantine pests pursuant to regulations made under Article 30(1)”.
- (20) In Article 86—
- (a) in the heading—

- (i) after “a” insert “UK”;
  - (ii) for “protected zone” substitute “GB pest-free area”;
- (b) at the beginning insert—
- “A1. This Article applies to any plant, plant product or other object of a description specified in any entry in column (1) of the table in Annex 14 to the Phytosanitary Conditions Regulation which is to be introduced into, or moved within, a GB pest-free area specified in the corresponding entry in column (2) of the table.”;
- (c) in paragraph 1—
- (i) in the words before point (a), for the words from “plant passport” to “which” substitute “UK plant passport may only be issued for the introduction into, or movement within, a GB pest-free area of a plant, plant product or other object if it”;
  - (ii) in point (a), for “respective protected zone quarantine pest” substitute “PFA quarantine pests which relates to that GB pest-free area”;
  - (iii) in point (b), for “(2) and (3)” substitute “(1)”;
- (d) in paragraph 2—
- (i) for the words from the beginning to “shall” substitute “But where Article 33(2) applies, a UK plant passport may”;
  - (ii) for “protected zone” substitute “PFA quarantine”.
- (21) After Article 86 insert—
- “Article 86a

*UK plant passports for the introduction of plants, plant products  
and other objects into CD territories from Great Britain*

1. This Article applies to any plant, plant product or other object which is to be introduced into a CD territory from Great Britain and is required by the relevant CD legislation to be accompanied by a UK plant passport on its introduction into that territory.
2. A UK plant passport may only be issued for the introduction of a plant, plant product or other object into a CD territory if the plant, plant product or other object:
- (a) fulfils all of the requirements of Articles 85 and 86, where applicable; and
  - (b) fulfils any additional requirements that apply under the relevant CD legislation to the introduction of that plant, plant products or other object into the CD territory.”.
- (22) Article 87 is amended in accordance with paragraphs (23) to (26).
- (23) In the heading, after “for” insert “UK”.
- (24) In paragraph 1—
- (a) after “A” insert “UK”;
  - (b) for “Article 86” substitute “Articles 86 and 86a”.
- (25) In paragraph 3—
- (a) in the first subparagraph—
    - (i) in point (b), for the words from “by the” to “Article 54(2)” substitute “by or under regulations made under Article 28(1) or 30(1) or pursuant to Article 37(4A), 41(1B) or 54(1)”;
    - (ii) in point (c)(i)—
      - (aa) for “Union” substitute “GB”;

- (bb) for “pests subject to measures adopted pursuant to Article 30(1)” substitute “provisional GB quarantine pest”;
  - (cc) for “protected zone quarantine pest in the respective protected zone” substitute “PFA quarantine pest in the relevant GB pest-free area”;
  - (iii) in point (c)(ii), for “Union” substitute “GB”;
  - (b) in the second subparagraph, for the words from “adopted” to “Article 54(2) or (3)” substitute “applicable by virtue of regulations made under Article 28(1) or 30(1), or requirements or measures under Article 37(4A), 41(1B) or 54(1), and in the case of plants, plant products and other objects that are to be introduced into a CD territory, under the relevant CD legislation”.
- (26) In paragraph 4—
- (a) in the first subparagraph—
    - (i) in the first sentence, for the words from “Commission” to “supplementing” substitute “appropriate authority may by regulations supplement”;
    - (ii) in the second sentence, for the words from “, as respectively” to the end substitute “in accordance with relevant legislation on the marketing of seeds and other propagating material”;
  - (b) for the second subparagraph substitute—

“5. Where regulations made under paragraph 4 make provision in relation to specific plants for planting, and those plants for planting are subject to certification schemes under relevant legislation on the marketing of seeds and other propagating material, the regulations must set out the requirements as regards the examinations for the presence of GB quarantine pests, provisional GB quarantine pests and GB regulated non-quarantine pests, and other characteristics of the plants for planting under the relevant legislation, in a single certification scheme.”;
  - (c) for the third subparagraph substitute—

“6. Regulations made under paragraph 4 must take account of developments in scientific and technical knowledge and international standards.”.
- (27) In Article 88—
- (a) in the heading, after “**the**” insert “**UK**”;
  - (b) in the unnumbered paragraph—
    - (i) in the first sentence—
      - (aa) for “Plant” substitute “UK plant”;
      - (bb) after “passports” insert “issued in Great Britain”;
      - (cc) for “the Union territory” substitute “Great Britain”;
      - (dd) for “protected zone” substitute “GB pest-free area”;
      - (ee) at the end, insert “, or before they are introduced into a CD territory”;
    - (ii) in the second sentence, after “the” insert “UK”.
- (28) In Article 89—
- (a) in the heading, after “**issue**” insert “**UK**”;
  - (b) in paragraph 1—
    - (i) in the words before point (a), after “issue”, in both places where it occurs, insert “UK”;

- (ii) in point (a), for the words from “Union quarantine” to “and Union” substitute “GB quarantine pests, provisional GB quarantine pests, PFA quarantine pests, CD quarantine pests and GB”;
  - (c) in paragraph 2, for the words from “Commission” to “supplementing” substitute “appropriate authority may by regulations supplement”.
- (29) In Article 90, in paragraph 1, in the first subparagraph—
- (a) after “a” insert “UK”;
  - (b) for the words from “Article 37(1)” to the end substitute “Articles 33(2), 37(4A), 41(1B), 54(1), 85, 86, 86a and 87 (as the case may be) and any requirements specified in regulations made under Article 28(1) or 30(1)”;
- (30) In Article 91, in paragraph 2, in point (f), for “plant passports”, in both places where it occurs, substitute “UK plant passports”.
- (31) In Article 92—
- (a) in paragraph 1—
    - (i) after “comply with” insert “, where applicable,”;
    - (ii) for “or”, in each place where it occurs, substitute “and”;
  - (b) in paragraph 2—
    - (i) in the first subparagraph, after “issued a” insert “UK”;
    - (ii) in the second subparagraph, after “issue” insert “UK”;
    - (iii) after “Article 86” insert “or 86a”;
  - (c) in paragraph 3—
    - (i) after “issue” insert “UK”;
    - (ii) after “Article 86” insert “or “86a”.
- (32) After Article 92 insert—  
“Article 92a

*UK plant passports issued in CD territories*

1. A UK plant passport issued in a CD territory may only accompany plants, plant products or other objects that are introduced into Great Britain from that CD territory, and are subsequently moved within Great Britain, if the UK plant passport:
  - (a) has been issued, in accordance with the relevant legislation in the CD territory, by the CD authority for that territory or by a professional operator under the supervision of the CD authority;
  - (b) is in the relevant form and has the relevant content specified in Article 83; and
  - (c) is attached to the trade unit of the plants, plant products or other objects, or where the plants, plant products or other objects are moved in a package, bundle or container, to that package, bundle or container.
2. In paragraph 1, ‘relevant legislation’ means legislation containing provision which only permits UK plant passports to be issued for plants, plant products or other objects that are to be introduced into Great Britain if:
  - (a) the plants, plant products or other objects:
    - (i) are free from GB quarantine pests, provisional GB quarantine pests, and where applicable, PFA quarantine pests;

- (ii) comply with the provisions of Article 37(1) concerning the presence of GB regulated non-quarantine pests on plants for planting and the provisions of Article 37(4A) concerning the measures to be taken;
  - (iii) comply with the requirements concerning their introduction into, and movement within, Great Britain referred to in Article 41(1A) and (1B) and, where applicable, the requirements referred to in Article 54(1);
  - (iv) comply with any requirements specified in regulations made under Article 28(1) or 30(1); and
  - (v) comply with any measures adopted by the competent authority for the eradication of GB quarantine pests pursuant to Article 17(1) or the eradication of provisional GB quarantine pests pursuant to regulations made under Article 30(1); and
- (b) examinations have been carried out for the purpose of attesting that the plants, plant products or other objects fulfil those requirements in a manner equivalent to the examinations required under Article 87 in respect of UK plant passports issued for the movement of plants, plant products or other objects within Great Britain.”
- (33) In Article 93—
- (a) in the heading, after “a” insert “UK”;
  - (b) in paragraphs 1 to 5, for “plant passport”, in each place where it occurs, insert “UK plant passport”;
  - (c) in paragraph 2, in the second sentence, after “those” insert “UK”.
- (34) In Article 94—
- (a) in the heading, for “**Plant**” substitute “**UK plant**”;
  - (b) in paragraph 1—
    - (i) in the first subparagraph—
      - (aa) for the words from “, introduced into” to “requires a plant passport” substitute “is introduced into Great Britain from a third country and a UK plant passport is required for the movement of the plant, plant product or other object within Great Britain”;
      - (bb) for “the passport” substitute “a UK plant passport”;
      - (cc) after “issuance of a” insert “UK”;
    - (ii) in the second subparagraph—
      - (aa) for “plant passport” substitute “UK plant passport”;
      - (bb) omit “, as referred to in Union legislation on official controls”;
  - (c) for paragraph 2 substitute—

“2. By way of derogation from the first subparagraph of paragraph 1, a UK plant passport need not be issued for the movement of a plant, plant product or other object from its place of entry into Great Britain to its initial destination in Great Britain if the plant, plant product or other object is accompanied by a copy, issued by the competent authority, of the original phytosanitary certificate that accompanied it on its arrival in Great Britain.”
- (35) In Article 95—
- (a) in the heading, for “**the**” substitute “**a UK**”;
  - (b) at the beginning insert—



- “A1. This Article applies where a professional operator becomes aware that a trade unit of plants, plant products or other objects, which is under the operator’s control does not comply with any of the requirements in Article 83 to 86, 87, 89, 90, 92a, 93 or 94.”;
- (c) for paragraph 1 substitute—
- “1. The professional operator must invalidate the UK plant passport and, where possible, remove it from that trade unit.”;
- (d) in paragraphs 2 to 4, for “plant passport”, in each place where it occurs, insert “UK plant passport”;
- (e) omit paragraph 5.
- (36) In Article 96—
- (a) in paragraph 1—
- (i) in the first subparagraph—
- (aa) for “the Union territory”, in each place where it occurs, substitute “Great Britain”;
- (bb) in point (b), at the end insert “to a third country or Northern Ireland”;
- (cc) in point (c), for the words from “, if required” to the end substitute “or into Great Britain from a CD territory, if so required by regulations made under Article 28(1) or 30(1), or by Article 41(1) or 54(1), or in the case of wood packaging material moving from Great Britain to a CD territory, if required by legislation in force in that CD territory.”;
- (ii) in the third subparagraph, for “the Union territory” substitute “Great Britain”;
- (b) in paragraph 2, for the words from “Commission” to “amending” substitute “appropriate authority may by regulations amend”.
- (37) In Article 97—
- (a) in the heading, for “**the Union territory**” substitute “**Great Britain**”;
- (b) in paragraph 2—
- (i) in the first sentence—
- (aa) for the words from “Commission” to “acts,” substitute “appropriate authority may by regulations”;
- (bb) at the end insert “, taking into account relevant international standards and in particular ISPM15”;
- (ii) omit the second and third sentences.
- (38) In Article 98—
- (a) in the heading, for “**the Union territory**” substitute “**Great Britain**”;
- (b) in paragraph 1—
- (i) in the first subparagraph, in point (a), for “the acts” substitute “regulations”;
- (ii) in the second subparagraph, for “Commission” to “supplementing” substitute “appropriate authority may by regulations supplement”;
- (c) in paragraph 2—
- (i) in point (b), for the words from “those” to the end substitute “the treatment facilities referred to in point (a)(i) and (ii) of this paragraph”;
- (ii) in point (c)—

- (aa) for the words from “Article 28(1)” to “Article 54(2) and (3)” substitute “regulations made under Article 28(1) or 30(1), or pursuant to Article 41(1) or 54(1)”;
  - (bb) after “by a” insert “UK”;
  - (d) in paragraph 3, after “operators” insert “it has”;
  - (e) in paragraph 4, in the first subparagraph, for “the competent authority” substitute “any of the competent authorities”.
- (39) In Article 99—
- (a) in paragraph 1—
    - (i) for the words from “Commission” to “supplementing” substitute “appropriate authority may by regulations supplement”;
    - (ii) for the words from “adopted” to the end substitute “specified in regulations made under Article 28(1), 30(1) or 44(1), or the implementation of measures specified in the requirements to be fulfilled under Article 41(1) or 54(1)”;
  - (b) in paragraph 2, for “The delegated acts referred to in paragraph 1” substitute “Those regulations”;
  - (c) in paragraph 3—
    - (i) in the first sentence, for “Commission shall adopt, by means of implementing acts,” substitute “appropriate authority may by regulations make provision about”;
    - (ii) omit the second sentence.
- (40) In the heading to Section 4, for “**the Union territory**” substitute “**Great Britain**”.
- (41) Before Article 100 insert—  
“Article 99a

#### *Interpretation*

In Articles 100 and 101, “relevant phytosanitary import requirements” means:

- (a) in relation to the export of plants, plant products or other objects to a third country other than an EU Member State, the phytosanitary import requirements of that third country;
  - (b) in relation to the export of plants, plant products or other objects to an EU Member State, the phytosanitary import requirements of the European Union;
  - (c) in relation to the movement of plants, plant products or other objects to Northern Ireland, the phytosanitary import requirements of the European Union that apply by virtue of the Protocol on Ireland/Northern Ireland to the withdrawal agreement.”.
- (42) In Article 100—
- (a) in the heading, for “**the Union**” substitute “**Great Britain**”;
  - (b) in paragraph 1—
    - (i) in the words before point (a)—
      - (aa) for “the Union territory” substitute “Great Britain”;
      - (bb) after “country”, in the first place where it occurs, insert “or Northern Ireland”;
      - (cc) for “phytosanitary import requirements of that third country” substitute “relevant phytosanitary import requirements”;
    - (ii) in point (c), for “phytosanitary import requirements of that third country concerned” substitute “relevant phytosanitary import requirements”;

- (c) in paragraph 2—
    - (i) in the words before point (a) for “phytosanitary import requirements of that third country concerned” substitute “relevant phytosanitary import requirements”;
    - (ii) in point (c)—
      - (aa) for “plant passport”, in both places where it occurs, substitute “UK plant passport”;
      - (bb) for “the”, in the final place where it occurs, substitute “a”;
    - (iii) omit point (e);
    - (iv) in point (f), for “the Union territory” substitute “Great Britain”;
  - (d) in paragraph 4—
    - (i) for the words from “Commission” to “amending” substitute “appropriate authority may by regulations amend”;
    - (ii) omit “and Part A of Annex VIII”;
  - (e) in paragraph 5, for “IMSOC” substitute “appropriate computerised information management system, where the use of electronic phytosanitary certificates is permitted by the competent authority”.
- (43) In Article 101—
- (a) in the heading, for “**the Union**” substitute “**Great Britain**”;
  - (b) in paragraph 1—
    - (i) for “the Union territory” substitute “Great Britain”;
    - (ii) for “the Union” substitute “Great Britain”;
  - (c) in paragraph 2—
    - (i) in the words before point (a), for “phytosanitary import requirements of that third country concerned” substitute “relevant phytosanitary import requirements”;
    - (ii) in point (b), for “the Union territory” substitute “Great Britain”;
    - (iii) in point (c)—
      - (aa) for “by” substitute “for the purposes of imports into”;
      - (bb) for the words from “storage” to the end substitute “its storage in Great Britain”;
  - (d) in paragraph 6, for “IMSOC” substitute “appropriate computerised information management system, where the use of electronic phytosanitary certificates is permitted by the competent authority”.
- (44) Omit Article 102.

**Chapter 7**

33. Omit Articles 103 and 104.

**Chapter 8**

- 34.—(1) For Article 105 substitute—  
“Article 105

### Regulations

1. Regulations made by the Secretary of State or the Welsh Ministers under this Regulation are to be made by statutory instrument.
  2. For regulations made under this Regulation by the Scottish Ministers, see section 27 of the Interpretation and Legislative Reform (Scotland) Act 2010<sup>(30)</sup>.
  3. A statutory instrument containing regulations made by the Secretary of State under these Regulations is subject to annulment in pursuance of a resolution of either House of Parliament.
  4. A statutory instrument containing regulations made by the Welsh Ministers under these Regulations is subject to annulment in pursuance of a resolution of the Senedd Cymru.
  5. Regulations made by the Scottish Ministers under these Regulations are subject to the negative procedure (see section 28 of the Interpretation and Legislative Reform (Scotland) Act 2010).
  6. Such regulations may—
    - (a) contain supplementary, incidental, consequential, transitional, transitory or saving provision, including provision amending, repealing or revoking enactments (which has the meaning given by section 20(1) of the European Union (Withdrawal) Act 2018);
    - (b) make different provision for different cases or descriptions of case, different circumstances, different purposes or different areas.”.
- (2) Omit Articles 106 to 108.
- (3) After Article 113, omit the words from “This Regulation” to “Member States”.

### Annex 1

35. Annex 1 is amended as follows.

- 36.—(1) In the heading to Annex 1, for “THE UNION TERRITORY” substitute “GREAT BRITAIN”.
- (2) In Section 1—
- (a) in the heading, for “*Article 30(2)*” substitute “*Article 30(A1)*”;
  - (b) in point (4)(n), after “Natura 2000” insert “within the meaning of the Conservation of Habitats and Species Regulations 2017<sup>(31)</sup>”.
- (3) In Section 2—
- (a) in the heading for “*Union*” substitute “*GB*”;
  - (b) in the words before point (a)—
    - (i) for “Union”, in the first place where it occurs, substitute “GB”;
    - (ii) for “the Union territory” substitute “Great Britain”;
  - (c) in point (a), for “the Union territory” substitute “Great Britain”;
  - (d) in point (b)(iii)—
    - (i) for “the Union territory” substitute “Great Britain”;
    - (ii) for “for the Union” substitute “for Great Britain”;
  - (e) in point (c)—

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<sup>(30)</sup> 2010 asp 10.

<sup>(31)</sup> S.I. 2017/1012, prospectively amended by S.I. 2019/579; there are other amending instruments but none is relevant.

- (i) in point (i), for the words from “listed” to the end substitute “protected by retained EU law relating to the conservation of natural habitats and wild fauna and flora”;
  - (ii) in point (iii)—
    - (aa) for “the Union territory” substitute “Great Britain”;
    - (bb) for “for the Union” substitute “for Great Britain”.
- (4) In Section 3—
- (a) in the heading—
    - (i) for “**Union**” substitute “**GB**”;
    - (ii) for “**Article 29(1) and 30(1)**” substitute “**Articles 29(2) and 30(A1)**”;
  - (b) in Subsection 1—
    - (i) in the heading for “**Article 29(1)**” substitute “**Article 29(2)**”;
    - (ii) in point (2)—
      - (aa) in the heading, for “the Member State’s territory” substitute “Great Britain”;
      - (bb) for “the territory of a Member State” substitute “Great Britain”;
      - (cc) for “that Member State” substitute “the competent authorities”;
      - (dd) for “the Union territory”, in both places where it occurs, substitute “Great Britain”;
    - (iii) in point (3)—
      - (aa) in the heading, for the words from “in the Union territory” to “present” substitute “Great Britain”;
      - (bb) for “Member State” substitute “competent authorities”;
      - (cc) for the words from “its territory” to the end substitute “Great Britain”;
    - (iv) in point (4)—
      - (aa) for “Member State”, in the first place where it occurs, substitute “competent authorities”;
      - (bb) for the words from “its territory” to “Union territory” substitute “Great Britain”;
      - (cc) for “that territory” substitute “Great Britain”;
  - (c) in Subsection 2—
    - (i) in the heading—
      - (aa) for “**Union**” substitute “**GB**”;
      - (bb) for “**Article 30(1)**” substitute “**Article 30(A1)**”;
    - (ii) in point (2)—
      - (aa) in the heading for “the Union territory” substitute “Great Britain”;
      - (bb) for “Union territory” and “the Union territory” substitute “Great Britain”;
    - (iii) in point (3)—
      - (aa) for “the Union territory”, in each place where it occurs, substitute “Great Britain”;
      - (bb) omit “to the Union”;
    - (iv) in point (4)—
      - (aa) omit “to the Union”;

- (bb) for “the Union territory” substitute “Great Britain”;
- (cc) for “that territory” substitute “Great Britain”.

(5) In Section 4—

- (a) in the heading, for “*Union*” substitute “*GB*”;
- (b) in point (2), in the heading and in point (1), for “the Union territory” substitute “Great Britain”.

## **Annex 2**

**37.** Annex 2 is amended as follows.

**38.**—(1) In Section 1—

- (a) in the heading—
  - (i) omit “*Article 25(2),*”;
  - (ii) for “*Article 28(4) and (6)*” substitute “*Article 28(4)*”;
  - (iii) for “*Article 30(5) and (7)*” substitute “*Article 30(5)*”;
  - (iv) for the words from “*Article 40(3)*” to “*Article 54(3)*” substitute “*Article 40(3A), Article 41(3A), Article 53(3), Article 54(3A)*”;
- (b) in point (1), in the third subparagraph, in point (ii), for “plant passport” substitute “UK plant passport”;
- (c) in point (2), in the second subparagraph, in point (i), for “plant passport” substitute “UK plant passport”.

(2) In Section 2—

- (a) in the heading—
  - (i) for “*Article 28(4) and (6)*” substitute “*Article 28(4)*”;
  - (ii) for “*Article 30(5) and (7)*” substitute “*Article 30(5)*”;
  - (iii) for “*Article 37(4)*” substitute “*Article 37(5C)*”;
  - (iv) for the words from “*Article 40(3)*” to “*Article 54(3)*” substitute “*Article 40(3B), Article 41(3B), Article 49(2), Article 53(3A), Article 54(3B)*”;
- (b) in the words before point (1)—
  - (i) for “Union”, in both places where it occurs, substitute “GB”;
  - (ii) for “protected zone” substitute “PFA”;
- (c) in point (4), for “the Union territory” substitute “Great Britain”.

## **Annex 3**

**39.** In Annex 3—

- (a) in point (1)(a), for “into the Union” substitute “into Great Britain”;
- (b) for “the Union territory”, in each place where it occurs, substitute “Great Britain”.

## **Annex 4**

**40.** In Annex 4—

- (a) in the heading, for “**THE UNION TERRITORY**” substitute “**GREAT BRITAIN**”;
- (b) for “the Union territory”, in each place where it occurs, substitute “Great Britain”;

- (c) in point (2)(a), for “pursuant to Article 5(2)” substitute “in Annex 2 to the Phytosanitary Conditions Regulation”.

#### Annex 5

41. In Annex 5, in the heading, for “THE UNION TERRITORY” substitute “GREAT BRITAIN”.

#### Annex 6

- 42.—(1) Annex 6 is amended as follows.

- (2) In point (1)—

- (a) for “Union quarantine pests or pests subject to measures adopted pursuant to Article 30” substitute “GB quarantine pests or provisional GB quarantine pests”;
- (b) for “the Union” substitute “Great Britain”.

- (3) In point (2), for “the Union territory” substitute “Great Britain”;

- (4) In point (3)—

- (a) for “Union quarantine pests or pests subject to the measures adopted pursuant to Article 30” substitute “GB quarantine pests or provisional GB quarantine pests”;
- (b) for “the Union territory” substitute “Great Britain”.

#### Annex 7

- 43.—(1) Annex 7 is amended as follows.

- (2) In the heading to Annex 7, at the beginning insert “**UK**”.

- (3) In Part A—

- (a) in the heading—

- (i) for “*Plant passports*” substitute “*UK plant passports*”;
- (ii) omit “*for movement within the Union territory*”;

- (b) in point (1)—

- (i) in the words before point (a), for “plant passport for movement within the Union territory” substitute “UK plant passport for the movement of plants, plant products and other objects within Great Britain, the introduction of plants, plant products and other objects into Great Britain from a CD territory or the introduction of plants, plant products and other objects into a CD territory from Great Britain”;

- (ii) for point (a) substitute—

- “(a) the words ‘UK Plant Passport’ in its upper right-hand corner in English;”;

- (iii) omit point (b);

- (iv) in point (d)—

- (aa) omit the words from “subsequently” to “a hyphen and”;
- (bb) at the end insert “or the CD authority”;

- (v) in point (f), for point (ii) substitute—

- “(ii) if originating in or from Great Britain or a CD territory, ‘GB’.”.

- (4) In Part B—

- (a) for the heading substitute “**UK plant passports for movement into GB pest-free areas and CD pest-free areas, as referred to in Article 83(4)**”;
- (b) in point (1)—
  - (i) in the words before point (a)—
    - (aa) after “The” insert “UK”;
    - (bb) for “protected zones” substitute “GB pest-free areas and for movement into CD pest-free areas”;
  - (ii) for point (a) substitute—
    - “(a) the words ‘UK Plant Passport — PFA’ in its upper right-hand corner in English;”;
  - (iii) in point (b), for “protected zone quarantine pest(s), as referred to in Article 32(3)” substitute “PFA quarantine pest(s) or CD quarantine pest(s)”;
  - (iv) omit point (c);
  - (v) in point (e)—
    - (aa) omit the words from “subsequently” to “a hyphen and”;
    - (bb) at the end, insert “or the CD authority”;
  - (vi) in point (g)(ii), for the words from “two” to “origin and” substitute “if originating in or from Great Britain or a CD territory, ‘GB’”.
- (5) In Part C—
  - (a) in the heading—
    - (i) for “**Plant passports**” substitute “**UK plant passports**”;
    - (ii) omit “**for movement within the Union territory**”;
  - (b) in point (1)—
    - (i) in the words before point (a)—
      - (aa) for “plant passport for movement within the Union territory” substitute “UK plant passport for the movement of plants, plant products and other objects within Great Britain, the introduction of plants, plant products and other objects into Great Britain from a CD territory or the introduction of plants, plant products and other objects into a CD territory from Great Britain”;
      - (bb) for the words from “respectively” to “[Directive 2008/90/EC](#)” substitute “in the relevant legislation on the marketing of seeds and other propagating material”;
    - (ii) for point (a) substitute—
      - “(a) the words ‘UK Plant Passport’ in its upper right-hand corner in English;”;
    - (iii) omit point (b);
    - (iv) in the second subparagraph, for “plant passport” substitute “UK plant passport”.
- (6) In Part D—
  - (a) in the heading—
    - (i) for “**Plant passports**” substitute “**UK plant passports**”;
    - (ii) for “**protected zones**” substitute “**GB pest-free areas and for movement into CD pest-free areas**”;
  - (b) in point (1)—



- (i) in the words before point (a), for “plant passport for movement into and within protected zones” substitute “UK plant passport for movement into and within GB pest-free areas and for movement into CD pest-free areas”;
- (ii) for the words from “respectively” to “[Directive 2008/90/EC](#)” substitute “in the relevant legislation on the marketing of seeds and other propagating material”;
- (iii) for point (a) substitute—
  - “(a) the words ‘UK Plant Passport — PFA’ in its upper right-hand corner in English;”;
- (iv) in point (b), for “protected zone quarantine pest(s)” substitute “PFA quarantine pest(s) or CD quarantine pest(s)”;
- (v) omit point (c);
- (c) in the second subparagraph, for “plant passport” substitute “UK plant passport”.

**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**

44.—(1) 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(32) is amended as follows.

- (2) In Article 1, omit paragraphs 2 to 4.
- (3) Omit Articles 2 to 9.
- (4) In Annex 1—
  - (a) omit paragraphs 1 to 3;
  - (b) in paragraph 4—
    - (i) for “the Community” substitute “Great Britain”;
    - (ii) for “Member States” substitute “the competent authority”.
- (5) Omit Annex 2.

**Commission [Decision 2005/51/EC](#) authorising Member States temporarily to provide for derogations from certain provisions of Council [Directive 2000/29/EC](#) in respect of the importation of soil contaminated by pesticides or persistent organic pollutants for decontamination purposes**

45.—(1) Commission [Decision 2005/51/EC](#) authorising Member States temporarily to provide for derogations from certain provisions of Council [Directive 2000/29/EC](#) in respect of the importation of soil contaminated by pesticides or persistent organic pollutants for decontamination purposes(33) is amended as follows.

- (2) Before Article 1, insert—  
“Article A1

In this Decision:

‘contaminated soil’ means:

(32) EUDN 2002/757.

(33) EUDN 2005/51.

- (a) soil contaminated by pesticides governed by the programme of the Food and Agriculture Organization of the United Nations on the prevention and disposal of obsolete and unwanted pesticides or any other similar multilateral programme; or
- (b) soil contaminated with persistent organic pollutants listed in the Stockholm Convention on persistent organic pollutants<sup>(34)</sup> or in the 1998 Protocol to the 1979 Convention on long-range trans-boundary air pollution on persistent organic pollutants<sup>(35)</sup>;

‘dedicated hazardous waste incinerator’ means an incinerator in Great Britain which is officially authorised to treat contaminated soil under retained EU law relating to industrial emissions;

‘Plant Health Regulation’ means Regulation (EU) 2016/2031 on protective measures against pests of plants.”.

(3) In Article 1—

- (a) for the first paragraph substitute—

“1. The competent authorities may authorise the introduction into Great Britain of contaminated soil originating in third countries by way of derogation from:

- (a) any prohibition that would otherwise apply to its introduction by virtue of Article 40(1) of the Plant Health Regulation; or
- (b) any requirements that would otherwise apply to its introduction by virtue of Article 41(1) of the Plant Health Regulation.”;

- (b) number the second paragraph as paragraph 2 and in that paragraph—

- (i) for “the Community” substitute “Great Britain”;
- (ii) after “2024 and” insert “is”;

- (c) number the third subparagraph as paragraph 3;

- (d) omit Articles 2 to 5.

(4) In the Annex—

- (a) for paragraphs 1 to 6 substitute—

“1. In this Annex, IMDG Code’ means the 2018 edition of the International Maritime Dangerous Goods Code<sup>(36)</sup>.

2. The specific conditions are:

- (a) the introduction of the contaminated soil is authorised in accordance with Regulation (EC) No 1013/2006 of the European Parliament and of the Council on shipments of waste prior to its introduction<sup>(37)</sup> by the appropriate competent authority within the meaning of that Regulation;
- (b) the soil is packaged in sealed drums or bags in compliance with the IMDG Code and transported in sealed shipping containers from the packaging site in the country of origin to the dedicated hazardous waste incinerator treatment site in accordance with the authorisation mentioned in point (a);
- (c) the soil is accompanied on its introduction into Great Britain by a phytosanitary certificate issued by the national plant protection organisation

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<sup>(34)</sup> Adopted in Stockholm, Sweden on 22nd May 2001 (Treaty series No. 22 (2005), Cm 6581).

<sup>(35)</sup> The 1979 Convention on long range trans-boundary air pollution was adopted in Geneva, Switzerland on 13th November 1979 (Treaty series No. 57 (1983), Cmnd 9034); the 1998 Protocol on persistent organic pollutants was adopted in Aarhus, Denmark on 24th June 1998 (Treaty series No. 5 (2006), Cm 6757).

<sup>(36)</sup> A copy of this edition of the code may be obtained from IMO Publishing: ISBN: 978-92-801-1683-0 (2018 edition).

<sup>(37)</sup> EUR 2006/1013, prospectively amended by S.I. 2019/590.

- in the country of origin which includes under the heading “Additional declaration” the statement: “Authorised under [Decision 2005/55/EC](#)”;
  - (d) the soil is introduced through a point of entry in Great Britain approved by the competent authority;
  - (e) the soil is transported directly from its point of entry in Great Britain to the dedicated hazardous waste incinerator where it is to be treated.”;
- (b) omit paragraph 7.

**Commission Implementing Regulation (EU) 2018/2018 laying down specific rules concerning the procedure to be followed in order to carry out the risk assessment of high risk plants, plant products and other objects within the meaning of Article 42(1) of Regulation (EU) 2016/2031 of the European Parliament and of the Council**

**46.**—(1) Commission Implementing Regulation (EU) 2018/2018 laying down specific rules concerning the procedure to be followed in order to carry out the risk assessment of high risk plants, plant products and other objects within the meaning of Article 42(1) of Regulation (EU) 2016/2031 of the European Parliament and of the Council(**38**) is amended as follows.

- (2) In Article 2—
- (a) the first paragraph becomes paragraph 1 and in that paragraph, for “Commission” substitute “UK NPPO”;
  - (b) the second paragraph becomes paragraph 2;
  - (c) after that paragraph insert—
    - “**3.** The UK NPPO must:
      - (a) produce a document setting out the detailed information that must be included in a technical dossier to support the completion of a risk assessment which is required to be carried out under Article 42(4) of Regulation (EU) 2016/2031; and
      - (b) publish the document in such manner as it considers appropriate.”.
- (3) In Article 3—
- (a) in the first paragraph—
    - (i) in point (d), for “Commission and the European Food Safety Authority (EFSA)” substitute “UK NPPO”;
    - (ii) at the end insert—
      - “(e) the detailed information referred to in point (a) of Article 2(3).”;
    - (iii) omit the second paragraph;
    - (iv) in the final paragraph, for “one of the official languages of the Union” substitute “English”.
- (4) In Article 4—
- (a) in the heading, for “**Commission**” substitute “**UK NPPO**”;
  - (b) in the first paragraph, for “Commission” substitute “UK NPPO”;
  - (c) in the second paragraph, for “(d)” substitute “(e)”;
  - (d) omit the third paragraph.
- (5) In Article 5—

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(38) EUR 2018/2018.

- (a) omit the first paragraph;
  - (b) in the second and third paragraphs, for “EFSA”, in both places where it occurs, substitute “the UK NPPO”;
  - (c) omit the fourth paragraph;
  - (d) in the fifth paragraph—
    - (i) omit the first sentence;
    - (ii) for the second sentence substitute “The UK NPPO must publish the risk assessment in such manner as it considers appropriate.”;
  - (e) omit the final paragraph.
- (6) After Article 7, omit the words “This Regulation” to “Member States”.

**Commission Delegated Regulation (EU) 2019/827 on criteria to be fulfilled by the professional operators in order to comply with the conditions set out in Article 89(1) point (a) of Regulation (EU) 2016/2031 of the European Parliament and of the Council and procedures to ensure that those criteria are met**

**47.**—(1) Commission Delegated Regulation (EU) 2019/827 on criteria to be fulfilled by the professional operators in order to comply with the conditions set out in Article 89(1) point (a) of Regulation (EU) 2016/2031 of the European Parliament and of the Council and procedures to ensure that those criteria are met<sup>(39)</sup> is amended as follows.

- (2) In Article 1—
- (a) in the heading, after “**issue**” insert “**UK**”;
  - (b) in the words before point (a), after “of” insert “UK”;
  - (c) in point (a), for “Union quarantine” to “Union” substitute “GB quarantine pests, provisional GB quarantine pests, PFA quarantine pests and GB”.
- (3) In Article 2, in paragraph 1, in the first subparagraph, after “of” insert “UK”.
- (4) After Article 3, omit the words from “This Regulation” to “Member States”.

**Commission Delegated Regulation (EU) 2019/829 supplementing Regulation (EU) 2016/2031 of the European Parliament and of the Council on protective measures against pests of plants, authorising Member States to provide for temporary derogations in view of official testing, scientific or educational purposes, trials, varietal selections, or breeding**

**48.**—(1) Commission Delegated Regulation (EU) 2019/829 supplementing Regulation (EU) 2016/2031 of the European Parliament and of the Council on protective measures against pests of plants, authorising Member States to provide for temporary derogations in view of official testing, scientific or educational purposes, trials, varietal selections, or breeding<sup>(40)</sup> is amended as follows.

- (2) In Article 1—
- (a) in the first paragraph—
    - (i) in the first sentence—
      - (aa) for “the Union” substitute “Great Britain”;
      - (bb) for “protected zones” substitute “GB pest-free areas”;
    - (ii) for points (a) to (i) substitute—
      - “(a) Article 5(1);

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<sup>(39)</sup> EUR 2019/827.

<sup>(40)</sup> EUR 2019/829.

- (b) Article 30(A2);
  - (c) Article 32(2);
  - (d) Article 40(1);
  - (e) Article 41(1);
  - (f) Article 42(2);
  - (g) Article 49(1);
  - (h) Article 53(1);
  - (i) Article 54(1).”;
- (b) in the second paragraph—
- (i) omit point (a);
  - (ii) in point (b), for “Member States” substitute “competent authorities”.
- (3) In Article 2—
- (a) in point (a)—
    - (i) for point (i) substitute—
      - “(i) GB quarantine pests,”;
    - (ii) for point (ii) substitute—
      - “(ii) provisional GB quarantine pests,”;
    - (iii) for point (iii) substitute—
      - “(iii) PFA quarantine pests,”;
  - (b) in point (b), for the words from “subjected” to “54(2) and (3)” substitute “that are subject to measures specified in regulations made under Article 30(1) or 49(1), or are subject to Article 40(1), 41(1), 42(2), 53(1) or 54(1)”;
  - (c) in point (d)—
    - (i) after “within,” insert “or the”;
    - (ii) for “the Union and protected zone thereof” substitute “, Great Britain or any GB pest-free area”;
- (4) In Article 3—
- (a) for the heading substitute “**Recording of information**”;
  - (b) omit paragraphs 1 and 2;
  - (c) in paragraph 3—
    - (i) for “the Union” substitute “Great Britain”;
    - (ii) for the words from “a computerised” to “(IMSOC)” substitute “the appropriate computerised information management system”;
- (5) In Article 4, in the first unnumbered paragraph—
- (a) for “the Union” substitute “Great Britain”;
  - (b) for “authorities” substitute “authority”.
- (6) In Article 5—
- (a) in the words before point (a)—
    - (i) for “the Union” substitute “Great Britain”;
    - (ii) for “Member States” substitute “competent authority”;

- (b) in point (d)—
  - (i) for “has been” substitute “will be”;
  - (ii) omit “or”;
  - (iii) after “use” insert “, or released and moved”.
- (7) In Article 6—
  - (a) in paragraph 1, in the first sentence, omit the words from “of the Member State” to the end;
  - (b) in paragraph 2—
    - (i) in the first sentence, omit the words from “In” to “Union,”;
    - (ii) for “the”, in the third place where it occurs, substitute “The”;
    - (iii) omit “Part A of”;
    - (iv) omit the second sentence;
  - (c) omit paragraph 3;
  - (d) in paragraph 4—
    - (i) in the first paragraph, for “the Union” substitute “Great Britain”;
    - (ii) in the second paragraph—
      - (aa) omit “Parts A and B of”;
      - (bb) for “the Union” substitute “Great Britain”.
- (8) In Article 7, in the words before point (a)—
  - (a) for “Member States” substitute “the competent authority”;
  - (b) for “authorities”, in both places where it occurs, substitute “authority”;
  - (c) for “professional operators” substitute “the professional operator”.
- (9) In Article 8, in point (a), for “the Union”, in both places where it occurs, substitute “Great Britain”.
- (10) After Article 11, omit the words from “This Regulation” to “Member States”.
- (11) In Annex 1, in paragraph 1, in point (h), for “or storage” substitute “, storage or release and movement to another quarantine station or confinement facility”.
- (12) In Annex 2—
  - (a) in the heading preceding the first model letter of authority—
    - (i) omit “A.”;
    - (ii) after “for”, in the first place where it occurs, insert “**the introduction into, or**”;
    - (iii) for “**the Union**” substitute “, **Great Britain**”;
  - (b) in the first model letter of authority—
    - (i) in box 1, in the first column, for “organisation]\* of the Member State of origin” substitute “organisation of the third country of origin]\*/[competent authority of the place of origin]\*”;
    - (ii) in box 2, in the first column, for “responsible body of the Member State of issue” substitute “issuing competent authority”;
    - (iii) in box 9, in the second column—
      - (aa) after “material” insert “introduced into or”;
      - (bb) for the words from “the Union territory” to the end substitute “Great Britain under Regulation (EU) 2016/2031”;

- (iv) in box 11, in the second column, for “or storage” substitute “/storage/release/movement”;
  - (v) in box 12, for the entry substitute “Endorsement by the National Plant Protection Organization (NPPO) of the third country of origin of the specified material\*/ Endorsement by the competent authority of the place of origin of the specified material\*”;
  - (vi) in box 13, for “Competent Authority” substitute “issuing competent authority”;
  - (vii) in box 14, for “IMSOC Reference” substitute “Appropriate computerised information management system reference”;
- (c) omit the second model letter of authority and the heading preceding it.

**Commission Delegated Regulation (EU) 2019/1702 supplementing Regulation (EU) 2016/2031 of the European Parliament and of the Council by establishing the list of priority pests**

**49.**—(1) Commission Delegation Regulation (EU) 2019/1702 supplementing Regulation (EU) 2016/2031 of the European Parliament and of the Council by establishing the list of priority pests is amended~~(41)~~ as follows.

- (2) In Article 1, for “6(2)” substitute “6(1)(c)”.
- (3) After Article 2, omit the words from “This Regulation” to “Member States”.
- (4) For the Annex substitute the Annex in Schedule 1.

**Commission Implementing Regulation (EU) 2017/2313 setting out the format specifications of the plant passport for movement within the Union territory and the plant passport for introduction into, and movement within, a protected zone**

**50.**—(1) Commission Implementing Regulation (EU) 2017/2313 setting out the format specifications of the plant passport for movement within the Union territory and the plant passport for introduction into, and movement within, a protected zone~~(42)~~ is amended as follows.

- (2) In Article 1—
  - (a) in the heading, after “**for**” insert “**UK**”;
  - (b) in paragraph 1—
    - (i) for “Plant” substitute “UK plant”;
    - (ii) for “the Union territory” substitute “Great Britain, the introduction into Great Britain from a CD territory and the introduction into a CD territory from Great Britain”;
  - (c) in paragraph 2—
    - (i) for “Plant” substitute “UK plant”;
    - (ii) for “protected zone” substitute “GB pest-free area and for the introduction into a CD pest-free area”;
  - (d) in paragraph 3—
    - (i) for “Plant” substitute “UK plant”;
    - (ii) for “the Union territory” substitute “Great Britain, the introduction into Great Britain from a CD territory and the introduction into a CD territory from Great Britain”;
    - (iii) for “second” substitute “first”;

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(41) EUR 2019/1702.

(42) EUR 2017/2313.

- (e) in paragraph 4—
  - (i) for “Plant” substitute “UK plant”;
  - (ii) for “protected zone” substitute “GB pest-free area and for the introduction into a CD pest-free area”;
  - (iii) for “third” substitute “first”;
- (3) In Article 2—
  - (a) in the heading, for “**plant**” substitute “**UK plant**”;
  - (b) in the first paragraph, for “plant” substitute “UK plant”.
- (4) In Article 4, after “with” insert “legislation transposing”.
- (5) After Article 4, omit the words from “This Regulation” to “Member States”.
- (6) In the Annex—
  - (a) omit the second paragraph;
  - (b) in point 1—
    - (i) for “Plant”, in both places where it occurs, substitute “UK plant”;
    - (ii) for “PZ” substitute “PFA”;
    - (iii) omit the words from “and” to the end;
  - (c) omit point 3;
  - (d) for point 7 substitute—

“7. Where originating in, or from, Great Britain or a CD territory, ‘GB’.”;
  - (e) in point 9—
    - (i) for “protected zone” substitute “PFA”;
    - (ii) for the words from “the codes” to the end substitute “their EPPO codes”;
  - (f) in point 10, for the words from “respectively” to the end substitute “in the relevant legislation on the marketing of seeds and other propagating material”;
  - (g) in Part A—
    - (i) in the heading—
      - (aa) for “**the**”, in the first place where it occurs, substitute “**UK**”;
      - (bb) omit “**for the movement within the Union territory,**”;
    - (ii) omit the EU flag symbol in each model;
    - (iii) before “Plant”, in each model, insert “UK”;
  - (h) in Part B—
    - (i) in the heading—
      - (aa) for “**the**”, in the first place where it occurs, substitute “**UK**”;
      - (bb) omit “**for the introduction into, and movement within, a protected zone,**”
    - (ii) omit the EU flag symbol in each model;
    - (iii) for “Plant Passport - PZ”, in each model, substitute “UK Plant Passport - PFA”;
  - (i) in Part C—
    - (i) in the heading—
      - (aa) for “**the**”, in the first place where it occurs, substitute “**UK**”;



- (bb) omit “**for the movement within the Union territory,**”;
- (ii) omit the EU flag symbol in each model;
- (iii) before “Plant”, in each model, insert “UK”;
- (j) in Part D—
  - (i) in the heading—
    - (aa) for “**the**”, in the first place where it occurs, substitute “**UK**”;
    - (bb) omit “**for the introduction into, and movement within, a protected zone,**”;
  - (ii) omit the EU flag symbol in each model;
  - (iii) for “Plant Passport - PZ”, in each model, substitute “UK Plant Passport - PFA”.

**Commission Implementing Regulation (EU) 2020/918 establishing a derogation from Implementing Regulation (EU) 2019/2072 as regards the requirements for the introduction into the Union of ash wood originating or processed in Canada**

51.—(1) Commission Implementing Regulation (EU) 2020/918 establishing a derogation from Implementing Regulation (EU) 2019/2072 as regards the requirements for the introduction into the Union of ash wood originating or processed in Canada(43) is amended as follows.

- (2) In Article 1—
  - (a) for “Article 8(1) and point 87(a) and (b)” substitute “Article 41(1) of Regulation (EU) 2016/2031 and entry 125 of Part A of Annex 7 to Commission Implementing Regulation (EU) 2019/2072”;
  - (b) for “the Union” substitute “Great Britain”.
- (3) In Article 2—
  - (a) in paragraph 1—
    - (i) for “Union”, in the first place where it occurs, substitute “GB”;
    - (ii) for “pests not listed as Union” substitute “provisional GB”;
    - (iii) for “the measures adopted pursuant to” substitute “any measures specified in regulations made under”;
  - (b) in paragraph 2, in point (a), for “European Union” substitute “GB”.
- (4) After Article 4, omit the words from “This Regulation” to “Member States”.
- (5) In the Annex—
  - (a) in Part A, in point 4, for “the Union” substitute “Great Britain”;
  - (b) in Part B, for “Union” substitute “GB”.

**Commission Implementing Regulation (EU) 2020/1002 establishing a derogation from Implementing Regulation (EU) 2019/2072 as regards the requirements for introduction into the Union of ash wood originating or processed in the United States**

52.—(1) . Commission Implementing Regulation (EU) 2020/1002 establishing a derogation from Implementing Regulation (EU) 2019/2072 as regards the requirements for the introduction into the Union of ash wood originating or processed in the United States(44) is amended as follows.

- (2) In Article 1—

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(43) EUR 2020/918.

(44) EUR 2020/1002.

- (a) for “Article 8(1) and points 87(a) and (b)” substitute Article 41(1) of Regulation (EU) 2016/2031 and entry 125 of Part A of Annex 7 to Commission Implementing Regulation (EU) 2019/2072”;
  - (b) for “the Union” substitute “Great Britain”.
- (3) In Article 2—
- (a) in paragraph 1—
    - (i) for “Union”, in the first place where it occurs, substitute “GB”;
    - (ii) for “pests not listed as Union” substitute “provisional GB”;
    - (iii) for “the measures adopted pursuant to” substitute “any measures specified in regulations made under”;
  - (b) in paragraph 2, in point (a), for “European Union” substitute “GB”.
- (4) After Article 4, omit the words from “This Regulation” to “Member States”.
- (5) In the Annex—
- (a) in Part A, in point 4, for “the Union” substitute “Great Britain”;
  - (b) in Part B, for “Union” substitute “GB”.

## PART 4

### Miscellaneous

#### **Transitional provision: plants, plant products and other objects from EU Member States**

**53.**—(1) This regulation applies to plants, plant products and other objects which originate in, or are dispatched from, an EU Member State, other than qualifying Northern Ireland goods, and are introduced into Great Britain during the period commencing on IP completion day and ending on 31st March 2021.

- (2) In relation to plants, plant products and other objects to which regulation applies—
  - (a) Article 72(1) of Regulation (EU) 2016/2031 only applies if the plants, plant products and other objects are specified in Schedule 2;
  - (b) Article 73(1) of Regulation (EU) 2016/2031 does not apply.

(3) In paragraph (1), “qualifying Northern Ireland goods” has the meaning given in the Definition of Qualifying Northern Ireland Goods (EU Exit) Regulations 2020(**45**).

#### **Transitional provision: UK plant passports**

**54.**—(1) An authorisation to issue plant passports which has been granted and has effect immediately before IP completion day continues to apply after IP completion day as if it were an authorisation to issue UK plant passports.

(2) In the case of any plant passport that has been issued in respect of any plant, plant product or other object before IP completion day for the purposes of the movement of that plant, plant product or other object which takes place in part before and in part after IP completion day, the plant passport is after the IP completion day to be treated as if it were a UK plant passport and references to a UK plant passport are to be construed accordingly.

- (3) In this regulation—

“plant passport” has the meaning given in Article 78 of Regulation (EU) 2016/2031 of the European Parliament and of the Council on protective measures against pests of plants, as it has effect in EU law<sup>(46)</sup>;

“UK plant passport” has the meaning given in Article 78 of Regulation (EU) 2016/2031 of the European Parliament and of the Council on protective measures against pests of plants<sup>(47)</sup>.

### Revocations

55. The following are revoked—

- (a) The Plant Health (Amendment) (England) (EU Exit) Regulation 2019<sup>(48)</sup>;
- (b) the Plant Health (EU Exit) Regulations 2019<sup>(49)</sup>;
- (c) the retained direct EU legislation listed in Schedule 3.

### Savings

56.—(1) The revocations of the instruments listed in Schedule 3 and the amendments to Regulation (EU) 2016/2031 have no effect on the validity of any notice issued or any licence, authorisation or other approval given under or for the purposes of those instruments or that Regulation before IP completion day.

(2) Any such notice, licence, authorisation or other approval remains in force and continues to have effect on or after IP completion day in so far as it applies to anything done, or omitted to be done, before or after IP completion day.

(3) Paragraph (1) is subject to regulation 54.

Date

*Name*  
Parliamentary Under Secretary of State  
Department for Environment, Food and Rural  
Affairs

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<sup>(46)</sup> OJ No L 317, 23.11.2016, p.4, as amended by Regulation (EU) 2017/625 (OJ No L 95, 7.4.2017, p.1).

<sup>(47)</sup> EUR 2016/2031.

<sup>(48)</sup> S.I. 2019/786.

<sup>(49)</sup> S.I. 2019/787.

SCHEDULE 1

Regulation 49(4)

New Annex to Commission Implementing Regulation (EU) 2019/1702

“Annex

List of priority pests

*Agrilus anxius* Gory  
*Agrilus planipennis* Fairmaire  
*Anoplophora chinensis* (Forster)  
*Anoplophora glabripennis* (Motschulsky)  
*Aromia bungii* (Faldermann)  
*Bactericera cockerelli* (Sulc.)  
*Ceratocystis platani* (J.M. Walter) Engelbr. & T.C. Harr  
*Clavibacter sepedonicus* (Spieckermann & Kotthoff) Li *et al.*  
*Epitrix cucumeris* (Harris)  
*Epitrix papa* (Orlova-Bienkowskaja)  
*Epitrix subcrinita* (Leconte)  
*Epitrix tuberis* Gentner  
*Fusarium circinatum* Nirenberg & O’Donnell  
*Ips amitinus* (Eichhoff)  
*Ips duplicatus* (Sahlberg)  
*Ips typographus* (L.)  
*Leptinotarsa decemlineata* Say  
Rose Rosette virus and *Phyllocoptes fructiphilus* Keifer  
*Thaumetopoea pityocampa* Denis & Schiffermüller  
*Thaumetopoea processionea* L.  
*Thrips palmi* Karny  
*Xylella fastidiosa* (Wells *et al*) (all strains and subspecies).”

SCHEDULE 2

Regulation 53(2)(a)

Transitional provision: EU plants, plant products and other objects

1. Machinery and vehicles which have been operated for agricultural or forestry purposes.
2. Plants for planting, other than seeds.
3. Tubers of *Solanum tuberosum* L. intended for planting (seed potatoes).
4. Tubers of *Solanum tuberosum* L. (ware potatoes).
5. Seeds of—
  - (a) *Allium cepa* L.,
  - (b) *Allium porrum* L.,

- (c) *Castanea* Mill.,
  - (d) *Capsicum* spp. L.,
  - (e) *Helianthus annuus* L.,
  - (f) *Medicago sativa* L.,
  - (g) *Phaseolus cocineus*.,
  - (h) *Phaseolus vulgaris* L.,
  - (i) *Solanum lycopersicum* L.,
  - (j) *Solanum tuberosum* L. (True potato seed).
- 6.** Vegetable seeds of *Pisum sativum* L. and *Vicia faba* L.
- 7.** Seeds of oil and fibre plants of—
- (a) *Brassica napus* L.,
  - (b) *Brassica rapa* L.,
  - (c) *Sinapis alba* L.,
  - (d) *Glycine max* (L.) Merrill,
  - (e) *Linum usitatissimum* L.
- 8.** Isolated bark of—
- (a) *Castanea* Mill.,
  - (b) Conifers (Pinales),
  - (c) *Juglans* L.,
  - (d) *Pterocarya* Kunth.
- 9.** Wood of *Platanus* L., including wood which has not kept its natural round surface.
- 10.** Wood of *Castanea* Mill., excluding wood which is bark-free.
- 11.** Wood of Conifers (Pinales), including wood which has not kept its natural round surface.
- 12.** Wood of *Prunus* L. including wood which has not kept its natural round surface, other than wood of *Prunus laurocerasus* L.
- 13.** Wood, including wood which has not kept its natural round surface of—
- (a) *Acer* L.,
  - (b) *Aesculus* L.,
  - (c) *Alnus* L.,
  - (d) *Betula* L.,
  - (e) *Carpinus* L.,
  - (f) *Cercidiphyllum* Siebold & Zucc.,
  - (g) *Corylus* L.,
  - (h) *Fagus* L.,
  - (i) *Fraxinus* L.,
  - (j) *Koelreuteria* Medikus.,
  - (k) *Platanus* L.,
  - (l) *Populus* L.,
  - (m) *Salix* L.,

- (n) *Tilia* L.,
- (o) *Ulmus* L.

14. Wood of *Juglans* L. and *Pterocarya* Kunth.

SCHEDULE 3

Regulation 55(c)

Revocation of retained direct EU legislation

1. Commission [Decision 91/261/EEC](#) recognising Australia as being free from *Erwinia amylovora* (Burr.) Winsl. *et al.*
2. Commission [Decision 93/360/EEC](#) authorising the Member States to provide for derogations from certain provisions of Council [Directive 77/93/EEC](#) in respect of wood of *Thula* L., originating in Canada.
3. Commission [Decision 93/365/EEC](#) authorising the Member States to provide for derogations from certain provisions of Council [Directive 77/93/EEC](#) in respect of heat-treated coniferous wood, originating in Canada, and establishing the details of the indicator system to be applied to the heat-treated wood.
4. Commission [Decision 93/422/EEC](#) authorising the Member States to provide for derogations from certain provisions of Council [Directive 77/93/EEC](#) in respect of kiln dried coniferous wood, originating in Canada, and establishing the details of the indicator system to be applied to the kiln dried wood.
5. Commission [Decision 93/423/EEC](#) authorising the Member States to provide for derogations from certain provisions of Council [Directive 77/93/EEC](#) in respect of kiln dried coniferous wood, originating in the United States of America, and establishing the details of the indicator system to be applied to the kiln dried wood.
6. Commission [Decision 98/109/EC](#) authorising Member States temporarily to take emergency measures against the dissemination of *Thrips palmi* Karny as regards Thailand.
7. [Commission Regulation \(EC\) No 1040/2002](#) establishing detailed rules for the implementation of the provisions relating to the allocation of a financial contribution from the Community for plant-health control and repealing [Regulation \(EC\) No 2051/97](#).
8. Commission [Decision 2004/200/EC](#) on measures to prevent the introduction into and the spread within the Community of Pepino mosaic virus.
9. Commission [Decision 2005/359/EC](#) providing for a derogation from certain provisions of Council [Directive 2000/29/EC](#) as regards oak (*Quercus* L.) logs with bark attached, originating in the United States of America.
10. Commission [Decision 2006/750/EC](#) amending [Decision 2005/359/EC](#) as regards the ports of unloading of oak (*Quercus* L.) logs with bark attached, originating in the United States.
11. Commission [Decision 2010/723/EU](#) extending the period of validity of [Decision 2005/359/EC](#) providing for a derogation from certain provisions of Council [Directive 2000/29/EC](#) as regards oak (*Quercus* L.) logs with bark attached, originating in the United States of America.
12. Commission Implementing [Decision 2011/787/EU](#) authorising Member States temporarily to take emergency measures against the dissemination of *Ralstonia solanacearum* (Smith) Yabuuchi *et al.* as regards Egypt.

13. Commission Implementing [Decision 2012/138/EU](#) as regards emergency measures to prevent the introduction into and the spread within the Union of *Anoplophora chinensis*.
14. Commission Implementing [Decision 2012/270/EU](#) as regards emergency measures to prevent the introduction into and the spread within the Union of *Epitrix cucumeris* (Harris), *Epitrix papa* sp.n., *Epitrix subcrinita* (Lec.) and *Epitrix tuberis* (Gentner).
15. Commission Implementing [Decision 2012/535/EU](#) on emergency measures to prevent the spread within the Union of *Bursaphelenchus xylophilus* (Steiner et Buhner) Nickle et al. (the pine wood nematode).
16. Commission Implementing [Decision 2012/697/EU](#) as regards measures to prevent the introduction into and the spread within the Union of the genus *Pomacea* (Perry).
17. Commission Implementing [Decision 2013/780/EU](#) providing for a derogation from Article 13(1)(ii) of Council [Directive 2000/29/EC](#) in respect of bark-free sawn wood of *Quercus* L., *Platanus* L. and *Acer saccharum* Marsh. originating in the United States of America.
18. Commission Implementing [Decision 2014/356/EU](#) amending Implementing [Decision 2012/138/EU](#) as regards the conditions of introduction into and movement within the Union of specified plants to prevent the introduction and the spread of *Anoplophora chinensis* (Forster).
19. Commission Implementing [Decision 2014/679/EU](#) amending Implementing [Decision 2012/270/EU](#) as regards its period of application and as regards the movement to packing facilities of potato tubers originating in areas demarcated in order to prevent the spread within the Union of *Epitrix cucumeris* (Harris), *Epitrix similaris* (Gentner), *Epitrix subcrinita* (Lec.) and *Epitrix tuberis* (Gentner).
20. Commission Implementing Decision (EU) 2015/179 authorising Member States to provide for a derogation from certain provisions of Council [Directive 2000/29/EC](#) in respect of wood packaging material of conifers (Coniferales) in the form of ammunition boxes originating in the United States of America under the control of the United States Department of Defence.
21. Commission Implementing Decision (EU) 2015/226 amending Implementing [Decision 2012/535/EU](#) as regards the definition of susceptible wood and measures to be taken in demarcated areas.
22. Commission Implementing Decision (EU) 2015/893 as regards measures to prevent the introduction into and the spread within the Union of *Anoplophora glabripennis* (Motschulsky).
23. Commission Implementing Decision (EU) 2015/1199 recognising Bosnia and Herzegovina as being free from *Clavibacter michiganensis* ssp. *sepedonicus* (Spieckermann and Kotthoff) Davis et al.
24. Commission Implementing Decision (EU) 2016/1359 amending Implementing [Decision 2012/270/EU](#) as regards emergency measures to prevent the introduction into and the spread within the Union of *Epitrix cucumeris* (Harris), *Epitrix similaris* (Gentner), *Epitrix subcrinita* (Lec.) and *Epitrix tuberis* (Gentner).
25. Commission Implementing Decision (EU) 2016/2004 amending Implementing [Decision 2013/780/EU](#) providing for a derogation from Article 13(1)(ii) of Council [Directive 2000/29/EC](#) in respect of bark-free sawn wood of *Quercus* L., *Platanus* L. and *Acer saccharum* Marsh. originating in the United States of America.
26. Commission Implementing Decision (EU) 2017/427 amending Implementing [Decision 2012/535/EU](#) as regards measures to prevent the spread within the Union of *Bursaphelenchus xylophilus* (Steiner et Buhner) Nickle et al. (the pine wood nematode).
27. Commission Implementing Decision (EU) 2017/2187 extending the period of validity of Implementing Decision (EU) 2015/179 authorising Member States to provide for a derogation

from certain provisions of Council [Directive 2000/29/EC](#) in respect of wood packaging material of conifers (Coniferales) in the form of ammunition boxes originating in the United States of America under the control of the United States Department of Defence.

**28.** Commission Implementing Decision (EU) 2018/5 amending Implementing [Decision 2012/270/EU](#) as regards the symptoms of *Epitrix cucumeris* (Harris), *Epitrix papa* sp. n., *Epitrix subcrinita* (Lec.) and *Epitrix tuberis* (Gentner) and the establishment of relevant demarcated areas.

**29.** Commission Implementing Decision (EU) 2018/618 amending Implementing [Decision 2012/535/EU](#) as regards measures to prevent the spread within the Union of *Bursaphelenchus xylophilus* (Steiner et Buhner) Nickle et al. (the pine wood nematode).

**30.** Commission Implementing Decision (EU) 2018/638 establishing emergency measures to prevent the introduction into and spread within the Union of the harmful organism *Spodoptera frugiperda* (Smith).

**31.** Commission Implementing Decision (EU) 2018/1503 establishing measures to prevent the introduction into and the spread within the Union of *Aromia bungii* (Faldermann).

**32.** Commission Implementing Regulation (EU) 2018/2019 establishing a provisional list of high risk plants, plant products or other objects, within the meaning of Article 42 of Regulation (EU) 2016/2031 and a list of plants for which phytosanitary certificates are not required for introduction into the Union, within the meaning of Article 73 of that Regulation.

**33.** Commission Implementing Decision (EU) 2019/1598 amending Implementing Decision (EU) 2018/638 establishing emergency measures to prevent the introduction into and the spread within the Union of the harmful organism *Spodoptera frugiperda* (Smith).

**34.** Commission Implementing Decision (EU) 2019/1739 establishing emergency measures to prevent the introduction into and the spread within the Union of Rose Rosette Virus.

**35.** Commission Implementing Decision (EU) 2019/2032 establishing measures to prevent the introduction into and the spread within the Union of *Fusarium circinatum* Nirenberg & O'Donnell (formerly *Gibberella circinata*) and repealing [Decision 2007/433/EC](#).

**36.** Commission Implementing Regulation (EU) 2020/885 as regards measures to prevent the introduction into and the spread within the Union of *Pseudomonas syringae* pv. *actinidiae* Takikawa, Serizawa, Ichikawa, Tsuyumu & Goto.

**37.** Commission Implementing Regulation (EU) 2020/1191 establishing measures to prevent the introduction into and the spread within the Union of Tomato brown rugose fruit virus (ToBRFV).

**38.** Commission Implementing Regulation (EU) 2020/1164 providing for a temporary derogation from certain provisions of Implementing Regulation (EU) 2019/2072 in respect of measures to prevent the introduction into and the spread within the Union of the pest *Agrilus planipennis* Fairmaire from Canada and the United States.

**39.** Commission Implementing Regulation (EU) 2020/1199 of 13 August 2020 amending Annex VI to Implementing Regulation (EU) 2019/2072 to temporarily prohibit the introduction into the Union of certain fruits originating in Argentina to prevent the introduction into and the spread within the Union of *Phyllosticta citricarpa* (McAlpine) Van der Aa.

**40.** Commission Implementing Regulation (EU) 2020/1201 of 14 August 2020 as regards measures to prevent the introduction into and the spread within the Union of *Xylella fastidiosa* (Wells et al.).



## EXPLANATORY NOTE

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

These Regulations are made in exercise of the powers conferred by the European Union (Withdrawal) Act 2018 (c. 16) in order to address failures of retained EU law to operate effectively and other deficiencies (in particular the deficiencies referred to in paragraphs (a), (d) and (g) of section 8(2)) arising from the withdrawal of the United Kingdom from the European Union.

These Regulations make amendments to legislation in the field of plant health. Part 2 amends domestic legislation relating to plant health. Part 3 amends Regulation (EU) 2016/2031 of the European Parliament and of the Council on protective measures against pests of plants and other retained direct EU legislation relating to plant health. Part 4 contains transitional provisions and savings, and revocations.

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

## EXPLANATORY MEMORANDUM TO

### THE PLANT HEALTH (AMENDMENT ETC.) (EU EXIT) REGULATIONS 2020

2020 No. [XXXX]

#### 1. Introduction

- 1.1 This explanatory memorandum has been prepared by Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.

#### 2. Purpose of the instrument

- 2.1 The purpose of this instrument is to protect biosecurity and support trade by ensuring that effective phytosanitary controls continue to operate within GB and between GB and the EU at the end of the Transition Period on 31 December 2020.
- 2.2 Regulation (EU) 2016/2031 on protective measures against pests of plants and Regulation (EU) 2017/625) on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products (“the EU Regulations”) and associated implementing legislation will be made operable for GB. The result of the European Union (Withdrawal) Act 2018 (“the Withdrawal Act”) is that the UK leaves the EU single market. The operability amendments contained in this instrument create a ‘single market’ covering GB and the Crown Dependencies. The EU will become a third country and, as a result, be subject to third country import controls. Plant health controls on material imported from third countries will continue to be applied and will focus on risks to GB, rather than risks to the EU. Internal controls will also continue to apply to movement of goods within the GB internal market.

#### *Explanations*

##### *What did any relevant EU law do before exit day?*

- 2.3 The EU Regulations form part of the EU Smarter Rules for Safer Food package of regulations. This package was designed to modernise, simplify and improve existing health and safety standards for the agri-food chain, taking a risk-based approach to animal, plant and public health protection and introducing more efficient pest and disease control measures.
- 2.4 The EU Regulations, and the implementing legislation made under these Regulations, such as Commission Implementing Regulation (EU) 2019/2072, are directly applicable (i.e. national implementing legislation was not needed for them to take effect in UK law). The Official Controls (Plant Health and Genetically Modified Organisms) (England) Regulations 2019 (S.I. 2019/1517) (“the 2019 Regulations”) contain supplementary domestic provisions to enable the competent authorities in England to carry out their obligations under the EU Regulations, enforce these EU Regulations and implement derogations to various provisions in the EU Regulations that are available to Member States. Separate but parallel domestic legislation applies in Wales, Northern Ireland, and Scotland.

Why is it being changed?

- 2.5 The Plant make operability changes and other consequential amendments to Regulation (EU) 2016/2031 on protective measures against pests of plants the (“EU Plant Health Regulation”) and the 2019 Regulations to ensure the continued functioning of plant health phytosanitary controls within GB and between GB and the EU at the end of the Transition Period.

What will it now do?

- 2.6 This instrument will ensure the continued functioning of plant health phytosanitary controls within GB and between GB and the EU at the end of the Transition Period.

**3. Matters of special interest to Parliament**

*Matters of special interest to the Joint Committee on Statutory Instruments*

- 3.1 None.

*Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)*

- 3.2 The territorial application of this instrument includes Scotland.

**4. Extent and Territorial Application**

- 4.1 The territorial extent of this instrument is England, Wales, Scotland and Northern Ireland.
- 4.2 The territorial application of this instrument is England, Wales and Scotland.

**5. European Convention on Human Rights**

- 5.1 The Parliamentary Under Secretary of State for Rural Affairs and Biosecurity, Lord Gardiner of Kimble, has made the following statement regarding Human Rights:
- “In my view the provisions of the Plant Health (Amendment etc.) (EU Exit) Regulations 2020 are compatible with the Convention rights.”

**6. Legislative Context**

- 6.1 The Withdrawal Act converts and preserves EU law at the end of the Transition Period into domestic law (“retained EU law”). This instrument is made under powers conferred by the Withdrawal Act, in order to address failures in retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union.
- 6.2 If retained EU law was not amended, it would contain inoperable rules that would prevent the UK government and the Devolved Administrations from being able to deliver workable legislation on plant health. This instrument uses the powers in Section 8 of the Withdrawal Act to correct these deficiencies. The legislation being amended would not have the right effect as it would not reflect the change in the legislative position following the Withdrawal Act, the Protocol of Ireland / Northern Ireland (“the Protocol”) and amendments which have been made to the EU Regulations since they were made.
- 6.3 This instrument makes amendments to legislation in the field of plant health. Part 2 of the Plant amends domestic legislation relating to plant health. Part 3 amends

Regulation (EU) 2016/2031 of the European Parliament and of the Council on protective measures against pests of plants and other directly applicable EU legislation relating to plant health. Part 4 makes consequential amendments, contains transitional provisions and savings, and revokes retained direct EU legislation.

## **7. Policy background**

### *What is being done and why?*

- 7.1 All the amendments introduced by this instrument are technical operability amendments and do not include any policy changes.
- 7.2 The purpose of this instrument is to protect biosecurity and support trade by ensuring that effective phytosanitary controls continue to operate within GB and between GB and the EU at the end of the Transition Period on 31 December 2020. The current policy of risk-based plant health controls applied under EU legislation will continue. However, the regime will now focus on risks to GB, rather than risks to the EU, to ensure it is technically justified in accordance with World Trade Organisation obligations and the EU Regulations. The GB risk assessment process will follow the same internationally accepted principles and approach used in previous Pest Risk Analysis under the EU regime.
- 7.3 The revised approach for EU imports will be phased in over 6 months, from 1 January 2021 to stagger the operational implementation of controls on EU products to allow trade to continue to flow whilst businesses adapt to the application of third country import controls. This will be a temporary and risk-based transitional arrangement, with the aim of ensuring consistent and technically justified import controls which apply to all countries exporting to GB.
- 7.4 For Northern Ireland, separate legislative arrangements will be needed in order to maintain alignment with Sanitary and Phytosanitary related EU regulations and specify requirements for GB goods entering Northern Ireland.

## **8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union**

- 8.1 The Plant are being made using the power in section 8 of the European Union (Withdrawal) Act 2018, in order to address failures of retained EU law to operate effectively or other deficiencies (within the meaning of that Act) 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.

## **9. Consolidation**

- 9.1 Not applicable to this instrument.

## **10. Consultation outcome**

- 10.1 Stakeholders have not been consulted as all the amendments introduced by this instrument are technical operability amendments and not policy changes.
- 10.2 The Scottish and Welsh Devolved Administrations have been consulted about the proposed amendments and are content.

## **11. Guidance**

- 11.1 The Animal and Plant Health Agency and the Forestry Commission are the relevant delivery body and are developing an implementation plan and associated guidance for publication on GOV.UK.

## **12. Impact**

- 12.1 There is no significant impact on business, charities or voluntary bodies as a result of policy changes introduced under this instrument.
- 12.2 There is no significant impact on the public sector as a result of policy changes introduced under this instrument.
- 12.3 The result of the Withdrawal Act is that the UK leaves the EU single market. The amendments in this instrument reflect this change which results in the EU becoming a third country for plant health purposes.
- 12.4 As the EU becomes a third country at the end of the Transition Period, regulated EU commodities imported to GB will be subject to standard third country controls for plant health (provide a certificate, pre-notify imports from the EU, undergo document, identity and physical checks). These direct impacts on businesses and the public sector are a result of the terms of the Withdrawal Act and do not reflect any change in GB plant health policy, therefore an impact assessment has not been prepared for this instrument.
- 12.5 Requirement to use UK rather than EU plant passports for intra-GB movements of plant passported commodities – this will require businesses moving plant passported commodities within GB to modify the reference code that they use when issuing plant passports, replacing ‘EU’ with ‘UK’. The process for authorising businesses for plant passporting will not change and businesses who will need to use the system from 1 January 2021 are likely to already be registered. Therefore, we expect no extra impact on business from this change.

### *Additional Benefits*

- 12.6 There may be some increase in protection against the spread of plant pests and diseases. This is because the current requirement is for an EU plant passport for trade in higher risk plants and plant products between the GB and other EU countries and that requirement would now increase to a phytosanitary certificate for all imports of regulated plants and plant products, as defined by the EU Plant Health Regulation, that have been assessed to be higher risk by GB. In addition, there may be extra data available on higher risk commodities (through pre-notification), which would allow for better targeting of plants and pests from the EU which present a biosecurity risk.

## **13. Regulating small business**

- 13.1 This instrument applies to activities that are undertaken by small businesses.
- 13.2 This instrument applies equally to all businesses importing controlled plant health material, including small businesses. The risk of introducing harmful organisms is not mitigated by the size of the business.

## **14. Monitoring & review**

- 14.1 No specific monitoring arrangements are needed.

14.2 As this instrument is made under the EU Withdrawal Act 2018, no review clause is required.

**15. Contact**

15.1 Kate Somerwill-Owens at the Department for Environment, Food and Rural Affairs Telephone: 02080 5654319 or email: kate.somerwill-owens@defra.gov.uk can be contacted with any queries regarding this instrument.

15.2 Nicola Spence, Deputy Director for Plant Health, Bee Health and Seeds, at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.

15.3 Lord Gardiner of Kimble, Parliamentary Under Secretary of State at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.

# 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 under the 2018 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(3), 3(7) and 17(3) and 17(7) of Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) to make a Negative SI	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/Sifting Committees
Appropriateness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly 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	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	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	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them.  State 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	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2 In addition to the statutory obligation the Government has made a political commitment to include these statements alongside all EUWA SIs	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.
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Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9, and 23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising sections 10(1), 12 and part 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority by Statutory Instrument.	State why it is appropriate to create such a sub-delegated power.
Urgency	Paragraph 34, Schedule 7	Ministers of the Crown using the urgent procedure in paragraphs 4 or 14, Schedule 7.	Statement of the reasons for the Minister's opinion that the SI is urgent.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 13, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement explaining the good reasons for modifying the instrument made under s. 2(2) ECA, identifying the relevant law before exit day, and explaining the instrument's effect on retained EU law.



<p>Scrutiny statement where amending regulations under 2(2) ECA 1972</p>	<p>Paragraph 16, Schedule 8</p>	<p>Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA</p>	<p>Statement setting out:</p> <ul style="list-style-type: none"> <li>a) the steps which the relevant authority has taken to make the draft instrument published in accordance with paragraph 16(2), Schedule 8 available to each House of Parliament,</li> <li>b) containing information about the relevant authority's response to— (i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and (ii) any other representations made to the relevant authority about the published draft instrument, and,</li> <li>c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the instrument or draft instrument which is to be laid.</li> </ul>
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## Part 2

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

#### 1. Appropriateness statement

- 1.1 The Parliamentary Under Secretary of State for Rural Affairs and Biosecurity, Lord Gardiner of Kimble has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Plant Health (Amendment etc.) (EU Exit) Regulations 2020 do no more than is appropriate”.

- 1.2 This is the case because this instrument corrects technical deficiencies that arise from the UK’s withdrawal from the EU and ensure that the existing regimes for safeguarding UK biosecurity will continue to operate effectively after the end of the Transition Period. This is in line with government policy.

#### 2. Good reasons

- 2.1 The Parliamentary Under Secretary of State for Rural Affairs and Biosecurity, Lord Gardiner of Kimble 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”.

- 2.2 These are that there is real public concern about biosecurity and that the government should at least maintain the protections that currently exist.

#### 3. Equalities

- 3.1 The Parliamentary Under Secretary of State for Rural Affairs and Biosecurity, Lord Gardiner of Kimble has made the following statement:

“This 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.”

- 3.2 The Parliamentary Under Secretary of State for Rural Affairs and Biosecurity, Lord Gardiner of Kimble has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to this instrument, I, Lord Gardiner of Kimble 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. Explanations

- 4.1 The explanations statement has been made in section 2 of the main body of this Explanatory Memorandum.



Ein cyf/Our ref MA/LG/3436/20

Mick Antoniw AS  
Cadeirydd Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad  
Senedd Cymru

[SeneddDCC@senedd.cymru](mailto:SeneddDCC@senedd.cymru)

22 Hydref 2020

Annwyl Mick

Rwy'n ysgrifennu atoch i'ch hysbysu fy mod wedi gosod memorandwm cydsyniad offeryn statudol ("y memorandwm") sy'n ymwneud â Rheoliadau Iechyd Planhigion (Diwygio etc) (Ymadael â'r UE) 2020 ("y Rheoliadau") a wnaed gan yr Is-Ysgrifennydd Gwladol Seneddol dros yr Amgylchedd ar 15 Hydref. Mae'r Rheoliadau'n cynnwys diwygiadau i Ddeddf Iechyd Planhigion 1967 sy'n gymwys i Gymru.

Pwrpas y Rheoliadau yw cynnal bioddiogelwch a chefnogi masnach trwy sicrhau bod mesurau effeithiol ar gyfer diogelu iechyd planhigion yn parhau o fewn Prydain Fawr a rhwng Prydain Fawr a'r UE ar ddiwedd y Cyfnod Pontio ar 31 Rhagfyr 2020.

Rwyf wedi gosod y memorandwm yn unol â'r gofyn o dan Reol Sefydlog (RhS) 30A. Yn fy marn i, mae'r Rheoliadau'n gwneud darpariaeth berthnasol gan eu bod yn diwygio deddfwriaeth sylfaenol sy'n gymwys i Gymru ac sydd o fewn cymhwysedd deddfwriaethol Senedd Cymru.

Cofion

**Lesley Griffiths AS/MS**  
Gweinidog yr Amgylchedd, Ynni a Materion Gwledig  
Minister for Environment, Energy and Rural Affairs

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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.



Llywodraeth Cymru  
Welsh Government

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## DATGANIAD YSGRIFENEDIG GAN LYWODRAETH CYMRU

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<b>TEITL</b>	<b>Rheoliadau Iechyd Planhigion (Diwygio etc) (Ymadael â'r UE) 2020</b>
<b>DYDDIAD</b>	<b>19 Hydref 2020</b>
<b>GAN</b>	<b>Rebecca Evans AS, Y Gweinidog Cyllid a'r Trefnydd</b>

**OS a osodwyd yn Senedd y DU, sy'n diwygio is-ddeddfwriaeth mewn maes datganoledig**

### **Rheoliadau Iechyd Planhigion (Diwygio etc) (Ymadael â'r UE) 2020**

Pwrpas y Rheoliadau yw cynnal bioddiogelwch a chefnogi masnach trwy sicrhau bod mesurau effeithiol ar gyfer diogelu iechyd planhigion yn parhau o fewn Prydain Fawr a rhwng Prydain Fawr a'r UE ar ddiwedd y Cyfnod Pontio ar 31 Rhagfyr 2020.

### Offerynnau Ewropeaidd Sy'n Uniongyrchol Gymwys a ddiwygir gan Reoliadau 2020

- Rheoliad (EU) 2016/2031;
- Penderfyniad y Comisiwn 2002/757/EC;
- Penderfyniad y Comisiwn 2005/51/EC;
- Rheoliad Gweithredu'r Comisiwn (UE) 2017/2313;
- Rheoliad Gweithredu'r Comisiwn (UE) 2018/2018;
- Rheoliad Dirprwyedig y Comisiwn (UE) 2019/827;
- Rheoliad Dirprwyedig y Comisiwn (UE) 2019/829;
- Rheoliad Gweithredu'r Comisiwn (UE) 2019/2148;
- Rheoliad Gweithredu'r Comisiwn (EU) 2020/918; a Rheoliad Gweithredu'r Comisiwn (EU) 2020/1002.

Mae Rheoliadau 2020 yn dirymu Deddfwriaeth yr UE a restrir yn yr Atodiad i'r hysbysiad hwn.

## Deddfwriaeth ddomestig sylfaenol a ddiwygir gan Reoliadau 2020

Deddf Iechyd Planhigion 1967.

## Is-ddeddfwriaeth ddomestig a ddiwygir gan Reoliadau 2020 (nad oes yr un ohonynt yn gymwys i Gymru)

- Rheoliadau Iechyd Planhigion (Coedwigaeth) (Ffioedd) (Lloegr a'r Alban) 2015;
- Rheoliadau Iechyd Planhigion etc (Ffioedd) (Lloegr) 2018; a
- Rheoliadau Rheolaethau Swyddogol (Iechyd Planhigion ac Organebau a Addaswyd yn Enetig) (Lloegr) 2019.

## Is-ddeddfwriaeth ddomestig a ddirymir gan Reoliadau 2020

- Rheoliad Iechyd Planhigion (Diwygio) (Lloegr) (Ymadael â'r UE) 2019; a
- Rheoliadau Iechyd Planhigion (Ymadael â'r UE) 2019.

## **Unrhyw effaith y gall yr offeryn statudol ei chael ar gymhwysedd deddfwriaethol y Senedd a/neu gymhwysedd gweithredol Gweinidogion Cymru**

Mae Rheoliadau 2020 yn cynnwys darpariaethau sy'n galluogi Gweinidogion Cymru i arfer swyddogaethau mewn perthynas â Chymru heb lyffethair ac i Weinidogion Cymru roi cydsyniad i'r Ysgrifennydd Gwladol arfer swyddogaethau mewn perthynas â Chymru.

Mae gan y swyddogaethau cydamserol a geir yn Rheoliadau 2020 y potensial i gynnwys y gofynion cydsynio yn Atodlen 7B i Ddeddf Llywodraeth Cymru 2006 ac felly maent yn gyfyngiad posibl ar gymhwysedd Senedd Cymru yn y dyfodol. Fodd bynnag, rydym yn cynnal trafodaethau gydag Ysgrifennydd Gwladol Cymru mewn perthynas â Gorchymyn a.109 o dan y Ddeddf i ddiwygio Atodlen 7B i negyddu'r cyfyngiad posibl ar gymhwysedd Senedd Cymru yn y dyfodol.

## **Diben y gwelliannau**

Mae Rheoliadau 2020 yn gwneud diwygiadau o ran gallu gweithredu a diwygiadau canlyniadol eraill i ddeddfwriaeth ddomestig, i Reoliad (UE) 2016/2031 ar y mesurau amddiffyn rhag plâu planhigion a deddfwriaeth drydyddol gysylltiedig i sicrhau bod mesurau rheoli iechyd planhigion yn parhau i weithredu ym Mhrydain Fawr a rhwng Prydain Fawr a'r UE ar ddiwedd y Cyfnod Pontio. Maent yn creu 'marchnad sengl' sy'n cwmpasu Prydain Fawr a Thiriogaethau Dibynnol y Goron. Bydd yr UE yn dod yn drydedd wlad ac, o ganlyniad, bydd yn ddarostyngedig i reolaethau mewnforio trydydd gwledydd.

Mae'r diwygiadau a gyflwynwyd gan Reoliadau 2020 yn ddiwygiadau gweithredu technegol ac nid ydynt yn cynnwys unrhyw newidiadau polisi. Bydd y polisi cyfredol o fesurau rheoli iechyd planhigion sy'n seiliedig ar risg a gymhwysir o dan ddeddfwriaeth yr UE yn parhau. Bydd y drefn fodd bynnag yn canolbwyntio ar risgiau i Brydain Fawr yn hytrach na risgiau i'r UE er mwyn sicrhau bod cyfiawnhad technegol iddi yn unol â rhwymedigaethau Sefydliad Masnach y Byd a Rheoliadau'r UE. Bydd yr asesiad risg Prydeinig yn dilyn yr un dulliau a'r

egwyddorion a gydnabyddir yn rhyngwladol a ddefnyddiwyd gan yr UE i ddadansoddi Risg Plâu.

Pe na bai cyfraith yr UE yn cael ei diwygio, byddai'n cynnwys rheolau anweithredadwy a fyddai'n rhwystro Llywodraeth y DU, Llywodraeth yr Alban a Llywodraeth Cymru rhag gallu cyflawni deddfwriaeth ymarferol ar iechyd planhigion. Ni fyddai'r ddeddfwriaeth sy'n cael ei diwygio yn cael yr effaith a ddymunir heb ei diwygio gan na fyddai'n adlewyrchu'r newid yn y sefyllfa ddeddfwriaethol yn dilyn Deddf yr Undeb Ewropeaidd (Ymadael) 2018, Protocol Gogledd Iwerddon a diwygiadau sydd wedi'u gwneud i ddeddfwriaeth yr UE ers iddynt gael eu gwneud.

Mae Rheoliadau 2020 a'r Memorandwm Esboniadol cysylltiedig, sy'n nodi tarddiad a phwrpas y Rheoliadau, ar gael yma:

<https://www.legislation.gov.uk/ukdsi/2020/9780348213775/introduction>

## **Pam y cafodd cydsyniad ei roi**

Mae cydsyniad wedi'i roi i Lywodraeth y DU i wneud y cywiriadau hyn mewn cysylltiad ag ac ar ran Cymru er sicrhau effeithlonrwydd a hwylustod. Mae'r diwygiadau wedi'u hystyried yn llawn, ac nid ydynt yn newid polisi. Bydd y diwygiadau hyn yn sicrhau bod y llyfr statud yn parhau'n ymarferol ar ôl i'r DU ymadael â'r UE.

## **Atodiad**

Mae Rheoliadau 2020 yn dirymu deddfwriaeth ganlynol yr UE

### **Rheoliadau'r UE**

1. Rheoliad y Comisiwn (EC) Rhif 1040/2002 sy'n pennu rheolau manwl ar gyfer gweithredu'r darpariaethau sy'n ymwneud â dyrannu cyfraniad ariannol gan y Gymuned ar gyfer rheoli iechyd planhigion a diddymu Rheoliad (EC) Rhif 2051/97.

2. Rheoliad y Comisiwn (CE) Rhif 1756/2004 sy'n pennu'r amodau manwl ar gyfer y dystiolaeth sy'n ofynnol a'r meini prawf ar gyfer math a lefel y gostyngiad mewn archwiliadau iechyd planhigion o blanhigion, cynnyrch planhigion neu wrthrychau eraill a restrir yn Rhan B o Atodiad V i Gyfarwyddeb y Cyngor 2000/29/EC.

### **Penderfyniadau'r UE**

3. Penderfyniad 91/261/EEC y Comisiwn sy'n cydnabod bod Awstralia yn rhydd o *Erwinia amylovora* (Burr.) Winkl. *et al.*

4. Penderfyniad 93/360/EEC y Comisiwn sy'n awdurdodi'r Aelod-wladwriaethau i ddarparu ar gyfer rhanddirymiadau o ddarpariaethau penodol o Gyfarwyddeb y Cyngor 77/93/EEC mewn perthynas â phren *Thuja L.*, sy'n tarddu yng Nghanada.

5. Penderfyniad 93/365/EEC y Comisiwn sy'n awdurdodi'r Aelod-wladwriaethau i ddarparu ar gyfer rhanddirymiadau o ddarpariaethau penodol Cyfarwyddeb 77/93/EEC y Cyngor

mewn perthynas â phren conwydd sy'n cael ei drin gan wres, sy'n tarddu o Ganada, a sefydlu manylion y system ddangosyddion i'w cymhwyso i'r pren sy'n cael ei drin â gwres.

**6.** Penderfyniad 93/422/EEC y Comisiwn sy'n awdurdodi'r Aelod-wladwriaethau i ddarparu ar gyfer rhanddirymiadau o ddarpariaethau penodol Cyfarwyddeb 77/93/EEC y Cyngor mewn perthynas â phren conwydd a sychwyd mewn olyn, sy'n tarddu o Ganada, a sefydlu manylion y system ddangosyddion i'w cymhwyso i'r pren a sychir mewn olyn.

**7.** Penderfyniad 93/423/EEC y Comisiwn sy'n awdurdodi'r Aelod-wladwriaethau i ddarparu ar gyfer rhanddirymiadau o ddarpariaethau penodol Cyfarwyddeb 77/93/EEC y Cyngor mewn perthynas â phren conwydd a sychir mewn olyn, sy'n tarddu o Unol Daleithiau America, a sefydlu manylion y system ddangosyddion i'w cymhwyso i'r pren a sychir mewn olyn.

**8.** Penderfyniad 98/109/EC y Comisiwn sy'n awdurdodi Aelod-wladwriaethau dros dro i gymryd camau brys yn erbyn lledaenu *Thrips palmi* Karny o ran Gwlad Thai.

**9.** Penderfyniad y Comisiwn 2002/499/EC sy'n awdurdodi rhanddirymiadau o ddarpariaethau penodol o Gyfarwyddeb y Cyngor 2000/29/EC mewn perthynas â phlanhigion naturiol neu gorblanhigion artiffisial o *Chamaecyparis* Spach, *Juniperus* L. a *Pinus* L., sy'n tarddu o Weriniaeth Corea.

**10.** Penderfyniad y Comisiwn 2002/887/EC sy'n awdurdodi rhanddirymiadau o ddarpariaethau penodol o Gyfarwyddeb y Cyngor 2000/29/EC mewn perthynas â phlanhigion naturiol neu gorblanhigion artiffisial o *Chamaecyparis* Spach, *Juniperus* L. a *Pinus* L., sy'n tarddu yn Japan.

**11.** Penderfyniad y Comisiwn 2003/248/EC sy'n awdurdodi Aelod-wladwriaethau i ddarparu ar gyfer rhanddirymiadau dros dro o ddarpariaethau penodol o Gyfarwyddeb y Cyngor 2000/29/EC mewn perthynas â phlanhigion mefus (*Fragaria* L. ), a fwriedir ar gyfer plannu, ac eithrio hadau, sy'n tarddu o'r Ariannin.

**12.** Penderfyniad y Comisiwn 2003/249/EC sy'n awdurdodi Aelod-wladwriaethau i ddarparu ar gyfer rhanddirymiadau dros dro o ddarpariaethau penodol o Gyfarwyddeb y Cyngor 2000/29/EC mewn perthynas â phlanhigion mefus (*Fragaria* L. ), a fwriedir ar gyfer plannu, ac eithrio hadau, sy'n tarddu o Chile.

**13.** Penderfyniad y Comisiwn 2004/200/EC ar fesurau i atal cyflwyno a lledaenu yn Gymuned firws mosaig Pepino.

**14.** Penderfyniad y Comisiwn 2005/775/EC sy'n diwygio Penderfyniad 2002/499/EC sy'n awdurdodi rhanddirymiadau o ddarpariaethau penodol o Gyfarwyddeb y Cyngor 2000/29/EC mewn perthynas â phlanhigion naturiol neu gorblanhigion artiffisial o *Chamaecyparis* Spach, *Juniperus* L. a *Pinus* L., sy'n tarddu o Weriniaeth Corea.

**15.** Penderfyniad y Comisiwn 2005/359/EC sy'n darparu ar gyfer rhanddirymiad o ddarpariaethau penodol o Gyfarwyddeb y Cyngor 2000/29/EC o ran boncyffion derw (*Quercus* L.) â'u rhisgl, sy'n tarddu o Unol Daleithiau America.

**16.** Penderfyniad y Comisiwn 2006/750/EC yn diwygio Penderfyniad 2005/359/EC o ran porthladdoedd dadlwytho boncyffion derw (*Quercus* L.) â'u rhisgl, sy'n tarddu o Unol Daleithiau America.

**17.** Penderfyniad y Comisiwn 2007/212/EC sy'n diwygio Penderfyniad 2003/248/EC o ran ymestyn hyd rhanddirymiadau dros dro o ddarpariaethau penodol o Gyfarwyddeb y Cyngor 2000/29/EC mewn perthynas â phlanhigion mefus (*Fragaria* L. ), a fwriedir ar gyfer plannu, ac eithrio hadau, sy'n tarddu o'r Ariannin.

**18.** Penderfyniad y Comisiwn 2007/221/EC sy'n diwygio Penderfyniad 2003/249/EC o ran ymestyn hyd rhanddirymiadau dros dro o ddarpariaethau penodol o Gyfarwyddeb y Cyngor 2000/29/EC mewn perthynas â phlanhigion mefus (*Fragaria* L. ), a fwriedir ar gyfer plannu, ac eithrio hadau, sy'n tarddu o Chile.

**19.** Penderfyniad y Comisiwn 2007/432/EC sy'n ymestyn cyfnod dilysrwydd Penderfyniad 2002/499/EC mewn perthynas â phlanhigion naturiol neu gorblanhigion artiffisial o *Chamaecyparis* Spach, *Juniperus* L. a *Pinus* L., sy'n tarddu o Weriniaeth Corea.

**20.** Penderfyniad y Comisiwn 2010/646/EU sy'n ymestyn cyfnod dilysrwydd Penderfyniad 2002/499/EC mewn perthynas â phlanhigion naturiol neu gorblanhigion artiffisial o *Chamaecyparis* Spach, *Juniperus* L. a *Pinus* L., sy'n tarddu o Weriniaeth Corea.

**21.** Penderfyniad y Comisiwn 2011/74/EU sy'n diwygio Penderfyniad 2003/248/EC o ran ymestyn hyd rhanddirymiadau dros dro o ddarpariaethau penodol o Gyfarwyddeb y Cyngor 2000/29/EC mewn perthynas â phlanhigion mefus (*Fragaria* L. ), a fwriedir ar gyfer plannu, ac eithrio hadau, sy'n tarddu o'r Ariannin.

**22.** Penderfyniad y Comisiwn 2010/723/EU sy'n ymestyn cyfnod dilysrwydd Penderfyniad 2005/359/EC sy'n darparu ar gyfer rhanddirymiad o ddarpariaethau penodol o Gyfarwyddeb y Cyngor 2000/29/EC o ran boncyffion derw (*Quercus* L.) â'u rhisgl, sy'n tarddu o Unol Daleithiau America.

**23.** Penderfyniad y Comisiwn 2011/75/EU yn diwygio Penderfyniad 2003/249/EC o ran ymestyn hyd rhanddirymiadau dros dro o ddarpariaethau penodol o Gyfarwyddeb y Cyngor 2000/29/EC mewn perthynas â phlanhigion mefus (*Fragaria* L. ), a fwriedir ar gyfer plannu, ac eithrio hadau, sy'n tarddu o Chile.

**24.** Penderfyniad Gweithredu'r Comisiwn 2011/787/EU yn rhoi awdurdod dros dro i Aelod-wladwriaethau gymryd camau brys yn erbyn lledaenu *Ralstonia solanacearum* (Smith) Yabuuchi et al. o ran yr Aifft.

**25.** Penderfyniad Gweithredu'r Comisiwn 2012/138/EU o ran mesurau brys i atal cyflwyno a lledaenu *Anoplophora chinensis* o fewn yr Undeb.

**26.** Penderfyniad Gweithredu'r Comisiwn 2012/270/EU o ran mesurau brys i atal cyflwyno a lledaenu *Epitrix cucumeris* (Harris), *Epitrix papa* sp.n., *Epitrix subcrinita* (Lec.) and *Epitrix tuberis* (Gentner) o fewn yr Undeb.

**27.** Penderfyniad Gweithredu'r Comisiwn 2012/535/EU ar fesurau brys i atal y lledaenu *Bursaphelenchus xylophilus* (Steiner et Buhner) Nickle et al. (nematod pren pinwydd) o fewn yr Undeb.



**28.** Penderfyniad Gweithredu'r Comisiwn 2012/697/EU o ran mesurau i atal cyflwyno a lledaenu'r genws *Pomacea* (Perry) o fewn yr Undeb.

**29.** Penderfyniad Gweithredu'r Comisiwn 2013/780/EU sy'n darparu ar gyfer rhanddirymiad o Erthygl 13(1)(ii) o Gyfarwyddeb y Cyngor 2000/29/EC mewn perthynas â phren di-risgl wedi'i lifio'n o *Quercus* L., *Platanus* L. ac *Acer saccharum* Marsh. sy'n tarddu o Unol Daleithiau America.

**30.** Penderfyniad Gweithredu'r Comisiwn 2014/356/EU sy'n diwygio Penderfyniad Gweithredu 2012/138/EU o ran amodau cyflwyno a symud planhigion penodedig o fewn yr Undeb er mwyn atal cyflwyno a lledaenu *Anoplophora chinensis* (Forster).

**31.** Penderfyniad Gweithredu'r Comisiwn 2014/679/EU yn diwygio Penderfyniad Gweithredu 2012/270/EU o ran ei gyfnod cymhwyso ac o ran symud i gyfleusterau pacio gloron tatws sy'n tarddu o ardaloedd sydd wedi'u marcio er mwyn atal lledaenu *Epitrix cucumeris* (Harris), *Epitrix similaris* (Gentner), *Epitrix subcrinita* (Lec.) ac *Epitrix tuberis* (Gentner) o fewn yr Undeb

**32.** Penderfyniad Gweithredu'r Comisiwn (UE) 2015/179 sy'n awdurdodi Aelod-wladwriaethau i ddarparu ar gyfer rhanddirymiad o ddarpariaethau penodol o Gyfarwyddeb y Cyngor 2000/29/EC mewn perthynas â deunydd pacio pren o bren conwydd (Coniferales) ar ffurf blychau arfau sy'n tarddu o Unol Daleithiau America o dan reolaeth Adran Amddiffyn yr Unol Daleithiau.

**33.** Penderfyniad Gweithredu'r Comisiwn (UE) 2015/226 sy'n diwygio Penderfyniad Gweithredu 2012/535/EU o ran y diffiniad o bren sy'n dueddol o ddiodef a mesurau i'w cymryd mewn ardaloedd â'u ffiniau wedi'u marcio.

**34.** Penderfyniad Gweithredu'r Comisiwn (UE) 2015/893 o ran mesurau i atal cyflwyno a lledaenu *Anoplophora glabripennis* (Motschulksy) o fewn yr Undeb.

**35.** Penderfyniad Gweithredu'r Comisiwn (UE) 2015/1199 sy'n cydnabod Bosnia a Herzegovina yn wlad sy'n rhydd o *Clavibacter michiganensis* ssp. *sepedonicus* (Spieckermann a Kotthoff) Davis et al.

**36.** Penderfyniad Gweithredu'r Comisiwn (UE) 2016/1359 sy'n diwygio Penderfyniad Gweithredu 2012/270/EU o ran mesurau brys i atal cyflwyno a lledaenu *Epitrix cucumeris* (Harris), *Epitrix similaris* (Gentner), *Epitrix subcrinita* (Lec.) and *Epitrix tuberis* (Gentner) o fewn yr Undeb.

**37.** Penderfyniad Gweithredu'r Comisiwn (UE) 2017/427 sy'n diwygio Penderfyniad Gweithredu 2012/535/EU o ran mesurau i atal lledaenu *Bursaphelenchus xylophilus* (Steiner et Buhner) Nickle et al. (nematod pren pinwydd) o fewn yr Undeb.

**38.** Penderfyniad Gweithredu'r Comisiwn (UE) 2017/2187 sy'n ymestyn cyfnod dilysrwydd Penderfyniad Gweithredu (UE) 2015/179 sy'n awdurdodi Aelod-wladwriaethau i ddarparu ar gyfer rhanddirymiad o ddarpariaethau penodol Cyfarwyddeb y Cyngor 2000/29/EC mewn perthynas â deunydd pacio o bren conwydd (Coniferales) ar ffurf blychau arfau sy'n tarddu o Unol Daleithiau America o dan reolaeth Adran Amddiffyn yr Unol Daleithiau.

**39.** Penderfyniad Gweithredu'r Comisiwn (UE) 2018/5 sy'n diwygio Penderfyniad Gweithredu 2012/270/EU o ran symptomau *Epitrix cucumeris* (Harris), *Epitrix papa* sp. n., *Epitrix subcrinita* (Lec.) ac *Epitrix tuberis* (Gentner) a sefydlu ardaloedd â ffiniau perthnasol wedi'u marcio.

**40.** Penderfyniad Gweithredu'r Comisiwn (UE) 2018/618 sy'n diwygio Penderfyniad Gweithredu 2012/535/EU o ran mesurau i atal lledaenu *Bursaphelenchus xylophilus* (Steiner et Buhner) Nickle et al. (nematode pren pinwydd) o fewn yr Undeb.

**41.** Penderfyniad Gweithredu'r Comisiwn (UE) 2016/2004 sy'n diwygio Penderfyniad Gweithredu 2013/780/EU sy'n darparu ar gyfer rhanddirymiad o Erthygl 13(1)(ii) o Gyfarwyddeb y Cyngor 2000/29/EC mewn perthynas â phren di-risgl wedi'i lifio'n o *Quercus* L., *Platanus* L. ac *Acer saccharum* Marsh. sy'n tarddu o Unol Daleithiau America.

**42.** Penderfyniad Gweithredu'r Comisiwn 2018/638 sy'n sefydlu mesurau brys i atal cyflwyno a lledaenu yr *organeb* niweidiol *Spodoptera frugiperda* (Smith) o fewn yr Undeb.

**43.** Penderfyniad Gweithredu'r Comisiwn (UE) 2018/1503 sy'n sefydlu mesurau i atal cyflwyno a lledaenu *Aromia bungii* (Faldermann) o fewn yr Undeb.

**44.** Penderfyniad Gweithredu'r Comisiwn (UE) 2019/1598 sy'n diwygio Penderfyniad Gweithredu (UE) 2018/638 gan sefydlu mesurau brys i atal cyflwyno a lledaenu'r *organeb* niweidiol *Spodoptera frugiperda* (Smith) o fewn yr Undeb

**45.** Penderfyniad Gweithredu'r Comisiwn (UE) 2019/1739 sy'n sefydlu mesurau brys i atal cyflwyno a lledaenu feirws Rosette Rhosod o fewn yr Undeb.

**46.** Penderfyniad Gweithredu'r Comisiwn (UE) 2019/2032 sy'n sefydlu mesurau i atal cyflwyno a lledaenu *Fusarium circinatum* Nirenberg & O'Donnell (*Gibberella circinata* gynt) o fewn yr Undeb a diddymu Penderfyniad 2007/433/EC.

**47.** Rheoliad Gweithredu'r Comisiwn (EU) 2018/2019 sy'n sefydlu rhestr dros dro o blanhigion, cynhyrchion planhigion neu wrthrychau eraill risg uchel, o fewn ystyr Erthygl 42 o Reoliad (UE) 2016/2031 a rhestr o blanhigion nad oes angen tystysgrifau ffytoiechydol arnynt i'w cyflwyno i'r Undeb, o fewn ystyr Erthygl 73 o'r Rheoliad hwnnw.

**48.** Rheoliad Gweithredu'r Comisiwn (UE) 2020/885 o ran mesurau i atal cyflwyno a lledaenu *Pseudomonas syringae* pv. *actinidiae* Takikawa, Serizawa, Ichikawa, Tsuyumu & Goto o fewn yr Undeb.

**49.** Rheoliad Gweithredu'r Comisiwn (UE) 2020/1191 sy'n sefydlu mesurau i atal cyflwyno a lledaenu feirws Tomatos ffrwythau rwgos brown (ToBRFV). o fewn yr Undeb.

**50.** Rheoliad Gweithredu'r Comisiwn (EU) 2020/1164 sy'n darparu ar gyfer rhanddirymiad dros dro o ddarpariaethau penodol o Reoliad Gweithredu (UE) 2019/2072 mewn perthynas â mesurau i atal cyflwyno a lledaenu'r *pla* *Agilus planipennis* Fairmaire o Ganada a'r Unol Daleithiau o fewn yr Undeb.

**51.** Rheoliad Gweithredu'r Comisiwn (EU) 2020/1199 ar 13 Awst 2020 sy'n diwygio Atodiad VI Rheoliad Gweithredu (UE) 2019/2072 sy'n rhoi gwaharddiad dros dro ar gyflwyno ffrwythau penodol sy'n tarddu o'r Ariannin i'r Undeb er mwyn atal cyflwyno a lledaenu *Phyllosticta citricarpa* (Matsushima) Van der Meer a o fewn yr Undeb.

Rheoliad Gweithredu'r Comisiwn (UE) 2020/1201 ar 14 Awst 2020 o ran mesurau i atal cyflwyno a lledaenu *Xylella fastidiosa* (Wells et

**GWEINIDOGION Y DU SY'N GWEITHREDU MEWN MEYSYDD  
DATGANOLEDIG**

**187- Rheoliadau lechyd Planhigion (Diwygio etc) (Ymadael â'r UE) 2020**

*Dyddiad gosod yn Senedd y DU: 15 Hydref 2020*

**Sifftio**

Yn destun sifftio yn Senedd y DU?	Nac ydy
Gweithdrefn:	Cadarnhaol drafft
Dyddiad trafod gan Bwyllgor Offerynnau Statudol Ewropeaidd Tŷ'r Cyffredin	Amh
Dyddiad trafod gan Bwyllgor Craffu ar Is-ddeddfwriaeth Tŷ'r Arglwyddi	Amh
Dyddiad y daw'r cyfnod sifftio i ben yn Senedd y DU	Amh
Datganiad ysgrifenedig o dan Reol Sefydlog 30C:	Papur 69
Memorandwm Cydsyniad Offeryn Statudol o dan Reol Sefydlog 30A (oherwydd eu bod yn diwygio deddfwriaeth sylfaenol)	SICM(5)35

**Gweithdrefn graffu**

Canlyniad y broses sifftio	Amh
Gweithdrefn	Cadarnhaol drafft
Dyddiad trafod gan y Cydbwyllgor ar Offerynnau Statudol	Anhysbys
Dyddiad trafod gan Bwyllgor Offerynnau Statudol Tŷ'r Cyffredin	Anhysbys
Dyddiad trafod gan Bwyllgor Craffu ar Is-ddeddfwriaeth Tŷ'r Arglwyddi	Anhysbys

**Cefndir**

Bwriedir i'r Rheoliadau hyn gael eu gwneud gan Lywodraeth y DU o dan adran 8 o Ddeddf yr Undeb Ewropeaidd (Ymadael) 2018.

**Crynodeb**

Diben y Rheoliadau 2020 hyn yw amddiffyn bioddiogelwch a chefnogi masnach drwy sicrhau bod rheolaethau ffytoiechydol effeithiol yn parhau i weithredu o fewn Prydain Fawr a rhwng Prydain Fawr a'r UE ar ddiwedd y Cyfnod Pontio ar 31 Rhagfyr 2020.

Mae'r Rheoliadau hyn hefyd yn adlewyrchu Protocol Iwerddon - Gogledd Iwerddon.

### **Datganiad gan Lywodraeth Cymru**

Mae'r Cynghorwyr Cyfreithiol yn cytuno â'r datganiad a osodwyd gan Lywodraeth Cymru dyddiedig 19 Hydref 2020 ynghylch effaith y Rheoliadau hyn.

Rydym yn nodi bod y Rheoliadau yn creu swyddogaethau y gall Gweinidogion Cymru a Gweinidogion y DU eu harfer ar yr un pryd. Os yw'r Senedd yn dymuno dileu elfen Gweinidog y DU o swyddogaeth gydredol, yna byddai'n rhaid i Lywodraeth y DU gydsynio i'w dileu. I'r graddau hynny, mae'r Rheoliadau'n effeithio ar gymhwysedd deddfwriaethol y Senedd.

Fodd bynnag, nodwn hefyd fod Llywodraeth Cymru yn cynnal trafodaethau gyda Llywodraeth y DU ynghylch gorchymyn adran 109 (h.y. Gorchymyn yn y Cyngor a wnaed o dan adran 109 o Ddeddf Llywodraeth Cymru 2006). Byddai gorchymyn o'r fath yn negyddu'r effaith ar gymhwysedd deddfwriaethol y Senedd drwy ddileu'r angen am gydsyniad Llywodraeth y DU mewn perthynas â swyddogaethau cydamserol.

### **Cytundeb Rhynglywodraethol ar Fil yr Undeb Ewropeaidd (Ymadael)**

Mae'r crynodeb uchod a chynnwys y Memorandwm Esboniadol i'r Rheoliadau hyn yn cadarnhau eu heffaith ac i ba raddau y byddai'r Rheoliadau hyn yn deddfu polisi newydd mewn meysydd datganoledig.

Nid yw'r Cynghorwyr Cyfreithiol o'r farn bod unrhyw faterion arwyddocaol yn codi o dan baragraff 8 o'r Memorandwm ar Fil yr Undeb Ewropeaidd (Ymadael) a Sefydlu Fframweithiau Cyffredin mewn perthynas â'r Rheoliadau hyn.

Nodwn y bydd y polisi rheolaethau iechyd planhigion sy'n seiliedig ar risg sy'n berthnasol o dan gyfraith yr UE yn parhau, ond y bydd gweithredu'r polisi hwnnw ym Mhrydain Fawr (yn hytrach nag o fewn yr Undeb Ewropeaidd) yn arwain at ganolbwyntio ar risgiau ym Mhrydain Fawr (yn hytrach na risgiau yn yr Undeb Ewropeaidd).

### **Cynnig cydsyniad o dan Reol Sefydlog 30A.10**

Gosododd Llywodraeth Cymru Femorandwm Cydsyniad Offeryn Statudol gerbron y Senedd ar 22 Hydref 2020, ar y sail mai un o'r diwygiadau a wneir gan y Rheoliadau yw diwygiad i deddfwriaeth sylfaenol o fewn cymhwysedd deddfwriaethol y Senedd (yn yr achos hwn, adrannau 2(1) a 3(1) o Ddeddf Iechyd Planhigion 1967).

Mewn [llythyr](#) at y Pwyllgor, dyddiedig 22 Hydref 2020, dywedodd Gweinidog yr Amgylchedd, Ynni a Materion Gwledig fod Memorandwm Cydsyniad Offeryn Statudol wedi'i osod, ond ni soniodd ynghylch a fyddai Llywodraeth Cymru yn cyflwyno cynnig i drafod y Memorandwm.

# Eitem 10.6

## MEMORANDWM OFFERYN CYDSYNIAD STATUDOL

### Rheoliadau Gwastraff a Thrwyddedu Amgylcheddol etc. (Swyddogaethau Deddfwriaethol a Diwygio etc.) (Ymadael â'r UE) 2020

1. Gosodir y Memorandwm Offeryn Cydsyniad Statudol hwn o dan Reol Sefydlog 30A.2. Mae Rheol Sefydlog 30A yn rhagnodi bod yn rhaid gosod Memorandwm Cydsyniad Offeryn Statudol ac y caniateir cyflwyno Cynnig Cydsyniad Offeryn Statudol gerbron y Senedd os bydd Offeryn Statudol y DU yn gwneud darpariaeth, mewn perthynas â Chymru, sy'n diwygio deddfwriaeth sylfaenol sydd o fewn cymhwysedd deddfwriaethol y Senedd.
2. Gosodwyd Rheoliadau Gwastraff a Thrwyddedu Amgylcheddol etc. (Swyddogaethau Deddfwriaethol a Diwygio etc.) (Ymadael â'r UE) 2020 gerbron Senedd y DU ar 20 Hydref 2020. Mae'r rheoliadau ar gael yn:

<https://statutoryinstruments.parliament.uk/timeline/pBNWzAvN/SI-2020/>

### Crynodeb o'r Offeryn Statudol a'i amcan

3. Amcan yr Offeryn Statudol (OS) yw mynd i'r afael â methiannau cyfraith yr UE a ddargedwir wrth weithredu'n effeithiol, a diffygion eraill sydd wedi codi o ganlyniad i'r DU yn ymadael â'r Undeb Ewropeaidd, fel y darperir ar eu cyfer gan Ddeddf yr Undeb Ewropeaidd (Ymadael) 2018. Mae hefyd yn cywiro cyfeiriadau at ddeddfwriaeth yr UE nad ydynt bellach yn gyfredol.
4. Mae'r OS yn gwneud diwygiadau i:
  - Deddf Diogelu'r Amgylchedd 1990.

### Darpariaeth berthnasol i'w gwneud gan yr OS

5. Roedd angen y newidiadau a wnaed gan y Rheoliadau hyn gan fod deddfwriaeth berthnasol yr UE wedi newid, a deddfwriaeth newydd yr UE wedi cael ei mabwysiadu ers i'r OSau presennol mewn perthynas ag ymadael â'r UE gael eu gwneud. Mae angen i bwerau ddychwelyd i'r DU, ac roedd angen rhai diwygiadau o ganlyniad i brotocol Gogledd Iwerddon.
6. Roedd y Rheoliadau yn sicrhau bod deddfwriaeth ddomestig bresennol a deddfwriaeth yr UE a ddargedwir yn parhau i fod yn addas i'r diben. Er enghraifft, roeddent yn diweddar cyfeiriadau at ddeddfwriaeth ddomestig mewn perthynas ag ymadael â'r UE fel eu bod yn cyfeirio at Gyfarwyddbau a Rheoliadau gwastraff ac adnoddau fel y'u diwygiwyd gan Becyn Economi Gylchol yr UE. Roeddent hefyd yn dirymu neu'n gwneud diwygiadau a oedd yn gysylltiedig ag ymadael â'r UE i ddeddfwriaeth ddiweddar yr UE, a fydd yn dod yn gyfraith uniongyrchol yr UE a ddargedwir. Bydd pwerau'r Comisiwn Ewropeaidd sy'n gysylltiedig ag Erthygl 7(1) o'r Gyfarwydddeb

Fframwaith Dŵr bellach yn cael eu harfer gan yr Ysgrifennydd Gwladol a'r gweinyddiaethau datganoledig fel sy'n briodol.

7. Roedd rhan 3 o'r Rheoliadau yn diwygio deddfwriaeth sylfaenol mewn perthynas â Deddf Diogelu'r Amgylchedd 1990; gan hepgor adran 62A. Fel diwygiad canlyniadol i drosglwyddo'r pŵer yn Erthygl 7(1) mewn perthynas â'r Rhestr Wastraffoedd, mae'r pŵer yn adran 62A o Ddeddf Diogelu'r Amgylchedd 1990 yn cael ei dirymu.
8. Mae'r pŵer hwn yn caniatáu i'r Ysgrifennydd Gwladol yn Lloegr, neu Weinidogion Cymru yng Nghymru, restru gwastraff fel gwastraff peryglus yn y Rhestr Wastraffoedd a sefydlwyd gan Benderfyniad y Comisiwn 2000/532/EC. Pan fydd y pŵer yn Erthygl 7(1) wedi cael ei drosglwyddo, nid ystyriwn y bydd angen y pŵer yn adran 62A. Y sail resymegol yw mewn amgylchiadau lle na restrir gwastraff penodol fel gwastraff peryglus, ond mae'n dangos nodweddion Atodlen 3, yr ateb amlwg yw gwneud diwygiad i Benderfyniad 2000/532 i adlewyrchu hynny, yn hytrach nag arfer y pŵer yn adran 62A.

### **Pam mae'n bwysig i'r OS wneud y darpariaeth hon**

9. Nid oes gwahaniaeth rhwng polisi cywiro Llywodraeth Cymru a Llywodraeth y DU. Felly, byddai gwneud OSau gwahanol yng Nghymru a Lloegr yn arwain at ddyblygu a gwneud y Llyfr Statud yn gymhleth yn ddiangen. Mae cydsynio i'r OS hwn yn sicrhau bod fframwaith deddfwriaethol sengl ar draws Cymru a Lloegr, sy'n hybu eglurder a hygyrchedd yn ystod y cyfnod hwn o newid. Yn yr amgylchiadau eithriadol hyn, mae Llywodraeth Cymru o'r farn ei bod yn briodol i Lywodraeth y DU ddeddfu ar ein rhan ni yn yr achos hwn.

**Lesley Griffiths AS**  
**Gweinidog yr Amgylchedd, Ynni a Materion Gwledig**

Hydref 2020

*Draft Regulations laid before Parliament under paragraph 1(1) of Schedule 7 to the European Union (Withdrawal) Act 2018, for approval by resolution of each House of Parliament.*

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DRAFT STATUTORY INSTRUMENTS

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**2020 No.**

**EXITING THE EUROPEAN UNION  
ENVIRONMENTAL PROTECTION  
WASTE**

The Waste and Environmental Permitting etc. (Legislative Functions and Amendment etc.) (EU Exit) Regulations 2020

*Made* - - - -

\*\*\*

*Coming into force in accordance with regulation 1*

The Secretary of State makes these Regulations in exercise of the powers conferred by sections 8(1) and 8C of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018(1).

In accordance with paragraph 1(1) of Schedule 7 to the European Union (Withdrawal) Act 2018, a draft of this instrument has been laid before Parliament and approved by resolution of each House of Parliament.

**PART 1**

Introduction

**Citation, commencement and extent**

1.—(1) These Regulations may be cited as the Waste and Environmental Permitting etc. (Legislative Functions and Amendment etc.) (EU Exit) Regulations 2020.

(2) These Regulations come into force on IP completion day, except as provided in paragraphs (3) and (4).

(3) Regulations 10 to 12 and 14 come into force immediately before IP completion day.

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(1) 2018 c. 16, amended by the European Union (Withdrawal Agreement) Act 2020 (c. 1).



(4) Regulations 13 and 15, and this regulation, come into force immediately before the coming into force of the Environment and Rural Affairs (Amendment) (EU Exit) Regulations 2019(2).

(5) Parts 1 and 2 extend to the United Kingdom.

(6) An amendment, repeal or revocation made by Part 3, 4 or 5 or the Schedule has the same extent as the provision being amended, repealed or revoked, subject to paragraph (7).

(7) The revocations in paragraphs 7, 9, 10 and 11 of the Schedule extend to England and Wales and Northern Ireland.

## PART 2

### Retention of legislative functions: list of waste

#### Interpretation

2.—(1) In this Part—

“the Waste Framework Directive” means [Directive 2008/98/EC](#) of the European Parliament and of the Council on waste(3), as last amended by Directive (EU) 2018/851(4), and read in accordance with paragraph (2);

“the appropriate authority” has the meaning given in paragraphs (3) and (4);

“hazardous waste” and “non-hazardous waste” have the meanings given in Article 3(2) and (2a) of the Waste Framework Directive;

“waste” has the meaning given in Article 3(1) of the Waste Framework Directive.

(2) For the purposes of this Part, the Waste Framework Directive is to be read as if, in Annex 3, in entry HP 9, in the second sentence, “in the Member States” were omitted.

(3) “The appropriate authority” means—

- (a) for regulations applying in relation to England, the Secretary of State;
- (b) for regulations applying in relation to Wales, the Welsh Ministers;
- (c) for regulations applying in relation to Scotland, the Scottish Ministers;
- (d) for regulations applying in relation to Northern Ireland, the Department of Agriculture, Environment and Rural Affairs.

(4) But the appropriate authority is the Secretary of State if consent is given by—

- (a) for regulations applying in relation to Wales, the Welsh Ministers;
- (b) for regulations applying in relation to Scotland, the Scottish Ministers;
- (c) for regulations applying in relation to Northern Ireland, the Department of Agriculture, Environment and Rural Affairs.

#### Power to prescribe list of waste

3.—(1) The appropriate authority may, by regulations, make provision for or in connection with prescribing or amending a list which categorises different types of waste (a “list of waste”).

(2) The provision which may be made by regulations under paragraph (1) includes—

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(2) [S.I. 2019/1078](#). Regulation 1 states that those Regulations come into force immediately before exit day. By virtue of Schedule 5, paragraph 1(1) of the European Union (Withdrawal Agreement) Act 2020 (c. 1) they instead come into force immediately before IP completion day.

(3) OJ No L 312, 22.11.2008, p. 3.

(4) OJ No L 150, 14.6.2018, p. 109.

- (a) provision specifying identifying codes for categories of waste; and
- (b) provision specifying categories of waste which—
  - (i) are hazardous waste;
  - (ii) are non-hazardous waste; or
  - (iii) are hazardous waste if they contain a concentration of a substance which exceeds a value specified in the regulations, and are non-hazardous waste otherwise;
- (c) provision amending Commission [Decision 2000/532/EC](#) replacing [Decision 94/3/EC](#) establishing a list of wastes pursuant to Article 1(a) of Council [Directive 75/442/EEC](#) on waste and Council [Decision 94/904/EC](#) establishing a list of hazardous waste pursuant to Article 1(4) of Council [Directive 91/689/EEC](#) on hazardous waste<sup>(5)</sup>.

(3) The inclusion of a substance or object in a list of waste is not conclusive as to whether it is waste in all circumstances, and a substance or object is only to be considered as waste for the purposes of any legislation if, in the circumstances, it meets the definition of waste which applies for those purposes.

### **Consultation**

4. Before making any regulations under regulation 3, the appropriate authority must consult such persons as the appropriate authority considers appropriate.

### **Regulations: procedure**

5.—(1) Regulations by the Secretary of State or the Welsh Ministers under regulation 3 are to be made by statutory instrument.

(2) For regulations made by the Scottish Ministers under regulation 3, see section 27 of the Interpretation and Legislative Reform (Scotland) Act 2010<sup>(6)</sup>.

(3) Any power of the Department of Agriculture, Environment and Rural Affairs to make regulations under regulation 3 is exercisable by statutory rule for the purpose of the Statutory Rules (Northern Ireland) Order 1979<sup>(7)</sup>.

(4) A statutory instrument containing regulations made by the Secretary of State under regulation 3 is subject to annulment in pursuance of a resolution of either House of Parliament.

(5) A statutory instrument containing regulations by the Welsh Ministers under regulation 3 is subject to annulment in pursuance of a resolution of the Senedd Cymru.

(6) Regulations made by the Scottish Ministers under regulation 3 are subject to the negative procedure (see section 28 of the Interpretation and Legislative Reform (Scotland) Act 2010).

(7) Regulations made by the Department of Agriculture, Environment and Rural Affairs under regulation 3 are subject to negative resolution within the meaning of section 41(6) of the Interpretation Act (Northern Ireland) 1954<sup>(8)</sup>.

### **Power to make consequential etc. provision**

6. Regulations made under regulation 3 may—
- (a) include consequential, incidental, supplementary, transitional or saving provision (including provision amending, repealing or revoking enactments);

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(5) EUDN 2000/532.

(6) 2010 asp 10.

(7) S.I. 1979/1573 (N.I. 12).

(8) 1954 c. 33 (N.I.). Section 41(6) was amended by S.I. 1999/663.

- (b) make different provision for different purposes.

## PART 3

### Amendment of primary legislation

#### **Environmental Protection Act 1990**

7. In the Environmental Protection Act 1990(9), omit section 62A.

## PART 4

### Amendment of subordinate legislation

#### **The Hazardous Waste (England and Wales) Regulations 2005**

8. In the Hazardous Waste (England and Wales) Regulations 2005(10), omit regulations 6(b), 8(1)(b), 9(1)(b) and 72(3).

#### **The Marine Licensing (Exempted Activities) Order 2011**

- 9.—(1) The Marine Licensing (Exempted Activities) Order 2011(11) is amended as follows.
- (2) In article 3, in the definition of waste, at the end insert—
- “
- and for this purpose Article 5(1) of that Directive is to be read as if the words “Member States shall take appropriate measures to ensure that” were omitted”.

#### **The Environmental Permitting (England and Wales) (Amendment) (EU Exit) Regulations 2019**

- 10.—(1) In the Schedule to the Environmental Permitting (England and Wales) (Amendment) (EU Exit) Regulations 2019(12), the inserted Schedule 1A to the Environmental Permitting (England and Wales) Regulations 2016(13) is amended as follows.

- (2) In paragraph 4—
- (a) in sub-paragraph (2)(b), for “exit day” substitute “IP completion day”;
- (b) in sub-paragraph (5), for paragraph (a) substitute—
- “(a) in paragraph 1, for “[Directive 2008/98/EC](#) of the European Parliament and of the Council” there were substituted “the Waste Framework Directive”;
- (3) In paragraph 6(3)(f) and (g), for “exit day” substitute “IP completion day”;
- (4) In paragraph 7—
- (a) in sub-paragraph (2)(d), for “exit day” substitute “IP completion day”;

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(9) 1990 c. 43. Section 62A was inserted by [S.I. 2005/894](#) for England and Wales, and amended by [S.I. 2011/988](#), [2015/1360](#) and [2019/620](#).

(10) [S.I. 2005/894](#), to which relevant amendments were made by [S.I. 2011/988](#).

(11) [S.I. 2011/409](#), to which relevant amendments were made by [S.I. 2016/738](#), [2018/942](#) and [2020/904](#).

(12) [S.I. 2019/39](#), amended by [S.I. 2019/559](#) and [2019/1078](#).

(13) [S.I. 2016/1154](#); relevant amending instruments are [S.I. 2018/575](#), [2018/721](#) and [2020/904](#). In regulation 2(1), the definition of “waste” is prospectively amended from IP completion day by [S.I. 2019/39](#).

- (b) for sub-paragraph (4) substitute—
    - “(4) Article 2 is to be read as if—
      - (a) for point (a) there were substituted—
        - “(a) the definitions of ‘municipal waste’, ‘waste producer’, ‘waste holder’, ‘waste management’, ‘separate collection’, ‘preparing for re-use’ and ‘recycling’ in the Waste Framework Directive apply, with references to ‘waste’ in those definitions being interpreted in accordance with the definition of ‘waste’ in Part 1 of the Environmental Permitting (England and Wales) Regulations 2016.”;
      - (b) points (l), (p) and (r) were omitted.”;
  - (c) for sub-paragraph (5) substitute—
    - “(5) Article 3 is to be read as if—
      - (a) in paragraph 2, in the words before the first indent, “Without prejudice to existing Community legislation,” were omitted;
      - (b) for paragraph 3 there were substituted—
        - “**3.** The management of extractive waste is excluded from the scope of this Directive where it falls within the scope of Schedule 20, or paragraph 8(a) or (b) of Schedule 22, to the Environmental Permitting (England and Wales) Regulations 2016.”;
  - (d) in sub-paragraph (6), at the end insert—
    - “(d) in point (f)—
      - (i) after “waste”, in the first place it occurs, there were inserted “paper, metal, plastic and glass”;
      - (ii) the words from “pursuant” to “Article 22 of that Directive” were omitted;
      - (ii) for “Article 4 of that Directive” there were substituted “Article 4 of the Waste Framework Directive”;
  - (e) for sub-paragraph (7) substitute—
    - “(7) In Article 6, point (a) is to be read as if—
      - (a) in the first paragraph, in the second sentence, for “may” there were substituted “does”;
      - (b) in the second paragraph, for the words from “of [Directive 2008/98/EC](#)” to the end, there were substituted “set out in Part 1 of Schedule 1 to the Waste (England and Wales) Regulations 2011(**14**), or any objectives in retained EU law relating to the increase of preparing for re-use and recycling”.
  - (f) omit sub-paragraphs (15)(d) and (16)(d);
  - (g) for sub-paragraph (17)(a) substitute—
    - “(a) in Section 2, in the table, in the first column, for “14.00 h CET” in both places it occurs there were substituted “1 p.m.”;
- (5) In paragraph 9(2)(c), for “exit day” substitute “IP completion day”.
- (6) In paragraph 12—
  - (a) for sub-paragraph (2) substitute—

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(14) [S.I. 2011/988](#), to which relevant amendments are made by [S.I. 2020/904](#).

“(2) When interpreting the Waste Framework Directive for the purposes of these Regulations—

- (a) an expression used in the Directive that is defined in Part 1 of these Regulations has the meaning given in that Part;
- (b) “permit” means an environmental permit;
- (c) a reference to one or more member States in a provision imposing an obligation or conferring a discretion on a member State or member States is to be read as a reference to the appropriate authority, appropriate agency or local authority which, immediately before IP completion day, was responsible for the United Kingdom’s compliance with that obligation or able to exercise that discretion so far as it related to England or Wales;
- (d) the competent authority is the regulator.”;

(b) for sub-paragraphs (6), (7) and (8) substitute—

“(6) Article 5 is to be read as if—

- (a) in paragraph 1, “Member States shall take appropriate measures to ensure that” were omitted;
- (b) after paragraph 1 there were inserted—

“**1A.** Any decision as to whether a substance or object is a by-product must be made—

- (a) in accordance with any regulations setting out detailed criteria on the application of the conditions in paragraph 1 to specific substances or objects; and
- (b) having regard to any guidance published by the appropriate authority or the appropriate agency for the purposes of this Article.”;

(c) paragraphs 2 and 3 were omitted.

(7) Article 6 is to be read as if—

- (a) in paragraph 1, “Member States shall take appropriate measures to ensure that” were omitted;
- (b) after paragraph 1 there were inserted—

“**1A.** Any decision as to whether a substance or object has ceased to be waste must be made—

- (a) in accordance with any regulations or retained direct EU legislation setting out detailed criteria on the application of the conditions in paragraph 1 to specific types of waste; and
- (b) having regard to any guidance published by the appropriate authority or the appropriate agency for the purposes of this Article.”;

(c) in paragraph 2—

- (i) the first subparagraph were omitted;
- (ii) in the second subparagraph, for “Those detailed criteria” there were substituted “Any detailed criteria set out in guidance as referred to in paragraph 1A”;
- (iii) the third and fourth subparagraphs were omitted;

- (d) paragraph 3 were omitted;
  - (e) in paragraph 4—
    - (i) in the first subparagraph—
      - (aa) in the first sentence, for the words from the beginning to “Member State”, there were substituted “Where criteria have not been set out as referred to in paragraph 1A(a), the appropriate agency”;
      - (bb) the second sentence were omitted;
    - (ii) in the second subparagraph—
      - (aa) for “Member States” there were substituted “The appropriate agency”;
      - (bb) “by competent authorities” were omitted.
- (8) Article 7 is to be read as if—
- (a) before paragraph 1 there were inserted—

“**A1.** In this Article, the “list of waste” means the list contained in the Annex to Commission [Decision 2000/532/EC](#), as that list has effect in England or in Wales (as the case may be).”;
  - (b) in paragraph 1—
    - (i) the first and second sentences were omitted;
    - (ii) for the third sentence there were substituted “The list of waste shall, except as provided in Commission [Decision 2000/532/EC](#), be binding as regards determination of the waste which is to be considered as hazardous waste or as non-hazardous waste.”;
  - (c) paragraphs 2, 3, 6 and 7 were omitted.”;
- (c) after sub-paragraph (9) insert—
- “(9A) Article 35(1) is to be read as if, for the second paragraph, there were substituted—
- “They shall make that data available to the regulator through any electronic registry established for the reporting of such data or, if no such registry is in operation, in such form and manner as the regulator may specify.”.”;
- (d) at the end insert—
- “(11) Annex 4a is to be read as if, in point 6, “, including through Union funds” were omitted.
- (12) In sub-paragraph (2)(c), “local authority” has the meaning given in paragraph 4(7).”.
- (7) In paragraph 14(2), for “exit day” substitute “IP completion day”.

### **The Waste (Miscellaneous Amendments) (EU Exit) (No. 2) Regulations 2019**

**11.**—(1) The Waste (Miscellaneous Amendments) (EU Exit) (No. 2) Regulations 2019(15) are amended as follows.

- (2) After regulation 1 insert—

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(15) [S.I. 2019/188](#), amended by [S.I. 2019/1078](#).

**“Extent**

**1A.**—(1) Subject to paragraph (2), the amendments made by Parts 2 and 3 have the same extent as the Regulations being amended.

(2) The amendments made by regulations 18 and 20 do not extend to Northern Ireland.”.

(3) In regulation 9—

(a) in paragraph (3), in the inserted regulation 2A—

(i) for paragraphs (2), (3) and (4) substitute—

“(2) Article 5 is to be read as if—

(a) in paragraph 1, “Member States shall take appropriate measures to ensure that” were omitted;

(b) after paragraph 1 there were inserted—

“**1A.** Any decision as to whether a substance or object is a by-product must be made—

(a) in accordance with any regulations setting out detailed criteria on the application of the conditions in paragraph 1 to specific substances or objects; and

(b) having regard to any guidance published by the appropriate authority or the appropriate agency for the purposes of this Article.”;

(c) paragraphs 2 and 3 were omitted.

(3) Article 6 is to be read as if—

(a) in paragraph 1, “Member States shall take appropriate measures to ensure that” were omitted;

(b) after paragraph 1 there were inserted—

“**1A.** Any decision as to whether a substance or object has ceased to be waste must be made—

(a) in accordance with any regulations or retained direct EU legislation setting out detailed criteria on the application of the conditions in paragraph 1 to specific types of waste; and

(b) having regard to any guidance published by the appropriate authority or the appropriate agency for the purposes of this Article.”;

(c) in paragraph 2—

(i) the first subparagraph were omitted;

(ii) in the second subparagraph, for “Those detailed criteria” there were substituted “Any detailed criteria set out in guidance as referred to in paragraph 1A”;

(iii) the third and fourth subparagraphs were omitted;

(d) paragraph 3 were omitted;

(e) in paragraph 4—

(i) in the first subparagraph—

(aa) in the first sentence, for the words from the beginning to “Member State”, there were substituted “Where criteria

- have not been set out as referred to in paragraph 1A(a), the appropriate agency”;
- (bb) the second sentence were omitted;
- (ii) in the second subparagraph—
  - (aa) for “Member States” there were substituted “The appropriate agency”;
  - (bb) “by competent authorities” were omitted.
- (4) In this regulation—
  - “appropriate agency” means—
    - (a) in relation to England, the Environment Agency;
    - (b) in relation to Wales, the Natural Resources Body for Wales;
    - (c) in relation to Scotland, the Scottish Environment Protection Agency;
    - (d) in relation to Northern Ireland, the Department of Agriculture, Environment and Rural Affairs;
  - “appropriate authority” means—
    - (a) in relation to England, the Secretary of State;
    - (b) in relation to Wales, the Welsh Ministers;
    - (c) in relation to Scotland, the Scottish Ministers;
    - (d) in relation to Northern Ireland, the Department of Agriculture, Environment and Rural Affairs.”;
- (b) in paragraph (5), for sub-paragraph (b) substitute—
  - “(b) for “existing EU legislation and relevant national legislation” substitute “any other relevant legislation”.”.
- (4) In regulation 10—
  - (a) in paragraph (3), in the inserted regulation 2A—
    - (i) in paragraph (2), for “exit day” substitute “IP completion day”;
    - (ii) in paragraph (5), for sub-paragraph (a) substitute—
      - “(a) in paragraph 3—
        - (i) in the first paragraph, for “Treatment facilities, which have obtained a permit in accordance with Article 6,” there were substituted “Authorised treatment facilities”;
        - (ii) in the third paragraph, the final sentence were omitted;”;
      - (iii) omit paragraph (6);
  - (b) in paragraph (3), in the inserted regulation 2B—
    - (i) in paragraph (2), for “exit day” substitute “IP completion day”;
    - (ii) omit paragraph (3);
    - (iii) for paragraphs (4) to (6) substitute—
      - “(4) Article 5 is to be read as if—
        - (a) in paragraph 1, “Member States shall take appropriate measures to ensure that” were omitted;
        - (b) after paragraph 1 there were inserted—



- “**1A.** Any decision as to whether a substance or object is a by-product must be made—
- (a) in accordance with any regulations setting out detailed criteria on the application of the conditions in paragraph 1 to specific substances or objects; and
  - (b) having regard to any guidance published by the appropriate authority or the appropriate agency for the purposes of this Article.”;
- (c) paragraphs 2 and 3 were omitted.
- (5) Article 6 is to be read as if—
- (a) in paragraph 1, “Member States shall take appropriate measures to ensure that” were omitted;
  - (b) after paragraph 1 there were inserted—
    - “**1A.** Any decision as to whether a substance or object has ceased to be waste must be made—
    - (a) in accordance with any regulations or retained direct EU legislation setting out detailed criteria on the application of the conditions in paragraph 1 to specific types of waste; and
    - (b) having regard to any guidance published by the appropriate authority or the appropriate agency for the purposes of this Article.”;
  - (c) in paragraph 2—
    - (i) the first subparagraph were omitted;
    - (ii) in the second subparagraph, for “Those detailed criteria” there were substituted “Any detailed criteria set out in guidance as referred to in paragraph 1A”;
    - (iii) the third and fourth subparagraphs were omitted;
  - (d) paragraph 3 were omitted;
  - (e) in paragraph 4—
    - (i) in the first subparagraph—
      - (aa) in the first sentence, for the words from the beginning to “Member State”, there were substituted “Where criteria have not been set out as referred to in paragraph 1A(a), the appropriate agency”;
      - (bb) the second sentence were omitted;
    - (ii) in the second subparagraph—
      - (aa) for “Member States” there were substituted “The appropriate agency”;
      - (bb) “by competent authorities” were omitted.
- (6) Article 7 is to be read as if—
- (a) before paragraph 1 there were inserted—
    - “**A1.** In this Article, the “list of waste” means the list contained in the Annex to Commission [Decision 2000/532/EC](#), as that list has effect in England, Wales, Scotland or Northern Ireland (as the case may be).”;

- (b) in paragraph 1—
  - (i) the first and second sentences were omitted;
  - (ii) for the third sentence there were substituted “The list of waste shall, except as provided in Commission [Decision 2000/532/EC](#), be binding as regards determination of the waste which is to be considered as hazardous waste or as non-hazardous waste.”;
- (c) paragraphs 2, 3, 6 and 7 were omitted.”;
- (iv) omit paragraphs (7) and (8);
- (c) in paragraph (3), omit the inserted regulation 2C;
- (d) for paragraph (4) substitute—
  - “(4) In regulation 3(2), for “the appropriate Community or domestic provisions” substitute “any relevant legislation”.”;
- (e) in paragraph (5), for sub-paragraph (b) substitute—
  - “(b) for “existing EU legislation and relevant national legislation” substitute “any other relevant legislation””;
- (f) after paragraph (6) insert—
  - “(7) In regulation 12(1), for “the requirements of Article 6 and Annex I of the Directive” substitute “the requirements set out in Annex 1 to the Directive, and the general requirements referred to in Article 13 of the Waste Directive”.”.
- (5) In regulation 11—
  - (a) in paragraph (3), in the inserted regulation 2A—
    - (i) in paragraph (2), for “exit day” substitute “IP completion day”;
    - (ii) omit paragraph (4);
    - (iii) for paragraphs (5) to (7) substitute—
      - “(5) Article 5 is to be read as if—
        - (a) in paragraph 1, “Member States shall take appropriate measures to ensure that” were omitted;
        - (b) after paragraph 1 there were inserted—
          - “**1A.** Any decision as to whether a substance or object is a by-product must be made—
            - (a) in accordance with any regulations setting out detailed criteria on the application of the conditions in paragraph 1 to specific substances or objects; and
            - (b) having regard to any guidance published by the appropriate authority for the purposes of this Article.”;
          - (c) paragraphs 2 and 3 were omitted.
  - (6) Article 6 is to be read as if—
    - (a) in paragraph 1, “Member States shall take appropriate measures to ensure that” were omitted;
    - (b) after paragraph 1 there were inserted—
      - “**1A.** Any decision as to whether a substance or object has ceased to be waste must be made—

- (a) in accordance with any regulations or retained direct EU legislation setting out detailed criteria on the application of the conditions in paragraph 1 to specific types of waste; and
- (b) having regard to any guidance published by the appropriate authority for the purposes of this Article.”;
- (c) in paragraph 2—
  - (i) the first subparagraph were omitted;
  - (ii) in the second subparagraph, for “Those detailed criteria” there were substituted “Any detailed criteria set out in guidance as referred to in paragraph 1A”;
  - (iii) the third and fourth subparagraphs were omitted;
- (d) paragraph 3 were omitted;
- (e) in paragraph 4—
  - (i) in the first subparagraph—
    - (aa) in the first sentence, for the words from the beginning to “Member State”, there were substituted “Where criteria have not been set out as referred to in paragraph 1A(a), the Agency”;
    - (bb) the second sentence were omitted;
  - (ii) in the second subparagraph—
    - (aa) for “Member States” there were substituted “The Agency”;
    - (bb) “by competent authorities” were omitted.
- (7) Article 7 is to be read as if—
  - (a) before paragraph 1 there were inserted—
 

**“A1.** In this Article, the “list of waste” means the list contained in the Annex to Commission [Decision 2000/532/EC](#), as that list has effect in England.”;
  - (b) in paragraph 1—
    - (i) the first and second sentences were omitted;
    - (ii) for the third sentence there were substituted “The list of waste shall, except as provided in Commission [Decision 2000/532/EC](#), be binding as regards determination of the waste which is to be considered as hazardous waste or as non-hazardous waste.”;
  - (c) paragraphs 2, 3, 6 and 7 were omitted.”;
- (b) in paragraph (3), in the inserted regulation 2B—
  - (i) in the heading, omit “and “Industrial Emissions Directive””;
  - (ii) omit paragraphs (4), (5) and (6);
- (c) in paragraph (4)(b), for the inserted definition of “Landfill Directive” substitute—
 

““Landfill Directive” means Council [Directive 1999/31/EC](#) on the landfill of waste(16), as last amended by Directive (EU) 2018/850, and read as if—

  - (a) in Article 2—

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(16) OJ L 182, 16.7.1999, p. 1.

- (i) in point (a)—
  - (aa) “‘waste’,” were omitted; and
  - (bb) for “[Directive 2008/98/EC](#)” there were substituted “the Waste Framework Directive”;
- (ii) after point (a) there were inserted—
  - “(aa) ‘waste’ has the meaning given by regulation 2(1)(b) of the Hazardous Waste (England and Wales) Regulations 2005(17);”;
- (b) in Article 3—
  - (i) in paragraph (2), “Without prejudice to existing Community legislation,” were omitted;
  - (ii) for paragraph (3) there were substituted—
    - “**3.** The management of extractive waste, within the meaning given in regulation 2(1) of the Environmental Permitting Regulations, is excluded from the scope of this Directive where it falls within the scope of Schedule 20, or paragraph 8(a) or (b) of Schedule 22, to those Regulations.”;
- (b) in Article 3—
  - (i) in paragraph (2), “Without prejudice to existing Community legislation,” were omitted;
  - (ii) for paragraph (3) there were substituted—
    - “**3.** The management of extractive waste, within the meaning given in regulation 2(1) of the Environmental Permitting Regulations, is excluded from the scope of this Directive where it falls within the scope of Schedule 20, or paragraph 8(a) or (b) of Schedule 22, to those Regulations.”;
- (d) in paragraph (7), after “landfill of waste” insert “, as last amended by Directive (EU) 2018/850”.
- (6) In regulation 12—
  - (a) in paragraph (2)(b), for paragraph (i) substitute—
    - “(i) in the definition of “appropriate authority”, in paragraph (a), for “regulation 4(7)” substitute “regulations 2A, 2B and 4(7)”;
  - (b) in paragraph (3), in the inserted regulation 2A—
    - (i) in paragraph (1), for “Packaging Directive” substitute “Packaging Waste Directive”;
    - (ii) in paragraph (2), for “exit day” substitute “IP completion day”;
    - (iii) for paragraph (3) substitute—
      - “(3) Article 3 is to be read as if—
        - (a) in paragraph 2, for “Article 3 of [Directive 2008/98/EC](#)” there were substituted “Article 3(1) of the Waste Directive, as read with Articles 5 and 6 of that Directive;
        - (b) in paragraph 2c, for “[Directive 2008/98/EC](#)” there were substituted “the Waste Directive”;

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(17) [S.I. 2005/894](#); relevant amendments were made by [S.I. 2011/988](#).

- (iv) omit paragraph (4);
- (c) in paragraph (3), in the inserted regulation 2B—
  - (i) in paragraph (2), for “exit day” substitute “IP completion day”;
  - (ii) for paragraphs (3) and (4) substitute—
    - “(3) Article 5 is to be read as if—
      - (a) in paragraph 1, “Member States shall take appropriate measures to ensure that” were omitted;
      - (b) after paragraph 1 there were inserted—
        - “**1A.** Any decision as to whether a substance or object is a by-product must be made—
          - (a) in accordance with any regulations setting out detailed criteria on the application of the conditions in paragraph 1 to specific substances or objects; and
          - (b) having regard to any guidance published by the appropriate authority or the appropriate agency for the purposes of this Article.”;
      - (c) paragraphs 2 and 3 were omitted.
  - (4) Article 6 is to be read as if—
    - (a) in paragraph 1, “Member States shall take appropriate measures to ensure that” were omitted;
    - (b) after paragraph 1 there were inserted—
      - “**1A.** Any decision as to whether a substance or object has ceased to be waste must be made—
        - (a) in accordance with any regulations or retained direct EU legislation setting out detailed criteria on the application of the conditions in paragraph 1 to specific types of waste; and
        - (b) having regard to any guidance published by the appropriate authority or the appropriate agency for the purposes of this Article.”;
- (c) in paragraph 2—
  - (i) the first subparagraph were omitted;
  - (ii) in the second subparagraph, for “Those detailed criteria” there were substituted “Any detailed criteria set out in guidance as referred to in paragraph 1A”;
  - (iii) the third and fourth subparagraphs were omitted;
- (d) paragraph 3 were omitted;
- (e) in paragraph 4—
  - (i) in the first subparagraph—
    - (aa) in the first sentence, for the words from the beginning to “Member State”, there were substituted “Where criteria have not been set out as referred to in paragraph 1A(a), the appropriate agency”;
    - (bb) the second sentence were omitted;

- (ii) in the second subparagraph—
  - (aa) for “Member States” there were substituted “The appropriate agency”;
  - (bb) “by competent authorities” were omitted.”;
- (d) for paragraph (4) substitute—
  - “(4) In regulation 24—
    - (a) in paragraph (3)(b)—
      - (i) in paragraph (i)—
        - (aa) for “European Union” substitute “United Kingdom”;
        - (bb) for the words from “the requirements” to the end, substitute “any recovery or recycling operations taking place in each such site take place under conditions that are broadly equivalent to requirements applicable to reprocessing sites in the United Kingdom”;
      - (ii) in paragraph (ii)—
        - (aa) for “European Union” substitute “United Kingdom”;
        - (bb) for “of Article 6(2) of that Directive” substitute “applicable to the shipment of waste from the United Kingdom”;
    - (b) omit paragraph (8);
    - (c) in paragraph (9)—
      - (i) for “European Union” substitute “United Kingdom”;
      - (ii) for “the requirements of Article 6(2) of the Packaging Waste Directive” substitute “requirements that are broadly equivalent to requirements applicable to reprocessing sites in the United Kingdom”.”;
  - (e) after paragraph (4) insert—
    - “(4A) In regulation 26(2), for the words from the beginning to “Directive”, substitute “Where the appropriate Agency has granted an accreditation to an exporter, and is no longer satisfied that the requirements in regulation 24(3)(b) or (9), which applied to that grant of accreditation,”.”;
  - (f) in paragraph (5), in paragraph (2) of the inserted regulation 43, for “exit day” substitute “IP completion day”.

(7) In regulation 13—

  - (a) for paragraph (2)(b) substitute—
    - “(b) for the definition of “placing on the market” substitute—
      - ““placing on the market”—
        - (a) except in relation to a person in Northern Ireland, means supplying or making available, whether in return for payment or free of charge, to a third party within the United Kingdom;
        - (b) in relation to a person in Northern Ireland, means supplying or making available, whether in return for payment or free of charge, to a third party within the United Kingdom or the European Economic Area, and includes import into the customs territory of the Union as defined in Article 4 of Regulation (EU) No 952/2013 of the European Parliament and of the Council

laying down the Union Customs Code(18), as that Regulation applies in EU law;”;

(b) for paragraph (3) substitute—

“(3) In regulation 3—

(a) in paragraph (2)(a), for “the essential security interests of EEA states” substitute “essential security interests”;

(b) after paragraph (2) insert—

“(3) In paragraph (2)(a)—

(a) as it applies in England and Wales and Scotland, “essential security interests” means the essential security interests of the United Kingdom;

(b) as it applies in Northern Ireland, “essential security interests” means the essential security interests of the United Kingdom or EEA states.”;

(c) in paragraph (4)(b), for the inserted paragraphs (5), (6) and (7) substitute—

“(5) Article 5 is to be read as if—

(a) in paragraph 1, “Member States shall take appropriate measures to ensure that” were omitted;

(b) after paragraph 1 there were inserted—

“**1A.** Any decision as to whether a substance or object is a by-product must be made—

(a) in accordance with any regulations setting out detailed criteria on the application of the conditions in paragraph 1 to specific substances or objects; and

(b) having regard to any guidance published by the appropriate authority or the appropriate agency for the purposes of this Article.”;

(c) paragraphs 2 and 3 were omitted.

(6) Article 6 is to be read as if—

(a) in paragraph 1, “Member States shall take appropriate measures to ensure that” were omitted;

(b) after paragraph 1 there were inserted—

“**1A.** Any decision as to whether a substance or object has ceased to be waste must be made—

(a) in accordance with any regulations or retained direct EU legislation setting out detailed criteria on the application of the conditions in paragraph 1 to specific types of waste; and

(b) having regard to any guidance published by the appropriate authority or the appropriate agency for the purposes of this Article.”;

(c) in paragraph 2—

(i) the first subparagraph were omitted;

- (ii) in the second subparagraph, for “Those detailed criteria” there were substituted “Any detailed criteria set out in guidance as referred to in paragraph 1A”;
    - (iii) the third and fourth subparagraphs were omitted;
  - (d) paragraph 3 were omitted;
  - (e) in paragraph 4—
    - (i) in the first subparagraph—
      - (aa) in the first sentence, for the words from the beginning to “Member State”, there were substituted “Where criteria have not been set out as referred to in paragraph 1A(a), the appropriate agency”;
      - (bb) the second sentence were omitted;
    - (ii) in the second subparagraph—
      - (aa) for “Member States” there were substituted “The appropriate agency”;
      - (bb) “by competent authorities” were omitted.
- (7) In paragraphs (5) and (6)—
- “appropriate agency” means—
- (a) in relation to England, the Environment Agency;
  - (b) in relation to Wales, the Natural Resources Body for Wales;
  - (c) in relation to Scotland, the Scottish Environment Protection Agency;
  - (d) in relation to Northern Ireland, the Department of Agriculture, Environment and Rural Affairs;
- “appropriate authority” means—
- (a) in relation to England, the Secretary of State;
  - (b) in relation to Wales, the Welsh Ministers;
  - (c) in relation to Scotland, the Scottish Ministers;
  - (d) in relation to Northern Ireland, the Department of Agriculture, Environment and Rural Affairs.”.
- (8) In regulation 14—
- (a) in paragraph (2)—
    - (i) in sub-paragraph (a), at the end insert—
      - “(iv) after the definition of “waste disposal authority” insert—
        - ““the Waste Framework Directive” means [Directive 2008/98/EC](#) of the European Parliament and of the Council on waste, as last amended by Directive (EU) 2018/851, and as read in accordance with regulation 2A.”;”;
    - (ii) for sub-paragraph (c) substitute—
      - “(c) omit paragraph (1A).”;
  - (b) in paragraph (3), in the inserted regulation 2A—
    - (i) omit paragraph (2);
    - (ii) for paragraphs (3) and (4) substitute—



- “(3) Article 5 is to be read as if—
- (a) in paragraph 1, “Member States shall take appropriate measures to ensure that” were omitted;
  - (b) after paragraph 1 there were inserted—
    - “**1A.** Any decision as to whether a substance or object is a by-product must be made—
      - (a) in accordance with any regulations setting out detailed criteria on the application of the conditions in paragraph 1 to specific substances or objects; and
      - (b) having regard to any guidance published by the appropriate authority or the appropriate agency for the purposes of this Article.”;
    - (c) paragraphs 2 and 3 were omitted.
- (4) Article 6 is to be read as if—
- (a) in paragraph 1, “Member States shall take appropriate measures to ensure that” were omitted;
  - (b) after paragraph 1 there were inserted—
    - “**1A.** Any decision as to whether a substance or object has ceased to be waste must be made—
      - (a) in accordance with any regulations or retained direct EU legislation setting out detailed criteria on the application of the conditions in paragraph 1 to specific types of waste; and
      - (b) having regard to any guidance published by the appropriate authority or the appropriate agency for the purposes of this Article.”;
    - (c) in paragraph 2—
      - (i) the first subparagraph were omitted;
      - (ii) in the second subparagraph, for “Those detailed criteria” there were substituted “Any detailed criteria set out in guidance as referred to in paragraph 1A”;
      - (iii) the third and fourth subparagraphs were omitted;
    - (d) paragraph 3 were omitted;
    - (e) in paragraph 4—
      - (i) in the first subparagraph—
        - (aa) in the first sentence, for the words from the beginning to “Member State”, there were substituted “Where criteria have not been set out as referred to in paragraph 1A(a), the appropriate agency”;
        - (bb) the second sentence were omitted;
      - (ii) in the second subparagraph—
        - (aa) for “Member States” there were substituted “The appropriate agency”;
        - (bb) “by competent authorities” were omitted.”;
  - (iii) omit paragraphs (5) and (6);

- (iv) in paragraph (7)—
    - (aa) for “paragraph (2)” substitute “paragraphs (2) and (3)”;
    - (bb) omit the definition of “local authority”;
  - (c) after paragraph (3) insert—
    - “(3A) In regulation 6—
      - (a) in paragraph (2)(a), for “the essential security interests of EEA states” substitute “essential security interests”;
      - (b) after paragraph (2) insert—
        - “(3) In paragraph (2)(a)—
          - (a) as it applies in England and Wales and Scotland, “essential security interests” means the essential security interests of the United Kingdom;
          - (b) as it applies in Northern Ireland, “essential security interests” means the essential security interests of the United Kingdom or EEA states.”;
  - (d) in paragraph (9), in the inserted regulation 56A, for paragraph (2) substitute—
    - “(2) Article 2 is to be read as if—
      - (a) in point (a)—
        - (i) “‘waste’,” were omitted; and
        - (ii) for “[Directive 2008/98/EC](#)” there were substituted “the Waste Framework Directive”;
      - (b) after point (a) there were inserted—
        - “(aa) ‘waste’ has the meaning given by Article 3(1) of the Waste Framework Directive, as read with Articles 5 and 6 of that Directive;”;
  - (e) in paragraph (13), in the substituted text, at the end insert “and, in relation to Northern Ireland, EU legislation which has effect by virtue of the Protocol on Ireland/Northern Ireland in the EU withdrawal agreement”.
- (9) In regulation 15(3)—
- (a) in the inserted regulation 2A, in paragraph (2), for “exit day” substitute “IP completion day”;
  - (b) in the inserted regulation 2C—
    - (i) in paragraph (1), for “Council Regulation (EU) 2017/997” substitute “Directive (EU) 2018/851”;
    - (ii) in paragraph (2), for “exit day” substitute “IP completion day”;
    - (iii) for paragraphs (4), (5) and (6) substitute—
      - “(4) Article 5 is to be read as if—
        - (a) in paragraph 1, “Member States shall take appropriate measures to ensure that” were omitted;
        - (b) after paragraph 1 there were inserted—
          - “**1A.** Any decision as to whether a substance or object is a by-product must be made—

- (a) in accordance with any regulations setting out detailed criteria on the application of the conditions in paragraph 1 to specific substances or objects; and
  - (b) having regard to any guidance published by the appropriate authority or the appropriate agency for the purposes of this Article.”;
  - (c) paragraphs 2 and 3 were omitted.
- (5) Article 6 is to be read as if—
- (a) in paragraph 1, “Member States shall take appropriate measures to ensure that” were omitted;
  - (b) after paragraph 1 there were inserted—
    - “**1A.** Any decision as to whether a substance or object has ceased to be waste must be made—
    - (a) in accordance with any regulations or retained direct EU legislation setting out detailed criteria on the application of the conditions in paragraph 1 to specific types of waste; and
    - (b) having regard to any guidance published by the appropriate authority or the appropriate agency for the purposes of this Article.”;
  - (c) in paragraph 2—
    - (i) the first subparagraph were omitted;
    - (ii) in the second subparagraph, for “Those detailed criteria” there were substituted “Any detailed criteria set out in guidance as referred to in paragraph 1A”;
    - (iii) the third and fourth subparagraphs were omitted;
  - (d) paragraph 3 were omitted;
  - (e) in paragraph 4—
    - (i) in the first subparagraph—
      - (aa) in the first sentence, for the words from the beginning to “Member State”, there were substituted “Where criteria have not been set out as referred to in paragraph 1A(a), the appropriate agency”;
      - (bb) the second sentence were omitted;
    - (ii) in the second subparagraph—
      - (aa) for “Member States” there were substituted “The appropriate agency”;
      - (bb) “by competent authorities” were omitted.
- (6) Article 7 is to be read as if—
- (a) before paragraph 1 there were inserted—
    - “**A1.** In this Article, the “list of waste” means the list contained in the Annex to Commission [Decision 2000/532/EC](#), as that list has effect in England or in Wales (as the case may be).”;
  - (b) in paragraph 1—
    - (i) the first and second sentences were omitted;

- (ii) for the third sentence there were substituted “The list of waste shall, except as provided in Commission [Decision 2000/532/EC](#), be binding as regards determination of the waste which is to be considered as hazardous waste or as non-hazardous waste.”;
- (c) paragraphs 2, 3, 6 and 7 were omitted.”;
- (c) in the inserted regulation 2D, for paragraph (4) substitute—
  - “(4) In paragraph (3)(c), “the Landfill Directive” means Council [Directive 1999/31/EC](#) on the landfill of waste, as last amended by Directive (EU) 2018/850, and read as if, in Article 2—
    - (a) in point (a)—
      - (i) “‘waste’,” were omitted; and
      - (ii) for “[Directive 2008/98/EC](#)” there were substituted “the Waste Framework Directive”;
    - (b) after point (a) there were inserted—
      - “(aa) “waste” means anything that—
        - (i) is waste within the meaning of Article 3(1) of the Waste Framework Directive, as read with Articles 5 and 6 of that Directive, and
        - (ii) is not excluded from the scope of that Directive by Article 2(1), (2) or (3) of that Directive;”.”.
- (10) In regulation 16—
  - (a) in paragraph (2)(b), in the inserted text, in the definition of “Landfill Directive”, for “Council [Directive 2011/97/EU](#)” substitute “Directive (EU) 2018/850”;
  - (b) in paragraph (3), in the inserted regulation 3B—
    - (i) for paragraph (2)(a) substitute—
      - “(a) in point (a)—
        - (i) “‘waste’,” were omitted; and
        - (ii) for “[Directive 2008/98/EC](#)” there were substituted “the Waste Framework Directive”;
      - (aa) after point (a) there were inserted—
        - “(aa) ‘waste’ means anything that—
          - (i) is waste within the meaning of Article 3(1) of the Waste Framework Directive, as read with Articles 5 and 6 of that Directive, and
          - (ii) is not excluded from the scope of that Directive by Article 2(1), (2) or (3) of that Directive;”.”;
    - (ii) for paragraph (3) substitute—
      - “(3) Article 3 is to be read as if—
        - (a) in paragraph 2, “Without prejudice to existing Community legislation” were omitted;
        - (b) for paragraph 3 there were substituted—
          - “**3.** The management of extractive waste, within the meaning given in regulation 2(1) of the Environmental Permitting (England and Wales) Regulations 2016, is excluded from the scope of this Directive where

- it falls within the scope of Schedule 20, or paragraph 8(a) or (b) of Schedule 22, to those Regulations.”.”;
- (c) in paragraph (3), in the inserted regulation 3C, in paragraph (2), for “exit day” substitute “IP completion day”;
- (d) in paragraph (3), in the inserted regulation 3D—
- (i) in paragraph (2), for “exit day” substitute “IP completion day”;
  - (ii) for paragraphs (5), (6) and (7) substitute—
    - “(5) Article 5 is to be read as if—
      - (a) in paragraph 1, “Member States shall take appropriate measures to ensure that” were omitted;
      - (b) after paragraph 1 there were inserted—
        - “**1A.** Any decision as to whether a substance or object is a by-product must be made—
          - (a) in accordance with any regulations setting out detailed criteria on the application of the conditions in paragraph 1 to specific substances or objects; and
          - (b) having regard to any guidance published by the appropriate authority or the appropriate body for the purposes of this Article.”;
        - (c) paragraphs 2 and 3 were omitted.
    - (6) Article 6 is to be read as if—
      - (a) in paragraph 1, “Member States shall take appropriate measures to ensure that” were omitted;
      - (b) after paragraph 1 there were inserted—
        - “**1A.** Any decision as to whether a substance or object has ceased to be waste must be made—
          - (a) in accordance with any regulations or retained direct EU legislation setting out detailed criteria on the application of the conditions in paragraph 1 to specific types of waste; and
          - (b) having regard to any guidance published by the appropriate authority or the appropriate body for the purposes of this Article.”;
        - (c) in paragraph 2—
          - (i) the first subparagraph were omitted;
          - (ii) in the second subparagraph, for “Those detailed criteria” there were substituted “Any detailed criteria set out in guidance as referred to in paragraph 1A”;
          - (iii) the third and fourth subparagraphs were omitted;
      - (d) paragraph 3 were omitted;
      - (e) in paragraph 4—
        - (i) in the first subparagraph—
          - (aa) in the first sentence, for the words from the beginning to “Member State”, there were substituted “Where criteria

- have not been set out as referred to in paragraph 1A(a), the appropriate body”;
- (bb) the second sentence were omitted;
- (ii) in the second subparagraph—
- (aa) for “Member States” there were substituted “The appropriate body”;
- (bb) “by competent authorities” were omitted.
- (7) Article 7 is to be read as if—
- (a) before paragraph 1 there were inserted—
- “A1. In this Article, the “list of waste” means the list contained in the Annex to Commission [Decision 2000/532/EC](#), as that list has effect in England or in Wales (as the case may be).”;
- (b) in paragraph 1—
- (i) the first and second sentences were omitted;
- (ii) for the third sentence there were substituted “The list of waste shall, except as provided in Commission [Decision 2000/532/EC](#), be binding as regards determination of the waste which is to be considered as hazardous waste or as non-hazardous waste.”;
- (c) paragraphs 2, 3, 6 and 7 were omitted.”;
- (iii) for paragraph (10) substitute—
- “(10) Article 35(1) is to be read as if, for the second paragraph, there were substituted—
- “They shall make that data available to the appropriate body through any electronic registry established for the reporting of such data or, if no such registry is in operation, in such form and manner as the appropriate body may specify.”.”;
- (iv) at the end insert—
- “(13) Annex 4a is to be read as if, in point 6, “including through Union funds” were omitted.”;
- (e) in paragraph (5), in sub-paragraphs (a) and (c)(i), in the words to be replaced, at the end insert “as last amended by Directive (EU) 2018/850”;
- (f) in paragraph (6), omit sub-paragraph (a).
- (11) In regulation 17—
- (a) in paragraph (2), after sub-paragraph (a) insert—
- “(aa) in the definition of “Directive waste”, in paragraph (a), after “Waste Directive” insert “as read with Articles 5 and 6 of that Directive”.”;
- (b) in paragraph (3), in the inserted paragraph 2A—
- (i) in paragraph (2), for “exit day” substitute “IP completion day”;
- (ii) for paragraphs (4), (5) and (6) substitute—
- “(4) Article 5 is to be read as if—
- (a) in paragraph 1, “Member States shall take appropriate measures to ensure that” were omitted;
- (b) after paragraph 1 there were inserted—

- “**1A.** Any decision as to whether a substance or object is a by-product must be made—
- (a) in accordance with any regulations setting out detailed criteria on the application of the conditions in paragraph 1 to specific substances or objects; and
  - (b) having regard to any guidance published by the appropriate authority or the appropriate agency for the purposes of this Article.”;
- (c) paragraphs 2 and 3 were omitted.
- (5) Article 6 is to be read as if—
- (a) in paragraph 1, “Member States shall take appropriate measures to ensure that” were omitted;
  - (b) after paragraph 1 there were inserted—
    - “**1A.** Any decision as to whether a substance or object has ceased to be waste must be made—
    - (a) in accordance with any regulations or retained direct EU legislation setting out detailed criteria on the application of the conditions in paragraph 1 to specific types of waste; and
    - (b) having regard to any guidance published by the appropriate authority or the appropriate agency for the purposes of this Article.”;
  - (c) in paragraph 2—
    - (i) the first subparagraph were omitted;
    - (ii) in the second subparagraph, for “Those detailed criteria” there were substituted “Any detailed criteria set out in guidance as referred to in paragraph 1A”;
    - (iii) the third and fourth subparagraphs were omitted;
  - (d) paragraph 3 were omitted;
  - (e) in paragraph 4—
    - (i) in the first subparagraph—
      - (aa) in the first sentence, for the words from the beginning to “Member State”, there were substituted “Where criteria have not been set out as referred to in paragraph 1A(a), the appropriate agency”;
      - (bb) the second sentence were omitted;
    - (ii) in the second subparagraph—
      - (aa) for “Member States” there were substituted “The appropriate agency”;
      - (bb) “by competent authorities” were omitted.
- (6) Article 7 is to be read as if—
- (a) before paragraph 1 there were inserted—
    - “**A1.** In this Article, the “list of waste” means the list contained in the Annex to Commission [Decision 2000/532/EC](#), as that list has effect in England or in Wales (as the case may be).”;

- (b) in paragraph 1—
    - (i) the first and second sentences were omitted;
    - (ii) for the third sentence there were substituted “The list of waste shall, except as provided in Commission [Decision 2000/532/EC](#), be binding as regards determination of the waste which is to be considered as hazardous waste or as non-hazardous waste.”;
  - (c) paragraphs 2, 3, 6 and 7 were omitted.”;
  - (c) in paragraph (3), in the inserted paragraph 2B, in paragraph (2), for “exit day” substitute “IP completion day”.
- (12) In regulation 19—
- (a) in paragraph (2)—
    - (i) after sub-paragraph (g) insert—
      - “(ga) before the definition of “Natural Resources Body for Wales” insert—
        - ““national authority” means—
        - (a) in relation to England, the Secretary of State;
        - (b) in relation to Wales, the Welsh Ministers;
        - (c) in relation to Scotland, the Scottish Ministers;
        - (d) in relation to Northern Ireland, the Department of Agriculture, Environment and Rural Affairs;”;
    - (ii) at the end insert—
      - “(j) in the definition of “waste electrical and electronic equipment”, after “Waste Directive” insert “, as read with Articles 5 and 6 of that Directive,”;
  - (b) in paragraph (3), in the inserted paragraph 2A, in paragraph (2), for “Secretary of State or appropriate authority which, immediately before exit day” substitute “national authority or appropriate authority which, immediately before IP completion day”;
  - (c) in paragraph (3), in the inserted paragraph 2B—
    - (i) in paragraph (2), for “Secretary of State or appropriate authority which, immediately before exit day” substitute “national authority or appropriate authority which, immediately before IP completion day”;
    - (ii) for paragraphs (4), (5) and (6) substitute—
      - “(4) Article 5 is to be read as if—
        - (a) in paragraph 1, “Member States shall take appropriate measures to ensure that” were omitted;
        - (b) after paragraph 1 there were inserted—
          - “**1A.** Any decision as to whether a substance or object is a by-product must be made—
            - (a) in accordance with any regulations setting out detailed criteria on the application of the conditions in paragraph 1 to specific substances or objects; and
            - (b) having regard to any relevant guidance published by the national authority or the appropriate authority.”;
    - (c) paragraphs 2 and 3 were omitted.



- (5) Article 6 is to be read as if—
- (a) in paragraph 1, “Member States shall take appropriate measures to ensure that” were omitted;
  - (b) after paragraph 1 there were inserted—
    - “**1A.** Any decision as to whether a substance or object has ceased to be waste must be made—
    - (a) in accordance with any regulations or retained direct EU legislation setting out detailed criteria on the application of the conditions in paragraph 1 to specific types of waste; and
    - (b) having regard to any relevant guidance published by the national authority or the appropriate authority.”;
  - (c) in paragraph 2—
    - (i) the first subparagraph were omitted;
    - (ii) in the second subparagraph, for “Those detailed criteria” there were substituted “Any detailed criteria set out in guidance as referred to in paragraph 1A”;
    - (iii) the third and fourth subparagraphs were omitted;
  - (d) paragraph 3 were omitted;
  - (e) in paragraph 4—
    - (i) in the first subparagraph—
      - (aa) in the first sentence, for the words from the beginning to “Member State”, there were substituted “Where criteria have not been set out as referred to in paragraph 1A(a), the appropriate authority”;
      - (bb) the second sentence were omitted;
    - (ii) in the second subparagraph—
      - (aa) for “Member States” there were substituted “The appropriate authority”;
      - (bb) “by competent authorities” were omitted.
- (6) Article 7 is to be read as if—
- (a) before paragraph 1 there were inserted—
    - “**A1.** In this Article, the “list of waste” means the list contained in the Annex to Commission [Decision 2000/532/EC](#), as that list has effect in England, Wales, Scotland or Northern Ireland (as the case may be).”;
  - (b) in paragraph 1—
    - (i) the first and second sentences were omitted;
    - (ii) for the third sentence there were substituted “The list of waste shall, except as provided in Commission [Decision 2000/532/EC](#), be binding as regards determination of the waste which is to be considered as hazardous waste or as non-hazardous waste.”;
  - (c) paragraphs 2, 3, 6 and 7 were omitted.”;
- (iii) after paragraph (7) insert—
- “(7A) Article 25 is to be read as if paragraph 3 were omitted.”;

- (d) in paragraph (3), in the inserted paragraph 2C—
- (i) in paragraph (2), for “Secretary of State or appropriate authority which, immediately before exit day” substitute “national authority or appropriate authority which, immediately before IP completion day”;
  - (ii) for paragraph (9) substitute—
    - “(9) In paragraph (7)(c), “the Landfill Directive” means Council [Directive 1999/31/EC](#) on the landfill of waste, as last amended by Directive (EU) 2018/850, and read as if, in Article 2—
      - (a) in point (a) “waste,” were omitted; and
      - (b) after point (a) there were inserted—
        - “(aa) “waste” means anything that—
          - (i) is waste within the meaning of Article 3(1) of [Directive 2008/98/EC](#), as read with Articles 5 and 6 of that Directive, and
          - (ii) is not excluded from the scope of that Directive by Article 2(1), (2) or (3) of that Directive;”;
- (e) in paragraph (5)—
- (i) in sub-paragraph (a), in the substituted heading, at the end insert “etc”;
  - (ii) in sub-paragraph (b), in the substituted text, at the end insert “and, in relation to Northern Ireland, EU legislation which has effect by virtue of the Protocol on Ireland/Northern Ireland in the EU withdrawal agreement.”.
- (13) In regulation 20—
- (a) in paragraph (3), in the inserted regulation 2A, for paragraphs (2), (3) and (4) substitute—
    - “(2) Article 5 is to be read as if—
      - (a) in paragraph 1, “Member States shall take appropriate measures to ensure that” were omitted;
      - (b) after paragraph 1 there were inserted—
        - “**1A.** Any decision as to whether a substance or object is a by-product must be made—
          - (a) in accordance with any regulations setting out detailed criteria on the application of the conditions in paragraph 1 to specific substances or objects; and
          - (b) having regard to any guidance published by the appropriate authority or the appropriate agency for the purposes of this Article.”;
      - (c) paragraphs 2 and 3 were omitted.
    - (3) Article 6 is to be read as if—
      - (a) in paragraph 1, “Member States shall take appropriate measures to ensure that” were omitted;
      - (b) after paragraph 1 there were inserted—
        - “**1A.** Any decision as to whether a substance or object has ceased to be waste must be made—

- (a) in accordance with any regulations or retained direct EU legislation setting out detailed criteria on the application of the conditions in paragraph 1 to specific types of waste; and
- (b) having regard to any guidance published by the appropriate authority or the appropriate agency for the purposes of this Article.”;
- (c) in paragraph 2—
  - (i) the first subparagraph were omitted;
  - (ii) in the second subparagraph, for “Those detailed criteria” there were substituted “Any detailed criteria set out in guidance as referred to in paragraph 1A”;
  - (iii) the third and fourth subparagraphs were omitted;
- (d) paragraph 3 were omitted;
- (e) in paragraph 4—
  - (i) in the first subparagraph—
    - (aa) in the first sentence, for the words from the beginning to “Member State”, there were substituted “Where criteria have not been set out as referred to in paragraph 1A(a), the appropriate agency”;
    - (bb) the second sentence were omitted;
  - (ii) in the second subparagraph—
    - (aa) for “Member States” there were substituted “The appropriate agency”;
    - (bb) “by competent authorities” were omitted.
- (4) In this regulation—
  - “appropriate agency” means—
    - (a) in relation to England, the Environment Agency;
    - (b) in relation to Wales, the Natural Resources Body for Wales;
    - (c) in relation to Scotland, the Scottish Environment Protection Agency;
  - “appropriate authority” means—
    - (a) in relation to England, the Secretary of State;
    - (b) in relation to Wales, the Welsh Ministers;
    - (c) in relation to Scotland, the Scottish Ministers.”;
  - (b) in paragraph (5), for sub-paragraph (a) substitute—
    - “(a) in paragraph (1), for “EU market” substitute “market of Great Britain”.”;
  - (c) for paragraph (6) substitute—
    - “(6) In regulation 5(1), for “EU market” substitute “market of Great Britain”.”.

### **The Environment (Amendment etc.) (EU Exit) Regulations 2019**

**12.**—(1) The Environment (Amendment etc.) (EU Exit) Regulations 2019<sup>(19)</sup> are amended as follows.

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<sup>(19)</sup> S.I. 2019/458, to which there are amendments not relevant to these Regulations.

- (2) In regulation 3—
  - (a) in paragraph (3)(a)(iii) and (iv), in the substituted text, for “exit day” substitute “IP completion day”;
  - (b) in paragraph (14)(a), in paragraph (b)(i) of the substituted text, for “exit day” substitute “IP completion day”.
- (3) In regulation 6(2)(a), in the substituted text, for “exit day” substitute “IP completion day”.
- (4) In regulation 7(4)(a), in the inserted paragraph 1A, for “exit day” substitute “IP completion day”.
- (5) In regulation 8(1) and (3), for “exit day”, in each place that it occurs, substitute “IP completion day”.

### **The Environment (Miscellaneous Amendments and Revocations) (EU Exit) Regulations 2019**

**13.**—(1) The Environment (Miscellaneous Amendments and Revocations) (EU Exit) Regulations 2019<sup>(20)</sup> are amended as follows.

- (2) In regulation 3(3), in the inserted paragraph 6(5A), in paragraph (b), for “exit day” substitute “IP completion day”.

### **The Waste (Miscellaneous Amendments) (EU Exit) Regulations 2019**

**14.**—(1) The Waste (Miscellaneous Amendments) (EU Exit) Regulations 2019<sup>(21)</sup> are amended as follows.

- (2) In regulation 5(4), in the inserted section 75A of the Environmental Protection Act 1990<sup>(22)</sup>—
  - (a) in subsection (2), for “exit day” substitute “IP completion day”;
  - (b) for subsections (4) to (6) substitute—
    - “(4) Article 5 is to be read as if—
      - (a) in paragraph 1, “Member States shall take appropriate measures to ensure that” were omitted;
      - (b) after paragraph 1 there were inserted—
        - “**1A.** Any decision as to whether a substance or object is a by-product must be made—
          - (a) in accordance with any regulations setting out detailed criteria on the application of the conditions in paragraph 1 to specific substances or objects; and
          - (b) having regard to any guidance published by the appropriate authority or the waste regulation authority for the purposes of this Article.”;
        - (c) paragraphs 2 and 3 were omitted.
  - (5) Article 6 is to be read as if—
    - (a) in paragraph 1, “Member States shall take appropriate measures to ensure that” were omitted;
    - (b) after paragraph 1 there were inserted—

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<sup>(20)</sup> [S.I. 2019/559](#).

<sup>(21)</sup> [S.I. 2019/620](#), amended by [S.I. 2019/1078](#).

<sup>(22)</sup> [1990 c. 43](#). Section 75A was inserted by [S.I. 2019/620](#), and amended by [S.I. 2020/904](#).

- “**1A.** Any decision as to whether a substance or object has ceased to be waste must be made—
- (a) in accordance with any regulations or retained direct EU legislation setting out detailed criteria on the application of the conditions in paragraph 1 to specific types of waste; and
  - (b) having regard to any guidance published by the appropriate authority or the waste regulation authority for the purposes of this Article.”;
- (c) in paragraph 2—
- (i) the first subparagraph were omitted;
  - (ii) in the second subparagraph, for “Those detailed criteria” there were substituted “Any detailed criteria set out in guidance as referred to in paragraph 1A”;
  - (iii) the third and fourth subparagraphs were omitted;
- (d) paragraph 3 were omitted;
- (e) in paragraph 4—
- (i) in the first subparagraph—
    - (aa) in the first sentence, for the words from the beginning to “Member State”, there were substituted “Where criteria have not been set out as referred to in paragraph 1A(a), the waste regulation authority”;
    - (bb) the second sentence were omitted;
  - (ii) in the second subparagraph—
    - (aa) for “Member States” there were substituted “The waste regulation authority”;
    - (bb) “by competent authorities” were omitted.
- (6) Article 7 is to be read as if—
- (a) before paragraph 1 there were inserted—
 

“**A1.** In this Article, the “list of waste” means the list contained in the Annex to Commission [Decision 2000/532/EC](#), as that list has effect in England, Wales or Scotland (as the case may be).”;
  - (b) in paragraph 1—
    - (i) the first and second sentences were omitted;
    - (ii) for the third sentence there were substituted “The list of waste shall, except as provided in Commission [Decision 2000/532/EC](#), be binding as regards determination of the waste which is to be considered as hazardous waste or as non-hazardous waste.”;
  - (c) paragraphs 2, 3, 6 and 7 were omitted.”;
- (c) in subsection (8), for “subsection (2)” substitute “this section”.
- (3) In regulation 6(4)(b)—

- (a) in the inserted subsection (3) of section 37 of the Waste and Emissions Trading Act 2003(23), for “exit day” substitute “IP completion day”;
- (b) in the inserted subsection (4) of that section, in paragraph (a)(i), at the end of the substituted text insert “or, in relation to Northern Ireland, EU legislation which has effect by virtue of the Protocol on Ireland/Northern Ireland in the EU withdrawal agreement”;
- (c) for the inserted subsections (5), (6) and (7) of that section substitute—
  - “(5) Article 5 is to be read as if—
    - (a) in paragraph 1, “Member States shall take appropriate measures to ensure that” were omitted;
    - (b) after paragraph 1 there were inserted—
      - “1A. Any decision as to whether a substance or object is a by-product must be made—
        - (a) in accordance with any regulations setting out detailed criteria on the application of the conditions in paragraph 1 to specific substances or objects; and
        - (b) having regard to any guidance published by the appropriate authority or the appropriate agency for the purposes of this Article.”;
      - (c) paragraphs 2 and 3 were omitted.
  - (6) Article 6 is to be read as if—
    - (a) in paragraph 1, “Member States shall take appropriate measures to ensure that” were omitted;
    - (b) after paragraph 1 there were inserted—
      - “1A. Any decision as to whether a substance or object has ceased to be waste must be made—
        - (a) in accordance with any regulations or retained direct EU legislation setting out detailed criteria on the application of the conditions in paragraph 1 to specific types of waste; and
        - (b) having regard to any guidance published by the appropriate authority or the appropriate agency for the purposes of this Article.”;
      - (c) in paragraph 2—
        - (i) the first subparagraph were omitted;
        - (ii) in the second subparagraph, for “Those detailed criteria” there were substituted “Any detailed criteria set out in guidance as referred to in paragraph 1A”;
        - (iii) the third and fourth subparagraphs were omitted;
      - (d) paragraph 3 were omitted;
      - (e) in paragraph 4—
        - (i) in the first subparagraph—
          - (aa) in the first sentence, for the words from the beginning to “Member State”, there were substituted “Where criteria have

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(23) 2003 c. 33. Section 37 was amended by S.I. 2011/988 (as it extends to England and Wales), S.S.I. 2011/226 (as it extends to Scotland), S.I. 2019/620 and S.I. 2020/904.

- not been set out as referred to in paragraph 1A(a), the appropriate agency”;
- (bb) the second sentence were omitted;
- (ii) in the second subparagraph—
- (aa) for “Member States” there were substituted “The appropriate agency”;
- (bb) “by competent authorities” were omitted.
- (7) Article 7 is to be read as if—
- (a) before paragraph 1 there were inserted—
- “**A1.** In this Article, the “list of waste” means the list contained in the Annex to Commission [Decision 2000/532/EC](#), as that list has effect in England, Wales, Scotland or Northern Ireland (as the case may be).”;
- (b) in paragraph 1—
- (i) the first and second sentences were omitted;
- (ii) for the third sentence there were substituted “The list of waste shall, except as provided in Commission [Decision 2000/532/EC](#), be binding as regards determination of the waste which is to be considered as hazardous waste or as non-hazardous waste.”;
- (c) paragraphs 2, 3, 6 and 7 were omitted.”.
- (4) In regulation 8—
- (a) in paragraph (2)—
- (i) before sub-paragraph (a) insert—
- “(za) for the heading, substitute “Scope and interpretation”.”;
- (ii) in sub-paragraph (b), in the inserted paragraph 1A, for “United Kingdom”, in both places that it occurs, substitute “Great Britain”;
- (iii) after sub-paragraph (b) insert—
- “(c) after paragraph 2 insert—
- “**3.** In this Regulation, “appliance” means any electrical or electronic equipment, as defined by Article 3(1)(a) of [Directive 2012/19/EU](#) of the European Parliament and of the Council on waste electrical and electronic equipment (WEEE), which is fully or partly powered by batteries or accumulators or is capable of being so.”.”;
- (b) for paragraph (5) substitute—
- “(5) In Annex 1, in point (1), for “Article 11 of [Directive 2006/66/EC](#)” substitute “regulation 7 of the Batteries and Accumulators (Placing on the Market) Regulations 2008(**24**)”.”;
- (c) omit paragraph (6).
- (5) In regulation 9—
- (a) in paragraph (3), in the inserted Article 2A—
- (i) in paragraph 1, for “Council Regulation (EU) 2017/997” substitute “Directive (EU) 2018/851”;
- (ii) in paragraph 2, for “exit day” substitute “IP completion day”;

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(24) [S.I. 2008/2164](#), to which relevant amendments were made by [S.I. 2015/63](#) and [2019/188](#).

(iii) for paragraphs 5, 6 and 7 substitute—

“5. Article 5 is to be read as if—

- (a) in paragraph 1, “Member States shall take appropriate measures to ensure that” were omitted;
- (b) after paragraph 1 there were inserted—

“1A. Any decision as to whether a substance or object is a by-product must be made—

- (a) in accordance with any regulations setting out detailed criteria on the application of the conditions in paragraph 1 to specific substances or objects; and
- (b) having regard to any guidance published by the appropriate authority or the competent authority for the purposes of this Article.”;
- (c) paragraphs 2 and 3 were omitted.

6. Article 6 is to be read as if—

- (a) in paragraph 1, “Member States shall take appropriate measures to ensure that” were omitted;
- (b) after paragraph 1 there were inserted—

“1A. Any decision as to whether a substance or object has ceased to be waste must be made—

- (a) in accordance with any regulations or retained direct EU legislation setting out detailed criteria on the application of the conditions in paragraph 1 to specific types of waste; and
- (b) having regard to any guidance published by the appropriate authority or the competent authority for the purposes of this Article.”;
- (c) in paragraph 2—
  - (i) the first subparagraph were omitted;
  - (ii) in the second subparagraph, for “Those detailed criteria” there were substituted “Any detailed criteria set out in guidance as referred to in paragraph 1A”;
  - (iii) the third and fourth subparagraphs were omitted;

(d) paragraph 3 were omitted;

(e) in paragraph 4—

(i) in the first subparagraph—

- (aa) in the first sentence, for the words from the beginning to “Member State”, there were substituted “Where criteria have not been set out as referred to in paragraph 1A(a), the competent authority”;
- (bb) the second sentence were omitted;

(ii) in the second subparagraph—

- (aa) for “Member States” there were substituted “The competent authority”;



(bb) “by competent authorities” were omitted.

7. Article 7 is to be read as if—

(a) before paragraph 1 there were inserted—

“**A1.** In this Article, the “list of waste” means the list contained in the Annex to Commission [Decision 2000/532/EC](#), as that list has effect in England, Wales, Scotland or Northern Ireland (as the case may be).”;

(b) in paragraph 1—

(i) the first and second sentences were omitted;

(ii) for the third sentence there were substituted “The list of waste shall, except as provided in Commission [Decision 2000/532/EC](#), be binding as regards determination of the waste which is to be considered as hazardous waste or as non-hazardous waste.”;

(c) paragraphs 2, 3, 6 and 7 were omitted.”;

(iv) in paragraph 9, for “paragraph 2” substitute “this Article”;

(b) in paragraph (3), in the inserted Article 2B, for paragraph 8 substitute—

“**8.** In paragraph 6(c), “the Landfill Directive” means Council [Directive 1999/31/EC](#) on the landfill of waste, as last amended by Directive (EU) 2018/850, and read as if, in Article 2—

(a) in point (a) “‘waste’,” were omitted; and

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

“(aa) “waste” means anything that—

(i) is waste within the meaning of Article 3(1) of [Directive 2008/98/EC](#), as read with Articles 5 and 6 of that Directive, and

(ii) is not excluded from the scope of that Directive by Article 2(1), (2) or (3) of that Directive;”;

(c) in paragraph (5), in the inserted Article 6A, for “exit day” in each place that it occurs, substitute “IP completion day”.

(6) In regulation 10—

(a) in paragraph (2)(b), in the inserted point (4C), for “[Directive 2013/56/EU](#)” substitute “[Directive \(EU\) 2018/849](#)”;

(b) in paragraph (2)(c), in the inserted text—

(i) in paragraph 2, for “[Council Regulation \(EU\) 2017/997](#)” substitute “[Directive \(EU\) 2018/851](#)”;

(ii) for paragraphs 3, 4 and 5 substitute—

“**3.** Article 5 is to be read as if—

(a) in paragraph 1, “Member States shall take appropriate measures to ensure that” were omitted;

(b) after paragraph 1 there were inserted—

“**1A.** Any decision as to whether a substance or object is a by-product must be made—

- (a) in accordance with any regulations setting out detailed criteria on the application of the conditions in paragraph 1 to specific substances or objects; and
  - (b) having regard to any guidance published by the appropriate authority or the competent authority for the purposes of this Article.”;
  - (c) paragraphs 2 and 3 were omitted.
- 4. Article 6 is to be read as if—
  - (a) in paragraph 1, “Member States shall take appropriate measures to ensure that” were omitted;
  - (b) after paragraph 1 there were inserted—
    - “1A. Any decision as to whether a substance or object has ceased to be waste must be made—
    - (a) in accordance with any regulations or retained direct EU legislation setting out detailed criteria on the application of the conditions in paragraph 1 to specific types of waste; and
    - (b) having regard to any guidance published by the appropriate authority or the competent authority for the purposes of this Article.”;
  - (c) in paragraph 2—
    - (i) the first subparagraph were omitted;
    - (ii) in the second subparagraph, for “Those detailed criteria” there were substituted “Any detailed criteria set out in guidance as referred to in paragraph 1A”;
    - (iii) the third and fourth subparagraphs were omitted;
  - (d) paragraph 3 were omitted;
  - (e) in paragraph 4—
    - (i) in the first subparagraph—
      - (aa) in the first sentence, for the words from the beginning to “Member State”, there were substituted “Where criteria have not been set out as referred to in paragraph 1A(a), the competent authority”;
      - (bb) the second sentence were omitted;
    - (ii) in the second subparagraph—
      - (aa) for “Member States” there were substituted “The competent authority”;
      - (bb) “by competent authorities” were omitted.
- 5. In this Article—
  - “appropriate agency” means—
    - (a) in relation to England, the Environment Agency;
    - (b) in relation to Wales, the Natural Resources Body for Wales;
    - (c) in relation to Scotland, the Scottish Environment Protection Agency;

“appropriate authority” means—

- (a) in relation to England, the Secretary of State;
- (b) in relation to Wales, the Welsh Ministers;
- (c) in relation to Scotland, the Scottish Ministers.”;

(c) in paragraph (6), in the inserted text—

(i) in point 8—

- (aa) omit “in the United Kingdom”;
- (bb) for “within the United Kingdom” substitute “within Great Britain”;

(ii) in point 9(a), for “as it had effect immediately before 4th July 2018” substitute “as last amended by Directive (EU) 2018/849”;

(iii) in point 9(c), for “the United Kingdom”, in both places that it occurs, substitute “Great Britain”.

(7) In regulation 11—

(a) in paragraph (3), in the inserted Article 2A—

(i) in paragraph 1, for “Council Regulation (EU) 2017/997” substitute “Directive (EU) 2018/851”;

(ii) in paragraph 2, for “exit day” substitute “IP completion day”;

(iii) for paragraphs 3, 4 and 5 substitute—

**“3.** Article 5 is to be read as if—

(a) in paragraph 1, “Member States shall take appropriate measures to ensure that” were omitted;

(b) after paragraph 1 there were inserted—

**“1A.** Any decision as to whether a substance or object is a by-product must be made—

(a) in accordance with any regulations setting out detailed criteria on the application of the conditions in paragraph 1 to specific substances or objects; and

(b) having regard to any guidance published by the appropriate authority or the competent authority for the purposes of this Article.”;

(c) paragraphs 2 and 3 were omitted.

**4.** Article 6 is to be read as if—

(a) in paragraph 1, “Member States shall take appropriate measures to ensure that” were omitted;

(b) after paragraph 1 there were inserted—

**“1A.** Any decision as to whether a substance or object has ceased to be waste must be made—

(a) in accordance with any regulations or retained direct EU legislation setting out detailed criteria on the application of the conditions in paragraph 1 to specific types of waste; and

- (b) having regard to any guidance published by the appropriate authority or the competent authority for the purposes of this Article.”;
    - (c) in paragraph 2—
      - (i) the first subparagraph were omitted;
      - (ii) in the second subparagraph, for “Those detailed criteria” there were substituted “Any detailed criteria set out in guidance as referred to in paragraph 1A”;
      - (iii) the third and fourth subparagraphs were omitted;
    - (d) paragraph 3 were omitted;
    - (e) in paragraph 4—
      - (i) in the first subparagraph—
        - (aa) in the first sentence, for the words from the beginning to “Member State”, there were substituted “Where criteria have not been set out as referred to in paragraph 1A(a), the competent authority”;
        - (bb) the second sentence were omitted;
      - (ii) in the second subparagraph—
        - (aa) for “Member States” there were substituted “The competent authority”;
        - (bb) “by competent authorities” were omitted.
  - 5. Article 7 is to be read as if—
    - (a) before paragraph 1 there were inserted—

“**A1.** In this Article, the “list of waste” means the list contained in the Annex to Commission [Decision 2000/532/EC](#), as that list has effect in England, Wales, Scotland or Northern Ireland (as the case may be).”;
    - (b) in paragraph 1—
      - (i) the first and second sentences were omitted;
      - (ii) for the third sentence there were substituted “The list of waste shall, except as provided in Commission [Decision 2000/532/EC](#), be binding as regards determination of the waste which is to be considered as hazardous waste or as non-hazardous waste.”;
    - (c) paragraphs 2, 3, 6 and 7 were omitted.”;
    - (iv) in paragraph 7, for “paragraph 2” substitute “this Article”.
  - (b) in paragraph (5), in the inserted Article 5A, for “exit day”, in each place that it occurs, substitute “IP completion day”.
- (8) In regulation 12—
- (a) in paragraph (3), in the inserted Article 2A—
    - (i) in paragraph 1, for “Council Regulation (EU) 2017/997” substitute “Directive (EU) 2018/851”;
    - (ii) in paragraph 2, for “exit day” substitute “IP completion day”;

(iii) for paragraphs 5, 6 and 7 substitute—

“5. Article 5 is to be read as if—

- (a) in paragraph 1, “Member States shall take appropriate measures to ensure that” were omitted;
- (b) after paragraph 1 there were inserted—

“1A. Any decision as to whether a substance or object is a by-product must be made—

- (a) in accordance with any regulations setting out detailed criteria on the application of the conditions in paragraph 1 to specific substances or objects; and
- (b) having regard to any guidance published by the appropriate authority or the competent authority for the purposes of this Article.”;
- (c) paragraphs 2 and 3 were omitted.

6. Article 6 is to be read as if—

- (a) in paragraph 1, “Member States shall take appropriate measures to ensure that” were omitted;
- (b) after paragraph 1 there were inserted—

“1A. Any decision as to whether a substance or object has ceased to be waste must be made—

- (a) in accordance with any regulations or retained direct EU legislation setting out detailed criteria on the application of the conditions in paragraph 1 to specific types of waste; and
- (b) having regard to any guidance published by the appropriate authority or the competent authority for the purposes of this Article.”;
- (c) in paragraph 2—

(i) the first subparagraph were omitted;

(ii) in the second subparagraph, for “Those detailed criteria” there were substituted “Any detailed criteria set out in guidance as referred to in paragraph 1A”;

(iii) the third and fourth subparagraphs were omitted;

(d) paragraph 3 were omitted;

(e) in paragraph 4—

(i) in the first subparagraph—

(aa) in the first sentence, for the words from the beginning to “Member State”, there were substituted “Where criteria have not been set out as referred to in paragraph 1A(a), the competent authority”;

(bb) the second sentence were omitted;

(ii) in the second subparagraph—

(aa) for “Member States” there were substituted “The competent authority”;

(bb) “by competent authorities” were omitted.

7. Article 7 is to be read as if—

(a) before paragraph 1 there were inserted—

“**A1.** In this Article, the “list of waste” means the list contained in the Annex to Commission [Decision 2000/532/EC](#), as that list has effect in England, Wales, Scotland or Northern Ireland (as the case may be).”;

(b) in paragraph 1—

(i) the first and second sentences were omitted;

(ii) for the third sentence there were substituted “The list of waste shall, except as provided in Commission [Decision 2000/532/EC](#), be binding as regards determination of the waste which is to be considered as hazardous waste or as non-hazardous waste.”;

(c) paragraphs 2, 3, 6 and 7 were omitted.”;

(b) in paragraph (3), in the inserted Article 2B, for paragraph 8 substitute—

“**8.** In paragraph 6(c), “the Landfill Directive” means Council [Directive 1999/31/EC](#) on the landfill of waste, as last amended by Directive (EU) 2018/850, and read as if, in Article 2—

(a) in point (a) “waste’,” were omitted; and

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

“(aa) “waste” means anything that—

(i) is waste within the meaning of Article 3(1) of [Directive 2008/98/EC](#), as read with Articles 5 and 6 of that Directive, and

(ii) is not excluded from the scope of that Directive by Article 2(1), (2) or (3) of that Directive;”.”;

(c) in paragraph (5), in the inserted Article 6A, for “exit day” in each place that it occurs, substitute “IP completion day”;

(d) in paragraph (8)(b)—

(i) for “Commission Directive (EU) 2017/2096” substitute “Commission Delegated Directive (EU) 2020/363”;

(ii) for “as it had effect immediately before 4th July 2018” substitute “as last amended by Directive (EU) 2018/849”.

(9) Omit regulation 13.

(10) In regulation 14(2), in the inserted Article A1—

(a) in paragraph 1 for “Directive (EU) 2015/720” substitute “Directive (EU) 2018/852”;

(b) for paragraph 3 substitute—

“**3.** Article 3 is to be read as if, in paragraph 2, for “Article 3 of [Directive 2008/98/EC](#)” there were substituted “Article 3(1) of the Waste Framework Directive, as read with Articles 5 and 6 of that Directive”.”;

(c) in paragraph 4—

(i) for “3(b)” substitute “3”;

- (ii) for “Council Regulation (EU) 2017/997” substitute “Directive (EU) 2018/851”;
- (d) for paragraphs 5, 6 and 7 substitute—
  - “5. Article 5 is to be read as if—
    - (a) in paragraph 1, “Member States shall take appropriate measures to ensure that” were omitted;
    - (b) after paragraph 1 there were inserted—
      - “1A. Any decision as to whether a substance or object is a by-product must be made—
        - (a) in accordance with any regulations setting out detailed criteria on the application of the conditions in paragraph 1 to specific substances or objects; and
        - (b) having regard to any guidance published by the appropriate authority or the appropriate agency for the purposes of this Article.”;
    - (c) paragraphs 2 and 3 were omitted.
  - 6. Article 6 is to be read as if—
    - (a) in paragraph 1, “Member States shall take appropriate measures to ensure that” were omitted;
    - (b) after paragraph 1 there were inserted—
      - “1A. Any decision as to whether a substance or object has ceased to be waste must be made—
        - (a) in accordance with any regulations or retained direct EU legislation setting out detailed criteria on the application of the conditions in paragraph 1 to specific types of waste; and
        - (b) having regard to any guidance published by the appropriate authority or the appropriate agency for the purposes of this Article.”;
    - (c) in paragraph 2—
      - (i) the first subparagraph were omitted;
      - (ii) in the second subparagraph, for “Those detailed criteria” there were substituted “Any detailed criteria set out in guidance as referred to in paragraph 1A”;
      - (iii) the third and fourth subparagraphs were omitted;
    - (d) paragraph 3 were omitted;
    - (e) in paragraph 4—
      - (i) in the first subparagraph—
        - (aa) in the first sentence, for the words from the beginning to “Member State”, there were substituted “Where criteria have not been set out as referred to in paragraph 1A(a), the appropriate agency”;
        - (bb) the second sentence were omitted;
      - (ii) in the second subparagraph—

(aa) for “Member States” there were substituted “The appropriate agency”;

(bb) “by competent authorities” were omitted.

7. In this Article—

“appropriate agency” means—

- (a) in relation to England, the Environment Agency;
- (b) in relation to Wales, the Natural Resources Body for Wales;
- (c) in relation to Scotland, the Scottish Environment Protection Agency;

“appropriate authority” means—

- (a) in relation to England, the Secretary of State;
- (b) in relation to Wales, the Welsh Ministers;
- (c) in relation to Scotland, the Scottish Ministers.”.

(11) In regulation 15—

(a) in paragraph (2), in the inserted Article A1—

(i) in paragraph 2, for “Council [Directive 2011/97/EU](#)” substitute “Directive (EU) 2018/850”;

(ii) in paragraph 3, for “exit day” substitute “IP completion day”;

(iii) in paragraph 5, for points (a) and (b) substitute—

“(a) in point (a)—

(i) “‘waste’” were omitted; and

(ii) for “[Directive 2008/98/EC](#)” there were substituted “the Waste Framework Directive”;

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

“(aa) “waste” means anything that—

(i) is waste within the meaning of Article 3(1) of the Waste Framework Directive, as read with Articles 5 and 6 of that Directive, and

(ii) is not excluded from the scope of that Directive by Article 2(1), (2) or (3) of that Directive;”;

(iv) after paragraph 5 insert—

“**5A.** Article 3 is to be read as if—

(a) in paragraph 2, “Without prejudice to existing Community legislation” were omitted;

(b) for paragraph 3 there were substituted—

“**3.** The management of extractive waste is excluded from the scope of this Directive—

(a) in relation to England and Wales, where it falls within the scope of Schedule 20, or paragraph 8(a) or (b) of Schedule 22, to the Environmental Permitting (England and Wales) Regulations 2016 (“the 2016 Regulations”);

(b) in relation to Northern Ireland, where it falls within the scope of the Planning (Management of Waste from



Extractive Industries) Regulations (Northern Ireland) 2015(25) (“the 2015 Regulations”).

In this paragraph, “extractive waste”—

- (a) in relation to England and Wales, has the meaning given in regulation 2(1) of the 2016 Regulations;
- (b) in relation to Northern Ireland, has the meaning given in regulation 2(2) of the 2015 Regulations.”.”;

(v) in paragraph 6, at the end insert—

“(d) in point (f)—

- (i) after “waste”, in the first place it occurs, there were inserted “paper, metal, plastic and glass”;
- (ii) the words from “pursuant” to “Article 22 of that Directive” were omitted;
- (iii) for “Article 4 of that Directive” there were substituted “Article 4 of the Waste Framework Directive”.”.”;

(vi) after paragraph 6, insert—

“6A. Article 6(a) is to be read as if—

- (a) in the first paragraph, in the second sentence, for “may” there were substituted “does”;
- (b) in the second paragraph, for the words from “of [Directive 2008/98/EC](#)” to the end, there were substituted “set out in Part 1 of Schedule 1 to the Waste (England and Wales) Regulations 2011, or any objectives in retained EU law relating to the increase of preparing for re-use and recycling”.”.”;

(vii) omit paragraphs 10(b), 11(d) and 12(a)(i);

(b) in paragraph (2), in the inserted Article A2—

- (i) in paragraph 1, for “Council Regulation (EU) 2017/997” substitute “Directive (EU) 2018/851”;
- (ii) in paragraph 2, for “exit day” substitute “IP completion day”;
- (iii) for paragraphs 4, 5 and 6, substitute—

“4. Article 5 is to be read as if—

- (a) in paragraph 1, “Member States shall take appropriate measures to ensure that” were omitted;
- (b) after paragraph 1 there were inserted—

“1A. Any decision as to whether a substance or object is a by-product must be made—

- (a) in accordance with any regulations setting out detailed criteria on the application of the conditions in paragraph 1 to specific substances or objects; and
- (b) having regard to any guidance published by the appropriate authority or the appropriate agency for the purposes of this Article.”.”;

- (c) paragraphs 2 and 3 were omitted..
- 5. Article 6 is to be read as if—
  - (a) in paragraph 1, “Member States shall take appropriate measures to ensure that” were omitted;
  - (b) after paragraph 1 there were inserted—
    - “**1A.** Any decision as to whether a substance or object has ceased to be waste must be made—
      - (a) in accordance with any regulations or retained direct EU legislation setting out detailed criteria on the application of the conditions in paragraph 1 to specific types of waste; and
      - (b) having regard to any guidance published by the appropriate authority or the appropriate agency for the purposes of this Article.”;
  - (c) in paragraph 2—
    - (i) the first subparagraph were omitted;
    - (ii) in the second subparagraph, for “Those detailed criteria” there were substituted “Any detailed criteria set out in guidance as referred to in paragraph 1A”;
    - (iii) the third and fourth subparagraphs were omitted;
  - (d) paragraph 3 were omitted;
  - (e) in paragraph 4—
    - (i) in the first subparagraph—
      - (aa) in the first sentence, for the words from the beginning to “Member State”, there were substituted “Where criteria have not been set out as referred to in paragraph 1A(a), the appropriate agency”;
      - (bb) the second sentence were omitted;
    - (ii) in the second subparagraph—
      - (aa) for “Member States” there were substituted “The appropriate agency”;
      - (bb) “by competent authorities” were omitted.
- 6. Article 7 is to be read as if—
  - (a) before paragraph 1 there were inserted—
    - “**A1.** In this Article, the “list of waste” means the list contained in the Annex to Commission [Decision 2000/532/EC](#), as that list has effect in England, Wales or Northern Ireland (as the case may be).”;
  - (b) in paragraph 1—
    - (i) the first and second sentences were omitted;
    - (ii) for the third sentence there were substituted “The list of waste shall, except as provided in Commission [Decision 2000/532/EC](#), be binding as regards determination of the waste which

- is to be considered as hazardous waste or as non-hazardous waste.”;
- (c) paragraphs 2, 3, 6 and 7 were omitted.”;
- (c) for paragraph (7)(d)(v) substitute—
- “(v) in section 2.2.1, in the first paragraph—
- (aa) for “Article 2(b) of the Landfill Directive” substitute “Article 3(2b) of the Waste Framework Directive”;
- (bb) for “the European waste list” substitute “Commission [Decision 2000/532/EC](#)”.”.
- (12) In regulation 16—
- (a) in paragraph (2), in the inserted Article 1A—
- (i) in paragraph 1, for “Directive (EU) 2015/720” substitute “Directive (EU) 2018/852(26)”;
- (ii) for paragraph 2 substitute—
- “2. Article 3 is to be read as if, in paragraph 2, for “Article 3 of [Directive 2008/98/EC](#)” there were substituted “Article 3(1) of the Waste Framework Directive, as read with Articles 5 and 6 of that Directive”.”;
- (iii) in paragraph 4—
- (aa) for “2(b)” substitute “2”;
- (bb) for “Council Regulation (EU) 2017/997” substitute “Directive (EU) 2018/851”;
- (iv) for paragraphs 5, 6 and 7 substitute—
- “5. Article 5 is to be read as if—
- (a) in paragraph 1, “Member States shall take appropriate measures to ensure that” were omitted;
- (b) after paragraph 1 there were inserted—
- “1A. Any decision as to whether a substance or object is a by-product must be made—
- (a) in accordance with any regulations setting out detailed criteria on the application of the conditions in paragraph 1 to specific substances or objects; and
- (b) having regard to any guidance published by the appropriate authority or the appropriate agency for the purposes of this Article.”;
- (c) paragraphs 2 and 3 were omitted.
6. Article 6 is to be read as if—
- (a) in paragraph 1, “Member States shall take appropriate measures to ensure that” were omitted;
- (b) after paragraph 1 there were inserted—
- “1A. Any decision as to whether a substance or object has ceased to be waste must be made—

- (a) in accordance with any regulations or retained direct EU legislation setting out detailed criteria on the application of the conditions in paragraph 1 to specific types of waste; and
  - (b) having regard to any guidance published by the appropriate authority or the appropriate agency for the purposes of this Article.”;
  - (c) in paragraph 2—
    - (i) the first subparagraph were omitted;
    - (ii) in the second subparagraph, for “Those detailed criteria” there were substituted “Any detailed criteria set out in guidance as referred to in paragraph 1A”;
    - (iii) the third and fourth subparagraphs were omitted;
  - (d) paragraph 3 were omitted;
  - (e) in paragraph 4—
    - (i) in the first subparagraph—
      - (aa) in the first sentence, for the words from the beginning to “Member State”, there were substituted “Where criteria have not been set out as referred to in paragraph 1A(a), the appropriate agency”;
      - (bb) the second sentence were omitted;
    - (ii) in the second subparagraph—
      - (aa) for “Member States” there were substituted “The appropriate agency”;
      - (bb) “by competent authorities” were omitted.
7. In this Article—
- “appropriate agency” means—
- (a) in relation to England, the Environment Agency;
  - (b) in relation to Wales, the Natural Resources Body for Wales;
  - (c) in relation to Scotland, the Scottish Environment Protection Agency;
- “appropriate authority” means—
- (a) in relation to England, the Secretary of State;
  - (b) in relation to Wales, the Welsh Ministers;
  - (c) in relation to Scotland, the Scottish Ministers.”;
- (b) in paragraph (6)(c), in the inserted paragraph 2, for “exit day” substitute “IP completion day”.
- (13) In regulation 17—
- (a) in paragraph (2)(b), for the inserted paragraph 3(a) substitute—
    - “(a) in so far as it extends to England and Wales—
      - (i) “financial guarantee” means the financial guarantee referred to in Article 14 of [Directive 2006/21/EC](#), as it applies by virtue of paragraph 7(j) of Schedule 20 to the Environmental Permitting (England and Wales) Regulations 2016 (“the 2016 Regulations”);

- (ii) “rehabilitation” has the meaning given in Article 3(20) of [Directive 2006/21/EC](#), and for the purposes of that definition “waste facility” has the meaning given in paragraph (iv);
  - (iii) “treatment” has the meaning given in Article 3(8) of [Directive 2006/21/EC](#), and for the purposes of that definition “waste” has the meaning given in paragraph (b) of the definition of “waste” in regulation 2(1) of the 2016 Regulations;
  - (iv) “waste facility” has the meaning given to “mining waste facility” in paragraph 2(1) of Schedule 20 to the 2016 Regulations;”;
- (b) omit paragraph (3).
- (14) In regulation 18(2)—
- (a) in the inserted Article A2, in paragraph 2, for “exit day” substitute “IP completion day”;
  - (b) in the inserted Article A3—
    - (i) in paragraph 1, for “Council Regulation (EU) 2017/997” substitute “Directive (EU) 2018/851”;
    - (ii) in paragraph 2, for “exit day” substitute “IP completion day”;
    - (iii) for paragraph 3, 4 and 5 substitute—
      - “3. Article 5 is to be read as if—
      - (a) in paragraph 1, “Member States shall take appropriate measures to ensure that” were omitted;
      - (b) after paragraph 1 there were inserted—
        - “1A. Any decision as to whether a substance or object is a by-product must be made—
        - (a) in accordance with any regulations setting out detailed criteria on the application of the conditions in paragraph 1 to specific substances or objects; and
        - (b) having regard to any guidance published by the appropriate authority or the appropriate agency for the purposes of this Article.”;
      - (c) paragraphs 2 and 3 were omitted.
4. Article 6 is to be read as if—
- (a) in paragraph 1, “Member States shall take appropriate measures to ensure that” were omitted;
  - (b) after paragraph 1 there were inserted—
    - “1A. Any decision as to whether a substance or object has ceased to be waste must be made—
    - (a) in accordance with any regulations or retained direct EU legislation setting out detailed criteria on the application of the conditions in paragraph 1 to specific types of waste; and
    - (b) having regard to any guidance published by the appropriate authority or the appropriate agency for the purposes of this Article.”;
  - (c) in paragraph 2—

- (i) the first subparagraph were omitted;
  - (ii) in the second subparagraph, for “Those detailed criteria” there were substituted “Any detailed criteria set out in guidance as referred to in paragraph 1A”;
  - (iii) the third and fourth subparagraphs were omitted;
  - (d) paragraph 3 were omitted;
  - (e) in paragraph 4—
    - (i) in the first subparagraph—
      - (aa) in the first sentence, for the words from the beginning to “Member State”, there were substituted “Where criteria have not been set out as referred to in paragraph 1A(a), the appropriate agency”;
      - (bb) the second sentence were omitted;
    - (ii) in the second subparagraph—
      - (aa) for “Member States” there were substituted “The appropriate agency”;
      - (bb) “by competent authorities” were omitted.
5. Article 7 is to be read as if—
- (a) before paragraph 1 there were inserted—

“**A1.** In this Article, the “list of waste” means the list contained in the Annex to Commission [Decision 2000/532/EC](#), as that list has effect in England, Wales, Scotland or Northern Ireland (as the case may be).”;
  - (b) in paragraph 1—
    - (i) the first and second sentences were omitted;
    - (ii) for the third sentence there were substituted “The list of waste shall, except as provided in Commission [Decision 2000/532/EC](#), be binding as regards determination of the waste which is to be considered as hazardous waste or as non-hazardous waste.”;
  - (c) paragraphs 2, 3, 6 and 7 were omitted.”.
- (15) In regulation 19(3)—
- (a) in the inserted Article 1A, in paragraph 2, for “exit day” substitute “IP completion day”;
  - (b) in the inserted Article 1B—
    - (i) in paragraph 1, for “Council Regulation (EU) 2017/997” substitute “Directive (EU) 2018/851”;
    - (ii) in paragraph 2, for “exit day” substitute “IP completion day”;
    - (iii) for paragraphs 3, 4 and 5 substitute—

“**3.** Article 5 is to be read as if—

      - (a) in paragraph 1, “Member States shall take appropriate measures to ensure that” were omitted;
      - (b) after paragraph 1 there were inserted—

- “**1A.** Any decision as to whether a substance or object is a by-product must be made—
- (a) in accordance with any regulations setting out detailed criteria on the application of the conditions in paragraph 1 to specific substances or objects; and
  - (b) having regard to any guidance published by the appropriate authority or the appropriate agency for the purposes of this Article.”;
- (c) paragraphs 2 and 3 were omitted.
- 4.** Article 6 is to be read as if—
- (a) in paragraph 1, “Member States shall take appropriate measures to ensure that” were omitted;
  - (b) after paragraph 1 there were inserted—
    - “**1A.** Any decision as to whether a substance or object has ceased to be waste must be made—
    - (a) in accordance with any regulations or retained direct EU legislation setting out detailed criteria on the application of the conditions in paragraph 1 to specific types of waste; and
    - (b) having regard to any guidance published by the appropriate authority or the appropriate agency for the purposes of this Article.”;
  - (c) in paragraph 2—
    - (i) the first subparagraph were omitted;
    - (ii) in the second subparagraph, for “Those detailed criteria” there were substituted “Any detailed criteria set out in guidance as referred to in paragraph 1A”;
    - (iii) the third and fourth subparagraphs were omitted;
  - (d) paragraph 3 were omitted;
  - (e) in paragraph 4—
    - (i) in the first subparagraph—
      - (aa) in the first sentence, for the words from the beginning to “Member State”, there were substituted “Where criteria have not been set out as referred to in paragraph 1A(a), the appropriate agency”;
      - (bb) the second sentence were omitted;
    - (ii) in the second subparagraph—
      - (aa) for “Member States” there were substituted “The appropriate agency”;
      - (bb) “by competent authorities” were omitted.
- 5.** Article 7 is to be read as if—
- (a) before paragraph 1 there were inserted—
    - “**A1.** In this Article, the “list of waste” means the list contained in the Annex to Commission [Decision 2000/532/EC](#), as that list

- has effect in England, Wales, Scotland or Northern Ireland (as the case may be).”;
- (b) in paragraph 1—
- (i) the first and second sentences were omitted;
- (ii) for the third sentence there were substituted “The list of waste shall, except as provided in Commission [Decision 2000/532/EC](#), be binding as regards determination of the waste which is to be considered as hazardous waste or as non-hazardous waste.”;
- (c) paragraphs 2, 3, 6 and 7 were omitted.”;
- (iv) in paragraph 7, for “paragraph 2” substitute “this Article”.
- (16) In regulation 20(2), in the inserted Article A1—
- (a) in paragraph 3, for “Council Regulation (EU) 2017/997” substitute “Directive (EU) 2018/851”;
- (b) in paragraph 4, for “exit day” substitute “IP completion day”;
- (c) for paragraphs 5, 6 and 7 substitute—
- “5. Article 5 is to be read as if—
- (a) in paragraph 1, “Member States shall take appropriate measures to ensure that” were omitted;
- (b) after paragraph 1 there were inserted—
- “1A. Any decision as to whether a substance or object is a by-product must be made—
- (a) in accordance with any regulations setting out detailed criteria on the application of the conditions in paragraph 1 to specific substances or objects; and
- (b) having regard to any guidance published by the appropriate authority or the appropriate agency for the purposes of this Article.”;
- (c) paragraphs 2 and 3 were omitted.
6. Article 6 is to be read as if—
- (a) in paragraph 1, “Member States shall take appropriate measures to ensure that” were omitted;
- (b) after paragraph 1 there were inserted—
- “1A. Any decision as to whether a substance or object has ceased to be waste must be made—
- (a) in accordance with any regulations or retained direct EU legislation setting out detailed criteria on the application of the conditions in paragraph 1 to specific types of waste; and
- (b) having regard to any guidance published by the appropriate authority or the appropriate agency for the purposes of this Article.”;
- (c) in paragraph 2—
- (i) the first subparagraph were omitted;



- (ii) in the second subparagraph, for “Those detailed criteria” there were substituted “Any detailed criteria set out in guidance as referred to in paragraph 1A”;
  - (iii) the third and fourth subparagraphs were omitted;
  - (d) paragraph 3 were omitted;
  - (e) in paragraph 4—
    - (i) in the first subparagraph—
      - (aa) in the first sentence, for the words from the beginning to “Member State”, there were substituted “Where criteria have not been set out as referred to in paragraph 1A(a), the appropriate agency”;
      - (bb) the second sentence were omitted;
    - (ii) in the second subparagraph—
      - (aa) for “Member States” there were substituted “The appropriate agency”;
      - (bb) “by competent authorities” were omitted.
7. Article 7 is to be read as if—
- (a) before paragraph 1 there were inserted—
    - “**A1.** In this Article, the “list of waste” means the list contained in the Annex to Commission [Decision 2000/532/EC](#), as that list has effect in England, Wales, Scotland or Northern Ireland (as the case may be).”;
  - (b) in paragraph 1—
    - (i) the first and second sentences were omitted;
    - (ii) for the third sentence there were substituted “The list of waste shall, except as provided in Commission [Decision 2000/532/EC](#), be binding as regards determination of the waste which is to be considered as hazardous waste or as non-hazardous waste.”;
  - (c) paragraphs 2, 3, 6 and 7 were omitted.”;
  - (d) in paragraph 9, for “paragraph 4” substitute “this Article”.
- (17) In regulation 21(3), in the inserted Article 1A—
- (a) in paragraph 1, for “Council Regulation (EU) 2017/997” substitute “Directive (EU) 2018/851”;
  - (b) in paragraph 2, for “exit day” substitute “IP completion day”;
  - (c) after paragraph 2 insert—
    - “**2A.** Article 3 is to be read as if points 2b, 2c, 15a and 17a were omitted.”;
  - (d) for paragraphs 3 to 6 substitute—
    - “**3.** Article 5 is to be read as if—
      - (a) in paragraph 1, “Member States shall take appropriate measures to ensure that” were omitted;
      - (b) after paragraph 1 there were inserted—
        - “**1A.** Any decision as to whether a substance or object is a by-product must be made—

- (a) in accordance with any regulations setting out detailed criteria on the application of the conditions in paragraph 1 to specific substances or objects; and
    - (b) having regard to any guidance published by the appropriate authority or the appropriate agency for the purposes of this Article.”;
  - (c) paragraphs 2 and 3 were omitted.
4. Article 6 is to be read as if—
- (a) in paragraph 1, “Member States shall take appropriate measures to ensure that” were omitted;
  - (b) after paragraph 1 there were inserted—
    - “**1A.** Any decision as to whether a substance or object has ceased to be waste must be made—
    - (a) in accordance with any regulations or retained direct EU legislation setting out detailed criteria on the application of the conditions in paragraph 1 to specific types of waste; and
    - (b) having regard to any guidance published by the appropriate authority or the appropriate agency for the purposes of this Article.”;
  - (c) in paragraph 2—
    - (i) the first subparagraph were omitted;
    - (ii) in the second subparagraph, for “Those detailed criteria” there were substituted “Any detailed criteria set out in guidance as referred to in paragraph 1A”;
    - (iii) the third and fourth subparagraphs were omitted;
  - (d) paragraph 3 were omitted;
  - (e) in paragraph 4—
    - (i) in the first subparagraph—
      - (aa) in the first sentence, for the words from the beginning to “Member State”, there were substituted “Where criteria have not been set out as referred to in paragraph 1A(a), the appropriate agency”;
      - (bb) the second sentence were omitted;
    - (ii) in the second subparagraph—
      - (aa) for “Member States” there were substituted “The appropriate agency”;
      - (bb) “by competent authorities” were omitted.
5. Article 7 is to be read as if—
- (a) before paragraph 1 there were inserted—
    - “**A1.** In this Article, the “list of waste” means the list contained in the Annex to Commission [Decision 2000/532/EC](#), as that list has effect in England, Wales, Scotland or Northern Ireland (as the case may be).”;
  - (b) in paragraph 1—

- (i) the first and second sentences were omitted;
- (ii) for the third sentence there were substituted “The list of waste shall, except as provided in Commission [Decision 2000/532/EC](#), be binding as regards determination of the waste which is to be considered as hazardous waste or as non-hazardous waste.”;
- (c) paragraphs 2, 3, 6 and 7 were omitted.
- 6. Article 11(2) is to be read as if—
  - (a) in the words before point (a), for “European” there were substituted “United Kingdom”;
  - (b) points (c) to (e) were omitted.”;
  - (e) in paragraph 8, for “paragraph 2” substitute “this Article”.

### **The Environment and Rural Affairs (Amendment) (EU Exit) Regulations 2019**

15.—(1) The Environment and Rural Affairs (Amendment) (EU Exit) Regulations 2019(27) are amended as follows.

- (2) In regulation 4(3), for “regulations 13(3) and” substitute “regulation”.
- (3) Omit regulation 5.

## PART 5

### Amendment and revocation of retained direct EU legislation

#### **Commission [Decision 2000/532/EC](#) replacing [Decision 94/3/EC](#) establishing a list of wastes pursuant to Article 1(a) of Council [Directive 75/442/EEC](#) on waste and Council [Decision 94/904/EC](#) establishing a list of hazardous waste pursuant to Article 1(4) of Council [Directive 91/689/EEC](#) on hazardous waste**

16.—(1) Commission [Decision 2000/532/EC](#) replacing [Decision 94/3/EC](#) establishing a list of wastes pursuant to Article 1(a) of Council [Directive 75/442/EEC](#) on waste and Council [Decision 94/904/EC](#) establishing a list of hazardous waste pursuant to Article 1(4) of Council [Directive 91/689/EEC](#) on hazardous waste is amended as follows.

- (2) Omit Articles 4, 5 and 6.
- (3) In the Annex, in the “Definitions” section, before point 1 insert—
  - “A1. ‘the Waste Framework Directive’ means [Directive 2008/98/EC](#) of the European Parliament and of the Council on waste, as last amended by Directive (EU) 2018/851, and read as if, in Annex 3, in entry HP 9, in the second sentence, “in the Member States” were omitted;
  - A2. ‘waste’, ‘hazardous waste’ and ‘non-hazardous waste’ have the meanings given in the Waste Framework Directive.”
- (4) In the Annex, in the “Assessment and Classification” section—
  - (a) for “[Directive 2008/98/EC](#)”, in each place that it occurs, substitute “the Waste Framework Directive”;
  - (b) in paragraph 2 (classification of waste as hazardous)—

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(27) [S.I. 2019/1078](#).

- (i) in the first subparagraph, for the words from “pursuant” to the end, substitute “for the purposes of any legislation relating to hazardous waste”;
- (ii) after that subparagraph, insert—
  - “This is subject to any legislation which provides, or gives a person power to determine, that—
  - (a) waste of a kind which is listed as hazardous waste in the list of wastes is to be treated as non-hazardous waste in particular cases or circumstances (including in the case of a particular batch or consignment of waste); or
  - (b) waste of a kind which is listed as non-hazardous waste in the list of wastes is to be treated as hazardous waste in particular cases or circumstances (including in the case of a particular batch or consignment of waste).”;
- (iii) in the second subparagraph (commencing “For those wastes”), in the first indent, in the second sentence, omit “in the Member States”.

**Commission Implementing Decision (EU) 2020/248 laying down technical guidelines for inspections in accordance with Article 17 of Directive 2006/21/EC of the European Parliament and of the Council**

17.—(1) Commission Implementing Decision (EU) 2020/248 laying down technical guidelines for inspections in accordance with Article 17 of Directive 2006/21/EC of the European Parliament and of the Council is amended as follows.

(2) In Article 1—

- (a) the existing text is numbered paragraph 1;
- (b) in paragraph 1, for “waste facilities in accordance with Article 17 of Directive 2006/21/EC” substitute “mining waste facilities”;
- (c) after paragraph 1 insert—

“2. In this Decision—

“the Mining Waste Directive” means Directive 2006/21/EC of the European Parliament and of the Council on the management of waste from extractive industries(28), read with the modifications in Article 1A;

“the Waste Framework Directive” means Directive 2008/98/EC of the European Parliament and of the Council on waste, as last amended by Directive (EU) 2018/851;

“Category A facility” or “Category A waste facility” means a mining waste facility classified as Category A in accordance with the criteria in Annex 3 to the Mining Waste Directive;

“competent authority” means an authority responsible for carrying out inspections of mining waste facilities under the inspection provisions;

“the inspection provisions” means the provisions of the relevant mining waste legislation which, immediately before IP completion day, implemented Article 17 of the Mining Waste Directive;

“mining waste facility” or “waste facility”—

- (a) in relation to England and Wales, has the meaning given to “mining waste facility” by paragraph 2(1) of Schedule 20 to the Environmental Permitting (England and Wales) Regulations 2016;

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(28) OJ L 102, 11.4.2006, p. 15.

- (b) in relation to Scotland, has the meaning given to “waste facility” by regulation 2(1) of the Management of Extractive Waste (Scotland) Regulations 2010<sup>(29)</sup>;
- (c) in relation to Northern Ireland, has the meaning given to “waste facility” by regulation 2(2) of the Planning (Management of Waste from Extractive Industries) Regulations (Northern Ireland) 2015<sup>(30)</sup>;

“the relevant mining waste legislation” means—

- (a) in relation to England and Wales, Schedule 20 to the Environmental Permitting (England and Wales) Regulations 2016;
- (b) in relation to Scotland, the Management of Extractive Waste (Scotland) Regulations 2010;
- (c) in relation to Northern Ireland, the Planning (Management of Waste from Extractive Industries) Regulations (Northern Ireland) 2015;

“waste management plan” has the meaning given in the relevant mining waste legislation.

3. Other expressions used in this Decision which are defined in the Mining Waste Directive have the meanings given in that Directive.”.

(3) After Article 1 insert—

#### “Article 1A

1. For the purposes of Article 1(2) and (3), the Mining Waste Directive is to be read with the modifications in paragraphs 2 and 3.

2. Article 3 is to be read as if—

- (a) in point (1), for “Article 1(a) of [Directive 75/442/EEC](#)” there were substituted “Article 3(1) of the Waste Framework Directive, as read with Articles 5 and 6 of that Directive”;
- (b) in point (2), for “Article 1(4) of Council [Directive 91/689/EEC](#) of 12 December 1991 on hazardous waste” there were substituted “Article 3(2) of the Waste Framework Directive”;
- (c) in point (24), the words from “in accordance” to “takes place,” were omitted;
- (d) point (27) were omitted.

3. Annex 3 is to be read as if—

- (a) in the second indent, for “[Directive 91/689/EEC](#)” there were substituted “the Waste Framework Directive”;
- (b) in the third indent, for “Directives [67/548/EEC](#) or [1999/45/EC](#)” there were substituted “Regulation [\(EC\) 1272/2008](#) of the European Parliament and of the Council on classification, labelling and packaging of substances and mixtures”.

#### Article 1B

1. For the purposes of Article 1A, “the Waste Framework Directive” means [Directive 2008/98/EC](#) of the European Parliament and of the Council on waste, as last amended by Directive (EU) 2018/851, and read with the modifications in paragraphs 2 to 4.

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<sup>(29)</sup> S.S.I. 2010/60, to which there are amendments not relevant to these Regulations.

<sup>(30)</sup> S.R. 2015 No. 85, to which there are amendments not relevant to these Regulations.

2. Article 5 is to be read as if—
  - (a) in paragraph 1, “Member States shall take appropriate measures to ensure that” were omitted;
  - (b) after paragraph 1 there were inserted—
    - “1A. Any decision as to whether a substance or object is a by-product must be made—
      - (a) in accordance with any regulations setting out detailed criteria on the application of the conditions in paragraph 1 to specific substances or objects; and
      - (b) having regard to any guidance published by the appropriate authority or the appropriate agency for the purposes of this Article.”;
  - (c) paragraphs 2 and 3 were omitted.
3. Article 6 is to be read as if—
  - (a) in paragraph 1, “Member States shall take appropriate measures to ensure that” were omitted;
  - (b) after paragraph 1 there were inserted—
    - “1A. Any decision as to whether a substance or object has ceased to be waste must be made—
      - (a) in accordance with any regulations or retained direct EU legislation setting out detailed criteria on the application of the conditions in paragraph 1 to specific types of waste; and
      - (b) having regard to any guidance published by the appropriate authority or the appropriate agency for the purposes of this Article.”;
  - (c) in paragraph 2—
    - (i) the first subparagraph were omitted;
    - (ii) in the second subparagraph, for “Those detailed criteria” there were substituted “Any detailed criteria set out in guidance as referred to in paragraph 1A”;
    - (iii) the third and fourth subparagraphs were omitted;
  - (d) paragraph 3 were omitted;
  - (e) in paragraph 4—
    - (i) in the first subparagraph—
      - (aa) in the first sentence, for the words from the beginning to “Member State”, there were substituted “Where criteria have not been set out as referred to in paragraph 1A(a), the appropriate agency”;
      - (bb) the second sentence were omitted;
    - (ii) in the second subparagraph—
      - (aa) for “Member States” there were substituted “The appropriate agency”;
      - (bb) “by competent authorities” were omitted.
4. Article 7 is to be read as if—
  - (a) before paragraph 1 there were inserted—
    - “A1. In this Article, the “list of waste” means the list contained in the Annex to Commission [Decision 2000/532/EC](#), as that list has effect in England, Wales, Scotland or Northern Ireland (as the case may be).”;

- (b) in paragraph 1—
    - (i) the first and second sentences were omitted;
    - (ii) for the third sentence there were substituted “The list of waste shall, except as provided in Commission [Decision 2000/532/EC](#), be binding as regards determination of the waste which is to be considered as hazardous waste or as non-hazardous waste.”;
  - (c) paragraphs 2, 3, 6 and 7 were omitted
5. Annex 3 is to be read as if, in entry HP 9, in the second sentence, “in the Member States” were omitted.”.
- (4) Omit Article 2.
  - (5) In Part A of the Annex, in the first paragraph—
    - (a) for “waste facilities covered by Article 7 of [Directive 2006/21/EC](#)” substitute “mining waste facilities;
    - (b) for “Article 17 of that Directive” substitute “the inspection provisions”.
  - (6) In Part B of the Annex, in the first paragraph, for “waste facilities covered by Article 7 of [Directive 2006/21/EC](#)” substitute “mining waste facilities”.
  - (7) In Part C of the Annex—
    - (a) in paragraph 1, in the first sub-paragraph—
      - (i) in point (a)—
        - (aa) for “the entire territory of the Member State” substitute “each part of the United Kingdom”;
        - (bb) for “waste facilities covered by Article 7 of [Directive 2006/21/EC](#)” substitute “mining waste facilities”;
      - (ii) in point (e)—
        - (aa) omit “national or Union”;
        - (bb) for “facilities covered by Article 7 of [Directive 2006/21/EC](#)” substitute “mining waste facilities”;
      - (iii) in point (h), for “Article 17 of [Directive 2006/21/EC](#)” substitute “the inspection provisions”;
    - (b) in paragraph 2.1—
      - (i) in point (c), for “waste facility under Article 7 of [Directive 2006/21/EC](#)” substitute “mining waste facility”;
      - (ii) in point (d)(iv), for “waste facilities covered by Article 7 of [Directive 2006/21/EC](#)” substitute “mining waste facilities”;
      - (iii) in point (d)(viii)—
        - (aa) omit “national or Union”;
        - (bb) for “the waste facilities covered by Article 7 of [Directive 2006/21/EC](#)” substitute “mining waste facilities”;
    - (c) in paragraph 2.2, in point (d), omit “Union”;
    - (d) in paragraph 2.3—
      - (i) in point (a), omit “according to Article 11(3) or Article 12(6) of [Directive 2006/21/EC](#)”
      - (ii) in point (b), omit “Union”;

- (e) in paragraph 3.1, in point (f), for “[Directive 2003/4/EC](#) of the European Parliament and of the Council” substitute “the Environmental Information Regulations 2004(**31**) or the Environmental Information (Scotland) Regulations 2004(**32**)”.
- (8) In Part D of the Annex—
- (a) in paragraph 1—
- (i) in point (f), for “referred to in Article 5(3)(f) of [Directive 2006/21/EC](#)” substitute “contained in the waste management plan for the waste facility”;
- (ii) in point (h), for “set out in [Directive 2006/21/EC](#)” substitute “under the relevant mining waste legislation”;
- (b) in paragraph 2—
- (i) in point (l), for “referred to in Article 5(3)(f) of [Directive 2006/21/EC](#)” substitute “contained in the waste management plan for the waste facility”;
- (ii) in point (o), for “set out in [Directive 2006/21/EC](#)” substitute “under the relevant mining waste legislation”;
- (c) in paragraph 3—
- (i) in the heading, omit “in accordance with Article 12(3) of [Directive 2006/21/EC](#)”;
- (ii) in point (b), for “referred to in Article 5(3)(f) of [Directive 2006/21/EC](#)” substitute “contained in the waste management plan for the waste facility”;
- (iii) in point (g), for “set out in [Directive 2006/21/EC](#)” substitute “under the relevant mining waste legislation”;
- (d) in paragraph 4—
- (i) in point (d), for “referred to in Article 5(3)(f) of [Directive 2006/21/EC](#)” substitute “contained in the waste management plan for the waste facility”;
- (ii) in point (e), omit “referred to in Article 5(3)(f) of [Directive 2006/21/EC](#)”;
- (iii) in point (j), for “set out in [Directive 2006/21/EC](#)” substitute “under the relevant mining waste legislation”.

## Revocations

18. The instruments listed in the Schedule are revoked.

Date

*Name*  
Parliamentary Under Secretary of State  
Department for Environment, Food and Rural  
Affairs

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(31) [S.I. 2004/3391](#).

(32) [S.S.I. 2004/520](#), amended by [S.S.I. 2013/127](#).



## SCHEDULE

Regulation 18

## Revocations

1. Commission Implementing Regulation (EU) 2017/699 establishing a common methodology for the calculation of the weight of electrical and electronic equipment (EEE) placed on the market of each Member State and a common methodology for the calculation of the quantity of waste electrical and electronic equipment (WEEE) generated by weight in each Member State.
2. Commission Implementing Decision (EU) 2018/896 laying down the methodology for the calculation of the annual consumption of lightweight plastic carrier bags and amending [Decision 2005/270/EC](#).
3. Commission Decision (EU) 2018/1702 establishing the EU Ecolabel criteria for lubricants.
4. Commission Implementing Regulation (EU) 2019/290 establishing the format for registration and reporting of producers of electrical and electronic equipment to the register.
5. Commission Decision (EU) 2019/418 amending Decisions (EU) 2017/1214, (EU) 2017/1215, (EU) 2017/1216, (EU) 2017/1217, (EU) 2017/1218 and (EU) 2017/1219.
6. Commission Implementing Decision (EU) 2019/665 amending [Decision 2005/270/EC](#) establishing the formats relating to the database system pursuant to European Parliament and Council [Directive 94/62/EC](#) on packaging and packaging waste.
7. Commission Implementing Decision (EU) 2019/1004 laying down rules for the calculation, verification and reporting of data on waste in accordance with [Directive 2008/98/EC](#) on the European Parliament and of the Council and repealing Commission Implementing Decision C(2012) 2384.
8. Commission Decision (EU) 2019/1134 amending [Decision 2009/300/EC](#) and Decision (EU) 2015/2099, as regards the period of validity of the ecological criteria for the award of the EU Ecolabel to certain products, and of the related assessment and verification requirements.
9. Commission Delegated Decision (EU) 2019/1597 supplementing [Directive 2008/98/EC](#) of the European Parliament and of the Council as regards a common methodology and minimum quantity requirements for the uniform measurement of levels of food waste.
10. Commission Implementing Decision (EU) 2019/1885 laying down rules for the calculation, verification and reporting of data on landfill of municipal waste in accordance with Council [Directive 1999/31/EC](#) and repealing Commission [Decision 2000/738/EC](#).
11. Commission Implementing Decision (EU) 2019/2000 laying down a format for reporting of data on food waste and for submission of the quality check report in accordance with [Directive 2008/98/EC](#) of the European Parliament and of the Council.
12. Commission Implementing Decision (EU) 2019/2193 laying down rules for the calculation, verification and reporting of data and establishing data formats for the purposes of [Directive 2012/19/EU](#) of the European Parliament and of the Council on waste electrical and electronic equipment (WEEE).
13. Commission Decision (EU) 2020/503 amending [Decision 2014/312/EU](#) in order to extend the derogation of zinc oxide to allow its use as a preservative stabilizer to cover ‘in-can preservation’ and preservation of ‘tinting pastes’.
14. Commission Decision (EU) 2020/519 on the sectoral reference document on best environmental management practices, sector environmental performance indicators and benchmarks of excellence for the waste management sector under Regulation (EC) No 1221/2009 on the voluntary participation by organisations in a Community eco-management and audit scheme (EMAS).

## EXPLANATORY NOTE

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

These Regulations are made in exercise of powers in section 8(1) of the European Union (Withdrawal) Act 2018 (c. 16) (“the 2018 Act”) in order to address failures of retained EU law to operate effectively and other deficiencies (in particular under section 8(2)(a), (b), (d), (f) and (g)) arising from the withdrawal of the United Kingdom from the European Union, and under section 8C(1) of the 2018 Act to make provision to implement the Protocol on Ireland/Northern Ireland in the EU Withdrawal Agreement.

Part 2 provides for a legislative function of the European Commission under Directive 2008/98/EC of the European Parliament and of the Council on waste to be exercisable instead by public authorities in the United Kingdom.

Part 3 amends primary legislation and Part 4 amends subordinate legislation, including previous instruments made under section 8(1) of the 2018 Act. The amendments relate principally to waste and environmental permitting, and in a few cases to other aspects of the environment.

Part 5 amends or revokes retained EU tertiary legislation relating to resources and waste.

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

## EXPLANATORY MEMORANDUM TO

### THE WASTE AND ENVIRONMENTAL PERMITTING ETC. (LEGISLATIVE FUNCTIONS AND AMENDMENT ETC.) (EU EXIT) REGULATIONS 2020

2020 No. [XXXX]

#### 1. Introduction

- 1.1 This Explanatory Memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.
- 1.2 This Explanatory Memorandum contains information for the Joint Committee on Statutory Instruments.

#### 2. Purpose of the instrument

- 2.1 This instrument amends a number of existing EU Exit SIs to ensure that the legislation amended by those instruments will continue to operate effectively at the end of the Transition Period and makes EU Exit related amendments to, or revokes, some recent EU legislation which will become retained direct EU law. It also makes amendments to primary and subordinate domestic legislation for similar purposes. It also includes some technical amendments to EU Exit SIs that are needed in consequence of the Protocol on Ireland / Northern Ireland to the Withdrawal Agreement ("the Protocol"). This instrument also transfers some functions from the European Commission to the Secretary of State and the Devolved Administrations.

#### *Explanations*

##### What did any relevant EU law do before exit day?

- 2.2 The European Commission has powers under Article 7(1) of Directive 2008/98/EC of the European Parliament and the Council of 19 November 2008 on waste (Waste Framework Directive) to adopt delegated acts establishing and reviewing a list of waste. Commission Decision 2000/532/EC establishing a list of waste was adopted under the predecessor of this power. The list of waste classifies types of waste for the purposes of waste management, and indicates which categories of waste are normally to be treated as hazardous waste..
- 2.3 Commission Implementing Decision (EU) 2020/248 lays down technical guidelines for inspections of mining waste facilities.
- 2.4 The provisions of S.I. 2019/620 which are amended by regulation 14 of this instrument include provisions amending 14 EU Regulations and Decisions on waste, details of which are included in the Explanatory Memorandum to S.I. 2019/620.
- 2.5 The retained direct EU legislation revoked by the Schedule to this instrument includes legislation relating to landfill of waste, food waste, packaging waste and waste electrical and electronic equipment, and legislation relating to the EU Ecolabel and eco-management and audit schemes.

Why is it being changed?

- 2.6 The changes made by this instrument will ensure that waste regulation and environmental permitting can continue to be effectively managed after the end of the EU Exit transition period. The legislative power conferred on the Commission by Article 7(1) of the Waste Framework Directive is being transferred into domestic law in order to enable the list of waste to be amended without having to use primary legislation. This will provide flexibility to update the list from time to time, for example to respond to scientific and technical changes. The existing EU Exit SIs amended by this instrument are being changed principally in consequence of recent amendments to EU and domestic legislation on waste. Some amendments are also necessary in consequence of the Protocol.

What will it now do?

- 2.7 This instrument will ensure that existing domestic and retained EU legislation will still be fit for purpose. For example, it updates references in domestic EU Exit legislation so that they refer to waste and resources Directives and domestic Regulations as amended by the EU Circular Economy Package. It also makes EU Exit related amendments to, or revokes, recent EU legislation which will become retained direct EU law. The European Commission's powers related to Article 7(1) of the Waste Framework Directive will now be exercised by the Secretary of State and Devolved Administrations as appropriate. Section 7 of this Explanatory Memorandum further explains what this instrument does.

### **3. Matters of special interest to Parliament**

*Matters of special interest to the Joint Committee on Statutory Instruments.*

- 3.1 The Committee's 52nd Report of Session 2017-19 reported regulation 10(3) of the Waste (Miscellaneous Amendments) (EU Exit) (No. 2) Regulations 2019 (S.I. 2019/188) for defective drafting, on the ground that the modification of Article 6 of Directive 2000/53/EC by new regulation 2A of the End-of-Life Vehicles (Producer Responsibility) Regulations 2005 (S.I. 2005/263) ("the ELV Regulations"), as inserted by regulation 10(3), left uncertain the extent to which Article 6 was intended to apply after EU Exit. The amendments made to regulation 10 of S.I. 2019/188 by regulation 11(4) of this instrument include amendments to address this issue. The amendments made to the ELV Regulations by regulation 10 are changed so that the ELV Regulations will no longer refer to Article 6, or to any other provision of the Directive which cross-refers to it. In consequence, the modifications of Article 6 which were inserted by regulation 10(3) of S.I. 2019/188 are no longer required, and are omitted by regulation 11(4)(a)(iii) of this instrument.
- 3.2 The other errors in S.I. 2019/188 which the Committee reported have already been corrected by the Environment and Rural Affairs (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/1078).

*Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)*

- 3.3 The territorial application of this instrument includes Scotland and Northern Ireland.

3.4 The powers under which this instrument is made cover the entire United Kingdom (see section 24(1) of the European Union (Withdrawal) Act 2018) and the territorial application of this instrument is not limited either by the Act or by this instrument.

#### **4. Extent and Territorial Application**

4.1 The territorial extent of this instrument is the United Kingdom, subject to paragraphs 4.3 and 4.4.

4.2 The territorial application of this instrument is the United Kingdom, subject to paragraphs 4.3 and 4.4.

4.3 Amendments made to domestic Regulations by Parts 3 and 4 of this instrument have the same extent and application as the Regulations being amended.

4.4 The revocations of retained direct EU legislation by paragraphs 7, 9, 10 and 11 of the Schedule extend and apply to England, Wales and Northern Ireland, but not Scotland.

#### **5. European Convention on Human Rights**

5.1 The Parliamentary Under Secretary of State for the Environment Rebecca Pow MP has made the following statement regarding Human Rights:

“In my view the provisions of the Waste and Environmental Permitting etc. (Legislative Functions and Amendment etc.) (EU Exit) Regulations 2020 are compatible with the Convention rights.”

#### **6. Legislative Context**

6.1 This instrument is principally made in exercise of powers conferred by Sections 8(1) and 8C of the European Union (Withdrawal) Act 2018.

6.2 This instrument makes amendments to the following existing Act and instruments:

- The Environmental Protection Act 1990 (c. 43)
- The Hazardous Waste (England and Wales) Regulations 2005 (S.I. 2005/894)
- The Marine Licensing (Exempted Activities) Order 2011 (S.I. 2011/409)
- The Environmental Permitting (England and Wales) (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/39)
- The Waste (Miscellaneous Amendments) (EU Exit) Regulations 2019 (S.I. 2019/620)
- The Waste (Miscellaneous Amendments) (EU Exit) (No. 2) Regulations 2019 (S.I. 2019/188)
- The Environment (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/458)
- The Environment (Miscellaneous Amendments and Revocations) (EU Exit) Regulations 2019 (S.I. 2019/559)
- The Environment and Rural Affairs (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/1078).

6.3 S.I. 2019/39, 188 and 620 contain amendments to domestic legislation which implements, and to retained direct EU legislation which is made under, 8 EU Directives relating to waste management (“the EU Waste Directives”), which are listed in the Explanatory Memorandum to S.I. 2019/188. The EU Waste Directives

have recently been amended by a series of amending Directives (Directives (EU) 2018/849 to 2018/853 of the European Parliament and of the Council), collectively known as the “Circular Economy Package”. The Waste (Circular Economy) (Amendment) Regulations 2020 (S.I. 2020/904) amended domestic waste legislation to implement the Circular Economy Package.

- 6.4 Three of the EU Waste Directives (Directive 94/62/EC on packaging and packaging waste, Directive 2006/66/EC on batteries and accumulators, and Directive 2011/65/EU on the restriction of the use of certain hazardous substances in electrical and electronic equipment) are listed in Annex 2 to the Protocol, and will therefore continue to apply in relation to Northern Ireland after the end of the EU Exit transition period.

## 7. Policy background

### *What is being done and why?*

- 7.1 This instrument makes technical amendments, which can be grouped as follows:
- Transferring some of the European Commission’s functions in relation to Article 7(1) of the Waste Framework Directive, which allows the European Commission to establish and review, in accordance with Article 7(2) and (3) of that Directive, a list of waste. This power has been exercised by the Commission to make Decision 2000/532/EC, which sets out the list of waste types and their codes (“EU waste codes”), and identifies which categories of waste are normally to be treated as hazardous waste. For England this power is being transferred to the Secretary of State and to the appropriate devolved Ministers in Wales and Scotland. For Northern Ireland this power will go to Department of Agriculture, Environment and Rural Affairs (DAERA). This instrument will allow the Secretary of State and the Devolved Administrations to establish their own lists of waste or amend the existing list of waste (Decision 2000/532/EC) as it will have effect as retained direct EU legislation on and after the end of the EU Exit transition period. The consent of the relevant Devolved Administrations will be required for the Secretary of State to make amendments to the list of waste on their behalf. Any amendments to the list of waste would be subject to public consultation.
  - Amending cross-references which existing EU Exit SIs insert into legislation, where the cross-references have become out of date due to recent legislative changes.
  - Amending provisions of existing EU Exit SIs which amend legislation to provide for EU Directives to be read with modifications, for the purpose of interpreting references to those Directives in that legislation. In most cases this is being done because the modifications as originally drafted no longer work because the Directives have been amended by the Circular Economy Package. The opportunity has also been taken, in a few places, to simplify provisions of this kind in existing EU Exit SIs.
  - Making EU Exit related amendments to, or revoking, recent EU legislation which will become retained direct EU law. This relates to EU legislation which has been adopted by the EU since the existing EU Exit SIs were made.
  - Amending references to ‘exit day’ in existing EU Exit SIs, to refer instead to IP completion day.

- Making some amendments that are needed in consequence of the Protocol, to provisions of existing EU Exit SIs that amend legislation relating to batteries and accumulators, and packaging. For example: EU Exit SIs have inserted definitions of terms such as “appropriate authority” into UK-wide legislation, which include a Northern Ireland authority. For the Protocol Annex legislation, the amendments made by EU Exit SIs will no longer apply to Northern Ireland, so the Northern Ireland specific references need to be removed.
- The Schedule lists retained direct EU legislation relating to resources and waste which is being revoked.

## **8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union**

- 8.1 This instrument is being made using the power in Section 8 of the European Union (Withdrawal) Act 2018 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. It also makes provision to implement the Protocol in the EU Withdrawal Agreement.
- 8.2 This instrument is also made under paragraph 21 of Schedule 7 to the European Union (Withdrawal) Act 2018. In accordance with the requirements of that Act the Parliamentary Under Secretary of State for the Environment Rebecca Pow MP, has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.

## **9. Consolidation**

- 9.1 Not considered necessary.

## **10. Consultation outcome**

- 10.1 A consultation was not required because no policy changes are being made via this instrument.
- 10.2 The Department for Environment, Food and Rural Affairs has worked with the Devolved Administrations in developing this instrument.

## **11. Guidance**

- 11.1 There is no associated guidance as this instrument only amends deficiencies arising from the UK’s withdrawal from the EU.

## **12. Impact**

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 An Impact Assessment has not been prepared because this instrument only amends deficiencies arising from the UK’s withdrawal from the EU, along with associated repatriation of powers to the UK.

## **13. Regulating small business**

- 13.1 This instrument applies to activities that are undertaken by small businesses.

13.2 The effect of this instrument is to maintain the status quo, therefore no specific action was required to minimise the impact of the requirements on small businesses.

#### **14. Monitoring & review**

14.1 The approach to monitoring of this instrument is that no specific monitoring arrangements are needed.

14.2 As this instrument is made under the European Union (Withdrawal) Act 2018, no review clause is required.

#### **15. Contact**

15.1 Dawn Woodward at the Department for Environment, Food and Rural Affairs, Telephone: 02080 255306 or email: [Dawn.Woodward@defra.gov.uk](mailto:Dawn.Woodward@defra.gov.uk) can be contacted with any queries regarding this instrument.

15.2 Chris Preston, Deputy Director for Resources and Waste Policy, at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Parliamentary Under Secretary of State for the Environment Rebecca Pow MP at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.



# 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 under the 2018 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(3), 3(7) and 17(3) and 17(7) of Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) to make a Negative SI	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/Sifting Committees
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly 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	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	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	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them.  State 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	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2 In addition to the statutory obligation the Government has made a political commitment to include these statements alongside all EUWA SIs	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	Ministers of the Crown exercising sections 8(1), 9, and	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.

		23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising sections 10(1), 12 and part 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority by Statutory Instrument.	State why it is appropriate to create such a sub-delegated power.
Urgency	Paragraph 34, Schedule 7	Ministers of the Crown using the urgent procedure in paragraphs 4 or 14, Schedule 7.	Statement of the reasons for the Minister's opinion that the SI is urgent.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 13, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement explaining the good reasons for modifying the instrument made under s. 2(2) ECA, identifying the relevant law before exit day, and explaining the instrument's effect on retained EU law.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 16, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement setting out: a) the steps which the relevant authority has taken to make the draft instrument published in accordance with paragraph 16(2), Schedule 8 available to each House of Parliament, b) containing information about the relevant authority's response to— (i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and (ii) any other representations made to the relevant authority about the published draft instrument, and, c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the instrument or draft instrument which is to be laid.

## Part 2

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

#### 1. Appropriateness statement

- 1.1 The Parliamentary Under Secretary of State for the Environment, Rebecca Pow MP has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Waste and Environmental Permitting etc. (Legislative Functions and Amendment etc.) EU Exit) Regulations 2020 does no more than is appropriate”.

- 1.2 This is the case because it does no more than: ensure that existing domestic EU legislation is still fit for purpose, update references in domestic EU Exit legislation and transfers a European Commission power related to Article 7(1) of the Waste Framework Directive to appropriate UK authorities, as explained further in Section 7 of this Explanatory Memorandum.

#### 2. Good reasons

- 2.1 The Parliamentary Under Secretary of State for the Environment, Rebecca Pow MP, 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”.

- 2.2 These are: this instrument corrects deficiencies in the waste regulatory regime to ensure that it can continue to operate from the end of the EU Exit transition period.

#### 3. Equalities

- 3.1 The Parliamentary Under Secretary of State for the Environment, Rebecca Pow MP, has made the following statement:

“The draft 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.

- 3.2 The Parliamentary Under Secretary of State for the Environment, Rebecca Pow MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to the draft instrument, I, Rebecca Pow MP, 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. Explanations

- 4.1 The explanations statement has been made in section 2 of the main body of this Explanatory Memorandum.



Ein cyf/Our ref MA-L/LG/3269/20

Mick Antoniw AS  
Cadeirydd Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad  
Senedd Cymru

[SeneddDCC@senedd.cymru](mailto:SeneddDCC@senedd.cymru)

27 Hydref 2020

Annwyl Mick

Rwy'n ysgrifennu atoch i'ch hysbysu fy mod wedi gosod memorandwm cydsyniad offeryn statudol ("y memorandwm") sy'n ymwneud â Rheoliadau Gwastraff a Thrwyddedu Amgylcheddol etc (Swyddogaethau a Diwygio Deddfwriaethol etc) (Ymadael â'r UE) 2020 ("y Rheoliadau") a wnaed gan yr Is-Ysgrifennydd Gwladol Seneddol dros yr Amgylchedd ar 20 Hydref. Mae'r Rheoliadau'n cynnwys diwygiadau i Ddeddf Diogelu'r Amgylchedd 1990 sy'n cynnwys darpariaeth ar gyfer Cymru.

Pwrpas y Rheoliadau fydd sicrhau bod deddfwriaeth ddomestig a deddfwriaeth yr UE a ddargedwir yn parhau i ateb y diben. Er enghraifft, maent yn diweddarau cyfeiriadau mewn deddfwriaeth ddomestig sy'n ymwneud ag Ymadael yr UE fel eu bod yn cyfeirio at Gyfarwydddebau a Rheoliadau gwastraff ac adnoddau fel y'u diwygiwyd gan Becyn Economi Gylchol yr UE. Maent yn diwygio neu'n dirymu hefyd o ran Ymadael â'r UE ddeddfwriaeth ddiweddar yr UE a ddaw'n gyfraith yr UE a ddargedwir. Yr Ysgrifennydd Gwladol a'r gweinyddiaethau datganoledig sydd bellach yn arfer pwerau'r Comisiwn Ewropeaidd mewn perthynas ag Erthygl 7(1) y Gyfarwydddeb Fframwaith Gwastraff.

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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.

**Tudalen y pecyn 732**  
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.

Rwyf wedi gosod y memorandwm yn unol â'r gofyn o dan Reol Sefydlog (RhS) 30A. Yn fy marn i, mae'r Rheoliadau'n offeryn statudol perthnasol gan eu bod yn gwneud darpariaeth ar gyfer Cymru sy'n diwygio deddfwriaeth sylfaenol o fewn cymhwysedd deddfwriaethol Senedd Cymru nad yw'n ddarpariaeth gysylltiedig, canlyniadol, trosiannol, darfodol, ategol nac arbed sy'n ymwneud â materion nad ydynt o fewn cymhwysedd deddfwriaethol Senedd Cymru.

Cofion

A handwritten signature in black ink that reads "Lesley Griffiths". The signature is written in a cursive, flowing style.

**Lesley Griffiths AS/MS**

Gweinidog yr Amgylchedd, Ynni a Materion Gwledig  
Minister for Environment, Energy and Rural Affairs



Llywodraeth Cymru  
Welsh Government

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## DATGANIAD YSGRIFENEDIG GAN LYWODRAETH CYMRU

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**TEITL** Rheoliadau Gwastraff a Thrwyddedu Amgylcheddol etc  
(Swyddogaethau Deddfwriaethol a Diwygio etc) (Ymadael â'r UE)  
2020 (Rheoliadau 2020)

**DYDDIAD** 22 Hydref 2020

**GAN** Rebecca Evans AS, Y Gweinidog Cyllid a'r Trefnydd

**OS a osodwyd yn Senedd y DU, sy'n diwygio is-ddeddfwriaeth mewn maes datganoledig**

**Rheoliadau Gwastraff a Thrwyddedu Amgylcheddol etc (Swyddogaethau Deddfwriaethol a Diwygio etc) (Ymadael â'r UE) 2020 (Rheoliadau 2020)**

Mae Rheoliadau 2020 yn diwygio nifer o offerynnau sy'n ymwneud ag Ymadael â'r UE i sicrhau y byddant yn parhau'n addas i'r diben ar ddiwedd y Cyfnod Pontio ac yn gwneud newidiadau sy'n ymwneud ag Ymadael â'r UE i ychydig ddeddfwriaeth ddiweddar yr UE a ddaw'n gyfraith uniongyrchol yr UE a ddargedwir, neu'n ei dirymu. Mae'n cynnwys hefyd rai diwygiadau technegol i offerynnau Ymadael â'r UE sydd eu hangen o ganlyniad i Brotocol Gogledd Iwerddon.

Offerynnau Ewropeaidd sy'n Uniongyrchol Gymwysadwy a ddiwygir gan Rheoliadau 2020

- Penderfyniad 2000/532/EC y Comisiwn sy'n disodli Penderfyniad 94/3/EC sy'n sefydlu rhestr wastraff yn unol ag Erthygl 1(a) o Gyfarwyddeb 75/442/EEC y Cyngor ar wastraff a Phenderfyniad 94/904/EC y Cyngor sy'n sefydlu rhestr o wastraff peryglus yn unol ag Erthygl 1(4) o Gyfarwyddeb 91/689/EEC y Cyngor ar wastraff peryglus, a
- Phenderfyniad Gweithredu'r Comisiwn (UE) 2020/248 sy'n gosod canllawiau technegol ar gyfer cynnal archwiliadau yn unol ag Erthygl 17 o Gyfarwyddeb 2006/21/EC Senedd Ewrop a'r Cyngor.

Is-ddeddfwriaeth

- Rheoliadau Gwastraff Peryglus (Cymru a Lloegr) 2005

Tudalen y pecyn 734

- Gorchymyn Trwyddedu Morol (Gweithgareddau Esempt) 2011
- Rheoliadau Trwyddedu Amgylcheddol (Cymru a Lloegr) (Diwygio) (Ymadael â'r UE) 2019
- Rheoliadau Gwastraff (Diwygiadau Amrywiol) (Ymadael â'r UE) (Rhif 2) 2019
- Rheoliadau'r Amgylchedd (Diwygio etc) (Ymadael q'r UE) 2019
- Rheoliadau'r Amgylchedd (Diwygiadau a Dirymiadau Amrywiol) (Ymadael â'r UE) 2019
- Rheoliadau Gwastraff (Diwygiadau Amrywiol) (Ymadael â'r UE) 2019
- Rheoliadau'r Amgylchedd a Materion Gwledig (Diwygio) (Ymadael â'r UE) 2019

#### Deddfwriaeth Sylfaenol a ddiwygir

- Deddf Diogelu'r Amgylchedd 1990.

### **Unrhyw effaith y gall yr offeryn statudol ei chael ar gymhwysedd deddfwriaethol Senedd Cymru a/neu gymhwysedd gweithredol Gweinidogion Cymru**

Nid oes unrhyw effaith ar gymhwysedd deddfwriaethol Senedd Cymru. Mae Rheoliadau 2020 yn darparu bod y swyddogaethau hyn yn cael eu harfer gan yr Ysgrifennydd Gwladol mewn perthynas â Chymru, ond dim ond â chydysyniad Gweinidogion Cymru.

Mae gan y swyddogaethau cydamserol a geir yn yr OS hwn y potensial i sbarduno'r gofynion cydsynio yn Atodlen 7B i Ddeddf Llywodraeth Cymru ac y gallent felly fod yn gyfyngiad ar gymhwysedd Senedd Cymru yn y dyfodol. Fodd bynnag, rydym wrthi'n trafod â Swyddfa Ysgrifennydd Gwladol Cymru mewn perthynas â Gorchymyn a.109 i ddiwygio Atodlen 7B i negyddu'r cyfyngiad posibl ar gymhwysedd Senedd Cymru yn y dyfodol.

### **Diben y diwygiadau**

Bydd Rheoliadau 2020 yn sicrhau bod deddfwriaeth ddomestig a deddfwriaeth yr UE a ddargedwir yn parhau'n addas i'r diben. Er enghraifft, maent yn diweddarau cyfeiriadau at ddeddfwriaeth ddomestig sy'n ymwneud ag Ymadael â'r UE fel eu bod yn cyfeirio at Gyfarwyddebau a Rheoliadau gwastraff ac adnoddau fel y'u diwygiwyd gan Becyn Economi Gylchol yr UE. Maent yn gwneud newidiadau hefyd sy'n ymwneud ag Ymadael â'r UE i ddeddfwriaeth ddiweddar yr UE a ddaw'n gyfraith uniongyrchol yr UE a ddargedwir, neu'n ei dirymu. Arferir bellach pwerau'r Comisiwn Ewropeaidd mewn perthynas ag Erthygl 7(1) y Gyfarwyddeb Fframwaith Gwastraff gan yr Ysgrifennydd Gwladol a'r gweinyddiaethau datganoledig yn ôl y gofyn.

Mae Rheoliadau 2020 yn gwneud diwygiadau technegol y gellir eu carfanu fel a ganlyn:

- a. Trosglwyddo rhai o swyddogaethau'r Comisiwn Ewropeaidd mewn perthynas ag erthygl 7(1) y Gyfarwyddeb Fframwaith Gwastraff, sy'n caniatáu'r Comisiwn Ewropeaidd i sefydlu ac adolygu rhestr wastraff, yn unol ag Erthyglau 7(2) a (3) y

Gyfarwyddeb honno. Defnyddiodd y Comisiwn y pŵer hwn i wneud Penderfyniad 2000/532 sy'n pennu rhestr o fathau o wastraff a'u codau (codau gwastraff yr UE). Mae'r pŵer hwn yn cael ei drosglwyddo i'r Ysgrifennydd Gwladol a'r gweinyddiaethau datganoledig. Bydd Rheoliadau 2020 yn caniatáu'r Ysgrifennydd Gwladol a'r gweinyddiaethau datganoledig i sefydlu rhestr o wastraff neu i newid rhestr o wastraff (Penderfyniad 2000/532) pan ddaw'n gyfraith y DU (cyfraith yr UE a ddargedwir) wrth i'r DU ymadael â'r UE, yn unol â darpariaethau Erthygl 7. Rhaid ymgynghori cyn newid y rhestr wastraff. Bydd angen ymgynghori hefyd â'r cymdeithasau masnach a chynhyrchwyr gwastraff perthnasol cyn defnyddio'r pŵer hwn.

- b. Mewnosod darpariaethau o fewn deddfwriaeth fel bod Cyfarwyddebau'r UE yn cael eu darllen gyda newidiadau, os nad yw'r newidiadau bellach yn gweithio am fod y Cyfarwyddebau wedi'u diwygio. Hepgor neu symleiddio newidiadau i Gyfarwyddebau sy'n cael eu gwneud gan OSau Ymadael â'r UE am eu bod o edrych arnynt, yn ymddangos yn ddiangen neu'n ddiangen o gymhleth.
- c. Diwygio croes-gyfeiriadau y mae OSau Ymadael â'r UE yn eu mewnosod o fewn deddfwriaeth, lle nad yw'r croes-gyfeiriadau hynny bellach yn gyfredol oherwydd newidiadau deddfwriaethol diweddar. Gan amlaf, mae'r offeryn yn diweddar OSau Ymadael â'r UE fel eu bod yn cyfeirio at fersiwn ddiweddaraf Rheoliadau a Chyfarwyddebau'r UE ar wastraff ac adnoddau, fel y'u diwygiwyd gan Becyn Economi Gylchol yr UE.
- d. Gwneud newidiadau sy'n ymwneud ag Ymadael â'r UE i ddeddfwriaeth ddiweddar yr UE a ddaw'n gyfraith uniongyrchol yr UE a ddargedwir, neu'n eu dirymu. Mae hyn yn ymwneud â deddfwriaeth yr UE sydd wedi'i mabwysiadu gan yr UE ers i'r OSau presennol sy'n ymwneud ag Ymadael â'r UE gael eu gwneud.
- e. Diwygio cyfeiriadau at 'ddiwrnod ymadael' mewn OSau sy'n ymwneud ag Ymadael â'r UE. Nid oes angen diwygio'r darpariaethau cychwyn mewn OSau Ymadael â'r UE gan fod y Ddeddf Cytundeb Ymadael yn cynnwys darpariaeth gyffredinol bod OSau a oedd i ddod i rym ar y diwrnod ymadael yn dod i rym yn lle hynny ar ddiwrnod cwblhau'r Cyfnod Gweithredu. Fodd bynnag, nid yw'r ddarpariaeth gyffredinol yn berthnasol i gyfeiriadau eraill at y diwrnod ymadael sydd wedi'u mewnosod o fewn deddfwriaeth gan OSau Ymadael â'r UE, ac mae angen diwygio'r cyfeiriadau hyn bob yn un iddynt gyfeirio yn hytrach at ddiwrnod cwblhau'r cyfnod gweithredu.
- f. Gwneud rhai diwygiadau technegol i OSau Ymadael â'r UE sydd eu hangen o ganlyniad i Brotocol Gogledd Iwerddon ac y gellir eu gwneud o dan a.8(1) Deddf yr Undeb Ewropeaidd (Ymadael) 2018 (gellir gwneud rhai diwygiadau o dan 8C. Er enghraifft: mae OSau Ymadael â'r UE wedi mewnosod diffiniadau o dermau fel "appropriate authority" o fewn deddfwriaeth y DU gyfan, sy'n cynnwys awdurdod Gogledd Iwerddon. O ran deddfwriaeth Atodlen Protocol Gogledd Iwerddon, ni fydd diwygiadau a wneir gan OSau Ymadael â'r UE bellach yn gymwys i Ogledd Iwerddon, felly mae angen dileu'r cyfeiriadau at Ogledd Iwerddon. Mae OSau Ymadael â'r UE wedi diwygio cyfeiriadau cyffredinol at "EU legislation" er mwyn cyfeirio yn lle hynny at "retained EU law". Mae angen diwygio'r cyfeiriadau hynny'n rhannol ambell le er mwyn cynnwys cyfeiriad



at deddfwriaeth Atodlen Protocol Gogledd Iwerddon oherwydd, o safbwynt Gogledd Iwerddon, bydd deddfwriaeth Atodlen Protocol Gogledd Iwerddon yn uniongyrchol gymwys yn sgil y Cytundeb Ymadael ac a. 7A Deddf yr UE (Ymadael) ac ni fydd yn gyson â'r diffiniad o'r hyn yw cyfraith yr UE a ddargedwir.

- g. Cafodd cyfeiriadau at erthyglau 5 a 6 y Gyfarwyddeb Fframwaith Gwastraff eu mewnosod gan OSau Ymadael â'r UE blaenorol (h.y. Rheoliadau Gwastraff (Diwygiadau Amrywiol) (Ymadael â'r UE) 2019 (ar gyfer deddfwriaeth sylfaenol a Rheoliadau a Phenderfyniadau'r UE) a Rheoliadau Gwastraff (Diwygiadau Amrywiol) (Ymadael â'r UE) (Rhif 2) 2019 (ar gyfer OSau/rheoliadau domestig) sy'n dweud y bydd y Gyfarwyddeb Fframwaith Gwastraff yn gymwys gyda newidiadau. Mae Rheoliadau 2020 yn mewnosod diwygiadau a newidiwyd yn Erthyglau 5 a 6 i adlewyrchu geiriad diweddaraf Cyfarwyddeb Fframwaith Gwastraff 2008 (Cyfarwyddeb 2008/98(EC)), a gafodd ei diwygio ddiwethaf gan Gyfarwyddeb (EU) 2018/851.

Mae Rheoliadau 2020 a'u Memorandwm Esboniadol, sy'n esbonio effeithiau'r diwygiadau, ar gael yma: <https://statutoryinstruments.parliament.uk/timeline/pBNWzAvN/SI-2020/>

### **Pam y cafodd cydsyniad ei roi**

Mae cydsyniad wedi'i roi i Lywodraeth y DU i wneud y cywiriadau hyn mewn cysylltiad ag ac ar ran Cymru er sicrhau effeithlonrwydd a hwylustod. Mae'r diwygiadau wedi'u hystyried yn llawn; nid yw'r diwygiadau'n newid polisi. Bydd y diwygiadau hyn yn sicrhau bod y llyfr statud yn parhau'n ymarferol ar ôl i'r DU ymadael â'r UE. Mae Memorandwm Cydsyniad Offeryn Statudol yn cael ei osod yn unol â Rheol Sefydlog 30.A.

**GWEINIDOGION Y DU SY'N GWEITHREDU MEWN MEYSYDD  
DATGANOLEDIG**

**194 - Rheoliadau Gwastraff a Thrwyddedu Amgylcheddol etc (Swyddogaethau Deddfwriaethol a Diwygio etc) (Ymadael â'r UE) 2020 (Rheoliadau 2020)**  
*Dyddiad gosod yn Senedd y DU: 20 Hydref 2020*

**Sifftio**

Yn destun sifftio yn Senedd y DU?	Nac ydy
Gweithdrefn:	Cadarnhaol drafft
Dyddiad trafod gan Bwyllgor Offerynnau Statudol Ewropeaidd Tŷ'r Cyffredin	Amh
Dyddiad trafod gan Bwyllgor Craffu ar Is-ddeddfwriaeth Tŷ'r Arglwyddi	Amh
Dyddiad y daw'r cyfnod sifftio i ben yn Senedd y DU	Amh
Datganiad ysgrifenedig o dan Reol Sefydlog 30C:	Papur 75
Memorandwm Cydsyniad Offeryn Statudol o dan Reol Sefydlog 30A (oherwydd eu bod yn diwygio deddfwriaeth sylfaenol)	SICM(5)37

**Gweithdrefn graffu**

Canlyniad y broses sifftio	Amh
Gweithdrefn	Cadarnhaol drafft
Dyddiad trafod gan y Cydbwyllgor ar Offerynnau Statudol	Anhysbys
Dyddiad trafod gan Bwyllgor Offerynnau Statudol Tŷ'r Cyffredin	Anhysbys
Dyddiad trafod gan Bwyllgor Craffu ar Is-ddeddfwriaeth Tŷ'r Arglwyddi	Anhysbys

**Cefndir**

Bwriedir i'r Rheoliadau hyn gael eu gwneud gan Lywodraeth y DU yn unol ag adrannau 8(1) ac 8C o Ddeddf yr Undeb Ewropeaidd (Ymadael) 2018, a pharagraff 21 o Atodlen 7 iddi.

**Crynodeb**

Mae'r Rheoliadau hyn:

- Yn diwygio nifer o offerynnau sy'n ymwneud ag Ymadael â'r UE i sicrhau y byddant yn parhau'n addas i'r diben ar ddiwedd y Cyfnod Pontio ac yn gwneud neu'n dirymu diwygiadau sy'n ymwneud ag Ymadael â'r UE i ychydig ddeddfwriaeth ddiweddar yr UE a ddaw'n gyfraith uniongyrchol yr UE a ddargedwir (a hefyd gwneud diwygiadau i ddeddfwriaeth sylfaenol ac is-ddeddfwriaeth ddomestig at ddibenion tebyg).

- Yn gwneud rhai diwygiadau technegol i offerynnau Ymadael â'r UE sydd eu hangen o ganlyniad i Brotocol Gogledd Iwerddon.

• Yn trosglwyddo rhai o swyddogaethau'r Comisiwn Ewropeaidd i'r Ysgrifennydd Gwladol a'r Gweinyddiaethau Datganoledig.

### **Datganiad gan Lywodraeth Cymru**

Mae'r Cynghorwyr Cyfreithiol wedi gwneud y sylwadau a ganlyn mewn perthynas â datganiad Llywodraeth Cymru, dyddiedig 22 Hydref 2020, am effaith y Rheoliadau hyn:

• Mae'r Rheoliadau hyn yn creu swyddogaethau y gall Gweinidogion Cymru a Gweinidogion y DU eu harfer ar yr un pryd. O dan Atodlen 7B i Ddeddf Llywodraeth Cymru 2006 ("Deddf 2006"), ni chaiff y Senedd ddileu nac addasu swyddogaethau cydredol o'r fath (i'r graddau y maent yn cael eu harfer gan Weinidogion y DU) heb gydsyniad Llywodraeth y DU. Mae datganiad ysgrifenedig Llywodraeth Cymru yn dweud bod Llywodraeth Cymru mewn trafodaethau â Llywodraeth y DU mewn perthynas â Gorchymyn adran 109 i ddiwygio Atodlen 7B o Ddeddf 2006 er mwyn negyddu'r cyfyngiad posibl ar gymhwysedd Senedd Cymru yn y dyfodol.

### **Cytundeb Rhynglywodraethol ar Fil yr Undeb Ewropeaidd (Ymadael)**

Mae'r crynodeb uchod a chynnwys y Memorandwm Esboniadol i'r Rheoliadau hyn yn cadarnhau eu heffaith.

Nid yw'r Cynghorwyr Cyfreithiol o'r farn bod unrhyw faterion arwyddocaol yn codi o dan baragraff 8 o'r Memorandwm ar Fil yr Undeb Ewropeaidd (Ymadael) a Sefydlu Fframweithiau Cyffredin mewn perthynas â'r Rheoliadau hyn.

### **Cynnig cydsyniad o dan Reol Sefydlog 30A.10**

Gosododd Llywodraeth Cymru Femorandwm Cydsyniad Offeryn Statudol gerbron y Senedd ar 27 Hydref 2020, ar y sail bod y Rheoliadau yn diwygio deddfwriaeth sylfaenol o fewn cymhwysedd deddfwriaethol y Senedd (yn yr achos hwn, adran 62A o Ddeddf Diogelu'r Amgylchedd 1990).

Mewn llythyr at y Pwyllgor, dyddiedig 27 Hydref 2020, dywedodd Gweinidog yr Amgylchedd, Ynni a Materion Gwledig fod Memorandwm Cydsyniad Offeryn Statudol wedi'i osod, ond ni soniodd a fyddai Llywodraeth Cymru yn cyflwyno cynnig yn y Cyfarfod Llawn i drafod y Memorandwm.



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## DATGANIAD YSGRIFENEDIG GAN LYWODRAETH CYMRU

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<b>TEITL</b>	<b>Rheoliadau Llygryddion Organig Parhaus (Diwygio) (Ymadael â'r UE) 2020</b>
<b>DYDDIAD</b>	<b>13 Hydref 2020</b>
<b>GAN</b>	<b>Rebecca Evans AS, Y Gweinidog Cyllid a'r Trefnydd</b>

**Offeryn Statudol a osodwyd yn Senedd y DU, sy'n diwygio is-ddeddfwriaeth mewn maes datganoledig**

### **Rheoliadau Llygryddion Organig Parhaus (Diwygio) (Ymadael â'r UE) 2020**

Yn dilyn ymadawiad y DU â'r Undeb Ewropeaidd, bydd y diwygiadau i Reoliad (EU) 2019/1021 yn galluogi'r DU i weithredu Confensiwn Stockholm drwy reoleiddio'r ffordd y caiff llygryddion organig parhaus eu cynhyrchu, eu gosod ar y farchnad a'u defnyddio. Bydd y diwygiadau hefyd yn galluogi awdurdodau'r DU i reoleiddio stociau a rheoli gwastraff pan fo llygryddion organig parhaus yn bresennol, ac yn gosod gofynion monitro ac adrodd. Ar ben hynny, bydd y diwygiadau yn creu pŵer a fydd yn galluogi'r DU i osod y mesurau angenrheidiol i sicrhau bod modd rheoli ac olrhain gwastraff sydd wedi'i halogi gan lygryddion perthnasol.

### Offerynnau Ewropeaidd sy'n Uniongyrchol Gymwys a ddiwygiwyd gan Reoliadau 2019

Rheoliad (EU) 2019/1021

#### Is-ddeddfwriaeth

- Rheoliadau Llygryddion Organig Parhaus 2007
- Rheoliadau Llygryddion Organig Parhaus (Diwygio) (Ymadael â'r UE) 2018 (OS 2018/1405)
- Rheoliadau'r Amgylchedd a Bywyd Gwyllt (Swyddogaethau Deddfwriaethol) (Ymadael â'r UE) 2019 (OS 2019/473)

## **Unrhyw effaith y gall yr OS ei chael ar gymhwysedd deddfwriaethol y Senedd a/neu gymhwysedd gweithredol Gweinidogion Cymru**

Nid oes unrhyw effaith ar gymhwysedd deddfwriaethol y Senedd. O dan Reoliadau 2019, trosglwyddir swyddogaethau Comisiwn yr UE i Weinidogion ar gyfer meysydd o fewn cymhwysedd. Fel arall, mae Rheoliadau 2020 yn darparu ar gyfer y swyddogaethau hyn i'w harfer gan yr Ysgrifennydd Gwladol mewn perthynas â Chymru, ond gyda chydysyniad Gweinidogion Cymru yn unig.

### **Diben y diwygiadau**

Mae OS y weithdrefn gadarnhaol yn mynd i'r afael â gwendidau yng nghyfraith yr UE a ddargedwir rhag gweithredu'n effeithiol a diffygion eraill sy'n deillio o ymadawiad y DU â'r UE.

Mae Rheoliadau 2019 yn gwneud sawl cywiriad i gyfraith yr UE a ddargedwir, sy'n ymwneud â swyddogaethau deddfwriaethol. Maent yn angenrheidiol i ddiogelu'r ddeddfwriaeth sy'n sail i'r meysydd a nodir uchod ac isod. Maent hefyd yn sicrhau bod deddfwriaeth yr UE yn parhau i weithio ar draws y DU ar ôl i'r DU ymadael â'r UE. Mae'n cyfuno newidiadau i swyddogaeth ddeddfwriaethol sy'n defnyddio'r weithdrefn penderfyniad cadarnhaol tra bo'r swyddogaethau anneddfwriaethol wedi'u cynnwys yn OSau cynharach gan Defra sy'n dilyn y weithdrefn penderfyniad negyddol a osodwyd ar ddiwedd 2018 ar gyfer pob un o'r meysydd deddfwriaethol.

Mae Rheoliadau 2020 yn gwneud cywiriadau i fynd i'r afael â diffygion yn y ddeddfwriaeth i alluogi'r ddeddfwriaeth i weithio ar ôl y diwrnod ymadael. Mae Rheoliadau 2020 yn newid pwy yw'r cyrff sy'n cyflawni'r swyddogaethau benodedig o natur ddeddfwriaethol ac yn trosi gweithdrefnau'r UE i weithdrefnau'r DU pan fo'n briodol.

### Mae Rheoliadau 2020 yn diwygio:

Rheoliadau Llygryddion Organig Parhaus 2007. Mae Llygryddion Organig Parhaus ("POPs") yn sylweddau sy'n cael eu hadnabod yn rhai gwenwynig, sy'n biogronni'n barhaus ac sy'n gallu teithio pellterau hir. Y bwriad yw cael rheoliad yn y DU, ar ôl iddi ymadael â'r UE, sy'n nodi'r un cyfyngiadau â Rheoliad yr UE ar y ffordd y caiff POPs eu cynhyrchu, eu gosod ar y farchnad a'u defnyddio. Mae hefyd yn nodi'r un esemptiadau i'r cyfyngiadau hynny. Ar ben hynny, bydd hefyd yn gwahardd mewnfario POPs sydd wedi'u cynhyrchu'n fwriadol. Bydd yn gosod terfynau ynghylch faint o POPs ddylai fod mewn cynhyrchion ac ar gyfer dinistrio POPs mewn cynnyrch gwastraff. Bydd yn ei gwneud yn ofynnol i stociau a gwastraff gael eu nodi a'u rheoli i leihau neu ddileu POPs a ryddheir o'r ffynonellau hyn. Mae'n ofynnol i'r sawl sy'n rhan o Gonfensiwn Stockholm adrodd ar eu dull o reoli POPs ac mae hyn wedi'i nodi yn y rheoliad. Mae'r newidiadau y mae'r offeryn hwn yn ymdrin â nhw yn cynnwys:

- (a) diwygio cyfeiriadau at yr UE a sefydliadau'r UE a phrosesau gweinyddol i brosesau cyfatebol ym Mhrydain Fawr;

(b) diweddarau cyfeiriadau cyfreithiol i gyfeirio at ddeddfwriaeth berthnasol Prydain Fawr; ac

(c) cadw'r gofynion ar gyfer llywodraethau'r Deyrnas Unedig i fonitro ac adrodd.

Rheoliad (EU) 2019/1021 ar lygryddion organig parhaus. Mae Rheoliadau 2020 yn diwygio Rheoliad 2019/1021 er mwyn sicrhau y bydd yn parhau i weithio ar ôl i'r cyfnod gweithredu ddod i ben pan fydd y DU wedi ymadael â'r UE yn llwyr.

Mae Rhan 4 o Reoliadau Llygryddion Organig Parhaus (Diwygio) (Ymadael â'r UE) 2018 wedi'i dirymu, a wnaeth gywiro'r Rheoliad (EC) Rhif 850/2004 ar POPs sydd bellach wedi'i ddiddymu.

Mae Rheoliad 2 o Reoliadau'r Amgylchedd a Bywyd Gwyllt (Swyddogaethau Deddfwriaethol) (Ymadael â'r UE) 2019 wedi'i ddiddymu, a drosglwyddodd swyddogaethau deddfwriaethol a oedd wedi'u cynnwys yn Rheoliad (EC) Rhif 850/2004 ar POPs

Mae Rheoliadau 2020 a'r Memorandwm Esboniadol cysylltiedig, sy'n egluro effaith y diwygiadau, i'w gweld yma:

<https://statutoryinstruments.parliament.uk/timeline/1MRfOFTK/SI-2020/>

### **Pam y rhoddwyd cydsyniad**

Mae cydsyniad wedi'i roi i Lywodraeth y DU wneud y cywiriadau hyn o ran, ac ar ran, Cymru am resymau'n ymwneud ag effeithlonrwydd a hwylustod. Mae'r diwygiadau wedi'u hystyried yn llawn ac nid oes gwahaniaeth o ran polisi. Mae'r diwygiadau hyn yn sicrhau y bydd y llyfr statud yn parhau i weithio ar ôl ymadawiad y DU â'r UE.

**GWEINIDOGION Y DU SY'N GWEITHREDU MEWN MEYSYDD  
DATGANOLEDIG**

**174 - Rheoliadau Llygryddion Organig Parhaus (Diwygio) (Ymadael â'r  
UE) 2020**

*Dyddiad gosod yn Senedd y DU: 8 Hydref 2020*

**Sifftio**

Yn destun sifftio yn Senedd y DU?	Nac ydw
Gweithdrefn:	Cadarnhaol drafft
Dyddiad trafod gan Bwyllgor Offerynnau Statudol Ewropeaidd Tŷ'r Cyffredin	Amh
Dyddiad trafod gan Bwyllgor Craffu ar Is-ddeddfwriaeth Tŷ'r Arglwyddi	Amh
Dyddiad y daw'r cyfnod sifftio i ben yn Senedd y DU	Amh
Datganiad ysgrifenedig o dan Reol Sefydlog 30C:	Papur 77
Memorandwm Cydsyniad Offeryn Statudol o dan Reol Sefydlog 30A (oherwydd eu bod yn diwygio deddfwriaeth sylfaenol)	Nid yw'n ofynnol

**Gweithdrefn graffu**

Canlyniad y broses sifftio	Amh
Gweithdrefn	Cadarnhaol drafft
Dyddiad trafod gan y Cydbwyllgor ar Offerynnau Statudol	21 Hydref 2020
Dyddiad trafod gan Bwyllgor Offerynnau Statudol Tŷ'r Cyffredin	Anhysbys
Dyddiad trafod gan Bwyllgor Craffu ar Is-ddeddfwriaeth Tŷ'r Arglwyddi	20 Hydref 2020

**Cefndir**

Bwriedir i'r Rheoliadau hyn gael eu gwneud gan Lywodraeth y DU yn unol ag adran 8(1) ac 8(c) o Ddeddf yr Undeb Ewropeaidd (Ymadael) 2018, a pharagraff 21 o Atodlen 7 iddi.

**Crynodeb**

Mae'r offeryn hwn yn gwneud y cywiriadau angenrheidiol i sicrhau bod Rheoliad (UE) 2019/1021 Senedd Ewrop a'r Cyngor ar Lygryddion Organig Parhaus ("POPs") yn gweithredu ym Mhrydain Fawr ar ôl diwedd y Cyfnod Gweithredu. Mae'r offeryn hwn hefyd yn gwneud diwygiadau at ddibenion sy'n ymwneud â gweithredu Protocol Iwerddon / Gogledd Iwerddon ("y Protocol").

Yn dilyn diwedd y Cyfnod Gweithredu, bydd y diwygiadau i Reoliad (EU) 2019/1021 yn galluogi awdurdodau Prydain Fawr i weithredu Confensiwn

Stockholm yn annibynnol drwy reoleiddio'r broses o gynhyrchu POPs, eu rhoi ar y farchnad, a'u defnyddio. Bydd y diwygiadau hefyd yn caniatáu i awdurdodau Prydain Fawr reoleiddio pentyrrau o POPs a rheoli gwastraff lle mae POPs yn bresennol. Maent hefyd yn nodi gofynion monitro ac adrodd. At hynny, bydd y diwygiadau yn creu pŵer a fydd yn galluogi Prydain Fawr i roi'r mesurau angenrheidiol ar waith i sicrhau y bydd modd rheoli ac olrhain gwastraff sydd wedi'i halogi gan y llygryddion perthnasol.

Daeth Confensiwn Stockholm i rym yn 2004 a'i nod yw dileu neu gyfyngu ar y gallu i gynhyrchu a defnyddio'r POPs hyn. Mae'n rheoleiddio'r broses o gynhyrchu POPs sy'n cael eu gwahardd neu eu cyfyngu o dan Confensiwn Stockholm, y gallu i'w rhoi ar y farchnad a'u defnyddio. Mae esemptiau a therfynau ar gyfer faint o sylwedd a ganiateir mewn eitemau newydd. Mae hefyd yn nodi gofynion i gymryd camau priodol i ddinistrio gwastraff POPs ac mae gofynion i fonitro'r broses o ddileu sylweddau a restrir, stoc-bentyrru a rheoli gwastraff, a gofynion i baratoi adroddiadau cysylltiedig. Mae'r DU yn rhan o Confensiwn Stockholm yn ei rhinwedd ei hun a bydd ei rhwymedigaethau rhyngwladol o dan y Confensiwn yn parhau ar ôl ymadael â'r UE.

### **Datganiad gan Lywodraeth Cymru**

Mae'r Cynghorwyr Cyfreithiol yn cytuno â'r datganiad a osodwyd gan Lywodraeth Cymru dyddiedig 13 Hydref 2020 ynghylch effaith y Rheoliadau hyn, ond cynigiwyd y sylwadau a ganlyn:

1. Mae Erthygl 7 o Reoliad (EU) 2019/1021, fel y'i diwygiwyd gan reoliad 14 o'r Rheoliadau hyn ac sy'n rhan o gyfraith yr UE a ddargedwir, yn rhoi (ym mharagraff 7 newydd o Erthygl 7) pŵer i Weinidogion Cymru neu, gyda'u cydsyniad, i'r Ysgrifennydd Gwladol, wneud rheoliadau i sicrhau y bydd modd rheoli ac olrhain gwastraff sydd wedi'i halogi gan y llygryddion a restrir yn Atodiad 4 o Reoliad (EU) 2019/1021. Mae pŵer tebyg yn arferadwy ar hyn o bryd drwy gyfrwng adran 2(2) o Ddeddf Cymunedau Ewropeaidd 1972, na fydd mewn grym yn dilyn diwedd y Cyfnod Gweithredu.
2. Mae'r diwygiadau i Erthygl 7 yn sicrhau y bydd y pŵer hwn yn gweithredu'n effeithiol yn dilyn diwedd y Cyfnod Gweithredu. Fodd bynnag, nodir bod paragraff 14 newydd o Erthygl 7 o Reoliad (EU) 2019/1021 yn darparu na chaiff unrhyw reoliadau eu gwneud o dan baragraff 7 ar neu ar ôl 31 Hydref 2023 (gweler rheoliad 14(4) o'r Rheoliadau hyn).
3. O ran arddull, mae datganiad Llywodraeth Cymru yn cyfeirio at 'Reoliadau 2019' a "Rheoliadau 2020". Mae'n debyg mai camgymeriad yw hwn, gan fod y ddau derm, mae'n ymddangos, yn cyfeirio at y Rheoliadau hyn.



**Cytundeb Rhynglywodraethol ar Fil yr Undeb Ewropeaidd (Ymadael)**

Mae'r crynodeb uchod a chynnwys y Memorandwm Esboniadol i'r Rheoliadau hyn yn cadarnhau eu heffaith.

Nid yw'r Cynghorwyr Cyfreithiol o'r farn bod unrhyw faterion arwyddocaol yn codi o dan baragraff 8 o'r Memorandwm ar Fil yr Undeb Ewropeaidd (Ymadael) a Sefydlu Fframweithiau Cyffredin mewn perthynas â'r Rheoliadau hyn.



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## DATGANIAD YSGRIFENEDIG GAN LYWODRAETH CYMRU

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<b>TEITL</b>	<b>Rheoliadau Plaladdwyr (Diwygio) (Ymadael â'r UE) 2020 (Rheoliadau 2020)</b>
<b>DYDDIAD</b>	<b>13 Hydref 2020</b>
<b>GAN</b>	<b>Rebecca Evans AS, Y Gweinidog Cyllid a'r Trefnydd</b>

**Offeryn Statudol a osodwyd yn y Senedd sy'n cynnwys darpariaeth mewn maes datganoledig**

### **Rheoliadau Plaladdwyr (Diwygio) (Ymadael â'r UE) 2020 (Rheoliadau 2020)**

Mae Rheoliadau 2020 yn gwneud nifer o ddiwygiadau i Offerynnau Statudol Ymadael â'r UE cynharach sy'n trosi deddfwriaeth yr UE (sy'n ffurfio cyfundrefnau rheoleiddio cynnyrch diogelu planhigion ("PPP") a'r lefel gweddillion uchaf ("MRL") yn gyfraith genedlaethol, gan adlewyrchu pryd y daw cyfraith yr UE i ben a chan gadw cyfraith yr UE i rym ar ddiwedd y cyfnod gweithredu, gan sicrhau felly y bydd y gyfundrefn genedlaethol yn gweithredu'n effeithiol. Mae angen y rhan fwyaf o'i welliannau oherwydd deddfwriaeth newydd yr UE sydd wedi dod i rym yn fuan cyn ac yn ystod y cyfnod gweithredu, ac felly ni chafodd sylw gan OSau Ymadael â'r UE cynharach. Mae Rheoliadau 2020 hefyd yn gwneud diwygiadau o ganlyniad i Brotocol Gogledd Iwerddon lle bydd cyfundrefnau PPP ac MRL yr UE yn parhau i fod yn gymwys, felly mae angen newidiadau deddfwriaethol i ddileu Gogledd Iwerddon o ddeddfwriaeth yr UE a ddargedwir fel bod y gyfundrefn PPP ac MRL newydd yn gymwys ym Mhrydain Fawr yn unig, yn hytrach na ledled y DU.

### **Mae Rheoliadau 2020 yn diwygio'r ddeddfwriaeth ganlynol**

#### Deddfwriaeth Ewropeaidd

Mae Rheoliadau 2020 yn diwygio Rheoliad Gweithredu'r Comisiwn (EU) Rhif 844/2012 sy'n nodi'r weithdrefn adnewyddu ar gyfer sylweddau gweithredol sy'n gysylltiedig â gosod cynhyrchion diogelu planhigion ar y farchnad.

Mae Rheoliadau 2020 yn dirymu pwyntiau yn Atodiad 2 i Gytundeb yr Ardal Economaidd Ewropeaidd.

Mae Rheoliadau 2020 yn dirymu deddfwriaeth yr UE a nodir yn Atodiad i'r Datganiad hwn.

### Deddfwriaeth ddomestig

Mae Rheoliadau 2020 yn diwygio'r ddeddfwriaeth ddomestig ganlynl:

- Rheoliadau Cynhyrchion Diogelu Planhigion (Diwygiadau Amrywiol) (Ymadael â'r UE) 2019;
- Rheoliadau'r Amgylchedd (Diwygiadau a Dirymiadau Amrywiol) (Ymadael â'r UE) 2019;
- Rheoliadau Plaladdwyr a Gwrteithiau (Diwygiadau Amrywiol) (Ymadael â'r UE) 2019;
- Y Plaladdwyr (Lefelau Gweddilliol Uchaf) (Gwelliant ac ati.) (Ymadael â'r UE) Rheoliadau 2019;
- Rheoliadau Plaladdwyr (Diwygio) (Ymadael â'r UE) 2019;
- Rheoliadau Cynhyrchion Diogelu Planhigion (Defnydd Cynaliadwy) 2012; a
- Rheoliadau Rheolaethau Swyddogol (Cynhyrchion Diogelu Planhigion) 2020.

### **Unrhyw effaith y gall yr offeryn statudol ei chael ar gymhwysedd deddfwriaethol y Senedd a/neu gymhwysedd gweithredol Gweinidogion Cymru**

Nid yw Rheoliadau 2020 yn effeithio ar gymhwysedd deddfwriaethol y Senedd ond maent yn ehangu cymhwysedd gweithredol Gweinidogion Cymru drwy roi swyddogaethau iddynt (yn rhinwedd eu swydd fel 'Awdurdod Cymwys' Cymru) yn ddilyffethair.

### **Diben y diwygiadau**

Mae'r prif gywiriadau sy'n ofynnol i'r drefn reoleiddio ar gyfer plaladdwyr o ganlyniad i Ymadael â'r UE eisoes wedi'u rhoi ar waith drwy gyfres o OSau Ymadael â'r UE cynharach, yn bennaf Rheoliadau Cynhyrchion Diogelu Planhigion (Diwygiadau Amrywiol) (Ymadael â'r UE) 2019 (OS Rhif 2019/556) a Rheoliadau Plaladdwyr (Lefelau Gweddillion Mwyaf) (Diwygio etc.) (Ymadael â'r UE) 2019 (OS Rhif 2019/557).

Diwygiodd Rheoliadau Plaladdwyr (Diwygio) (Ymadael â'r UE) 2019 (OS Rhif 2019/1410) OSau Ymadael â'r UE cynharach oherwydd newidiadau i'r "Diwrnod Ymadael" a oedd yn effeithio ar wahanol ddyddiadau a bennir yng nghyfraith yr UE a argedwir. Cywirodd nifer o ddiffygion hefyd o fewn yr OSau hynny. Mae Rheoliadau 2020 yn gwneud newidiadau pellach oherwydd y cyfnod gweithredu. Mae gwahanol ddarnau ychwanegol o ddeddfwriaeth yr UE wedi dod i rym yn y cyfnod ers OSau Ymadael â'r UE cynharach, ac felly cânt eu diwygio er mwyn cywiro diffygion newydd sy'n deillio o adael yr UE.

Canlyniad arall yw bod angen cywiriadau i adlewyrchu'r newid i'r dyddiad y mae cyfraith yr UE yn peidio â bod yn gymwys, a phan ddaw cyfraith a ddargedwir i rym, sydd bellach ar ddiwedd y cyfnod gweithredu yn hytrach na Diwrnod Ymadael. Felly, mae Rheoliadau 2020 yn gwneud nifer o fân gywiriadau ac ychwanegiadau fel y gall cyfraith a ddargedwir weithredu'n gywir.

Ers cwblhau'r OSau Ymadael â'r UE, cytunwyd ar Brotocol Gogledd Iwerddon sydd bellach yn ei gwneud yn ofynnol i Reoladuron Rhyngwladol 7207 a Rheoliad (EC) Rhif 396/2005

barhau i fod yn uniongyrchol gymwys yng Ngogledd Iwerddon ar ôl diwedd y cyfnod gweithredu. Felly, mae Rheoliadau 2020 yn diwygio'r OSau Ymadael â'r UE ledled y DU fel bod cyfeiriadau sy'n ymwneud â Gogledd Iwerddon yn cael eu dileu ac o ganlyniad dim ond ym Mhrydain Fawr y maent yn ymarferol gymwys. Bydd hyn yn egluro bod y fframwaith cyfreithiol gofynnol yn parhau i fod ar waith ar gyfer Gogledd Iwerddon, er mwyn i Reoliadau perthnasol yr UE barhau i fod yn gymwys i Ogledd Iwerddon a pharhau i weithredu fel y rhagwelwyd o dan Brotocol Gogledd Iwerddon.

Mae Rheoliadau 2020 hefyd yn gwneud mân addasiadau i Reoliadau Plaladdwyr a Gwrteithiau (Diwygiadau Amrywiol) (Ymadael â'r UE) 2019 (OS Rhif 2019/306), yn dilyn cyhoeddi Cyfarwyddeb Comisiwn yr UE o ran sefydlu dangosyddion risg wedi'u cysoni er mwyn cywiro diffygion newydd yng nghyfraith yr UE a ddargedwir.

Yn olaf, mae Rheoliadau 2020 hefyd yn gwneud mân addasiadau i Reoliadau Rheolaethau Swyddogol (Cynhyrchion Diogelu Planhigion) 2020 (OS Rhif 2020/552), a weithredodd Reoliad (UE) 2017/625 o'r Senedd a'r Cyngor ar reolaethau swyddogol ar gyfer cynhyrchion diogelu planhigion.

Mae Rheoliadau 2020 a'r Memorandwm Esboniadol cysylltiedig, sy'n nodi manylion tarddiad, diben ac effaith y Rheoliadau, ar gael yma:

<https://statutoryinstruments.parliament.uk/timeline/sOqcsMAG/SI-2020/>

### **Pam y rhoddwyd caniatâd**

Rhoddwyd caniatâd i Lywodraeth y DU wneud y cywiriadau hyn mewn perthynas â Chymru am resymau effeithlonrwydd a hwylustod. Mae'r gwelliannau wedi'u hystyried yn llawn ac nid oes gwahaniaeth mewn polisi. Nod y gwelliannau hyn yw sicrhau bod y llyfr statud yn parhau i fod yn weithredol ar ddiwedd y Cyfnod Gweithredu.

## ATODIAD

Mae Rheoliadau 2020 yn dirymu deddfwriaeth ganlynol yr UE.

- Rheoliad y Comisiwn (UE) 2019/973 sy'n diwygio Atodiadau II a III i Reoliad (EC) Rhif 396/2005 Senedd Ewrop a'r Cyngor o ran lefelau gweddillion uchaf sylweddau penodol.
- Rheoliad y Comisiwn (UE) 2019/977 sy'n diwygio Atodiadau II a IV i Reoliad (EC) Rhif 396/2005 Senedd Ewrop a'r Cyngor o ran lefelau gweddillion uchaf ar gyfer sylweddau penodol.
- Rheoliad Gweithredu'r Comisiwn (UE) 2019/989 ynghylch peidio ag adnewyddu cymeradwyaeth sylwedd actif clorpropham.
- Rheoliad y Comisiwn (EU) 2019/1015 sy'n diwygio Atodiadau II a III i Reoliad (EC) Rhif 396/2005 Senedd Ewrop a'r Cyngor o ran lefelau gweddillion uchaf ar gyfer sylweddau penodol.
- Rheoliad Gweithredu'r Comisiwn (UE) 2019/1085 yn adnewyddu'r gymeradwyaeth i'r sylwedd actif 1-methylgylchol.
- Rheoliad Gweithredu'r Comisiwn (UE) 2019/1090 ynghylch peidio ag adnewyddu'r gymeradwyaeth i'r sylwedd actif dimethoate.
- Rheoliad Gweithredu'r Comisiwn (UE) 2019/1100 ynghylch peidio ag adnewyddu'r gymeradwyaeth i'r sylwedd actif desmedipham.
- Rheoliad Gweithredu'r Comisiwn (UE) 2019/1101 yn adnewyddu'r gymeradwyaeth i'r sylwedd actif tolclafos-methyl.
- Rheoliad Gweithredu'r Comisiwn (UE) 2019/1137 yn adnewyddu'r gymeradwyaeth i'r sylwedd actif dimethenamid-P.
- Rheoliad Gweithredu'r Comisiwn (UE) 2019/1138 yn cymeradwyo'r sylwedd actif gweithredol-benzyl.
- Rheoliad y Comisiwn (EU) 2019/1176 sy'n diwygio Atodiadau II, III a V i Reoliad (EC) Rhif 396/2005 Senedd Ewrop a'r Cyngor o ran y lefelau gweddillion uchaf ar gyfer sylweddau penodol.
- Rheoliad y Comisiwn (EU) 2019/1559 sy'n diwygio Atodiadau II a II i Reoliad (EC) Rhif 396/2005 Senedd Ewrop a'r Cyngor o ran lefelau gweddillion uchaf sylweddau penodol.
- Rheoliad y Comisiwn (EU) 2019/1561 sy'n diwygio Atodiadau II a III i Reoliad (EC) Rhif 396/2005 Senedd Ewrop a'r Cyngor o ran y lefelau gweddillion uchaf ar gyfer clormequat mewn ffwng wedi'i dyfu.

- Rheoliad Gweithredu'r Comisiwn (EU) 2019/1582 sy'n diwygio Atodiadau II a III i Reoliad (EC) Rhif 396/2005 Senedd Ewrop a'r Cyngor o ran y lefelau gweddillion uchaf ar gyfer imazalil mewn neu ar rai cynhyrchion.
- Rheoliad Gweithredu'r Comisiwn (UE) 2019/1589 sy'n diwygio Rheoliad Gweithredu (UE) Rhif 540/2011 o ran ymestyn cyfnodau cymeradwyo sylweddau actif penodol.
- Rheoliad Gweithredu'r Comisiwn (UE) 2019/1605 sy'n cymeradwyo'r sylwedd gweithredol risg isel *Bacillus isdilis* straen IAB/BS03.
- Rheoliad Gweithredu'r Comisiwn (UE) 2019/1606 ynghylch peidio ag adnewyddu'r gymeradwyaeth actif i'r sylwedd actif methiocarb.
- Rheoliad Gweithredu'r Comisiwn (UE) 2019/1675 yn adnewyddu'r gymeradwyaeth i'r sylwedd actif *Verticillium albo-atrum* straen WCS850 fel sylwedd risg isel.
- Rheoliad Gweithredu'r Comisiwn (UE) 2019/1690 yn adnewyddu'r gymeradwyaeth i'r sylwedd actif alpha-cypermethrin.
- Rheoliad y Comisiwn (EU) 2019/1791 sy'n diwygio Atodiadau II, III a IV i Reoliad (EC) Rhif 396/2005 Senedd Ewrop a'r Cyngor o ran y lefelau gweddillion uchaf ar gyfer sylweddau penodol.
- Rheoliad y Comisiwn (EU) 2019/1792 sy'n diwygio Atodiadau II, III a V i Reoliad (EC) Rhif 396/2005 Senedd Ewrop a'r Cyngor o ran y lefelau gweddillion uchaf ar gyfer sylweddau penodol.
- Rheoliad Gweithredu'r Comisiwn 2019/2094 sy'n diwygio Rheoliad Gweithredu (EU) Rhif 540/2011 o ran ymestyn cyfnodau cymeradwyo sylweddau actif penodol.
- Rheoliad Gweithredu'r Comisiwn (UE) 2020/17 ynghylch peidio ag adnewyddu'r gymeradwyaeth i'r sylwedd actif clorpyrifos-methyl.
- Rheoliad Gweithredu'r Comisiwn (UE) 2020/18 ynghylch peidio ag adnewyddu'r gymeradwyaeth i'r sylwedd actif clorpyrifos.
- Rheoliad Gweithredu'r Comisiwn (UE) 2020/23 ynghylch peidio ag adnewyddu'r gymeradwyaeth i'r sylwedd actif thiacloprid.
- Rheoliad Gweithredu'r Comisiwn 2020/192 sy'n diwygio Atodiadau II a III i Reoliad (EC) Rhif 396/2005 Senedd Ewrop a'r Cyngor o ran lefelau gweddillion uchaf ar gyfer prochloraz mewn neu ar rai cynhyrchion.
- Rheoliad Gweithredu'r Comisiwn (EU) 2020/421 sy'n diwygio Rheoliad Gweithredu (EU) Rhif 540/2011 o ran ymestyn cyfnodau cymeradwyo sylweddau actif penodol.

**GWEINIDOGION Y DU YN GWEITHREDU MEWN MEYSYDD  
DATGANOLEDIG**

**175 - Rheoliadau Plaladdwyr (Diwygio) (Ymadael â'r UE) 2020**

*Gosodwyd yn Senedd y DU: 08 Hydref 2020*

**Sifftio**

Yn destun gwaith sifftio yn Senedd y DU?	Na
Y weithdrefn:	Cadarnhaol drafft
Dyddiad trafod gan Bwyllgor Offerynnau Statudol Ewropeaidd Tŷ'r Cyffredin	Amh.
Dyddiad trafod gan Bwyllgor Craffu ar Is-ddeddfwriaeth Tŷ'r Arglwyddi	Amh.
Dyddiad y daw'r cyfnod sifftio i ben yn Senedd y DU	Amh.
Datganiad ysgrifenedig o dan Reol Sefydlog 30C:	Papur 79
Memorandwm Cydsyniad Offeryn Statudol (SICM) o dan Reol Sefydlog 30A (oherwydd eu bod yn diwygio deddfwriaeth sylfaenol)	Ddim yn ofynnol

**Gweithdrefn graffu**

Canlyniad y broses sifftio	Amh.
Y weithdrefn	Cadarnhaol drafft
Dyddiad trafod gan y Cydbwyllgor ar Offerynnau Statudol	21/10/2020
Dyddiad trafod gan Bwyllgor Offerynnau Statudol Ewropeaidd Tŷ'r Cyffredin	Ddim yn hysbys
Dyddiad trafod gan Bwyllgor Craffu ar Is-ddeddfwriaeth Tŷ'r Arglwyddi	20/10/2020

**Cefndir**

Cynigir bod y Rheoliadau hyn yn cael eu gwneud gan Lywodraeth y DU o dan adran 8 o Ddeddf yr Undeb Ewropeaidd (Ymadael) 2018 a pharagraff 21 o Atodlen 7 i'r Ddeddf hon.

**Crynodeb**

Mae Rheoliadau 2020 yn gwneud nifer o ddiwygiadau i Offerynnau Statudol Ymadael â'r UE cynharach sy'n trosi deddfwriaeth yr UE (sy'n ffurfio cyfundrefnau rheoleiddio cynnyrch diogelu planhigion ("PPP") a'r lefel gweddillion uchaf ("MRL") yn gyfraith genedlaethol, gan adlewyrchu pryd y daw cyfraith yr UE i ben a chan gadw cyfraith yr UE i rym ar ddiwedd y cyfnod gweithredu, gan sicrhau felly y bydd y gyfundrefn genedlaethol yn gweithredu'n effeithiol. Mae angen y rhan fwyaf o'i welliannau oherwydd deddfwriaeth newydd yr UE sydd wedi dod i rym yn fuan cyn ac yn ystod y cyfnod gweithredu, ac felly ni chafodd sylw gan

OSau Ymadael â'r UE cynharach. Mae Rheoliadau 2020 hefyd yn gwneud diwygiadau o ganlyniad i Brotocol Gogledd Iwerddon lle bydd cyfundrefnau PPP ac MRL yr UE yn parhau i fod yn gymwys, felly mae angen newidiadau deddfwriaethol i ddileu Gogledd Iwerddon o ddeddfwriaeth yr UE a ddargedwir fel bod y gyfundrefn PPP ac MRL newydd yn gymwys ym Mhrydain Fawr yn unig, yn hytrach na ledled y DU.

**Datganiad gan Lywodraeth Cymru**

Mae'r Cynghorwyr Cyfreithiol yn cytuno â'r datganiad a osodwyd gan Lywodraeth Cymru, dyddiedig 13 Hydref 2020, ynghylch effaith y Rheoliadau hyn.

**Cytundeb Rhynglywodraethol ar Fil yr Undeb Ewropeaidd (Ymadael)**

Mae'r crynodeb uchod a chynnwys y Memorandwm Esboniadol i'r Rheoliadau hyn yn cadarnhau eu heffaith.

Ym marn y Cynghorwyr Cyfreithiol, nid oes unrhyw faterion sylweddol yn codi o dan baragraff 8 o'r Memorandwm ar Fil yr Undeb Ewropeaidd (Ymadael) a sefydlu fframweithiau cyffredin mewn perthynas â'r Rheoliadau hyn.



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## DATGANIAD YSGRIFENEDIG GAN LYWODRAETH CYMRU

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<b>TEITL</b>	<b>Rheoliadau Sylweddau sy'n Teneuo'r Osôn a Nwyon Tŷ Gwydr wedi'u Fflworeiddio (Diwygio etc) (Ymadael â'r UE) 2020</b>
<b>DYDDIAD</b>	<b>15 Hydref 2020</b>
<b>GAN</b>	<b>Rebecca Evans AS, Y Gweinidog Cyllid a'r Trefnydd</b>

**SO30C – OS a osodwyd gerbron Senedd y DU, sy'n diwygio is-ddeddfwriaeth mewn maes datganoledig**

**Rheoliadau Sylweddau sy'n Teneuo'r Osôn a Nwyon Tŷ Gwydr wedi'u Fflworeiddio (Diwygio etc) (Ymadael â'r UE) 2020**

Mae Rheoliadau 2020 yn cynnwys darpariaethau sy'n dod o fewn cymhwysedd datganoledig. Maent yn diwygio'r deddfwriaeth a ganlyn:-

### **Deddfwriaeth Ddomestig**

- Rheoliadau Sylweddau sy'n Teneuo'r Osôn a Nwyon Tŷ Gwydr wedi'u Fflworeiddio (Diwygio etc.) (Ymadael â'r UE) 2019 (Rheoliadau 2019), a
- Rheoliadau Nwyon Tŷ Gwydr wedi'u Fflworeiddio 2015

**Unrhyw effaith y gall yr OS ei chael ar gymhwysedd deddfwriaethol y Senedd a/neu gymhwysedd gweithredol Gweinidogion Cymru**

Trosglwyddodd Rheoliadau 2019 swyddogaethau a oedd yn dod o fewn cymhwysedd datganoledig i Weinidogion Cymru a Cyfoeth Naturiol Cymru.

Roedd Rheoliadau 2019 hefyd yn rhoi'r pŵer i Weinidogion Cymru gydsynio i'r Ysgrifennydd Gwladol arfer y swyddogaethau Gweinidogol hynny, mewn perthynas â Chymru.

Mae Rheoliadau 2020 yn cynnwys un swyddogaeth newydd i'r Ysgrifennydd Gwladol yn ddilyffethair. Mae hyn yn benderfyniad ymarferol a wnaed i gydymffurfio â Phrotocolau Montreal a Gogledd Iwerddon (NIP), a hefyd mae'n adlewyrchu mai Cyllid a Thollau Ei Mawrhydi (CThEM) a Llu'r Ffiniau sy'n gyfrifol am yr adnoddau a'r arbenigedd yn y maes hwn. Pe bai NIP yn dod i ben, ni fydd y swyddogaeth hon bellach yn bodoli.

Mae cyflwyno darpariaethau i reoli mewnfurion ac allfurion ar ffin Prydain Fawr yn hytrach nag ar ffin y DU yn hanfodol i sicrhau bod integriti cwota a systemau trwyddedu nwyon wedi'u fflworeiddio neu sylweddau sy'n teneuo'r osôn Prydain a'r UE yn cael eu cynnal. Mae'n cydnabod bod symud nwyon wedi'u fflworeiddio a sylweddau sy'n teneuo'r osôn wedi'i eithrio rhag yr egwyddor o fynediad dirwystri'r farchnad ar gyfer masnach o Ogledd Iwerddon i Brydain Fawr, i sicrhau bod y DU yn parhau i gydymffurfio â'i rwymedigaethau rhyngwladol o dan Protocol Montreal.

Mae'r swyddogaeth orfodi bresennol o fewn y DU wedi'u datganoli ym mhob maes ond am ddau (sy'n ymwneud â gwaredu a phŵer CThEM i ymafael yn nwyddau a'u cadw). Bydd y swyddogaethau gorfodi datganoledig hyn yn parhau, a bydd swyddogaeth gorfodi newydd yr Ysgrifennydd Gwladol yn cael ei hychwanegu at y swyddogaethau gorfodi datganoledig presennol hyn. Mae swyddogaeth orfodi newydd yr Ysgrifennydd Gwladol yn benodol i fewnfurion/allfurion dros ffin Gogledd Iwerddon/Prydain Fawr a fydd, at ddibenion cydymffurfio â'r protocol, yn cael ei thrin yn ffin ryngwladol hyn hytrach nag un fewnol. Yn ymarferol, cytunwyd y bydd y gwiriadau a gynhelir gan Lu'r Ffiniau ar Nwyon wedi'u Fflworeiddio a Sylweddau sy'n Teneuo'r Osôn ar ffin Gogledd Iwerddon/Prydain Fawr yn ddogfennol yn hytrach na'n ffisegol, a bydd asiantaethau gorfodi lleol, megis Cyfoeth Naturiol Cymru, Awdurdodau Lleol ac Awdurdodau Iechyd Porthladdoedd yng Nghymru yn dal i chwarae rôl gorfodi. Er nad oes data manwl ar gael, credir mai ar nifer bach o nwyddau y bydd hyn yn effeithio.

Bydd gan Weinidogion Cymru y pŵer o hyd i sefydlu a gweithredu eu systemau eu hunain pe baent yn dewis gwneud hynny. Yn ymarferol, fodd bynnag, mae Llywodraeth Cymru, Llywodraeth y DU a Llywodraeth yr Alban yn bwriadu gweithredu systemau ar draws Prydain Fawr ar gyfer nwyon wedi'u fflworeiddio a sylweddau sy'n teneuo'r osôn, a fydd yn cael eu gweinyddu gan Asiantaeth yr Amgylchedd ar ôl diwedd y Cyfnod Gweithredu. Bydd y trefniadau manwl y cytunwyd arnynt ar gyfer cydweithio hirdymor rhwng Llywodraeth y DU a'r Gweinyddiaethau Datganoledig yn sail i Fframwaith Cyffredin.

## **Diben y diwygiadau**

Gwneir Rheoliadau 2020 drwy arfer y pwerau a roddir gan adrannau 8(1) ac 8C o Ddeddf yr Undeb Ewropeaidd (Ymadael) 2018, a pharagraff 21 o Atodlen 7 iddi, ac adran 41(1) o Ddeddf yr Undeb Ewropeaidd (Ymadael) 2020.

Mae Rheoliadau 2020 yn cywiro diffygion sydd eu hangen i weithredu'r Protocol. Yn benodol, mae'n cyfyngu ar raddfa Rheoliadau 2019 o'r DU i Brydain Fawr, gan y bydd Gogledd Iwerddon yn parhau i fod yn ddarostyngedig i Reoliadau'r UE o ran nwyon wedi'u fflworeiddio a sylweddau sy'n teneuo'r osôn o dan y Protocol. Bydd Rheoliadau 2019, fel y'u diwygir gan Reoliadau 2020, yn trosglwyddo pwerau a ysgwyddwyd yn flaenorol gan Gomisiwn yr UE i Loegr, yr Alban a Chymru.

Mae Rheoliadau 2020 yn cyflwyno darpariaethau i reoli symudiadau nwyon wedi'u fflworeiddio a sylweddau sy'n teneuo'r osôn rhwng Prydain Fawr a Gogledd Iwerddon. Mae'r darpariaethau hyn yn diffinio y bydd y symudiadau hyn yn cael eu hystyried yn fewnfurion/allfurion at ddiben masnach yn 754 wedi'u fflworeiddio a sylweddau sy'n

teneuo'r osôn. Mae rheoli'r fasnach hon rhwng Prydain Fawr a Gogledd Iwerddon yn hanfodol i gynnal integriti systemau nwyon wedi'u fflworeiddio a sylweddau sy'n teneuo'r osôn Prydain Fawr (a'r UE), ac i weithredu'r Protocol. Mae'n cefnogi ein gallu, felly, i fodloni rhwymedigaethau'r DU o dan Brotocol Montreal a chaiff ei gydnabod fel eithriad rhag yr egwyddor o fynediad dirwysr i'r farchnad ar gyfer masnach o Ogledd Iwerddon i Brydain Fawr.

Mae'r OSau a'r Memoranda Esboniadol, sy'n nodi effaith pob diwygiad, i'w gweld yma: <https://statutoryinstruments.parliament.uk/timeline/dXJbyQy9/SI-2020/>

### **Pam y rhoddwyd cydsyniad**

Mae cydsyniad wedi'i roi i Lywodraeth y DU wneud y cywiriadau hyn o ran, ac ar ran, Cymru am resymau'n ymwneud ag effeithlonrwydd a hwylustod ac oherwydd natur dechnegol y diwygiadau. Mae'r diwygiadau wedi'u hystyried yn llawn ac nid oes gwahaniaeth o ran polisi. Mae'r diwygiadau hyn yn sicrhau y bydd y llyfr statud yn parhau i weithio ar ddiwedd y Cyfnod Gweithredu.

**GWEINIDOGION Y DU SY'N GWEITHREDU MEWN MEYSYDD  
DATGANOLEDIG**

**177 - Rheoliadau Sylweddau sy'n Teneuo'r Osôn a Nwyon Tŷ Gwydr  
wedi'u Fflworeiddio (Diwygio etc) (Ymadael â'r UE) 2020**

*Dyddiad gosod yn Senedd y DU: 13 Hydref 2020*

**Sifftio**

Yn destun sifftio yn Senedd y DU?	Nac ydynt
Y weithdrefn:	Cadarnhaol drafft
Dyddiad trafod gan Bwyllgor Offerynnau Statudol Ewropeaidd Tŷ'r Cyffredin	Amherthnasol
Dyddiad trafod gan Bwyllgor Craffu ar Is-ddeddfwriaeth Tŷ'r Arglwyddi	Amherthnasol
Dyddiad y daw'r cyfnod sifftio i ben yn Senedd y DU	Amherthnasol
Datganiad ysgrifenedig o dan Reol Sefydlog 30C:	Papur 81
Memorandwm Cydsyniad Offeryn Statudol o dan Reol Sefydlog 30A (oherwydd eu bod yn diwygio deddfwriaeth sylfaenol)	Nid yw'n ofynnol

**Gweithdrefn graffu**

Canlyniad y broses sifftio	Amherthnasol
Y weithdrefn	Cadarnhaol drafft
Dyddiad trafod gan y Cydbwyllgor ar Offerynnau Statudol	Anhysbys
Dyddiad trafod gan Bwyllgor Offerynnau Statudol Tŷ'r Cyffredin	Anhysbys
Dyddiad trafod gan Bwyllgor Craffu ar Is-ddeddfwriaeth Tŷ'r Arglwyddi	Anhysbys

**Cefndir**

Bwriedir i'r Rheoliadau hyn gael eu gwneud gan Lywodraeth y DU yn unol ag adran 8(1) ac 8C(1) o Ddeddf yr Undeb Ewropeaidd (Ymadael) 2018, a pharagraff 21 o Atodlen 7 iddi.

**Crynodeb**

Mae'r Rheoliadau hyn yn gwneud diwygiadau technegol i'r offerynnau a ganlyn:

- Rheoliadau Sylweddau sy'n Teneuo'r Osôn a Nwyon Tŷ Gwydr wedi'u Fflworeiddio (Diwygio etc) (Ymadael â'r UE) 2019 ("Rheoliadau 2019"), a
- Rheoliadau Nwyon Tŷ Gwydr wedi'u Fflworeiddio 2015

Mae'r offeryn hwn yn diwygio'r Offerynau Statudol uchod sy'n ymwneud ag ymadael â'r UE er mwyn cywiro diffygion gweithredadwyedd, fel na fydd deddfwriaeth yr UE a ddargedwir yn y DU ar ddefnyddio nwyon tŷ gwydr wedi'u fflworeiddio a sylweddau sy'n teneuo'r osôn yn berthnasol yng Ngogledd Iwerddon ac y bydd yn berthnasol ym Mhrydain Fawr yn unig. Bydd Gogledd Iwerddon yn parhau i fod yn ddarostyngedig i deddfwriaeth yr UE o ran nwyon wedi'u fflworeiddio a sylweddau sy'n teneuo'r osôn o dan y Protocol ar Iwerddon a Gogledd Iwerddon.

Bydd Rheoliadau 2019, fel y'u diwygir gan y Rheoliadau hyn, yn trosglwyddo pwerau a oedd yn nwylo Comisiwn yr UE yn flaenorol i Gymru, Lloegr a'r Alban.

Mae'r Rheoliadau hyn hefyd yn cyflwyno darpariaethau i reoli symudiad nwyon wedi'u fflworeiddio a sylweddau sy'n teneuo'r osôn rhwng Prydain Fawr a Gogledd Iwerddon. Mae'r darpariaethau hyn yn diffinio y bydd y symudiadau hyn yn cael eu hystyried yn fewnforion/allforion at ddibenion masnach nwyon wedi'u fflworeiddio a sylweddau sy'n teneuo'r osôn. Mae rheoli'r fasnach hon rhwng Prydain Fawr a Gogledd Iwerddon yn hanfodol i gynnal integriti systemau nwyon wedi'u fflworeiddio a sylweddau sy'n teneuo'r osôn Prydain Fawr (a'r UE), ac i sicrhau bod y DU yn parhau i gydymffurfio â'i goblygiadau rhyngwladol o dan Brotool Montreal.

Gwneir y diwygiadau hyn i sicrhau bod y llyfr statud yn parhau i weithio ar ddiwedd y Cyfnod Gweithredu ac nad oes unrhyw wahaniaeth o ran polisi.

#### **Datganiad gan Lywodraeth Cymru**

Mae'r Cynghorwyr Cyfreithiol yn cytuno â'r datganiad a osodwyd gan Lywodraeth Cymru dyddiedig 15 Hydref 2020 ynghylch effaith y Rheoliadau hyn.

#### **Cytundeb Rhynglywodraethol ar Fil yr Undeb Ewropeaidd (Ymadael)**

Mae'r crynodeb uchod a chynnwys y Memorandwm Esboniadol i'r Rheoliadau hyn yn cadarnhau eu heffaith.

Nid yw'r Cynghorwyr Cyfreithiol o'r farn bod unrhyw faterion arwyddocaol yn codi o dan baragraff 8 o'r Memorandwm ar Fil yr Undeb Ewropeaidd (Ymadael) a Sefydlu Fframweithiau Cyffredin mewn perthynas â'r Rheoliadau hyn.



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## DATGANIAD YSGRIFENEDIG GAN LYWODRAETH CYMRU

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<b>TEITL</b>	<b>Rheoliadau Cymorth Gwladwriaethol (Dirymu etc) (Ymadael â'r UE) 2020</b>
<b>DYDDIAD</b>	<b>15 Hydref 2020</b>
<b>GAN</b>	<b>Jeremy Miles AS, y Cwnsler Cyffredinol a'r Gweinidog Pontio Ewropeaidd</b>

### **Rheoliadau Cymorth Gwladwriaethol (Dirymu etc) (Ymadael â'r UE) 2020**

Yn unol â Rheol Sefydlog 30C, mae Gweinidogion Cymru yn hysbysu Senedd Cymru pan fyddant wedi cydsynio i Weinidogion y DU wneud rheoliadau mewn perthynas ag Ymadael â'r Undeb Ewropeaidd sy'n effeithio ar gymhwysedd datganoledig.

Yn achos y Rheoliadau Cymorth Gwladwriaethol (Dirymu etc.) (Ymadael â'r UE) 2020, ni ofynnwyd i Weinidogion Cymru roi eu cydsyniad, gan fod Llywodraeth y DU yn honni bod cymorth gwladwriaethol yn fater sydd wedi ei gadw'n ôl. Nid yw Llywodraeth Cymru yn cytuno gan nad oes cyfeiriad yn Erthygl 7(A) o Ddeddf Llywodraeth Cymru at y pwnc hwn.

Felly, rwyf wedi ystyried a ddylem roi cydsyniad i'r rheoliadau hyn a phenderfynu na ddylem wneud hynny.

Mae Rheoliadau 2020:

- yn dirymu rheoliadau a phenderfyniadau cymorth gwladwriaethol yr UE i'r graddau y maent yn rhan o gyfraith ddomestig;
- yn diwygio cyfraith yr UE a ddargedwir;
- yn diwygio cyfeiriadau yn neddfwriaeth y DU at reoliadau cymorth gwladwriaethol yr UE sydd wedi'u dirymu.

A bod yn fanylach, mae'r rheoliadau yn dirymu'r ddeddfwriaeth a ganlyn:

- **Hawliau o dan y Cytuniad ar Weithrediad yr UE (TFEU)**

Mae'r Rheoliadau yn dirymu unrhyw hawliau, pwerau, atebolrwyddau, rhwymedigaethau, cyfyngiadau, rhwymedïau a gweithdrefnau a fyddai, ar ddiwedd y Cyfnod Pontio—

Tudalen y pecyn 758

- (a) Yn parhau fel arall yn rhinwedd adran 4(1) o Ddeddf yr Undeb Ewropeaidd (Ymadael) 2018; a
- (b) yn deillio o—
  - (i) Erthygl 107(1) neu 108(3) o'r TFEU;
  - (ii) Erthygl 346(1) o'r TFEU, i'r graddau y mae Erthygl 346(1) yn ymwneud ag Erthygl 107(1) neu Erthygl 108(3) o'r TFEU;
  - (iii) Erthygl 61(1) neu 62(1) o gytundeb yr Ardal Economaidd Ewropeaidd; neu
  - (iv) Erthygl 123 o gytundeb yr Ardal Economaidd Ewropeaidd, i'r graddau y mae'n ymwneud ag Erthygl 61(1) neu 62(1) o gytundeb yr Ardal Economaidd Ewropeaidd;

- **Hawliau o dan Gytundeb yr Ardal Economaidd Ewropeaidd**

Mae'r Rheoliadau yn dirymu Atodiad 15 o gytundeb yr Ardal Economaidd Ewropeaidd, i'r graddau y byddai fel arall yn dod yn rhan o gyfraith ddomestig yn rhinwedd adran 3(1) o Ddeddf yr Undeb Ewropeaidd (Ymadael) 2018.

- **Rheoliadau'r UE**

Mae'r Rheoliadau yn dirymu'r Rheoliadau a ganlyn:

- (a) Rheoliad y Comisiwn (CE) Rhif 794/2004 dyddiedig 21 Ebrill 2004, sy'n gweithredu Rheoliad y Cyngor (CE) Rhif 659/1999 sy'n gosod rheolau manwl ar gyfer cymhwysio Erthygl 93 o Gytuniad y CE;
- (b) Rheoliad gan y Comisiwn (UE) Rhif 360/2012 dyddiedig 25 Ebrill 2012 ar gymhwysio Erthyglau 107 a 108 o'r Cytuniad ar Weithrediad yr Undeb Ewropeaidd i gymorth de minimis a roddir i ymgymeriadau sy'n darparu gwasanaethau o fudd economaidd cyffredinol;
- (c) Rheoliad y Comisiwn (UE) Rhif 1407/2013 dyddiedig 18 Rhagfyr 2013 ar gymhwysio Erthyglau 107 a 108 o'r Cytuniad ar Weithrediad yr Undeb Ewropeaidd i gymorth de minimis;
- (d) Rheoliad y Comisiwn (UE) Rhif 1408/2013 dyddiedig 18 Rhagfyr 2013 ar gymhwysio Erthyglau 107 a 108 o'r Cytuniad ar Weithrediad yr Undeb Ewropeaidd i gymorth de minimis yn y sector amaethyddiaeth;
- (e) Rheoliad y Comisiwn (UE) Rhif 651/2014 dyddiedig 17 Mehefin 2014 yn datgan categorïau penodol o gymorth sy'n gydnaws â'r farchnad fewnol wrth gymhwysio Erthyglau 107 a 108 o'r Cytuniad;
- (f) Rheoliad y Comisiwn (UE) Rhif 702/2014 dyddiedig 25 Mehefin 2014 yn datgan categorïau penodol o gymorth yn y sector amaethyddiaeth a'r sector coedwigaeth ac mewn ardaloedd gwledig sy'n gydnaws â'r farchnad fewnol wrth gymhwysio Erthyglau 107 a 108 o'r Cytuniad ar Weithrediad yr Undeb Ewropeaidd;
- (g) Rheoliad y Comisiwn (UE) Rhif 717/2014 dyddiedig 27 Mehefin 2014 ar gymhwysio Erthyglau 107 a 108 o'r Cytuniad ar Weithrediad yr Undeb Ewropeaidd i gymorth de minimis yn y sector pysgodfa a dyframaethu;
- (h) Rheoliad y Comisiwn (UE) Rhif 1388/2014 dyddiedig 16 Rhagfyr 2014 yn datgan categorïau penodol o gymorth ar gyfer ymgymeriadau sy'n weithredol wrth gynhyrchu, prosesu a marchnata ynni a ffynonellau godfeydd a dyframaethu sy'n

gydnaws â'r farchnad fewnol wrth gymhwyso Erthyglau 107 a 108 o'r Cytuniad ar Weithrediad yr Undeb Ewropeaidd;

- (i) Rheoliad y Comisiwn (UE) Rhif 2015/1588 dyddiedig 13 Gorffennaf 2015 ar gymhwyso Erthyglau 107 a 108 o'r Cytuniad ar Weithrediad yr Undeb Ewropeaidd i gategoriâu penodol o gymorth gwladwriaethol llorweddol; a
- (j) Rheoliad y Cyngor (UE) 2015/1589 ar 13 Gorffennaf 2015 sy'n gosod rheolau manwl ar gyfer cymhwyso Erthygl 108 o'r Cytuniad ar Weithrediad yr Undeb Ewropeaidd.

- **Penderfyniadau'r UE**

Mae'r Rheoliadau hefyd yn dirymu'r penderfyniadau hyn gan yr UE

- (a) Penderfyniad y Cyngor (2010/787/UE) dyddiedig 10 Rhagfyr 2010 ar Gymorth Gwladwriaethol i hwyluso cau pyllau glo anghystadleuol;
- (b) Penderfyniad gan y Comisiwn 2012/21/UE dyddiedig 20 Rhagfyr 2011 ar gymhwyso Erthygl 106(2) o'r Cytuniad ar Weithrediad yr Undeb Ewropeaidd i Gymorth gwladwriaethol ar ffurf iawndal gwasanaeth cyhoeddus a roddir i ymgymeriadau penodol sy'n gyfrifol am weithredu gwasanaethau o fudd economaidd cyffredinol; ac
- (c) unrhyw benderfyniad arall gan yr UE sy'n rhan o gyfraith ddomestig ar ac ar ôl diwrnod cwblhau'r Cyfnod Gweithredu yn rhinwedd adran 3(1) o Ddeddf yr Undeb Ewropeaidd (Ymadael) 2018 ac a wneir o dan—
  - (i) y rheoliad gweithdrefnol neu'r rheoliad sy'n rhagflaenu<sup>1</sup>; neu
  - (ii) [Erthygl 108(2) o'r TFEU] [neu Erthygl 88 o Gytuniad y Gymuned Economaidd Ewropeaidd].

Mae Rheoliadau 2020 hefyd yn gwneud amryw o ddiwygiadau canlyniadol i ddeddfwriaeth y DU mewn meysydd datganoledig eraill y dylai cydsyniad fod wedi'i geisio ar eu cyfer o dan y Cytundeb Rhynglywodraethol, sef yn benodol:

- Gorchymyn y Diwydiant Dŵr (Penderfynu ar Drosiant ar gyfer Cosbau) 2005
- Rheoliadau Ardoll Seilwaith Cymunedol 2010
- Rheoliadau'r Fframwaith Cyd-drefniadaeth ar gyfer y Marchnadoedd mewn Cynhyrchion Amaethyddol (Diwygiadau Amrywiol etc.) (Ymadael â'r UE) 2019

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<sup>1</sup> Ystyr "rheoliad gweithdrefnol" yw Rheoliad y Cyngor (UE) 2015/1589 dyddiedig 13 Gorffennaf 2015 sy'n gosod rheolau manwl ar gyfer cymhwyso Erthygl 108 o'r Cytuniad ar Weithrediad yr Undeb Ewropeaidd.

Ystyr "deddfwriaeth sy'n rhagflaenu" yw:

- a) Rheoliad y Cyngor (CE) Rhif 994/98 dyddiedig 7 Mai 1998 ar gymhwyso Erthyglau 92 a 93 o'r Cytuniad sy'n sefydlu'r Gymuned Ewropeaidd i gategoriâu penodol o gymorth gwladwriaethol llorweddol (fel y cafodd effaith yn union cyn diwrnod cwblhau'r cyfnod gweithredu); a
- b) Rheoliad y Cyngor (CE) Rhif 659/1999 dyddiedig 22 Mawrth 1999, sy'n gosod rheolau manwl ar gyfer cymhwyso Erthygl 108 o'r Cytuniad ar Weithrediad yr Undeb Ewropeaidd (fel y cafodd effaith yn union cyn diwrnod cwblhau'r cyfnod gweithredu);



Nid yw Llywodraeth y DU wedi ceisio cydsyniad ar gyfer y diwygiadau hyn.

Mae'r OS a'r Memoranda Esboniadol cysylltiedig sy'n nodi effaith pob un o'r diwygiadau i'w gweld yma:

<https://www.legislation.gov.uk/ukdsi/2020/9780348212570/contents>

Effaith y Rheoliadau hyn fyddai dileu'r rheolau cymorth gwladwriaethol presennol sy'n darparu fframwaith sy'n sicrhau nad yw masnach yn cael ei hystumio gan gymhorthdal cyhoeddus heb ei reoleiddio i fentrau unigol ond nad yw'n rhoi unrhyw drefn gymorthdaliadau amgen yn ei lle.

Mae Llywodraeth Cymru o'r farn y bydd hyn yn achosi bwlch deddfwriaethol annerbyniol ym maes cymorth gwladwriaethol. Ychydig o eglurder y mae Llywodraeth y DU wedi'i roi ynghylch unrhyw gyfundrefn cymorthdaliadau yn y DU yn y dyfodol y mae'n bwriadu ei chyflwyno yn lle rheolau cymorth gwladwriaethol yr UE, y tu hwnt i'r ffaith y bydd y DU yn bodloni rheolau cymhorthdal sylfaenol Sefydliad Masnach y Byd, unrhyw amodau ychwanegol sy'n deillio o Gytundebau Masnach Rydd a chanlyniadau ymgynghoriad arfaethedig yn 2021. Felly, mae Llywodraeth Cymru o'r farn ei bod yn amhosibl rhoi cydsyniad i'r Rheoliadau hyn, ar sail gwybodaeth, gan nad oes digon o wybodaeth ar gael ynghylch ffurf cyfundrefn rheoli cymhorthdal y DU ar ddiwedd y cyfnod gweithredu.

Felly, rydym wedi hysbysu Llywodraeth y DU bod ei methiant i ofyn am ein cydsyniad yn groes i'r Cytundeb Rhynglywodraethol a'n bod yn atal ein cydsyniad.

**GWEINIDOGION Y DU SY'N GWEITHREDU MEWN MEYSYDD  
DATGANOLEDIG**

**178 - Rheoliadau Cymorth Gwladwriaethol (Dirymiadau a Diwygiadau)  
(Ymadael â'r UE) 2020**

*Dyddiad gosod yn Senedd y DU: 29 Medi 2020*

**Sifftio**

Yn destun gwaith sifftio yn Senedd y DU?	Nac ydynt
Y weithdrefn	Cadarnhaol drafft
Dyddiad trafod gan Bwyllgor Offerynnau Statudol Ewropeaidd Tŷ'r Cyffredin	Amherthnasol
Dyddiad trafod gan Bwyllgor Craffu ar Is-ddeddfwriaeth Tŷ'r Arglwyddi	Amherthnasol
Dyddiad y daw'r cyfnod sifftio i ben yn Senedd y DU	Amherthnasol
Datganiad ysgrifenedig o dan Reol Sefydlog 30C:	Papur 83
Memorandwm Cydsyniad Offeryn Statudol (SICM) o dan Reol Sefydlog 30A (oherwydd eu bod yn diwygio deddfwriaeth sylfaenol)	Nid yw'n ofynnol

**Gweithdrefn graffu**

Canlyniad y broses sifftio	Amherthnasol
Y weithdrefn	Cadarnhaol drafft
Dyddiad trafod gan y Cydbwyllgor ar Offerynnau Statudol	14 Hydref 2020
Dyddiad trafod gan Bwyllgor Offerynnau Statudol Tŷ'r Cyffredin	Anhysbys
Dyddiad trafod gan Bwyllgor Craffu ar Is-ddeddfwriaeth Tŷ'r Arglwyddi	13 Hydref 2020

**Cefndir**

Bwriedir i'r Rheoliadau hyn gael eu gwneud gan Lywodraeth y DU yn unol ag adran 8(1) ac adran 8C(1) o Ddeddf yr Undeb Ewropeaidd (Ymadael) 2018, a pharagraff 21 o Atodlen 7 iddi.

**Crynodeb**

Byddai Rheoliadau Cymorth Gwladwriaethol (Ymadael â'r UE) 2019 ("Rheoliadau drafft 2019"), pe byddent wedi eu gwneud, wedi trosglwyddo swyddogaethau gorfodi cymorth gwladwriaethol y Comisiwn Ewropeaidd i Awdurdod Cystadleuaeth a Marchnadoedd y DU ac wedi gwneud cywiriadau i gyfraith ddiffygiol a ddargedwir i roi effaith i barhau i gymhwyso cyfraith cymorth gwladwriaethol yn y DU os na fydd cytundeb â'r UE.

Mae'r Memorandwm Esboniadol i'r Rheoliadau hyn yn nodi'r canlynol:

*“Following the UK’s conclusion of the Withdrawal Agreement, the draft 2019 regulations were withdrawn in February 2020 without being made as this approach is no longer appropriate. This Government’s policy is that at the end of the transition period the UK will have its own domestic subsidy control regime... Therefore, retained EU law on State aid will have no practical application in the UK after the end of the transition period and will become redundant.”*

Mae'r Rheoliadau hyn yn datgymhwyso cyfraith yr UE sy'n ymwneud â chymorth gwladwriaethol a ddargedwir yng nghyfraith y DU ar hyn o bryd gan Ddeddf yr Undeb Ewropeaidd (Ymadael) 2018 (“y Ddeddf Ymadael”) a, thrwy hynny, sicrhau nad yw cyfraith cymorth gwladwriaethol yr UE yn rhan o gyfraith ddomestig y DU ar ôl diwedd y cyfnod pontio. Mewn llythyr at Gadeirydd y Pwyllgor ar 25 Ionawr 2019, gwnaeth y Cwnsler Cyffredinol y datganiad a ganlyn ynghylch Rheoliadau drafft 2019:

*“The Welsh Government’s position is that State aid is a devolved matter and not a reserved matter under any heading of the Reserved Matters Schedule in the Government of Wales Act 2006. However, the UK Government do not consider it as such (as was noted in the Intergovernmental Agreement) and therefore they have not requested Welsh Ministerial consent). The Welsh Government has requested from the UK Government, an explanation of their legal position but there has been no response.”*

O gofio effaith arwyddocaol y Rheoliadau hyn, efallai y bydd angen i'r Aelodau ystyried ysgrifennu at Bwyllgor Craffu ar Is-ddeddfwriaeth Tŷ'r Arglwyddi i wneud sylwadau.

### **Datganiad gan Lywodraeth Cymru**

Mae'r Cynghorwyr Cyfreithiol yn cytuno â'r datganiad a osodwyd gan Lywodraeth Cymru dyddiedig 15 Hydref 2020 ynghylch effaith y Rheoliadau hyn. Mae'r Cynghorwyr Cyfreithiol yn nodi'r gwallau a ganlyn yn natganiad Llywodraeth Cymru:

1. Mae'r datganiad yn cyfeirio'n wallus at y Rheoliadau hyn fel “Rheoliadau Cymorth Gwladwriaethol (Dirymu etc) (Ymadael â'r UE) 2020”, ond yr enw cywir yw “Rheoliadau Cymorth Gwladwriaethol (Dirymiadau a Diwygiadau) (Ymadael â'r UE) 2020”
2. Mae'r datganiad yn cyfeirio'n wallus at “*Erthygl 7(A)* o Ddeddf Llywodraeth Cymru”, ond y cyfeiriad cywir yw “*Atodlen 7A* i Ddeddf Llywodraeth Cymru 2006” [*ychwanegwyd y pwyslais*].

### **Cytundeb Rhynglywodraethol ar Fil yr Undeb Ewropeaidd (Ymadael)**

Mae'r crynodeb uchod a chynnwys y Memorandwm Esboniadol i'r Rheoliadau hyn yn cadarnhau eu heffaith ac i ba raddau y byddai'r Rheoliadau hyn yn deddfu polisi newydd mewn meysydd datganoledig.

Mae'r Cynghorwyr Cyfreithiol yn tynnu sylw'r Pwyllgor at y materion a ganlyn mewn perthynas â pharagraff 8 o'r Memorandwm ar Fil yr Undeb Ewropeaidd (Ymadael) a Sefydlu Fframweithiau Cyffredin.

1. Mae gan Lywodraeth Cymru a Llywodraeth y DU farn gyferbyniol ynghylch a yw cymorth gwladwriaethol wedi'i ddatganoli. Gan nad yw Llywodraeth y DU o'r farn bod y mater yn un a gedwir yn ôl, nid yw wedi ceisio cydsyniad Llywodraeth Cymru.

Fodd bynnag, mae Llywodraeth Cymru o'r farn bod cymorth gwladwriaethol wedi ei ddatganoli ac, fel y cyfryw, mae'n dadlau y dylid ceisio ei chydsyniad gan fod y Rheoliadau hyn yn effeithio ar gymhwysedd datganoledig. Gellir ystyried peidio â gofyn am gydsyniad Llywodraeth Cymru mewn perthynas â rheoliadau sy'n effeithio ar faes polisi datganoledig yn achos o dorri'r Cytundeb Rhynglywodraethol.

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## **DATGANIAD YSGRIFENEDIG GAN LYWODRAETH CYMRU**

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**TEITL** Rheoliadau Diogelwch ac Ansawdd Gwaed (Diwygio) (Ymadael â'r UE) 2020

**DYDDIAD** 15 Hydref 2020

**GAN** Rebecca Evans AS, Y Gweinidog Cyllid a'r Trefnydd

**Rheol Sefydlog 30C – Gosod Offeryn Statudol yn Senedd y DU sy'n diwygio deddfwriaeth mewn maes lle y mae cymhwysedd wedi ei ddatganoli**

**Rheoliadau Diogelwch ac Ansawdd Gwaed (Diwygio) (Ymadael â'r UE) 2020 cadarnhaol**

### **Trosolwg Polisi o'r Offeryn Statudol (OS)**

Mae'r Offeryn Statudol yn diwygio'r Rheoliadau Diogelwch ac Ansawdd Gwaed (Diwygio) (Ymadael â'r UE) 2019 ("Rheoliadau 2019") a wnaed y llynedd gyda chydysniad Gweinidogion Cymru, fel rhan o'r ymarfer cywiriadau ar gyfer ymadael â'r UE heb gytundeb yn 2019 er mwyn sicrhau bod y llyfr statud yn parhau i weithredu'n gywir. Mae'r OS yn berthnasol i'r DU gyfan a disgwylir iddo ddod i rym yn syth cyn dyddiad cwblhau'r cyfnod gweithredu (11pm 31 Rhagfyr 2020).

Mae'r Offeryn Statudol yn diwygio Rheoliadau 2019 er mwyn galluogi i'r darpariaethau a ddiwygiwyd gan y Rheoliadau hynny i barhau i weithredu'n effeithiol yng ngoleuni Protocol Gogledd Iwerddon ar ôl y Cyfnod Gweithredu.

Mae'r Offeryn Statudol hefyd yn gwneud rhai mân newidiadau ychwanegol. Er enghraifft mae'r Offeryn Statudol yn diwygio Rheoliadau 2019 i ddiwygio'r canllawiau arferion gorau diweddaraf ar gyfer sefydliadau gwaed. Yn ogystal, mae'r Offeryn Statudol yn diwygio Rheoliadau 2019 i alluogi i'r safonau a'r gofynion sy'n berthnasol i sefydliadau gwaed fod yn berthnasol i fanciau gwaed mewn ysbytai hefyd os oes angen.

Nid oes gwahaniaeth o ran polisi rhwng Llywodraeth Cymru a Llywodraeth y DU mewn perthynas â'r Offeryn Statudol hwn.

### **Y Gyfraith sy'n cael ei diwygio**

- Rheoliadau Diogelwch ac Ansawdd Gwaed (Diwygio) (Ymadael â'r UE) 2019  
Tudalen y pecyn 765

## **Diben y diwygiadau**

Darpariaethau perthnasol yr offeryn statudol yw gweithredu Protocol Gogledd Iwerddon, lle caiff Gogledd Iwerddon ei thrin fel pe bai'n Aelod-wladwriaeth (yn amodol ar yr addasiadau i gyfraith yr UE a wnaed gan Brotocol Gogledd Iwerddon), ac fel rhan gyfansoddol o'r DU. Mae'r darpariaethau'n cyfyngu ar y newidiadau sy'n cael eu gwneud gan Reoliadau 2019 i Brydain Fawr, sy'n golygu bod y gyfraith bresennol yn parhau i fod ar waith ar gyfer Gogledd Iwerddon.

Mae'r OS a'r Memorandwm Esboniadol cysylltiedig, sy'n nodi effaith pob un o'r diwygiadau i'w gweld yma:

[The Blood Safety and Quality \(Amendment\) \(EU Exit\) Regulations 2020](#)

## **Unrhyw effaith y gall yr OS ei chael ar gymhwysedd deddfwriaethol Senedd Cymru a/neu ar gymhwysedd gweithredol Gweinidogion Cymru**

Mae'r Offeryn Statudol yn diwygio Offeryn Statudol ymadael â'r UE mewn perthynas ag ansawdd a diogelwch gwaed. Nid yw'r OS yn cael unrhyw effaith ar gymhwysedd gweithredol Gweinidogion Cymru na chymhwysedd deddfwriaethol Senedd Cymru. Nid yw'r OS yn golygu y caiff unrhyw swyddogaethau eu trosglwyddo i nac oddi wrth Weinidogion Cymru ac nid yw ychwaith yn rhoi unrhyw swyddogaethau newydd i Weinidogion Cymru.

## **Pam y rhoddwyd cydsyniad**

Nid oes gwahaniaeth rhwng Llywodraeth Cymru a Llywodraeth y DU (yr Adran Iechyd a Gofal Cymdeithasol) o ran y polisi ar ddiogelwch ac ansawdd gwaed. Mae'r OS yn diwygio Rheoliadau 2019 a wnaed ar sail Cymru a Lloegr, gyda chydsyniad Gweinidogion Cymru, fel rhan o'r ymarfer cywiriadau ar gyfer ymadael â'r UE heb gytundeb er mwyn sicrhau bod y llyfr statud yn parhau i weithredu'n gywir. Felly, byddai gwneud OS ar wahân yng Nghymru ac yn Lloegr yn arwain at ddyblygu gwaith, a chymhlethdod diangen i'r llyfr statud. Mae cydsynio unwaith yn rhagor i OS ar gyfer y DU gyfan yn sicrhau bod un fframwaith deddfwriaethol ar draws y DU sy'n hybu eglurder a hygyrchedd i gleifion a darparwyr. O dan yr amgylchiadau eithriadol hyn, mae Llywodraeth Cymru yn ystyried ei bod yn briodol i Lywodraeth y DU ddeddfu ar ein rhan yn yr achos hwn.

**GWEINIDOGION Y DU SY'N GWEITHREDU MEWN MEYSYDD  
DATGANOLEDIG**

**179 - Rheoliadau Diogelwch ac Ansawdd Gwaed (Diwygio) (Ymadael â'r  
UE) 2020**

*Dyddiad gosod yn Senedd y DU: 08 Hydref 2020*

**Sifftio**

Yn destun sifftio yn Senedd y DU?	Nac ydy
Gweithdrefn:	Cadarnhaol drafft
Dyddiad trafod gan Bwyllgor Offerynnau Statudol Ewropeaidd Tŷ'r Cyffredin	Amh
Dyddiad trafod gan Bwyllgor Craffu ar Is-ddeddfwriaeth Tŷ'r Arglwyddi	Amh
Dyddiad y daw'r cyfnod sifftio i ben yn Senedd y DU	Amh
Datganiad ysgrifenedig o dan Reol Sefydlog 30C:	Papur 85
Memorandwm Cydsyniad Offeryn Statudol o dan Reol Sefydlog 30A (oherwydd eu bod yn diwygio deddfwriaeth sylfaenol)	Nid yw'n ofynnol

**Gweithdrefn graffu**

Canlyniad y broses sifftio	Amh
Gweithdrefn	Cadarnhaol drafft
Dyddiad trafod gan y Cydbwyllgor ar Offerynnau Statudol	21 Hydref 2020
Dyddiad trafod gan Bwyllgor Offerynnau Statudol Tŷ'r Cyffredin	Anhysbys
Dyddiad trafod gan Bwyllgor Craffu ar Is-ddeddfwriaeth Tŷ'r Arglwyddi	20/10/2020

**Cefndir**

Bwriedir i'r Rheoliadau hyn gael eu gwneud gan Lywodraeth y DU yn unol ag adrannau 8(1) ac 8C o Ddeddf yr Undeb Ewropeaidd (Ymadael) 2018.

**Crynodeb**

Diwygiodd Rheoliadau Diogelwch ac Ansawdd Gwaed (Diwygio) (Ymadael yr UE) 2019 ("Rheoliadau 2019") Rheoliadau Diogelwch ac Ansawdd Gwaed 2005 ("Rheoliadau 2005") i gywiro diffygion a oedd yn codi o ganlyniad i ymadawiad y DU â'r Undeb Ewropeaidd ym maes diogelwch ac ansawdd gwaed a chydannau gwaed. Disgwylir i Rheoliadau 2019 ddod i rym ar ddiwrnod cwblhau'r Cyfnod Gweithredu.

Er mwyn gweithredu Protocol Gogledd Iwerddon, mae'r Rheoliadau pwnc yn diwygio Rheoliadau 2019 i gyfyngu ar y newidiadau a wnaed gan

Reoliadau 2019 i Brydain Fawr yn unig, ac yn gwneud mân ddiwygiadau eraill.

### **Datganiad gan Lywodraeth Cymru**

Mae'r Cynghorwyr Cyfreithiol wedi gwneud y sylwadau a ganlyn mewn perthynas â datganiad Llywodraeth Cymru, dyddiedig 15 Hydref 2020, am effaith y Rheoliadau hyn:

1. Roedd Rheoliad 13 o Reoliadau 2019 yn mewnosod pŵer newydd i wneud rheoliadau yn Rheoliad 23A(1)(a) o Reoliadau 2005 ar gyfer Gweinidogion Cymru (neu'r Ysgrifennydd Gwladol yn gweithredu gyda chydysniad Gweinidogion Cymru), fel awdurdod priodol Cymru, i wneud darpariaeth mewn perthynas â safonau a gofynion yn ymwneud â system ansawdd ar gyfer sefydliadau gwaed.
2. Ymddengys bod rheoliad 13(b)(ii) o'r Rheoliadau pwnc yn ymestyn y pŵer hwnnw i gynnwys hefyd y gallu i wneud darpariaeth o'r fath mewn perthynas â banciau gwaed ysbytai.

### **Cytundeb Rhynglywodraethol ar Fil yr Undeb Ewropeaidd (Ymadael)**

Mae'r crynodeb uchod a chynnwys y Memorandwm Esboniadol i'r Rheoliadau hyn yn cadarnhau eu heffaith.

Nid yw'r Cynghorwyr Cyfreithiol o'r farn bod unrhyw faterion arwyddocaol yn codi o dan baragraff 8 o'r Memorandwm ar Fil yr Undeb Ewropeaidd (Ymadael) a Sefydlu Fframweithiau Cyffredin mewn perthynas â'r Rheoliadau hyn.



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## **DATGANIAD YSGRIFENEDIG GAN LYWODRAETH CYMRU**

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<b>TEITL</b>	<b>Rheoliadau Meinweoedd Dynol (Ansawdd a Diogelwch at Ddefnydd mewn Bodau Dynol) (Diwygio) (Ymadael â'r UE) 2020</b>
<b>DYDDIAD</b>	<b>15 Hydref 2020</b>
<b>GAN</b>	<b>Rebecca Evans AS, Y Gweinidog Cyllid a'r Trefnydd</b>

**Rheol Sefydlog 30C – Gosod Offeryn Statudol yn Senedd y DU sy'n diwygio deddfwriaeth mewn maes lle y mae cymhwysedd wedi ei ddatganoli**

**Rheoliadau Meinweoedd Dynol (Ansawdd a Diogelwch at Ddefnydd mewn Bodau Dynol) (Diwygio) (Ymadael â'r UE) 2020 - cadarnhaol**

### **Trosolwg Polisi o'r Offeryn Statudol (OS)**

Mae'r Offeryn Statudol hwn yn diwygio Rheoliadau Meinweoedd Dynol (Ansawdd a Diogelwch at Ddefnydd mewn Bodau Dynol) (Diwygio) (Ymadael â'r UE) 2019 ("Rheoliadau 2019") a wnaed y llynedd gyda chydysyniad Gweinidogion Cymru fel rhan o'r ymarfer cywiriadau ar gyfer Ymadael â'r UE heb gytundeb yn 2019 i sicrhau bod y llyfr statud yn parhau i weithredu'n gywir. Mae'r Offeryn Statudol yn gymwys i'r DU gyfan a disgwylir iddo ddod i rym yn union cyn dyddiad cwblhau'r cyfnod gweithredu (11pm 31 Rhagfyr 2020).

Mae'r Offeryn Statudol yn diwygio Rheoliad 2019 er mwyn galluogi'r darpariaethau a ddiwygir gan y Rheoliadau hynny i barhau i weithredu'n effeithiol yng ngoleuni Protocol Gogledd Iwerddon ar ôl y cyfnod gweithredu.

Nid oes gwahaniaeth o ran polisi rhwng Llywodraeth Cymru a Llywodraeth y DU mewn perthynas â'r OS hwn.

### **Y Gyfraith sy'n cael ei diwygio**

- Rheoliadau Meinweoedd Dynol (Ansawdd a Diogelwch at Ddefnydd mewn Bodau Dynol) (Diwygio) (Ymadael â'r UE) 2019

## **Diben y diwygiadau**

Darpariaethau perthnasol yr offeryn statudol yw gweithredu Protocol Gogledd Iwerddon, lle caiff Gogledd Iwerddon ei thrin fel pe bai'n Aelod-wladwriaeth (yn amodol ar yr addasiadau i gyfraith yr UE a wnaed gan Brotocol Gogledd Iwerddon), ac fel rhan gyfansoddol o'r DU. Mae'r darpariaethau'n cyfyngu ar y newidiadau sy'n cael eu gwneud gan Reoliadau 2019 i Brydain Fawr, sy'n golygu bod y gyfraith bresennol yn parhau i fod ar waith ar gyfer Gogledd Iwerddon.

Mae'r OS a'r Memorandwm Esboniadol cysylltiedig, sy'n nodi effaith pob un o'r diwygiadau i'w gweld yma:

[The Human Tissue \(Quality and Safety for Human Application\) \(Amendment\) \(EU Exit\) Regulations 2020](#)

## **Unrhyw effaith y gall yr OS ei chael ar gymhwysedd deddfwriaethol y Senedd a/neu ar gymhwysedd gweithredol Gweinidogion Cymru**

Mae'r Offeryn Statudol yn diwygio OS Ymadael â'r UE mewn perthynas ag ansawdd a diogelwch meinweoedd dynol. Nid yw'r OS yn cael unrhyw effaith ar gymhwysedd gweithredol Gweinidogion Cymru na chymhwysedd deddfwriaethol y Senedd. Nid yw'r OS yn golygu y caiff unrhyw swyddogaethau eu trosglwyddo i nac oddi wrth Weinidogion Cymru ac nid yw ychwaith yn rhoi unrhyw swyddogaethau newydd i Weinidogion Cymru.

## **Pam y rhoddwyd cydsyniad**

Nid oes gwahaniaeth rhwng Llywodraeth Cymru a Llywodraeth y DU (yr Adran Iechyd a Gofal Cymdeithasol) o ran y polisi ar ddiogelwch ac ansawdd meinweoedd. Mae'r OS yn diwygio Rheoliadau 2019 a wnaed ar sail Cymru a Lloegr, gyda chydsyniad Gweinidogion Cymru, fel rhan o'r ymarfer cywiriadau ar gyfer ymadael â'r UE heb gytundeb er mwyn sicrhau bod y llyfr statud yn parhau i weithredu'n gywir. Felly, byddai gwneud OS ar wahân yng Nghymru ac yn Lloegr yn arwain at ddyblygu gwaith, a chymhlethdod diangen i'r llyfr statud. Mae cydsynio unwaith yn rhagor i OS ar gyfer y DU gyfan yn sicrhau bod un fframwaith deddfwriaethol ar draws y DU sy'n hybu eglurder a hygyrchedd i gleifion a darparwyr. O dan yr amgylchiadau eithriadol hyn, mae Llywodraeth Cymru yn ystyried ei bod yn briodol i Lywodraeth y DU ddeddfu ar ein rhan yn yr achos hwn.

**GWEINIDOGION Y DU YN GWEITHREDU MEWN MEYSYDD  
DATGANOLEDIG**

**181 - Rheoliadau Meinweoedd Dynol (Ansawdd a Diogelwch at  
Ddefnydd mewn Bodau Dynol) (Diwygio) (Ymadael â'r UE) 2020**

*Gosodwyd yn Senedd y DU: 8 Hydref 2020*

**Sifftio**

Yn destun gwaith sifftio yn Senedd y DU?	Na
Y weithdrefn:	Cadarnhaol drafft
Dyddiad trafod gan Bwyllgor Offerynnau Statudol Ewropeaidd Tŷ'r Cyffredin	Amh.
Dyddiad trafod gan Bwyllgor Craffu ar Is-ddeddfwriaeth Tŷ'r Arglwyddi	Amh.
Dyddiad y daw'r cyfnod sifftio i ben yn Senedd y DU	Amh.
Datganiad ysgrifenedig o dan Reol Sefydlog 30C:	Papur 87
Memorandwm Cydsyniad Offeryn Statudol (SICM) o dan Reol Sefydlog 30A (oherwydd eu bod yn diwygio deddfwriaeth sylfaenol)	Ddim yn ofynnol

**Gweithdrefn graffu**

Canlyniad y broses sifftio	Amh.
Y weithdrefn	Cadarnhaol drafft
Dyddiad trafod gan y Cydbwyllgor ar Offerynnau Statudol	21 Hydref 2020
Dyddiad trafod gan Bwyllgor Offerynnau Statudol Ewropeaidd Tŷ'r Cyffredin	Ddim yn hysbys
Dyddiad trafod gan Bwyllgor Craffu ar Is-ddeddfwriaeth Tŷ'r Arglwyddi	20 Hydref 2020

**Cefndir**

Cynigir bod y Rheoliadau hyn yn cael eu gwneud gan Lywodraeth y DU o dan adrannau 8(1) ac 8C o Ddeddf yr Undeb Ewropeaidd (Ymadael) 2018 ac adran 41(1) o Ddeddf yr Undeb Ewropeaidd (Cytundeb Ymadael) 2020.

**Crynodeb**

Mae'r Rheoliadau hyn yn diwygio Rheoliadau Meinweoedd Dynol (Ansawdd a Diogelwch at Ddefnydd mewn Bodau Dynol) (Diwygio) (Ymadael â'r UE) 2019 ("Rheoliadau 2019") a wnaed y llynedd gyda chydsyniad Gweinidogion Cymru fel rhan o'r ymarfer cywiriadau ar gyfer ymadael â'r UE heb gytundeb yn 2019 i sicrhau bod y llyfr statud yn parhau i weithredu'n gywir.

Mae'r Rheoliadau hyn yn gweithredu Protocol Gogledd Iwerddon, lle caiff Gogledd Iwerddon ei thrin fel pe bai'n Aelod-wladwriaeth (yn amodol ar yr addasiadau I gyfraith yr UE a wnaed gan Brotocol Gogledd Iwerddon), ac fel rhan gyfansoddol o'r DU. Mae'r darpariaethau'n cyfyngu ar y newidiadau sy'n cael eu gwneud gan Reoliadau 2019 i Brydain Fawr, sy'n golygu bod y gyfraith bresennol yn parhau i fod ar waith ar gyfer Gogledd Iwerddon.

#### **Datganiad gan Lywodraeth Cymru**

Mae'r Cynghorwyr Cyfreithiol yn cytuno â'r datganiad a osodwyd gan Lywodraeth Cymru, dyddiedig 15 Hydref, ynghylch effaith y Rheoliadau hyn.

#### **Cytundeb Rhynglywodraethol ar Fil yr Undeb Ewropeaidd (Ymadael)**

Mae'r crynodeb uchod a chynnwys y Memorandwm Esboniadol i'r Rheoliadau hyn yn cadarnhau eu heffaith.

Ym marn y Cynghorwyr Cyfreithiol, nid oes unrhyw faterion sylweddol yn codi o dan baragraff 8 o'r Memorandwm ar Fil yr Undeb Ewropeaidd (Ymadael) a sefydlu fframweithiau cyffredin mewn perthynas â'r Rheoliadau hyn..

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## **DATGANIAD YSGRIFENEDIG GAN LYWODRAETH CYMRU**

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**TEITL** Rheoliadau Organebau a Addaswyd yn Enetig (Diwygio)  
(Ymadael â'r UE) 2020

**DYDDIAD** 15 Hydref 2020

**GAN** Rebecca Evans AS, Y Gweinidog Cyllid a'r Trefnydd

**OS a osodwyd yn Senedd y DU, sy'n diwygio is-ddeddfwriaeth mewn maes datganoledig**

### **Rheoliadau Organebau a Addaswyd yn Enetig (Diwygio) (Ymadael â'r UE) 2020**

Mae Rheoliadau 2020 yn diwygio'r ddeddfwriaeth ganlynol sy'n gymwys yng Nghymru:

#### Rheoliadau'r UE

- Rhan C o Gyfarwyddeb 2001/18 Senedd Ewrop a'r Cyngor dyddiedig 12 Mawrth 2001 ar ryddhau organebau a addaswyd yn enetig yn fwriadol i'r amgylchedd a diddymu Cyfarwyddeb 90/220/EEC y Cyngor.
- Rheoliad (EC) Rhif 1830/2003 Senedd Ewrop a'r Cyngor sy'n ymdrin ag olrhain a labelu organebau a addaswyd yn enetig ac olrhain cynhyrchion bwyd a phorthiant a gynhyrchir o organebau a addaswyd yn enetig.
- Rheoliad (EC) Rhif 1946/2003 Senedd Ewrop a'r Cyngor ar symudiadau trawsffiniol organebau a addaswyd yn enetig sy'n rheoleiddio allforio GMOs o'r UE i drydydd gwledydd (y tu allan i'r UE).
- Mae Penderfyniad y Comisiwn 94/730/EC yn nodi gweithdrefnau arbennig y gellir eu dilyn ar gyfer ceisiadau i gynnal mathau penodol o dreialon o blanhigion a addaswyd yn enetig.
- Penderfyniad y Cyngor 2002/812/EC sy'n pennu fformat safonol ar gyfer crynhoi ceisiadau am ganiatâd i farchnata organebau a addaswyd yn enetig.
- Penderfyniad y Cyngor 2002/813/EC sy'n pennu fformat safonol ar gyfer crynhoi ceisiadau am ganiatâd ar gyfer treialon organebau a addaswyd yn enetig.

- Penderfyniad y Cyngor 2003/701/EC sy'n pennu fformat safonol i ddeiliaid caniatâd adrodd ar fonitro a/neu ganlyniad treialon gydag organebau a addaswyd yn enetig a gynhelir o dan ddeddfwriaeth rhyddhau bwriadol.
- Penderfyniad y Cyngor 2009/770/EC sy'n nodi fformat yr adroddiad monitro ôl-farchnata y mae'n ofynnol i ddeiliaid caniatâd i farchnata organebau a addaswyd yn enetig ei gwblhau.

### Is-ddeddfwriaeth

- Rheoliadau Organebau a Addaswyd yn Enetig (Diwygio) (Ymadael â'r UE) 2019
- Rheoliadau Bwyd a Ffermio (Diwygio) (Ymadael â'r UE) 2019
- Rheoliadau'r Amgylchedd, Bwyd a Materion Gwledig (Diwygio) (Ymadael â'r UE) 2019
- Rheoliadau Iechyd Anifeiliaid ac Organebau a Addaswyd yn Enetig (Diwygio) (Ymadael â'r UE) 2019
- Rheoliadau Organebau a Addaswyd yn Enetig (Diwygio) (Lloegr) (Ymadael â'r UE) 2019

### **Unrhyw effaith y gall yr offeryn statudol ei chael ar gymhwysedd deddfwriaethol y Senedd a/neu gymhwysedd gweithredol Gweinidogion Cymru**

Mae Rheoliadau 2020 yn ymwneud â meysydd sydd o fewn cymhwysedd datganoledig. Mae'r diwygiadau'n sicrhau bod swyddogaethau presennol Gweinidogion Cymru yn cael eu dargadw cyn belled ag y bo modd mewn perthynas â chyfraith yr UE a ddargedwir a bod y llyfr statud yn gweithredu'n briodol ar ôl diwrnod cwblhau'r Cyfnod Gweithredu, ar ddiwedd y Cyfnod Pontio.

### **Diben y gwelliannau**

Mae Rheoliadau 2020 yn ddarostyngedig i'r weithdrefn ac yn diwygio deddfwriaeth yr UE a ddargedwir a deddfwriaeth bresennol y Deyrnas Unedig (gan gynnwys deddfwriaeth a wnaed yn flaenorol o dan Ddeddf 2018 fel y nodir uchod) sy'n ymwneud â rheoli a symud, rhyddhau a marchnata organebau a addaswyd yn enetig. Mae angen y gwelliannau hyn i weithredu'r Protocol ar Iwerddon/Gogledd Iwerddon yn y Cytundeb Ymadael.

Mae Rheoliadau 2020 hefyd yn gwneud mân ddiwygiad i un darn o ddeddfwriaeth yr UE a drosglwyddwyd i gyfraith y DU, h.y. deddfwriaeth uniongyrchol yr UE a ddargedwir (fel y mae'n gymwys ym Mhrydain Fawr). Mae hyn yn diddymu darpariaeth yn ffurfiol yn y ddeddfwriaeth honno sy'n rhoi pwerau i fabwysiadu Deddfau Dirprwyedig ar Gomisiwn yr UE ac na fydd o unrhyw ddefnydd ymarferol ym Mhrydain Fawr ar ôl diwedd y cyfnod pontio.

Mae Rheoliadau 2020 a'r Memorandwm Esboniadol cysylltiedig, sy'n nodi effaith y diwygiadau, i'w gweld yma: <https://statutoryinstruments.parliament.uk/timeline/x6J24beo/SI-2020/>

## **Pam y rhoddwyd caniatâd**

Rhoddwyd caniatâd i Lywodraeth y DU wneud y cywiriadau hyn o ran ac ar ran Cymru am resymau'n ymwneud ag effeithlonrwydd a hwylustod ac i sicrhau cysondeb a chydlynid y llyfr statud. Mae'r gwelliannau wedi'u hystyried yn llawn; ac nid oes gwahaniaeth mewn polisi. Nod y gwelliannau hyn yw sicrhau bod y llyfr statud yn parhau i fod yn weithredol ar ddiwedd y Cyfnod Gweithredu.

**GWEINIDOGION Y DU SY'N GWEITHREDU MEWN MEYSYDD  
DATGANOLEDIG**

**182 - Rheoliadau Organebau a Addaswyd yn Enetig (Diwygio) (Ymadael  
â'r UE) 2020**

*Dyddiad gosod yn Senedd y DU: 12 Hydref 2020*

**Sifftio**

Yn destun sifftio yn Senedd y DU?	Nac ydy
Gweithdrefn:	Cadarnhaol drafft
Dyddiad trafod gan Bwyllgor Offerynnau Statudol Ewropeaidd Tŷ'r Cyffredin	Amh
Dyddiad trafod gan Bwyllgor Craffu ar Is-ddeddfwriaeth Tŷ'r Arglwyddi	Amh
Dyddiad y daw'r cyfnod sifftio i ben yn Senedd y DU	Amh
Datganiad ysgrifenedig o dan Reol Sefydlog 30C:	Papur 89
Memorandwm Cydsyniad Offeryn Statudol o dan Reol Sefydlog 30A (oherwydd eu bod yn diwygio deddfwriaeth sylfaenol)	Nid yw'n ofynnol
<b>Gweithdrefn graffu</b>	
Canlyniad y broses sifftio	Amh
Gweithdrefn	Cadarnhaol drafft
Dyddiad trafod gan y Cydbwyllgor ar Offerynnau Statudol	21/10/20
Dyddiad trafod gan Bwyllgor Offerynnau Statudol Tŷ'r Cyffredin	Anhysbys
Dyddiad trafod gan Bwyllgor Craffu ar Is-ddeddfwriaeth Tŷ'r Arglwyddi	Anhysbys

**Cefndir**

Bwriedir i'r Rheoliadau Organebau a Addaswyd yn Enetig (Diwygio) (Ymadael â'r UE) 2020 ("y Rheoliadau") gael eu gwneud gan Lywodraeth y DU yn unol ag adrannau 8(1) ac 8C o Ddeddf yr Undeb Ewropeaidd (Ymadael) 2018 ("Deddf 2018"), a pharagraff 21 o Atodlen 7 i'r Ddeddf honno.

**Crynodeb**

Mae Rheoliadau 2020 yn ddarostyngedig i'r weithdrefn ac yn diwygio deddfwriaeth yr UE a ddargedwir a deddfwriaeth bresennol y Deyrnas Unedig (gan gynnwys deddfwriaeth a wnaed yn flaenorol o dan Ddeddf 2018) sy'n ymwneud â rheoli a symud, rhyddhau a marchnata organebau a



addaswyd yn enetig. Mae angen y diwygiadau hyn i weithredu Protocol Iwerddon/Gogledd Iwerddon yn y Cytundeb Ymadael.

Cyn y diwrnod ymadael, gwnaeth amryw is-ddeddfwriaeth fân newidiadau a newidiadau technegol i sicrhau y byddai deddfwriaeth yr UE a ddargedwir a deddfwriaeth ddomestig y DU sydd yn ei gorfodi yn parhau i weithio'n effeithiol. Newidiwyd cyfeiriadau at yr UE, sefydliadau'r UE a phrosesau gweinyddol yr UE i gyfateb i rai'r DU, a diweddarwyd cyfeiriadau cyfreithiol i gyfeirio at ddeddfwriaeth berthnasol y DU. Ers i'r darnau hynny o is-ddeddfwriaeth gael eu gwneud, mae'r DU a'r UE wedi mabwysiadu'r Cytundeb Ymadael gan gynnwys y Protocol. Mae deddfwriaeth yr UE ar Organebau a Addaswyd yn Enetig a grybwyllir uchod (ynghyd â deddfwriaeth a wnaed oddi tani) wedi'i chynnwys yn Atodiad 2 i'r Protocol fel a ganlyn:

- Rheoliad (EC) No 1830/2003;
- Rheoliad (EC) No 1946/2003;
- Rhan C o Gyfarwyddeb 2001/18/EC.

Mae cynnwys deddfwriaeth yr UE hon yn Atodiad 2 i'r Protocol yn golygu bod angen newidiadau pellach i sicrhau bod rhwymedigaethau'r DU o dan y Protocol yn cael eu rhoi ar waith ac y bydd deddfwriaeth yr UE a ddargedwir a deddfwriaeth ddomestig sy'n ei gorfodi ym Mhrydain Fawr yn parhau i weithio'n effeithiol. Mae angen gwneud newidiadau i gyfeiriadau at y DU, sefydliadau'r DU a phrosesau gweinyddol y DU a deddfwriaeth y DU i gyfeirio at y rhai cyfatebol ym Mhrydain Fawr. At y diben hwn, mae'r Rheoliadau'n diwygio:

- Rheoliadau Organebau a Addaswyd yn Enetig (Diwygio) (Lloegr) (Ymadael â'r UE) 2019 (O.S. 2019/88);
- Rheoliadau Organebau a Addaswyd yn Enetig (Diwygio) (Ymadael â'r UE) 2019 (O.S. 2019/90);
- Rheoliadau Bwyd a Ffermio (Diwygio) (Ymadael â'r UE) 2019 (O.S. 2019/759);
- Rheoliadau'r Amgylchedd, Bwyd a Materion Gwledig (Diwygio) (Ymadael â'r UE) 2019 (O.S. 2019/778).

Mae'r Rheoliadau hefyd yn gwneud mân ddiwygiad i un darn o ddeddfwriaeth yr UE (Rheoliad (EC) NO 1830/2003), a drosglwyddwyd i gyfraith y DU, hynny yw deddfwriaeth uniongyrchol yr UE a ddargedwir (fel y mae'n gymwys ym Mhrydain Fawr). Mae hyn yn diddymu darpariaeth yn y ddeddfwriaeth honno sy'n rhoi pwerau i fabwysiadu Deddfau Dirprwyedig ar Gomisiwn yr UE ac na fydd o unrhyw ddefnydd ymarferol ym Mhrydain Fawr ar ôl diwedd y cyfnod pontio.

### **Datganiad gan Lywodraeth Cymru**

Mae'r Cynghorwyr Cyfreithiol wedi gwneud y sylwadau a ganlyn mewn perthynas â datganiad Llywodraeth Cymru, dyddiedig 15 Hydref 2020, am effaith y Rheoliadau hyn:

- (1) Er bod yr offerynnau canlynol gan yr UE yn amlwg yn rhan o'r drefn gyffredinol ar gyfer defnyddio a rheoli organebau a addaswyd yn enetig, nid yw'n glir pam eu bod wedi'u rhestru yn y datganiad fel rhai sy'n cael eu diwygio gan y Rheoliadau gan ystyried y Rheoliadau eu hunain a'r Memorandwm Esboniadol cysylltiedig: Rhan C o Gyfarwyddeb 2001/18; Penderfyniad y Cyngor 2003/701/EC; Penderfyniad y Cyngor 2002/813 EC, a Phenderfyniad y Comisiwn 94/730/EC. Mae'r offerynnau UE eraill a restrir yn cael eu diwygio gan y Rheoliadau (er yn anuniongyrchol gan fod y Rheoliadau'n diwygio rheoliadau presennol ymadael â'r UE fel y'u rhestrir uchod).
- (2) Mae Rheoliad y Comisiwn (EC) Rhif 65/2004 yn cael ei ddiwygio (yn anuniongyrchol) gan baragraff 4 o'r Atodlen i'r Rheoliadau, ond nid yw wedi'i restru yn y datganiad fel offeryn sy'n cael ei ddiwygio yn y modd hwnnw.
- (3) Mae'r datganiad yn rhestru Rheoliadau Iechyd Anifeiliaid ac Organebau a Addaswyd yn Enetig (Diwygio) (Ymadael â'r UE) 2019 fel rhai sy'n cael eu diwygio gan y Rheoliadau, ond ni ellir nodi diwygiad o'r fath o'r Rheoliadau eu hunain na'r Memorandwm Esboniadol cysylltiedig.

### **Cytundeb Rhynglywodraethol ar Fil yr Undeb Ewropeaidd (Ymadael)**

Mae'r crynodeb uchod a chynnwys y Memorandwm Esboniadol i'r Rheoliadau hyn yn cadarnhau eu heffaith.

Nid yw'r Cynghorwyr Cyfreithiol o'r farn bod unrhyw faterion arwyddocaol yn codi o dan baragraff 8 o'r Memorandwm ar Fil yr Undeb Ewropeaidd (Ymadael) a Sefydlu Fframweithiau Cyffredin mewn perthynas â'r Rheoliadau hyn.

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## **DATGANIAD YSGRIFENEDIG GAN LYWODRAETH CYMRU**

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<b>TEITL</b>	<b>Rheoliadau Cynnyrch Organig (Cynhyrchu a Rheoli) (Diwygio) (Ymadael â'r UE) 2020</b>
<b>DYDDIAD</b>	<b>16 Hydref 2020</b>
<b>GAN</b>	<b>Rebecca Evans AS, Y Gweinidog Cyllid a'r Trefnydd</b>

**OS a osodwyd yn Senedd y Deyrnas Unedig sy'n newid is-ddeddfwriaeth mewn maes datganoledig.**

### **Rheoliadau Cynnyrch Organig (Cynhyrchu a Rheoli) (Diwygio) (Ymadael â'r UE) 2020**

Mae Rheoliadau 2020 yn diwygio'r ddeddfwriaeth ganlynol sy'n gymwys i Gymru:

#### Rheoliadau'r UE

- Rheoliad y Comisiwn (EC) rhif 889/2009 sy'n nodi rheolau manwl ar gyfer gweithredu Rheoliad y Cyngor (EC) rhif 834/2007 ar gynhyrchu organig a labelu cynnyrch organig mewn cysylltiad â chynhyrchu, labelu a rheoli organig.

#### Is-ddeddfwriaeth

- Rheoliadau Cynhyrchu a Rheoli Organig (Diwygio) (Ymadael â'r UE) 2019
- Rheoliadau Cynhyrchu Organig (Rheoli Mewnforion) (Diwygio) (Ymadael â'r UE) 2019
- Rheoliadau Cynnyrch Organig (Diwygio) (Ymadael â'r UE) 2019

### **Unrhyw effaith y gall yr offeryn statudol ei chael ar gymhwysedd deddfwriaethol Senedd Cymru a/neu gymhwysedd gweithredol Gweinidogion Cymru**

Mae Rheoliadau 2020 yn ymwneud â meysydd sydd o fewn cymhwysedd datganoledig. Mae'r diwygiadau'n sicrhau bod swyddogaethau presennol Gweinidogion Cymru'n cael eu cadw cyn belled â phosibl mewn perthynas â chyfraith yr UE a ddargedwir a bod y llyfr statud yn gweithredu'n briodol yn dilyn diwrnod cwblhau'r Cyfnod Gweithredu, ar ddiwedd y Cyfnod Pontio.

## **Diben y diwygiadau**

Mae'r OS yn diwygio set o ddeddfwriaeth ar gynnyrch organig, yn bennaf at ddiben gwneud newidiadau sy'n ofynnol yn sgil cyflwyno Protocol Gogledd Iwerddon, yn ogystal â chywiro cyfeiriadau at y Comisiwn Ewropeaidd, Aelod-wladwriaethau a'r Undeb Ewropeaidd. Mae newidiadau eraill wedi'u gwneud i gywiro gwallau teipograffyddol.

Mae Rheoliadau 2020 a'r Memorandwm Esboniadol cysylltiedig, sy'n gosod allan effeithiau'r diwygiadau, ar gael yn y fan hon:

<https://statutoryinstruments.parliament.uk/timeline/RlqKi0nf/SI-2020/>

## **Pam y cafodd cydsyniad ei roi**

Mae cydsyniad wedi'i roi i Lywodraeth y DU i wneud y cywiriadau hyn mewn cysylltiad â Chymru ac ar ei rhan, er sicrhau effeithlonrwydd a hwylustod a sicrhau cysondeb ac chydlynid y llyfr statud. Mae'r diwygiadau wedi'u hystyried yn llawn, ac nid ydynt yn newid polisi. Bydd y diwygiadau hyn yn sicrhau bod y llyfr statud yn parhau'n ymarferol ar ddiwedd y Cyfnod Gweithredu.

**GWEINIDOGION Y DU SY'N GWEITHREDU MEWN MEYSYDD  
DATGANOLEDIG**

**183 - Rheoliadau Cynnyrch Organig (Cynhyrchu a Rheoli) (Diwygio)  
(Ymadael â'r UE) 2020**

*Dyddiad gosod yn Senedd y DU: 13 Hydref 2020*

**Sifftio**

Yn destun gwaith sifftio yn Senedd y DU?	Nac ydynt
Y weithdrefn	Cadarnhaol drafft
Dyddiad trafod gan Bwyllgor Offerynnau Statudol Ewropeaidd Tŷ'r Cyffredin	Amherthnasol
Dyddiad trafod gan Bwyllgor Craffu ar Is-ddeddfwriaeth Tŷ'r Arglwyddi	Amherthnasol
Dyddiad y daw'r cyfnod sifftio i ben yn Senedd y DU	Amherthnasol
Datganiad ysgrifenedig o dan Reol Sefydlog 30C:	Papur 91
Memorandwm Cydsyniad Offeryn Statudol (SICM) o dan Reol Sefydlog 30A (oherwydd eu bod yn diwygio deddfwriaeth sylfaenol)	Nid yw'n ofynnol

**Gweithdrefn graffu**

Canlyniad y broses sifftio	Amherthnasol
Y weithdrefn	Cadarnhaol drafft
Dyddiad trafod gan y Cydbwyllgor ar Offerynnau Statudol	Anhysbys
Dyddiad trafod gan Bwyllgor Offerynnau Statudol Tŷ'r Cyffredin	Anhysbys
Dyddiad trafod gan Bwyllgor Craffu ar Is-ddeddfwriaeth Tŷ'r Arglwyddi	Anhysbys

**Cefndir**

Bwriedir i'r Rheoliadau hyn gael eu gwneud gan Lywodraeth y DU yn unol ag adrannau 8(1) ac 8C o Ddeddf yr Undeb Ewropeaidd (Ymadael) 2018, a pharagraff 21 o Atodlen 7 iddi.

**Crynodeb**

Mae'r Rheoliadau hyn yn sicrhau y caiff rheolau organig eu diweddarw wrth baratoi at 31 Rhagfyr 2020, sef diwedd Cyfnod Pontio Ymadael â'r UE, drwy ddiwygio diffygion yn neddfwriaeth yr UE a ddargedwir. Mae'r Rheoliadau hefyd yn gwneud diwygiadau angenrheidiol i sicrhau bod y Rheoliadau'n adlewyrchu'n ddigonol y Protocol ynghylch Iwerddon/Gogledd Iwerddon i'r Cytundeb Ymadael ("y Protocol").

Bydd y Rheoliadau'n diwygio cyfraith yr UE a ddargedwir sy'n ymwneud â chynhyrchu organig ac is-ddeddfwriaeth ddomestig bresennol sydd,

ynddi ei hun, yn diwygio deddfwriaeth cynhyrchion organig yr UE a ddargedwir. Bydd y diwygiadau'n sicrhau cysondeb â'r Protocol ac yn gwneud rhagor o ddiwygiadau gweithredu. Cafodd yr is-ddeddfwriaeth ddomestig bresennol sydd, ynddi ei hun, yn diwygio deddfwriaeth yr UE a ddargedwir ei drafftio ar gyfer y DU ar y sail y byddai'r DU yn gadael yr UE heb gytundeb. Gan yr ymadawodd y DU â'r UE ar 31 Ionawr 2020, gyda chytundeb ar waith, mae angen diweddarau'r deddfwriaeth i adlewyrchu hyn a darpariaethau Deddf yr Undeb Ewropeaidd (Ymadael) 2018, yn benodol, y Protocol.

### **Datganiad gan Lywodraeth Cymru**

Nid yw datganiad Llywodraeth Cymru ar 16 Hydref 2020 yn nodi pa rai o bwerau deddfwriaethol y Senedd na pha rai o bwerau gweithredol Gweinidogion Cymru y mae'r offeryn hwn yn effeithio arnynt. Mae'r cynghorwyr cyfreithiol yn argymhell ceisio eglurhad ynghylch pa bwerau datganoledig yr effeithir arnynt.

### **Cytundeb Rhynglywodraethol ar Fil yr Undeb Ewropeaidd (Ymadael)**

Mae'r crynodeb uchod a chynnwys y Memorandwm Esboniadol i'r Rheoliadau hyn yn cadarnhau eu heffaith.

Nid yw'r Cynghorwyr Cyfreithiol o'r farn bod unrhyw faterion arwyddocaol yn codi o dan baragraff 8 o'r Memorandwm ar Fil yr Undeb Ewropeaidd (Ymadael) a Sefydlu Fframweithiau Cyffredin mewn perthynas â'r Rheoliadau hyn.

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## **DATGANIAD YSGRIFENEDIG GAN LYWODRAETH CYMRU**

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**TEITL** Rheoliadau Hylendid a Diogelwch Bwyd a Bwyd Anifeiliaid  
(Diwygiadau Amrywiol) (Ymadael â'r UE) 2020

**DYDDIAD** 16 Hydref 2020

**GAN** Rebecca Evans AS, Y Gweinidog Cyllid a'r Trefnydd

**Rheoliadau Hylendid a Diogelwch Bwyd a Bwyd Anifeiliaid (Diwygiadau Amrywiol)  
(Ymadael â'r UE) 2020**

**Yr is-ddeddfwriaeth sy'n cael ei diwygio**

- a. Rheoliadau Egin a Hadau (Diwygio) (Ymadael â'r UE) 2019
  - i. Mewnosod Erthygl 3A yn lle Erthygl 2 o Reoliad (UE) Rhif 211/2013 a ddiddymwyd ar ofynion ardystio ar gyfer mewnforio egin a hadau i'r Undeb a fwriedir ar gyfer cynhyrchu egin gydag Erthygl 3 o Reoliad (UE) Rhif 2017/625 ar reolaethau swyddogol a gweithgareddau swyddogol eraill a gyflawnir i sicrhau bod cyfraith bwyd a bwyd anifeiliaid, rheolau ar iechyd a lles anifeiliaid, iechyd planhigion a chynhyrchion diogelu planhigion oll yn cael eu cymhwyso i ddarparu diffiniad ar gyfer y term 'llwyth' (*consignment*).
  - ii. Mân ddiwygiadau i reoliad 4 sy'n cynnwys diwygiadau presennol i Erthygl 4 o Reoliad (UE) Rhif 208/2013 ar ofynion olrhain ar gyfer egin a hadau a fwriedir ar gyfer cynhyrchu egin.
  - iii. Hepgor rheoliadau 8 i 13 sy'n cynnwys diwygiadau presennol i Reoliad (UE) Rhif 211/2013 a ddiddymwyd.
  
- b. Rheoliadau Halogion mewn Bwyd (Diwygio) (Ymadael â'r UE) 2019
  - i. Mân ddiwygiadau i reoliadau 3 a 7 sy'n cynnwys diwygiadau presennol i Reoliad (EEC) Rhif 315/93 sy'n gosod gweithdrefnau Cymunedol ar gyfer halogion mewn bwyd.

- ii. Mân ddiwygiadau i reoliadau 14,15 ac 17 sy'n cynnwys diwygiadau presennol i Atodiad 1 a 2 o Reoliad (CE) Rhif 401/2006 sy'n gosod dulliau samplu a dadansoddi ar gyfer rheolaeth swyddogol ar lefelau mycotocsinau mewn bwydydd.
  - iii. Mân ddiwygiadau i reoliad 20 a hepgor rheoliadau 21 a 22 sy'n cynnwys diwygiadau presennol i Reoliad (CE) Rhif 1881/2006 sy'n gosod y lefelau uchaf ar gyfer rhai halogion mewn bwydydd.
  - iv. Mân ddiwygiadau i reoliadau 27 sy'n cynnwys diwygiadau presennol i Reoliad (CE) Rhif 1882/2006 sy'n gosod dulliau samplu a dadansoddi ar gyfer rheolaeth swyddogol ar lefelau nitradau mewn rhai bwydydd.
  - v. Mân ddiwygiadau i reoliad 30 sy'n cynnwys diwygiadau presennol i Reoliad (CE) Rhif 333/2007 sy'n gosod dulliau samplu a dadansoddi ar gyfer rheoli lefelau elfennau hybrin (*trace elements*) a phrosesu halogion mewn bwydydd.
  - vi. Mân ddiwygiadau i reoliad 35 sy'n cynnwys diwygiadau presennol i Reoliad (CE) 2015/705 sy'n gosod dulliau samplu a meini prawf perfformiad ar gyfer y dulliau dadansoddi ar gyfer rheolaeth swyddogol ar lefelau asid erwsig mewn bwydydd.
  - vii. Mân ddiwygiadau i reoliad 39 sy'n cynnwys diwygiadau presennol i Reoliad (CE) 2017/644 sy'n gosod dulliau samplu a dadansoddi ar gyfer rheoli lefelau deuocsinau, Biffenylau Polychlorinedig (PCBs) tebyg i ddeuocsinau a PCBs nad ydynt yn debyg i ddeuocsinau mewn rhai bwydydd.
- c. Rheoliadau Hylendid Bwyd Penodol (Diwygio ac ati) (Ymadael â'r UE) 2019
- i. Mewnosod yn Rheoliad 2 ddiffiniadau ychwanegol o reoliadau cymwys yr UE.
  - ii. Diwygio rheoliadau 5, 8, 12, 13, 17, 18 ac 19 a hepgor rheoliad 10 sy'n cynnwys diwygiadau presennol i Reoliad (CE) Rhif 853/2004 sy'n gosod rheolau penodol ar gyfer bwyd sy'n dod o anifeiliaid.
  - iii. Mewnosod rheoliadau 19A ac 19B sy'n diwygio Rheoliad (CE) Rhif 2074/2005 sy'n gosod mesurau gweithredu ar gyfer rhai cynhyrchion o dan Reoliad (CE) Rhif 853/2004 ac ar gyfer trefnu rheolaethau swyddogol o dan Reoliad (CE) Rhif 854/2004, yn rhanddirymiad o Reoliad (CE) Rhif 852/2004 a diwygio Rheoliadau (CE) Rhif 853/2004 a (CE) Rhif 854/2004.
  - iv. Hepgor rheoliadau 20 i 49 sy'n cynnwys diwygiadau presennol i Reoliad (CE) Rhif 854/2004 sy'n gosod rheolau penodol ar gyfer trefnu rheolaethau swyddogol ar gyfer cynhyrchion sy'n dod o anifeiliaid y bwriedir i bobl eu bwyta.
  - v. Mewnosod rheoliadau 51A-51N sy'n diwygio Rheoliad (UE) 2015/1375 sy'n gosod rheolau penodol ar reolaethau swyddogol ar gyfer *Trichinella* mewn cig.



- vi. Mewnosod rheoliadau 53A-53G sy'n diwygio Rheoliad (UE) 2016/759 sy'n llunio rhestrau o drydydd gwledydd, rhannau o drydydd gwledydd a thriogaethau lle mae Aelod-wladwriaethau i awdurdodi cyflwyno rhai cynhyrchion sy'n dod o anifeiliaid y bwriedir i bobl eu bwyta, yn gosod gofynion penodol, yn diwygio Rheoliad (CE) Rhif 2074/2005 a diddymu Penderfyniad 2003/812/EC.
- vii. Mewnosod rheoliadau 53H-53L sy'n diwygio Rheoliad (UE) 2017/185 sy'n gosod mesurau trosiannol ar gyfer cymhwyso rhai o ddarpariaethau Rheoliadau (CE) Rhif 853/2004 a (CE) Rhif 854/2004 Senedd Ewrop a'r Cyngor.

d. Rheoliadau Cyfraith Bwyd Cyffredinol (Diwygio ac ati) (Ymadael â'r UE) 2019

- i. Diwygio rheoliadau 7, 9, 11, 13, 14, 15, 16, 17, 19, 20 a 21 sy'n cynnwys diwygiadau presennol i Rheoliad (CE) Rhif 178/2002 sy'n gosod egwyddorion a gofynion cyffredinol cyfraith bwyd, gan sefydlu Awdurdod Diogelwch Bwyd Ewrop a gosod gweithdrefnau ynghylch materion yn ymwneud â diogelwch bwyd
- ii. Mewnosod rheoliad 20A a 20B i gadw Erthygl 53, a mewnosod Erthygl 53a newydd yn Rheoliad (CE) Rhif 178/2002 sy'n cynnwys mesurau brys ar gyfer bwyd a bwyd anifeiliaid sy'n tarddu o'r Gymuned neu a fewnforiwyd o drydedd wlad.
- iii. Mân ddiwygiad i rheoliad 21(a) i hepgor Erthygl 57a o Rheoliad (CE) Rhif 178/2002 sy'n cynnwys mesurau brys ar gyfer bwyd a bwyd anifeiliaid sy'n tarddu o'r Gymuned neu a fewnforiwyd o drydedd wlad.
- iv. Mân ddiwygiadau i'r Atodlen sy'n cynnwys diwygiadau presennol i ddarpariaethau penodedig yr UE.

e. Rheoliadau Hylendid Bwyd Cyffredinol (Diwygio) (Ymadael â'r UE) 2019

- i. Mân ddiwygiadau i reoliadau 3, 4, 5, 7, 13 ac 18 sy'n cynnwys diwygiadau presennol i Rheoliad (CE) Rhif 852/2004 ar hylendid bwydydd.
- ii. Hepgor rheoliad 22(a) sy'n cynnwys diwygiadau presennol i Rheoliad (CE) Rhif 2073/2005 ar feini prawf microbiolegol ar gyfer bwydydd.
- iii. Mân ddiwygiadau i reoliadau 28 a 29 sy'n cynnwys diwygiadau presennol i Rheoliad (UE) 2017/2158 sy'n sefydlu'r mesurau lliniaru a'r lefelau meincnodi ar gyfer lleihau presenoldeb acrylamid mewn bwyd.

f. Rheoliadau Bwyd Anifeiliaid (Diwygio) (Ymadael â'r UE) 2019

- i. Mewnosod yn Rheoliad 2 ddiffiniad ychwanegol o reoliadau cymwys yr UE.
  - ii. Mân ddiwygiadau i reoliadau 10, 11, 24 a 27 sy'n cynnwys diwygiadau presennol i Reoliad (CE) Rhif 1831/2003 ar ychwanegion i'w defnyddio mewn maeth anifeiliaid.
  - iii. Mewnosod rheoliad 30A sy'n hepgor Erthygl 21a o Reoliad (CE) Rhif 1831/2003 ar ychwanegion i'w defnyddio mewn maeth anifeiliaid.
  - iv. Mân ddiwygiadau i reoliadau 36, 50, 51, 55, 56 a 62 sy'n cynnwys diwygiadau presennol i Reoliad (CE) Rhif 183/2005 sy'n gosod y gofynion ar gyfer hylendid bwyd anifeiliaid.
  - v. Mewnosod rheoliad 50A sy'n mewnosod paragraff ar ddiwedd Erthygl 24 o Reoliad (CE) Rhif 183/2005 sy'n gosod y gofynion ar gyfer hylendid bwyd anifeiliaid.
  - vi. Mân ddiwygiadau i reoliad 66 sy'n cynnwys diwygiadau presennol i Reoliad (CE) Rhif 378/2005 ar reolau manwl ar gyfer gweithredu Rheoliad (CE) Rhif 1831/2003.
  - vii. Mân ddiwygiadau i reoliadau 83 ac 84 sy'n cynnwys diwygiadau presennol i Reoliad (CE) Rhif 429/2008 ar reolau manwl ar gyfer gweithredu Rheoliad (CE) Rhif 1831/2003.
  - viii. Mân ddiwygiadau i reoliadau 94, 95, 97, 110 a 116 sy'n cynnwys diwygiadau presennol i Reoliad (CE) Rhif 767/2009 ar ddefnyddio bwyd anifeiliaid a'i osod ar y farchnad.
  - ix. Mân ddiwygiadau i reoliad 137 sy'n cynnwys diwygiadau presennol i Reoliad (UE) 2015/786 sy'n diffinio meini prawf derbynioldeb ar gyfer prosesau dadwenwyno a gymhwysir i gynhyrchion a fwriedir ar gyfer bwyd anifeiliaid fel y darperir ar eu cyfer yng Nghyfarwyddeb 2002/32/EC ar sylweddau annymunol mewn bwyd anifeiliaid i ddarparu diffiniad ar gyfer awdurdodau.
  - x. Mewnosod rheoliadau 146 i 148 i ddiwygio Rheoliad (CE) 2020/354 sy'n sefydlu rhestr o ddefnyddiau bwriadedig bwyd anifeiliaid at ddibenion maethol penodol ac yn diddymu Cyfarwyddeb 2008/38/EC.
- g. Rheoliadau Mewnforion Bwyd a Bwyd Anifeiliaid (Diwygio) (Ymadael â'r Undeb Ewropeidd) 2019
- i. Diwygio rheoliad 2 i adlewyrchu diffiniadau o ddeddfwriaeth berthnasol yr UE.
  - ii. Mân ddiwygiadau i reoliadau 4 a 5 sy'n cynnwys diwygiadau presennol i Reoliadau Llestri Cegin Plastig (Amodau ar Fewnforion o China) (Lloegr) 2011.

- iii. Hepgor rheoliadau 7 i 17 sy'n cynnwys diwygiadau presennol i Reoliad (CE) Rhif 669/2009 a ddiddymwyd sy'n gweithredu Rheoliad (CE) Rhif 882/2004 a ddiddymwyd o ran y cynnydd yn lefel y rheolaethau swyddogol ar fewnforio bwyd a bwyd anifeiliaid penodol nad ydynt yn dod o anifeiliaid.
  - iv. Mân ddiwygiadau i reoliadau 19, 20 a 26 sy'n cynnwys diwygiadau presennol i Reoliad (UE) Rhif 284/2011 sy'n gosod amodau penodol a gweithdrefnau manwl ar gyfer mewnforio offer cegin plastig polyamid a melamin sy'n deillio, neu'n cael eu hanfon, o Weriniaeth Pobl Tsieina a Rhanbarth Gweinyddol Arbennig Hong Kong, Tsieina.
  - v. Hepgor rheoliadau 27 i 49 sy'n cynnwys diwygiadau presennol i Reoliad (UE) Rhif 884/2014 a ddiddymwyd sy'n gosod amodau arbennig i reoli mewnforio bwyd anifeiliaid a bwyd penodol o drydydd gwledydd penodol oherwydd risg halogiad gan afflatocsinau.
  - vi. Mân ddiwygiadau i reoliadau 51 a 55 sy'n cynnwys diwygiadau presennol i Reoliad (UE) 2015/949 sy'n cymeradwyo'r gwiriadau cyn allforio a gynhelir ar fwyd penodol gan drydydd gwledydd penodol o ran presenoldeb mycotocsinau penodol.
  - vii. Hepgor rheoliadau 56 i 73 sy'n cynnwys diwygiadau presennol i Reoliad (UE) 2017/186 sy'n gosod amodau arbennig sy'n berthnasol i gyflwyno llwythi o drydydd gwledydd penodol i'r Undeb oherwydd halogiad microbiolegol.
  - viii. Mân ddiwygiadau i reoliadau 80 ac 81 sy'n cynnwys diwygiadau presennol i Benderfyniad 2011/884/EU ar fesurau argyfwng ynghylch reis a addaswyd yn enetig heb ei awdurdodi mewn cynhyrchion reis sy'n dod o Tsieina.
  - ix. Hepgor rheoliadau 82 i 84 sy'n cynnwys diwygiadau presennol i Benderfyniad 2014/88/UE a ddiddymwyd sy'n atal mewnforion o fwydydd sy'n cynnwys dail betel o Fagladesh dros dro.
- h. Rheoliadau Bwyd a Bwyd Anifeiliaid (Lefelau Uchaf o Halogiad Ymbelydrol a Ganiateir) (Diwygio) (Ymadael â'r UE) 2019
- i. Mân ddiwygiadau i reoliadau 5, 6 ac 8 sy'n cynnwys diwygiadau presennol i Reoliad (Euratom) 2016/52 sy'n pennu'r lefelau uchaf o halogiad ymbelydrol a ganiateir mewn bwyd a bwyd anifeiliaid yn dilyn damwain niwclear neu unrhyw achos arall o argyfwng radiolegol.
- i. Rheoliadau Bwyd Newydd (Diwygio) (Ymadael â'r UE) 2019
- i. Mân ddiwygiadau i reoliadau 6, 7, 8, 11, 12, 20, 32, 34 a 38 sy'n cynnwys diwygiadau presennol i Reoliad (UE) 2015/2283 ar fwyd newydd.
  - ii. Mân ddiwygiadau i reoliadau 44, 50 a 51 sy'n cynnwys diwygiadau presennol i Reoliad (UE) 2017/2468 sy'n gosod gofynion gweinyddol a gwyddonol sy'n

ymwneud â bwyd traddodiadol o drydydd gwledydd yn unol â Rheoliad (UE) 2015/2283.

- iii. Mân ddiwygiadau i reoliad 60 sy'n cynnwys diwygiadau presennol i Reoliad (UE) 2017/2469 sy'n nodi gofynion gweinyddol a gwyddonol ar gyfer ceisiadau y cyfeirir atynt yn Erthygl 10 o Reoliad (UE) 2015/2283.
  - iv. Mân ddiwygiadau i reoliad 62 sy'n cynnwys diwygiadau presennol i Reoliad (UE) 2017/2470 sy'n sefydlu rhestr yr Undeb o fwydydd newydd yn unol â Rheoliad (UE) 2015/2283.
  - v. Mân ddiwygiadau i reoliad 76 sy'n cynnwys diwygiadau presennol i Reoliad (UE) 2018/456 ar gamau gweithdrefnol y broses ymgynghori ar gyfer pennu statws bwyd newydd yn unol â Rheoliad (UE) 2015/2283.
- j. Rheoliadau Deunyddiau ac Eitemau mewn Cysylltiad â Bwyd (Diwygio) (Ymadael â'r UE) 2019
- i. Mân ddiwygiadau i reoliadau 13, 24, 33 sy'n cynnwys diwygiadau presennol i Reoliad (CE) Rhif 1935/2004 ar ddeunyddiau ac eitemau y bwriedir iddynt ddod i gysylltiad â bwyd.
  - ii. Mân ddiwygiadau i reoliad 44 sy'n cynnwys diwygiadau presennol i Reoliad (CE) Rhif 282/2008 ar ddeunyddiau ac eitemau plastig wedi'u hailgylchu y bwriedir iddynt ddod i gysylltiad â bwyd.
  - iii. Mân ddiwygiadau i reoliadau 67 a 68 sy'n cynnwys diwygiadau presennol i Reoliad (CE) Rhif 10/2011 ar ddeunyddiau ac eitemau plastig y bwriedir iddynt ddod i gysylltiad â bwyd.
- k. Rheoliadau Bwyd a Bwyd Anifeiliaid a Addaswyd yn Enetig (Diwygio ac ati) (Ymadael â'r UE) 2019
- i. Mân ddiwygiadau i reoliadau 6, 8, 16, 20, 35, 36 a 37 sy'n cynnwys diwygiadau presennol i Reoliad (CE) Rhif 1829/2003 ar fwyd a bwyd anifeiliaid a addaswyd yn enetig.
  - ii. Mewnosod rheoliad 36A i ddiwygio Erthygl 34 o Reoliad (CE) Rhif 1829/2003.
  - iii. Mewnosod rheoliad 38A i ddiwygio Erthygl 44 o Reoliad (CE) Rhif 1829/2003.
  - iv. Mân ddiwygiadau i reoliadau 49 a 54 sy'n cynnwys diwygiadau presennol i Reoliad Rhif 503/2013 ar geisiadau i awdurdodi bwyd a bwyd anifeiliaid a addaswyd yn enetig yn unol â Rheoliad (CE) Rhif 1829/2003.
  - v. Mân ddiwygiadau i reoliadau 63, 66, 69, 112, 187, 226, 261, 272, 313, 346 sy'n cynnwys diwygiadau presennol i Benderfyniad 2007/305/EC, Penderfyniad 2007/306/EC, Penderfyniad 2007/307/EC, Penderfyniad 2009/184/EC, Penderfyniad 2013/327/EU, Penderfyniad (UE) 2015/686, Penderfyniad (UE) 2015/696, Penderfyniad (UE) 2015/698, Penderfyniad (UE)

2016/1217, Penderfyniad (UE) 2017/2448 ar awdurdodi a thynnu amryw gynhyrchion a addaswyd yn enetig yn ôl.

- vi. Mewnosod rheoliadau 390-476 yn diwygio' Penderfyniadau Gweithredu'r Comisiwn (UE) 2018/2045, (UE) 2018/2046, (UE) 2019/1302, (UE) 2019/1303, (UE) 2019/1304, (UE) 2019/1305, (UE) 2019/1306, (UE) 2019/1307, (UE) 2019/1308, (UE) 2019/1309, (UE) 2019/2080 (UE) 2019/2081, (UE) 2019/2082, (UE) 2019/2083, (UE) 2019/2084 (UE) 2019/2085, (UE) 2019/2086, (UE) 2019/2087 yn awdurdodi gosod amryw gynhyrchion a addaswyd yn enetig ar y farchnad.
  - vii. Mewnosod rheoliad 477 i ddirymu Rheoliad (CE) Rhif 1981/2006 ar reolau manwl ar gyfer gweithredu Erthygl 32 o Reoliad (CE) Rhif 1829/2003.
- I. Rheoliadau Ychwanegion Bwyd, Cyflasynnau, Ensymau a Thoddyddion Echdynnu (Diwygio ac ati) (Ymadael â'r UE) 2019
- i. Diwygiadau i reoliadau 12, 16, 22, 26, 27, 28 a 29 sy'n cynnwys diwygiadau presennol i Reoliad (CE) Rhif 2065/2003 ar gyflasynnau mwg a ddefnyddir neu y bwriedir eu defnyddio mewn bwyd neu ar fwyd.
  - ii. Mân ddiwygiadau i reoliadau 39 a 52 sy'n cynnwys diwygiadau presennol i Reoliad (CE) Rhif 1331/2008 sy'n gosod gweithdrefn awdurdodi gyffredin ar gyfer ychwanegion bwyd, ensymau bwyd a chyflasynnau bwyd.
  - iii. Mân ddiwygiadau i reoliadau 58, 61 a 72 sy'n cynnwys diwygiadau presennol i Reoliad (CE) Rhif 1332/2008 ar ensymau bwyd.
  - iv. Mân ddiwygiadau i reoliadau 82 a 105 sy'n cynnwys diwygiadau presennol i Reoliad (CE) Rhif 1333/2008 ar ychwanegion bwyd.
  - v. Mân ddiwygiadau i reoliadau 118, 123 a 132 sy'n cynnwys diwygiadau presennol i Reoliad (CE) Rhif 1334/2008 ar gyflasynnau a chynhwysion bwyd penodol sydd â phriodweddau cyflasynnau i'w defnyddio mewn bwyd neu ar fwyd.

Mae Rheoliadau 2020 hefyd yn diwygio cyfraith ddomestig benodol sy'n deillio o'r UE sy'n berthnasol i Loegr yn unig.

### **Deddfwriaeth uniongyrchol yr Undeb Ewropeaidd (UE) a ddargedwir sy'n cael ei diwygio**

- m. Mân ddiwygiadau i Reoliad (UE) 2016/6 sy'n gosod amodau arbennig sy'n llywodraethu mewnfôrion bwyd a bwyd anifeiliaid sy'n deillio o Japan neu a anfonir oddi yno yn dilyn y ddamwain yn orsaf bŵer niwclear Fukushima ac sy'n diddymu Rheoliad Gweithredu (UE) Rhif 322/2014.
- n. Mân ddiwygiadau i Reoliad (UE) Rhif 2020/1158 ar yr amodau sy'n llywodraethu mewnfôrion bwyd a bwyd anifeiliaid sy'n deillio o drydydd gwledydd yn dilyn y ddamwain yn orsaf bŵer niwclear Chernobyl 6/6.

## **Yr isddeddfwriaeth sy'n cael ei dirymu**

- Rheoliadau'r Rheolaethau Swyddogol ar gyfer Bwyd, Bwyd Anifeiliaid ac Iechyd a Lles Anifeiliaid (Diwygio ac ati) (Ymadael â'r UE) 2019.
- Rheoliadau Bwyd a Bwyd Anifeiliaid (Cyfyngiadau Chernobyl a Fukushima) (Diwygio) (Ymadael â'r UE) 2019.
- Rheoliadau Hylendid a Diogelwch Bwyd a Bwyd Anifeiliaid (Diwygiadau Amrywiol) (Ymadael â'r UE) 2019.

Mae Rheoliadau 2020 hefyd yn dirymu cyfraith ddomestig benodol sy'n deillio o'r UE sy'n berthnasol i Ogledd Iwerddon yn unig.

## **Deddfwriaeth uniongyrchol yr UE a ddargedwir sy'n cael ei dirymu**

- Rheoliad (EU) Rhif 415/2013 sy'n gosod cyfrifoldebau a thasgau ychwanegol ar gyfer labordai ymchwil yr UE ar gyfer y gynddaredd (*rabies*), twbercwlosis buchol ac iechyd gwenyn.

## **Unrhyw effaith y gall yr Offeryn Statudol (OS) ei chael ar gymhwysedd deddfwriaethol y Cynulliad a/neu gymhwysedd gweithredol Gweinidogion Cymru**

Mae Rheoliadau 2020 yn gwneud diwygiadau technegol i is-ddeddfwriaeth a deddfwriaeth uniongyrchol yr UE a ddargedwir i sicrhau gweithrediad y ddeddfwriaeth hon ar ddiwedd y cyfnod pontio. Nid oes unrhyw effaith ar gymhwysedd gweithredol Gweinidogion Cymru na chymhwysedd deddfwriaethol y Senedd.

## **Diben y diwygiadau**

Mae Deddf yr Undeb Ewropeaidd (Ymadael) 2018 ("y Ddeddf Ymadael") yn trosi ac yn cadw cyfraith yr UE yn gyfraith ddomestig ("cyfraith yr UE a ddargedwir") ar ddiwedd y cyfnod pontio ar ôl i'r DU ymadael â'r UE.

Mae Rheoliadau 2020 yn gwneud diwygiadau i is-ddeddfwriaeth a deddfwriaeth uniongyrchol yr UE a ddargedwir ac yn darparu ar gyfer dirymu is-ddeddfwriaethsydd wedi darfod a deddfwriaeth uniongyrchol yr UE a ddargedwir mewn perthynas â hylendid a diogelwch bwyd a bwyd anifeiliaid.

Mae diwygiadau Rheoliadau 2020 yn sicrhau y gall deddfwriaeth weithredu'n effeithiol ar ddiwedd y Cyfnod Pontio i adlewyrchu'r Cytundeb Ymadael, Protocol Gogledd Iwerddon ac ymrwymiad Llywodraeth y DU i sicrhau mynediad heb gyfyngiadau i'r farchnad.

Gellir gweld yr OS a'r Memorandwm Esboniadol cysylltiedig, sy'n nodi effaith bob diwygiad yma: <https://statutoryinstruments.parliament.uk/timeline/5qIVuf1h/SI-2020/>

## **Pam rhoddwyd cydsyniad**

Rhoddwyd cydsyniad i Lywodraeth y DU wneud y cywiriadau hyn mewn perthynas â Chymru, ac ar ran Cymru am resymau effeithlonrwydd a hwylustod ac i sicrhau cysondeb a chydlyniant y llyfr statud. Mae'r diwygiadau wedi'u hystyried yn llawn ac nid oes gwahaniaeth mewn polisi. Pwrpas y diwygiadau hyn yw sicrhau bod y llyfr statud yn parhau i fod yn weithredol ar ôl i'r DU ymadael â'r UE.

**GWEINIDOGION Y DU SY'N GWEITHREDU MEWN MEYSYDD  
DATGANOLEDIG**

**184 - Rheoliadau Hylendid a Diogelwch Bwyd a Bwyd Anifeiliaid  
(Diwygiadau Amrywiol) (Ymadael â'r UE) 2020**  
*Dyddiad gosod yn Senedd y DU: 14 Hydref 2020*

**Sifftio**

Yn destun sifftio yn Senedd y DU?	Nac ydy
Gweithdrefn:	Cadarnhaol drafft
Dyddiad trafod gan Bwyllgor Offerynnau Statudol Ewropeaidd Tŷ'r Cyffredin	Amh
Dyddiad trafod gan Bwyllgor Craffu ar Is-ddeddfwriaeth Tŷ'r Arglwyddi	Amh
Dyddiad y daw'r cyfnod sifftio i ben yn Senedd y DU	Amh
Datganiad ysgrifenedig o dan Reol Sefydlog 30C:	Papur 93
Memorandwm Cydsyniad Offeryn Statudol o dan Reol Sefydlog 30A (oherwydd eu bod yn diwygio deddfwriaeth sylfaenol)	Nid yw'n ofynnol
<b>Gweithdrefn graffu</b>	
Canlyniad y broses sifftio	Amh
Gweithdrefn	Cadarnhaol drafft
Dyddiad trafod gan y Cydbwyllgor ar Offerynnau Statudol	Anhysbys
Dyddiad trafod gan Bwyllgor Offerynnau Statudol Tŷ'r Cyffredin	Anhysbys
Dyddiad trafod gan Bwyllgor Craffu ar Is-ddeddfwriaeth Tŷ'r Arglwyddi	Anhysbys

**Cefndir**

Bwriedir i'r Rheoliadau hyn gael eu gwneud gan Lywodraeth y DU yn unol ag adrannau 8 ac 8C o Ddeddf yr Undeb Ewropeaidd (Ymadael) 2018, a pharagraff 7 o Atodlen 4 a pharagraff 21 o Atodlen 7 i'r Ddeddf honno.

**Crynodeb**

Mae'r Rheoliadau hyn:

- yn gweithredu Protocol Iwerddon/Gogledd Iwerddon ("y Protocol") trwy ddiwygio neu ddirymu 16 o'r 17 offeryn Ymadael â'r UE ym maes bwyd a diogelwch bwyd i fod yn gymwys i Brydain Fawr yn unig, ac offerynnau ychwanegol a wnaed mewn perthynas â Gogledd Iwerddon;



- yn mynd i'r afael ag ystod o ddiffygion sy'n weddill yng nghyfraith yr UE a ddargedwir ym maes hylendid a diogelwch bwyd a bwyd anifeiliaid i sicrhau y gall cyfraith yr UE a ddargedwir weithredu'n effeithlon ar ddiwedd y Cyfnod Gweithredu, ac i gymryd i ystyriaeth cyfraith yr UE sydd wedi dod i rym ers i'r offerynnau Ymadael â'r UE gael eu gwneud.

### **Datganiad gan Lywodraeth Cymru**

Mae gwall teipograffydol yn enw'r Rheoliadau hyn yn y datganiad (mae "etc." wedi'i hepgor). Nodir bod yna Reoliadau 2019 gyda'r un enw â'r un a ddefnyddir yn y datganiad, hynny yw heb "etc."

Mae'r Cyngorwyr Cyfreithiol yn cytuno â'r datganiad a osodwyd gan Lywodraeth Cymru dyddiedig 16 Hydref 2020 ynghylch effaith y Rheoliadau hyn.

### **Cytundeb Rhynglywodraethol ar Fil yr Undeb Ewropeaidd (Ymadael)**

Mae'r crynodeb uchod a chynnwys y Memorandwm Esboniadol i'r Rheoliadau hyn yn cadarnhau eu heffaith.

Nid yw'r Cyngorwyr Cyfreithiol o'r farn bod unrhyw faterion arwyddocaol yn codi o dan baragraff 8 o'r Memorandwm ar Fil yr Undeb Ewropeaidd (Ymadael) a Sefydlu Fframweithiau Cyffredin mewn perthynas â'r Rheoliadau hyn.



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## **DATGANIAD YSGRIFENEDIG GAN LYWODRAETH CYMRU**

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<b>TEITL</b>	<b>Rheoliadau Iechyd Planhigion (Cyflyrau Ffytioechydol) (Diwygio) (Ymadael â'r UE) 2020</b>
<b>DYDDIAD</b>	<b>19 Hydref 2020</b>
<b>GAN</b>	<b>Rebecca Evans AS, Y Gweinidog Cyllid a'r Trefnydd</b>

**OS a osodwyd yn Senedd y DU, sy'n diwygio is-ddeddfwriaeth mewn maes datganoledig**

### **Rheoliadau Iechyd Planhigion (Cyflyrau Ffytioechydol) (Diwygio) (Ymadael â'r UE) 2020**

Mae'r diwygiadau a wneir gan Rheoliadau Iechyd Planhigion (Cyflyrau Ffytioechydol) (Diwygio) (Ymadael â'r UE) 2020 ("Rheoliadau 2020") yn ddiwygiadau technegol i'w gwneud yn haws eu gweithredu ac nid ydynt yn newid y polisi. Mae Rheoliadau 2020 yn gwneud newidiadau ymarferol a diwygiadau canlyniadol eraill i Reoliad Gweithredu'r Comisiwn (UE) 2019/2072 sy'n sefydlu amodau unffurf ar gyfer gweithredu Rheoliad (UE) 2016/2031 ar fesurau amddiffyn rhag plâu planhigion i sicrhau bod mesurau rheoli ffytioechydol planhigion ym Mhrydain Fawr a rhwng Prydain Fawr a'r UE ar ddiwedd y Cyfnod Pontio yn parhau i weithio.

### **Mae Rheoliadau 2020 yn diwygio'r ddeddfwriaeth a ganlyn**

#### Deddfwriaeth Ewropeaidd

Rheoliad Gweithredu'r Comisiwn (UE) 2019/2072.

### **Unrhyw effaith y gall yr Offeryn Statudol ei chael ar gymhwysedd deddfwriaethol Senedd Cymru a/neu gymhwysedd gweithredol Gweinidogion Cymru**

Nid yw Rheoliadau 2020 yn effeithio ar gymhwysedd deddfwriaethol Senedd Cymru ond maent yn lledu cymhwysedd gweithredol Gweinidogion Cymru trwy roi swyddogaethau iddynt (fel 'Awdurdod Cymwys' Cymru) heb lyffethair.

## **Diben y diwygiadau**

Diben y Rheoliadau yw cynnal bioddiogelwch a chefnogi masnach trwy sicrhau bod mesurau effeithiol ar gyfer diogelu iechyd planhigion yn parhau o fewn Prydain Fawr a rhwng Prydain Fawr a'r UE ar ddiwedd y Cyfnod Pontio ar 31 Rhagfyr 2020.

Mae Rheoliadau 2020 yn rhestru plâu cwarantîn Prydain Fawr, plâu cwarantîn amodol Prydain Fawr, plâu cwarantîn Ardaloedd Heb Blâu a phlâu di-gwarantîn rheoleiddiedig Prydain Fawr a mesurau'n ymwneud â chyflwyno planhigion, cynnyrch planhigion a gwrthrychau eraill i Brydain Fawr a symud planhigion, cynnyrch planhigion a gwrthrychau eraill o fewn Prydain Fawr er mwyn lleihau'r risgiau sy'n gysylltiedig â'r plâu hynny i lefel dderbyniol.

Mae Rheoliadau 2020 a'u Memorandwm Esboniadol, sy'n nodi manylion tarddiad, pwrpas ac effaith y Rheoliadau, ar gael yn:

<https://www.legislation.gov.uk/ukdsi/2020/9780348213706/introduction>

## **Pam y cafodd cydsyniad ei roi**

Mae cydsyniad wedi'i roi i Lywodraeth y DU i wneud y cywiriadau hyn mewn cysylltiad â Chymru er sicrhau effeithlonrwydd a hwylustod. Mae'r diwygiadau wedi'u hystyried yn llawn, ac nid ydynt yn newid polisi. Bydd y diwygiadau hyn yn sicrhau bod y llyfr statud yn parhau'n ymarferol ar ddiwedd y Cyfnod Gweithredu.

**GWEINIDOGION Y DU SY'N GWEITHREDU MEWN MEYSYDD  
DATGANOLEDIG**

**186 - Rheoliadau Iechyd Planhigion (Cyflyrau Ffytoiechydol) (Diwygio)  
(Ymadael â'r UE) 2020**

*Dyddiad gosod yn Senedd y DU: 15 Hydref 2020*

**Sifftio**

Yn destun sifftio yn Senedd y DU?	Nac ydy
Gweithdrefn:	Cadarnhaol drafft
Dyddiad trafod gan Bwyllgor Offerynnau Statudol Ewropeaidd Tŷ'r Cyffredin	Amh
Dyddiad trafod gan Bwyllgor Craffu ar Is-ddeddfwriaeth Tŷ'r Arglwyddi	Amh
Dyddiad y daw'r cyfnod sifftio i ben yn Senedd y DU	Amh
Datganiad ysgrifenedig o dan Reol Sefydlog 30C:	Papur 95
Memorandwm Cydsyniad Offeryn Statudol o dan Reol Sefydlog 30A (oherwydd eu bod yn diwygio deddfwriaeth sylfaenol)	Nid yw'n ofynnol

**Gweithdrefn graffu**

Canlyniad y broses sifftio	Amh
Gweithdrefn	Cadarnhaol drafft
Dyddiad trafod gan y Cydbwyllgor ar Offerynnau Statudol	Anhysbys
Dyddiad trafod gan Bwyllgor Offerynnau Statudol Tŷ'r Cyffredin	Anhysbys
Dyddiad trafod gan Bwyllgor Craffu ar Is-ddeddfwriaeth Tŷ'r Arglwyddi	Anhysbys

**Cefndir**

Bwriedir i'r Rheoliadau hyn gael eu gwneud gan Lywodraeth y DU yn unol ag adran 8(1) o Ddeddf yr Undeb Ewropeaidd (Ymadael) 2018, a pharagraff 21 o Atodlen 7 iddi.

**Crynodeb**

Diben yr offeryn hwn yw amddiffyn bioddiogelwch a chefnogi masnach drwy sicrhau bod rheolaethau ffytoiechydol effeithiol yn parhau i weithredu o fewn Prydain Fawr a rhwng Prydain Fawr a'r UE ar ddiwedd y Cyfnod Pontio ar 31 Rhagfyr 2020.

Mae Rheoliadau Iechyd Planhigion (Cyflyrau Ffytoiechydol) (Diwygio) (Ymadael â'r UE) 2020 yn gwneud newidiadau ymarferol a diwygiadau canlyniadol eraill i Reoliad Gweithredu'r Comisiwn (UE) 2019/2072 sy'n sefydlu amodau unffurf ar gyfer gweithredu Rheoliad (UE) 2016/2031 ar

fesurau amddiffyn rhag plâu planhigion i sicrhau bod mesurau rheoli ffytoiechydol planhigion ym Mhrydain Fawr a rhwng Prydain Fawr a'r UE ar ddiwedd y Cyfnod Pontio yn parhau i weithio.

**Datganiad gan Lywodraeth Cymru**

Mae'r Cynghorwyr Cyfreithiol yn cytuno â'r datganiad a osodwyd gan Lywodraeth Cymru dyddiedig 19 Hydref 2020 ynghylch effaith y Rheoliadau hyn.

**Cytundeb Rhynglywodraethol ar Fil yr Undeb Ewropeaidd (Ymadael)**

Mae'r crynodeb uchod a chynnwys y Memorandwm Esboniadol i'r Rheoliadau hyn yn cadarnhau eu heffaith.

Nid yw'r Cynghorwyr Cyfreithiol o'r farn bod unrhyw faterion arwyddocaol yn codi o dan baragraff 8 o'r Memorandwm ar Fil yr Undeb Ewropeaidd (Ymadael) a Sefydlu Fframweithiau Cyffredin mewn perthynas â'r Rheoliadau hyn.



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## DATGANIAD YSGRIFENEDIG GAN LYWODRAETH CYMRU

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**TEITL** Rheoliadau Rheoli Mercwri (Diwygio) (Ymadael â'r UE) 2020

**DYDDIAD** 20 Hydref 2020

**GAN** Rebecca Evans AS, Y Gweinidog Cyllid a'r Trefnydd

**OS a osodwyd yn Senedd y DU, sy'n diwygio is-ddeddfwriaeth mewn maes datganoledig**

### **Rheoliadau Rheoli Mercwri (Diwygio) (Ymadael â'r UE) 2020**

Mae Confensiwn Minamata ("y Confensiwn") ar fercwri, y mae'r DU yn rhan ohono, yn gytuniad gan y Cenhedloedd Unedig sy'n bwriadu diogelu iechyd pobl a'r amgylchedd rhag effeithiau negyddol dod i gysylltiad â mercwri. Nod y Confensiwn yw cyflawni hyn drwy gymryd camau byd-eang i gyfyngu ar faint o fercwri sy'n cael ei ryddhau a'i allyrru ar draws ei gylch oes. Mae hyn yn cynnwys cyfyngu ar gyflenwi a masnachu mercwri elfennaidd; ei gwneud yn ofynnol cael gwared ar fercwri yn raddol o sawl cynnyrch a phroses; gwahardd cloddio ar raddfa fach am aur gyda mercwri; a gosod mesurau ar ddulliau storio mercwri pan gaiff ei ddefnyddio mewn prosesau diwydiannol a sut i'w reoli pan ddaw'n wastraff.

Er mwyn galluogi'r DU a'r Aelod-wladwriaethau eraill i ymrwymo i'r Confensiwn, mabwysiadodd yr UE a'i Aelod-wladwriaethau Reoliad (EU) 2017/852 ar fercwri, a ddaeth i rym ar 1 Ionawr 2018. Mae Rheoliadau Rheoli Mercwri (Diwygio) (Ymadael â'r UE) 2020 ("Rheoliadau 2020") yn diddymu'r ddeddfwriaeth bresennol ar fercwri ac yn llenwi bylchau deddfwriaethol. Er ei fod yn bennaf yn gweithredu'r ymrwymadau yng Nghonfensiwn Minamata, mae Rheoliad yr UE yn mynd ymhellach mewn sawl maes, gan gynnwys cyfyngiadau ar ddefnyddio amalgam deintyddol ac allforio mercwri.

### Offerynnau Ewropeaidd sy'n Uniongyrchol Gymwys a ddiwygir gan Reoliadau 2020

- Rheoliad (EU) 2017/852 Senedd Ewrop a'r Cyngor ar fercwri a diddymu Rheoliad (EC) Rhif 1102/2008

#### Is-ddeddfwriaeth a ddiwygir

- Rheoliadau Rheoli Mercwri (Gorfodi) 2017

- Rheoliadau'r Amgylchedd a Bywyd Gwyllt (Swyddogaethau Deddfwriaethol) (Ymadael â'r UE) 2019 ("Rheoliadau 2019")

#### Is-ddeddfwriaeth a ddi-rymir

- Mae Rheoliadau Rheoli Mercwri (Diwygio) (Ymadael â'r UE) 2019 wedi'u dirymu.

### **Unrhyw effaith y gall yr OS ei chael ar gymhwysedd deddfwriaethol y Senedd a/neu gymhwysedd gweithredol Gweinidogion Cymru**

Nid oes unrhyw effaith ar gymhwysedd deddfwriaethol y Senedd. O dan Reoliadau 2019, trosglwyddir swyddogaethau Comisiwn yr UE i Weinidogion ar gyfer meysydd o fewn cymhwysedd. Fel arall, mae Rheoliadau 2020 yn darparu ar gyfer y swyddogaethau hyn i'w harfer gan yr Ysgrifennydd Gwladol mewn perthynas â Chymru, ond gyda chydysyniad Gweinidogion Cymru yn unig.

Mae gan effaith y swyddogaethau cydamserol a geir yn yr Offeryn Statudol hwn botensial i gynnwys y gofynion cydsyniad yn Atodlen 7B i Ddeddf Llywodraeth Cymru ac felly gallant gyfyngu o bosibl ar gymhwysedd y Senedd yn y dyfodol. Fodd bynnag, rydym yn cynnal trafodaethau gyda Swyddfa Ysgrifennydd Gwladol Cymru mewn perthynas â Gorchymyn a.109 i ddiwygio Atodlen 7B er mwyn negyddu'r cyfyngiad posibl ar gymhwysedd y Senedd yn y dyfodol.

### **Diben y diwygiadau**

Mae offeryn statudol a wneir dan y weithdrefn gadarnhaol yn mynd i'r afael â gwendidau yng nghyfraith yr UE a ddargedwir rhag gweithredu'n effeithiol a diffygion eraill sy'n deillio o ymadawiad y DU â'r UE.

Mae Rheoliadau 2019 yn gwneud sawl cywiriad i gyfraith yr UE a ddargedwir, sy'n ymwneud â swyddogaethau deddfwriaethol. Maent yn angenrheidiol i ddiogelu'r ddeddfwriaeth sy'n sail i'r meysydd a nodir uchod ac isod. Maent hefyd yn sicrhau bod deddfwriaeth yr UE yn parhau i weithio ar draws y DU ar ôl i'r DU ymadael â'r UE. Mae'n cyfuno newidiadau i swyddogaethau deddfwriaethol sy'n defnyddio'r weithdrefn penderfyniad cadarnhaol.

Mae Rheoliadau 2020 yn gwneud cywiriadau i fynd i'r afael â diffygion yn y ddeddfwriaeth i alluogi'r ddeddfwriaeth i weithio ar ôl diwedd y cyfnod pontio. Mae Rheoliadau 2020 yn newid pwy yw'r cyrff sy'n cyflawni'r swyddogaethau penodedig o natur ddeddfwriaethol. Maent hefyd yn trosi gweithdrefnau'r UE i weithdrefnau Prydain Fawr, fel y bo'n briodol, yn yr un ffordd a gyflawnwyd hyn yn flaenorol gan reoliadau 2019 y maent yn eu disodli, ond dim ond mewn perthynas â Phrydain Fawr y tro hwn.

### Mae Rheoliadau 2020 yn diwygio:

Er mwyn galluogi'r DU a'r Aelod-wladwriaethau eraill i ymrwymo i'r Confensiwn, mabwysiadodd yr UE a'i Aelod-wladwriaethau Reoliad (EU) 2017/852 ar fercwri, a ddaeth i rym ar 1 Ionawr 2018. Mae Rheoliadau Rheoli Mercwri (Diwygio) (Ymadael â'r UE) 2020 ("Rheoliadau 2020") yn diddymu'r deddfwriaeth bresennol ar fercwri ac yn llenwi bylchau deddfwriaethol. Er ei fod yn bennaf yn gweithredu'r ymrwymadau yng Nghonfensiwn Minamata, mae Rheoliad yr UE yn mynd ymhellach mewn sawl maes, gan gynnwys cyfyngiadau ar ddefnyddio amalgam deintyddol ac allforio mercwri.

Mae Rheoliad (EU) 2017/682 Senedd Ewrop a'r Cyngor ar fercwri yn sefydlu mesurau ac amodau yn ymwneud â:

- defnyddio, storio a masnachu mercwri, cyfansoddion mercwri a chymysgeddau mercwri;
- gweithgynhyrchu, defnyddio a masnachu cynhyrchion y mae mercwri wedi'i ychwanegu atynt;
- rheoli gwastraff mercwri er mwyn diogelu iechyd pobl a'r amgylchedd ar lefel uchel rhag allyriadau anthropogenig; a
- mercwri a chyfansoddion mercwri sy'n cael eu rhyddhau.

Mae pŵer gan y Comisiwn i bennu ffurfiau i'w defnyddio ar gyfer cyfyngiadau allforio a mewnforio; gosod gofynion technegol ar gyfer storio mercwri, cyfansoddion mercwri a chymysgeddau mercwri dros dro mewn ffordd amgylcheddol ddiogel; ehangu'r cyfnod a ganiateir ar gyfer storio gwastraff mercwri dros dro; a diwygio Atodiadau 1 i 4 i'r Rheoliad yn unol â'r cytundebau rhyngwladol. Mae'r offeryn yn caniatáu i'r swyddogaethau hyn gael eu trosglwyddo i'r Ysgrifennydd Gwladol, Gweinidogion Cymru a Gweinidogion yr Alban i'w harfer yn eu hardaloedd priodol. Gall yr Ysgrifennydd Gwladol arfer y swyddogaethau ar ran Gweinyddiaeth Ddatganoledig gyda'i gydsyniad.

Mae Rheoliadau 2020 a'r Memorandwm Esboniadol cysylltiedig sy'n nodi effaith y diwygiadau i'w gweld yma:

<https://www.legislation.gov.uk/ukdsi/2020/9780348213188>

### **Pam y rhoddwyd cydsyniad**

Mae cydsyniad wedi'i roi i Lywodraeth y DU wneud y cywiriadau hyn o ran, ac ar ran, Cymru am resymau'n ymwneud ag effeithlonrwydd a hwylustod. Mae'r diwygiadau wedi'u hystyried yn llawn ac nid oes gwahaniaeth o ran polisi. Mae'r diwygiadau hyn yn sicrhau y bydd y llyfr statud yn parhau i weithio ar ôl ymadawiad y DU â'r UE.





**GWEINIDOGION Y DU YN GWEITHREDU MEWN MEYSYDD  
DATGANOLEDIG**

**189 - Rheoliadau Rheoli Mercwri (Diwygio) (Ymadael â'r UE) 2020**  
*Gosodwyd yn Senedd y DU: 19 Hydref 2020*

**Sifftio**

Yn destun gwaith sifftio yn Senedd y DU?	Na
Y weithdrefn:	Cadarnhaol drafft
Dyddiad trafod gan Bwyllgor Offerynnau Statudol Ewropeaidd Tŷ'r Cyffredin	Amherthnasol
Dyddiad trafod gan Bwyllgor Craffu ar Is-ddeddfwriaeth Tŷ'r Arglwyddi	Amherthnasol
Dyddiad y daw'r cyfnod sifftio i ben yn Senedd y DU	Amherthnasol
Datganiad ysgrifenedig o dan Reol Sefydlog 30C:	Papur 97
Memorandwm Cydsyniad Offeryn Statudol (SICM) o dan Reol Sefydlog 30A (oherwydd eu bod yn diwygio deddfwriaeth sylfaenol)	Ddim yn ofynnol
<b>Gweithdrefn graffu</b>	
Canlyniad y broses sifftio	Amherthnasol
Y weithdrefn	Cadarnhaol drafft
Dyddiad trafod gan y Cydbwyllgor ar Offerynnau Statudol	Anhysbys
Dyddiad trafod gan Bwyllgor Offerynnau Statudol Ewropeaidd Tŷ'r Cyffredin	Anhysbys
Dyddiad trafod gan Bwyllgor Craffu ar Is-ddeddfwriaeth Tŷ'r Arglwyddi	Anhysbys

**Cefndir**

Cynigir bod y Rheoliadau hyn yn cael eu gwneud gan Lywodraeth y DU yn unol ag adrannau 8(1) ac 8C(1) o Ddeddf yr Undeb Ewropeaidd (Ymadael) 2018 a pharagraff 21 o Atodlen 7 i'r Ddeddf hon.

**Crynodeb**

Mae'r Rheoliadau hyn yn dirymu deddfwriaeth bresennol ynghylch mercwri ac yn llenwi bylchau deddfwriaethol. Mae Confensiwn Minamata ar fercwri, y mae'r DU yn rhan ohono, yn gytuniad gan y Cenhedloedd Unedig sy'n bwriadu diogelu iechyd pobl a'r amgylchedd rhag effeithiau negyddol dod i gysylltiad â mercwri. Er mwyn galluogi'r DU a'r Aelod-wladwriaethau eraill i ymrwymo i'r Confensiwn, mabwysiadodd yr UE a'i Aelod-wladwriaethau Reoliad (EU) 2017/852 ("Rheoliad yr UE") ar fercwri. Mae Rheoliad yr UE yn gweithredu'r ymrwymïadau yng Nghonfensiwn

Minamata, gan fynd ymhellach mewn sawl maes, gan gynnwys cyfyngiadau ar ddefnyddio amalgam deintyddol ac allforio mercwri.

Diben y Rheoliadau hyn yw gwneud y cywiriadau angenrheidiol i Reoliad yr UE er mwyn galluogi iddo barhau i gael ei ddefnyddio fel cyfraith yr UE a ddargedwir ar ôl dyddiad cwblhau'r cyfnod gweithredu. Mae'r rheoliadau hyn hefyd yn gwneud diwygiadau at ddibenion gweithredu Protocol Iwerddon/Gogledd Iwerddon.

Caiff Rheoliadau Rheoli Mercwri (Gorfodi) 2017 a Rheoliadau'r Amgylchedd a Bywyd Gwyllt (Swyddogaethau Deddfwriaethol) (Ymadael â'r UE) 2019 eu diwygio gan y Rheoliadau hyn. Caiff Rheoliadau Rheoli Mercwri (Diwygio) (Ymadael â'r UE) 2019 eu dirymu ganddynt.

### **Datganiad gan Lywodraeth Cymru**

Mae'r cynghorwyr cyfreithiol yn cytuno â'r datganiad a osodwyd gan Lywodraeth Cymru, dyddiedig 20 Hydref, ynghylch effaith y Rheoliadau hyn.

### **Y Cytundeb Rhynglywodraethol ar Fil yr Undeb Ewropeaidd (Ymadael)**

Mae'r crynodeb uchod a chynnwys y Memorandwm Esboniadol ar y Rheoliadau hyn yn cadarnhau eu heffaith.

Ym marn y cynghorwyr cyfreithiol, nid oes unrhyw faterion sylweddol yn codi o dan baragraff 8 o'r Memorandwm ar Fil yr Undeb Ewropeaidd (Ymadael) a sefydlu fframweithiau cyffredin mewn perthynas â'r Rheoliadau hyn.



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## DATGANIAD YSGRIFENEDIG GAN LYWODRAETH CYMRU

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**TEITL** Rheoliadau REACH etc. (Diwygio etc.) (Ymadael â'r UE) 2020

**DYDDIAD** 20 Hydref 2020

**GAN** Rebecca Evans AS, Y Gweinidog Cyllid a'r Trefnydd

**OS a osodwyd yn Senedd y DU, sy'n diwygio is-ddeddfwriaeth mewn maes datganoledig**

**Rheoliadau REACH etc. (Diwygio etc.) (Ymadael â'r UE) 2020**

Mae Rheoliadau 2020 yn diwygio'r ddeddfwriaeth ganlynol:

### Deddfwriaeth yr UE

- Rheoliad (EC) Rhif 1907/2006 Senedd Ewrop a'r Cyngor dyddiedig 18 Rhagfyr 2006 ynglŷn â Chofrestru, Gwerthuso, Awdurdodi a Chyfyngu ar Gemegion a sefydlu Asiantaeth Cemegion Ewropeaidd (REACH).

### Deddfwriaeth Ddomestig

- Rheoliadau REACH etc. (Diwygio etc.) (Ymadael â'r UE) 2019;
- Rheoliadau REACH etc. (Diwygio etc.) (Ymadael â'r UE) (Rhif 3) 2019;
- Rheoliadau Gorfodi REACH 2008 (Gogledd Iwerddon yn unig)

**Unrhyw effaith y gall yr OS ei chael ar gymhwysedd deddfwriaethol y Senedd a/neu ar gymhwysedd gweithredol Gweinidogion Cymru**

Nid yw Rheoliadau 2020 yn cael unrhyw effaith ar gymhwysedd deddfwriaethol y Senedd nac ar gymhwysedd gweithredol Gweinidogion Cymru.

Mae'r diwygiadau'n sicrhau bod y Deyrnas Unedig (DU) yn bodloni ei rhwymedigaethau o dan y Protocol ar Iwerddon/Gogledd Iwerddon i'r cytundeb ymadael ("y Protocol") ac i roi'r Protocol ar sail gyfreithiol mewn perthynas â'r Rheoliadau ar Gofrestru, Gwerthuso, Awdurdodi a Chyfyngu ar Gemegion ("REACH"), fel sy'n ofynnol ar ddiwedd y Cyfnod

Gweithredu (IP). Mae'r offeryn hefyd yn darparu ar gyfer parhau i gael mynediad i nwyddau Gogledd Iwerddon ar gyferi marchnad Prydain Fawr .

### **Diben y diwygiadau**

Mae Rheoliadau 2020 yn gwneud diwygiadau i Reoliadau REACH etc. (Diwygio etc.) (Ymadael â'r UE) 2019, Rheoliadau REACH etc. (Diwygio etc.) (Ymadael â'r UE) (Rhif 3) 2019 a Rheoliadau Gorfodi REACH 2008 (Gogledd Iwerddon yn unig).

Mae'r Protocol yn mynnu bod Rheoliad (EC) Rhif 1907/2006 Senedd Ewrop a'r Cyngor ar 18 Rhagfyr 2006, sy'n ymwneud ag REACH a sefydlu Asiantaeth Cemegion Ewropeaidd, yn parhau i fod yn gymwys i Ogledd Iwerddon. Felly, mae angen cywiriadau er mwyn diffinio'n gywir faint y gyfundrefn cemegion domestig newydd a sicrhau bod gan asiantaethau gorfodi Prydain Fawr y pŵer i gymhwyso cyfundrefn REACH ddomestig yn gywir ar ddiwedd y IP.

Mae Rheoliadau 2020 a'r Memorandwm Esboniadol cysylltiedig sy'n nodi manylion tarddiad, diben ac effaith y y diwygiadau ar gael yma:

<https://www.legislation.gov.uk/ukdsi/2020/9780348213300>

### **Pam y rhoddwyd cydsyniad**

Rhoddwyd cydsyniad i Lywodraeth y DU wneud y cywiriadau hyn o ran, ac ar ran, Cymru am resymau'n ymwneud ag effeithlonrwydd, hwylustod ac oherwydd natur dechnegol y diwygiadau. Mae angen y rhan fwyaf o'r gwelliannau i sicrhau bod busnesau Gogledd Iwerddon yn gallu masnachu o fewn marchnad Prydain Fawr ac i sicrhau nad yw Gogledd Iwerddon yn destun rheoleiddio dwbl. Y gwelliannau sy'n weddill yw gwneud cyfundrefn REACH newydd Prydain Fawr yn fwy hylaw i fusnesau, yn enwedig busnesau bach sy'n masnachu mewn tunelli is o gemegion risg is. Mae'r gwelliannau wedi'u hystyried yn llawn; ac nid oes gwahaniaeth mewn polisi. Diben y diwygiadau hyn yw sicrhau bod y llyfr statud yn parhau i weithio ar ôl i'r DU ymadael â'r UE. Mae hyn yn unol â dull y Llyw

**GWEINIDOGION Y DU SY'N GWEITHREDU MEWN MEYSYDD  
DATGANOLEDIG**

**190 - Rheoliadau REACH etc. (Diwygio etc.) (Ymadael â'r UE) 2020**

*Dyddiad gosod yn Senedd y DU: 19 Hydref 2020*

**Sifftio**

Yn destun gwaith sifftio yn Senedd y DU?	Nac ydynt
Y weithdrefn	Cadarnhaol drafft
Dyddiad trafod gan Bwyllgor Offerynnau Statudol Ewropeaidd Tŷ'r Cyffredin	Amherthnasol
Dyddiad trafod gan Bwyllgor Craffu ar Is-ddeddfwriaeth Tŷ'r Arglwyddi	Amherthnasol
Dyddiad y daw'r cyfnod sifftio i ben yn Senedd y DU	Amherthnasol
Datganiad ysgrifenedig o dan Reol Sefydlog 30C:	Papur 99
Memorandwm Cydsyniad Offeryn Statudol (SICM) o dan Reol Sefydlog 30A (oherwydd eu bod yn diwygio deddfwriaeth sylfaenol)	Nid yw'n ofynnol

**Gweithdrefn graffu**

Canlyniad y broses sifftio	Amherthnasol
Y weithdrefn	Cadarnhaol drafft
Dyddiad trafod gan y Cydbwyllgor ar Offerynnau Statudol	Anhysbys
Dyddiad trafod gan Bwyllgor Offerynnau Statudol Tŷ'r Cyffredin	Anhysbys
Dyddiad trafod gan Bwyllgor Craffu ar Is-ddeddfwriaeth Tŷ'r Arglwyddi	Anhysbys

**Cefndir**

Bwriedir i'r Rheoliadau hyn gael eu gwneud gan Lywodraeth y DU yn unol ag adrannau 8(1) ac 8C(1) o Ddeddf yr Undeb Ewropeaidd (Ymadael) 2018, a pharagraff 21 o Atodlen 7 iddi.

**Crynodeb**

Mae'r Rheoliadau hyn yn diwygio deddfwriaeth yr UE a deddfwriaeth ddomestig sy'n ymwneud â Chofrestru, Gwerthuso, Awdurdodi a Chyfyngu ar Gemegion ("REACH"). Diben y diwygiadau yw helpu i sicrhau bod y DU yn bodloni ei rhwymedigaethau o dan y Protocol ar Iwerddon/Gogledd Iwerddon i'r cytundeb ymadael fel y bydd cyfundrefn REACH yr UE yn parhau i weithredu yng Ngogledd Iwerddon ar ôl 31 Rhagfyr 2020.

Mae'r Rheoliadau hefyd yn darparu ar gyfer parhau i gael mynediad at nwyddau Gogledd Iwerddon ar gyfer marchnad Prydain Fawr, gan

gynnwys proses hysbysu ar gyfer pan roddir sylweddau ar farchnad Prydain Fawr ac amserlenni cymwys ar gyfer hysbysiadau.

### **Datganiad gan Lywodraeth Cymru**

Mae'r Cynghorwyr Cyfreithiol wedi gwneud y sylwadau a ganlyn mewn perthynas â datganiad Llywodraeth Cymru, dyddiedig 20 Hydref 2020, am effaith y Rheoliadau hyn:

- Mae'r datganiad yn cynnwys crynodeb cyfyngedig o'r Rheoliadau a'r hyn y maent yn ei wneud yn ymarferol. Mae Memorandwm Esboniadol y Rheoliadau yn nodi'r canlynol:

*"These Regulations create two versions of the REACH Enforcement Regulations 2008. One will apply to Great Britain, including to offshore installations other than those in the UK territorial sea adjacent to Northern Ireland. The other will apply to Northern Ireland, including to offshore installations in the UK territorial sea adjacent to Northern Ireland. These Regulations also provide for Northern Irish entities to be able to exercise certain functions under the GB REACH Regulation. Related GB REACH offences will be applied to Northern Ireland by the Northern Irish version of the REACH Enforcement Regulations."*

Mae'r Memorandwm Esboniadol yn mynd ymlaen i gyfeirio at y ffordd y bydd gan Ogledd Iwerddon fynediad at farchnad Prydain Fawr ac at y terfynau amser cymwys ar gyfer cyflwyno gwybodaeth am fewnforio cemegion i Brydain Fawr.

Ni roddir manylion yn y datganiad ynghylch y newidiadau a wneir gan y Rheoliadau mewn perthynas â mewnforio cemegion o Ogledd Iwerddon i Brydain Fawr yn dilyn diwedd y cyfnod pontio a pha effaith uniongyrchol neu anuniongyrchol, os o gwbl, y bydd newidiadau o'r fath yn ei chael ar y diwydiant cemegion yng Nghymru. Mae'r Cynghorwyr Cyfreithiol yn argymhell ceisio eglurhad gan Lywodraeth Cymru ynghylch pa effaith uniongyrchol neu anuniongyrchol y bydd y Rheoliadau hyn yn ei chael ar Gymru.

- Mae datganiad Llywodraeth Cymru yn cadarnhau nad yw'r Rheoliadau hyn yn effeithio ar gymhwysedd deddfwriaethol y Senedd na chymhwysedd gweithredol Gweinidogion Cymru.

### **Cytundeb Rhynglywodraethol ar Fil yr Undeb Ewropeaidd (Ymadael)**

Mae'r crynodeb uchod a chynnwys y Memorandwm Esboniadol i'r Rheoliadau hyn yn cadarnhau eu heffaith.

Nid yw'r Cynghorwyr Cyfreithiol o'r farn bod unrhyw faterion arwyddocaol yn codi o dan baragraff 8 o'r Memorandwm ar Fil yr Undeb Ewropeaidd

(Ymadael) a Sefydlu Fframweithiau Cyffredin mewn perthynas â'r Rheoliadau hyn.



## Cytundeb Cysylltiadau Rhyngsefydliadol rhwng y Senedd a Llywodraeth Cymru

### Adroddiad Blynyddol 2019-2020

Yn gynnar 2019 cymeradwyodd Senedd Cymru a Llywodraeth Cymru gytundeb cysylltiadau rhyngsefydliadol. Mae'r cytundeb<sup>1</sup> yn cynnwys y canlynol:

- rhoi'r wybodaeth ddiweddaraf i'r Senedd am y cysylltiadau rhynglywodraethol ffurfiol gan gynnwys fforymau gweinidogol; (a chyfarfodydd rhynglywodraethol ffurfiol ar lefel weinidogol, concordatiau, cytundebau a memoranda cyd-ddealltwriaeth); a
- darparu adroddiad blynyddol sy'n crynhoi'r gwaith cysylltiadau rhynglywodraethol a wnaed yn ystod y flwyddyn.

Mae'r adroddiad blynyddol hwn yn cwmpasu'r cyfnod rhwng mis Ebrill 2019 a mis Mawrth 2020. Mae Llywodraeth Cymru yn diweddarau'r Senedd yn rheolaidd yn y cyfarfodydd llawn ac yn y pwyllgorau a thrwy ddatganiadau a gohebiaeth. Mae ein gohebiaeth, sy'n rhoi'r wybodaeth ddiweddaraf i'r Aelodau am gyfarfodydd a chytundebau rhynglywodraethol, ar gael ar wefan y Senedd.<sup>2</sup>

### Crynodeb

Y cyfrwng ffurfiol ar gyfer unrhyw gyfathrebu rhynglywodraethol yw Cyd-bwyllgor y Gweinidogion, nad yw wedi cyfarfod mewn cyfarfod llawn ers mis Rhagfyr 2018.

Mae gennym berthynas gref â'r llywodraethau datganoledig eraill, ac rydym yn croesawu'n fawr y ffaith i Weithrediaeth Gogledd Iwerddon ddychwelyd ar ddechrau 2020.

Mae lefelau'r ymgysylltu a'r ymwneud â Llywodraeth y DU yn amrywio.

### Cysylltiadau Rhynglywodraethol

#### *Cyfansoddiad*

Yn 2019, cyhoeddwyd *Diwygio Ein Hundeb*<sup>3</sup>, sy'n cyfrannu at y ddadl am ddyfodol hyfw a deinamig i'r DU.

Rydym wedi parhau i gyflwyno achos cadarn dros gael pwerau pellach mewn meysydd strategol bwysig, gan gynnwys Cyfiawnder (a gefnogwyd gan y Comisiwn ar Gyfiawnder yng Nghymru<sup>4</sup>).

<sup>1</sup> <https://senedd.wales/laid%20documents/cr-ld12097/cr-ld12097-w.pdf>

<sup>2</sup> <https://busnes.senedd.cymru/mglIssueHistoryHome.aspx?lId=25602>

<sup>3</sup> <https://llyw.cymru/sites/default/files/publications/2019-10/diwygio-ein-hundeb-cydllywodraethu-yn-y-du.pdf>

<sup>4</sup> <https://llyw.cymru/adroddiad-comisiwn-ar-gyfiawnder-yng-nghymru>

Gwnaed llawer iawn o waith i ddylanwadu ar yr adolygiad o gysylltiadau rhynglywodraethol ac i ddatblygu'r model cydwodraethu rhwng gweinyddiaethau'r DU<sup>5</sup>.

Fe wnaeth y Cyngor Prydeinig-Gwyddelig, yn ei Uwchgynadledau a gynhaliwyd gan Lywodraeth y DU a Llywodraeth Iwerddon<sup>6</sup>, yn eu tro, ac ymhlith eraill y cyfarfod Gweinidogol ar bolisi'r Blynyddoedd Cynnar a gynhaliwyd gan Lywodraeth Cymru yng Nghaerdydd<sup>7</sup>, ddarparu fforwm pwysig ar gyfer trafodaethau. Credwn y dylai'r Cyngor Prydeinig-Gwyddelig dyfu yn ei bwysigrwydd dros amser yng ngoleuni'r newidiadau sydd ar y gweill yn y cyd-destun gwleidyddol ehangach.

### *Pontio Ewropeaidd*

Estynnwyd y dyddiad ar gyfer ymadawiad y DU â'r UE dair gwaith (29 Mawrth, 12 Ebrill a 31 Hydref), ac fe'i cadarnhawyd ar gyfer 31 Ionawr 2020.

Gwrthododd y Senedd, yn ogystal â Senedd yr Alban a Chynulliad Gogledd Iwerddon, roi cydsyniad i Ddeddf yr Undeb Ewropeaidd (Y Cytundeb Ymadael) 2020. Aeth Llywodraeth y DU ymlaen â'r ddeddfwriaeth serch hynny, gan nodi eu bod yn amgylchiadau unigol, penodol ac eithriadol.

Parhawyd i gefnogi buddiannau Cymru, fel y nodir yn ein dogfennau polisi, yn fwyaf diweddar yn *Y Berthynas rhwng y DU a'r UE yn y dyfodol: blaenoriaethau negodi i Gymru*<sup>8</sup>. Mae ein cynigion yn parhau i nodi'r hyn y credwn fyddai'r canlyniad gorau ar gyfer Cymru o fewn cyd-destun y negodiadau a gynhaliwyd – yn fwyaf diweddar mewn cysylltiad â'r Datganiad Gwleidyddol y cytunwyd arno rhwng Llywodraeth y DU a'r UE.

Drwy ein cysylltiadau rhynglywodraethol, ceisiwyd sicrhau bod gennym rôl glir yn y negodiadau â'r Ewropeaidd, a chytundebau masnach yn y dyfodol. Roeddem yn ymwneud yn helaeth â sicrhau marchnad fewnol agored yn y DU a fframweithiau cyffredin mewn meysydd lle y mae penderfyniadau'n cael eu gwneud ar y cyd.

Buom yn gweithio i baratoi ar gyfer ymadael heb gytundeb. Roedd ein paratodau'n cynnwys datblygu'r ddeddfwriaeth angenrheidiol i sicrhau llyfr statud gweithredol ar y diwrnod ymadael (gan gwblhau tua 50 o Offerynnau Statudol Cymru a rhoi cydsyniad i fwy na 150 o Offerynnau Statudol y DU), gweithio gyda Llywodraeth y DU ar brosiectau parodrwydd gweithredol, argyfyngau sifil posibl, a phrosiectau sy'n benodol i Gymru yn ychwanegol at y gwaith ar fesurau ledled y DU.

### *Negodiadau Masnach y DU/UE a Gweddill y Byd*

Nid oes gan Lywodraeth Cymru rôl ffurfiol o gwbl yn y negodiadau ar y berthynas rhwng y DU a'r UE yn y dyfodol. Mae cyfarfodydd Cyd-bwyllgor y Gweinidogion (Negodiadau'r UE) wedi parhau, ond mae gwaith y pwyllgor hwnnw yn bell o'r cylch

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<sup>5</sup> <https://www.gov.uk/government/publications/draft-principles-for-intergovernmental-relations>

<sup>6</sup> <https://www.britishirishcouncil.org/bic/summits>

<sup>7</sup> <https://www.britishirishcouncil.org/sites/default/files/communiqu%C3%A9s/Early%20Years%20Policy%20Cardiff%20%20Ministerial-%20Communique.pdf>

<sup>8</sup> <https://llyw.cymru/y-berthynas-rhwng-y-du-ar-ue-yn-y-dyfodol>

gorchwyl, a oedd yn cynnwys: goruchwyllo'r negodiadau a cheisio dod i gytundeb ar flaenoriaethau negodi. Er gwaethaf hyn, rydym yn parhau i fwydo ein blaenoriaethau i'r trafodaethau ac yn dadlau'r achos dros y math o berthynas a fydd, ar sail y dystiolaeth, er budd gorau Cymru yn y dyfodol.

Yn wahanol i'r gwaith ymgysylltu ar y berthynas rhwng y DU a'r UE yn y dyfodol, mae'r berthynas â'r Adran Masnach Ryngwladol ar negodiadau Gweddill y Byd yn llawer mwy adeiladol. Cynhaliwyd tri chyfarfod o'r Fforwm Masnach Gweinidogol ers ei sefydlu'n gynharach yn y flwyddyn a chyfarfodydd Gweinidogol rheolaidd ddwywaith y flwyddyn. Cawsom gyfle i roi sylwadau ar y mandadau mewn meysydd lle mae cymhwysedd wedi'i ddatganoli, ac rydym hefyd yn cael gweld a rhoi sylwadau ar y testun cyfreithiol sy'n cael ei gyflwyno yn y negodiadau.

### *Cyllid*

Yng nghyd-destun dull mympwyol Llywodraeth y DU o ymdrin â chyllid cyhoeddus, ac ymadawiad anhrefnus y DU â'r UE, rydym wedi galw'n gyson am sicrwydd yng nghyfarfodydd y Gweinidogion Cyllid na fyddai Cymru yn derbyn ceiniog yn llai nag y byddem wedi'i ddisgwyl o fewn yr UE. Rydym wedi defnyddio cyfarfodydd pedairochrog y Gweinidogion Cyllid i ganolbwyntio ar faterion brys, megis llifogydd, lle rydym wedi pwysu ar Lywodraeth y DU am yr angen i gael cyllid ychwanegol er mwyn ymdrin â'r effaith y mae'n ei chael ar ein cymunedau.

Mae pandemig Covid-19 wedi dwysáu'r berthynas, wrth i gyfarfodydd y Gweinidogion Cyllid gael eu cynnal yn fwy aml, gyda ffocws ar yr ymateb cyllidol i'r pandemig gan gynnwys Cynllun Cadw Swyddi drwy gyfnod y Coronafeirws a phhecyn Hunangyflogaeth Llywodraeth y DU. Drwy gydol y cyfnod, rydym wedi parhau i bwysu ar Lywodraeth y DU am eglurder ar ei chyhoeddiadau cyllid, y cynlluniau ar gyfer y Gyllideb a'r Adolygiad Cynhwysfawr o Wariant gan gynnwys pwysu am gael Datganiad Polisi Cyllid cryfach. Mae'n hanfodol ein bod yn cael yr eglurder hwn, er mwyn ein galluogi i gynllunio ar gyfer y dyfodol yn seiliedig ar anghenion pobl Cymru.

### *Yr Economi, Ynni a'r Newid yn yr Hinsawdd*

Mewn perthynas ag Adran Busnes, Ynni a Strategaeth Ddiwydiannol Llywodraeth y DU (BEIS), nid oedd cysylltiadau rhynglywodraethol a chydweithio wedi'u sefydlu'n gadarn, ac achosodd hyn broblemau o ran sicrhau ein bod yn chwarae rhan lawn wrth ddatblygu'r ymateb economaidd, ein gwydnwch busnes, ac wrth sicrhau ein bod yn parhau i elwa o gyllid i gefnogi busnesau, ymchwil ac arloesi. Gwnaed cynnydd drwy sefydlu cyfarfodydd pedairochrog Gweinidogol yn cwmpasu busnes a diwydiant, ac ynni a'r newid yn yr hinsawdd yn y drefn honno, ond nid oedd y rhain yn ddulliau difrifol o weithredu, gyda chyfarfodydd yn aml yn cael eu gohirio a'u canslo. Fodd bynnag, cafwyd ymgysylltu cyson rhwng swyddogion mewn perthynas â'r agweddau ar ymadawiad y DU â'r UE oedd yn ymwneud ag ynni a'r newid yn yr hinsawdd, a chydweithio agos yn enwedig ar Gynllun Masnachu Allyriadau arfaethedig y DU. Parhawyd i bwysu ar Weinidogion BEIS i geisio sicrhau cysylltiadau rhynglywodraethol a chydweithio gwell.

## *Sgiliau a Chyflogadwyedd*

Galluogodd ymdrech gyfunol ar draws y pedair gwlad i roi cyhoeddusrwydd i'r neges 'Aros Gartref. Diogelu'r GIG. Achub Bywydau' fel rhan o'r ymateb cychwynnol i'r pandemig Covid-19. Roedd hyn yn cynnwys dull ar y cyd o gefnogi ysgolion, colegau, prifysgolion a darparwyr dysgu eraill i symud i ddysgu ar-lein ac ystyriaeth gychwynnol i arholiadau haf 2020. Mae Llywodraeth Cymru yn gweithio'n agos gyda'r Adran Gwaith a Phensiynau ar bolisi sgiliau a chyflogadwyedd yn ogystal ag ar lefel weithredol, i sicrhau bod gweithgarwch yr Adran yn cyd-fynd â pholisïau a blaenoriaethau Llywodraeth Cymru. Gwelwyd tystiolaeth arbennig o hyn gan y gwaith partneriaeth yn y Rhaglenni Cyflogadwyedd Cymunedau, a'r Grwpiau Ymateb Cyflogaeth Rhanbarthol a ffurfiwyd fel ymateb cyflym i amodau marchnad lafur sy'n gysylltiedig ag ymadawiad y DU â'r UE. Mae cydweithio da yn digwydd rhwng y Ganolfan Byd Gwaith a Cymru'n Gweithio, gyda'r nod o adeiladu gwasanaeth sy'n canolbwyntio ar y cwsmer, a all gyfeirio dinasyddion at y cymorth cyflogadwyedd mwyaf priodol ar gyfer eu hanghenion. Mae'r pandemig Covid-19 wedi cynyddu lefel y cydweithrediad rhwng Llywodraeth Cymru a'r Adran Gwaith a Phensiynau, ac rydym yn awyddus i sicrhau bod ymyriadau a gynllunnir yn gyflym gan Lywodraeth y DU yn ychwanegu gwerth at y ddarpariaeth bresennol, yn hytrach na'i disodli neu ei dyblygu.

Ar hyn o bryd mae Llywodraeth Cymru yn ariannu'r ddarpariaeth addysg a dysgu a llyfrgelloedd yng ngharchardai Cymru drwy Femorandwm Cyd-ddealltwriaeth ar y cyd â Gwasanaeth Carchardai a Phrawf Ei Mawrhydi (HMPPS). Mae'r trefniadau hyn yn galluogi perthynas waith agos a chynhyrchiol gyda HMPPS ac yn caniatáu i Lywodraeth Cymru gysoni'r ddarpariaeth addysg â nifer o bolisïau Llywodraeth Cymru, gan gynnwys y Glasbrintiau Troseddwr Benywaidd a Chyfiawnder Ieuencid, a'n Fframwaith Lleihau Troseddu 2018-23. Rydym hefyd wedi cyflawni yn erbyn nifer o argymhellion yn adolygiad Hanson o Addysg Carcharorion yng Nghymru, gan gynnwys sefydlu Grŵp Rhanddeiliaid Dysgu Troseddwr, mewn cydweithrediad â HMPPS.

## *Addysg*

Cynhaliwyd sawl cyfarfod pedairochrog Gweinidogol i drafod materion sy'n effeithio ar bortffolio'r Gweinidog Addysg. Roedd y pynciau a drafodwyd yn cynnwys dyfodol y cronfeydd strwythurol, parhau i gymryd rhan/trefniadau domestig amgen ar gyfer rhaglenni'r UE (Erasmus, Horizon), ffioedd myfyrwyr a mewnfudo.

Ategwyd hyn gan alwadau ffôn ad hoc i sefydlu cydberthnasau newydd gyda Gweinidog Addysg a Gweinidog Prifysgolion Llywodraeth y DU.

## *Yr Amgylchedd, Amaethyddiaeth, Bwyd*

Ar lefel Weinidogol, parhaodd y berthynas ag Adran yr Amgylchedd, Bwyd a Materion Gwledig Llywodraeth y DU (Defra) i fod yn gadarnhaol drwy gydol y cyfnod hwn. Cynhaliwyd cyfarfodydd Grŵp Rhyng-Weinidogol yr Amgylchedd, Bwyd a Materion Gwledig (EFRA) yn fwy rheolaidd, a chyfarfu'r Fforwm Manwethwyr, sy'n cynnwys manwerthwyr bwyd, Defra a Gweinidogion Llywodraethau datganoledig, i drafod materion yn ymwneud â'r gadwyn cyflenwi bwyd a manwerthu ledled y DU.

Yn gyffredinol, roedd y berthynas waith â Defra ar ein paratodau ar gyfer ymadael â'r Undeb Ewropeaidd yn gadarnhaol. Datblygwyd dull cydweithredol yn gynnar yn y broses i weithio ar feysydd blaenoriaeth, er bod faint o wybodaeth a rennir yn amrywio a'i bod weithiau'n brin neu'n cyrraedd ar y funud olaf. Parhaodd y cydweithio hwn i'r cyfnod pontio.

### *Iechyd*

Roedd trafodaethau ar lefel Weinidogol yn cynnwys ymgysylltiad adeiladol ar y cyfan ar amrywiaeth o faterion yn ymwneud ag ymadawiad y DU â'r UE. Roedd y rhain yn cynnwys trefniadau paroddrwydd o ran meddyginiaethau, dyfeisiau meddygol a defnyddiau traul clinigol, sianelau cludo nwyddau a mewnfario, statws preswlydd sefydlog ac effeithiau ar y gweithlu (a oedd hefyd yn cwmpasu polisi pensiynau yn gynnar yn 2020), paroddrwydd deddfwriaethol a gofal iechyd cyfatebol, a chyfraniad Cymru i drefniadau dan arweiniad Llywodraeth y DU (er enghraifft ar warysau a chyflenwad meddyginiaethau).

Y tu ôl i hyn, roedd y gwaith rhynglywodraethol ar gyfer ymadael â'r UE yn weithredol ar y cyfan, drwy fforwm cydgysylltu cyflenwadau yn cynnwys swyddogion arweiniol ar lefel Cyfarwyddwr Cyffredinol/Cyfarwyddwr, ac wedi'i ategu gan y gwaith manwl a wnaed drwy gysylltiadau'r GIG, yn enwedig rhwng Public Health England ac Iechyd Cyhoeddus Cymru ar ddiogelu iechyd y cyhoedd, a rhwng NHS Supply Chain a Phartneriaeth Cydwasanaethau GIG Cymru ar stociau wth gefn a pharoddrwydd cyflenwyr.

Tua diwedd mis Mawrth daeth rhywfaint o bwysau i'r amlwg mewn perthynas â'r diffyg cysylltiad rhwng negodiadau masnach (a gadwyd yn ôl i'r DU) a'u goblygiadau polisi mewn meysydd datganoledig; ac wrth i bwysau cyfarpar diogelu personol (PPE) ddod i'r amlwg ddiwedd mis Mawrth, wynebwyd heriau wrth weithredu'r tybiaethau a'r egwyddorion ar draws y DU gyfan, y cytunwyd arnynt er mwyn bod yn barod ar gyfer Brexit.

### **Blaenoriaethau a Rhagolygon**

Mae Llywodraeth Cymru wedi bod ar flaen y gad o ran meddwl cyfansoddiadol yn y DU, gan ddadlau'r achos dros gryfhau datganoli mewn cyhoeddiadau gan gynnwys 'Sicrhau Dyfodol Cymru', 'Brexit a Datganoli', a 'Diwygio ein Hundeb: Cydlywodraethu yn y DU'.

Mae Pontio Ewropeaidd a Covid-19 wedi gwella gwybodaeth a chynyddu dealltwriaeth o rôl Senedd Cymru a Llywodraeth Cymru ym maes llywodraethu'r DU, ac wedi tynnu sylw at yr angen i gryfhau datganoli er mwyn sicrhau dyfodol yr Undeb.

Mae cyd-destun ymadawiad y DU â'r UE a'r pandemig Covid-19 yn gofyn am dull cydweithredol ar draws llywodraethau'r DU yn seiliedig ar gydlywodraethu a pharch rhwng y ddwy ochr, parch cydradd, a chyfranogiad cydradd. Byddwn yn parhau i gynnal yr egwyddorion hyn wrth ymgysylltu â Llywodraeth y DU.

Drwy ein gwaith ar faterion cyfansoddiadol a chysylltiadau rhynglywodraethol byddwn yn parhau i geisio diogelu a chryfhau datganoli, ceisio cael canlyniad

cadarnhaol i'r Cyd-adolygiad o Gysylltiadau Rhynglywodraethol, cael perthynas ddyfnach â'n partneriaid yn y Cyngor Prydeinig-Gwyddelig, a gweithio gyda Llywodraeth y DU a llywodraethau datganoledig lle bynnag y bo modd i ddiwygio ein Hundeb.

**Mark Drakeford AS**

**Prif Weinidog Cymru**

**26 Hydref 2020**



Llywodraeth Cymru  
Welsh Government

## DATGANIAD YSGRIFENEDIG GAN LYWODRAETH CYMRU

**TEITL** Cysylltiadau Rhynglywodraethol

**DYDDIAD** 26 Hydref 2020

**GAN** Mark Drakeford AS, y Prif Weinidog

Heddiw rydym yn cyhoeddi adroddiad blynyddol cyntaf Llywodraeth Cymru ar gysylltiadau rhynglywodraethol, ar gyfer y cyfnod rhwng mis Ebrill 2019 a mis Mawrth 2020.

Mae'r adroddiad hwn yn cyflawni un o'n hymrwymadau yn y cytundeb cysylltiadau rhyngsefydliadol rhwng y Senedd a Llywodraeth Cymru. Roeddwn yn falch o ymrwmo i'r cytundeb hwnnw gan fy mod yn credu ei fod wedi gwella tryloywder y gwaith hwn ar draws portffolios y Gweinidogion a'r broses o graffu ar y gwaith.

Mae'r adroddiad yn ymdrin â chyfnod cythryblus yn ein hanes, gyda chanlyniadau dwys i ddyfodol pawb. Mae'n adlewyrchu heriau parhaus o ran ymgysylltu â Llywodraeth y Deyrnas Unedig. Mae hefyd yn cyfeirio at barhau i ddwysáu'r berthynas gyda'n partneriaid yn y Cyngor Prydeinig-Gwyddelig a llywodraethau datganoledig eraill y DU. Mae hyn yn cynnwys adfer Gweithrediaeth Gogledd Iwerddon, cam i'w groesawu'n fawr sydd wedi bod o fudd nid yn unig i'r bobl y mae'n eu gwasanaethu, ond i Gymru a'r DU gyfan.

Mae ein bywydau wedi newid yn sylweddol ers mis Mawrth, ac mae'r datganiad hwn yn rhoi diweddariad i'r Aelodau ar y datblygiadau ers hynny. Mae'r profiad o arwain Cymru drwy bandemig y coronafeirws wedi cadarnhau bod y dadansoddiad a nodwyd gennym yn 'Diwygio ein Hundeb' – a gyhoeddwyd flwyddyn yn ôl – yn un cywir.

Nodwyd ugain o gynigion a ddylai, yn ein barn ni, fod yn sail i'n trefniadau cyfansoddiadol yn ogystal â'r diwygiadau sy'n angenrheidiol yn ein cred ni. Gwnaethom alw am gonfensiwn cyfansoddiadol i ystyried y materion hyn ymhellach. Mae'r angen i wneud cynnydd ar y diwygiadau hyn wedi cryfhau yn ystod y pandemig.

Mae'n arwyddocaol nad yw strwythurau Cyd-bwyllgor y Gweinidogion wedi'u defnyddio o gwbl yn ystod yr argyfwng. Mae hyn yn arwydd clir nad ydynt yn addas at y diben. Mae'r ymgysylltu wedi bod yn ad hoc ac yn fympwyol.

Yn ystod y cyfnod diweddar, mae'r rhaniad rhwng y pwerau a'r cyfrifoldebau eang sydd gennym mewn berthynas ag iechyd y cyhoedd a gwasanaethau cyhoeddus ar y naill law, a

chyfrifoldebau Llywodraeth y DU dros gyfiawnder ar y llaw arall, yn parhau i adlewyrchu'r holl anfanteision y tynnwyd sylw atynt yn adroddiad Comisiwn Thomas y llynedd.

Rydym wedi creu troseddau i ddiogelu iechyd y cyhoedd, ond mae'r rhain yn cael eu gorfodi gan heddluoedd a llysoedd sydd o dan reolaeth Llywodraeth y DU. Mae Llywodraeth y DU wedi gorfod gwneud penderfyniadau ynghylch sut i fynd i'r afael â'r heriau sy'n wynebu carchardai yn sgil y pandemig ond eto, ni sydd yn gyfrifol am wasanaethau allweddol a ddarperir i garcharorion ac i bobl a ryddheir o'r carchar.

Hoffwn dalu teyrnged i'r gweision cyhoeddus a gyflogir gan y ddwy lywodraeth, ac i'n partneriaid. Maent wedi gweithio'n eithriadol o galed i sicrhau nad yw ein dinasyddion a'n busnesau dan anfantais oherwydd yr ymyl anesmwyth hwnnw yn y setliad datganoli. Gallai ein cyfansoddiad ei gwneud gymaint yn haws pe bai cyfiawnder yn cael ei ddatganoli i Gymru yn yr un modd ag y mae wedi cael ei ddatganoli i'r Alban ac i Ogledd Iwerddon.

Rydym yn parhau i weithio tuag at setliad mwy effeithiol i Gymru, o fewn Undeb cryf. Mae Covid-19 wedi codi ymwybyddiaeth o gyfrifoldebau priodol Llywodraeth y DU a Llywodraeth Cymru. Mae wedi dangos y gall Cymru elwa ar y penderfyniadau a wneir gan ein sefydliadau datganoledig, yn seiliedig ar ein hamgylchiadau, yn ogystal â mesurau ehangach ledled y DU, ac y dylai barhau i wneud hynny. Mae'r gymdeithas o genhedloedd yr ydym wedi gallu rhannu risgiau a manteision gyda hi yn ystod y cyfnod digynsail hwn wedi bod o fudd inni hefyd.

Er mwyn sicrhau'r manteision hynny ar gyfer y dyfodol mae angen diwygio'r DU yn radical, gan ei gwneud yn gymdeithas wirfoddol o genhedloedd lle mae sofraniaeth yn cael ei dal gan bob gwlad ac yna'n cael ei chyfuno at ddibenion cyffredin.

Yn anffodus, nid yw'r berthynas gyda Llywodraeth y DU fel y byddem yn dymuno iddi fod. Mae Llywodraeth y DU yn tanseilio datganoli, weithiau'n ddiotal, ac weithiau'n fwriadol, oherwydd ei hawydd i ganoli pŵer a dileu rhwystrau ym mhob cangen o lywodraeth er mwyn cael arfer y pŵer hwnnw. Mae'r setliad cyfansoddiadol, a gefnogwyd gan bobl Cymru mewn dau refferendwm, dan fygythiad difrifol.

Yn y cyfamser, rydym yn gwneud rhywfaint o gynnydd gyda'r adolygiad ar y cyd o gysylltiadau rhynglywodraethol. Mae'n hanfodol bod yr adolygiad yn cael ei gwblhau a bod cynigion ymarferol ar gyfer diwygio yn cael eu rhoi ar waith.

Mae ein cynigion ar gyfer cydweithio rhynglywodraethol yn cynnwys cynnal cyfres o gyfarfodydd rheolaidd a rhagweladwy gyda phenaethiaid y llywodraeth, Gweinidogion portffolio a swyddogion i ystyried ymateb y DU i'r pandemig. Mae hyn yn cynnwys cydgysylltu'r gwaith o wneud penderfyniadau a chyfathrebu fel bod y cyhoedd yn deall pa reolau sy'n berthnasol iddyn nhw a pham mae rhai cyfyngiadau yr un fath ledled y DU a rhai yn wahanol. Mae arnom angen deialog â Phrif Weinidog y DU ynghylch pam mae rhyddid pobl i symud o Loegr yn bwysicach, yn ei farn ef, na diogelu pobl Cymru rhag y feirws. Dylem fod yn gweithio gyda'n gilydd, a chyda rhanddeiliaid, i ddiogelu'r rhai sy'n byw yng ngwersyll Penalun a gerllaw iddo. Dylem gael rhan lawn yn y broses o ddatblygu Adolygiad Integredig Prif Weinidog y DU a Diogelu'r Amgylchedd, Datblygu a Pholisi Tramor. Mae'r



adolygiad hwnnw yn hanfodol i'n perthynas ryngwladol, yn ogystal â'n heconomi forol, ein hallforwyr a sectorau busnes eraill, a chadernid ein gwasanaethau cyhoeddus a'n cymunedau. Dylem fod yn cael sgwrs aeddfed am ein cynigion, y caniateir ar eu cyfer yn Neddf Llywodraeth Cymru 2006, i'r Senedd gael yr opsiwn o ddefnyddio trethiant i helpu i sicrhau bod tir gwag yn cael ei ddefnyddio mewn modd cynhyrchiol.

Dylem fod yn gweithio gyda'n gilydd i sicrhau bod y gwaith rydym wedi'i wneud gyda'n rhanddeiliaid yn cael ei adlewyrchu yn safbwynt y DU yn y negodiadau gyda'r UE. Safbwynt sydd wirioneddol yn cynrychioli buddiannau Cymru – sydd wedi'i gryfhau gan ein cyfraniad – ond sy'n dal i barchu cyfrifoldeb Llywodraeth y DU am y negodi ei hun. Yn yr un modd, dylem fod yn rhannu'r holl wybodaeth angenrheidiol i sicrha/u ein bod yn gallu helpu ein rhanddeiliaid, yn ogystal â Llywodraeth y DU, i baratoi ar gyfer diwedd y Cyfnod Pontio.

Ni ddylem fod yn cael ein hwynebu â Bil Marchnad Fewnol y DU, sydd yn ddiangen ac sy'n ymosod ar ddatganoli. Yn hytrach, dylem fod yn gweithio gyda'n gilydd yn gyflym i lunio Fframweithiau Cyffredin i roi eglurder i fusnesau a dinasyddion ynghylch pa nwyddau a gwasanaethau y gellir eu gwerthu yng Nghymru ac mewn mannau eraill yn y DU, ar sut y dylai cymhwyster proffesiynol mewn un rhan o'r DU gael ei gydnabod mewn rhan arall o'r wlad, ar gyfundrefn y cytunwyd ar y cyd arni ar gyfer rheoli cymorthdaliadau'r wladwriaeth, ac ar gynigion ar y cyd, wedi'u cynllunio ar y cyd â'n partneriaid yn y sector cyhoeddus, y sector preifat a'r trydydd sector, ar gyfer y Gronfa Ffyniant Gyffredin, er mwyn sicrhau bod buddsoddiad yn cyrraedd y cymunedau hynny sydd â'r angen mwyaf. Dylai penderfyniadau am y materion hyn gael eu gwneud yng Nghymru, nid yn Whitehall.

## **Casgliad**

Mae angen hyblygrwydd a dyfeisgarwch i ddelio ag argyfyngau. Nid yw'r ymgysylltu ledled y DU wedi bod yn ddigon dibynadwy na rheolaidd, ac mae wedi amlygu'r gwendid yn y trefniadau rhynglywodraethol sydd â'r bwriad o gynnal Undeb datganoledig. Ond mae'n bwysig cydnabod y cafwyd enghreifftiau nodedig o gydweithio. Cynhaliwyd 17 o gyfarfodydd COBR (M) a fynychwyd gan Weinidogion y llywodraethau datganoledig. Mae Canghellor Dugiaeth Caerhirfryn wedi cynnull cyfarfodydd ad hoc rhwng y pedair gwlad i rannu profiad a mewnwleidiad wrth ymateb i'r pandemig, a chafwyd cyfarfodydd amlach rhwng pedwar Gweinidog Iechyd y DU.

Mae'r ymgysylltu diweddar hwn wedi dangos y potensial ar gyfer cydweithredu a chydgyssylltu, ond ar yr un pryd mae wedi tanlinellu faint yn fwy effeithiol y gallai ymgysylltu o'r fath fod, gyda chynllunio a pharatoi priodol fel rhan o'r strwythur rhynglywodraethol diwygiedig nesaf yr ydym yn awyddus i'w sicrhau.

Caiff y datganiad ei gyhoeddi yn ystod y toriad er mwyn rhoi'r wybodaeth ddiweddaraf i aelodau. Os bydd aelodau eisiau i mi wneud datganiad pellach neu ateb cwestiynau ynglŷn â hyn pan fydd y Senedd yn dychwelyd, byddwn yn hapus i wneud hynny.

Elin Jones AS

Y Llywydd a Chadeirydd y Pwyllgor Busnes

22 Hydref 2020

Annwyl Elin

### Craffu ar reoliadau Covid-19

Diolch am eich llythyr dyddiedig 8 Hydref 2020, a drafodwyd gennym yn ein cyfarfodydd ar 12 Hydref a 19 Hydref 2020.

Roedd eich llythyr yn ceisio canfod a fyddai'n briodol bod Llywodraeth Cymru yn tynnu sylw at Reoliadau newydd lle'r oedd yr egwyddor sylfaenol eisoes wedi bod yn destun craffu, er mwyn galluogi'r Pwyllgor Busnes i wneud penderfyniad ynghylch lefel y gwaith craffu pellach a allai fod yn ofynnol cyn y ddadl. O ganlyniad, gwnaethoch ofyn am ein barn ynghylch a oedd posibilrwydd o alluogi rhai Rheoliadau sy'n gysylltiedig â Covid-19 i gael eu blaenoriaethu i'w trafod mewn amgylchiadau o'r fath.

Nid ydym yn credu bod yr opsiwn a awgrymwyd gan y Pwyllgor Busnes yn briodol am sawl rheswm. Yn ein barn ni, ni ddylai cymeradwyaeth ar gyfer unrhyw fath o ddeddfwriaeth fod ar sail 'mewn egwyddor'. Felly nid ydym yn gweld y bydd gennym rôl wrth gymeradwyo (neu wrthod) unrhyw asesiad gan Lywodraeth Cymru bod cyfres benodol o reoliadau, mewn egwyddor, yr un fath â chyfres flaenorol. At hynny, byddai gwerth asesiad o'r fath yn amheus yn ein barn ni, o gofio er y gallai cyfres newydd o reoliadau ddilyn amcan polisi tebyg, y gallent fod yn destun pwyntiau i adrodd yn eu cylch o dan Reol Sefydlog 21.2 neu 21.3 o hyd.

Credwn fod ein gwaith craffu ar yr holl reoliadau Covid-19 wedi bod yn effeithlon ac amserol. Rydym wedi adrodd ar y mwyafrif o reoliadau sy'n ddarostyngedig i'r weithdrefn gwneud cadarnhaol cyn pen 14 diwrnod ar ôl gosod yr offeryn. Yn y mwyafrif o achosion, mae hyn wedi galluogi'r Senedd i bleidleisio ar a ddylai'r rheoliadau aros mewn grym ymhell cyn yr 28 diwrnod a ganiateir yn ôl *Deddf Iechyd y Cyhoedd (Rheoli Clefydau) 1984* a'r 40 diwrnod a ganiateir yn ôl *Deddf y Coronafeirws 2020* (y cydsyniodd y Senedd iddi ym mis Mawrth eleni). Byddem hefyd yn dymuno tynnu sylw at y ffaith bod mwyafrif y rheoliadau gwneud cadarnhaol wedi'u gosod ar ddydd



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Gwener; mae hyn, ynghyd â'n slot cyfarfod ar fore Llun yn golygu y bu, yn anochel, bwlch o wythnos rhwng y gosod a chraffu ar y rheoliadau gan y Pwyllgor, waeth beth fu'r gwaith a oedd yn angenrheidiol i baratoi adroddiadau i'w hystyried gan y Pwyllgor. Rydym hefyd yn tynnu sylw at sylwadau Vaughan Gething AS, y Gweinidog Iechyd a Gwasanaethau Cymdeithasol, yn y Cyfarfod Llawn ar [6 Hydref 2020](#), yr ydym yn eu croesawu:

“Rwyf i hefyd yn croesawu'r ffaith bod y pwyllgor, o bryd i'w gilydd, wedi ein helpu ni o ran cysondeb mewn darpariaethau deddfwriaethol. Mae hynny'n rhan o bwynt y craffu. Rydym ni'n gwneud y rheoliadau hyn mewn modd cyflym oherwydd y darlun sy'n newid yn gyflym o ran y coronafeirws, ac rwy'n credu bod gwerth i'r pwyllgor ymgymryd â'i swyddogaeth graffu cyn i'r ddeddfwrfa wedyn allu arfer ei swyddogaeth wrth benderfynu pa un a all y rheoliadau hyn barhau ai peidio.”

Rydym, serch hynny, wedi ystyried amrywiaeth o opsiynau i hwyluso proses graffu gyflymach fyth. Gwnaethom drafod a fyddai cyfarfod yn amlach nag unwaith yr wythnos yn hwyluso'r gwaith craffu ar reoliadau a osodir gan Lywodraeth Cymru ar wahanol adegau yn ystod yr wythnos waith flaenorol. O ystyried arfer Llywodraeth Cymru o osod mwyafrif y rheoliadau gwneud cadarnhaol ar ddydd Gwener, gwnaethom hefyd ystyried a fyddai'n ymarferol symud slot cyfarfod rheolaidd ein Pwyllgor i fore Mercher, er mwyn ystyried rheoliadau a wnaed y dydd Gwener blaenorol ac i osod adroddiad mewn pryd ar gyfer dadl y prynhawn hwnnw. Gwnaethom hefyd drafod a allem roi ymrwymiad ffurfiol i adrodd ar reoliadau gwneud cadarnhaol o fewn terfyn amser o 14 diwrnod.

Daethom i'r casgliad, fodd bynnag, bod dulliau o'r fath yn debygol iawn o arwain at broblemau sylweddol o ran amserlennu ar gyfer Llywodraeth Cymru ac Aelodau o'r Senedd. At hynny, o ystyried cymhlethdod y ddeddfwriaeth hon, mae unrhyw ffurfioli o ran ein trefniadau presennol ar gyfer craffu ar ddeddfwriaeth sy'n gysylltiedig â Covid-19 angen ei ystyried ochr yn ochr â nifer cynyddol o ddeddfwriaeth sy'n ymdrin ag ymadawiad y DU â'r UE, yn anad dim oherwydd y gallai ffurfioli o'r fath ei gwneud yn ofynnol i gael adnoddau ychwanegol neu batrymau gwaith gwahanol. Mae'r pwynt olaf hwn yn arbennig o berthnasol o ystyried bod ein cylch gwaith yn golygu bod ein rhaglen waith wedi'i chyfyngu'n fawr ar hyn o bryd gan y gwaith craffu angenrheidiol a phwysig ar is-ddeddfwriaeth sy'n ymwneud ag ymadael â'r UE a memoranda cydsyniad deddfwriaethol ar gyfer Biliau sy'n ymwneud ag ymadawiad y DU â'r UE, gan gynnwys Bil Marchnad Fewnol y DU sy'n arwyddocaol o ran y cyfansoddiad.

Rydym yn cydnabod bod materion sy'n ymwneud â'r pandemig wedi'u blaenoriaethu yn amser y Llywodraeth yn ystod sesiynau'r Cyfarfod Llawn. Gwnaethom hefyd ystyried a allai Llywodraeth Cymru ystyried defnyddio'r weithdrefn gadarnhaol ddrafft os yn bosibl o gwbl wrth lunio deddfwriaeth sy'n gysylltiedig â Covid-19 o dan adran 45C o Ddeddf 1984. Er ein bod yn gwerthfawrogi efallai na fydd hyn yn ymarferol, byddem yn annog Llywodraeth Cymru i ystyried a oes cyfleoedd o gwbl i'w defnyddio.



Byddwn yn parhau i wneud popeth o fewn ein gallu i sicrhau bod gwaith craffu ar reoliadau sy'n gysylltiedig â Covid-19 yn cael ei gynnal mewn modd amserol. Fodd bynnag, nid ydym yn credu y dylid peryglu ein swyddogaeth graffu o dan unrhyw amgylchiadau.

Anfonaf gopi o'r llythyr hwn at Gadeiryddion pob pwyllgor.

Yn gywir



**Mick Antoniw AS**

Cadeirydd

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



Julie James AS  
Y Gweinidog Tai a Llywodraeth Leol

26 Hydref 2020

Annwyl Julie,

Diolch am eich llythyr, dyddiedig 15 Hydref 2020, yn ymwneud â'r Cytundeb Amlinellol Fframwaith drafft ar gyfer Cynllunio o ran Sylweddau Peryglus.

Ar hyn o bryd, o ran fframweithiau cyffredin y disgwylir iddynt gael eu cyhoeddi cyn diwedd 2020, gallu cyfyngedig sydd gan y Pwyllgor i graffu ar y rhai sy'n dod o fewn ei gylch gwaith. Nid ydym yn rhagweld gwneud gwaith sylweddol ar y darpar Gytundeb Amlinellol Fframwaith ar gyfer Cynllunio o ran Sylweddau Peryglus, ond byddai'n dda cael ymateb gennych ar yr isod:

Datblygu'r fframwaith cyffredin

- 1. A allwch chi egluro pam, yn eich barn chi, y mae angen fframwaith yn y maes polisi hwn?**
- 2. A allwch ehangu ar pam y dewisodd gweinyddiaethau'r DU ddilyn fframwaith anneddfwriaethol?**
- 3. A allwch chi amlinellu sut rydych chi wedi ymgysylltu â rhanddeiliaid Cymru, gan gynnwys diwydiant, awdurdodau cynllunio lleol a Chyfoeth Naturiol Cymru, wrth ddatblygu'r fframwaith?**
- 4. A allwch chi amlinellu'r materion allweddol a godwyd gan randdeiliaid Cymru a sut mae'r rhain wedi cael eu hadlewyrchu yn y fframwaith?**

Rhyngweithio â chyfraith ddomestig, cyfraith ryngwladol a chytundebau rhyngwladol

- 5. A allwch egluro a yw'r fframwaith yn rhyngweithio â deddfwriaeth ddomestig bresennol, ar wahân i'r hyn sydd eisoes wedi'i restru yn Adran 1 o'r Cytundeb Amlinellol Fframwaith drafft?**



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6. Mae'r DU yn llofnodwr i ddau gytundeb rhyngwladol sy'n berthnasol i'r gyfundrefn ar gyfer sylweddau peryglus: Confensiwn Aarhus a Chonfensiwn Effeithiau Trawsffiniol Damweiniau Diwydiannol. **A allwch chi ehangu ar sut y bydd y fframwaith yn sicrhau y cydymffurfir â'r Confensiynau hyn?**

**7. A allwch egluro a fydd canlyniad y trafodaethau parhaus rhwng yr UE a'r DU ar y Berthynas yn y Dyfodol yn effeithio ar y fframwaith, ac os felly, sut?**

**8. A allwch egluro a fydd Bil Marchnad Fewnol Llywodraeth y DU yn effeithio ar y fframwaith, ac os felly, sut?**

Proses graffu ac amserlenni

**9. A allwch gadarnhau y bydd y fframwaith yn cynnwys y Cytundeb Amlinellol Fframwaith dros dro, y Concordat a'r Memorandwm Cyd-ddealltwriaeth wedi'i ddiweddarau y cyfeirir atynt yn y Cytundeb Amlinellol Fframwaith drafft?**

**10. A allwch egluro a fydd y Concordat a'r Memorandwm Cyd-ddealltwriaeth wedi'i ddiweddarau ar gael i'r Senedd graffu arnynt?**

**11. A allwch egluro'r amserlen ar gyfer gwaith craffu'r Senedd ar y Cytundeb Amlinellol Fframwaith dros dro a'r dogfennau cysylltiedig?**

Trefniadau monitro ac adolygu ar gyfer y fframwaith

Yn ôl y Cytundeb Amlinellol Fframwaith drafft, nid oes unrhyw fesurau monitro ffurfiol yn gysylltiedig â'r fframwaith. Yn lle hynny, bydd arweinwyr polisi ym mhob gweinyddiaeth yn cynnal cynadleddau ffôn bob chwe mis "to discuss any issues and share learning". Yn ogystal, fe gynhelir cyfarfod adolygu rhwng gweinyddiaethau'r DU ddwy flynedd ar ôl i'r fframwaith ddod i rym.

**12. A allwch chi egluro pam mae gweinyddiaethau'r DU wedi dewis peidio â sefydlu system fwy ffurfiol ar gyfer monitro'r gwaith o weithredu'r fframwaith?**

**13. A allwch egluro a fydd adroddiad o'r cyfarfod adolygu cyd-rhwng gweinyddiaethau'r DU ar gael i'r cyhoedd?**

Mae'r Cytundeb Amlinellol Fframwaith drafft yn nodi y byddai cyfranogiad rhanddeiliaid yn y broses adolygu a diwygio ar gyfer y fframwaith yn cael ei ystyried ar y pryd.

**14. A allwch chi egluro o dan ba amgylchiadau y byddai'n amhriodol cynnwys rhanddeiliaid yn y broses adolygu ar gyfer y fframwaith?**

**15. A allwch chi gadarnhau a fydd y Senedd yn gallu cyfrannu i'r gwaith o adolygu a diwygio'r fframwaith, ac os felly, sut?**



Cefndir y fframwaith cyffredin

**16. A allwch chi amlinellu 'gofynion sylfaenol' Cyfarwyddeb Seveso III mewn perthynas â chynllunio o ran sylweddau peryglus, sy'n gyffredin ledled y DU?**

Yn ôl y Cytundeb Amlinellol Fframwaith drafft, mae cryn le ar gyfer gwahaniaeth yn barod o dan y gyfundrefn gynllunio gyfredol o ran sylweddau peryglus. Fodd bynnag, mae nifer o gyfyngiadau ar yr hyn y gall gweinyddiaethau'r DU ei ddiwygio, yn seiliedig ar yr hyn a osodwyd ar lefel yr UE. Mae'r cyfyngiadau allweddol yn cynnwys newid y diffiniad o sefydliad a gostwng safonau ynghylch beth yw sylwedd peryglus.

**17. A allwch chi ddarparu mwy o fanylion am faint o gyfle sydd ar gyfer gwahaniaeth o dan y gyfundrefn gynllunio gyfredol o ran sylweddau peryglus?**

Y gyfundrefn gynllunio ar gyfer sylweddau peryglus wedi Ymadael â'r UE

**18. A allwch egluro a fydd unrhyw un neu rai o'r 'cyfyngiadau allweddol' cyfredol yn cael eu cynnal ledled y DU yn y cyfnod wedi ymadael â'r UE? Sut y bydd hyn yn cael ei adlewyrchu yn y fframwaith?**

O dan y gyfundrefn gynllunio gyfredol ar gyfer sylweddau peryglus, mae gofynion sylfaenol cyffredin ledled y DU. Efallai nad felly y bydd hi o reidrwydd o dan y gyfundrefn wedi ymadael â'r UE, gan y bydd gan weinyddiaethau'r DU gwmpas ehangach i ddefnyddio'u pwerau i wneud newidiadau. Gallai'r newidiadau hyn gynnwys llacio gofynion ynghylch lefel y sylweddau y gellir eu dal cyn cychwyn y broses gydsynio, ac o bosibl (mewn senario lle na fyddai'r egwyddor dim atchwelyd yn berthnasol) gael gwared ar reolaethau ar gyfer rhai sylweddau yn llwyr.

**19. Pa ystyriaeth a roddwyd i gynnal gofynion sylfaenol cyffredin, gan gynnwys, er enghraifft, safonau gofynnol ar gyfer beth yw sylwedd peryglus?**

**20. Beth yw'r risgiau a'r cyfleoedd posibl yn gysylltiedig â pheidio â chynnal gofynion sylfaenol cyffredin ac ehangu'r cyfle ar gyfer gwiriadau?**

**21. I ba raddau yr ydych chi'n fodlon na fydd y dull a ddewiswyd ar gyfer y maes polisi hwn, h.y. fframwaith anneddfwriaethol, yn arwain at safonau is a gostyngiad yn lefelau'r amddiffyniad ar gyfer iechyd pobl a'r amgylchedd?**

**22. I ba raddau mae'r fframwaith yn cyd-fynd ag ymrwymiad Llywodraeth Cymru i ddim atchwelyd o ran safonau amgylcheddol?**

Cynigion ar gyfer newidiadau i'r gyfundrefn gynllunio ar gyfer sylweddau peryglus yn y dyfodol

Wrth ymateb i'r [Ymgynghoriad ar drosi gofynion cynllunio defnydd tir Cyfarwyddeb Seveso III ar reoli peryglon damweiniau mawr](#) (Awst 2015), nododd Llywodraeth Cymru y byddai'n ystyried diwygio'r gyfundrefn yn ddiweddarach.

**23. A allwch egluro a yw Llywodraeth Cymru wedi gwneud unrhyw waith ar gynigion i ddiwygio'r gyfundrefn gynllunio ar gyfer sylweddau peryglus ers yr ymgynghoriad uchod?**



**24. A allwch egluro a oes gan Lywodraeth Cymru unrhyw gynlluniau nawr neu yn y dyfodol i adolygu'r gyfundrefn gynllunio ar gyfer sylweddau peryglus?**

**25. O dan ba amgylchiadau y byddai Llywodraeth Cymru yn ystyried cynigion i ostwng rheolaethau yn is na'r gofynion sylfaenol cyfredol, er enghraifft, ynghylch lefel y sylweddau y gellir eu dal, neu mewn perthynas â'r broses gydsynio?**

**26. A allwch egluro a fyddai newidiadau i'r gofynion sylfaenol cyfredol yn destun ymgynghoriad cyhoeddus ac yn amodol ar gymeradwyaeth y Senedd?**

**27. I ba raddau yr ydych chi'n fodlon bod digon o arbenigedd technegol ar lefel Cymru neu'r DU i gymryd lle'r hyn sydd ar gael ar lefel UE ar hyn o bryd yn y maes polisi hwn?**

**28. Yn absenoldeb gofynion newydd neu ddiwygiedig yr UE mewn perthynas â chynllunio o ran sylweddau peryglus sy'n gymwys i'r DU, pa drefniadau a roddir ar waith i adolygu gofynion domestig, gan ystyried datblygiadau mewn mannau eraill?**

Byddwn yn ddiolchgar pe gallech ymateb i'r cwestiynau uchod cyn gynted â phosibl, ac erbyn 13 Tachwedd 2020 fan bellaf.

Rwy'n anfon copi o'r llythyr hwn at Gadeirydd y Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad, a Chadeirydd Y Pwyllgor Materion Allanol a Deddfwriaeth Ychwanegol.

Yn gywir,



**Mike Hedges AS**

**Cadeirydd y Pwyllgor Newid Hinsawdd, Amgylchedd a Materion Gwledig**

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.





**Jeremy Miles AS/MS**

**Cwnsler Cyffredinol a'r Gweinidog Pontio Ewropeaidd  
Counsel General and Minister for European Transition**



Eich cyf/Your ref  
Ein cyf/Our ref

**Llywodraeth Cymru  
Welsh Government**

Mick Antoniw MS, Chair  
Legislation, Justice and Constitution Committee  
Senedd Cymru  
Bae Caerdydd  
Caerdydd  
CF99 1SN

28 Hydref 2020

Annwyl Mick

Diolch am eich llythyr dyddiedig 9 Hydref 2020 ynghylch drafftio Biliau Cymru.

Rydym yn gwerthfawrogi diddordeb y Pwyllgor yn y pwyntiau rydych wedi'u codi, gan gydnabod eich bod yn ceisio deall gwaith y drafftwyr deddfwriaethol a rhai o'r heriau sy'n eu hwynebu wrth baratoi deddfwriaeth. Byddaf yn troi maes o law at y pwyntiau ehangach a godwch ynghylch hygyrchedd, ond roeddwn eisieu ystyried y pwyntiau hynny yng nghyd-destun Bil Cwricwlwm ac Asesu (Cymru) yn gyntaf.

Mae'r Llywodraeth wedi ymrwymo'n gryf i hyrwyddo hygyrchedd mewn deddfwriaeth, ac i ddefnyddio'r Gymraeg. Dyma sail yr egwyddor a nodir yn ein canllawiau drafftio, pan ddefnyddir diffiniad neu ymadrodd mewn Bil, y dylid bob amser ystyried a ddylid ei nodi'n llawn yn y Bil dan sylw (yn hytrach na chyfeirio darllenwyr y Bil hwnnw at ddiffiniad sy'n bodoli eisoes mewn deddfwriaeth arall). Yng nghyd-destun deddfwriaeth ddwyieithog, mae'r penderfyniad hwn (p'un ai i ailddatgan diffiniad sy'n bodoli eisoes) yn un arbennig o arwyddocaol. Y rheswm am hyn yw mai canlyniad peidio ag ailddatgan diffiniad neu ymadrodd a roddir mewn Deddf Seneddol bresennol yw mai dim ond yn Saesneg y mae'r diffiniad neu'r ymadrodd ar gael, nid yn Gymraeg a'r Saesneg.

Yng nghyd-destun Bil Cwricwlwm ac Asesu (Cymru), fel y nodwyd gennych, nid yw'r Bil yn ailddatgan y diffiniadau a ddefnyddir yn Neddf Addysg 1996. Yn hytrach, mae'r Bil yn darparu (yn adran 77) bod i ymadroddion ynddo a ddiffinnir neu y rhoddir ystyr iddynt yn Neddf Addysg 1996, i gadw yr un ystyr ag yn y Ddeddf honno. Mae'r Bil hefyd yn cynnwys darpariaeth (yn adran 68) i'r perwyl ei fod yn un o'r Deddfau Addysg.

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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.

**Tudalen y pecyn 825**

Mae'r "Deddfau Addysg" yn y cyd-destun hwn yn Ddeddfau penodol sydd wedi'u rhestru yn Neddf Addysg 1996. Diffinnir y Deddfau hyn ynghyd â Deddf Addysg 1996 ei hun fel y "Deddfau Addysg". Mae diffiniadau ac ymadroddion a ddefnyddir yn Neddf Addysg 1996 yn bwydo drwodd i'r "Deddfau Addysg" eraill oni bai bod darpariaeth benodol fel arall.

Mae'r dull hwn yn caniatáu lefel uchel o unffurfiaeth a chydlyniant o fewn y system cyfraith addysg yn ei chyfanrwydd. Mae'n golygu bod diffiniadau ac ymadroddion a ddefnyddir mewn unrhyw un o'r "Deddfau Addysg" yn debygol o adeiladu ar ymadroddion yn y Ddeddf riant, h.y. Deddf Addysg 1996, a ddefnyddir hefyd mewn "Deddfau Addysg" eraill.

Rhag ofn ei fod yn ddefnyddiol i'r Pwyllgor, amgaeaf restr o'r ymadroddion a ddefnyddir yn y Bil a ddiffinnir yn Neddf Addysg 1996, neu y rhoddir ystyr iddynt ynddi.

Wrth ddrafftio'r Bil, ystyriwyd a ddylid ailddatgan yr ymadroddion hyn yn y Bil. Ystyriwyd y mater o safbwynt drafftio a pholisi cyfreithiol, gan ystyried ein hymrwymiad i hygyrchedd ac i ddrafftio'n dwyieithog: mantais ailddatgan fyddai sicrhau diffiniadau dwyieithog o dermau a ddefnyddir yn y Bil. Er ei bod yn werth nodi, lle mae ymadroddion yn rhan annatod o fframwaith newydd y cwricwlwm, er enghraifft "y pedwar diben", "elfennau gorfodol", "sgiliau trawsgwricwlaidd", eu bod yn cael eu diffinio yn y Bil beth bynnag. Er gwaethaf y fantais hon penderfynwyd, ar sail drafftio a pholisi cyfreithio, osgoi ailddatgan. Nod y penderfyniad hwn oedd osgoi tanseilio hygyrchedd a chydlyniant y corff o gyfreithiau addysg a nodir yn y Deddfau Addysg.

Ystyriwyd amrywiaeth o ffactorau wrth ddod i'r penderfyniad y byddai ailddatgan, ar yr achlysur hwn, yn tanseilio hygyrchedd a chydlyniant. Efallai y bydd o ddefnydd i'r Pwyllgor imi nodi'r rhain yn fanylach:

- Y man cychwyn wrth ystyried y mater oedd natur gymhleth yr ymadroddion y byddai angen eu hailddatgan, o ystyried eu perthynas ag ymadroddion diffiniedig eraill. Byddai ailddatgan ymadrodd a ddiffinnir yn Neddf Addysg 1996 yn golygu ailddatgan nid yn unig ymadroddion a ddiffinnir yn y Ddeddf honno, ond hefyd ymadroddion a diffiniadau sy'n bwydo i mewn i'r diffiniadau hynny, a hyd yn oed ymadroddion a diffiniadau sy'n bwydo i mewn i'r is-ymadroddion a diffiniadau hynny.
- Er enghraifft, meddyliwch petai'r Bil yn ailddatgan y diffiniad o "school" ("ysgol") a roddir yn Neddf Addysg 1996, yn hytrach na dibynnu ar y diffiniad a roddir yn Neddf 1996. Er mwyn cyflawni hyn, byddai angen i'r Bil, wrth gwrs, ailddatgan y diffiniad o "school" ("ysgol") a nodir yn adran 4 o Ddeddf Addysg 1996. Ond dim ond man cychwyn fyddai hwn. Byddai angen i'r Bil hefyd ailddatgan rhai ymadroddion (a ddiffinnir yn Neddf 1996 ac mewn manau eraill) sy'n bwydo i mewn i'r diffiniad o "school" ("ysgol") yn adran 4: er enghraifft, "further education sector", "higher education sector", "primary education", "secondary education", "further education", "early years provision", "maintained nursery school", "further education corporation" a "sixth form college".
- Yn ogystal â hyn, byddai angen i'r Bil ailddatgan unrhyw ymadroddion a diffiniadau sydd eu hunain yn bwydo i mewn i'r is-dermau a grybwyllir ym mharagraff 15. Er enghraifft, er mwyn ailddatgan y diffiniad o "primary education" (y byddai ei angen er mwyn ailddatgan y diffiniad o "school" ("ysgol")) byddai angen i'r Bil hefyd ailddatgan y diffiniadau o "pupil", "junior pupil", "compulsory school age", a "governing body".

- Mae'n bwysig nodi bod yr enghraifft uchod yn ymwneud ag ailddatgan posibl un ymadrodd yn unig: "school" ("ysgol"). Pe bai'r Bil yn dilyn polisi o ailddatgan yr holl ymadroddion a diffiniadau a ymgorfforwyd o Ddeddf 1996 (gweler yr Atodiad), byddai'r un mater yn codi mewn perthynas â phob ymadrodd a ailddatganwyd. Ar gyfer pob un, y cwestiwn fyddai i ba raddau y mae ailddatgan hefyd yn gofyn am ailddatgan diffiniadau atodol cymhleth a hir nad oes ganddynt berthynas uniongyrchol â phwnc y Bil.
- Byddai'r canlyniad yn debygol o fod yn ddarpariaeth hir yn y Bil, nid yn unig yn ailddatgan datganiadau sy'n uniongyrchol berthnasol i'r Bil, ond ailddatgan darpariaeth sy'n ymwneud â'r system addysg yn fwy cyffredinol, a'r gwahanol sefydliadau sydd wedi'u cynnwys yn y system addysg. Felly byddai Bil am y cwricwlwm yn cynnwys darpariaethau hirfaith, a fydd yn aml yn gymhleth, am faterion nad oes ganddynt ddim i'w wneud â'r cwricwlwm.
- Byddai hyn yn gwneud gwir bwnc y Bil yn llai amlwg ac yn yr ystyr hwnnw, yn ei wneud yn llai hygyrch. Byddai hefyd yn newid cwrpas y Bil yn sylweddol.
- Byddai hefyd yn cynyddu'n sylweddol y potensial ar gyfer camaliniol darpariaethau yn y dyfodol. Nid yw corff cyfraith addysg yn sefydlog. Gellir diwygio neu ychwanegu at ddiffiniadau ac ymadroddion yn Neddf Addysg 1996, a diffiniadau ac ymadroddion mewn Deddfau Addysg eraill a ystyrir yn rhai sydd wedi'u cynnwys yn y Ddeddf honno, drwy ddeddfwriaeth sylfaenol. Pe bai'r Bil yn ailddatgan y diffiniadau a'r ymadroddion hyn, mae'n anochel y byddai'r perygl o ymwahanu damweiniol yn cynyddu. (Mae'n werth nodi bod y dull a fabwysiadwyd yn y gyfraith bresennol, sy'n troi o amgylch Deddf riant a chorff o "Ddeddfau Addysg" wedi cael ei gynllunio'n fwiadol, yn ôl pob tebyg, i leihau'r risg o ymwahanu o'r math hwn.)
- Yn ogystal, byddai'r dull hwn yn golygu ymwahanu sylweddol oddi wrth yr hyn a fabwysiadwyd ar draws cyfraith addysg yn ei chyfanrwydd. Yn amlwg, dim ond un o amrywiaeth o ffactorau i'w hystyried yw cysondeb: ond yng nghyd-destun corff helaeth o gyfreithiau sy'n cael ei dderbyn yn eang gan ymarferwyr fel rhai sy'n gweithredu ar sail carfan gyffredin o ddiffiniadau, ystyrir bod gan yr ymwahanu hwn y potensial ynddo'i hun i danseilio hygyrchedd.

Mae'r sefyllfa hon ymhell o fod yn ddelfrydol ond mae'n adlewyrchu cyflwr presennol corff cyfraith addysg ac yn arbennig natur gydgyssylltiedig y gwahanol statudau a'r ymadroddion a ddefnyddir ynddynt, o ystyried y cysyniad cyffredinol o "Ddeddfau Addysg" a'r defnydd eang a wneir ohono. Felly, rwy'n fodlon na ddylai diffiniadau a ddefnyddir yn y Deddfau Addysg (gan gynnwys yn Neddf Addysg 1996) fod wedi cael eu hailddatgan yn y Bil, gan y byddai mabwysiadu dull gweithredu o'r fath yn y cyd-destun a nodais yn cael effeithiau andwyol o ran hygyrchedd, cysondeb a chydlynid ar draws corff cyfraith addysg.

Gan droi at eich prif bwynt arall ar ddiffiniadau, cytunaf y gall fod gwerth mewn defnyddio dulliau amgen o'u hailddatgan o fewn deddfwriaeth. Mae hyn yn rhywbeth a ystyriwyd gennym fel rhan o'r ymgynghoriad ar *Ddyfodol Cyfraith Cymru* y llynedd, a chredaf y bydd angen iddo barhau i fod yn faes sy'n cael ei ystyried a'i ddatblygu ymhellach o dan y rhaglen ffurfiol gyntaf i'w chyflwyno yn y Senedd nesaf. Am y rheswm hwnnw a'r rhesymau yr wyf wedi'u hamlinellu uchod, rwyf wedi gofyn i'r Nodiadau Esboniadol ar gyfer y Bil hwn gael eu diweddarau, ar y cyfle addas cyntaf, i gynnwys copi o'r rhestr rwyf wedi'i hatodi i'r llythyr hwn. Efallai nad yw'n ddull priodol ar gyfer Biliau eraill, ond y tro hwn fe'i hystyriaf yn ddewis amgen synhwyrol.

Mae eich llythyr hefyd yn cyffwrdd â materion yn ymwneud a chydgrynhoi rhannol, ymdrin â darpariaethau a ddisbyddiwyd ac ag aildatgan. Rwyf wedi trafod rhai o'r materion hyn gyda'r Pwyllgor o'r blaen, ond rwy'n credu ei bod yn ddefnyddiol ystyried y rhain unwaith eto yng nghyd-destun y Bil Cwricwlwm ac Asesu (Cymru). Nod y Bil yw sefydlu fframwaith cwricwlwm newydd, ac nid yw'n fil cydgrynhoi. Fodd bynnag, effaith sefydlu'r fframwaith newydd ar gyfer plant 3 i 16 oed yw dod â'r fframwaith hwnnw o fewn un statud.

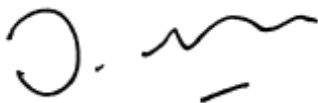
O dan y ddarpariaeth statudol bresennol nid yw hynny'n wir: mae'r ddarpariaeth gwricwlaidd bresennol ar gyfer plant 3 i 16 oed wedi'i gwasgaru ar draws pedair Deddf ar hyn o bryd – Deddf Addysg 1996, Deddf Addysg 2002, Deddf Safonau a Fframwaith Ysgolion 1998, a Mesur Dysgu a Sgiliau (Cymru) 2009. Effaith y Bil, fodd bynnag, yw y bydd fframwaith y cwricwlwm ar gyfer y grŵp oedran hwn bellach yn dod o fewn un Ddeddf. Mae'r dull gweithredu hwn o ddwyn ynghyd y ddeddfwriaeth bresennol a'r ddarpariaeth ddeddfwriaethol newydd, fel bod un brif Ddeddf yn dod yn ffynhonnell allweddol o ran deddfwriaeth ar bwnc, wedi bod yn un yr ydym wedi ceisio'i ddilyn lle bynnag y bo modd ers 2011. Wrth gwrs, dyma gonglfaen ein teithi meddwl ynghylch codeiddio cyfreithiau. Lle bo modd, byddwn yn parhau i ddefnyddio Biliau diwygio'r gyfraith yn y ffordd hon, gan ein bod yn credu ei fod yn gwella hygyrchedd i'r defnyddiwr terfynol ac yn cynyddu swmp y ddeddfwriaeth ddwyieithog sydd ar y llyfr statud.

Nid bil diddymu cyfraith statud yw Bil Cwricwlwm ac Asesu (Cymru) chwaith (mewn geiriau eraill, Bil sydd â'i unig ddiben i ddileu darpariaeth sydd wedi'i disbyddu ac wedi'i disodli o'r llyfr statud). Fodd bynnag, wrth gynhyrchu diwygiadau canlyniadol, lle bo'n briodol, achubwyd ar gyfleoedd i ddileu darpariaethau sy'n gysylltiedig â fframwaith y cwricwlwm sydd wedi disbyddu neu'u disodli. Hefyd, manteisiwyd ar gyfleoedd i sicrhau bod darpariaethau a ddiwygir yn cael eu gadael ar ffurf sy'n hwyluso hygyrchedd ac nad ydynt yn cynnwys darpariaeth ar gyfer Cymru sydd wedi'i disbyddu neu'i disodli.

Unwaith eto, nid dull newydd mo hwn, dyma'r un yr ydym wedi ceisio'i ddefnyddio lle bo modd. Rwyf yn awyddus i weld ymdrechion yn cael eu gwneud i fynd i'r afael â darpariaethau sydd wedi'u disbyddu neu'u disodli, gan fy mod yn credu y gallant achosi dryswch i ddarllenwyr y ddeddfwriaeth ac nad ydynt yn cynorthwyo eglurder na sicrwydd ynghylch y testun. Un o'r prif ddulliau ar gyfer gwneud hyn fydd drwy'r Biliau cydgrynhoi y byddwn yn eu cyflwyno, ond mae'n amlwg na fydd hynny'n ddigonol ynddo'i hun i fynd i'r afael â'r mater hwn. Byddwn yn parhau i ddefnyddio Biliau diwygio'r gyfraith lle y bo'n briodol i wneud hynny, ond mae gennyf ddiddordeb hefyd mewn ystyried a ellid manteisio ar gyfleoedd i gyflwyno deddfwriaeth annibynnol gyda'r nod o fynd i'r afael â meysydd penodol o'r gyfraith. Unwaith eto, dyma rywbeth rwy'n gobeithio y caiff ei ystyried fel rhan o raglenni yn y dyfodol i wella hygyrchedd cyfraith Cymru.

Rwy'n ddiolchgar i'r Pwyllgor am eu diddordeb parhaus yn y materion hyn. Rwy'n anfon copi o'r llythyr hwn at y Gweinidog Addysg.

Yn gywir,



**Jeremy Miles AS/MS**

Cwnsler Cyffredinol a'r Gweinidog Pontio Ewropeaidd  
Counsel General and Minister for European Transition

**Jeremy Miles AS/MS**  
Cwnsler Cyffredinol a'r Gweinidog Pontio Ewropeaidd  
Counsel General and Minister for European Transition



Llywodraeth Cymru  
Welsh Government

Mick Antoniw AS  
Cadeirydd y Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad  
Senedd Cymru  
Bae Caerdydd  
CF99 1NA

29 Hydref 2020

Annwyl Mick,

Rwy'n ysgrifennu i'ch hysbysu, yn unol â'r cytundeb ar gysylltiadau rhyngsefydliadol, y bydd cyfarfod nesaf Cyd-bwyllgor y Gweinidogion (Negodiadau'r UE) yn cael ei gynnal prynhawn yma ddydd Iau 29 Hydref, a hynny'n rhithiol unwaith eto. Bydd y cyfarfod yn trafod y negodiadau rhwng y DU a'r UE, gan gynnwys Cyd-bwyllgor a Phwyllgorau Arbenigol y Cytundeb Ymadael a Phrotocol Gogledd Iwerddon; diweddariad ar y materion pontio gan gynnwys Parodrwydd y DU a thrafodaeth ar Farchnad Fewnol y DU.

Rwy'n anfon copi o'r llythyr hwn at Gadeirydd y Pwyllgor Materion Allanol a Deddfwriaeth Ychwanegol.

Yn gywir,

**Jeremy Miles AS/MS**  
Cwnsler Cyffredinol a'r Gweinidog Pontio Ewropeaidd  
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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.

Tudalen y pecyn 829

Mae cyfyngiadau ar y ddogfen hon

Mae cyfyngiadau ar y ddogfen hon

Yn rhinwedd paragraff(au) vi o Reol Sefydlog 17.42

Mae cyfyngiadau ar y ddogfen hon





Mick Antoniow AS  
Cadeirydd, Y Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

[SeneddLJC@senedd.wales](mailto:SeneddLJC@senedd.wales)

16 Medi 2020

Annwyl Mick

Rwy'n ysgrifennu mewn ymateb i'ch llythyr ynglŷn â chraffu ar reoliadau sy'n deillio o ymadawiad y Deyrnas Unedig â'r Undeb Ewropeaidd a'r Protocol rhwng Llywodraeth Cymru a Phwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad, Senedd Cymru.

Fel yr ydych yn nodi yn eich llythyr, mae'r Protocol a gytunwyd ym mis Hydref 2018 rhwng eich Pwyllgor a Llywodraeth Cymru wedi dod i ben ers 31 Ionawr 2020 yn unol â'r telerau a gytunwyd. Mae'r Protocol wedi gwneud cyfraniad positif i'r gwaith effeithiol rhwng Llywodraeth Cymru a'r Senedd. Rwy'n cytuno yn sgil y cyfnod pontio a'r disgwyliad y bydd deddfwriaeth bellach yn ymwneud â'r ymadawiad â'r UE, y dylai'r Protocol barhau i fod yn berthnasol, fel y'i drafftwyd yn wreiddiol, i reoliadau a wnaed gan Weinidogion Cymru o dan Ddeddf yr Undeb Ewropeaidd (Ymadael) 2018, gan ehangu ei delerau i fod yn gymwys i'r rheoliadau perthnasol a wnaed o dan Ddeddf yr Undeb Ewropeaidd (Cytundeb Ymadael) 2020 neu Ddeddf 2018 fel y'i diwygiwyd gan Ddeddf 2020, a hefyd y rheoliadau a wnaed gan Weinidogion Cymru o dan y Biliau Amaethyddiaeth, Pysgodfeydd, Amgylchedd a Masnach pan fyddant wedi'u deddfu.

O ran gweithredu proses Rheol Sefydlog 30C, rwyf hefyd yn cytuno y gall y Protocol a atgyfodir fod yn gyfrwng i Lywodraeth Cymru ymrwmo i ddilyn egwyddor proses Rheol Sefydlog 30C pan fydd Gweinidogion Cymru'n rhoi eu cydsyniad ar gyfer y rheoliadau perthnasol a wnaed o dan Ddeddf 2020, Deddf 2018 fel y'i diwygiwyd gan Ddeddf 2020 ac, yn dilyn adolygiad pellach, y Biliau Amaethyddiaeth, Pysgodfeydd, Amgylchedd a Masnach pan fyddant wedi'u deddfu. Bydd angen adolygu'r cytundeb hwn, a thrafod a chytuno ar unrhyw ddiwygiadau pellach i'r Protocol yn ôl yr angen. Dylai'r Protocol hwn a ehangwyd fod yn weithredol tan ddiwedd y Pumed Senedd.

Yn gywir

**MARK DRAKEFORD**

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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.

**Tudalen y pecyn 842**  
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.

Y Gwir Anrhydeddus Mark Drakeford AS  
Prif Weinidog Cymru

23 Gorffennaf 2020

Annwyl Mark

**Craffu ar reoliadau sy'n deillio o ymadawiad y DU â'r Undeb Ewropeaidd - Protocol rhwng Llywodraeth Cymru a Phwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad Senedd Cymru**

Rwy'n ysgrifennu atoch ynghylch y **Protocol** y cytunwyd arno ym mis Hydref 2018 rhwng ein Pwyllgor ni a Llywodraeth Cymru. Byddwch yn ymwybodol y cytunwyd ar y Protocol yng nghyd-destun ymadawiad y Deyrnas Unedig â'r Undeb Ewropeaidd a phwerau Gweinidogion Cymru i wneud rheoliadau o dan *Ddeddf yr Undeb Ewropeaidd (Ymadael) 2018* (sef, 'Deddf 2018').

Rydym yn cydnabod bod y Protocol wedi dod i ben ar 31 Ionawr 2020, a hynny o dan delerau'r Protocol ei hun. Fodd bynnag, o ystyried y cyfnod pontio a'r ffaith ein bod yn disgwyl deddfwriaeth bellach sy'n ymwneud ag ymadael â'r UE, rydym yn credu y byddai'n werth atgyfodi'r protocol, fel ei fod yn parhau i fod yn berthnasol i reoliadau a gaiff eu gwneud o dan Ddeddf 2018, ac ehangu ei thelerau ar yr un pryd fel y nodir isod.

Mae'r Protocol yn nodi'r cyd-ddealltwriaeth sy'n bodoli rhwng ein Pwyllgor ni a Llywodraeth Cymru ynghylch y trefniadau gweinyddol ar gyfer craffu ar reoliadau sydd i'w gwneud gan Weinidogion Cymru o dan y pwerau a roddir gan Ran 1 o Atodlen 2 i Ddeddf 2018. Ar yr adeg y cafodd y Protocol ei ddrafftio a'i gytuno, roedd cydnabyddiaeth y byddai angen parhau â'r gwaith o adolygu'r Protocol, yn enwedig o ran y modd y byddai'n cael ei gymhwyso i waith craffu ar reoliadau a wnaed, neu sydd i'w gwneud o dan Ddeddfau perthnasol eraill sy'n ymwneud ag ymadael â'r UE (paragraff 18).

Yn ein cyfarfod ar 6 Gorffennaf 2020, gwnaethom drafod ein blaenraglen waith ar gyfer tymor yr hydref. Rydym yn ymwybodol o'r sylwadau yr ydych chi a'r Cwnsler Cyffredinol wedi'u gwneud hyd yma am y potensial y bydd toreth o is-ddeddfwriaeth sy'n gysylltiedig ag ymadael â'r UE yn cael ei wneud cyn diwedd y flwyddyn galendr hon. Yn anochel, bydd gan y sefyllfa hon oblygiadau o ran llwyth gwaith ein Pwyllgor yn ystod tymor yr hydref, ac rwy'n ysgrifennu ar wahân at y Trefnydd a'r Cwnsler Cyffredinol i ofyn



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am y wybodaeth ddiweddaraf ynghylch faint o is-ddeddfwriaeth o'r fath sy'n debygol o gael ei wneud.

Er y bydd y diweddariad hwnnw o fudd i'n cynlluniau gwaith, rydym yn gwerthfawrogi'r posibilrwydd y bydd y rhaglen ddeddfwriaeth sy'n ymwneud ag ymadael â'r UE yn newid, fel yn achos y gyfran gychwynnol o is-ddeddfwriaeth a wnaed i sicrhau effeithiolrwydd parhaus cyfraith yr UE a ddargedwir ar ôl y diwrnod ymadael. Felly, hoffem wneud cais yn awr bod y Protocol a atgyfodir yn cael ei ehangu i sicrhau ei fod yn gymwys i reoliadau perthnasol a wneir o dan *Ddeddf yr Undeb Ewropeaidd (Cytundeb Ymadael) 2020* (sef 'Deddf 2020'). At hynny, gofynnwn i chi ystyried a ddylai'r Protocol a atgyfodir fod yn gymwys hefyd yn y dyfodol i reoliadau perthnasol a wneir o dan ddeddfwriaeth sylfaenol allweddol arall sy'n ymwneud ag ymadael â'r UE, yn enwedig y Biliau ym meysydd amaethyddiaeth, pysgodfeydd, amgylchedd a masnach, pan fyddant yn dod i rym.

Yn ogystal â'r mater o ehangu'r modd y caiff y Protocol a atgyfodir ei gymhwyso i ddeddfwriaeth arall sy'n ymwneud ag ymadael â'r UE, hoffem hefyd godi'r mater o weithredu'r broses sydd ynghlwm wrth Reol Sefydlog 30C.

Fel y gwyddoch, mae Rheol Sefydlog 30C yn gymwys i reoliadau a gaiff eu gwneud o dan Ddeddf 2018 yn unig. Yn ystod ein gwaith craffu ar y memoranda cydsyniad deddfwriaethol ar gyfer pob Bil sy'n gysylltiedig ag ymadael â'r UE, rydym wedi cynnal trafodaethau a gwneud argymhellion lle y bo'n briodol, ynghylch sut y dylid hysbysu'r Senedd pan fydd Gweinidogion y DU yn gwneud rheoliadau perthnasol mewn meysydd datganoledig gyda chydsyniad Gweinidogion Cymru.

Hyd yma, rydym wedi cael ymatebion anghyson gan Weinidogion Cymru mewn perthynas â'n hargymhellion. Er enghraifft, o ran rheoliadau perthnasol y gellir eu gwneud o dan y [Ddeddf] Pysgodfeydd, dywedodd Gweinidog yr Amgylchedd, Ynni a Materion Gwledig na fyddai'n dilyn egwyddor proses Rheol Sefydlog 30C ond y byddai'n ysgrifennu at ein Pwyllgor. Fodd bynnag, o ran rheoliadau perthnasol y gellir eu gwneud o dan [Ddeddf] yr Amgylchedd, dywedodd y Gweinidog y byddai'n rhoi gwybod yn ffurfiol i'r Senedd yn unol â phroses Rheol Sefydlog 30C.

Rydym ni, fel erioed, yn ymwybodol o'r pwysau sydd ar Lywodraeth Cymru, yn enwedig mewn cyfnod o argyfwng iechyd byd-eang. Fodd bynnag, mae'r mater o Weinidogion Cymru yn cydsynio i Lywodraeth arall weithredu ar eu rhan mewn maes datganoledig yn fater cyfansoddiadol o sylwedd, a dylid sicrhau bod pob Aelod o'r Senedd yn ymwybodol ohono yn brydlon. Am y rheswm hwn, rydym wedi argymhell yn ein hadroddiadau y dylid ehangu proses Rheol Sefydlog 30C lle y bu'n briodol i wneud hynny.

Hoffem awgrymu bod y Protocol yn cael ei ddefnyddio fel modd i Lywodraeth Cymru ymrwymo i gadw at egwyddor Rheol Sefydlog 30C wrth wneud rheoliadau perthnasol o dan Ddeddf 2020 a'r Biliau ym meysydd amaethyddiaeth, pysgodfeydd, amgylchedd a masnach, pan fyddant yn dod i rym. Cellid parhau i adolygu hyn, a gellid trafod a chytuno ar unrhyw welliannau pellach i'r Protocol pan fo angen.



Byddai'r dull hwn yn osgoi'r angen i ddiwygio Rheolau Sefydlog y Senedd yn y tymor byr, gan hefyd roi cyfle i fyfyrio ymhellach ar ba mor addas fydd Rheol Sefydlog 30C yn y tymor hir.

Awgrymwn y dylai'r Protocol sy'n cael ei atgyfodi a'i ehangu gael effaith tan ddiwedd y Pumed Senedd. Yna, bydd ein Pwyllgor newydd yn trafod y mater gyda Llywodraeth nesaf Cymru yn y Chweched Senedd.

Edrychaf ymlaen at gael eich ymateb cyn gynted â phosibl ac, yn ddelfrydol, cyn dechrau tymor hydref y Senedd.

Yn gywir,



Mick Antoniw AS  
Cadeirydd y Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

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

