

# Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol

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Lleoliad:

Ystafell Bwyllgora 3 – Senedd

Dyddiad:

Dydd Llun, 19 Ionawr 2015

Amser:

14.30

Cynulliad  
Cenedlaethol  
Cymru

National  
Assembly for  
Wales



I gael rhagor o wybodaeth, cysylltwch a:

**Gareth Williams**

Clerc y Pwyllgor

0300 200 6565

[SeneddMCD@Cynulliad.Cymru](mailto:SeneddMCD@Cynulliad.Cymru)

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## Agenda

MeetingTitle

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**1 Cyflwyniad, ymddiheuriadau, dirprwyon a datgan buddiannau**

**2 Offerynnau nad ydynt yn cynnwys materion i gyflwyno adroddiad arnynt o dan Reol Sefydlog 21.2 na 21.3 (Tudalennau 1 – 5)**

**CLA(4)–02–15 – Papur 1 – Offerynnau statudol sydd ag adroddiadau clir**

Offerynnau'r Penderfyniad Negyddol

**CLA481 – Rheoliadau Tenantiaethau Diogel (Sail Absoliwt ar gyfer Meddiannu am Ymddygiad Gwrthgymdeithasol) (Y Weithdrefn Adolygu) (Cymru) 2014**

Y weithdrefn negyddol; Fe'u gwnaed ar: 9 Rhagfyr 2014; Fe'u gosodwyd ar: 12 Rhagfyr 2014; Yn dod i rym ar: 12 Ionawr 2015

**CLA482 – Rheoliadau Mesur Addysg (Cymru) 2009 (Treialu) (Dirymu) 2014**

Y weithdrefn negyddol; Fe'u gwnaed ar: 11 Rhagfyr 2014; Fe'u gosodwyd ar: 15 Rhagfyr 2014; Yn dod i rym ar: 5 Ionawr 2015

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

#### Offerynnau'r Penderfyniad Negyddol

**CLA484 – Rheoliadau Cyfrifon ac Archwilio (Cymru) 2014** (Tudalennau 6 – 40)

Y weithdrefn negyddol; Fe'u gwnaed ar: 22 Rhagfyr 2014; Fe'u gosodwyd ar: 23 Rhagfyr 2014; Yn dod i rym ar: 3 Mawrth 2015

CLA(4)–02–15 – Papur 2 – Adroddiad

CLA(4)–02–15 – Papur 3 – Rheoliadau

CLA(4)–02–15 – Papur 4 – Memorandwm Esboniadol

#### Offerynnau Cyfansawdd y Weithdrefn Penderfyniad Negyddol

**CLA483 – Rheoliadau Pysgota Môr (Pwyntiau ar gyfer Capteiniaid Cychod Pysgota) 2014** (Tudalennau 41 – 54)

Y weithdrefn negyddol cyfansawdd; Fe'u gwnaed: 18 Rhagfyr 2014; Fe'u gosodwyd ar: 19 Rhagfyr 2014; Yn dod i rym ar: 12 Ionawr 2015

CLA(4)–02–15 – Papur 5 – Adroddiad

CLA(4)–02–15 – Papur 6 – Rheoliadau

CLA(4)–02–15 – Papur 7 – Memorandwm Esboniadol

### **4 SICM 4 – Gorchymyn Cyrff Cyhoeddus (Diddymu'r Pwyllgorau Cynghori ar Blaladdwyr) 2015** (Tudalennau 55 – 78)

CLA(4)–02–14 – Papur 8 – Memorandwm Cydsyniad Offeryn Statudol

CLA(4)–02–14 – Papur 9 – Gorchymyn

CLA(4)–02–14 – Papur 10 – Dogfen Esboniadol

### **5 Cynnig o dan Reol Sefydlog 17.42 i benderfynu gwahardd y cyhoedd**

## **o'r cyfarfod ar gyfer y busnes canlynol:**

(vi) lle mae'r pwyllgor yn cyd-drafod cynnwys, casgliadau neu argymhellion adroddiad y mae'n bwriadu ei gyhoeddi; neu'n ymbaratoi i gael tystiolaeth gan unrhyw berson;

**Adroddiad Drafft ar y Bil Cynllunio (Cymru) (Tudalennau 79 – 121)**  
**CLA(4)-02-15 – Papur 11 – Adroddiad Drafft**

Ailddechrau Sesiwn Gyhoeddus

## **6 Tystiolaeth mewn perthynas â'r ymchwiliad i ddeddfu yn y Pedwerydd Cynulliad** (Tudalennau 122 – 140)

*(Amser a ddynodwyd: 3.00pm)*

### **Cymdeithas Feddygol Prydain**

Dr Stephen Monaghan, Cadeirydd Is-bwyllgor Deddfwriaeth Cyngor Cymru  
Cymdeithas Feddygol Prydain

Mr Andrew Cross, Ysgrifennydd cynorthwyol, BMA Cymru

Dr Rodney Berman, Uwch Swyddog Gweithredol Polisi, BMA Cymru

**CLA(4)-02-15 – Papur 12 – Tystiolaeth ysgrifenedig**

**CLA(4)-02-15 – Papur briffio gan y Gwasanaeth Ymchwil**

## **7 Tystiolaeth mewn perthynas â'r ymchwiliad i ddeddfu yn y Pedwerydd Cynulliad**

*(Amser a ddynodwyd: 3.40pm)*

### **Civitas Law**

Graham Walters

## **8 Tystiolaeth mewn perthynas â'r ymchwiliad i ddeddfu yn y Pedwerydd Cynulliad** (Tudalennau 141 – 147)

*(Amser a ddynodwyd: 4.00pm)*

**Cymdeithas Llywodraeth Leol Cymru**

Marie Rosenthal, Cyfreithwyr Llywodraeth Leol;  
Naomi Alleyne, CLILC;  
Tim Peppin, CLILC;  
Daniel Hurford, CLILC;

**CLA(4)-02-15 – Papur 13 – Tystiolaeth ysgrifenedig**

**9 Papurau i'w nodi** (Tudalen 148)

**CLA(4)-02-15 – Papur 14 – Datganiad ysgrifenedig Ymgynghoriad ar y Gorchymyn Cynulliad Cenedlaethol Cymru (Anghymhwys) Drafft 2015**

**10 Cynnig o dan Reol Sefydlog 17.42 i benderfynu gwahardd y cyhoedd o'r cyfarfod ar gyfer y busnes canlynol:**

(vi) lle mae'r pwyllgor yn cyd-drafod cynnwys, casgliadau neu argymhellion adroddiad y mae'n bwriadu ei gyhoeddi; neu'n ymbaratoi i gael tystiolaeth gan unrhyw berson;

**Blaenraglen Waith** (Tudalennau 149 – 151)

**CLA(4)-02-15 – Papur 15 – Blaenraglen Waith**

Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol  
Offerynnau Statudol Gydag Adroddiadau Clir  
12 Ionawr 2015

**CLA473 – Rheoliadau Cyfraniadau Ardrethu Annomestig (Cymru) (Diwygio)  
2014**

**Gweithdrefn:** Negyddol

Mae'r Rheoliadau hyn yn diwygio Rheoliadau Cyfraniadau Ardrethu Annomestig (Cymru) 1992 (O.S. 1992/3238) ("Rheoliadau 1992").

O dan Ran II o Atodlen 8 i Ddeddf Cyllid Llywodraeth Leol 1988 (p. 41) ("Deddf 1988"), mae'n ofynnol i awdurdodau bilio (yng Nghymru, cynghorau sir a chynghorau bwrdeistref sirol) dalu symiau (a elwir yn gyfraniadau ardrethu annomestig) i Weinidogion Cymru. Mae Rheoliadau 1992 yn cynnwys rheolau ar gyfer cyfrifo'r cyfraniadau hynny ar gyfer awdurdodau bilio Cymru.

Mae'r Rheoliadau hyn yn diwygio'r rheolau hynny ar gyfer y blynyddoedd ariannol sy'n dechrau ar neu ar ôl 1 Ebrill 2015 drwy roi paragraff 3 newydd yn lle paragraff 3 o Atodlen 1 i Rheoliadau 1992. Mae'r canrannau o ran rhyddhad yn ôl disgrisiwn ym mharagraff 3 yn aros yn ddigyfnewid; mae'r diwygiadau yn ganlyniadol ar ddiwygiadau i adran 47 o Ddeddf 1988 a wneir gan adran 69 o Ddeddf Lleoliaeth 2011 (p. 20), ac yn eu hystyried.

Mae'r Rheoliadau hyn hefyd yn rhoi Atodlen 4 newydd yn lle'r un bresennol (Ffigurau Poblogaeth Oedolion).

## **CLA474 – Rheoliadau'r Diwydiant Dŵr (Ymgwymerwyr sy'n Gyfan Gwbl neu'n Bennaf yng Nghymru) (Gwybodaeth am Feddianwyr nad ydynt yn Berchenogion) 2014**

**Gweithdrefn:** Negyddol

Mae'r Rheoliadau hyn yn gymwys mewn perthynas â gwasanaethau a ddarperir gan ymgwymerwr y mae ei ardal yng Nghymru yn gyfan gwbl neu'n bennaf.

O dan adran 144C(2) o Ddeddf y Diwydiant Dŵr 1991 (p. 56), mae dyletswydd ar berchennog mangre breswyl nad yw'n byw yn y fangre honno i drefnu i'r ymgwymerwr gael gwybodaeth am feddianwyr y fangre. Mae adran 144C(3) o'r Ddeddf honno yn darparu y bydd methiant gan y perchennog i ddarparu'r wybodaeth yn golygu y bydd y perchennog yn atebol gyda'r meddianwyr, ar y cyd ac yn unigol, am ffioedd dŵr a charthffosiaeth.

Mae'r Rheoliadau hyn yn gwneud darpariaeth ynghylch yr wybodaeth sydd i gael ei rhoi am y meddianwyr ac am yr amseru a'r weithdrefn sy'n gysylltiedig â darparu'r wybodaeth honno.

## **CLA475 – Rheoliadau Rhaglenni Datblygu Gwledig (Cymru) 2014**

**Gweithdrefn:** Negyddol

Er mwyn gweithredu diwygiad y Polisi Amaethyddol Cyffredin, mae casgliad o ddeddfwriaeth newydd yr UE wedi dod i rym. Mae'r ddeddfwriaeth honno yn delio â'r mater o sut y dylid rhoi cymorth allan o Gronfa Amaethyddol Ewrop ar gyfer Datblygu Gwledig.

Mae angen y Rheoliadau hyn i weithredu'r ddeddfwriaeth UE yng Nghymru. Maent yn gam technegol sydd ei angen i alluogi cyflawniad y Rhaglen Datblygu Wledig Cymru 2014–2020 (RDG).

Heb y Rheoliadau hyn, ni fyddai gan Weinidogion Cymru'r pwerau i dderbyn, talu neu adennill unrhyw gymorth ariannol o dan y RDG.

Ymhlith pethau eraill, mae'r Rheoliadau yn galluogi Gweinidogion Cymru i:

- Cymeradwyo gweithrediadau ar gyfer derbyn cymorth ariannol
- Talu cymorth ariannol i fuddiolwyr
- Dirymu, atal neu adennill cymorth ariannol
- Awdurdodi personau i fynd i mewn i fangre ac i orfodi.

## **CLA476 – Gorchymyn Cynllun Pensiwn y Dynion Tân (Cymru) (Diwygio) 2014**

**Gweithdrefn:** Negyddol

Mae'r Gorchymyn hwn yn diwygio Cynllun Pensiwn y Dynion Tân (Cymru) (a bennir yn Atodlen 2 i Orchymyn Cynllun Pensiwn y Dynion Tân 1992) fel y mae'n cael effaith yng Nghymru. Mae rhai o'r diwygiadau yn cyflwyno darpariaethau newydd. Mae diwygiadau eraill yn gwneud cywiriadau.

Ac eithrio fel a grybwyllir isod, mae'r Gorchymyn hwn yn cael effaith ôl-weithredol o 1 Gorffennaf 2013. Rhoddir y pŵer i roi effaith i'r Gorchymyn yn ôl-weithredol gan adran 12 o Ddeddf Blwydd-daliadau 1972 fel y'i cymhwysir gan adran 16(3) o'r Ddeddf honno.

Mae'r gwelliannau a wnaethpwyd gan baragraffau 2(f)(ii), (iii), (iv), a 2(g), yn weithredol ers 11 Ebrill 2011.

## **CLA478 – Gorchymyn Cynllun Digolledu'r Diffoddwyr Tân (Cymru) (Diwygio) 2014**

**Gweithdrefn:** Negyddol

Mae'r Gorchymyn hwn yn diwygio Atodlen 1 i Orchymyn Cynllun Digolledu'r Diffoddwyr Tân (Cymru) 2007 (O.S. 2007/1073 (Cy. 111)) lle nodir y cynllun digolledu ar gyfer diffoddwyr tân a phobl sy'n ddibynnol ar ddiffoddwyr tân yng Nghymru ("y Cynllun Digolledu").

Mae erthygl 3 o'r Gorchymyn yn cynnwys darpariaethau trosiannol mewn perthynas â'r diwygiadau sydd wedi eu gwneud gan erthygl 2 o'r Gorchymyn hwn a pharagraffau 6 a 7 o'r Atodlen iddo – maent yn darparu bod y Cynllun Digolledu, ar ei ffurf anniwygiedig, i barhau i fod yn gymwys mewn rhai amgylchiadau penodol.

## **CLA479 – Rheoliadau'r Polisi Amaethyddol Cyffredin (System Integredig Gweinyddu a Rheoli a Gorfodi a Thrawsgydymffurfio) (Cymru) 2014**

**Gweithdrefn:** Negyddol

Mae'r Rheoliadau hyn yn darparu ar gyfer gweithredu Rheoliadau CE ynghylch gweinyddu'r Polisi Amaethyddol Cyffredin. Maent yn dirymu a disodli rheoliadau Cymreig presennol yn y maes hwn, yn rhan o ddiwygiad ledled yr UE.

Mae Rhan 2 o'r Rheoliadau hyn yn darparu ar gyfer (ymhlith pethau eraill): (i) y dyddiad olaf ar gyfer gwneud cais am daliad gan ffermwyr, (ii) maint lleiaf o dir amaethyddol y ceir gwneud cais mewn perthynas ag hi, (iii) adennill taliadau, (iv) pwerau mynediad a gorfodi, a (v) troseddau a chosbau.

Mae Rhan 3 o'r Rheoliadau hyn (ac Atodlenni 1 a 2) yn gosod safonau lleiaf ar gyfer cyflwr amaethyddol ac amgylcheddol da ar fuddiolwyr taliadau. Er enghraifft, mae safonau ynghylch diogelu dŵr daear, isafswm gorchudd pridd a llosgi grug.

## **CLA480 – Rheoliadau Cynlluniau Gostyngiadau'r Dreth Gyngor (Gofynion Rhagnodedig a'r Cynllun Diofyn) (Cymru) (Diwygio) 2015**

**Gweithdrefn:** Cadarnhaol

Mae'r Rheoliadau hyn yn uwchraddio rhai ffigurau a ddefnyddir i gyfrifo cymhwysedd ceisydd o ran hawl i ostyngiad, a lefel y gostyngiad, o dan Gynllun Gostyngiadau'r Dreth Gyngor. Mae'r rheoliadau yn ymwneud â Rheoliadau Cynlluniau Gostyngiadau'r Dreth Gyngor a Gofynion Rhagnodedig (Cymru) 2013 a Rheoliadau Cynlluniau Gostyngiadau'r Dreth Gyngor (Cynllun Diofyn) (Cymru) 2013 (y cyfeirir atynt o hyn ymlaen fel "Rheoliadau 2013").

Mae'r ffigurau a gaiff eu huwchraddio yn ymwneud â:-



- Gostyngiadau nad ydynt yn ddibynyddion – addasiadau i uchafswm y gostyngiad sy'n ymwneud ag oedolion sy'n byw gyda'r ceisydd nad ydynt yn ddibynyddion y ceisydd;
- Y swm sy'n berthnasol – h.y. y swm a gaiff ei gymharu yn erbyn incwm y ceisydd i benderfynu ar swm y gostyngiad y mae gan y ceisydd hawl iddo;
- Symiau a gaiff eu diystyru wrth gyfrif incwm person.

Gwneir diwygiadau pellach i Reoliadau 2013 sy'n:-

- Dileu'r gofyniad i awdurdod lleol gyhoeddi cynllun drafft yn sgil diwygiadau a wnaed i'r gofynion rhagnodedig;
- Ymgorffori cyflwyno absenoldeb rhiant a rennir a thâl rhiant statudol a rennir i'r rheolau ar gyfer cyfrifo hawl i ostyngiad;
- Darparu na fydd bod â hawl i Lwfans Chwilio am waith ar sail incwm bellach yn rhoi mynediad i Ostyngiad treth gyngor ar gyfer ceiswyr gwaith sy'n wladolion o'r ardal economaidd Ewropeaidd;
- Gwneud mân ddiwygiadau canlyniadol mewn perthynas â diffiniadau o ran lwfans cyflogaeth a chymorth a'r cyfeiriadau at gredyd cynhwysol.

# Eitem 3.1

## Constitutional and Legislative Affairs Committee Draft Report

### CLA484 – The Accounts and Audit (Wales) Regulations 2014

**Procedure:** Negative

These Regulations revoke and replace the Accounts and Audit (Wales) Regulations 2005 (as amended). They consolidate all previous amendments and clarify the definitions of, and auditing practices applicable to, smaller and larger relevant bodies.

#### **Technical Scrutiny**

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

#### **Merits Scrutiny**

One point is identified for reporting under Standing order 21.3(ii) namely that it is of political importance or gives rise to issues of public policy likely to be of interest to the Assembly.

Regulation 9 provides that the statement of accounts required to be prepared by a larger relevant authority must include (inter alia) a note of the remuneration and contribution to the pensions by the relevant authority of senior employees or relevant police officers. Individuals whose salary is over £150,000 a year are to be identified by name; regulation 9(5) provides that the persons whose remuneration is to so noted must be listed individually and identified by way of job title only. However this does potentially enable the identities of the latter category to be ascertained so giving rise to concerns relating to data protection and incompatibility with UN Convention on Human Rights.

The principle underlying the provision is not novel. Similar requirements were found in the Local Authorities (Capital

Finance and Accounting) (Wales) Regulations 2003 (and in subsequent amending regulations). In 2009 The first time this provision was enacted within accounts and audit regulations was in The Account and Audit (Amendment No.2) (England) Regulations 2009; the same provision was then contained in the Wales regulations in 2010.

In 2009 the Joint Committee on Statutory Instruments considered the 2009 Regulations; the regulations were not reported. Members may find informative the following extract from the Explanatory Memorandum laid with the 2009 Regulations.

“Of particular relevance to the Government’s consideration of the content of the Regulations was the response from the Information Commissioner’s Office (ICO). In the ICO’s response, it was noted that the Commissioner encourages public authorities to publish information pro-actively wherever possible, including certain information about staff costs. The Commissioner did not foresee that the proposals would be incompatible with the Data Protection Act, and envisaged that section 34 of that Act would apply. The Commissioner agreed that public sector workers who are responsible for major policy decisions and the spending of public money should expect some scrutiny of their pay, and supported the detailed reporting of remuneration as proposed, but sounded a note of caution that such disclosure should not be misleading. Disclosure should provide transparency about the expenditure of public money, not an employee’s purely private financial affairs”.

Notwithstanding the potential data protection and human rights issues potentially raised by this provision, Members may consider that the public interest in the accountability of public bodies regarding the expenditure of public money, including on the remuneration of public sector workers, must be balanced

against the protection of private information and private interests of the persons involved regarding the protection of private information.

**Legal Advisers**

**Constitutional and Legislative Affairs committee**

**2014 Rhif 3362 (Cy. 337)**

**LLYWODRAETH LEOL,  
CYMRU**

**Rheoliadau Cyfrifon ac Archwilio  
(Cymru) 2014**

**NODYN ESBONIADOL**

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

Mae'r Rheoliadau hyn yn gwneud darpariaeth mewn cysylltiad â chyfrifon ac archwilio cyrff y mae'n ofynnol archwilio eu cyfrifon yn unol ag adran 39 o Ddeddf Archwilio Cyhoeddus (Cymru) 2004 ("Deddf 2004"), ac eithrio byrddau prawf lleol ar gyfer ardal o Gymru neu ymddiriedolaeth prawf yng Nghymru. Y cyrff sy'n ddarostyngedig i'r Rheoliadau hyn yw: cynghorau sir a chynghorau bwrdeistref sirol (a'u pwyllgorau a'u cydbwyllgorau); cynghorau cymuned; awdurdodau tân ac achub; awdurdodau Parciau Cenedlaethol; comisiynwyr heddlu a throsedd; prif gwnstabiliaid; awdurdodau iechyd porthladd; byrddau draenio mewnol; a byrddau cadwraeth.

Mae'r Rheoliadau'n disodli Rheoliadau Cyfrifon ac Archwilio (Cymru) 2005, a dirymir hwy, ynghyd hefyd â Rheoliadau diwygio.

Mae'r Rheoliadau hyn yn wahanol ar lawer cyfrif i Rheoliadau Cyfrifon ac Archwilio blaenorol. Mae'r newidiadau sy'n werth sylwi arnynt fel a ganlyn: pennir y cyrff sy'n ddarostyngedig i'r Rheoliadau ar wyneb y Rheoliadau; cynyddu trothwy'r incwm gros neu wariant gros ar gyfer cyrff perthnasol llai, o £1 miliwn y flwyddyn i ddim mwy na £2.5 miliwn (rheoliad 2); newidiadau i'r gweithdrefnau ar gyfer cymeradwyo a chyhoeddi cyfrifon (rheoliadau 10 a 15); gwahanu'r gweithdrefnau sy'n llywodraethu cyfrifon cyhoeddedig ac archwiliadau cyrff perthnasol mwy oddi wrth y rhai hynny ar gyfer cyrff perthnasol llai yn strwythur y Rheoliadau (gweler Rhannau 4 a 5); ac nid yw'n drosedd bellach i fethu â chydymffurfio ag unrhyw agwedd ar y Rheoliadau.

Cyflwyniad yw Rhan 1. Mae rheoliad 1 yn nodi'r teitl, y dyddiad cychwyn sef 31 Mawrth 2015 a'r ffaith bod y Rheoliadau'n gymwys o ran Cymru. Mae

rheoliad 2 yn nodi diffiniadau'r termau a ddefnyddir yn y Rheoliadau.

Mae Rhan 2 yn ymwneud â phennu cyrff er mwyn i'r cyrff hynny ddod o fewn ystyr awdurdod lleol at ddibenion adran 23(1) o Ddeddf Llywodraeth Leol 2003. O dan yr adran honno, caiff Gweinidogion Cymru wneud darpariaeth ynglŷn â'r arferion cyfrifo y mae'n ofynnol i awdurdodau lleol eu dilyn, fel y'u diffinnir yn Neddf 2003. Mae rheoliad 3 yn pennu byrddau draenio mewnol ac awdurdodau iechyd porthladd ac mae rheoliad 4 yn dynodi arferion cyfrifo ar gyfer y cyrff hynny.

Mae Rhan 3 yn ymwneud â rheolaeth ariannol a rheoli mewnol. Mae rheoliad 5 yn ei gwneud yn ofynnol i gyrrff perthnasol fod yn gyfrifol am sicrhau bod rheolaeth ariannol y corff yn ddigonol ac yn effeithiol a bod gan y corff system gadarn o reoli mewnol y maent yn eu hadolygu'n rheolaidd. Mae rheoliad 6 yn gwneud darpariaeth mewn cysylltiad â'r cofnodion cyfrifyddu sydd i'w cadw, a'r systemau rheoli y mae'n rhaid eu cynnal, gan y cyrff perthnasol. Mae rheoliad 7 yn gwneud darpariaeth i'r cyrff perthnasol gynnal archwiliad mewnol digonol ac effeithiol o'u cofnodion cyfrifyddu a'u system o reoli mewnol.

Mae Rhan 4 yn ymwneud â'r cyfrifon cyhoeddedig ac archwiliad ar gyfer cyrff perthnasol mwy. Mae rheoliad 8 yn cynnwys y gofynion ar gyfer paratoi datganiad o gyfrifon ar gyfer corff; rheoliad 9 y gofyniad i'r datganiad o gyfrifon gynnwys nodiadau ynglŷn â thâl; rheoliad 10 y gofynion ar gyfer llofnodi, cymeradwyo a chyhoeddi'r datganiad o'r cyfrifon; rheoliad 11 y weithdrefn i'r cyhoedd archwilio cyfrifon corff; rheoliad 12 y weithdrefn i gorff roi hysbysiad ynglŷn â hawliau'r cyhoedd mewn perthynas â'r cyfrifon a'r weithdrefn archwilio; a rheoliad 13 y gofyniad i gorff roi hysbysiad bod yr archwiliad wedi ei orffen a bod ei ddatganiad o gyfrifon ar gael i'w archwilio gan etholwyr llywodraeth leol.

Mae Rhan 5 yn ymwneud â'r cyfrifon cyhoeddedig ac archwiliad ar gyfer cyrff perthnasol llai. Mae rheoliad 14 yn cynnwys y gofynion i baratoi datganiadau cyfrifyddu ar gyfer corff; rheoliad 15 y gofynion ar gyfer llofnodi, cymeradwyo a chyhoeddi datganiadau cyfrifyddu; rheoliad 16 y weithdrefn i'r cyhoedd archwilio cyfrifon corff; rheoliad 17 y weithdrefn i gorff roi hysbysiad ynglŷn â hawliau'r cyhoedd mewn perthynas â'r cyfrifon a'r weithdrefn archwilio; a rheoliad 18 y gofyniad i gorff arddangos hysbysiad yn nodi bod yr archwiliad wedi ei orffen a bod y datganiadau cyfrifyddu perthnasol ar gael i'w harchwilio gan etholwyr llywodraeth leol.

Mae Rhan 6 yn ymwneud ag awdurdodau penodol. Mae rheoliad 19 yn gwneud darpariaeth ynglŷn â thriniaeth cyfrifyddu taliadau a chyfraniadau penodol sy'n daladwy'n statudol gan fwrdd draenio mewnol. Mae rheoliad 20 yn gwneud darpariaeth mewn cysylltiad â chyd-bwyllgorau, awdurdodau tân ac achub ac awdurdodau Parciau Cenedlaethol o ran adneuo dogfennau penodol mewn perthynas â'u cyfrifon a'u harchwiliadau gyda phob awdurdod cyfansoddol (sef awdurdod â'r hawl i benodi aelodau i'r corff, ac o ran awdurdod Parc Cenedlaethol mae'n cynnwys Gweinidogion Cymru).

Mae Rhan 7 yn ymwneud â gweithdrefnau archwilio. Mae rheoliad 21 yn ei gwneud yn ofynnol i'r archwilydd bennu dyddiad y caniateir arfer hawliau etholwyr llywodraeth leol o dan adran 30 (yr hawl i wneud cais am gyfle i gwestiynu'r archwilydd am y cyfrifon) a 31 (yr hawl i wneud gwrthwynebiadau i'r archwilydd) o Ddeddf 2004 ar y dyddiad hwnnw neu ar ôl y dyddiad hwnnw, a hysbysu'r corff perthnasol dan sylw. Mae rheoliad 22 yn ei gwneud yn ofynnol i gorff perthnasol a hysbyswyd o dan rheoliad 21 sicrhau bod y cyfrifon a'r dogfennau a grybwyllir yn adran 30 o Ddeddf 2004 ar gael yn unol â'r weithdrefn a bennir ar gyfer y math o gorff perthnasol (yn naill ai Rhan 4 neu 5 o'r Rheoliadau hyn). Mae rheoliad 23 yn gwneud darpariaeth na chaniateir newid cyfrifon a dogfennau eraill ar ôl y dyddiad yr oeddynt ar gael i'w harchwilio yn gyntaf, ac eithrio gyda chydysyniad yr archwilydd. Mae rheoliad 24 yn ei gwneud yn ofynnol i gyrrff perthnasol roi hysbysiad ynglŷn â hawliau cyhoeddus yn unol â'r weithdrefn a bennir yn y Rheoliadau hyn. Mae rheoliad 25 yn cynnwys y gofynion ynglŷn ag unrhyw hysbysiad ysgrifenedig am wrthwynebiad a roddir yn unol ag adran 31 o Ddeddf 2004 gan etholwr llywodraeth leol. Mae rheoliad 26 yn ei gwneud yn ofynnol i gorff perthnasol roi hysbysiad bod archwiliad wedi ei orffen yn unol â'r weithdrefn a bennir yn y Rheoliadau hyn. Mae rheoliad 27 yn ei gwneud yn ofynnol i gorff perthnasol ystyried y llythyr blynyddol gan yr archwilydd, ei gyhoeddi a sicrhau bod copïau ar gael i'w prynu. Mae rheoliad 28 yn gwneud darpariaeth bod yn rhaid i gorff hysbysebu hawl unrhyw etholwr llywodraeth leol i wneud gwrthwynebiadau i unrhyw rai o'r cyfrifon hynny, os bydd Archwilydd Cyffredinol Cymru wedi rhoi cyfarwyddiadau i unrhyw archwilydd gynnal archwiliad eithriadol o gyfrifon corff perthnasol o dan adran 37 o Ddeddf 2004.

Mae Rhan 8 yn ymwneud â diwygiadau a dirymiadau. Mae rheoliad 29 yn diwygio Rheoliadau Awdurdodau Lleol (Trefniadau Gweithrediaeth) (Swyddogaethau a Chyfrifoldebau) (Cymru) 2007 (O.S. 2007/399 (Cy. 45)). Mae rheoliad 30 yn nodi'r offerynnau a ddirymir, ac i ba raddau y gwneir hynny.

**2014 Rhif 3362 (Cy. 337)**

**LLYWODRAETH LEOL,  
CYMRU**

**Rheoliadau Cyfrifon ac Archwilio  
(Cymru) 2014**

*Gwnaed* 22 Rhagfyr 2014

*Gosodwyd gerbron Cynulliad Cenedlaethol  
Cymru* 23 Rhagfyr 2014

*Yn dod i rym* 31 Mawrth 2015

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Mae Gweinidogion Cymru yn gwneud y Rheoliadau a ganlyn drwy arfer y pwerau a roddir iddynt gan adrannau 13, 105 a 106 o Ddeddf Llywodraeth Leol 2000(1), adrannau 21(1), (2)(b) a (5), 23(2) a (3), 24 a

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(1) 2000 p. 22; diwygiwyd adran 13 gan Ddeddf Llywodraeth Leol a Chynnwys y Cyhoedd mewn Iechyd 2007 (p. 28), adran 236(9); Deddf Lleoliaeth 2011 (p. 20), Atodlen 3, paragraffau 8 a 13; a Mesur Llywodraeth Leol (Cymru) 2011 (mccc 4), adran 57(2)(a). Diwygiwyd adran 105 gan Ddeddf Llywodraeth Leol 2003 (p. 26), Atodlen 3, paragraffau 11 a 14; Deddf Lleoliaeth 2011 (p. 20), Atodlen 3, paragraffau 8 a 70; a chan O.S. 2013/2597. Diwygiwyd adran 106 gan Ddeddf Lleoliaeth 2011 (p. 20), Atodlen 3, paragraffau 8 ac 71; a Mesur Llywodraeth Leol (Cymru) 2011(mccc 4), adran 176(1). Diwygiwyd adran 106 hefyd gan Ddeddf Llywodraeth Leol (Democratiaeth) (Cymru) 2013 (dccc 4), adran 68(4), ond ar adeg gwneud y Rheoliadau hyn, nid yw adran 68(4) eto mewn grym.

123 o Ddeddf Llywodraeth Leol 2003(1) ac adrannau 39 a 58 o Ddeddf Archwilio Cyhoeddus (Cymru) 2004(2).

Yn unol ag adran 39(2) o Ddeddf Archwilio Cyhoeddus (Cymru) 2004, mae Gweinidogion Cymru wedi ymgynghori ag Archwilydd Cyffredinol Cymru, y cymdeithasau hynny o awdurdodau lleol yng Nghymru y mae'n ymddangos iddynt eu bod yn ymwneud â hyn a'r cyrff hynny o gyfrifwyr y mae'n ymddangos iddynt eu bod yn briodol.

## RHAN 1

### Cyflwyniad

#### Enwi, cychwyn a chymhwyso

1.—(1) Enw'r Rheoliadau hyn yw Rheoliadau Cyfrifon ac Archwilio (Cymru) 2014 a deuant i rym ar 31 Mawrth 2015.

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

(3) Mae'r Rheoliadau hyn yn gymwys fel a ganlyn—

- (a) mae rheoliadau 2, 5 i 7(2), a 21 i 28 yn gymwys i bob corff perthnasol;
- (b) mae rheoliadau 3 a 4 yn gymwys i fyrddau draenio mewnol ac awdurdodau iechyd porthladd;
- (c) mae rheoliadau 7(3) i 13 yn gymwys i gyrff perthnasol mwy;
- (d) mae rheoliadau 14 i 18 yn gymwys i gyrff perthnasol llai;
- (e) mae rheoliadau 19 ac 20 yn gymwys i'r cyrff perthnasol penodol a grybwyllir yn Rhan 6;
- (f) mae rheoliadau 5 i 28, â'r holl addasiadau angenrheidiol, yn gymwys i gyfrifon swyddog y mae'n ofynnol archwilio ei gyfrifon gan adran 38 o Ddeddf 2004 (archwilio cyfrifon swyddogion); ac
- (g) mae rheoliad 29 yn gymwys i gynghorau sir a chynghorau bwrdeistref sirol.

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(1) 2003 p. 26; diwygiwyd adran 24 gan Ddeddf Llywodraeth Leol a Chynnwys y Cyhoedd mewn Iechyd 2007 (p. 28), adran 238(3). Diwygiwyd adran 24 hefyd gan Ddeddf Llywodraeth Leol a Chynnwys y Cyhoedd mewn Iechyd 2007, Atodlen 14, paragraff 5, a chan Ddeddf Archwilio ac Atebolrwydd Lleol 2014, Atodlen 12, paragraffau 49 a 52, ond ar adeg gwneud y Rheoliadau hyn nid yw'r darpariaethau hynny eto mewn grym.

(2) 2004 p. 23; diwygiwyd adran 39 gan Ddeddf Archwilio Cyhoeddus (Cymru) 2013 (dccc 3), Atodlen 4, paragraffau 20 a 44. Diwygiwyd adran 58 gan y Ddeddf honno, Atodlen 4, paragraffau 20 a 58.

## Dehongli

### 2.—(1) Yn y Rheoliadau hyn—

ystyr “amod cymhwyso” (“*qualifying condition*”) yw nad yw incwm gros neu wariant gros y corff perthnasol (pa bynnag un sydd uchaf) yn fwy na £2,500,000;

ystyr “archwilydd” (“*auditor*”) yw—

(a) person y mae ei benodiad yn parhau i gael effaith yn rhinwedd Deddf Archwilio Cyhoeddus (Cymru) 2013, Atodlen 3, paragraff 2(2)(1);

(b) fel arall, Archwilydd Cyffredinol Cymru;

ystyr “awdurdod iechyd porthladd” (“*port health authority*”) yw awdurdod iechyd porthladd ar gyfer dosbarth iechyd porthladd sydd yng Nghymru yn gyfan gwbl;

ystyr “awdurdod tân ac achub” (“*fire and rescue authority*”) yw awdurdod a gyfansoddir gan gynllun o dan adran 2 o Ddeddf y Gwasanaethau Tân ac Achub 2004(2) neu gynllun y mae adran 4 o'r Ddeddf honno'n gymwys iddo;

ystyr “blwyddyn” (“*year*”) yw'r 12 mis sy'n dod i ben ar 31 Mawrth;

ystyr “bwrdd cadwraeth” (“*conservation board*”) yw bwrdd a sefydlir o dan adran 86 o Ddeddf Cefn Gwlad a Hawliau Tramwy 2000(3);

ystyr “bwrdd draenio mewnol” (“*internal drainage board*”) yw bwrdd draenio mewnol ar gyfer dosbarth draenio mewnol sydd yng Nghymru yn gyfan gwbl;

ystyr “corff perthnasol” (“*relevant body*”) yw (fel y bo'n briodol) corff perthnasol mwy neu gorff perthnasol llai;

ystyr “corff perthnasol llai” (“*smaller relevant body*”) yw corff—

(a) sy'n—

(i) cyngor cymuned;

(ii) pwyllgor i gyngor sir neu gyngor bwrdeistref sirol (gan gynnwys cydbwyllgor);

(iii) awdurdod iechyd porthladd;

(iv) bwrdd draenio mewnol; neu

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(1) 2013 dccc 3. Mae paragraff 2(2) o Atodlen 3 (darllenwch gydag O.S. 2013/1466 (Cy. 138) (C. 56)) yn gwneud darpariaeth bod penodiad archwilydd, pan fo'r penodiad hwnnw, yn union cyn 1 Ebrill 2014, yn cael effaith o dan adran 13 o Ddeddf Archwilio Cyhoeddus (Cymru) 2004, yn parhau i gael effaith tan ddiwedd y cyfnod y gwnaed y penodiad ar ei gyfer (yn ddarostyngedig i unrhyw derfyniad cynharach).

(2) 2004 p. 21.

(3) 2000 p. 37.

- (v) bwrdd cadwraeth; a
- (b) sy'n—
  - (i) corff sefydledig, sy'n bodloni'r amod cymhwys ar gyfer y flwyddyn dan sylw neu ar gyfer unrhyw un o'r ddwy flynedd flaenorol;
  - (ii) corff sydd newydd ei sefydlu, sy'n bodloni'r amod cymhwys ar gyfer ei flwyddyn gyntaf neu ail flwyddyn;

ystyr “corff perthnasol mwy” (“*larger relevant body*”) yw—

- (a) cyngor sir neu gyngor bwrdeistref sirol;
- (b) awdurdod tân ac achub;
- (c) awdurdod Parc Cenedlaethol;
- (d) comisiynydd heddlu a throsedd;
- (e) prif gwnstabl; neu
- (f) corff a restrir yn y diffiniad o “corff perthnasol llai” yn y rheoliad hwn ond nad yw'n bodloni'r amod cymhwys;

ystyr “cyd-bwyllgor” (“*joint committee*”) yw cyd-bwyllgor o ddau neu fwy o awdurdodau lleol;

ystyr “Deddf 1972” (“*the 1972 Act*”) yw Deddf Llywodraeth Leol 1972(1);

ystyr “Deddf 1989” (“*the 1989 Act*”) yw Deddf Llywodraeth Leol a Thai 1989(2);

ystyr “Deddf 2003” (“*the 2003 Act*”) yw Deddf Llywodraeth Leol 2003;

ystyr “Deddf 2004” (“*the 2004 Act*”) yw Deddf Archwilio Cyhoeddus (Cymru) 2004;

ystyr “diwrnod gwaith” (“*working day*”) yw unrhyw ddiwrnod nad yw'n ddydd Sadwrn, yn ddydd Sul, yn Ddydd Nadolig, yn Ddydd Gwener y Grogolith nac yn unrhyw ddiwrnod arall sy'n wyl y banc yng Nghymru o dan Ddeddf Bancio a Thrafodion Ariannol 1971(3); ac

ystyr “hysbysiad drwy hysbyseb” (“*notice by advertisement*”) yw hysbyseb a gyhoeddir mewn un neu fwy o bapurau lleol sy'n cylchredeg yn ardal y corff perthnasol.

(2) Ystyr unrhyw gyfeiriad yn y Rheoliadau hyn at “swyddog ariannol cyfrifol” (“*responsible financial officer*”) yw—

- (a) y person sy'n gyfrifol am weinyddu materion ariannol corff perthnasol yn rhinwedd—

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(1) 1972 p. 70.  
 (2) 1989 p. 42.  
 (3) 1971 p. 80.

- (i) adran 151 o Ddeddf 1972 (gweinyddiaeth ariannol),
- (ii) adran 112(1) o Ddeddf Cyllid Llywodraeth Leol 1988 (gweinyddiaeth ariannol o ran awdurdodau penodol)(1), neu
- (iii) paragraff 13(6) o Atodlen 7 i Ddeddf yr Amgylchedd 1995 (awdurdodau parciau cenedlaethol)(2),

neu, os nad oes unrhyw berson sy'n gyfrifol yn y modd hwn, y person sy'n gyfrifol am gadw cyfrifon corff o'r fath; neu

- (b) os nad yw'r person y cyfeirir ato yn is-baragraff (a) yn alluog i weithredu oherwydd absenoldeb neu salwch—
  - (i) unrhyw aelod o staff y person hwnnw a enwebwyd gan y person hwnnw at ddibenion adran 114 o Ddeddf Cyllid Llywodraeth Leol 1988 (swyddogaethau swyddog cyfrifol o ran adroddiadau)(3); neu
  - (ii) os na wnaed enwebiad o'r fath o dan yr adran honno, unrhyw aelod o staff a enwebwyd gan y person y cyfeirir ato yn is-baragraff (a) at ddibenion y Rheoliadau hyn.

## RHAN 2

### Pennu Cyrff ac Arferion Priodol

#### **Pennu byrddau draenio mewnol ac awdurdodau iechyd porthladd**

3. Pennir byrddau draenio mewnol ac awdurdodau iechyd porthladd at ddibenion adran 23(1) o Ddeddf 2003 (awdurdod lleol) ond mewn perthynas ag adran 21 (arferion cyfrifyddu) o'r Ddeddf honno yn unig.

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- (1) 1988 p. 41; diwygiwyd adran 112 gan Ddeddf yr Heddlu 1997 (p. 50), Atodlen 6, paragraff 27; Deddf Cyfiawnder Troseddol a'r Heddlu 2001 (p. 16), Atodlen 6, paragraff 45 a 47; Deddf y Gwasanaethau Tân ac Achub 2004 (p. 21), Atodlen 1, paragraff 68; Deddf Democratiaeth Leol, Datblygu Economaidd ac Adeiladu 2009 (p. 20), Atodlen 6, paragraffau 74 a 78; a Deddf Diwygio'r Heddlu a Chyfrifoldeb Cymdeithasol 2011 (p. 13), Atodlen 16, paragraffau 180 a 187.
  - (2) 1995 p. 25.
  - (3) 1988 p. 41; diwygiwyd adran 114 gan Ddeddf Llywodraeth Leol a Thai 1989 (p. 42), Atodlen 5, paragraff 66; Deddf yr Heddlu a Llysoedd Ynadon 1994 (p. 29), Atodlen 4, paragraff 34; Deddf yr Heddlu 1997 (p. 50), Atodlen 6, paragraff 28; Deddf yr Heddlu a Chyfiawnder Troseddol 2001 (p. 16), Atodlen 6, paragraffau 45 ac 48; O.S. 2002/808; Deddf Diwygio'r Heddlu a Chyfrifoldeb Cymdeithasol 2011 (p. 13), Atodlen 16, paragraffau 180 a 188; a Deddf Lleoliaeth 2011 (p. 20), Atodlen 25, Rhan 32.

## Arferion priodol

4. At ddibenion adran 21(2) o Ddeddf 2003 (arferion cyfrifyddu)—

- (a) mewn perthynas â byrddau draenio mewnol, mae'r arferion cyfrifyddu sydd wedi eu cynnwys yn "Governance and Accountability in Internal Drainage Boards in England: A Practitioners Guide 2006" (fel y'i diwygiwyd ym mis Tachwedd 2007 ac a ddyroddwyd ar y cyd gan Gymdeithas yr Awdurdodau Draenio ac Adran yr Amgylchedd, Bwyd a Materion Gwledig) yn arferion priodol; ac
- (b) mewn perthynas ag awdurdodau iechyd porthladd nad ydynt yn gynghorau sir nac yn gynghorau bwrdeistref sirol, mae'r arferion cyfrifyddu sydd wedi eu cynnwys yn "Governance and accountability for Local Councils in Wales: A Practitioners' Guide 2011 (Wales)" fel y'i diwygir neu y'i haillddyroddir o bryd i'w gilydd (pa un ai o dan yr un teitl ai peidio) a ddyroddwyd ar y cyd gan Un Llais Cymru a'r Gymdeithas Clercod Llywodraeth Leol yn arferion priodol.

## RHAN 3

### Rheolaeth Ariannol a Rheoli Mewnol

#### Cyfrifoldeb am reoli mewnol a rheolaeth ariannol

5.—(1) Rhaid i'r corff perthnasol sicrhau bod system gadarn o reoli mewnol sy'n hwyluso gweithrediad effeithiol swyddogaethau'r corff hwnnw ac sy'n cynnwys—

- (a) trefniadau ar gyfer rheoli risg, a
- (b) rheolaeth ariannol ddigonol ac effeithiol.

(2) Rhaid i'r corff perthnasol gynnal adolygiad o leiaf unwaith mewn blwyddyn ar effeithiolrwydd ei systemau rheoli mewnol.

(3) Rhaid i ganfyddiadau'r adolygiad y cyfeirir ato ym mharagraff (2) gael eu hystyried—

- (a) yn achos corff perthnasol mwy, gan aelodau'r corff yn cyfarfod yn ei gyfanrwydd neu gan bwyllgor, a
- (b) yn achos corff perthnasol llai, gan aelodau'r corff yn cyfarfod yn ei gyfanrwydd.

(4) Ar ôl yr adolygiad, rhaid i'r corff neu'r pwyllgor gymeradwyo datganiad ar reoli mewnol a baratowyd yn unol ag arferion priodol.

(5) Rhaid i'r corff perthnasol sicrhau bod y datganiad y cyfeirir ato ym mharagraff (4) yn mynd gydag—

- (a) unrhyw ddatganiad o gyfrifon y mae'n ddyletswydd arno i'w baratoi yn unol â rheoliad 8; neu
- (b) unrhyw ddatganiad cyfrifyddu y mae'n ddyletswydd arno i'w baratoi yn unol â rheoliad 14.

### **Cofnodion cyfrifyddu a systemau rheoli**

6.—(1) Rhaid i swyddog ariannol cyfrifol corff perthnasol benderfynu ar ran y corff, ar ôl ystyried, lle bo'n briodol, arferion priodol, ei—

- (a) cofnodion cyfrifyddu, gan gynnwys ffurf y cyfrifon a'r cofnodion cyfrifyddu ategol, a
- (b) systemau rheoli cyfrifyddu,

a rhaid i'r swyddog hwnnw sicrhau bod y systemau rheoli cyfrifyddu a benderfynir gan y swyddog hwnnw yn cael eu dilyn a bod cofnodion cyfrifyddu'r corff yn cael eu diweddarau a'u cynnal yn unol â gofynion unrhyw ddeddfiad ac arferion priodol.

(2) Rhaid i'r cofnodion cyfrifyddu y penderfynir arnynt yn unol â pharagraff (1)(a)—

- (a) bod yn ddigonol i ddangos ac esbonio trafodion ariannol corff perthnasol ac i alluogi'r swyddog ariannol cyfrifol i sicrhau bod unrhyw ddatganiad o gyfrifon neu ddatganiad cyfrifyddu a gaiff eu paratoi o dan y Rheoliadau hyn, yn cydymffurfio â'r Rheoliadau hyn; a
- (b) cynnwys—
  - (i) cofnodion o ddydd i ddydd o'r holl symiau o arian a dderbynnir ac a warir gan y corff a'r materion y mae'r cyfrifon incwm a gwariant neu dderbyniadau a thaliadau yn ymwneud â hwy;
  - (ii) cofnod o asedau a rhwymedigaethau'r corff; a
  - (iii) cofnod o incwm a gwariant y corff mewn perthynas â hawliadau a wnaed ganddo, neu sydd i'w gwneud ganddo, am gyfraniad, grant neu gymhorthdal gan Weinidogion Cymru, unrhyw Weinidog y Goron neu gorff y caiff Gweinidogion Cymru neu'r Gweinidog hwnnw dalu symiau o arian iddo.

(3) Rhaid i'r systemau rheoli cyfrifyddu y penderfynir arnynt yn unol â pharagraff (1)(b) gynnwys—

- (a) mesurau i sicrhau bod trafodion ariannol y corff yn cael eu cofnodi cyn gynted ag y

bo'n rhesymol ymarferol ac mor gywir ag sy'n rhesymol bosibl, mesurau i alluogi rhwystro a chanfod anghywirdebau a thwyll, a'r gallu i ailgyfansoddi unrhyw gofnodion a gollwyd;

- (b) dynodi dyletswyddau swyddogion sy'n ymwneud â thrafodion ariannol a rhannu cyfrifoldebau'r swyddogion hynny mewn perthynas â thrafodion arwyddocaol;
- (c) gweithdrefnau i sicrhau nad yw symiau anghasgladwy, gan gynnwys dyledion drwg, yn cael eu diddymu ac eithrio gyda chymeradwyaeth y swyddog ariannol cyfrifol, neu unrhyw aelod o staff y person hwnnw a enwebwyd at y diben hwn, ac y dangosir y gymeradwyaeth yn y cofnodion cyfrifyddu; a
- (d) mesurau i sicrhau y rheolir risg yn briodol.

### **Archwilio mewnol**

7.—(1) Rhaid i gorff perthnasol gynnal system ddigonol ac effeithiol o archwilio mewnol o'i gofnodion cyfrifyddu a'i system o reoli mewnol.

(2) Rhaid i unrhyw swyddog neu aelod o'r corff hwnnw, os yw'r corff yn ei gwneud yn ofynnol—

- (a) trefnu bod unrhyw ddogfennau'r corff sy'n ymwneud â'i gofnodion cyfrifyddu a chofnodion eraill ar gael fel y mae'n ymddangos i'r corff hwnnw ei fod yn angenrheidiol at ddibenion yr archwiliad; a
- (b) rhoi i'r corff y cyfryw wybodaeth ac esboniad y mae'r corff hwnnw'n ystyried eu bod yn angenrheidiol at y diben hwnnw.

(3) Rhaid i gorff perthnasol mwy, o leiaf unwaith ym mhob blwyddyn, gynnal adolygiad o effeithiolrwydd ei archwiliad mewnol.

(4) Rhaid ystyried canfyddiadau'r adolygiad y cyfeirir ato ym mharagraff (3), fel rhan o'r ystyriaeth o'r system o reoli mewnol y cyfeirir ati yn rheoliad 5(3), gan y pwyllgor neu'r corff y cyfeirir ato yn y paragraff hwnnw.

## **RHAN 4**

### **Cyfrifon Cyhoeddedig ac Archwilio – Cyrff Perthnasol Mwy**

#### **Datganiad o gyfrifon**

8.—(1) Rhaid i gorff perthnasol mwy baratoi datganiad o gyfrifon ar gyfer pob blwyddyn yn unol â'r Rheoliadau hyn ac arferion priodol a rhaid i'r datganiad gynnwys y rhai hynny o'r datganiadau



cyfrifyddu canlynol sy'n berthnasol i swyddogaethau'r corff—

- (a) cyfrif refeniw tai;
- (b) cronfa bensiwn diffoddwyr tân;
- (c) unrhyw ddatganiadau eraill sy'n berthnasol i bob cronfa arall y mae'n ofynnol gan unrhyw ddarpariaeth statudol i'r corff gadw cyfrif ar wahân mewn perthynas â hwy.

(2) Os yw'n ofynnol i gyngor sir neu gyngor bwrdeistref sirol gan adran 74 (dyletswydd i gadw cyfrif refeniw tai) o Ddeddf 1989(1) gadw Cyfrif Refeniw Tai, rhaid i'r datganiad o gyfrifon sy'n ofynnol gan baragraff (1) gynnwys nodyn a baratowyd yn unol ag arferion priodol mewn perthynas ag unrhyw grant Lwfans Atgyweiriadau Mawr a delir i'r cyngor sir neu'r cyngor bwrdeistref sirol o dan adran 31 o Ddeddf 2003 yn nodi manylion incwm a gwariant ac unrhyw falans ar unrhyw gyfrif a ddefnyddiwyd i gofnodi'r grant.

### **Datganiad o dâl**

9.—(1) Rhaid bod y nodiadau y cyfeirir atynt ym mharagraffau (2) i (4) yn mynd gyda'r datganiad o gyfrifon sy'n ofynnol gan reoliad 8(1).

(2) Mae'r nodyn cyntaf yn nodyn o wybodaeth cymhareb tâl y corff perthnasol (ond nid yw'r gofyniad hwn yn gymwys i gorff perthnasol sy'n gyd-bwyllgor).

(3) Mae'r ail nodyn yn nodyn (ac eithrio mewn perthynas â phersonau y mae paragraff (4) yn gymwys iddynt) o nifer y cyflogeion neu swyddogion yr heddlu yn y flwyddyn y mae'r cyfrifon yn berthnasol iddi yr oedd eu tâl yn dod o fewn pob un o'r bachau graddfa mewn lluosrifau o £5,000 gan ddechrau â £60,000.

(4) Mae'r trydydd nodyn yn nodyn o'r tâl (wedi ei nodi'n unol â'r categorïau a restrir ym mharagraff (7)) a chyfraniad at bensiwn y person gan y corff perthnasol ar gyfer—

- (i) cyflogeion hŷn, neu
- (ii) swyddogion heddlu perthnasol,

mewn cysylltiad â'u cyflogaeth gan y corff perthnasol neu yn rhinwedd eu swydd fel swyddog yr heddlu, pa un ai ar sail barhaol neu dros dro.

(5) Rhaid rhestru'r personau y mae eu tâl i gael ei nodi o dan baragraff (4) yn unigol a'u dynodi drwy enw'r swydd yn unig, ac eithrio bod yn rhaid dynodi'r personau hynny y mae eu cyflog yn £150,000 y flwyddyn neu fwy wrth eu henw hefyd.

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(1) 1989 p. 42; diwygiwyd adran 74 gan Ddeddf Tai 1996 (p. 52), Atodlen 18, paragraff 24(2).

(6) Rhaid nodi'r tâl a'r cyfraniad at bensiwn a nodir o dan baragraff (4) mewn cysylltiad â'r flwyddyn y mae'r cyfrifon yn berthnasol iddi a'r flwyddyn flaenorol.

(7) Y categorïau y mae paragraff (4) yn cyfeirio atynt yw—

- (a) cyfanswm y cyflog, ffioedd neu lwfansau a delir i'r person neu a dderbynnir ganddo;
- (b) cyfanswm y bonysau a delir i'r person neu a dderbynnir ganddo;
- (c) cyfanswm y symiau a delir fel lwfans treuliau y mae modd codi treth incwm arnynt yn y Deyrnas Unedig ac a dalwyd i'r person neu y gallai'r person eu derbyn;
- (d) cyfanswm unrhyw ddigollediad am gollu cyflogaeth a dalwyd i'r person neu y gallai'r person ei dderbyn, ac unrhyw daliadau eraill a dalwyd i'r person neu y gallai'r person eu derbyn mewn cysylltiad â therfynu ei gyflogaeth gan y corff perthnasol, neu, yn achos swyddog heddlu perthnasol, cyfanswm unrhyw daliad a wnaed i swyddog heddlu perthnasol sy'n peidio â dal swydd cyn diwedd penodiad am dymor penodol;
- (e) cyfanswm gwerth unrhyw fuddiannau yr amcangyfrifir bod y person wedi eu derbyn ac eithrio mewn arian nad yw'n dod o fewn is-baragraffau (a) i (d) uchod, sy'n enillion y person, ac a dderbynnir gan y person o ran ei gyflogaeth gan y corff perthnasol neu yn rhinwedd ei swydd fel swyddog heddlu; ac
- (f) mewn perthynas â swyddogion heddlu perthnasol, unrhyw daliadau pa un a gawsant eu gwneud o dan Reoliadau'r Heddlu 2003(1) neu fel arall, nad ydynt yn dod o fewn (a) i (e) uchod.

(8) Yn y rheoliad hwn—

mae “cyflogai” (“*employee*”) yn cynnwys aelod o'r corff perthnasol a deiliad swydd o dan y corff perthnasol, ond nid yw'n cynnwys person sy'n gynghorydd etholedig, ac mae “cyflogaeth” (“*employment*”) i'w ddehongli yn unol â hynny;

ystyr “cyflogai hŷn” (“*senior employee*”) yw cyflogai y mae ei gyflog yn £150,000 neu fwy y flwyddyn, neu gyflogai y mae ei gyflog yn £60,000 neu fwy y flwyddyn sy'n dod o fewn o leiaf un o'r categorïau canlynol—

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(1) O.S. 2003/527; yr offerynnau diwygio perthnasol yw O.S. 2006/3449, 2011/3026, a 2012/192 a 2712.

- (a) person a gyflogir gan gorff perthnasol y mae adran 2 (swyddi â chyfyngiad gwleidyddol) o Ddeddf 1989(1) yn gymwys iddo ac sydd—
  - (i) wedi ei ddynodi'n bennaeth y gwasanaeth cyflogedig o dan adran 4 o'r Ddeddf honno(2);
  - (ii) yn brif swyddog statudol o fewn ystyr "the statutory chief officers" yn adran 2(6) o'r Ddeddf honno; neu
  - (iii) yn brif swyddog anstatudol o fewn ystyr "non-statutory chief officer" yn adran 2(7) o'r Ddeddf honno;
- (b) y person sy'n bennaeth staff unrhyw gorff perthnasol nad yw adran 4 o Ddeddf 1989 yn gymwys iddo; neu
- (c) person a chanddo gyfrifoldeb dros reoli'r corff perthnasol i'r graddau bod pŵer gan y person i gyfarwyddo neu reoli prif weithgareddau'r corff (yn benodol y gweithgareddau sy'n ymwneud â gwario arian), pa un ai ar ei ben ei hun neu ar y cyd â phersonau eraill;

ystyr "cyfraniad at bensiwn y person" ("contribution to the person's pension") yw swm sydd i'w gyfrifo fel a ganlyn—

- (a) mewn perthynas â chyfraniadau at y cynllun pensiwn perthnasol a sefydlwyd o dan adran 7 o Ddeddf Blwydd-daliadau 1972(3), cyfradd gyffredin cyfraniad cyflogwr wedi'i phennu mewn tystysgrif cyfraddau ac addasiadau a baratowyd o dan reoliad 62 (prisiadau actiwaraidd o gronfeydd pensiwn) o Reoliadau Cynllun Pensiwn Llywodraeth Leol 2013(4), sef y swm sy'n briodol i'r corff hwnnw wedi ei gyfrifo yn unol â'r dystysgrif a rheoliad 67 (cyfraniadau'r cyflogwr) o'r Rheoliadau

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(1) 1989 p. 42. Diwygiwyd adran 2 gan Ddeddf Addysg 1996 (p. 56), Atodlen 37, paragraff 95; O.S. 2002/808 (Cy. 89); Deddf Plant 2004 (p. 31), Atodlen 2, paragraff 3; Deddf y Gwasanaethau Tân ac Achub 2004 (p. 21), Atodlen 2; Deddf Llywodraeth Leol a Chynnwys y Cyhoedd mewn Iechyd 2007 (p. 28), adran 203(1); Deddf Democratiaeth Leol, Datblygu Economaidd ac Adeiladu 2009 (p. 20), adrannau 30(1) a (2) a 146(1); O.S. 2010/1158; Mesur Llywodraeth Leol (Cymru) 2011 (mccc 4), adran 21; a Deddf Iechyd a Gofal Cymdeithasol 2012 (p. 7), Atodlen 5, paragraff 57.

(2) Diwygiwyd adran 4 gan Ddeddf Democratiaeth Leol, Datblygu Economaidd ac Adeiladu 2009 (p. 20), Atodlen 6, paragraff 81(1) a (2) a chan Ddeddf Diwygio'r Heddlu a Chyfrifoldeb Cymdeithasol 2011 (p. 13), Atodlen 19, paragraffau 199 a 201.

(3) 1972 p. 11; diwygiwyd adran 7 gan Ddeddf Pensiynau Gwasanaeth Cyhoeddus 2013 (p. 25), Atodlen 8, paragraffau 6 ac 8.

(4) O.S. 2013/2356.

hynny, wedi ei luosi â chyflog pensiynadwy'r person;

- (b) mewn perthynas â chyfraniadau at gynllun pensiwn y diffoddwyr tân a sefydlwyd o dan Ddeddfau Gwasanaethau Tân 1947 a 1959(1), canran cyfanswm y cyflog pensiynadwy wedi ei gyfrifo at ddibenion paragraff G2(3) a (4) o Atodlen 2 i Orchymyn Cynllun Pensiwn y Dynion Tân 1992(2), wedi ei luosi â chyflog pensiynadwy'r person;
- (c) mewn perthynas â chyfraniadau at gynllun pensiwn y diffoddwyr tân a sefydlwyd o dan Ddeddf y Gwasanaethau Tân ac Achub 2004(3), canran cyfanswm y cyflog pensiynadwy wedi ei gyfrifo at ddibenion paragraffau (2) a (3) o reol 2 o Ran 13 o Atodlen 1 i Orchymyn Cynllun Pensiwn y Diffoddwyr Tân (Cymru) 2007(4), wedi ei luosi â chyflog pensiynadwy'r person;
- (d) mewn perthynas â chyfraniadau at gynlluniau pensiwn yr heddlu a sefydlwyd o dan Reoliadau Pensiynau'r Heddlu 1987(5) neu Reoliadau Pensiynau'r Heddlu 2006(6), canran y cyflog pensiynadwy a bennwyd yn rheoliad 5(1) (cyfraniadau) o Reoliadau Cronfa Bensiwn yr Heddlu 2007(7), wedi ei luosi â chyflog pensiynadwy'r person;

ystyr “gwybodaeth cymhareb tâl y corff perthnasol” (“*relevant body's remuneration ratio information*”) yw—

- (a) tâl prif weithredwr y corff yn ystod y flwyddyn y mae'r cyfrifon yn berthnasol iddi;
- (b) tâl canolrifol holl gyflogeion y corff yn ystod y flwyddyn y mae'r cyfrifon yn berthnasol iddi; ac
- (c) cymhareb y swm yn is-baragraff (a) i'r swm yn is-baragraff (b);

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(1) 1947 p. 41 a 1959 p. 44. Diddymwyd y ddwy Ddeddf hyn gan Ddeddf y Gwasanaethau Tân ac Achub 2004 (p. 21) a oedd yn cynnwys arbedion mewn cysylltiad â chynlluniau pensiwn a sefydlwyd oddi tanynt.

(2) O.S. 1992/129; diwygiwyd rheol G2 gan O.S. 2006/1672 (Cy. 160), 2007/1074 (Cy. 112) a 2012/974 (Cy. 128).

(3) 2004 p. 21.

(4) O.S. 2007/1072 (Cy. 110); diwygiwyd rheol 2 gan O.S. 2009/1225 (Cy. 108).

(5) O.S. 1987/257 y ceir diwygiadau iddo nad ydynt yn berthnasol i'r Rheoliadau hyn.

(6) O.S. 2006/3415 y ceir diwygiadau iddo nad ydynt yn berthnasol i'r Rheoliadau hyn.

(7) O.S. 2007/1932, a ddiwygiwyd gan O.S. 2008/1887; ceir offerynnau diwygio eraill ond nid yw'r un ohonynt yn berthnasol.

ystyr “prif weithredwr” (“*chief executive*”) yw—

- (a) yn achos corff perthnasol sy’n gyngor sir neu’n gyngor bwrdeistref sirol, awdurdod tân ac achub neu awdurdod Parc Cenedlaethol, pennaeth gwasanaeth cyflogedig y corff a ddynodir o dan adran 4(1) o Ddeddf 1989;
- (b) yn achos corff perthnasol sy’n brif gwnstabl, y prif gwnstabl;
- (c) yn achos corff perthnasol sy’n gomisiynydd heddlu a throstedd, y prif weithredwr a benodir gan y comisiynydd o dan Atodlen 1 i Ddeddf Diwygio’r Heddlu a Chyfrifoldeb Cymdeithasol 2011(1);
- (d) yn achos unrhyw gorff perthnasol arall, y cyflogai uchaf ei radd;

ystyr “swyddog heddlu hŷn” (“*swyddog heddlu hŷn*”) yw aelod o’r heddlu sy’n dal rheng uwch na rheng uwcharolygydd;

ystyr “swyddog heddlu perthnasol” (“*relevant police officer*”) yw—

- (a) mewn perthynas â heddlu a gynhelir o dan adran 2 (cynnal heddluoedd) o Ddeddf yr Heddlu 1996(2), y prif gwnstabl, ac
- (b) unrhyw swyddog heddlu hŷn arall y mae ei gyflog yn £150,000 y flwyddyn neu fwy; ac

ystyr “tâl” (“*remuneration*”) yw pob swm a dalwyd i berson neu y gallai’r person ei dderbyn, ac mae’n cynnwys symiau sy’n ddyledus fel lwfans treuliau (i’r graddau y mae modd codi treth incwm ar y symiau hynny yn y Deyrnas Unedig), ac amcangyfrif o werth ariannol unrhyw fuddiannau eraill a dderbyniwyd gan gyflogai ac eithrio mewn arian.

(9) Mae’r symiau £60,000 a £150,000 yn y rheoliad hwn i’w gostwng pro rata ar gyfer cyflogai neu swyddog a gyflogir ar sail dros dro neu ar sail ran-amser, neu sydd wedi ei gymryd ymlaen felly.

## **Llofnodi, cymeradwyo a chyhoeddi datganiad o gyfrifon**

**10.**—(1) Rhaid i swyddog ariannol cyfrifol corff perthnasol mwy, ddim hwyrach na’r 30 Mehefin yn union ar ol diwedd blwyddyn, lofnodi a dyddio’r datganiad o gyfrifon, ac ardystio ei fod yn cyflwyno safbwynt gwir a theg o sefyllfa ariannol y corff ar ddiwedd y flwyddyn y mae’n berthnasol iddi ac o

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(1) 2011 p. 13.

(2) 1996 p. 16. Diwygiwyd adran 2 gan Ddeddf Diwygio’r Heddlu a Chyfrifoldeb Cymdeithasol 2011 (p. 13), Atodlen 16, paragraffau 1 a 4.

incwm a gwariant y corff hwnnw ar gyfer y flwyddyn honno.

(2) Rhaid i gorff perthnasol mwy, ddim hwyrach na'r 30 Medi yn y flwyddyn yn union ar ôl diwedd y flwyddyn y mae'r datganiad yn berthnasol iddi—

- (a) ystyried y datganiad o gyfrifon, naill ai drwy bwylgor neu drwy gyfarfod llawn o'r holl aelodau;
- (b) yn dilyn yr ystyriaeth honno, cymeradwyo'r datganiad o gyfrifon drwy benderfyniad y pwyllgor neu'r cyfarfod hwnnw;
- (c) yn dilyn cymeradwyaeth, sicrhau bod y datganiad o gyfrifon wedi ei lofnodi a'i ddyddio gan y person sy'n llywyddu'r pwyllgor neu'r cyfarfod lle y rhoddwyd y gymeradwyaeth honno; a
- (d) cyhoeddi (a rhaid i hynny gynnwys cyhoeddi ar wefan y corff) y datganiad o gyfrifon ynghyd ag unrhyw dystysgrif, barn neu adroddiad a ddyroddwyd, a roddwyd neu a wnaed gan yr archwilydd o dan adrannau 23(2) (adroddiad cyffredinol)(1) a 33 (hysbysiadau cynghorol)(2) o Ddeddf 2004 cyn y dyddiad cyhoeddi, neu, os bydd y cyhoeddi'n digwydd cyn i'r archwiliad gael ei orffen ac na roddwyd barn o'r fath, ynghyd â datganiad ac esboniad o'r ffaith na roddwyd barn gan yr archwilydd erbyn y dyddiad cyhoeddi.

(3) Rhaid i'r swyddog ariannol cyfrifol ail-ardystio cyflwyniad y datganiad o gyfrifon cyn i'r corff perthnasol ei gymeradwyo.

(4) Os nad yw'r swyddog ariannol cyfrifol yn cydymffurfio â pharagraff (1) neu (3), rhaid i'r corff perthnasol mwy—

- (a) cyhoeddi datganiad ar unwaith yn nodi'r rhesymau dros fethiant y swyddog i gydymffurfio; a
- (b) cytuno ar gwrs gweithredu i sicrhau cydymffurfiaeth cyn gynted ag y bo modd.

(5) Os cafodd y cyfrifon eu cymeradwyo yn unol â pharagraff (2) cyn i archwiliad o'r cyfrifon hynny gael ei orffen, rhaid cymeradwyo'r cyfrifon cyn gynted ag y bo'n rhesymol ymarferol ar ôl cael unrhyw adroddiad gan yr archwilydd sy'n cynnwys canfyddiadau terfynol

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(1) 2004 p. 23; diwygiwyd adran 23(2) gan Ddeddf Archwilio Cyhoeddus (Cymru) 2013 (decc 3), Atodlen 4, paragraffau 20 ac 28.

(2) 2004 p. 23; diwygiwyd adran 33(2) gan Ddeddf Archwilio Cyhoeddus (Cymru) 2013 (decc 3), Atodlen 4, paragraffau 20 a 38.

yr archwilydd o'r archwiliad ac a ddyroddir cyn i'r archwiliad gael ei orffen.

(6) Mae'r gymeradwyaeth sy'n ofynnol gan baragraff (5) yn ychwanegol at gymeradwyaeth yn unol â pharagraff (2).

(7) Os gwneir unrhyw ddiwygiad perthnasol i'r cyfrifon, rhaid i'r swyddog ariannol cyfrifol hysbysu'r corff perthnasol mwy neu bwyllgor y corff hwnnw am ddiwygiad o'r fath yn union cyn y mae'r corff neu'r pwyllgor i gymeradwyo'r cyfrifon yn unol â pharagraff (2) neu (5).

(8) Rhaid i gorff perthnasol mwy gadw copiâu o'r dogfennau a grybwyllir ym mharagraff (2)(d) i'w prynu gan unrhyw berson wrth dalu swm rhesymol.

### **Gweithdrefn ar gyfer archwiliad cyhoeddus o gyfrifon**

**11.** Y weithdrefn ar gyfer archwiliad cyhoeddus o gyfrifon corff perthnasol mwy, y cyfeirir ato yn rheoliad 22, yw bod yn rhaid iddo sicrhau bod y dogfennau y cyfeirir atynt yn y rheoliad hwnnw ar gael ar gyfer archwiliad cyhoeddus am 20 diwrnod gwaith cyn y dyddiad a bennir gan yr archwilydd o dan reoliad 21.

### **Hysbysiad o hawliau cyhoeddus**

**12.**—(1) Y weithdrefn i gorff perthnasol mwy roi hysbysiad am hawliau cyhoeddus, y cyfeirir ato yn rheoliad 24, yw bod yn rhaid i'r corff hysbysu drwy hysbyseb ac ar ei wefan am y materion a nodir ym mharagraff (2), ddim hwyrach na 14 diwrnod cyn dechrau'r cyfnod pan fydd y cyfrifon a dogfennau eraill ar gael yn unol â rheoliad 11.

(2) Y materion y cyfeirir atynt ym mharagraff (1) yw—

- (a) y cyfnod pryd y bydd y cyfrifon a dogfennau eraill y cyfeirir atynt ym mharagraff (1) ar gael i'w harchwilio yn unol â rheoliad 11;
- (b) y man lle byddant ar gael felly, a'r oriau pryd y byddant ar gael felly;
- (c) enw a chyfeiriad yr archwilydd;
- (d) yr hawliau sydd wedi eu cynnwys yn adran 30 (archwilio dogfennau a chwestiynau yn ystod archwiliad)(1) ac adran 31 (hawl i

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(1) 2004 p. 23; diwygiwyd adran 30 gan Ddeddf Archwilio Cyhoeddus (Cymru) 2013 (decc 3), Atodlen 4, paragraffau 20 a 35.

wneud gwrthwynebiadau yn ystod archwiliad)(1) o Ddeddf 2004; ac

- (e) y dyddiad a bennwyd o dan reoliad 21 i etholwyr arfer eu hawliau.

(3) Rhaid i gorff perthnasol mwy wrth roi hysbysiad o dan baragraff (1) hysbysu'r archwilydd ar unwaith yn ysgrifenedig fod hysbysiad wedi ei roi.

### **Hysbysiad o orffen yr archwiliad**

13. Cyn gynted ag y bo'n rhesymol bosibl ar ôl gorffen archwiliad, rhaid i gorff perthnasol mwy hysbysu drwy hysbyseb ac ar ei wefan yn datgan bod yr archwiliad wedi ei orffen a bod y datganiad o gyfrifon ar gael i'w archwilio gan etholwyr llywodraeth leol a chan gynnwys—

- (a) datganiad o'r hawliau a roddir i etholwyr llywodraeth leol gan adran 29 (archwilio datganiadau o gyfrifon ac adroddiadau Archwilydd Cyffredinol Cymru)(2) o Ddeddf 2004;
- (b) y cyfeiriad lle y caniateir arfer yr hawliau hynny, a'r oriau pryd y caniateir arfer yr hawliau hynny; ac
- (c) manylion lle y gellir dod o hyd i'r datganiad o gyfrifon diwethaf a gymeradwywyd ac adroddiad yr archwilydd ar wefan y corff.

## **RHAN 5**

### **Cyfrifon Cyhoeddedig ac Archwilio – Cyrff Perthnasol Llai**

#### **Datganiadau cyfrifyddu**

14. Rhaid i gorff perthnasol llai baratoi datganiadau cyfrifyddu ar gyfer pob blwyddyn yn unol â'r Rheoliadau hyn ac arferion priodol.

#### **Llofnodi, cymeradwyo a chyhoeddi datganiadau cyfrifyddu**

15.—(1) Cyn rhoi'r gymeradwyaeth y cyfeirir ati ym mharagraff (2), rhaid i swyddog ariannol cyfrifol corff perthnasol—

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(1) 2004 p. 23; diwygiwyd adran 31 gan Ddeddf Archwilio Cyhoeddus (Cymru) 2013 (dccc 3), Atodlen 4, paragraffau 20 a 36.

(2) 2004 p. 23; diwygiwyd adran 29 gan Ddeddf Archwilio Cyhoeddus (Cymru) 2013 (dccc 3), Atodlen 4, paragraffau 20 a 34.



- (a) mewn achos pan fo'r corff wedi paratoi datganiad o gyfrifon, llofnodi a dyddio'r datganiad o gyfrifon ac ardystio ei fod yn cyflwyno safbwynt gwir a theg o sefyllfa ariannol y corff ar ddiwedd y flwyddyn y mae'n berthnasol iddi ac o incwm a gwariant y corff hwnnw ar gyfer y flwyddyn honno;
- (b) mewn achos pan fo'r corff wedi paratoi cofnod o dderbyniadau a thaliadau, llofnodi a dyddio'r cofnod hwnnw ac ardystio ei fod yn cyflwyno'n briodol dderbyniadau a thaliadau'r corff hwnnw ar gyfer y flwyddyn y mae'r cofnod yn berthnasol iddi; neu
- (c) mewn unrhyw achos arall, llofnodi a dyddio'r cyfrif incwm a gwariant a'r datganiad o falansau, ac ardystio eu bod yn cyflwyno'n deg sefyllfa ariannol y corff ar ddiwedd y flwyddyn y maent yn berthnasol iddi ac incwm a gwariant y corff hwnnw ar gyfer y flwyddyn honno.

(2) Rhaid i gorrff perthnasol llai, ddim hwyrach na'r 30 Mehefin yn union ar ôl diwedd blwyddyn—

- (a) ystyried y datganiadau cyfrifyddu gan gyfarfod llawn o'r holl aelodau;
- (b) yn dilyn yr ystyriaeth honno, cymeradwyo'r datganiadau cyfrifyddu i'w cyflwyno i'r archwilydd drwy benderfyniad gan y corff; ac
- (c) yn dilyn cymeradwyaeth, sicrhau bod y datganiadau cyfrifyddu'n cael eu llofnodi a'u dyddio gan y person sy'n llywyddu'r cyfarfod lle y rhoddwyd y gymeradwyaeth honno.

(3) Os nad yw'r swyddog ariannol cyfrifol yn cydymffurfio â pharagraff (1), rhaid i'r corff perthnasol llai—

- (a) cyhoeddi datganiad ar unwaith yn nodi'r rhesymau dros fethiant y swyddog i gydymffurfio; a
- (b) cytuno ar gwrs gweithredu i sicrhau cydymffurfiaeth cyn gynted ag y bo modd.

(4) Pan fo corff perthnasol llai yn penderfynu diwygio ei ddatganiadau cyfrifyddu ar ôl cael unrhyw adroddiad gan yr archwilydd sy'n cynnwys canfyddiadau terfynol yr archwilydd o'r archwiliad ac a ddyroddir cyn i'r archwiliad gael ei orffen, rhaid i'r corff sicrhau bod y datganiadau cyfrifyddu a ddiwygiwyd yn cael eu llofnodi a dyddio gan y person sy'n llywyddu'r cyfarfod lle y cymeradwywyd y diwygiad.

(5) Rhaid i gorrff perthnasol llai, ddim hwyrach na'r 30 Medi yn y flwyddyn yn union ar ôl diwedd y

flwyddyn y mae'r datganiad yn berthnasol iddi, naill ai—

- (a) cyhoeddi'r datganiadau cyfrifyddu drwy gyfrwng heblaw drwy gyfeiriadau'n unig yn y cofnodion o gyfarfodydd, ynghyd ag—
  - (i) unrhyw dystysgrif, barn neu adroddiad a ddyroddwyd, a roddwyd neu a wnaed gan yr archwilydd o dan adrannau 23(2) a 33 o Ddeddf 2004, neu
  - (ii) os bydd y cyhoeddi'n digwydd cyn i'r archwiliad gael ei orffen ac na roddwyd unrhyw farn o'r fath, ynghyd â datganiad ac esboniad o'r ffaith na roddwyd barn gan yr archwilydd erbyn y dyddiad cyhoeddi; neu
- (b) arddangos hysbysiad sy'n cynnwys y dogfennau a grybwyllir yn is-baragraff (a) mewn lle neu leoedd amlwg yn ardal y corff am gyfnod o 14 diwrnod o leiaf.

(6) Rhaid i gorff perthnasol llai gadw copïau o'r dogfennau a grybwyllir ym mharagraff (5)(a) i'w prynu gan unrhyw berson wrth dalu swm rhesymol.

### **Gweithdrefn ar gyfer archwiliad cyhoeddus o gyfrifon**

16. Y weithdrefn ar gyfer archwiliad cyhoeddus o gyfrifon corff perthnasol llai, y cyfeirir ato yn rheoliad 22, yw bod rhaid i'r corff sicrhau bod y dogfennau a grybwyllir yn y rheoliad hwnnw ar gael ar gyfer archwiliad cyhoeddus drwy roi rhybudd rhesymol, am gyfnod o 20 diwrnod gwaith cyn y dyddiad a bennwyd gan yr archwilydd o dan reoliad 21.

### **Hysbysiad o hawliau cyhoeddus**

17.—(1) Y weithdrefn i gorff perthnasol llai roi hysbysiad o hawliau cyhoeddus, y cyfeirir ato yn rheoliad 24, yw bod rhaid iddo arddangos, mewn lle neu leoedd amlwg yn ardal y corff am gyfnod o 14 diwrnod o leiaf yn union cyn y cyfnod y mae'r cyfrifon a dogfennau eraill ar gael o dan reoliad 16, hysbysiad yn cynnwys y materion a nodir ym mharagraff (2).

(2) Y materion y cyfeirir atynt ym mharagraff (1) yw—

- (a) y cyfnod pryd y bydd y cyfrifon a dogfennau eraill y cyfeirir atynt ym mharagraff (1) ar gael i'w harchwilio yn unol â rheoliad 16;
- (b) manylion sut y dylid hysbysu am fwriad i archwilio'r cyfrifon a dogfennau eraill;
- (c) enw a chyfeiriad yr archwilydd;

- (d) y darpariaethau sydd wedi eu cynnwys yn adran 30 (archwilio dogfennau a chwestiynau yn ystod archwiliad) ac adran 31 (hawl i wneud gwrthwynebiadau yn ystod archwiliad) o Ddeddf 2004; ac
- (e) y dyddiad a bennwyd o dan reoliad 21 i etholwyr arfer eu hawliau.

(3) Rhaid i gorff perthnasol llai wrth arddangos hysbysiad o dan baragraff (1) hysbysu'r archwilydd ar unwaith yn ysgrifenedig bod hysbysiad wedi ei arddangos.

### **Hysbysiad o orffen yr archwiliad**

**18.** Cyn gynted ag y bo'n rhesymol bosibl ar ôl gorffen archwiliad, rhaid i gorff perthnasol llai arddangos hysbysiad mewn lle neu leoedd amlwg yn ardal y corff am gyfnod o 14 diwrnod o leiaf yn datgan bod yr archwiliad wedi ei orffen a bod y datganiadau cyfrifyddu perthnasol diwethaf a gymeradwywyd sy'n ofynnol gan y Rheoliadau hyn ac adroddiad yr archwilydd ar gael i'w harchwilio gan etholwyr llywodraeth leol drwy roi rhybudd rhesymol a chan gynnwys—

- (a) datganiad o'r hawliau a roddir i etholwyr llywodraeth leol gan adran 29 (archwilio datganiadau o gyfrifon ac adroddiadau archwilwyr) o Ddeddf 2004;
- (b) manylion sut y dylid hysbysu am fwriad i arfer yr hawl i archwilio; ac
- (c) os oes gan y corff wefan, manylion lle y gellir dod o hyd i'r datganiad o gyfrifon diwethaf a gymeradwywyd ac adroddiad yr archwilydd ar y wefan honno.

## **RHAN 6**

### **Cyrff Perthnasol Penodol**

#### **Byrddau draenio mewnol**

**19.** Rhaid i fwrdd draenio mewnol godi ar gyfrif refeniw swm sy'n hafal i'r taliadau a'r cyfraniadau sy'n daladwy'n statudol am y flwyddyn honno o dan drefniant a gyfrifir fel cynllun pensiwn â buddion wedi eu diffinio neu fel buddion eraill hirdymor i gyflogeion (fel y'u diffiniwyd yn unol ag arferion priodol mewn perthynas â chyfrifon).

#### **Cyd-bwyllgorau etc.**

**20.**—(1) Rhaid i unrhyw gyd-bwyllgor, awdurdod tân ac achub neu awdurdod Parc Cenedlaethol y mae'r Rheoliadau hyn yn gymwys iddynt adneuo gyda phob awdurdod cyfansoddol—

- (a) pan fo'r pwyllgor yn gorff perthnasol llai, o fewn y cyfnod o 14 diwrnod a bennir yn rheoliad 18, gopi o adroddiad yr archwilydd a'r datganiadau cyfrifyddu; a
- (b) fel arall, wrth roi hysbysiad o dan reoliad 13, gopi o adroddiad yr archwilydd a'r datganiad o gyfrifon.

(2) Yn y rheoliad hwn, ystyr "awdurdod cyfansoddol" ("*constituent authority*") yw unrhyw gyngor sir, cyngor bwrdeistref sirol neu gyngor cymuned sydd â hawl am y tro i benodi aelodau o'r pwyllgor neu'r awdurdod dan sylw ac mewn perthynas ag awdurdod Parc Cenedlaethol, mae'n cynnwys Gweinidogion Cymru.

## RHAN 7

### Gweithdrefn Archwilio

#### **Pennu dyddiad i etholwyr arfer eu hawliau**

21. Rhaid i'r archwilydd, at ddibenion arfer hawliau o dan adrannau 30(2) (archwilio dogfennau a chwestiynau yn ystod archwiliad) a 31(1) (hawl i wneud gwrthwynebiadau yn ystod archwiliad) o Ddeddf 2004, bennu dyddiad y caniateir arfer yr hawliau hynny ar neu ar ôl y dyddiad hwnnw, a rhaid iddo hysbysu'r corff perthnasol o dan sylw o'r dyddiad hwnnw.

#### **Archwiliad cyhoeddus o gyfrifon**

22. Rhaid i gorff perthnasol a gafodd ei hysbysu o dan reoliad 21 sicrhau bod y cyfrifon a'r dogfennau eraill a grybwyllir yn adran 30 (archwilio dogfennau a chwestiynau yn ystod archwiliad) o Ddeddf 2004 ar gael yn unol â'r weithdrefn a bennir ar gyfer cyrff perthnasol mwy yn rheoliad 11, neu gyrff perthnasol llai yn rheoliad 16, fel y bo'n briodol.

#### **Newid cyfrifon**

23. Ac eithrio gyda chydysyniad yr archwilydd, ni chaniateir newid cyfrifon a dogfennau eraill ar ôl y dyddiad pan oeddynt ar gael i'w harchwilio yn gyntaf yn unol â naill ai rheoliad 11 neu reoliad 16.

#### **Hysbysiad o hawliau cyhoeddus**

24. Rhaid i gorff perthnasol roi hysbysiad o hawliau cyhoeddus yn unol â'r weithdrefn a bennir ar gyfer cyrff perthnasol mwy yn rheoliad 12, neu i gyrff perthnasol llai yn rheoliad 17.

### **Hysbysiad ysgrifenedig o wrthwynebiad**

**25.** Rhaid i unrhyw hysbysiad ysgrifenedig o wrthwynebiad a roddir yn unol ag adran 31(2) o Ddeddf 2004 ddatgan y ffeithiau y mae'r etholwr llywodraeth leol yn dibynnu arnynt, a chynnwys, i'r graddau y mae'n bosibl—

- (a) manylion unrhyw eitem o gyfrif yr honnir ei bod yn groes i'r gyfraith, a
- (b) manylion unrhyw fater y bwriedir y gall yr archwilydd wneud adroddiad mewn cysylltiad ag ef o dan adran 22 (adroddiadau ar unwaith ac adroddiadau eraill er budd y cyhoedd)(1) o'r Ddeddf honno.

### **Hysbysiad o orffen yr archwiliad**

**26.** Rhaid i gorff perthnasol roi hysbysiad yn datgan bod yr archwiliad wedi ei orffen yn unol â'r weithdrefn a bennir ar gyfer cyrff perthnasol mwy yn rheoliad 13, neu gyrff perthnasol llai yn rheoliad 18, fel y bo'n briodol.

### **Cyhoeddi llythyr archwiliad blynyddol**

**27.** Cyn gynted ag y bo'n rhesymol bosibl ar ôl ei gael, rhaid i gorff perthnasol—

- (a) cyhoeddi'r llythyr archwiliad blynyddol a gafwyd gan yr archwilydd; a
- (b) sicrhau bod copïau ar gael i'w prynu gan unrhyw berson wrth dalu unrhyw swm y caiff y corff perthnasol yn rhesymol ei wneud yn ofynnol.

### **Archwiliad eithriadol**

**28.**—(1) Os bydd Archwilydd Cyffredinol Cymru, o dan adran 37 (archwiliad eithriadol)(2) o Ddeddf 2004, yn cyfarwyddo archwilydd i gynnal archwiliad eithriadol o gyfrifon corff perthnasol, rhaid i'r corff—

- (a) yn achos corff perthnasol mwy, rhoi hysbysiad drwy hysbyseb, a
- (b) yn achos corff perthnasol llai, arddangos hysbysiad mewn lle neu leoedd amlwg yn ardal y corff,

ynghylch hawl unrhyw etholwr llywodraeth leol yn yr ardal y mae'r cyfrifon yn berthnasol iddi i wrthwynebu unrhyw rai o'r cyfrifon hynny.

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(1) 2004 p. 23; diwygiwyd adran 22(2) gan Ddeddf Archwilio Cyhoeddus (Cymru) 2013 (dccc 3), Atodlen 4, paragraffau 20 a 27.

(2) 2004 p. 23; diwygiwyd adran 37 gan Ddeddf Archwilio Cyhoeddus (Cymru) 2013 (dccc 3), Atodlen 4, paragraffau 20 a 42.

(2) Pan mai Archwilydd Cyffredinol Cymru yw'r archwilydd y cyfeirir ato ym mharagraff (1), mae'r cyfeiriad at yr Archwilydd Cyffredinol yn cyfarwyddo archwilydd i gynnal archwiliad eithriadol i'w ddarllen fel Archwilydd Cyffredinol Cymru yn cynnal archwiliad eithriadol.

## RHAN 8

### Diwygiadau a Dirymiadau

#### **Diwygio Rheoliadau Awdurdodau Lleol (Trefniadau Gweithrediaeth) (Swyddogaethau a Chyfrifoldebau) (Cymru) 2007**

**29.**—(1) Mae Atodlen 1 (swyddogaethau nad ydynt i fod yn gyfrifoldeb i weithrediaeth awdurdod) i Reoliadau Awdurdodau Lleol (Trefniadau Gweithrediaeth) (Swyddogaethau a Chyfrifoldebau) (Cymru) 2007(1) wedi ei diwygio fel a ganlyn.

(2) Yn lle'r eitem yng ngholofn 2 o baragraff 1 o Ran Ff (Swyddogaethau amrywiol) rhodder “Rheoliadau a wnaed o dan adran 39 o Ddeddf Archwilio Cyhoeddus (Cymru) 2004 (p. 23)”.

#### **Dirymu ac arbed offerynnau**

**30.**—(1) Yn ddarostyngedig i baragraff (2), mae'r offerynnau canlynol wedi eu dirymu—

- (a) Rheoliadau Cyfrifon ac Archwilio (Cymru) 2005(2);
- (b) Rheoliadau Cyfrifon ac Archwilio (Cymru) (Diwygio) 2007(3);
- (c) Rheoliadau Cyfrifon ac Archwilio (Cymru) (Diwygio) 2010(4); a
- (d) Rheoliadau Cyfrifon ac Archwilio (Cymru) (Diwygio) 2013(5).

(2) Mae'r Rheoliadau ym mharagraff (1) wedi eu harbed i'r graddau y maent yn gymwys i gyfrifon ar gyfer y blynyddoedd ariannol sy'n dod i ben ar 31 Mawrth 2014 neu cyn hynny ac archwilio'r cyfrifon hynny.

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(1) O.S. 2007/399 (Cy. 45), a ddiwygiwyd gan O.S. 2008/1430, 2009/2983 (Cy. 260), 2010/630 (C. 42) a 2013/2902 (Cy. 281) a 3005 (Cy. 297).  
(2) O.S. 2005/368 (Cy. 34).  
(3) O.S. 2007/388 (Cy. 39).  
(4) O.S. 2010/683 (Cy. 66).  
(5) O.S. 2013/217 (Cy. 29).

*Leighton Andrews*  
Y Gweinidog Gwasanaethau Cyhoeddus, un o  
Weinidogion Cymru

22 Rhagfyr 2014

## **Explanatory Memorandum to The Accounts and Audit (Wales) Regulations 2014**

This Explanatory Memorandum has been prepared by Local Government and Communities Department and is laid before the National Assembly for Wales in accordance with Standing Order 27.1.

### **Minister's Declaration**

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Accounts and Audit (Wales) Regulations 2014.

**Leighton Andrews**  
**Minister for Public Services**  
22 December 2014



## **1. Description**

- 1.1. The Accounts and Audit (Wales) Regulations 2014 replace the Accounts and Audit (Wales) Regulations 2005 (“the 2005 Regulations”) along with other related amending Regulations. The changes include consolidating all previous amendment Regulations, defining smaller and larger relevant bodies and providing clarity of the requirements for those bodies.
- 1.2. This Statutory Instrument revokes the 2005 Regulations and amending Regulations.

## **2. Matters of special interest to the Subordinate Legislation Committee**

- 2.1. None.

## **3. Legislative Background**

- 3.1. Sections 39 and 58 of the Public Audit (Wales) Act 2004 (“the 2004 Act”) conferred powers on the National Assembly for Wales to make regulations in relation to the accounts and audit of local government bodies in Wales. Those powers are now vested in the Welsh Ministers by virtue of paragraph 30 of Schedule 11 to the Government of Wales Act 2006.
- 3.2. The 2005 Regulations provide the regulatory regime underpinning the financial reporting and accounting of local government bodies in Wales. In order to designate “proper [accounting] practices” for internal drainage boards and port health authorities, it is necessary, first, to use the power contained in sections 23(2) and 24 of the Local Government Act 2003 to specify the boards as “local authorities” for the purposes of then designating a proper practice, and secondly, under section 21 of that Act, to make the designation of proper practice. Sections 13, 105 and 106 of the Local Government Act 2000 authorise the Welsh Ministers to make regulations concerning the executive arrangements in local authorities. All these powers are powers of the Welsh Ministers.
- 3.3. These Regulations are made using the negative resolution procedure.

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

- 4.1. The Accounts and Audit (Wales) Regulations 2014 will revoke and replace the following legislation:-
  - the Accounts and Audit (Wales) Regulations 2005
  - S.I. 2007 No 388 (W.39)
  - S.I. 2010 No 683 (W.66)
  - S.I. 2013 No 217 (W.29)
- 4.2. Clarity  
To provide clarity for all the different types of public bodies to whom the Regulations apply, namely, County and County Borough Councils, Community Councils, Police and Crime Commissioners, Chief Constables,

National Park Authorities, Fire and Rescue Authorities, Port Health Authorities, Internal Drainage Boards, Conservation Boards and Joint Committees.

The current Regulations intertwine the different requirements affecting the types of bodies making them difficult to understand. To assist relevant bodies to identify how the provisions apply to them and what is required of them; a change to the presentation of the Regulations has been made. To facilitate this, the types of relevant bodies are separated into 2 broad areas. First, "larger relevant bodies" - those required to follow accounting practices contained in the Chartered Institute of Public Finance & Accountancy CIPFA code of practice and have the freedoms provided by the prudential system of capital controls set out in part 1 of the Local Government Act 2003. Secondly, "smaller relevant bodies" - those permitted by the existing Regulations to prepare simpler published accounts and who are subject to less demanding procedural requirements. Relevant bodies are now identified specifically in the Regulations, rather than by reference to other pieces of legislation.

#### 4.3. Smaller Relevant Body

The following will be classed as smaller relevant bodies: Community Councils, Internal Drainage Boards, Port Health Authorities, and Conservation Boards whose gross income or expenditure was no more than £2.5m in the year of account or either of the 2 preceding years. For any newly established bodies this would be applied to the year of account in its first or second years.

#### 4.4. Larger Relevant Body

Larger relevant bodies are now defined as County or County Borough Councils, National Park Authorities, Fire and Rescue Authorities, Police and Crime Commissioners, Chief Constables and any other body which does not meet the financial qualifying condition of a smaller relevant body.

Larger relevant bodies are now required to include publication of the organisation's pay multiple, specified as the ratio between the highest paid employee and the median earnings across the organisation as a means of illustrating the relationship. This follows a recommendation from the Hutton Review on Fair Pay in the Public Sector and provides synergy between the Regulations and the requirements of the pay policy statements.

#### 4.5. Proper Practices

Under the 2005 Regulations bodies which fall into the larger relevant body category (other than a chief constable) are required to prepare a statement of accounts in accordance with proper practices which, as defined in the Local Authorities (Capital Finance and Accounting) Regulations, is the "Code of practice on Local Authority Accounting in the UK" issued jointly by CIPFA and Local Authority Scotland Accounts Advisory Committee (LASAAC). This provision will be applied to the

smaller relevant bodies and require them to prepare accounting statements in accordance with proper practices.

As stipulated in the Local Authorities (Capital Finance and Accounting) (Wales) Regulations 2003, Community Councils and Minor Joint Committees will be required to follow the accounting practices contained in the “Governance and accountability for Local Councils: A practitioners guide” issued by One Voice Wales and the Society of Local Council Clerks.

The 2005 Regulations define proper practices for Internal Drainage Boards as the “Governance and Accountability in Internal Drainage Boards in England: A Practitioners Guide 2006” (revised in 2007) and this will continue to be applied to Internal Drainage Boards in Wales.

#### 4.6. Port Health Authorities

The new Regulations specify “proper [accounting] practice” for Port Health Authorities to follow in respect of the preparation of accounting statements, namely the “Governance and Accountability for Local Councils: A Practitioners Guide 2008 (Wales)”, the same as Community Councils.

#### 4.7. Remuneration

An amendment in 2010 to the 2005 Regulations introduced additional disclosure notes relating to remuneration of senior officers. The new Regulations have been amended to improve the clarity of the requirements to ensure a consistent approach is applied by Welsh Local Government Bodies for the disclosures relating to remuneration.

#### 4.8. Signing, Approval & Publication

The Regulations have been amended to reinstate these existing arrangements and make them apply to both smaller and larger bodies.

### **5. Implementation.**

- 5.1. These Regulations come into force on 31 March 2015 and will affect the completion of 2014-15 financial accounts.

### **6. Consultation**

- 6.1. Appropriate stakeholders were invited to comment on the proposed changes to the regulations. There were 29 replies in total, 21 from Community and Town Councils, 4 from Local Authorities including a response from the Chief Accountants Group which represents all 32 Local Government Bodies in Wales and 4 from “other” bodies, notably the Wales Audit Office (WAO) and The Chartered Institute of Public Finance and Accountancy (CIPFA). A summary of the responses can be provided by contacting Local Government Finance at [LGFPMail@wales.gsi.gov.uk](mailto:LGFPMail@wales.gsi.gov.uk).

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

- 7.1. A regulatory impact assessment has not been produced for this instrument as the Regulations do not create an additional regulatory burden. No impact on business, charities or the voluntary sector is foreseen.

## **8. Post implementation review**

- 8.1. The current regulatory framework has been in place since April 2005. Since that time the effectiveness of the system in place has been kept under regular review by Welsh Government officials and in regular formal and informal situations with interested stakeholders, examples being local authorities, Welsh Local Government Association, Wales Audit Office and One Voice Wales. This will continue under the new Regulations.

## **9. Summary**

- 9.1. The 2014 Regulations have provided an opportunity to review, update and consolidate the framework and processes for accounting and auditing in Welsh local government bodies. The main changes made should help to improve information available for public scrutiny and also improve the effectiveness of scrutiny and streamline the certification and approval processes.

## Adroddiad Drafft y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol

CLA(4)-02-15

### CLA483 – The Sea Fishing (Points for Masters of Fishing Boats) Regulations 2014

Mae'r rheoliadau cyfansawdd hyn yn gweithredu gofynion ynghylch polisi cyffredin yr UE ar bysgfaoedd. Maent yn ymestyn i Gymru, Gogledd Iwerddon a Lloegr (ac yn rhannol yr Alban).

Mae'r rheoliadau yn darparu ar gyfer system o bwyntiau ar gyfer meistri llongau pysgota yn y DU sydd wedi cyflawni troseddau difrifol. Er enghraifft, os oes gan feistr 10 pwynt fe'i gohiriwyd rhag meistroli llong bysgod am 2 fis. Os oes gan feistr (ar unrhyw un adeg) 90 pwynt, fe'i gwaharddwyd rhag meistroli llong bysgod.

Mae'n drosedd i gyflogi meistr i feistroli llong bysgod yn y DU tra bod meistr wedi'i ohirio neu ei wahardd.

Mae'r rheoliadau hefyd yn darparu bod y Marine Management Organisation (MMO) yn sefydlu cofrestr o feistri'r DU, sy'n cofnodi manylion o'r pwyntiau a ddisbarthwyd i feistri.

**Gweithdrefn:** Cyfansawdd Negyddol

### Craffu technegol

Nodwyd y pwyntiau canlynol i gyflwyno adroddiad arnynt o dan Reol Sefydlog 21.2 mewn perthynas â'r offeryn hwn.

#### 1. Diffiniad "British National"

1.1 Mae'r diffiniad o "British National" yn rheoliad 2 yn cynnwys tri chategori o berson. Un categori yw 'British citizen' – ni ddiffinnir hwn ymhellach. Categori arall yw 'British subject' – diffinnir hwn trwy gyfeiriad at Ran IV o Ddeddf Cenedligrwydd 1981.

- 1.2 Ceir ystyr British citizen yn Rhan I o Ddeddf Cenedligrwydd 1981. Nid yw'n glir pam mae cyfeiriad at Ddeddf 1981 yn rhan o ddiffiniad British subject, ond nid British citizen.

Rheol Sefydlog 21.2(v): bod angen eglurhad pellach ynglŷn â ffurf neu ystyr yr offeryn am unrhyw reswm penodol.

## **2. Nodi dyddiad cychwyn gohiriad yn y gofrestr**

- 2.1 Gellir dosbarthu pwyntiau am gollfarn yn y DU ac am gollfarn tu allan i'r DU.
- 2.2 Os ychwanegir pwyntiau i gofrestr yr MMO ar ôl collfarn yn y DU, ac os yw hyn yn peri gohiriad neu waharddiad, rhaid i ddiwrnod cyntaf y gohiriad neu'r gwaharddiad fod o leiaf un diwrnod ar ôl i'r pwyntiau gael eu cynnwys yn y gofrestr.
- 2.3 Fodd bynnag, nid oes darpariaeth gyfatebol os ychwanegir y pwyntiau ar ôl collfarn tu allan i'r DU.
- 2.4 Nid yw'n glir pam mae anghysondeb.

Rheol Sefydlog 21.2(v): bod angen eglurhad pellach ynglŷn â ffurf neu ystyr yr offeryn am unrhyw reswm penodol.

## **3. Cychwyn cyfnod gohiriad**

- 3.1 Mae rheoliad 10 yn nodi cyfnodau gohiriad gwahanol, yn ddibynnol ar faint o bwyntiau sydd gan feistr. Os oes gan y meistr 18 i 35 pwynt, gohiriwyd y meistr am 2 fis. Os oes gan y meistr 36 i 53 pwynt, gohiriwyd y meistr am 4 mis.
- 3.2 Gellir cael sefyllfa lle mae meistr wedi'i wahardd am 2 fis, ac yn ystod y cyfnod hwnnw daw trosedd arall i'r amlwg. Gall yr ail drosedd fynd â'r meistr i diriogaeth gohiriad am 4 mis.

3.3 Nod yw'n glir o'r rheoliadau ar ba amser byddai'r cyfnod o 4 mis yn cychwyn. A yw'r 4 mis yn cychwyn yn syth (ac felly'n gorgyffwrdd â'r 2 fis), neu a oes rhaid cwblhau'r cyfnod o 2 fis yn gyntaf?

3.4 Mae gohiriad rhag meistroli llong bysgod yn tynnu bywoliaeth i ffwrdd, felly mae angen bod yn glir pryd mae'r cyfnod gohiriad yn cychwyn.

Rheol Sefydlog 21.2(v): bod angen eglurhad pellach ynglŷn â ffurf neu ystyr yr offeryn am unrhyw reswm penodol.

#### **4. Yn Saesneg yn unig**

4.1 Mae'r rheoliadau cyfansawdd hyn yn ddarostyngedig i drefn seneddol San Steffan, ac felly maent yn Saesneg yn unig.

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

#### **Craffu ar rinweddau**

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

#### **Cynghorwyr Cyfreithiol**

Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol  
Ionawr 2015

**2014 No. 3345**

**SEA FISHERIES**

**The Sea Fishing (Points for Masters of Fishing Boats)  
Regulations 2014**

<i>Made</i> - - - -	<i>18th December 2014</i>
<i>Laid before Parliament</i>	<i>19th December 2014</i>
<i>Laid before the National Assembly for Wales</i>	<i>19th December 2014</i>
<i>Coming into force</i> - -	<i>12th January 2015</i>

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

These Regulations make provision for a purpose mentioned in that section and it appears to the Secretary of State and the Welsh Ministers that it is expedient for the references to the EU Regulations referred to in regulations 2(1) and 4(5) to be construed as references to those Regulations as amended from time to time.

The Secretary of State, in relation to England and Northern Ireland, and (but only as regards regulations 3(1), 4, 7, 8(5) and 11) in relation to Scotland, and the Welsh Ministers, in relation to Wales, make these Regulations in exercise of the powers conferred by section 2(2) of, and paragraph 1A of Schedule 2 to, the European Communities Act 1972(c).

**Citation, commencement, extent and application**

**1.**—(1) These Regulations may be cited as the Sea Fishing (Points for Masters of Fishing Boats) Regulations 2014 and come into force on 12th January 2015.

(2) They extend to England and Wales and to Northern Ireland, and regulations 3(1), 4, 7, 8(5) and 11 also extend to Scotland.

(3) Regulation 14 applies only in relation to England.

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- (a) The Secretary of State is designated under S.I. 1972/1811, the Schedule. The function of the former Minister of Agriculture of making regulations under section 2(2) was transferred to the Secretary of State by the Ministry of Agriculture, Fisheries and Food (Dissolution) Order (S.I. 2002/794), article 2(2). The Welsh Ministers are designated under S.I. 2010/2690, article 3.
- (b) 1972 c. 68; section 2(2) was amended by the Legislative and Regulatory Reform Act 2006 (c. 51), section 27(1)(a) and the European Union (Amendment) Act 2008 (c. 7), Part 1 of the Schedule.
- (c) Paragraph 1A of Schedule 2 was inserted by the Legislative and Regulatory Reform Act 2006, section 28 and amended by the European Union (Amendment) Act 2008, Part 1 of the Schedule and S.I. 2007/1388.



## Interpretation

### 2. —(1) In these Regulations—

“administrative sanction” means a sanction other than a criminal sanction imposed by the authorities of another member State or third country on a master in respect of a serious infringement;

“British national” means a British citizen, a person who is a British subject by virtue of Part IV of the British Nationality Act 1981<sup>(a)</sup> and who has the right of abode in the United Kingdom and is therefore exempt from United Kingdom immigration control, or a British overseas territories citizen who has acquired citizenship from a connection with Gibraltar<sup>(b)</sup>;

“the Control Regulation” means Council Regulation (EC) No. 1224/2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy<sup>(c)</sup>;

“conviction” has the meaning given by regulation 6;

“corresponding Scottish enactment” means, in relation to a provision of these Regulations, an enactment which in Scotland has the corresponding effect;

“DARD” means the Department of Agriculture and Rural Development in Northern Ireland;

“English fishing boat” means a UK fishing boat which is registered in England;

“fishing boat” means a vessel equipped for the commercial exploitation of living aquatic resources, including sea fish;

“master” means a British national who is the master of a fishing boat, and includes a person who carries out the functions of a master after disqualification or during a period of suspension under regulation 10;

“Northern Ireland fishing boat” means a UK fishing boat which is registered in Northern Ireland;

“points authority” has the meaning given by regulation 3(2);

“the points information” has the meaning given by regulation 7(5);

“prosecuting authority” has the meaning given by regulation 3(3);

“the register” means the register set up and maintained by the Marine Management Organisation under regulation 4(1);

“Scottish fishing boat” means a UK fishing boat which is registered in Scotland;

“serious infringement” has the meaning given by—

(a) Article 42 of Council Regulation (EC) No. 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing<sup>(d)</sup>; and

(b) Article 90 of the Control Regulation;

“statutory notification” means a notification under any enactment having effect in Scotland and requiring the notification in question by the Scottish Ministers;

“third country” means a country which is not a member State;

“UK fishing boat” means a fishing boat which—

(c) is registered in the United Kingdom under Part 2 of the Merchant Shipping Act 1995<sup>(e)</sup>;  
or

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(a) 1981 c. 61; section 31 in Part IV was amended by the British Overseas Territories Act 2002 (c. 8), section 1(1)(b). Section 33 was repealed by the Nationality, Immigration and Asylum Act 2002 (c. 41), Schedule 2, paragraph 1(i) and Schedule 9.

(b) See the 1972 and 1982 UK Declarations to the Final Act of the 1972 Accession Treaty (OJ No. L 73, 27.3.1972, p. 196 and OJ No. C 23, 28.1.1983, p. 1) and the Declaration attached to the Final Act of the Intergovernmental Conference on the Treaty of Lisbon, annexed to the Final Act of the Treaty on European Union (OJ 1992 No. C 191, 29.7.1992, p. 98), which define “British national” for EU law purposes.

(c) OJ No. L 343, 22.12.2009, p. 1, as last amended by Regulation (EU) No. 508/2014 (OJ No. L 149, 20.5.2014, p. 1).

(d) OJ No. L 286, 29.10.2008, p.1, as last amended by Commission Regulation (EU) No. 202/2011 (OJ No. L 57, 2.3.2011, p. 10).

(e) 1995 c. 21; section 15 in Part 2 was amended by S.I. 2002/794.

- (d) is wholly owned by persons qualified to own British ships for the purposes of that Part;  
“Welsh fishing boat” means a UK fishing boat which is registered in Wales.

(2) In this regulation and in regulation 4(5), references to EU Regulations are references to those EU Regulations as amended from time to time.

### Relevant authorities

3.—(1) The Marine Management Organisation is the competent authority for the purposes of Article 89(4) of the Control Regulation, insofar as it relates to serious infringements by masters of fishing boats.

(2) The “points authority” is—

(a) the Marine Management Organisation, if—

- (i) a master is convicted of a serious infringement by a court in the United Kingdom in relation to a fishing boat other than a Welsh, Northern Ireland or Scottish fishing boat; or
- (ii) a master of any fishing boat, other than a Welsh, Northern Ireland or Scottish fishing boat, is—
  - (aa) charged with a fisheries offence in another member State or in a third country;
  - (bb) convicted of a serious infringement by a court in another member State or in a third country; or
  - (cc) given an administrative sanction for a serious infringement in another member State or a third country;

(b) the Welsh Ministers, if—

- (i) a master is convicted of a serious infringement by a court in the United Kingdom in relation to a Welsh fishing boat; or
- (ii) a master of a Welsh fishing boat, is—
  - (aa) charged with a fisheries offence in another member State or in a third country;
  - (bb) convicted of a serious infringement by a court in another member State or in a third country; or
  - (cc) given an administrative sanction for a serious infringement in another member State or a third country;

(c) DARD, if—

- (i) a master is convicted of a serious infringement by a court in the United Kingdom in relation to a Northern Ireland fishing boat; or
- (ii) a master of a Northern Ireland fishing boat, is—
  - (aa) charged with a fisheries offence in another member State or in a third country;
  - (bb) convicted of a serious infringement by a court in another member State or in a third country; or
  - (cc) given an administrative sanction for a serious infringement in another member State or a third country.

(3) The “prosecuting authority” is—

(a) in relation to prosecutions in England—

- (i) the Marine Management Organisation; or
- (ii) the Inshore Fisheries Conservation Authority prosecuting in relation to an alleged offence in its inshore fisheries conservation district<sup>(a)</sup>;

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(a) Inshore fisheries and conservation districts and authorities were set up under sections 149 and 150 of the Marine and Coastal Access Act 2009 (c. 23).

- (b) in relation to prosecutions in Wales, the Welsh Ministers or the Counsel General;
  - (c) in relation to prosecutions in Northern Ireland, DARD.
- (4) Where the Marine Management Organisation is the points authority, regulations 7(1)(b) and (4)(c)(ii) and 8(3)(b) do not require it to notify itself.

#### **Register of masters of fishing boats**

4.—(1) The Marine Management Organisation must set up and maintain a register of masters who have been allocated points under regulation 7 or 8.

(2) The register must also include any points relating to serious infringements which the Scottish Ministers have notified to the Marine Management Organisation by statutory notification.

(3) The register must set out—

- (a) the name of each master who has been allocated points;
- (b) the total number of points allocated to each master;
- (c) the dates of each serious infringement in respect of which a master has been allocated points;
- (d) in relation to each serious infringement, which points authority allocated the points or, where the points were allocated by the Scottish Ministers, the fact that they were allocated by them;
- (e) the start and end date of—
  - (i) any period during which a master is suspended from mastering a fishing boat under regulation 10(1);
  - (ii) any period notified by the Scottish Ministers to the Marine Management Organisation by statutory notification as a period during which they have suspended a master from mastering a Scottish fishing boat by reason of points allocated to the master for serious infringements;
- (f) whether a master has been disqualified under regulation 10(3) or under a corresponding Scottish enactment; and
- (g) the date of any such disqualification.

(4) The Marine Management Organisation must ensure that the information in paragraph (3) is available to the public on its website.

(5) In this regulation and in regulations 5, 7 and 8, “the points relating to the serious infringement” are the points assignable in relation to the serious infringement under Article 126 of and Annex XXX to Commission Implementing Regulation (EU) No. 404/2011 laying down detailed rules for the implementation of the Control Regulation<sup>(a)</sup>, which, for the purposes of these Regulations, is deemed to apply to serious infringements by masters.

#### **Notification of prosecution for serious infringements**

5. Where a master is to be prosecuted for a serious infringement, the prosecuting authority must notify the master in writing—

- (a) that the master is to be prosecuted for a serious infringement;
- (b) of the points relating to the serious infringement; and
- (c) of the period of any suspension or disqualification which would be triggered by the allocation of those points.

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(a) OJ No. L 112, 30.4.2011, p.1, subject to a corrigendum (OJ No. L 328, 10.12.2011, p. 58).

### **Meaning of conviction**

6. For the purposes of these Regulations, a master is only to be treated as convicted of a serious infringement—

- (a) on the expiry of the period for appealing against that conviction; or
- (b) on the date on which the conviction is upheld by the final court to which the master appeals.

### **Allocation of points in respect of UK convictions**

7.—(1) If a master of an English, Welsh or Northern Ireland fishing boat is convicted in the United Kingdom of a serious infringement, the points authority must, within 7 days of the conviction or, if the conviction was in a Scottish court, of receiving statutory notification from the Scottish Ministers—

- (a) allocate to the master the points relating to the serious infringement; and
- (b) notify the allocation of points to the Marine Management Organisation.

(2) If a master of a Scottish fishing boat is convicted in England, Wales or Northern Ireland, the prosecuting authority must notify the Scottish Ministers within 7 days of the conviction.

(3) If the prosecuting authority is an Inshore Fisheries Conservation Authority, the Authority must notify the conviction to the Marine Management Organisation within 7 days.

(4) The Marine Management Organisation must—

- (a) within 7 days of receiving notification under paragraph (1)(b), include in the register against the master's name the points allocated to the master by the points authority;
- (b) within 7 days of receiving a statutory notification from the Scottish Ministers that they have allocated points to a master of a Scottish fishing boat for a serious infringement relating to that boat, include in the register against the master's name the points so allocated;
- (c) notify the points information to—
  - (i) the master (or, if they allocated the points to the master, the Scottish Ministers);
  - (ii) the points authority; and
  - (iii) if the prosecuting authority was an Inshore Fisheries Conservation Authority, that Authority.

(5) The points information in this regulation and in regulation 8 is information as to—

- (a) the points included in the register;
- (b) whether the inclusion of the points has triggered a suspension or disqualification under regulation 10 or under a corresponding Scottish enactment; and
- (c) the start date of any suspension or disqualification.

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

(7) If a suspension starts while the master is mastering a fishing boat engaged in fishing, the Marine Management Organisation must extend the period of the suspension by the number of calendar days the master spends at sea between the start date set out in the register and the date on which the master returns to port.

### **Allocation of points in respect of convictions and administrative sanctions in other member States and third countries**

8.—(1) A master (“M”) who is charged with an offence in another member State or a third country may request that the points authority notify M—

- (a) whether the offence is a serious infringement;
- (b) of the points relating to any such serious infringement; and
- (c) whether the inclusion of those points in the register would trigger a suspension or disqualification under regulation 10.

(2) The points authority must provide this information to M within 7 days of receiving M's request.

(3) The points authority must, within 7 days of being satisfied that M has been convicted of, or received an administrative sanction in respect of, a serious infringement in another member State or a third country—

- (a) allocate to M the points relating to the serious infringement; and
- (b) notify the Marine Management Organisation of the allocation of points.

(4) The Marine Management Organisation must, within 7 days of allocating points under paragraph (3)(a) or of receiving notice under paragraph 3(b)—

- (a) include the points allocated by the points authority against M's name; and
- (b) notify the points information to M and the other points authorities.

(5) The Marine Management Organisation must, within 7 days of receiving a statutory notification from the Scottish Ministers that they have allocated points to the master of a Scottish fishing boat in respect of a serious infringement in another member State or a third country—

- (a) include the points allocated by the Scottish Ministers against M's name; and
- (b) notify the Scottish Ministers that it has done so.

#### **Allocation of points in respect of serious infringements committed on the same occasion**

**9.**—(1) If a master has committed two or more serious infringements and these are detected by an enforcement officer in the course of one inspection, the total number of points to be allocated to the master by the points authority under regulation 7 or 8 in respect of those serious infringements is the sum of the points for each infringement, but must not exceed 12 points.

(2) An enforcement officer is—

- (a) a person appointed for the purposes of Article 74 of the Control Regulation—
  - (i) by a prosecuting authority; or
  - (ii) in the case of a charge brought in another member State, by that member State; or
- (b) in the case of a charge brought in a third country in respect of a fishing activity which is a serious infringement, the person appointed in that country who carried out the inspection or surveillance which led to the charge being brought.

#### **Suspension and disqualification**

**10.**—(1) A master who has, at any one time, accumulated at least 18 points but fewer than 90 points in the register is suspended from mastering a relevant fishing boat.

(2) The duration of the suspension is—

- (a) 2 months, on the accumulation of 18 to 35 points inclusive;
- (b) 4 months, on the accumulation of 36 to 53 points inclusive;
- (c) 8 months, on the accumulation of 54 to 71 points inclusive;
- (d) 12 months, on the accumulation of 72 to 89 points inclusive.

(3) A master who has, at any one time, accumulated 90 points or more is disqualified from mastering a relevant fishing boat.

(4) A suspension or disqualification under this regulation starts—

- (a) on the start date set out in the register; or

- (b) if the master is mastering a relevant fishing boat engaged in fishing when a suspension or disqualification is triggered, on the day following the day on which the master returns to port.

(5) It is an offence for a master to master a relevant fishing boat—

- (a) while suspended from doing so; or
- (b) if disqualified from doing so.

(6) In this regulation, “a relevant fishing boat” is a UK fishing boat which is not a Scottish fishing boat.

### **Deletion of points**

**11.**—(1) If the Marine Management Organisation is not aware of any serious infringement committed by a master (“M”) within 3 years of the date on which M last committed a serious infringement, it must delete all points listed against M’s name in the register and remove M’s name from the register.

(2) This regulation does not apply if M has accumulated 90 points or more and been disqualified under regulation 10(3) or under a corresponding Scottish enactment.

### **Prohibition of employing suspended or disqualified masters**

**12.** It is an offence for a person to employ a master to master a UK fishing boat if the register indicates that the master is suspended or has been disqualified.

### **Penalties**

**13.** A person convicted of an offence under these Regulations is liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum; or
- (b) on conviction on indictment, to a fine.

### **Review**

**14.**—(1) The Secretary of State must, from time to time—

- (a) carry out a review of these Regulations;
- (b) set out the conclusions of the review in a report; and
- (c) publish the report.

(2) In carrying out the review, the Secretary of State must, as far as is reasonable, have regard to how Articles 89, 92 and 93 of the Control Regulation are executed and enforced in other member States.

(3) The report must, in particular—

- (a) set out the objectives intended to be achieved by these Regulations;
- (b) assess the extent to which those objectives are achieved; and
- (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system which imposes less regulation.

(4) The first report under this regulation must be published before the end of the period of five years which starts on the day on which these Regulations come into force.

(5) Each subsequent report must be published before the end of the period of five years which starts on the day on which the previous report was published.

18th December 2014

*George Eustice*  
Parliamentary Under Secretary of State  
Department for Environment, Food and Rural Affairs

18th December 2014

*Carl Sargeant*  
Minister for Natural Resources, one of the Welsh Ministers

## **EXPLANATORY NOTE**

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

These Regulations implement Article 92(6) of Council Regulation (EC) No. 1224/2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy (OJ No. L 343, 22.12.2009, p. 1) (“the Control Regulation”). They extend mainly to England, Wales and Northern Ireland, although regulations 3(1), 4, 7, 8(5) and 11 also extend to Scotland. Regulation 14 applies only in relation to England.

The Regulations set up a system for the allocation of points to the UK masters of fishing boats who have committed serious infringements of EU fisheries law. They also provide for the Marine Management Organisation to set up a register of UK masters with details of the points which have been allocated to them.

Regulation 4 provides for the setting up and maintenance of the register. Regulation 5 requires prosecuting authorities to notify masters of the points they will be allocated if they are convicted of serious infringements of EU fisheries law.

Regulations 7 and 8 provide for the allocation of points to masters. Regulation 9 limits to twelve the total number of points that may be allocated in respect of multiple serious infringements detected by an enforcement officer in the course of one inspection.

Regulation 10(1) and (2) provides for masters to be suspended from mastering fishing boats for various periods, depending on the number of points they accumulate. Under regulation 10(3), masters are disqualified from mastering fishing boats if they accumulate 90 points at any one time.

Regulation 11 provides that the Marine Management Organisation must delete points if a master has not committed a serious infringement for 3 years.

Regulation 12 makes it an offence for a person to employ a disqualified or suspended master on a UK fishing boat.

Regulation 13 provides that a person convicted of an offence under these Regulations is liable to a fine. These Regulations are enforceable by marine enforcement officers under section 238 of the Marine and Coastal Access Act 2009 (c. 23).

Regulation 14 requires the Secretary of State to review the operation and effect of these Regulations and publish a report within five years after they come into force and within every five years after that. Following a review it will fall to the Secretary of State to consider whether the Regulations should remain as they are, or be revoked or be amended. A further instrument would be needed to revoke the Regulations or to amend them.

The Marine Management Organisation maintains a register of points for fishing boat owners, which is enforced through fishing boat licensing systems. Details of this scheme are available at <http://www.marinemanagement.org.uk/fisheries/monitoring/points.htm>.

A full impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector in England is available at [www.gov.uk/defra](http://www.gov.uk/defra) or from the Department for Environment, Food and Rural Affairs, Nobel House, 17 Smith Square, London, SW1P 3JR and is annexed to the Explanatory Memorandum which is available alongside the instrument on [www.legislation.gov.uk](http://www.legislation.gov.uk).

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

**EXPLANATORY MEMORANDUM TO**  
**THE SEA FISHING (POINTS FOR MASTERS OF FISHING BOATS) REGULATIONS**  
**2014**

**2014 No. 3345**

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. It contains information for the Joint Committee on Statutory Instruments.
2. **Purpose of the instrument**
  - 2.1 These Regulations set up a system for the allocation of points to masters of English, Welsh and Northern Irish fishing boats who have committed serious infringements of EU fisheries law. They provide for the setting up and maintenance of a register that details the points allocated to convicted masters. The Regulations are intended to discourage repeat offending.
3. **Matters of special interest to the Joint Committee on Statutory Instruments or the Select Committee on Statutory Instruments**
  - 3.1 None.
4. **Legislative Context**
  - 4.1 The key purpose of these Regulations is to ensure compliance with the rules of the Common Fisheries Policy. Specifically, the EU Fisheries Control Regulation (Council Regulation 1224/2009) requires Member States to establish a points system for masters of fishing vessels who commit “serious infringements” of fisheries law. A list of serious infringements is set out in Annex XXX of the Control Regulation detailed rules (Commission Regulation 404/2011)
  - 4.2 The Regulations will apply to the masters of all fishing vessels registered in England, Wales and Northern Ireland. Separate Regulations are being made in the Scottish Parliament to implement points for masters in Scotland but there will be a UK register showing the points allocated to UK masters of fishing vessels.
5. **Territorial Extent and Application**
  - 5.1 This instrument extends to England, Wales and Northern Ireland. Some provisions also extend to Scotland. Regulation 14 (review of the Regulations) only applies in England.
6. **European Convention on Human Rights**



As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## **7. Policy background**

What is being done and why

7.1 The Common Fisheries Policy (CFP) requires Member States to limit and control catch volumes and to comply with technical rules and effort schemes. The Control Regulation is at the heart of CFP and sets out a control and enforcement system for ensuring compliance with its rules. The Control Regulation requires Member States to apply points to vessel licences and also to the masters of fishing vessels when serious infringements of the CFP occur.

7.2 Full details of the points scheme for fishing vessel licences are set out in the Control Regulation and are directly applicable in the UK. The Control Regulation does not however specify the details of the points scheme for masters, these must be put in place by Member States and are the subject of these Regulations. To aid industry understanding and transparency, the Regulations will apply points to masters on as close a basis as possible to the existing vessel licencing system.

## **8. Consultation outcome**

8.1 A 6 week consultation was carried out, ending on 19 November. There were 20 responses to the consultation from a range of sectors including the fishing industry, the recreational sector, environmental NGOs and local authorities (IFCAs) with the majority supporting the proposal. The key reactions were:

- 60% broadly agreed with the proposal to base the number of points on the system already used for vessel licences and among those who did not agree no clear option or consensus for an alternative approach emerged.
- 65% supported the proposal to prohibit a master who reaches a points threshold from acting as master of a fishing vessel or thought the sanction should be tougher.
- 65% supported the proposed periods of suspension for those reaching points thresholds or felt they should be tougher.
- 65% agreed that vessel owners should be required to check that any master they put in charge of their vessels is not currently suspended.

8.2 Given that responses were mainly positive and no clear alternatives to our proposals emerged, no changes have been made to the measures as set out in the consultation document.

## **9. Guidance**

9.1 Formal Defra Guidance is not required. The MMO, as the administrators of the new system, will be responsible for making the fishing industry aware of the changes.

## **10. Impact**

10.1 The impact on business, charities or voluntary bodies is low .

10.2 The impact on the public sector is expected to be minimal as there is already a UK database of infringements which requires only minor modification to include masters.

10.3 An Impact Assessment is attached to this memorandum and is published alongside the Explanatory Memorandum on the [legislation.gov.uk](http://legislation.gov.uk) website.

## **11. Regulating small business**

11.1 These Regulations apply to small business. There are some large operators in the fisheries sector but in the main this industry is made up of small to medium sized businesses. Industry will incur minimal costs. As this measure relates to actions that occur as a result of illegal activity (i.e. receiving points and licence suspension) it does not of itself impose a burden on business.

## **12. Monitoring & review**

12.1 The Regulations will be regularly reviewed to ensure that they remain fit for purpose.

## **13. Contact**

13.1 Jacinta Vaz at the Department for Environment, Food and Rural Affairs, Tel: 0207238 4434 or email: [jacinta.vaz@defra.gsi.gov.uk](mailto:jacinta.vaz@defra.gsi.gov.uk) can answer any queries regarding the instrument.

## MEMORANDWM CYDSYNIAD OFFERYN STATUDOL

### Gorchymyn Cyrff Cyhoeddus (Diddymu'r Pwyllgorau Cynghori ar Blaladdwyr) 2015

1. Mae'r Memorandwm Cydsyniad Offeryn Statudol hwn yn cael ei osod o dan Reol Sefydlog 30A.2. Mae Rheol Sefydlog 30A yn rhagnodi bod rhaid gosod Memorandwm Cydsyniad Offeryn Statudol ac y gellir cyflwyno Cynnig Cydsyniad Offeryn Statudol gerbron Cynulliad Cenedlaethol Cymru ("y Cynulliad") os bydd Offeryn Statudol y DU yn gwneud darpariaeth, mewn perthynas â Chymru, sy'n diwygio'r ddeddfwriaeth sylfaenol o fewn cymhwysedd deddfwriaethol y Cynulliad.
2. Gosodwyd Gorchymyn Cyrff Cyhoeddus (Diddymu'r Pwyllgorau Cynghori ar Blaladdwyr) 2015 gerbron y Senedd ar 15 Rhagfyr 2014 a gerbron y Cynulliad ar 16 Rhagfyr 2014. Mae'r gorchymyn i'w weld yn: <http://www.legislation.gov.uk/ukdsi/2015/9780111125656/contents>
3. Mae Adran 9(6) o Ddeddf Cyrff Cyhoeddus 2011 yn ei gwneud yn ofynnol cael cydsyniad y Cynulliad pan fo Gorchymyn a wnaed dan adrannau 1 i 5 o'r Ddeddf honno yn gwneud darpariaethau a fyddai o fewn cymhwysedd deddfwriaethol y Cynulliad pe bai'n rhan o Ddeddf Cynulliad.

### Crynodeb o'r Gorchymyn a'i amcanion

4. Amcan y Gorchymyn hwn yw diddymu'r Pwyllgor Cynghori ar Blaladdwyr (yr "ACP") a'r Pwyllgor Cynghori ar Blaladdwyr (Gogledd Iwerddon) (ACP(NI)), cyfeirir at y ddau bwyllgor gyda'i gilydd yn y ddogfen hwn fel ACP. Sefydlwyd yr ACP dan adran 16(7) o Ddeddf Diogelu Bwyd a'r Amgylchedd 1985 (FEPA) fel cyrff cyhoeddus anadrannol statudol (NDPB). Yn dilyn diddymu yr ACP, y bwriad yw i osod yn eu lle bwyllgor arbenigol anstatudol o Adran yr Amgylchedd, Bwyd a Materion Gwledig (Defra).
5. Mae'r Gorchymyn hwn hefyd yn gwneud diddymiadau a dirymiadau mewn perthynas â diddymu'r ACP, gan gynnwys diddymu adrannau 16(7) ac 16(9) o FEPA. Mae adran 16(7) yn galluogi sefydlu pwyllgor i gynghori ar unrhyw faterion yn ymwneud â rheoli plâu wrth gyflawni dibenion cyffredinol Rhan III o FEPA. Mae adran 16(9) yn gosod dyletswydd i ymgynghori â'r pwyllgor fel y disgrifir ym mharagraff 8 isod.
6. Sefydlwyd yr ACP dan Adran 16(7) o FEPA i gynghori Gweinidogion Cymru, yr Ysgrifennydd Gwladol ac eraill ar faterion yn ymwneud â rheoli plâu wrth gyflawni dibenion cyffredinol Rhan III FEPA.

7. Mae'r dibenion cyffredinol i'w gweld yn adran 16(1) o FEPA, sy'n darparu y bydd Rhan III o'r Ddeddf yn cael effaith:
- a. gyda'r nod o ddatblygu gallu'n barhaus i wneud y canlynol;
    - i. diogelu iechyd bodau dynol, creaduriaid a phlanhigion;
    - ii. diogelu'r amgylchedd;
    - iii. sicrhau dulliau diogel, effeithlon, heb greulondeb o reoli plâu.
  - b. gyda'r nod o ddarparu gwybodaeth am blaladdwyr i'r cyhoedd.
8. Mae adran 16(9) o FEPA yn ei gwneud yn ofynnol i Weinidogion Cymru ac eraill ymgynghori â'r ACP ynghylch rheoliadau sydd dan ystyriaeth; cymeradwyaeth i blaladdwyr y maent yn ystyried ei roi, dileu neu atal dros dro; ac amodau y maent yn ystyried eu gosod ar gymeradwyaeth.
9. Mae'r Gorchymyn hwn yn ymestyn i Gymru, Lloegr, yr Alban a Gogledd Iwerddon.

**Darpariaethau i'w gwneud gan y Gorchymyn Cyrff Cyhoeddus (Diddymu'r Pwyllgorau Cynghori ar Blaladdwyr) 2015 y gofynnir am gydsyniad yn eu cylch**

10. Mae'r Gorchymyn drafft yn diddymu'r ACP ac ACP (NI) a sefydlwyd dan FEPA. Mae'n gwneud diddymiadau a dirymiadau sy'n gysylltiedig â'r diddymu, gan gynnwys yr hyn a ddisgrifiwyd ym mharagraff 5 uchod.
11. Mae Llywodraeth Cymru o'r farn bod y darpariaethau a ddisgrifir ym mharagraff (10) uchod o fewn cymhwysedd deddfwriaethol Cynulliad Cenedlaethol Cymru yn ymwneud â'r canlynol:
- a. amaethyddiaeth, iechyd a lles anifeiliaid ac iechyd planhigion yn unol â (Pwnc 1 Amaethyddiaeth, coedwigaeth, anifeiliaid, planhigion a datblygu gwledig) Atodlen 7 o Ddeddf Llywodraeth Cymru 2006;
  - b. diogelu'r amgylchedd, gan gynnwys llygredd, niwsasau a sylweddau peryglus yn unol â (Pwnc 6 Amgylchedd) Atodlen 7 o Ddeddf Llywodraeth Cymru;
  - c. hyrwyddo iechyd, atal, trin a lliniaru afiechyd, salwch, anabledd ac anhwylderau meddwl yn unol â (Pwnc 9 Iechyd a gwasanaethau iechyd) Atodlen 7 o Ddeddf Llywodraeth Cymru.
12. Mae Llywodraeth Cymru o'r farn, wrth ystyried y pynciau hyn gyda'i gilydd, ei bod o fewn cymhwysedd Cynulliad Cenedlaethol Cymru i sefydlu (neu alluogi sefydlu) pwyllgor sy'n cynghori ar reoli plâu o fewn cyd-destun iechyd pobl, anifeiliaid a phlanhigion; diogelu'r amgylchedd; a sicrhau ffyrdd diogel, effeithlon a heb greulondeb o reoli plâu. I'r

graddau y mae'r Cynulliad Cenedlaethol yn gymwys i greu corff o'r fath, byddai hefyd yn gymwys i'w ddiddymu a chreu diddymiadau a dirymiadau perthnasol.

### **Pam ei bod yn briodol i'r Gorchymyn wneud y ddarpariaeth hon**

13. Mae Llywodraeth Cymru'n ystyried mai'r Gorchymyn hwn yw'r dull deddfwriaethol mwyaf priodol a chymesur i ddiddymu'r ACP sy'n berthnasol i Gymru, Lloegr a'r Alban ac ACP (NI); sydd hefyd yn cael ei ddiddymu dan y Gorchymyn.
14. Mae'r ddau ACP yn cael eu diddymu fel cyrff cyhoeddus anadrannol statudol o ganlyniad i adolygiad Llywodraeth y DU i gyrff cyhoeddus yn 2010. Ers sefydlu'r ACP mae'r system reoleiddio ar gyfer plaladdwyr wedi newid yn sylweddol. Yn y 1980au, Gweinidogion Llywodraeth y DU oedd yn gyfrifol am bob penderfyniad i gymeradwyo plaladdwyr ar ôl asesiad gwyddonol o beryglon i bobl a'r amgylchedd. Roedd hyn yn system newydd dan FEPA bryd hynny, ac yn gofyn am lefelau uchel o arbenigedd i sefydlu cynsail ac adeiladu system reoleiddio gadarn a chyson. Sefydlwyd tîm o fewn y Weinyddiaeth Amaeth, Pysgodfeydd a Bwyd ar y pryd i reoli'r gwaith a chynnal asesiad technegol. Yn y dyddiau cynnar hynny, roedd arbenigedd yr ACP yn ganolog i'r gwaith o gyflawni'r holl asesiadau risg angenrheidiol.
15. Ers y 1980au, mae arbenigedd mewnol y Llywodraeth o fewn yr Awdurdod Gweithredol Iechyd a Diogelwch, sy'n cynnal gweithgarwch rheoleiddio o ddydd i ddydd ar ran Gweinidogion Cymru, wedi datblygu'n sylweddol. Arbenigedd yr ACP bellach felly yw darparu ffordd annibynnol o wirio a herio, yn hytrach na bod yn rhan ganolog o'r asesiad fel ag yr oedd yn flaenorol.
16. Hefyd ers y 1990au mae penderfyniadau ynghylch cymeradwyo sylweddau sy'n rhan o gylch gorchwyl yr ACP wedi'u gwneud yn gynyddol ar lefel yr Undeb Ewropeaidd, dan ddarpariaethau deddfwriaeth sy'n cwmpasu cynhyrchion amddiffyn planhigion. Mae Rheoliad (EC) 1107/2009 (a gyhoeddwyd ar 24 Tachwedd 2009) wedi creu cysondeb pellach yn y system reoleiddio ar gyfer cynhyrchion amddiffyn planhigion.
17. Mae'r datblygiadau hyn yn golygu bod swyddogaeth Rheoleiddiwr y DU (yr Awdurdod Gweithredol Iechyd a Diogelwch) a chyngor arbenigol annibynnol i helpu a herio'r gwaith wedi newid. O ganlyniad mae llai o angen am gyngor arbenigol penodol i'r DU ar geisiadau am gymeradwyaeth yn y DU, sef y rheswm dros sefydlu'r ACP. Fodd bynnag mae angen cyngor annibynnol o hyd ar amrywiaeth ehangach o faterion asesu a rheoli risg.
18. Felly er ei bod yn briodol i'r ACP gael eu diddymu, mae bwriad ar ôl y diddymu i sefydlu pwyllgor gwyddonol anstatudol fel corff newydd a fydd yn rhoi cyngor arbenigol, annibynnol a diduedd i Weinidogion, gan

gynnwys Gweinidogion Cymru. Bydd y pwyllgor newydd yn fwy effeithlon oherwydd ar hyn o bryd mae'r gofynion ar gyfer ymgynghori â'r ACP dan FEPA yn eang iawn. Byddai'r pwyllgor arbenigol arfaethedig yn medru cynnig cyngor ar unrhyw fater o fewn ei gylch gorchwyl, ond yn wahanol i'r ACP ni fyddai'n cael ceisiadau am gyngor yn gyffredinol i helpu gyda phenderfyniadau os nad ydynt yn codi materion newydd neu ddadleuol. Bydd hyn yn galluogi'r pwyllgor newydd i ymroi mwy o amser i'r cwestiynau pwysicaf.

19. Bydd y corff newydd hefyd er budd y cyhoedd ac er budd sicrhau bod Gweinidogion, gan gynnwys Gweinidogion Cymru ac eraill, yn parhau i dderbyn cyngor arbenigol, diduedd ac annibynnol wrth i'r cefndir rheoleiddio newid.
20. Hefyd bydd y corff anstatudol newydd yn fwy hyblyg ac ystwyth gan fod modd addasu'r cylch gwaith drwy newid y cylch gorchwyl.

### **Goblygiadau ariannol**

21. Mae'r ACP yn cael ei ariannu'n llwyr gan Defra. Bydd y pwyllgor gwyddonol anstatudol newydd yn parhau i gael ei ariannu'n llawn gan Defra, felly ar ôl aildrefnu ni fydd goblygiadau ariannol i Gymru.

**Rebecca Evans AC**  
**Y Dirprwy Weinidog Ffermio a Bwyd**  
**Rhagfyr 2014**

*Draft Order laid before Parliament under section 11 of the Public Bodies Act 2011, for approval by resolution of each House of Parliament after the expiry of the 40-day period referred to in section 11(4) of that Act.*

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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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**2015 No. 000**

**PESTICIDES**

**PUBLIC BODIES**

**The Public Bodies (Abolition of the Advisory Committees on  
Pesticides) Order 2015**

*Made*   -   -   -   -

\*\*\*

*Coming into force in accordance with article 1*

The Secretary of State makes this Order in exercise of the powers conferred by sections 1(1), 6(1) and (5) and 35(2) of the Public Bodies Act 2011 (“the Act”)(a).

In accordance with section 8 of the Act, the Secretary of State considers that this Order—

- (a) serves the purpose of improving the exercise of public functions, having had regard to the factors set out in section 8(1) of the Act; and
- (b) does not remove any necessary protection or prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise.

The consent of the Scottish Parliament, the consent of the Northern Ireland Assembly and the consent of the National Assembly for Wales has been obtained in accordance with section 9(1), (3) and (6) of the Act respectively.

The Secretary of State has consulted in accordance with section 10 of the Act.

The Secretary of State has consulted the Scottish Ministers in accordance with section 88(2) of the Scotland Act 1998(b) and the Welsh Ministers in accordance with section 63(1) of the Government of Wales Act 2006(c).

A draft of this Order and an explanatory document containing the information required by section 11(2) of the Act have been laid before Parliament in accordance with section 11(1) after the end of the period of twelve weeks mentioned in section 11(3).

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(a) 2011 c. 24.  
(b) 1998 c. 46.  
(c) 2006 c. 32.

In accordance with section 11(4) of the Act, a draft of this Order has been approved by a resolution of each House of Parliament after the expiry of the 40-day period referred to in that provision.

### **Title and commencement**

**1.**—(1) This Order may be cited as the Public Bodies (Abolition of the Advisory Committees on Pesticides) Order 2015.

(2) It comes into force on the day after the day on which it is made, except as provided by paragraph (3).

(3) The entry for the Public Bodies Act 2011 in the table of repeals in Part 1 of the Schedule, and article 3 so far as relating to that entry, come into force on the second day after the day on which the Order is made.

### **Abolition of advisory committees**

**2.** The following bodies established under section 16(7) of the Food and Environment Protection Act 1985(a) are abolished—

- (a) the Advisory Committee on Pesticides(b); and
- (b) the Advisory Committee on Pesticides for Northern Ireland(c).

### **Repeals and revocations**

**3.** The Schedule (repeals and revocations) has effect.

Date	<i>Name</i> Parliamentary Under Secretary of State Department
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## SCHEDULE

Article 3

### Repeals and revocations

#### PART 1

##### Repeals

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Parliamentary Commissioner Act 1967 (c.13) (d)	In Schedule 2, the entry relating to the Advisory Committee on Pesticides.
Food and Environment Protection Act 1985 (c.48)	Section 16(7), (8) and (9). In section 25(4), the words “and Schedule 5 to this Act”.

(a) 1985 c. 48.

(b) The Advisory Committee on Pesticides was established by article 3 of the Control of Pesticides (Advisory Committee on Pesticides) Order 1985 (S.I. 1985/1516).

(c) The Advisory Committee on Pesticides for Northern Ireland was established by article 4 of the Control of Pesticides (Advisory Committee) Order (Northern Ireland) 1987 (S.R. (NI) 1987 No 341).

(d) Schedule 2 to the Parliamentary Commissioner Act 1967 was amended by S.I. 2011/2986.



	Schedule 5.
Food Standards Act 1999 (c. 28)	In Schedule 3, paragraph 16(6).
Freedom of Information Act 2000 (c. 36)	In Schedule 1— <ul style="list-style-type: none"> <li>(a) in Part 6, the entry relating to The Advisory Committee on Pesticides;</li> <li>(b) in Part 7, the entry relating to The Advisory Committee on Pesticides for Northern Ireland.</li> </ul>
Public Bodies Act 2011 (c. 24)	In Schedule 1, the words “Advisory Committee on Pesticides and Advisory Committee on Pesticides for Northern Ireland (bodies established under section 16(7) of the Food and Environment Protection Act 1985).”.

## PART 2

### Revocations

<i>Instrument</i>	<i>Reference</i>	<i>Extent of revocation</i>
The Control of Pesticides (Advisory Committee on Pesticides) Order 1985	S.I. 1985/1516(a)	The whole Order.
The Control of Pesticides (Advisory Committee on Pesticides) (Terms of Office) Regulations 1985	S.I. 1985/1517(b)	The whole Regulations.
The Control of Pesticides (Advisory Committee) Order (Northern Ireland) 1987	S.R. (NI) 1987 No 341.	The whole Order.
The Control of Pesticides (Advisory Committee) (Terms of Office) Regulations (Northern Ireland) 1987	S.R. (NI) 1987 No 342.	The whole Regulations.
The Scotland Act 1998 (Cross-Border Public Authorities) (Specification) Order 1999	S.I. 1999/1319(c)	In the Schedule, the entry in the table relating to the Advisory Committee on Pesticides.
The Scotland Act 1998 (Cross-Border Public Authorities) (Adaptation of Functions etc)	S.I. 1999/1747(d)	Schedule 2.

- (a) As amended by S.I. 1999/1747.  
(b) As amended by S.I. 1999/1747.  
(c) There are amendments not relevant to this Order.  
(d) There are amendments not relevant to this Order.

Order 1999

The Scotland Act 1998  
(Agency Arrangements)  
(Specification) Order 1999

S.I. 1999/1512(a)

In Schedule 2—

- (a) paragraph 2;
- (b) paragraph 3.

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### EXPLANATORY NOTE

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

This Order abolishes the Advisory Committee on Pesticides and the Advisory Committee on Pesticides for Northern Ireland established under section 16(7) of the Food and Environment Protection Act 1985. It makes repeals and revocations associated with the abolition (including the repeal of the power to appoint a committee).

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

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(a) There are amendments not relevant to this Order.







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**EXPLANATORY DOCUMENT TO**  
**THE PUBLIC BODIES (ABOLITION OF THE ADVISORY COMMITTEES ON**  
**PESTICIDES) ORDER 2015**  
**2015 No. [xxxx]**

1. This explanatory document has been prepared by the Department for Environment, Food and Rural Affairs (Defra) and is laid before Parliament under section 11(1) of the Public Bodies Act 2011.
2. **Purpose of the instrument**
  - 2.1 This instrument abolishes the Advisory Committee on Pesticides (the ACP) and the Advisory Committee on Pesticides (Northern Ireland) (the ACP (NI) – jointly referred to in this document as the ACPs). The ACPs were established by section 16(7) of the Food and Environment Protection Act 1985 and abolition is part of the Government’s public body reform programme.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
  - 3.1 None.
4. **Legislative Context**
  - 4.1 The ACPs are statutory bodies set up by Ministers under section 16 (7) of the Food and Environment Protection Act 1985 to advise on all matters relating to the control of pesticides. The Advisory Committee on Pesticides is established by the Control of Pesticides (Advisory Committee on Pesticides) Order 1985, SI No 1985/1516; and the Advisory Committee on Pesticides for Northern Ireland by the Control of Pesticides (Advisory Committee) Order (Northern Ireland) 1987, S.R. (NI) 1987 No 341. In practice the same body of experts has been appointed under both regulations, meaning that there is a single committee serving as both legal entities.
  - 4.2 As statutory Non-Departmental Public Bodies (NDPBs), the ACPs should be abolished in their present form before they are reconstituted as a committee of experts. Both bodies were therefore included in Schedule 1 to the Public Bodies Act 2011, which allows abolition of the listed bodies by secondary legislation. This instrument, made under the Act, provides for the abolition of the ACPs.
  - 4.3 The legislation which established the ACPs (the Food and Environment Protection Act 1985) does not provide for their abolition. Therefore, the ACPs were included in Schedule 1 to the Public Bodies Act 2011 in order to achieve their legislative dissolution. An announcement on Defra’s proposals to reform a number of public bodies, including the ACPs, was made in July 2010 by the then Secretary of State for Environment, Food and Rural Affairs.

4.4 The Minister for the Cabinet Office announced the outcome of the Public Body Review on 14 October 2010, which included the proposal to abolish the ACPs. The Review examined whether a body's functions are needed and, if they are, whether the body should continue to operate at arm's length from Government. This decision was based upon three tests:

- Does it perform a technical function?
- Do its activities require political impartiality?
- Does it need to act independently to establish facts?

## **5. Territorial Extent and Application**

5.1 This instrument applies to the United Kingdom. The ACP covers England, Scotland and Wales and the ACP (NI) covers Northern Ireland. Sections 16(7), 16(8), 16(9) of, and Schedule 5 to, the Food and Environment Protection Act 1985 are repealed by this instrument and Section 25(4) is amended. Those parts of the Act apply to the whole of the UK.

## **6. European Convention on Human Rights**

6.1 Lord de Mauley, Parliamentary Under-Secretary of State for Environment, Food and Rural Affairs (the "Minister") has made the following statement regarding Human Rights:

"In my view the provisions of the Public Bodies (Abolition of the Advisory Committees on Pesticides) Order 2015 are compatible with Convention rights".

## **7. Policy background**

### What is being done and why

7.1 The Government is proposing to abolish the ACPs as statutory NDPBs and to replace them with an expert committee of Defra. This committee would work for a number of UK Departments and for the Devolved Administrations as set out below.

7.2 The ACPs are established under section 16(7) of the Food and Environment Protection Act 1985 (FEPA) to advise Ministers, either when requested to do so or otherwise, on any matters relating to the control of pests in furthering the general purposes of Part III of FEPA. The general purposes (set out in section 16(1) of FEPA) are that the provisions of Part III shall have effect:

- (i) with a view to the continuous development of means:
  - (a) to protect the health of human beings, creatures and plants;
  - (b) to safeguard the environment; and
  - (c) to secure safe, efficient and humane methods of controlling pests; and
- (ii) with a view to making information about pesticides available to the public.



- 7.3 Under section 16(9), Ministers are required to consult the ACPs:
- (i) as to regulations which they contemplate making;
  - (ii) as to approvals of pesticides which they contemplate giving, revoking or suspending; and
  - (iii) as to conditions to which they contemplate making approvals subject.
- 7.4 Sections 16(7) and (9) of FEPA provide the terms of reference for the ACPs. The ACPs have a membership of about 18. Most members are academics working in areas relevant to assessing the risks and benefits of pest control – including pesticides. The remainder are appointed specifically to consider the issues from a lay perspective, or to bring practical experience of farming and horticulture.
- 7.5 The ACPs operate cross-border advising Ministers in Defra, DWP, DH, the Scottish and Welsh Governments and the Northern Ireland Executive. Collectively, these Ministers are referred to in this document as “the Ministers”. Appointments are made by Defra Ministers in agreement with the Ministers and in accordance with the Code of Practice of the Commissioner for Public Appointments<sup>1</sup>. One of the members is appointed on the basis of a nomination by the Food Standards Agency (FSA).
- 7.6 Since the ACPs were established, the regulatory system for pesticides has changed considerably. In the 1980s, all decisions on the approval of pesticides were taken by UK Ministers following a scientific assessment of risks to people and to the environment. This was then a new system under FEPA and required high levels of expertise to establish precedents and build a robust and consistent regulatory system. A team within the then Ministry of Agriculture, Fisheries and Food was set up to project manage the work and to carry out the technical assessment. In these early days, this team of in-house experts was spread thin in some areas and the expertise of the ACPs was central to carrying out all the necessary risk assessments.
- 7.7 The in-house Government expertise is now within the Health and Safety Executive (HSE), which carries out the day to day regulatory functions on behalf of the Ministers. The in-house team is very much stronger than was the case in the early stages of FEPA and the expertise of the ACPs therefore provides an independent check and challenge rather than an integral part of the assessment. The ACPs normally provide input on
- The first approval of an active substance in the UK;
  - Special reviews of active substances (reviews triggered by new information. There is also a routine review programme within the EU);
  - Emergency authorisations determined case by case on the basis of pressing need and safety assessment;

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<sup>1</sup> <http://publicappointmentscommissioner.independent.gov.uk/the-code-of-practice/>

- Other applications that do not fit within the framework specified by the ACP or are of particular significance in terms of science or policy.
- 7.8 The EU has come to play an increasingly important role in the evaluation and approval of pesticides. Since the 1990s, decisions on the approval of active substances falling within the remit of the ACPs have increasingly been taken at EU level under provisions of legislation covering plant protection products and biocidal products. That transition from UK to EU decision-making for active substances is now almost complete. The process for deciding whether an active substance can be approved for use in the EU involves all Member States, an independent Agency (the European Food Safety Authority (EFSA) for plant protection products or the European Chemicals Agency for biocidal products) and the European Commission.
- 7.9 Decisions on the approval of products containing approved active substances are taken at national level but according to an increasingly tightly defined body of EU rules and guidance. Regulation (EC) No. 1107/2009 (which came into force in 2011) has further harmonised the regulatory system for plant protection products. In particular, previous arrangements that allowed provisional approval in Member States alongside applications for EU approval have been discontinued unless there are significant delays in the EU decisions.
- 7.10 Regulation (EU) No. 528/2012, which came into force on 1 September 2013, continues to offer a derogation to Member States allowing the issue of provisional authorisations for biocidal products, following a complete evaluation of the active substance and agreement of the Member States receiving an application for provisional authorisations that the product is likely to meet the requirements of the regulation.
- 7.11 These developments mean the role for the UK regulator (the Health and Safety Executive, reporting to the Ministers) and for independent expert advice to support and challenge this work has changed.
- 7.12 The proposed abolition of the ACPs as statutory NDPBs, and their reconstitution as a single expert scientific committee, is an outcome of the Government's 2010 review of public bodies. The Cabinet Office review aimed to increase the transparency and accountability of public bodies and to reduce their number and cost. Each body was tested under three criteria detailed in 4.4.
- 7.13 The ACPs were tested under these criteria and it was concluded that there was a continuing need for their work. However, it was concluded that this could be better delivered through a different model. On 14 October 2010, Defra announced its intention to reconstitute the majority of its advisory bodies as committees of experts. The announcement read as follows.

“Recognising their excellent work for Defra, the department has reviewed the role and functions of its scientific and technical advisory bodies to determine the scope for rationalisation where it is relevant and appropriate to do so. The number of Defra's scientific and

technical advisory NDPBs is to be reduced significantly, with the majority of them becoming expert committees to the department. This will improve transparency and accountability, provide for stronger co-ordination whilst allowing Defra to have continued access to independent, authoritative and cost-effective advice to support its policies.”

- 7.14 Also in 2010, Professor Charles Godfray led a review of Defra’s Science Advisory Council (SAC)<sup>2</sup>. Following that review and informed by advice from the Government Chief Scientific Adviser (CSA), Professor Sir John Beddington, the then Secretary of State for Environment, Food and Rural Affairs, Caroline Spelman, made a statement to Parliament on 26 January 2011<sup>3</sup>.
- 7.15 The SAC remained a Non-Departmental Public Body with a strengthened role in supporting the CSA in the oversight of all Defra expert scientific committees. The reformed SAC provides independent advice to Ministers and the CSA on the science underpinning a wide range of Defra policies. The new SAC and the CSA have an oversight function for Defra’s science bodies.
- 7.16 The Government has given a commitment that, where Departments are considering reconstituting bodies as expert scientific committees, they should put in place a number of safeguards. Such committees must provide independent advice in line with the Government’s Principles for Scientific Advice<sup>4</sup> and the Code of Practice for Scientific Advisory Committees<sup>5</sup>. Escalation routes must be in place to ensure advice from expert scientific committees can be submitted directly to Ministers, as appropriate. These requirements will be met in establishing the successor to the ACPs and will be written into the draft terms of reference.
- 7.17 The ACPs must be abolished before their successor is put in place. The successor body will continue to provide expert, impartial and independent advice to the Ministers and to the FSA. In respect of Defra’s interests, it will operate within an enhanced framework for scientific bodies in Defra, and with new terms of reference which reflect changes in the regulatory landscape for pesticides since the ACPs were established.
- 7.18 Following the announcement of the review referred to at 7.13 above, Defra’s Secretary of State wrote to each of the Devolved Administrations to outline the overall plans for changing the status of a number of Defra advisory bodies. In her letter, she recognised that arrangements would be needed to ensure that the

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<sup>2</sup> <http://sac.defra.gov.uk/2010/11/02/scientific-advice-to-defra-commended-in-independent-review-2-november-2010/>.

<sup>3</sup> <http://www.publications.parliament.uk/pa/cm201011/cmhansrd/cm110126/wmstext/110126m0001.htm#11012644000014>

<sup>4</sup> <https://www.gov.uk/government/publications/scientific-advice-to-government-principles/principles-of-scientific-advice-to-government>

<sup>5</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/278498/11-1382-code-of-practice-scientific-advisory-committees.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/278498/11-1382-code-of-practice-scientific-advisory-committees.pdf)

Devolved Administrations and all UK Government Departments with an interest in pesticides policy and regulation had access to the new body and to the advice it will provide in the same way as at present.

7.19 Before the ACPs can be abolished, the Public Bodies Act 2011 requires: consultation with the Committee itself and other interested parties; scrutiny by the UK Parliament; and the consent of the Scottish Parliament, the National Assembly for Wales and the Northern Ireland Assembly. In addition, as the proposal is to abolish a cross-border body, Defra is required to consult with Scottish Ministers in accordance with section 88(2) of the Scotland Act 1998 and with Welsh Ministers in accordance with section 63(1) of the Government of Wales Act 2006.

7.20 Following official level discussions, Defra Ministers will shortly write to all Devolved Ministers seeking their agreement to the proposed changes to the ACPs, providing information on how the new body is intended to work and asking them to request the consent of their Assembly/Parliament. The Devolved Administrations – and all interested Whitehall Departments - will be fully engaged with all aspects of the successor body. In brief, this means that all will:

- Participate in the appointment process and agree appointments;
- Agree changes to the terms of reference including if there was ever a proposal to abolish the new committee;
- Receive and be able to commission advice from the new committee;
- Be able to nominate a representative (“Assessor”) to attend meetings and receive papers and advice from the committee.

## **8. Satisfying the requirements of section 8(1) of the Public Bodies Act 2011**

8.1 Section 8 of the Public Bodies Act 2011 states that a Minister may make an order under that Act only where it is considered that the order serves the purpose of improving the exercise of public functions, having regard to efficiency, effectiveness, economy and securing appropriate accountability to Ministers. The Minister has reviewed the proposed legislative abolition of the ACPs and considers that this Order serves the purpose of improving the exercise of public functions in section 8(1) of the 2011 Act, having regard to efficiency, effectiveness, economy and securing appropriate accountability to Ministers.

8.2 The public function in question is set out at paragraphs 7.2 and 7.3 above. In summary it is the provision of advice to the Ministers on pesticides regulation and approvals. There are a number of strong features of the current ACPs, which include their independence, right of direct access to the Ministers, technical expertise and transparency. The proposed successor arrangements – which will cover the current range of issues – will retain these strengths. However, there will be several areas of improvement, arising in particular from the greater flexibility enabled by the new body’s non-statutory nature. These are outlined in paragraphs 8.3 to 8.13 below.

### Efficiency

8.3 The abolition of the ACPs and their replacement with an expert committee will be more efficient. This is because the requirement to consult the ACPs currently set out in the Food and Environment Protection Act 1985 is very broad. The proposed expert committee would be able to offer advice on any matter within its remit. But it would not routinely be asked for advice to support decisions which do not raise new or contentious issues. This will enable the new committee to devote more time to the most important questions.

### Effectiveness

8.4 There are two broad ways in which the new arrangements should be more effective than those they replace. First, a non-statutory basis will provide greater flexibility, particularly because terms of reference can be updated to reflect the changing EU regulatory regimes. Second, the new body will take its place in a more coherent system for science advice across Defra. The work of the new body will fall under new arrangements to strengthen the science and evidence base to support policy across Defra. The new body will operate within a closer network of expert bodies overseen by Defra's CSA, supported by his SAC. This will provide greater co-ordination of scientific advice and evidence gathering within the Department, making the process as a whole more effective and flexible. These arrangements sit within wider Government reform for Arms-Length Bodies and measures led by the Government's Chief Scientific Adviser.

8.5 One difficulty with the current static statutory arrangements derives from the fact that the regulatory systems for pesticides now derive from two EU regimes on plant protection products (PPPs - agricultural, horticultural, amenity and garden pesticides) and biocidal products. Under these two regimes, decisions on the approval of active substances are taken at the EU level. Product authorisations are determined nationally but according to common rules. Even authorisation is taking an increasingly transnational dimension with decisions being taken on a European 'zonal' basis for PPPs and the possibility of 'Union authorisations' for biocides. Mutual recognition of authorisations in between member states is a common efficiency measure for both PPPs and biocides under their respective regulations.

8.6 All this means that there is less need for UK specific expert advice on UK applications for approval. There remains a strong need for independent advice on broader risk assessment and risk management issues. However, the role is changed and the bodies carrying it out need to be adaptable in the face of constantly developing EU regimes.

8.7 Non-statutory advisory bodies are inherently more flexible and nimble and can be adapted, for example to acquire new terms of reference. The change of status to the ACPs will allow the successor body to take on new, more flexible and strategic terms of reference. It will then be more straightforward to adapt the terms of reference in future to meet currently unforeseen changes in demand.

## Economy

- 8.8 The costs of the ACPs are modest. Defra pays around £25,000 per year for administering meetings, meeting Members' travel and subsistence costs, and for recruitment campaigns. The costs to Defra of the Secretariat based in the Health and Safety Executive amount to around £40,000 per year. Similar amounts are also drawn from industry funding. The costs of the successor expert committee are likely to be slightly less. The size of the committee is likely to be similar to the ACPs but, as a result of the changes outlined at 8.3, the new committee may not need to meet so frequently. Minor savings in the costs of recruiting members are expected for the successor body, as it is anticipated there will no longer be a requirement to involve independent Office of the Commissioner for Public Appointments (OCPA) assessors.
- 8.9 There are no potential jobs impacts arising from this proposal – the size of the very small Secretariat for this body (within the Health and Safety Executive) will remain unchanged.
- 8.10 Immediate transitional costs will be negligible. The existing and proposed Committees will require a similar range of expertise in meeting the demand for the type of advice required in the near future. Current members of the ACPs are fully aware that, subject to the completion of the transition, their membership will carry across to the successor body.

## Accountability to Ministers

- 8.11 Across the Defra evidence network, the reconstitution of advisory NDPBs as expert scientific committees has been focussed on improving transparency and securing appropriate accountability to Ministers.
- 8.12 The new expert committee will retain the high degree of independence and transparency that characterised the ACPs. It will carry out an independent and technical advisory function in a sensitive area which Government requires, which society values, and which is best delivered through other arrangements, for which the status of expert scientific committee best describes its role and function.
- 8.13 The new expert committee will bring together independent scientific experts and will work independently of Government and in an open manner. It will provide advice to the Ministers and to the FSA. It will be able to put advice direct to any of the Ministers where the Members consider this appropriate. The Ministers will be closely engaged with the committee's work, commissioning some of that work and considering its advice. They will also be involved in recruiting and appointing committee members. They will not control the committee's operations, which will remain at arms' length.

## **9. Compliance with the conditions in section 8(2) of the Public Bodies Act 2011**

- 9.1 Section 8(2) of the Public Bodies Act 2011 provides that a Minister may make an order under sections 1 to 5 only if the Minister considers that—
- (a) the order does not remove any necessary protection, and

- (b) the order does not prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise.

- 9.2 The Minister considers that the conditions in Section 8(2) are met. The ACPs statutory functions as advisory bodies have no impact on personal protections, rights or freedoms. It follows that abolition of the ACPs functions will not remove any necessary protection nor prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise. The proposals would not impose any new costs, administrative burdens, or information obligations on companies or third sector organisations.
- 9.3 The Government intends to reconstitute the committee as an expert scientific committee to continue its work after the draft Order comes into force. This will maintain the flow, openness and independence of advice.

## **10 Parliamentary activity during passage of the Public Bodies Act**

- 10.1 The debates that took place during the passage of the Public Bodies Bill are summarised below. Hyperlinks are provided to the full Hansard transcripts.
- 10.2 **During the Committee Stage of the Public Bodies Bill, 2nd sitting, 29 November 2010, in the House of Lords an amendment was tabled by Lord Whitty<sup>6</sup>** seeking to remove the ACPs from Schedule 1 of the Bill. The proposer expressed concern at the prospect that these bodies, together with the Advisory Committee on Hazardous Substances (ACHS), might be abolished and not replaced. Lord Henley, the then Defra Minister, explained why abolition was proposed and how the issues covered by the Committees would be covered in the future. The amendment was withdrawn.
- 10.3 **During the Report Stage of the Public Bodies Bill, 1<sup>st</sup> sitting, 23 March 2011, in the House of Lords an amendment was tabled by Baroness Quin<sup>7</sup>** seeking to remove the Advisory Committee on Pesticides from Schedule 1 of the Bill. The proposer again asked why the ACPs and ACHS were to be abolished, saying that they had done good work on sensitive public issues. Lord Henley described the proposed arrangements and how the proposed changes fitted with those planned for other Defra science advisory bodies. The amendment was withdrawn.
- 10.4 **During the Committee Stage of the Public Bodies Bill, 2nd sitting, 8 September 2011, in the House of Commons an amendment was tabled by Roberta Blackman-Woods and Jon Trickett<sup>8</sup>** seeking to remove the Advisory Committee on Pesticides from Schedule 1 of the Bill. Dr Blackman-Woods asked how the proposed expert committee would do a better job than

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<sup>6</sup> <http://www.publications.parliament.uk/pa/ld201011/ldhansrd/text/101129-0003.htm>

<sup>7</sup> <http://www.publications.parliament.uk/pa/ld201011/ldhansrd/text/110323-0001.htm#11032365000810>

<sup>8</sup> <http://www.publications.parliament.uk/pa/cm201011/cmpublic/publicbod/110908/pm/110908s01.htm>

the existing committees. David Heath, the then Defra Minister, explained how the arrangements would work and why they would be more effective. The amendment was withdrawn.

## 11 Consultation outcome

11.1 In accordance with Section 10 of the Public Bodies Act, a public consultation inviting comments on the Government's proposals on the future of the ACPs was carried out. It was launched on 8 March and closed on 15 May 2012. The three options in the consultation were:

- Option A Maintain the status quo - the ACPs continue as statutory, advisory Non-Departmental Public Bodies;
- Option B Abolish the ACPs and put nothing in their place;
- Option C Abolish the ACPs and reconstitute as an expert scientific committee.

11.2 The consultation explained that the Government's preferred option was to abolish the Committees as statutory NDPBs and to reconstitute them as a new expert scientific committee. However, the Government wished to consider alternative approaches and to hear respondents' views on their proposals.

11.3 Forty five responses were received. Thirty responses were received from the farming/growing industry and businesses, six from government advisory bodies and nine from the public or Non-Government Organisations (NGOs). Of these:

- No respondent supported Option B (to abolish the ACPs and put nothing in their place).
- Twelve respondents stated specifically that they are opposed to the abolition of ACPs and wished to maintain the status quo (Option A) but some suggested that they could accept Option C if the new body were constituted so as to address their concerns (which, as set out at paragraph 11.6 below, is the intention).
- Twenty four respondents supported the Government's preferred option (Option C) to abolish the ACPs and reconstitute as an expert scientific committee. However, some respondents in favour of this option attached a number of caveats in their support of its abolition.
- Eight respondents did not favour one option over the other, but provided comments on the remit and operation of the committee.
- One respondent suggested an alternative option - to abolish the committee and replace it with a new committee advising on the overall aspects of pest management with the priority on non-chemical pest control.
- Many respondents highlighted similar views as to the strengths of the ACPs and the qualities which they would wish to see replicated in any expert committee. These included: independence; impartiality; scientific expertise;



transparency; a direct line to Ministers; and the ability to initiate its own lines of enquiry.

- 11.4 The Minister wrote to the Chair of the ACPs on 16 October 2010 to inform them of the intention to abolish. The Committees were consulted, as required by Section 10(1)(a) of the PBA, on the proposal to abolish and were also consulted (at their 15 May 2012 meeting) on the remit and terms of reference of the proposed successor body.
- 11.5 In view of the support expressed during this consultation for the Government's preferred option, Defra is proceeding as planned to lay a draft Order to abolish the ACPs. The Government will work with the ACPs on the transitional and subsequent on-going arrangements.
- 11.6 The consultation showed strong support for a body to provide expert, impartial and independent advice on pesticides to the Ministers and FSA. The Government reaffirms that the proposed successor body to the ACPs would continue to take this role. The Committee would operate in line with the Government's Principles for Scientific Advice and the Code of Practice for Scientific Advisory Committees.
- 11.7 The new committee would normally provide advice to officials supporting the Ministers on request but, as at present, would be entitled to choose its own subjects for consideration and to put advice direct to the Ministers.
- 11.8 The new committee would draw together an appropriate range of experts – and the Government will invite the current members to transfer to the new body. Future members would be chosen in a similar way as at present (although appointments would be made by a senior official rather than by a Minister). The new committee would not be regulated by the Code of Practice of the Commissioner for Public Appointments but recruitment would be carried out in line with the guidance and principles on public appointments set by the Office of the Commissioner for Public Appointments. Members would be expected to act impartially and to follow the seven 'Nolan' principles of public life.
- 11.9 The Government's response to the consultation was published on 14 November 2014 and can be found on the Single Government Website at <https://www.gov.uk/government/consultations/the-future-of-the-advisory-committee-on-pesticides>

## **12. Guidance**

- 12.1 This instrument abolishes a body providing expert advice to Ministers. It is not necessary to publish guidance for stakeholders or enforcement agencies in relation to this measure.

### **13. Impact**

- 13.1 This Order has no impact on business or civil society bodies. It does not impose any new costs, administrative burdens or information obligations. No Impact Assessment has therefore been prepared for this instrument.
- 13.2 The abolition of the ACPs and replacement with an expert committee will retain a number of good features of the ACPs but will produce improvements in effectiveness and efficiency.
- 13.3 The impact on the public sector is essentially neutral as a successor body will be established with the same level of Secretariat support from the Chemicals Regulation Directorate (a directorate of the Health and Safety Executive). Transitional costs will be negligible and ongoing savings will be small.
- 13.4 An Equality Impact Assessment initial screening was carried out for the ACPs. This showed no equality impact – ACP Members and the Secretariat will continue in similar roles as at present.

### **14. Regulating small businesses**

- 14.1 The legislation does not affect small businesses.

### **15. Monitoring and review**

- 15.1 The body which replaces the ACP will continue to work openly, and papers for meetings will continue to be available with agendas and minutes routinely published and detailed papers available on request in line with freedom of information legislation (Freedom of Information Act and Environmental Information Regulations). Members of the public, specialist press and other stakeholders will be able to attend annual open meetings. The terms of reference for the new committee will be kept under review, in line with Cabinet Office guidelines for such bodies. The openness of the replacement body will continue to be kept under review in line with the Code of Practice for Scientific Advisory Committees. The oversight of the successor committee by the Defra CSA, supported by the Defra SAC, will provide an additional level of peer review and scrutiny.

### **16. Contact**

- 16.1 David Williams at the Department for Environment, Food and Rural Affairs (Tel. 01904 455363 or e-mail [davidp.williams@defra.gsi.gov.uk](mailto:davidp.williams@defra.gsi.gov.uk)) can answer any queries regarding the instrument.

Mae cyfyngiadau ar y ddogfen hon

## Item 6

Y Comdeitias Feddygol Brydeinig

British Medical Association

0300 123 1233 bma.org.uk

Fifth Floor, 2 Caspian Point, Caspian Way, Cardiff Bay, Cardiff CF10 4DQ

Pumed Llawr, 2 Pentir Caspian, Ffordd Caspian, Bae Caerdydd, Caerdydd CF10 4DQ

☎ 029 2047 4646 📠 029 2047 4600



### MAKING LAWS IN THE FOURTH ASSEMBLY

National Office  
Swyddfa Genedlaethol

#### Inquiry by the National Assembly for Wales' Constitutional and Legislative Affairs Committee

#### Response from BMA Cymru Wales

30 June 2014

#### INTRODUCTION

BMA Cymru Wales is pleased to provide a response to the Constitutional and Legislative Affairs Committee's inquiry entitled 'Making Laws in the Fourth Assembly'.

The British Medical Association represents doctors from all branches of medicine all over the UK; and has a total membership of over 150,000 including more than 3,000 members overseas and over 19,000 medical student members.

The BMA is the largest voluntary professional association of doctors in the UK, which speaks for doctors at home and abroad. It is also an independent trade union.

BMA Cymru Wales represents some 7,000 members in Wales from every branch of the medical profession.

#### RESPONSE

BMA Cymru Wales does not offer a response to every question put forward in the Committee's consultation letter, but does put forward responses to the following specific questions:

#### **Question 2. What impact has the Assembly's conferred powers model of legislative competence had on the drafting of Bills? What would be different if the Assembly had a reserved powers model?**

BMA Cymru Wales considers there is constant risk of legal challenge and referral to the Supreme Court directly arising from the current conferred powers model. We believe that this constant risk of legal challenge is extremely unhelpful in determining policy and advising Assembly Members.

Meanwhile, we note that Scotland and Northern Ireland have the ability to legislate freely without the constraints of the conferred powers model – and more importantly, without the risk of their legislation being regularly subject to constitutional challenge.

It is our view that the National Assembly's powers to legislate would be more clearly defined under a reserved powers model. There would then no longer be a need to preface advice with a constitutional law lecture regarding what can or cannot be done. In short, we consider that uncertainty would be removed for those uninitiated in the constitutional technicalities of the Welsh devolution settlement.

#### **Question 3. What is your view of the content of the Explanatory Memoranda which accompany Bills and how useful are they in explaining the purposes of Bills?**

We believe that these explanatory memoranda do serve to make the understanding of proposed legislation more accessible to stakeholder organisations. This may make it easier for such organisations, which may lack

Ysgrifennydd Cymreig/Welsh Secretary:

Dr Richard JP Lewis, CSU MB ChB MRCPG Dip IMC RCS (Ed) PGDip FLM

Cofrestrwyd yn Gwmni Cyfyngedig trwy Warant. Rhif Cofrestredig: 8848 Lloegr

Swyddfa gofrestredig: BMA House, Tavistock Square, Llundain, WC1H 9JP.

Rhestrwyd yn Undeb Llafur o dan Ddeddf Undebau Llafur, 1944. Rhif Cofrestru: 8848

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Registered office: BMA House, Tavistock Square, London WC1H 9JP

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legal expertise, to engage with the democratic process and law-making. We therefore consider them to be helpful.

**Question 4. In a single chamber legislative system, what value to you place on the use of:**

**a) draft Bills for consideration before a Bill is formally introduced;**

A draft bill offers a clearer indication as to the Welsh Government's legislative intent – any such clarity is always to be welcomed. It can also offer greater opportunity for stakeholders and other interested parties to shape new legislation, something which may be of benefit in particular circumstances depending on the substance of what is being considered.

**b) more time for Stage 1 scrutiny;**

On some occasions the timeframe for responding to a Stage 1 consultation has proved challenging for a membership-based organisation such as ourselves. As such, it has sometimes been difficult for us to adequately consult with our members within the time available regarding points that they may wish to see included as well as to then seek endorsement of a draft response by the wider membership ahead of its submission.

There have also been occasions – e.g. during the Stage 1 scrutiny of the Human Transplantation (Wales) Bill – when we would have welcomed the opportunity to follow up our written evidence with the chance to present oral evidence to the committee considering the legislation. This was not, however, possible due to time constraints within the timetable the committee had adopted.

It also has to be remembered that, in addition to responding to consultations on proposed Bills, organisations such as BMA Cymru Wales may well be wishing to respond to numerous Welsh Government consultations and inquiries by National Assembly committees (and other organisations) that are not related to proposed legislation. This can provide a very challenging workload, particularly in an area like health. When balancing so many different consultations, it is therefore helpful if each is given an adequate timeframe within which organisations can respond. As a minimum, we would suggest that each consultation should be of at least two months' duration, and longer than that where possible. We note that this is not always the case.

**Question 5. What is your view of the need for, and impact of, curtailed scrutiny of Bills?**

We would suggest that this should be a more exceptional course of action than may have been the case up till now. Curtailed scrutiny creates a greater risk of poor legislation being enacted and reduces the opportunity for those legislating to consult with those who might have an interest in a new law being passed, including those who might be directly affected by it.

Whilst we note that both the Control of Horses (Wales) Bill and the National Health Services Budgets (Wales) Bill bypassed Stage 1 committee scrutiny, we are unconvinced that either of these Bills could be regarded of being of sufficient urgency for this to have been warranted. We would therefore suggest that clearer criteria should be adopted that would permit such curtailed scrutiny only when it is specifically justified by needs of urgency.

**Question 7. What is your view of the Welsh Government's and the National Assembly's capacity to legislate?**

The National Assembly's capability to legislate has improved greatly since the implementation of Part IV of the Government of Wales Act 2006, but Wales is still in an inferior position in comparison with the legislative competence which currently applies in both Scotland and Northern Ireland.

In relation to capacity, we are concerned that there does not always appear to have been time for committees to have undertaken sufficient scrutiny of certain Bills. We have observed on a couple of occasions, for instance, that a substantial number of amendments being considered by committees at Stage

2 of the legislative process have been disposed of within a single committee meeting. One example was the Health and Social Care Committee's consideration of 42 amendments to the Human Transplantation (Wales) Bill on 22 May 2013. This was dealt with in a single meeting lasting just over three hours. A second example was the Enterprise and Business Committee's consideration of the Active Travel (Wales) Bill on 4 July 2013 which disposed of 57 amendments in less than two and a half hours. This would suggest that many of these amendments were not considered in any great depth.

There is also perhaps a capacity issue as a result of the fact that the National Assembly's subject committees double-up as legislative scrutiny committees. This may mean that, at times, they have difficulty finding sufficient time to perform both roles as effectively as they would like. For instance we note that in July 2013, in order to accommodate more time to scrutinise the Social Services and Wellbeing (Wales) Bill, a planned oral evidence session on the 2013 measles outbreak in which we were scheduled to participate had to be cancelled by the Health and Social Care Committee late in the day. We are also aware that an inquiry by the Children and Young People Committee into childhood obesity had to be put on hold last year as it was determined that more committee time was required for scrutiny of the Further and Higher Education (Governance and Information) (Wales) Bill.

Taken together, these two examples might suggest that the current committee arrangements in the National Assembly do not provide sufficient capacity for them to undertake both roles. There is a danger that if National Assembly committees have too great a remit, then the work they undertake may be rushed or lacking in depth. This, in turn, can mean that there is inadequate time available for effective scrutiny of Bills under consideration.

**Question 8. What is your view of the Welsh Government's management of the legislative programme?**

Our observed impression is one of muddle. For instance, we have observed a lack of clarity concerning the interrelationship (or otherwise) between the proposed Future Generations (Wales) Bill and the proposed Public Health (Wales) Bill.

We further note that no explanation has been provided regarding the rationale for the dropping of a proposal for Health Impact Assessments between the publication of the Public Health (Wales) Green Paper and the more recent Public Health (Wales) White Paper. Nor has it been made clear why the proposed approach of the intended Bill appears to have been significantly narrowed in scope.

These examples imply a lack of a clear direction in the Welsh Government's legislative approach.

**Question 10. What other comments would you like to make about the making of laws?**

There can be no justification in our view for the current constitutional confusion that is caused to the medical profession (and wider civil society) by Wales having an inferior model of devolution compared to that which pertains in Scotland and Northern Ireland.

The sooner that Wales achieves a reserved powers model of devolution the better for all who have to both operate and work or engage within this system.

**Contact for further information:**

Rodney Berman

E-mail: [RBerman@bma.org.uk](mailto:RBerman@bma.org.uk)

Tel: 029 2047 4620

Fax: 029 2047 4600

Mobile: 07867 356106

Yn rhinwedd paragraff(au) vi o Reol Sefydlog 17.42

Mae cyfyngiadau ar y ddogfen hon

## WLGA RESPONSE

### Constitutional and Legislative Affairs Committee Inquiry: Making Laws in the Fourth Assembly

30<sup>th</sup> June 2014



The WLGA welcomes this second inquiry in the law making in Wales and looks forward to continued engagement throughout the Committee's Inquiry and consideration of any forthcoming recommendations. The themes of the WLGA's response have also been discussed by Lawyers in Local Government, the society that represents Monitoring Officers in Wales.

#### **1. What constitutes good practice in the drafting of a Bill? For example in relation to:**

##### **(a) the policy development process leading up to introduction;**

The Welsh Government's policy development process varies across Ministerial portfolios and often varies within a portfolio depending on the nature and scope of a prospective Bill. Earlier informal and formal dialogue and engagement with stakeholders, notably with those public service bodies expected to exercise any prospective powers or duties, is critical not only in the development of the overarching policy direction but, in particular, the practicability of implementation of the legislation, including financial implications and any unforeseen impact.

In terms of formal consultation, the statutory Local Government Partnership Scheme states that:

"Normally twelve weeks will be allowed for consultation. However there may be circumstances, for example where the Welsh Government is constrained by legislative or other timetables, when a shorter period is necessary. The Welsh Government will endeavour to keep such instances to a minimum, but if this is not possible, an eight-week period could be considered realistically achievable."

The WLGA believes that twelve weeks consultation around each of the policy provisions and the draft legislation is necessary to allow appropriate and informed engagement with stakeholders.

Explanatory Memoranda could also be improved if there was greater consistency in including summarised detail of the policy consultation process. This would aid Assembly Members (AMs) in understanding whether (and, if so, why and by whom) it was contested that there was a need for legislation in the first place or whether the scope of the legislation was appropriate, which could inform AMs' or Committees' lines of inquiry.



Similarly, there is often an inconsistent approach across Welsh Government Departments regarding the level of engagement in either drafting or testing key clauses in legislation. Early constructive and mature dialogue with relevant external stakeholders, in particularly those bodies expected to implement the legislation, helps ensure that better legislation is drafted.

On a related point, it would provide greater clarity to the Assembly and the relevant committee if the Explanatory Memorandum included a Register of Organisations included in Pre-Legislative Discussions to ensure AMs could see the details of who, if anybody, had been engaged or involved in discussions on the drafting of a Bill.

### **(b) the drafting accuracy and completeness of a Bill on introduction;**

The WLGA does not have any strong views on the drafting accuracy of Bills, however, there have been occasions where Draft Bills (for example, the draft Planning (Wales) Bill) have been incomplete, this means that it can prove difficult to provide informed comment on an incomplete Bill and some instances where there was little or no opportunity for consultation on or Assembly or stakeholder scrutiny of some substantial sections.

### **(c) the balance between what is included on the face of a Bill and what is left to subordinate legislation;**

Whilst there are fewer examples than in the previous Assembly, there are still a number of framework Bills being introduced (such as the Active Travel (Wales) Act), the Social Services and Wellbeing (Wales) Act and the proposals outlined in the Environmental Bill White Paper).

Given such legislation allows statutory implements and statutory guidance to be introduced subsequently, there is often reduced consultation and scrutiny, and scope for post-hoc 'policy-creep'. Whilst this may have capacity implications, a more complete legislative package, including accompanying statutory guidance (at least in draft form) would improve the process and avoid the need for post-legislative amendments in some instances.

The forthcoming Future Generations Bill is a good example of the challenges of a Framework Bill; it is difficult to disagree with the high level targets that it is assumed will appear on the face of the Bill but the critical issue for the Bill will be the guidance that follows. If that is well thought through the Bill could have a substantial impact and help to drive performance across a wide range of services. However, if the guidance is poor it could encourage a 'compliance-based' tick box approach that has little impact on outcomes.

### **(d) the accessibility of the language used (both English and Welsh);**

Explanatory Memoranda seek to provide a summary of objectives and rationale of a piece of legislation, a plain English/Cymraeg Clir summary of the draft and final Bill would improve accessibility and the general understanding of the public and, in some cases, the public service bodies subject to the legislation.

**(e) the way in which a Bill is structured;**

The structure of Bills could be improved significantly, notably where sections of a Bill seeks to amend previous legislation. It would be good practice and be much clearer and accessible if a Bill could restate the whole amended section rather than including 'drafting instructions' such as "after x, delete y and insert z'. Whilst this may have been a necessary drafting style during an era where legislation was read in a printed medium, this appears unnecessary and undermines accessibility and clarity in an era of modern electronic communications.

**(f) their fitness for purpose;**

Earlier dialogue and policy development consultation and engagement (as noted above) should lead to more relevant and proportionate legislation. There are some clauses in Bills, notably where new duties are conferred on local authorities, which have been questioned either because the new duties will not deliver the outcomes intended or would create a disproportionate regulatory burden.

**(g) the use of consolidation provisions;**

The WLGA supports the increased use of consolidation provisions, particularly where it improves the clarity and consistency of complementary legislation. That said, there are, on occasions, several Bills introduced in 'complementary' policy areas (for example in Planning, Environment, Future Generations) and it is not always clear how the Bills interrelate or connect. More explanation could therefore be included in Explanatory Memoranda and/or in consultation documents.

**(h) any other matter you consider to be of relevance.**

The Assembly's approach to managing amendments should be reviewed.

Whilst AMs are expected to complete a 'Notice of Amendment' form, Section 4 on 'Amendment Explanation' is marked as 'Optional'. This section should be mandatory, and AMs should state the rationale behind an amendment which should then be published to provide clarity, context and understanding, in effect, a supplement to the Explanatory Memorandum that the Government is expected to produce outlining the rationale for the Bill in the first place.

The Assembly should produce a summary of Amendments at Stage 3 and Report Stage for each Bill, as it does as a matter of course at the end of Stage 2 process. The approach to introducing a summary Report at the end of Stage 3 proceedings (e.g. for the Mobile Homes (Wales) Bill and the Social Services and Well-being (Wales) Bill) is a welcome innovation and should be introduced as the norm.

The Assembly should introduce a referral mechanism into the legislative process, whereby significant amendments (either in number or nature) introduced at Stage 3 may have a significant impact on the scope or practicability of the Bill and may require further Stage 1 scrutiny and engagement with relevant stakeholders. It may

not be a necessary process for all Bills, however, would be a valuable safeguard for scrutiny in a unicameral legislature.

The Assembly should keep an up-to-date schedule of commencement for each Act; whilst it may be clear when a Bill has been enacted there are various timescales and mechanisms for particular sections of an Act to be commenced and it is often unclear to organisations subject to the legislation to determine whether and when sections are in force. It would also be beneficial if the Assembly could with the UK Parliament to also include the commencement dates of Welsh or UK Bills with Welsh clauses passed in the UK Parliament. For example, the commencement provisions under S127 of the Housing (Wales) Bill are as follows:

**"127 Commencement**

*(1) The following provisions come into force on the day on which this Act receives Royal*

*Assent—*

*(a) section 124;*

*(b) section 125;*

*(c) this section;*

*(d) section 128.*

*(2) Sections 115 to 119 in Part 5 (Housing Finance) come into force after the end of the period of 2 months beginning with the day on which this Act receives Royal Assent.*

*(3) The remaining provisions of this Act are to come into force on a day appointed by the Welsh Ministers in an order made by statutory instrument.*

*(4) An order under this section may—*

*(a) appoint different days for different purposes;*

*(b) include such transitory, transitional or saving provision as the Welsh Ministers consider appropriate."*

Such a complicated and often protracted approach to commencement means that professionals and service users are unclear whether or when law is in force and, currently, the only way to find this out is to invest in often expensive access to commercial legislative databases.

**2. What impact has the Assembly's conferred powers model of legislative competence had on the drafting of Bills? What would be different if the Assembly has a reserved powers model?**

The WLGA supported the Silk Commission's recommendation that the UK Government should introduce a Bill introducing a reserved powers model in the Assembly. Such an approach would provide greater clarity around which powers could or could not be exercised by the Assembly. Currently, under the conferred model of legislative competence, there is less clarity and, crucially, differences in legal opinion around some areas of the Assembly's competence which has resulted in three referrals to the Supreme Court (Local Government Byelaws (Wales) Bill, the Agricultural Sector (Wales) Bill and the Recovery of Medical Costs for Asbestos Diseases (Wales) Bill).

Given the conferred powers model of legislative competence remains in place for the Assembly, it would be preferable for any inter-governmental discussions over competence to be settled in advance during initial legislative planning or where consensus was not possible, an early referral to the Supreme Court should be allowed. An earlier referral would avoid the risk of wasting considerable Welsh Government, National Assembly and stakeholders' resources and time shaping legislation through the Assembly's legislative process only for it to, potentially, be ruled out of competence once completed. Inevitably, there will remain a need for referral at the end of the legislative process to cover any amendments that may exceed competence, but this is less likely to undermine the substantive competence underpinning the wider Bill if this was approved at or before Stage 1.

### **3. What is your view of the content of the Explanatory Memoranda which accompany Bills and how useful are they in explaining the purposes of Bills?**

Explanatory Memoranda could also be improved if there was greater consistency in including summarised detail of the policy consultation process, as noted in 1a) above.

Explanatory Memoranda should also be strengthened in terms of their assessment of the financial implications of legislation. Good policy development and consultation should include a thorough assessment of the any financial implications, in particular for local authorities. New powers conferred upon local authorities tend to lead to increased spending. If this is not funded by Welsh Government it leads to an increase in council tax which confuses local accountabilities or impacts on the resources available for existing services. The UK Communities and Local Government Department provide UK Government Departments with good guidance for assessing the financial implications and justification of new powers and duties as part of its New Burdens' Doctrine. It would be useful to adopt such an approach in Wales.

### **4. In a single chamber legislative system, what value to you place on the use of:**

- (a) draft Bills for consideration before a Bill is formally introduced;**
- (b) more time for Stage 1 scrutiny;**
- (c) the optional Report stage at the end of Stage 3 proceedings (as for example in the Mobile Homes (Wales) Bill and the Social Services and Well-being (Wales) Bill.**

The WLGA would support the greater use of Draft Bills in aiding earlier engagement in the legislative process.

The WLGA would also welcome more time for Stage 1 to allow wider engagement, exploration and scrutiny of legislation. Although some Bills are narrow in scope and perhaps require less extensive engagement and scrutiny, many are broad and are inevitably complex requiring extensive consultation and engagement with relevant experts and stakeholders. The WLGA is often one of the earlier stakeholders to be invited to give evidence during the Stage 1 process, often with an expectation of written and/or oral evidence to be submitted within

a month or two a Bill being published. Most pieces of Assembly legislation often have significant and far-reaching resource or procedural ramifications for local authority governance or service delivery arrangements and the brevity of the current Stage 1 process can prove a challenge in gathering local authority professional or political perspectives, particularly those which have been through Councils' local democratic and decision-making processes.

As noted above, the introduction of a summary Report at the end of Stage 3 proceedings (e.g. for the Mobile Homes (Wales) Bill and the Social Services and Well-being (Wales) Bill) is a welcome innovation and should be introduced as the norm.

**5. What is your view of the need for, and impact of, curtailed scrutiny of Bills? In considering this issue you may wish to consider the scrutiny arrangements that applied to the following Bills in the 4th Assembly:**

**(a) the Agricultural Sector (Wales) Bill (procedures for Emergency Government Bills used)**

**(b) the Control of Horses (Wales) Bill (bypassed Stage 1 committee scrutiny)**

**(c) the National Health Service Budgets (Wales) Bill (bypassed Stage 1 committee scrutiny)**

Whilst it may be necessary for Governments to have some flexibility to introduce Emergency Government Bills on occasion, it should be a back-stop power and should follow clear agreed criteria set out in Standing Orders. It is important that each piece of legislation is subject to appropriate levels of scrutiny, both within and outside of the Assembly. It might therefore be appropriate that Standing Orders should build in post-legislative scrutiny where emergency legislation is introduced to be commenced after a set-period of time, in order to assess whether the legislation is effective or could be improved.

**6. What is your view of the scope for "fast-tracking" Bills within the Assembly's existing procedures?**

See above.

**7. What is your view of the Welsh Government's and the National Assembly's capacity to legislate?**

The WLGA notes that some of the Welsh Government's proposed legislative programme has not progressed within the timescales as originally set out (15 of the 20 Bills outlined in the Welsh Government's legislative programme for the years 2011-12, 2012-13 and 2013-14 have so far been introduced and/or enacted); this may be due to re-prioritisation of legislation, emerging policy developments and new priorities or may reflect capacity constraints.

The National Assembly's capacity to legislate (and stakeholders' capacity to engage in the legislative process) is inevitably impacted upon by the Welsh Government's planned management of the legislative programme, notably:

- the timetabling of legislation generally;
- the number (and scope) of Bills under scrutiny at any one time;
- the introduction of legislation at or around dates of Assembly Recess;
- the introduction of Emergency or urgent legislation (which may be introduced bypassing Stage 1 as noted above); and
- the tabling of substantial Stage 2 or Stage 3 Government amendments.

**8. What is your view of the Welsh Government's management of the legislative programme?**

See above.

**9. If you have had experience of following plenary and committee proceedings on the scrutiny of Bills, or participating in the process, what are your views on this experience and what improvements, if any, could be made?**

See above.

**10. What other comments would you like to make about the making of laws?**

The National Assembly is to be commended on the accessibility and navigability of its website, particularly around the legislative process, for example, the 'Guide to the Legislative Process' section (<http://www.assemblywales.org/bus-home/bus-legislation/bus-legislation-guidance.htm>) provides an excellent introduction to the process and the 'Progress of Assembly Bills' section (<http://www.assemblywales.org/bus-home/bus-legislation/bus-legislation-progress-bills.htm>) provides an easy to read summary of progress of each of the Bills, along with links to key accompanying documents or explanatory guidance around the legislative process.



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## DATGANIAD YSGRIFENEDIG GAN LYWODRAETH CYMRU

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<b>TEITL</b>	<b>Ymgynghoriad ar fersiwn ddrafft o Orchymyn Cynulliad Cenedlaethol Cymru (Anghymhwysu) 2015</b>
<b>DYDDIAD</b>	<b>14 Ionawr 2015</b>
<b>GAN</b>	<b>Carwyn Jones AC, Prif Weinidog Cymru</b>

Heddiw ar wefan Llywodraeth Cymru cyhoeddwyd dogfen ymgynghori sy'n gofyn am safbwyntiau ar fersiwn ddrafft o Orchymyn Cynulliad Cenedlaethol Cymru (Anghymhwysu) 2015 <http://wales.gov.uk/consultations/finance/disqualification-order/?&lang=cy>

Mae Adran 16 Deddf Llywodraeth Cymru 2006 yn galluogi Gorchymyn yn y Cyfrin Gyngor a wnaed gan Ei Mawrhydi i ddynodi rhai swyddi penodol, fel bod person sy'n dal un o'r swyddi hynny'n anghymhwysu rhag bod yn Aelod Cynulliad. Cyn pob etholiad Cynulliad gwneir Gorchymyn Anghymhwysu newydd sy'n nodi'r rhestr ddiweddaraf o'r swyddi sy'n anghymhwysu. Mae'r swyddi hyn yn ychwanegol at y rheini a wnaed yn swyddi anghymhwysu gan Ddeddf Llywodraeth Cymru 2006 a deddfwriaeth arall.

Mae'r ymgynghoriad hwn yn gofyn am safbwyntiau ynghylch pa swyddi y dylid eu cynnwys yn y Gorchymyn hwnnw. Rwy'n awyddus i glywed safbwyntiau'r rhanddeiliaid a byddaf yn ystyried y rhain yn ofalus cyn paratoi'r fersiwn ddrafft derfynol o'r Gorchymyn. Bydd yr ymgynghoriad ar y cynigion hyn yn para 8 wythnos tan 11 Mawrth 2015. Nodir manylion sut i ymateb yn y ddogfen ymgynghori. Yn dilyn ystyried yr ymatebion caiff y Gorchymyn drafft ei gyflwyno i'r Cynulliad ei gymeradwyo cyn iddo gael ei gyflwyno'n ffurfiol gerbron Ei Mawrhydi yn y Cyfrin Gyngor yn ddiweddarach eleni.

Mae cyfyngiadau ar y ddogfen hon