

## Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol

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Lleoliad:  
Ystafell Bwyllgora 2 – Y Senedd

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Dyddiad:  
Dydd Llun, 21 Tachwedd 2011

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Amser:  
14:10

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Cynulliad  
Cenedlaethol  
Cymru

National  
Assembly for  
Wales



I gael rhagor o wybodaeth, cysylltwch a:

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### Agenda

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1. Cyflwyniad, ymddiheuriadau, dirprwyon a datganiadau o fuddiant
2. Offerynnau nad ydynt yn cynnwys unrhyw faterion i'w codi o dan Reolau Sefydlog 21.2 a 21.3

#### Offerynnau'r weithdrefn penderfyniad negyddol

#### **CLA55 – Rheoliadau'r Hawl i Reoli (Manylion a Ffurflenni Rhagnodedig) (Cymru) 2011**

Y weithdrefn negyddol. Fe'u gwnaed ar 5 Tachwedd 2011. Fe'u gosodwyd ar 8 Tachwedd 2011. Yn dod i rym ar 30 Tachwedd 2011.

#### **CLA56 – Rheoliadau Deintyddiaeth Breifat (Cymru) (Diwygio) 2011**

Y weithdrefn negyddol. Fe'u gwnaed ar 6 Tachwedd 2011. Fe'u gosodwyd ar 9 Tachwedd 2011. Yn dod i rym ar 1 Ionawr 2012

#### Offerynnau'r weithdrefn penderfyniad cadarnhaol

Dim

3. Offerynnau sy'n cynnwys materion i'w codi gyda'r Cynulliad o dan

## **Reol Sefydlog 21.2 neu 21.3**

Offerynnau'r weithdrefn penderfyniad negyddol

Dim

Offerynnau'r weithdrefn penderfyniad cadarnhaol

**CLA52 – Rheoliadau Iechyd Meddwl (Cydgysylltu Gofal a Chynllunio Gofal a Thriniaeth) (Cymru) 2011** (Tudalennau 1 – 34)

Y weithdrefn gadarnhaol. Fe'u gwnaed ar 2011. Ni nodwyd y dyddiad y'u gosodwyd. Yn dod i rym ar 6 Mehefin 2012

**CLA53 – Gorchymyn Mesur Diwydiant Cig Coch (Cymru) 2010 (Diwygio) 2011** (Tudalennau 35 – 41)

Y weithdrefn gadarnhaol. Ni nodwyd y dyddiad y'i gwnaed. Ni nodwyd y dyddiad y'i gosodwyd. Yn dod i rym ar 1 Ebrill 2012

## **4. Ymchwiliadau'r Pwyllgor: Ymchwiliad i Roi Pwerau i Weinidogion Cymru yn Neddfau'r DU**

**Undeb Amaethwyr Cymru** (Tudalennau 42 – 46)

CLA(4)-07-11(p1) – CLA GP5 – Undeb Amaethwyr Cymru (Saesneg yn unig)

**Mr Andrew Gurney**, Swyddog Polisi (Defnydd Tir)

**Mr Gavin Williams**, Cadeirydd Pwyllgor Defnydd Tir a Materion Seneddol yr Undeb

**Prif Weinidog Llywodraeth Cymru, y Gwir Anrhydeddus Carwyn Jones AC**

(Tudalennau 47 – 55)

CLA(4)-12-11(p1) – CLA GP11 – Y Gwir Anrhydeddus Carwyn Jones AC, Prif Weinidog Llywodraeth Cymru (Saesneg yn unig)

CLA(4)-12 11(p2) – CLA GP12 – Swyddfa Cymru (Saesneg yn unig)

**Y Gwir Anrhydeddus Carwyn Jones AC**, Prif Weinidog Llywodraeth Cymru

**Dr Hugh Rawlings CB**, Cyfarwyddwr, Materion Cyfansoddiadol a Chysylltiadau

Rhynglywodraethol, Llywodraeth Cymru

## **5. Dyddiad y cyfarfod nesaf** (Tudalennau 56 – 64)

CLA(4)-11-11- Adroddiad ar y cyfarfod a gynhaliwyd ar 14 Tachwedd 2011

## **6. Cynnig o dan Reol Sefydlog 17.42 i benderfynu gwahardd y cyhoedd o'r cyfarfod ar gyfer yr eitemau a ganlyn:**

Caiff pwyllgor benderfynu gwahardd y cyhoedd o gyfarfod neu unrhyw ran o gyfarfod:

(vi) lle mae'r pwyllgor yn cyd-drafod...casgliadau neu argymhellion adroddiad y

mae'n bwriadu ei gyhoeddi.

## **7. Trafod y dystiolaeth a gyflwynwyd i'r ymchwiliad hyd yma** Undeb Amaethwyr Cymru

Y Gwir Anrhydeddus Carwyn Jones AC, Prif Weinidog Llywodraeth Cymru

# Eitem 3.1

## Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol

CLA(4)-11-11

CLA52

## Adroddiad drafft y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol

**Teitl: Rheoliadau Iechyd Meddwl (Cydgysylltu Gofal a Chynllunio Gofal a Thriniaeth) (Cymru) 2011**

**Gweithdrefn:** Cadarnhaol

Mae'r Rheoliadau hyn yn darparu ar gyfer cydgysylltu gofal a chynllunio gofal a thriniaeth i gleifion sy'n defnyddio gwasanaethau iechyd meddwl eilaidd.

### **Materion technegol: craffu**

Ni nodwyd unrhyw bwyntiau i fod yn destun adroddiad o dan Reol Sefydlog 15.2 mewn perthynas â'r offeryn drafft hwn.

### **Rhinweddau: craffu**

O dan Reol Sefydlog 21.3(ii) (ei fod yn codi materion polisi cyhoeddus sy'n debyg o fod o ddiddordeb i'r Cynulliad) bydd y Cynulliad yn cael ei wahodd i roi sylw arbennig i'r offeryn a ganlyn.

Mae'r Rheoliadau hyn yn rhan o gyfres o reoliadau sy'n cael eu gwneud gan Weinidogion Cymru o dan bwerau a roddwyd iddynt gan ddarpariaethau ym Mesur Iechyd Meddwl (Cymru) 2010 ("y Mesur") a'u bwriadwyd i ddatblygu a gwella gwasanaethau iechyd meddwl yng Nghymru.

O dan Ran 2 o'r Mesur, bydd cleifion sy'n defnyddio gwasanaethau iechyd meddwl eilaidd yng Nghymru yn cael cydgysylltydd gofal penodol. Mae'r Rheoliadau'n darparu ar gyfer y meini prawf y mae'n rhaid eu bodloni cyn y gellir penodi person yn gydgysylltydd gofal. Mae'r Mesur hefyd yn darparu y bydd darparwyr gwasanaethau (Byrddau Iechyd Lleol ac awdurdodau lleol) yn gweithredu mewn modd cydgysylltiedig i wella effeithiolrwydd y gwasanaethau iechyd meddwl a ddarperir i'r claf.

Mae'r Mesur yn sicrhau y bydd pob claf unigol yn cael cynllun gofal a thriniaeth wedi'i teilwra a ddatblygir gan y cydgysylltydd gofal mewn partneriaeth â'r claf a bydd y cydgysylltydd gofal yn goruchwylio'r cynllun gyda golwg ar gyflawni'r canlyniadau y mae'r gwasanaethau i'r claf wedi'u cynllunio ar gyfer eu cyflawni.

Mae'r darpariaethau hyn yn unigryw i Gymru.

O dan y weithdrefn gadarnhaol y mae'r Rheoliadau hyn yn cael eu gwneud ac felly cânt eu trafod gan y Cynulliad yn y Cyfarfod Llawn.

**Cynghorwyr Cyfreithiol  
Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol**

**14 Tachwedd 2011**

*Rheoliadau drafft a osodwyd gerbron Cynulliad Cenedlaethol Cymru o dan adran 52(6) o Fesur Iechyd Meddwl (Cymru) 2010, i'w cymeradwyo drwy benderfyniad gan Gynulliad Cenedlaethol Cymru.*

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OFFERYNNAU STATUDOL  
CYMRU DRAFFT

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**2011 Rhif (Cy. )**

**IECHYD MEDDWL, CYMRU**

**Rheoliadau Iechyd Meddwl  
(Cydgysylltu Gofal a Chynllunio  
Gofal a Thriniaeth) (Cymru) 2011**

**NODYN ESBONIADOL**

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

1. Mae'r Rheoliadau hyn yn cynnwys darpariaethau ynghylch cydgysylltu gofal a chynllunio gofal a thriniaeth i gleifion sy'n defnyddio gwasanaethau iechyd meddwl eilaidd (o fewn ystyr Mesur Iechyd Meddwl (Cymru) 2010 ("y Mesur")). Maent hefyd yn cynnwys darpariaeth ynghylch dynodi darparwyr gwasanaeth iechyd meddwl perthnasol, a darpariaethau trosiannol i gleifion sydd eisoes mewn gwasanaethau iechyd meddwl eilaidd ar y dyddiad y daw'r Rheoliadau hyn i rym.

2. Mae rheoliad 3 yn darparu ar gyfer dynodi darparydd gwasanaeth iechyd meddwl perthnasol o dan amgylchiadau lle mae claf yn defnyddio gwasanaethau iechyd meddwl eilaidd sy'n cael eu darparu gan Fwrdd Iechyd Lleol a chan awdurdod lleol.

3. Mae rheoliad 4 yn gwneud darpariaeth ynghylch y gofynion ynglŷn â chymhwystra y mae'n rhaid eu bodloni cyn i berson gael ei benodi'n gydgysylltydd gofal. Mae'r gofynion proffesiynol y mae'n rhaid i berson eu bodloni wedi'u nodi yn Atodlen 1.

4. Mae rheoliad 5 yn gwneud darpariaeth ynghylch ffurf a chynnwys cynlluniau gofal a thriniaeth. Mae ffurf cynllun gofal a thriniaeth wedi'i nodi yn Atodlen 2, ac mae i gael ei gwblhau yn Gymraeg neu'n Saesneg, neu yn rhannol yn Gymraeg ac yn rhannol yn Saesneg.

**5.** Mae rheoliad 6 yn gwneud darpariaeth ynghylch y personau y mae'n rhaid i'r cydgysylltydd gofal ymgynghori â nhw fel rhan o swyddogaethau'r cydgysylltydd gofal o baratoi cynlluniau gofal a thriniaeth, eu hadolygu a'u diwygio. Mae darpariaeth yn cael ei gwneud hefyd ynghylch personau y caniateir i'r cydgysylltydd gofal ymgynghori â nhw, a darpariaeth i farn y claf gael ei chymryd i ystyriaeth cyn i unrhyw ymgynghori ddigwydd o dan y rheoliad hwn.

**6.** Mae rheoliad 7 yn darparu ar gyfer adolygu a diwygio cynlluniau gofal a thriniaeth. Mae hyn yn cynnwys darpariaeth ynghylch pa mor aml y mae'n rhaid i gynllun gael ei adolygu ac, os oes angen hynny, ei ddiwygio, a phwy sy'n cael gwneud cais am adolygiad ac, os oes angen hynny, am ddiwygiad.

**7.** Mae rheoliad 8 yn gwneud darpariaeth ynghylch y personau y mae'n rhaid darparu copi iddyn nhw o gynllun gofal a thriniaeth claf ar ôl i'r cynllun hwnnw gael ei baratoi, ei adolygu neu ei ddiwygio. Mae darpariaeth yn cael ei gwneud hefyd ynghylch personau y caniateir darparu copïau o'r cynlluniau hyn iddyn nhw, i gopïau o gynlluniau gael eu cadw'n ôl neu i rannau yn unig o gynlluniau gael eu darparu, ac i farn y claf gael ei chymryd i ystyriaeth cyn i unrhyw gopïau o gynlluniau neu o rannau o gynlluniau gael eu darparu.

**8.** Mae rheoliad 9 yn gwneud darpariaeth ynghylch sut mae copïau o gynlluniau gofal a thriniaeth i gael eu darparu, gan ganiatáu i gyfryngau electronig ac anelectronig gael eu defnyddio i'w darparu.

**9.** Mae rheoliad 10 yn gwneud darpariaeth ynghylch yr wybodaeth sydd i'w darparu i unigolyn pan gaiff ei ryddhau o wasanaethau iechyd meddwl eilaidd.

**10.** Mae rheoliad 11 yn gwneud darpariaeth drosiannol i gleifion sydd eisoes mewn gwasanaethau iechyd meddwl eilaidd ar y dyddiad y daw'r Rheoliadau hyn i rym. Mae hyn yn cynnwys darpariaeth i gleifion sydd heb gydgysylltydd gofal neu gynllun gofal a thriniaeth ar y dyddiad dod i rym.

**11.** Mae asesiad effaith rheoleiddiol wedi'i baratoi o gostau a buddion tebygol cydymffurfio â'r Rheoliadau hyn. Gellir cael copi gan y Tîm Deddfwriaeth Iechyd Meddwl, Yr Adran Iechyd, Gwasanaethau Cymdeithasol a Phlant, Llywodraeth Cymru, Parc Cathays, Caerdydd, CF10 3NQ.

*Rheoliadau drafft a osodwyd gerbron Cynulliad Cenedlaethol Cymru o dan adran 52(6) o Fesur Iechyd Meddwl (Cymru) 2010, i'w cymeradwyo drwy benderfyniad gan Gynulliad Cenedlaethol Cymru.*

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OFFERYNNAU STATUDOL  
CYMRU DRAFFT

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**2011 Rhif (Cy. )**

**IECHYD MEDDWL, CYMRU**

**Rheoliadau Iechyd Meddwl  
(Cydgysylltu Gofal a Chynllunio  
Gofal a Thriniaeth) (Cymru) 2011**

*Gwnaed* 2011

*Yn dod i rym* 6 Mehefin 2012

Mae Gweinidogion Cymru yn gwneud y Rheoliadau hyn drwy arfer y pwerau a roddwyd gan adrannau 15(4), 18(1)(c), 18(8), 18(9), 47(1)(b), 47(2) a 52(2) o Fesur Iechyd Meddwl (Cymru) 2010(1).

Gosodwyd drafft o'r offeryn hwn gerbron Cynulliad Cenedlaethol Cymru yn unol ag adran 52(6) o'r Mesur, ac fe'i cymeradwywyd drwy benderfyniad gan Gynulliad Cenedlaethol Cymru.

**Rhan 1 - Cyffredinol**

**Enwi, cychwyn a chymhwyso**

1.—(1) Enw'r Rheoliadau hyn yw Rheoliadau Iechyd Meddwl (Cydgysylltu Gofal a Chynllunio Gofal a Thriniaeth) (Cymru) 2011 a deuant i rym ar 6 Mehefin 2012.

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

**Dehongli**

2.—(1) Yn y Rheoliadau hyn—

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(1) 2010 mccc 7.



mae i “Awdurdod Gwasanaethau Cymdeithasol Lleol cyfrifol” yr ystyr a roddir i “*responsible Local Social Services Authority*” gan adran 34(3) o Ddeddf 1983;

mae i “awdurdod rheoli” o ran un o ysbytai’r Gwasanaeth Iechyd Gwladol yr ystyr a roddir i “*managing authority*” gan baragraff 176 (ysbytai a’u hawdurdodau rheoli) o Atodlen A1 (preswylwyr ysbytai a chartrefi gofal: eu hamddifadu o’u rhyddid) i Ddeddf 2005, o ran ysbyty annibynnol mae iddo’r ystyr a roddir gan baragraff 177(b) (ysbytai a’u hawdurdodau rheoli) o Atodlen A1 i Ddeddf 2005, ac o ran cartref gofal mae iddo’r ystyr a roddir gan baragraff 179(b) (cartrefi gofal a’u hawdurdodau rheoli) o Atodlen A1 i Ddeddf 2005;

mae i “clinigydd cyfrifol” yr ystyr a roddir i “*responsible clinician*” yn adran 34(1) (dehongli Rhan II) o Ddeddf 1983;

dynodir “corff goruchwyllo” (“*supervisory body*”) o ran ysbyty gan baragraff 181 (cyrff goruchwyllo: ysbytai) o Atodlen A1 i Ddeddf 2005, ac o ran cartref gofal gan baragraff 182 (cyrff goruchwyllo: cartrefi gofal) o Atodlen A1 i Ddeddf 2005;

ystyr “cyfnod rhyddhau perthnasol” (“*relevant discharge period*”) yw’r cyfnod y caniateir i oedolyn wneud cais ynddo am i asesiad iechyd meddwl gael ei gynnal yn sgil ei ryddhau o wasanaethau iechyd meddwl eilaidd(1);

mae i “cyfrifoldeb rhiant” yr ystyr a roddir i “*parental responsibility*” gan adran 3 (ystyr “cyfrifoldeb rhiant”) o Ddeddf 1989;

ystyr “cynllun gofal a thriniaeth” (“*care and treatment plan*”) yw cynllun a baratoir er mwyn sicrhau’r canlyniadau y bwriedir i ddarpariaeth gwasanaethau iechyd meddwl i glaf perthnasol(2) eu sicrhau, fel y darperir yn adran 18(1)(b) (swyddogaethau’r cydgysylltydd gofal) o’r Mesur;

ystyr “darparydd gwasanaeth iechyd meddwl perthnasol” (“*relevant mental health service provider*”) yw’r darparydd gwasanaeth iechyd meddwl eilaidd a ddynodir yn ddarparydd gwasanaeth iechyd meddwl perthnasol i glaf perthnasol yn unol ag adran 15 (dynodi’r darparydd gwasanaeth iechyd meddwl perthnasol ar gyfer claf perthnasol) o’r Mesur neu reoliad 3 o’r Rheoliadau hyn;

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- (1) Gweler rheoliad 3 (cyfnod rhyddhau perthnasol) o Reoliadau Iechyd Meddwl (Asesu Defnyddwyr Blaenorol o Wasanaethau Iechyd Meddwl Eilaidd) (Cymru) 2011 (O.S. 2011/2500 (Cy.272)).
  - (2) Gweler adran 12 (ystyr “claf perthnasol”) o’r Mesur i gael y diffinaid o glaf perthnasol.

ystyr “Deddf 1983” (“*the 1983 Act*”) yw Deddf Iechyd Meddwl 1983(1);

ystyr “Deddf 1989” (“*the 1989 Act*”) yw Deddf Plant 1989(2);

ystyr “Deddf 2005” (“*the 2005 Act*”) yw Deddf Galluedd Meddyliol 2005(3);

ystyr “diwrnod gwaith” (“*working day*”) yw unrhyw ddiwrnod heblaw dydd Sadwrn, dydd Sul, dydd Nadolig, dydd Gwener y Groglith neu ŵyl banc yng Nghymru a Lloegr o dan Ddeddf Bancio a Thrafodion Ariannol 1971(4);

ystyr “gofalwr” (“*carer*”), o ran claf perthnasol, yw unigolyn sy’n darparu neu sy’n bwriadu darparu swm sylweddol o ofal yn rheolaidd i’r claf hwnnw, ond nid yw’n cynnwys unigolyn sy’n darparu, neu sy’n bwriadu darparu, gofal i’r claf hwnnw yn rhinwedd contract cyflogaeth neu contract arall gydag unrhyw berson neu fel gwirfoddolwr i gorff (corfforedig ynteu anghorfforedig);

ystyr “gofalwr lleoliad oedolyn” (“*adult placement carer*”) yw person y darperir neu y caniateir darparu llety a gofal personol i oedolyn yn ei gartref o dan gytundeb lleoliad oedolyn a wnaed neu y bwriedir ei wneud gan y gofalwr;

ystyr “gwarcheidwad” (“*guardian*”) yw’r person a enwyd yn warcheidwad mewn cais am warcheidiaeth a wnaed o dan adran 7 (cais am warcheidiaeth) o Ddeddf 1983 neu mewn gorchymyn gwarcheidiaeth a wnaed o dan adran 37 (pwerau llysoedd i orchymyn derbyn i’r ysbyty neu i orchymyn gwarcheidiaeth) o Ddeddf 1983;

ystyr “y Mesur” (“*the Measure*”) yw Mesur Iechyd Meddwl (Cymru) 2010(5);

ystyr “wedi’i gyflogi” (“*employed*”) yw wedi’i gyflogi o dan contract gwasanaeth neu wedi’i gymryd ymlaen o dan contract ynglŷn â gwasanaethau; ac

ystyr “ymarferydd meddygol claf perthnasol” (“*relevant patient’s medical practitioner*”), o ran claf perthnasol, yw’r ymarferydd meddygol cofrestredig y mae’r claf wedi’i gofrestru gydag ef ac unrhyw ymarferydd meddygol cofrestredig nad yw claf wedi’i gofrestru gydag ef ond y mae’r claf hwnnw wedi’i atgyfeirio ato i gael asesiad iechyd meddwl sylfaenol o dan Ran 1 (gwasanaethau cymorth iechyd meddwl sylfaenol lleol) o’r Mesur.

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(1) 1983 p.20.  
(2) 1989 p.41.  
(3) 2005 p.9.  
(4) 1971 p.80.  
(5) 2010 mccc 7.

## Rhan 2 – Cydgysylltwyr gofal

### **Dynodi'r darparpwydd gwasanaeth iechyd meddwl perthnasol**

3.—(1) Os oes Bwrdd Iechyd Lleol yn gyfrifol am ddarparu gwasanaeth iechyd meddwl eilaidd(1) i glaf perthnasol a bod awdurdod lleol hefyd yn gyfrifol am ddarparu gwasanaeth o'r fath, yna mae darpariaethau'r rheoliad hwn yn gymwys.

(2) Y Bwrdd Iechyd Lleol yw'r darparpwydd gwasanaeth iechyd meddwl perthnasol i glaf perthnasol oni bai bod paragraffau (3) neu (4) yn gymwys.

(3) Awdurdod lleol yw'r darparpwydd gwasanaeth iechyd meddwl perthnasol i glaf perthnasol os yw'r claf hwnnw'n destun—

- (a) cais am warcheidiaeth a wnaed o dan adran 7 o Ddeddf 1983; neu
- (b) gorchymyn gwarcheidiaeth a wnaed o dan adran 37 o Ddeddf 1983.

(4) Awdurdod lleol yw'r darparpwydd gwasanaeth iechyd meddwl perthnasol i glaf perthnasol os yw'r claf hwnnw o dan ddeunaw oed a hefyd—

- (a) yn derbyn gofal gan awdurdod lleol o fewn ystyr adran 22(1) (dyletswydd gyffredinol awdurdod lleol o ran plant sy'n derbyn gofal ganddynt) o Ddeddf 1989;
- (b) yn blentyn perthnasol o fewn ystyr adran 23A (yr awdurdod cyfrifol a phlant perthnasol) o Ddeddf 1989;
- (c) yn gymwys i gael cyngor a chymorth o dan adran 24(1A) (personau sy'n gymwys i gael cyngor neu gymorth) neu adran 24(1B) o Ddeddf 1989; neu
- (ch) yn cael ei dderbyn i ysgol yn unol â datganiad o anghenion addysgol arbennig a wneir o dan adran 324 (datganiad o anghenion addysgol arbennig) o Deddf Addysg 1996(2) sy'n enwi'r ysgol.

### **Gofynion cymhwystra i gydgyssylltwyr gofal**

4.—(1) Mae person yn gymwys i'w benodi'n gydgyssylltydd gofal os yw'r person hwnnw—

- (a) yn cyflawni un neu ragor o'r gofynion proffesiynol yn Atodlen 1 i'r Rheoliadau hyn; a

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(1) Gweler adran 49 o'r Mesur (ystyr gwasanaethau iechyd meddwl eilaidd) i gael y diffiniad o wasanaethau iechyd meddwl eilaidd.

(2) 1996 p. 56.

- (b) wedi dangos er boddhad y darparydd gwasanaeth iechyd meddwl perthnasol fod ganddo brofiad, sgiliau neu hyfforddiant priodol, neu gyfuniad priodol o brofiad, sgiliau a hyfforddiant.

(2) Wrth benderfynu a yw person yn bodloni'r gofyniad penodi ym mharagraff (1)(b) rhaid rhoi sylw i safonau mewn unrhyw Godau Ymarfer a ddyroddir o dan adran 44 (codau ymarfer) o'r Mesur, ac unrhyw ganllawiau a ddyroddir o dro i dro gan Weinidogion Cymru.

## Rhan 3 – Cynlluniau gofal a thriniaeth

### **Ffurf a chynnwys cynlluniau gofal a thriniaeth**

5.—(1) Rhaid i gydgyssylltydd gofal sicrhau bod cynllun gofal a thriniaeth sy'n cofnodi'r holl ganlyniadau y bwriedir i ddarpariaeth gwasanaethau iechyd meddwl eu sicrhau i glaf perthnasol yn cael ei gwblhau mewn ysgrifen ar y ffurf a nodir yn Atodlen 2.

(2) Rhaid i'r canlyniadau gynnwys cyflawniadau mewn o leiaf un o'r meysydd a ddarperir yn adran 18(1)(a) (swyddogaethau'r cydgysylltydd gofal) o'r Mesur (ond nid ydynt wedi'u cyfyngu i'r rhain).

## Rhan 4 – Paratoi cynlluniau gofal a thriniaeth, eu hadolygu a'u diwygio

### **Personau i ymgynghori â hwy**

6.—(1) Os oes rhaid i gydgyssylltydd gofal claf perthnasol weithio gyda chlaf perthnasol a darparwyr gwasanaeth iechyd meddwl y claf hwnnw er mwyn—

- (a) cytuno ar y canlyniadau y bwriedir i ddarpariaeth gwasanaethau iechyd meddwl i'r claf hwnnw eu sicrhau fel y darperir gan adran 18(1)(a) o'r Mesur;
- (b) cytuno ar gynllun gofal a thriniaeth i'r claf hwnnw fel y darperir gan adran 18(1)(b) o'r Mesur; neu
- (c) adolygu a diwygio cynllun gofal a thriniaeth i'r claf hwnnw fel y darperir gan adran 18(1)(c) o'r Mesur,  
yna mae darpariaethau'r rheoliad hwn yn gymwys.

(2) Yn ddarostyngedig i baragraff (4), mae'r cydgysylltydd gofal i gymryd pob cam ymarferol i ymgynghori â'r personau a ganlyn pan fo'r personau hynny wedi'u dynodi mewn perthynas â chlaf perthnasol—

- (a) yr holl bersonau sydd â chyfrifoldeb rhiant dros y claf hwnnw;
- (b) holl ofalwyr a holl ofalwyr lleoliad oedolyn y claf hwnnw;
- (c) clinigydd cyfrifol y claf hwnnw;
- (ch) pan fo gwarcheidwad wedi'i benodi i'r claf hwnnw o ganlyniad i gais am warcheidiaeth a wnaed o dan adran 7 o Ddeddf 1983 neu orchymyn gwarcheidiaeth a wnaed o dan adran 37 o Ddeddf 1983, gwarcheidwad y claf hwnnw;
- (d) rhoddai atwrneiaeth arhosol y claf hwnnw a benodwyd yn unol ag adran 10 (penodi rhoddeion) o Ddeddf 2005, neu ddirprwy i'r claf hwnnw a benodwyd gan y Llys Gwarchod yn unol ag adran 16 (pwerau i wneud penderfyniadau ac i benodi dirprwyon: cyffredinol) o Ddeddf 2005, ar yr amod—
  - (i) yn achos rhoddai, fod y materion sydd i'w hystyried wrth ymgynghori yn dod o fewn cwmpas yr atwrneiaeth arhosol, neu
  - (ii) yn achos dirprwy, fod y materion sydd i'w hystyried wrth ymgynghori yn dod o fewn cwmpas y gorchymyn, y cyfarwyddiadau neu'r telerau ynglŷn â phenodi'r dirprwy a bennwyd gan y Llys Gwarchod;
- (dd) pan gynigir gweithredoedd neu benderfyniadau mewn perthynas â'r claf hwnnw o dan adrannau 37 (darparu triniaeth feddygol ddifrifol gan un o gyrff y GIG), 38 (darparu llety gan un o gyrff y GIG), 39 (darparu llety gan awdurdod lleol), 39A (person yn dod yn destun Atodlen A1), 39C (person heb gynrychiolydd tra bo'n destun Atodlen A1) neu 39D (person sy'n destun Atodlen A1 heb gynrychiolaeth a delir) o Ddeddf 2005, Eiriolydd Galluedd Meddwl Annibynnol a benodwyd i gynrychioli'r claf hwnnw yn unol ag adran 35 (penodi eiriolwyr galluedd meddwl annibynnol) o'r Ddeddf honno;
- (e) pan fo'r claf hwnnw yn destun awdurdodiad safonol a roddwyd o dan Ran 4 (awdurdodiadau safonol) o Atodlen A1 i Ddeddf 2005, yr awdurdod rheoli, y corff goruchwyllo a chynrychiolydd y person perthnasol a benodwyd i'r claf hwnnw o dan baragraff 139 (corff goruchwyllo i benodi cynrychiolydd) o Atodlen A1 i Ddeddf 2005; ac
- (f) pan fo'r claf hwnnw yn destun awdurdodiad brys a roddwyd o dan Ran 5 (awdurdodiadau

brys) o Atodlen A1 i Ddeddf 2005, yr awdurdod rheoli a'r corff goruchwyllo.

(3) Yn ddarostyngedig i baragraff (4), pan fo'r personau a ganlyn wedi'u dynodi mewn perthynas â chlaf perthnasol, caniateir i'r cydgysylltydd gofal ymgynghori â hwy—

(a) unrhyw berson y mae'r cydgysylltydd gofal yn dymuno ymgynghori ag ef, er mwyn hwyluso cyflawni swyddogaethau'r cydgysylltydd gofal; a

(b) unrhyw berson y mae'r claf hwnnw'n dymuno gweld ymgynghori ag ef mewn cysylltiad â sut mae'r cydgysylltydd gofal yn cyflawni ei swyddogaethau.

(4) Cyn ymgynghori ag unrhyw rai o'r personau a grybwyllir ym mharagraffau (2) a (3)(a) mae'r cydgysylltydd gofal i gymryd i ystyriaeth farn y claf perthnasol ynghylch a ddylid ymgynghori â'r personau hynny.

(5) Ond mae'r cydgysylltydd gofal yn cael ymgynghori ag unrhyw rai o'r personau a grybwyllir ym mharagraffau (2) a (3)(a) yn erbyn dymuniadau claf perthnasol ar yr amod bod y cydgysylltydd gofal wedi rhoi ystyriaeth ddyladwy i farn y claf hwnnw.

(6) Pan fo'n rhaid ymgynghori â'r un person yn rhinwedd mwy nag un swyddogaeth o dan baragraffau (2) a (3), un ymgynghoriad yn unig y mae angen ei gynnal.

(7) Os nad unigolyn yw'r person yr ymgynghorir ag ef, caniateir ymgynghori ag unigolyn sy'n gweithredu ar ran y person neu sydd wedi'i gyflogi ganddo.

### **Adolygu a diwygio cynlluniau gofal a thriniaeth**

7.—(1) Caniateir i gynllun gofal a thriniaeth gael ei adolygu neu ei ddiwygio gan y cydgysylltydd gofal ar unrhyw adeg ar yr amod bod y cydgysylltydd gofal yn cytuno â'r adolygiad hwnnw neu'r diwygiad hwnnw.

(2) Yn ddarostyngedig i reoliad 11, rhaid i gydgyssylltydd gofal adolygu cynllun gofal a thriniaeth ac, os oes angen hynny, ei ddiwygio—

(a) pan fo cyfnod o ddim mwy na 12 mis calendr wedi mynd heibio ers i'r cynllun hwnnw gael ei baratoi gyntaf neu ei adolygu ddiwethaf;

(b) pan fo claf perthnasol yn gofyn i'w gynllun gael ei adolygu cyn i'r cyfnod o 12 mis calendr fynd heibio;

(c) pan fo gofalwr neu ofalwr lleoliad oedolyn claf perthnasol yn gofyn i gynllun y claf hwnnw gael ei adolygu cyn i'r cyfnod o 12 mis calendr fynd heibio; neu

(ch) pan fo darparydd gwasanaeth iechyd meddwl at ddibenion Rhan 2 (cydgysylltu a chynllunio

gofal ar gyfer defnyddwyr gwasanaethau iechyd meddwl eilaidd) o'r Mesur(1) yn gofyn i gynllun claf perthnasol gael ei adolygu.

(3) Ond nid oes angen i gydgyssylltydd gofal adolygu cynllun gofal a thriniaeth ar gais claf perthnasol, gofalwr y claf hwnnw neu ofalwr lleoliad oedolyn y claf hwnnw o dan yr amgylchiadau a ganlyn—

- (a) os yw'r cais yn ei farn ef yn wacsaw neu'n flinderus; neu
- (b) os nad oes newid amgylchiadau wedi bod yn ei farn ef sy'n teilyngu cynnal adolygiad arall cyn i'r cyfnod o 12 mis ym mharagraff (2)(a) fynd heibio.

(4) Ac eithrio'r gofyniad bod rhaid cael adolygiad ac, os oes angen hynny, diwygiad ar gynllun gofal a thriniaeth fel y darperir ym mharagraff (2)(a), nid oes angen i gydgyssylltydd gofal adolygu cynllun gofal a thriniaeth o dan unrhyw ddarpariaeth yn y rheoliad hwn os oes angen mân ddiwygiadau i'r cynllun y mae'n briodol ym marn y cydgyssylltydd gofal eu gwneud heb gynnal adolygiad.

### **Copiau o gynlluniau gofal a thriniaeth**

8.—(1) Pan fo cydgyssylltydd gofal claf perthnasol—

- (a) wedi cytuno ar gynllun gofal a thriniaeth i glaf perthnasol ac wedi cofnodi'r cynllun mewn ysgrifen fel y darperir gan adran 18(1) a (2) o'r Mesur;
- (b) wedi cofnodi'r cynllun neu'r cynlluniau a benderfynwyd o dan ddarpariaethau adran 18(4) neu (5) o'r Mesur mewn ysgrifen fel y darperir gan adran 18(6) o'r Mesur; neu
- (c) wedi adolygu neu wedi diwygio cynllun gofal a thriniaeth i glaf perthnasol fel y darperir gan reoliad 7 neu 11 o'r Rheoliadau,  
yna mae darpariaethau'r rheoliad hwn yn gymwys.

(2) Yn ddarostyngedig i baragraff (4), pan fo'r personau a ganlyn wedi'u dynodi mewn perthynas â chlaf perthnasol, mae'r cydgyssylltydd gofal i gymryd pob cam ymarferol i sicrhau y darperir copi ysgrifenedig iddynt o gynllun gofal a thriniaeth y claf hwnnw—

- (a) y claf hwnnw, oni bai—
  - (i) bod y claf hwnnw wedi gwrthod derbyn copi o'r cynllun; neu

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(1) Gweler adran 13 (ystyr "darparydd gwasanaeth iechyd meddwl") o'r Mesur i gael y diffiniad o ddarparydd gwasanaeth iechyd meddwl at ddibenion Rhan 2.

- (ii) bod darparu copi o'r cynllun yn debyg o beri niwed difrifol i iechyd neu gyflwr corfforol neu feddyliol y claf hwnnw;
- (b) yr holl bersonau sydd â chyfrifoldeb rhiant dros y claf hwnnw, oni bai bod person sydd â'r cyfrifoldeb hwnnw wedi gwrthod derbyn copi o'r cynllun;
- (c) holl ofalwyr a holl ofalwyr lleoliad oedolyn y claf hwnnw, oni bai bod gofalwr neu ofalwr lleoliad oedolyn wedi gwrthod derbyn copi o'r cynllun;
- (ch) ymarferydd meddygol cofrestredig y claf hwnnw;
- (d) y darparwyr gwasanaeth iechyd meddwl a'r sefydliadau gwirfoddol sy'n darparu gwasanaethau iechyd meddwl i'r claf hwnnw;
- (dd) clinigydd cyfrifol y claf hwnnw;
- (e) pan fo gwarcheidwad wedi'i benodi i'r claf hwnnw o ganlyniad i gais am warcheidiaeth a wnaed o dan adran 7 o Ddeddf 1983 neu orchymyn gwarcheidiaeth a wnaed o dan adran 37 o Ddeddf 1983—
  - (i) gwarcheidwad y claf hwnnw, a
  - (ii) Awdurdod Gwasanaethau Cymdeithasol Lleol cyfrifol y claf hwnnw;
- (f) rhoddai atwrneiaeth arhosol y claf hwnnw a benodwyd yn unol ag adran 10 o Ddeddf 2005, neu ddirprwy i'r claf hwnnw a benodwyd gan y Llys Gwarchod yn unol ag adran 16 o Ddeddf 2005, ar yr amod—
  - (i) yn achos rhoddai, fod y materion y mae'r cynllun yn ymwneud â hwy gan gynnwys canlyniadau (ond heb fod yn gyfyngedig i ganlyniadau) y cytunwyd arnynt yn unol ag adran 18(1)(a) o'r Mesur, yn dod o fewn cwmpas yr atwrneiaeth arhosol, neu
  - (ii) yn achos dirprwy, fod y materion y mae'r cynllun yn ymwneud â hwy gan gynnwys canlyniadau (ond heb fod yn gyfyngedig i ganlyniadau) y cytunwyd arnynt yn unol ag adran 18(1)(a) o'r Mesur, yn dod o fewn cwmpas y gorchymyn, y cyfarwyddiadau neu'r telerau ynglŷn â phenodi'r dirprwy a bennwyd gan y Llys Gwarchod;
- (ff) os oes gweithredoedd neu benderfyniadau wedi'u cynnig mewn perthynas â'r claf hwnnw o dan adrannau 37, 38, 39, 39A, 39C neu 39D o Ddeddf 2005, Eiriolydd Galluedd Meddwl Annibynnol a benodwyd i gynrychioli'r claf hwnnw yn unol ag adran 35 o'r Ddeddf honno;



(g) os yw'r claf hwnnw'n destun awdurdodiad safonol a roddwyd o dan Ran 4 o Atodlen A1 i Ddeddf 2005, yr awdurdod rheoli, y corff gorchwyllo a chynrychiolydd y person perthnasol a benodwyd i'r claf hwnnw o dan baragraff 139 o Atodlen A1 i Ddeddf 2005; ac

(ng) os yw'r claf hwnnw yn destun awdurdodiad brys a roddwyd o dan Ran 5 o Atodlen A1 i Ddeddf 2005, yr awdurdod rheoli a'r corff goruchwyllo.

(3) Yn ddarostyngedig i baragraff (4), pan fo'r personau a ganlyn wedi'u dynodi mewn perthynas â chlaf perthnasol, caniateir darparu copi ysgrifenedig o gynllun gofal a thriniaeth y claf perthnasol hwnnw iddynt—

(a) unrhyw berson y mae'r cydgysylltydd gofal yn dymuno iddo gael copi o'r cynllun, er mwyn hwyluso cyflawni'r canlyniadau y bwriedir i ddarpariaeth gwasanaethau iechyd meddwl eu sicrhau i'r claf hwnnw; a

(b) unrhyw berson y mae'r claf hwnnw'n dymuno i gopi o'r cynllun gael ei ddarparu iddo.

(4) Cyn darparu copïau o gynllun gofal a thriniaeth claf perthnasol i unrhyw rai o'r personau a grybwyllir ym mharagraffau (2) a (3)(a) mae'r cydgysylltydd gofal i gymryd i ystyriaeth farn y claf hwnnw ynghylch a ddylid darparu copïau o'r fath i'r personau hynny.

(5) Ond mae'r cydgysylltydd gofal yn cael darparu copïau o gynllun y claf perthnasol i unrhyw rai o'r personau a grybwyllir ym mharagraffau (2) a (3)(a) yn erbyn dymuniadau'r claf hwnnw ar yr amod bod y cydgysylltydd gofal wedi rhoi ystyriaeth ddyladwy i farn y claf hwnnw.

(6) At ddibenion y rheoliad hwn—

(a) os oes copi o gynllun i'w ddarparu i berson, caiff y cydgysylltydd gofal gadw'r copi hwnnw yn ôl neu ddarparu copi o ran o'r cynllun hwnnw os yw'r cydgysylltydd gofal o'r farn ei bod er lles claf perthnasol gwneud hynny;

(b) os yw person yn gymwys i gael mwy nag un copi o gynllun sy'n ymwneud â chlaf perthnasol, un copi yn unig o'r cynllun y mae angen ei ddarparu;

(c) mae person yn gymwys i gael copi o gynllun os yw'n gymwys o dan un neu fwy o'r categorïau ym mharagraff (2) ar yr adeg y mae copïau o'r cynllun i'w ddarparu o dan baragraff (1);

(ch) ni chaiff person y mae cynllun i'w ddarparu iddo wrthod derbyn cynllun oni bai bod darpariaeth ym mharagraff (2) yn caniatáu yn bendant iddo wneud hynny.

## **Traddodi copïau o gynlluniau gofal a thriniaeth**

**9.**—(1) Mae unrhyw gopi o gynllun gofal a thriniaeth wedi'i ddarparu os yw—

- (a) wedi'i draddodi â llaw i berson;
- (b) wedi'i draddodi â llaw i gyfeiriad hysbys diwethaf person;
- (c) wedi'i anfon drwy'r post a dalwyd ymlaen llaw i gyfeiriad hysbys diwethaf person;
- (ch) wedi'i anfon drwy drosglwyddiad ffacsimili i rif a bennwyd gan berson; neu
- (d) wedi'i draddodi neu wedi'i anfon drwy unrhyw gyfrwng arall boed electronig neu fel arall y cytunwyd arno rhwng y cydgyssylltydd gofal a pherson.

(2) Os nad unigolyn yw person, mae copi o gynllun wedi'i ddarparu os yw wedi'i draddodi neu wedi'i anfon i unigolyn sy'n gweithredu ar ran y person hwnnw neu sydd wedi'i gyflogi ganddo.

## **Rhan 5 - Rhyddhau**

### **Gwybodaeth i bersonau sy'n peidio â bod yn gleifion perthnasol**

**10.**—(1) Rhaid i'r wybodaeth a ganlyn gael ei darparu mewn ysgrifen i unigolyn wrth ei ryddhau o wasanaethau iechyd meddwl eilaidd—

- (a) y rheswm dros ryddhau'r unigolyn hwnnw o wasanaethau iechyd meddwl eilaidd; a
- (b) y camau a all gael eu cymryd, a chan bwy, os yw'r unigolyn hwnnw o'r farn bod angen rhagor o gymorth a chyngor mewn perthynas â'i iechyd meddwl yn sgil ei ryddhau.

(2) Yn ychwanegol at yr wybodaeth ym mharagraff (1), rhaid i oedolyn gael gwybodaeth mewn ysgrifen am ei hawl i gael asesiad o dan Ran 3 (asesiadau ar ddefnyddwyr blaenorol o wasanaethau iechyd meddwl eilaidd) o'r Mesur.

(3) Yn ychwanegol at yr wybodaeth ym mharagraff (1), pan fo unigolyn wedi'i ryddhau o wasanaethau iechyd meddwl eilaidd fel plentyn ond ei fod yn dod yn oedolyn yn ystod y cyfnod rhyddhau perthnasol rhaid i'r wybodaeth a ganlyn gael ei darparu mewn ysgrifen—

- (a) gwybodaeth am ei hawl wrth gyrraedd deunaw oed i gael asesiad o dan Ran 3 o'r Mesur;
- (b) esboniad ar sut mae ei ben-blwydd yn ddeunaw oed yn berthnasol at ddibenion hawl i gael asesiad o'r fath; ac

- (c) faint o'r cyfnod rhyddhau perthnasol sydd heb ddirwyn i ben ar ben-blwydd yr unigolyn yn ddeunaw oed.

(4) Caniateir i wybodaeth heblaw'r hyn y mae'n rhaid ei ddarparu yn unol â pharagraffau (1), (2) a (3) gael ei darparu i'r unigolyn wrth ei ryddhau o wasanaethau iechyd meddwl eilaidd

(5) Pan fo Bwrdd Iechyd Lleol yn rhyddhau unigolyn o wasanaethau iechyd meddwl eilaidd, rhaid i'r Bwrdd ddarparu gwybodaeth i'r unigolyn hwnnw yn unol â pharagraffau (1), (2), (3) a (4) os nad oes awdurdod lleol, ar y dyddiad rhyddhau, yn darparu gwasanaeth iechyd meddwl eilaidd i'r unigolyn hwnnw.

(6) Pan fo awdurdod lleol yn rhyddhau unigolyn o wasanaethau iechyd meddwl eilaidd, rhaid i'r awdurdod ddarparu gwybodaeth i'r unigolyn hwnnw yn unol â pharagraffau (1), (2), (3) a (4) os nad oes Bwrdd Iechyd Lleol, ar y dyddiad rhyddhau, yn darparu gwasanaeth iechyd meddwl eilaidd i'r unigolyn hwnnw.

## Rhan 6 - Trosiannol

### Darpariaethau trosiannol

**11.**—(1) Yn achos claf perthnasol nad oes cydgysylltydd gofal wedi'i benodi iddo ar y dyddiad y daw'r Rheoliadau hyn i rym, rhaid i'r darparydd gwasanaeth iechyd meddwl perthnasol—

- (a) penodi cydgysylltydd gofal i'r claf hwnnw heb fod yn fwy nag 1 mis calendr ar ôl y dyddiad y daw'r Rheoliadau hyn i rym;
- (b) sicrhau bod y cydgysylltydd a benodir yn bodloni'r gofynion cymhwysra i gydgylltwyr gofal a nodir yn rheoliad 4 o'r Rheoliadau hyn ac Atodlen 1 iddynt; ac
- (c) os yw'r cydgysylltydd gofal wedi'i gyflogi gan berson arall, sicrhau bod cydsyniad y person arall i benodiad y cydgysylltydd gofal wedi'i gael yn unol ag adran 16(2) (darpariaeth bellach ynghylch penodi cydgysylltwyr gofal) o'r Mesur.

(2) Os oes cydgysylltydd gofal wedi'i benodi i glaf perthnasol ar y dyddiad y daw'r Rheoliadau hyn i rym—

- (a) bernir bod y cydgysylltydd gofal wedi'i benodi'n gydgylltydd gofal i'r claf hwnnw yn unol â rheoliad 4 o'r Rheoliadau hyn ac Atodlen 1 iddynt, a chyfeirir ato fel "cydgysylltydd gofal tybiedig" at ddibenion y rheoliad hwn;

- (b) os yw'r cydgysylltydd gofal tybiedig wedi'i gyflogi gan berson arall heblaw darparpwydd gwasanaeth iechyd meddwl perthnasol y claf, rhaid i gydsyniad y person arall i benodiad y cydgysylltydd gofal tybiedig gael ei sicrhau gan y darparpwydd yn unol ag adran 16(2) o'r Mesur; ac
- (c) os na cheir cydsyniad y person sy'n gyflogwr i'r cydgysylltydd gofal tybiedig, rhaid i'r darparpwydd gwasanaeth iechyd meddwl perthnasol benodi cydgysylltydd gofal arall i'r claf hwnnw heb fod yn fwy nag 1 mis calendr ar ôl y dyddiad y daw'r Rheoliadau hyn i rym.

(3) Os nad yw'r cydgysylltydd gofal tybiedig i glaf perthnasol yn bodloni'r gofynion cymhwysra i'w benodi'n gydgysylltydd gofal yn unol â rheoliad 4 o'r Rheoliadau hyn ac Atodlen 1 iddynt, rhaid i ddarparpwydd gwasanaeth iechyd meddwl perthnasol y claf benodi cydgysylltydd gofal i'r claf hwnnw sy'n bodloni'r gofynion cymhwysra heb fod yn fwy nag 1 mis calendr ar ôl y dyddiad y daw'r Rheoliadau hyn i rym.

(4) Yn achos claf perthnasol sydd heb gynllun gofal a thriniaeth eisoes mewn bod ar y dyddiad y daw'r Rheoliadau hyn i rym, rhaid i'r cydgysylltydd gofal—

- (a) gweithio gyda'r claf hwnnw a darparpwydd gwasanaeth iechyd meddwl perthnasol y claf hwnnw gyda golwg ar gytuno ar y canlyniadau y bwriedir i ddarparpwydd gwasanaethau iechyd meddwl i'r claf hwnnw eu sicrhau, a pharatoi a chofnodi mewn ysgrifenedd gynllun gofal a thriniaeth i'r claf hwnnw yn unol â rheoliad 5 heb fod yn fwy na 60 diwrnod ar ôl y dyddiad y daw'r Rheoliadau hyn i rym;
- (b) ymgynghori â phersonau yn unol â rheoliad 6 fel rhan o broses cytuno ar ganlyniadau a pharatoi cynllun gofal a thriniaeth i'r claf hwnnw heb fod yn fwy na 60 diwrnod ar ôl y dyddiad y daw'r Rheoliadau hyn i rym;
- (c) darparu copiâu o gynllun gofal a thriniaeth y claf hwnnw yn unol â rheoliad 8 heb fod yn fwy na 10 diwrnod gwaith ar ôl i'r cynllun gael ei baratoi a'i gofnodi mewn ysgrifenedd; ac
- (ch) adolygu cynllun gofal a thriniaeth y claf hwnnw heb fod yn fwy na 12 mis calendr ar ôl y dyddiad y cafodd y cynllun ei baratoi a'i gofnodi mewn ysgrifenedd.

(5) Os oes gan glaf perthnasol gynllun gofal a thriniaeth eisoes mewn bod ar y dyddiad y daw'r Rheoliadau hyn i rym, rhaid i'r cydgysylltydd gofal—

- (a) adolygu'r cynllun gofal a thriniaeth hwnnw sydd eisoes mewn bod heb fod yn fwy na 12

mis calendr ar ôl y dyddiad y daw'r Rheoliadau hyn i rym;

- (b) fel rhan o'r adolygiad ar y cynllun gofal a thriniaeth hwnnw sydd eisoes mewn bod i'r claf hwnnw—
  - (i) ymgynghori â phersonau yn unol â rheoliad 6,
  - (ii) gweithio gyda'r claf hwnnw a darparwyr gwasanaeth iechyd meddwl perthnasol y claf hwnnw gyda golwg ar gytuno ar y canlyniadau y bwriedir i ddarpariaeth gwasanaethau iechyd meddwl i'r claf hwnnw eu sicrhau, a pharatoi a chofnodi mewn ysgrifen gynllun gofal a thriniaeth (y "cynllun newydd") yn unol â rheoliad 5; ac
- (c) darparu copïau o gynllun newydd y claf hwnnw fel y darperir yn rheoliad 8.

Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol,  
un o Weinidogion Cymru

2011

## ATODLEN 1 Rheoliad 4(1)(a)

### GOFYNION PROFFESIYNOL

1. Y gofynion proffesiynol yw bod rhaid i berson fod—

- (a) yn weithiwr cymdeithasol cymwysedig a gofrestrwyd gyda Chyngor Gofal Cymru neu'r Cyngor Gofal Cymdeithasol Cyffredinol;
- (b) yn nyrs lefel gyntaf neu'n nyrs ail lefel, a gofrestrwyd yn Is-Ran 1 neu Is-Ran 2 o'r gofrestr a gedwir o dan erthygl 5 o Orchymyn Nyrsio a Bydwreigiaeth 2001(1), gan gynnwys cofnod sy'n dynodi mai nyrsio iechyd meddwl neu nyrsio anabledau dysgu yw ei maes ymarfer;
- (c) yn therapydd galwedigaethol sydd wedi'i gofrestru yn Rhan 6 o'r Gofrestr a gedwir o dan erthygl 5 o Orchymyn Proffesiynau Iechyd 2001(2);
- (ch) yn seicolegydd ymarferol sydd wedi'i gofrestru yn Rhan 14 o'r Gofrestr a gedwir o dan erthygl 5 o Orchymyn Proffesiynau Iechyd 2001;
- (d) yn ymarferydd meddygol cofrestredig;
- (dd) yn ddeietegydd sydd wedi'i gofrestru yn Rhan 4 o'r Gofrestr a gedwir o dan erthygl 5 o Orchymyn Proffesiynau Iechyd 2001;
- (e) yn ffisiotherapydd sydd wedi'i gofrestru yn Rhan 9 o'r Gofrestr a gedwir o dan erthygl 5 o Orchymyn Proffesiynau Iechyd 2001; neu
- (f) yn therapydd iaith a lleferydd sydd wedi'i gofrestru yn Rhan 12 o'r Gofrestr a gedwir o dan erthygl 5 o Orchymyn Proffesiynau Iechyd 2001.

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(1) O.S. 2002/253.

(2) O.S. 2002/254.

## ATODLEN 2 Rheoliad 5(1)

### Cynllun Gofal a Thriniaeth

Gall y cynllun hwn cael ei gwblhau yn y Gymraeg neu yn y Saesneg, neu yn rhannol yn y Gymraeg ac yn rhannol yn y Saesneg

This plan may be completed in the Welsh or the English language, or partly in Welsh and partly in English

#### **Mesur Iechyd Meddwl (Cymru) 2010 Adran 18 – Cynllun Gofal a Thriniaeth**

Mae'r cynllun gofal a thriniaeth hwn wedi'i baratoi o dan adran 18 o Fesur Iechyd Meddwl (Cymru) 2010, ac yn unol â'r gofynion yn Rheoliadau Iechyd Meddwl (Cydgysylltu Gofal a Chynllunio Gofal a Thriniaeth) (Cymru) 2011.

Dyma gynllun gofal a thriniaeth [Enw'r claf perthnasol] sy'n byw yn [Cyfeiriad arferol llawn y claf perthnasol].

Y cydgysylltydd gofal sydd wedi paratoi'r cynllun gofal a thriniaeth hwn yw [Enw'r cydgysylltydd gofal] ac mae modd cysylltu â'r cydgysylltydd gofal yn [Rhif ffôn, cyfeiriad post ac, os yw'n briodol, cyfeiriad e-bost y cydgysylltydd gofal]. Mae'r cydgysylltydd gofal wedi cael ei benodi gan [Enw'r Bwrdd Iechyd Lleol neu'r Awdurdod Lleol a benododd y cydgysylltydd gofal] ac mae'n gweithredu ar eu rhan.

Cafodd y cynllun hwn ei wneud ar [Y dyddiad y cafodd y cynllun ei wneud] ac mae i'w adolygu erbyn [Y dyddiad y mae'n rhaid adolygu'r cynllun] fan bellaf. Er hynny, caiff [Enw'r claf perthnasol], neu'r gofalwr/gofalwyr neu'r gofalwr/gofalwyr lleoliad oedolyn sydd ganddo/ganddi ofyn i'r cynllun gofal hwn gael ei adolygu unrhyw bryd.

Mae'r rhan hon o'r cynllun gofal a thriniaeth yn cofnodi'r canlyniadau y mae'r ddarpariaeth gwasanaethau iechyd meddwl wedi'i bwriadu i'w sicrhau, manylion y gwasanaethau hynny sydd i gael eu darparu, a'r camau sydd i'w cymryd er mwyn sicrhau'r canlyniadau hynny.

[Rhaid i'r canlyniad(au) arfaethedig a gynhwysir yn y rhan ganlynol o'r cynllun ymwneud ag **un neu fwy** o'r meysydd sydd wedi'u rhestru, a chynnwys esboniad ar sut mae pob canlyniad yn ymwneud â phob maes. Gall canlyniadau gael eu sicrhau mewn meysydd eraill hefyd, a rhaid iddynt gymryd i ystyriaeth unrhyw risgiau sydd wedi'u nodi ar gyfer y claf perthnasol.

Mae'r rhan hon o'r cynllun hefyd yn nodi manylion y gwasanaethau sydd i'w darparu, neu'r camau sydd i'w cymryd, i sicrhau'r canlyniadau arfaethedig, gan gynnwys pa bryd a chan bwy y mae'r gwasanaethau hynny i'w darparu neu y mae'r camau hynny i'w cymryd.

[Rhaid cytuno ar ganlyniadau i'w sicrhau ar gyfer o leiaf un o'r meysydd a ganlyn:

- a) llety
- b) addysg a hyfforddiant
- c) cyllid ac arian
- ch) triniaeth feddygol a mathau eraill o driniaeth, gan gynnwys ymyriadau seicolegol
- d) perthnasau rhianta neu ofalu
- dd) gofal personol a llesiant corfforol
- e) cymdeithasol, diwylliannol neu ysbrydol
- f) gwaith a galwedigaeth.

Gall canlyniadau i'w sicrhau gael eu cytuno hefyd ar gyfer meysydd eraill]

- Y canlyniad sydd i'w sicrhau
- Pa wasanaethau sydd i'w darparu, neu pa gamau sydd i'w cymryd
- Pa bryd
- Gan bwy

Gall y meddyliau, y teimladau neu'r ymddygiadau a ganlyn ddangos bod [Enw'r claf perthnasol] yn mynd yn fwy sâl a bod angen cymorth ychwanegol oddi wrth y tîm gofal (mae'r rhain weithiau'n cael eu galw'n arwyddion o bwl pellach):

Os bydd [Enw'r claf perthnasol] yn teimlo bod ei iechyd meddwl neu ei hiechyd meddwl yn gwaethygu nes cyrraedd pwynt lle mae angen cymorth neu gefnogaeth ychwanegol, dylai'r camau a ganlyn gael eu cymryd (mae hyn weithiau'n cael ei alw'n gynllun argyfwng a rhaid iddo gynnwys manylion y gwasanaethau i gysylltu â nhw):

Dylai unrhyw ofynion neu ddymuniadau sydd gan [Enw'r claf perthnasol] o ran iaith neu gyfathrebu (gan gynnwys defnyddio'r Gymraeg) gael eu cofnodi yma:

Dyma farn [Enw'r claf perthnasol] am y cynllun gofal a thriniaeth hwn, y gwasanaethau iechyd meddwl sydd i'w darparu, ac unrhyw drefniadau at y dyfodol a ddylai gael eu hystyried:

[Cofnodwch unrhyw farn y mae'r claf perthnasol yn dymuno'i chynnwys (gan gynnwys dymuniadau a theimladau yn y gorffennol a'r presennol ynghylch y materion sydd wedi'u cynnwys yn y cynllun), gan



gynnwys unrhyw osodiadau am unrhyw drefniadau at y dyfodol a allai fod yn gymwys. Os nad oes gan y claf farn neu osodiadau ar y materion hyn, neu os nad oes modd sicrhau barn y claf, dylai hynny gael ei gofnodi hefyd.]

Mae'r cynllun gofal a thriniaeth hwn

- \* wedi'i gytuno gyda [Enw'r claf perthnasol] ac mae wedi'i gofnodi yn unol ag adran 18(2) o Fesur Iechyd Meddwl (Cymru) 2010
- \* heb gael ei gytuno gyda [Enw'r claf perthnasol] ond mae'r canlyniadau wedi'u penderfynu gan y darparydd/darparwyr gwasanaeth iechyd meddwl, ac maent wedi'u cofnodi yn unol ag adran 18(6) o Fesur Iechyd Meddwl (Cymru) 2010

[\* dileer fel y bo'n gymwys (rhaid defnyddio un, ond nid mwy nag un, o'r gosodiadau)]

Cyn belled ag y bo'n rhesymol ymarferol gwneud hynny, rhaid i'r darparydd/darparwyr gwasanaeth iechyd meddwl a ganlyn sicrhau bod y gwasanaethau iechyd meddwl a nodwyd yn y cynllun gofal a thriniaeth hwn yn cael eu darparu: [Rowch enw'r Bwrdd Iechyd Lleol a/neu'r Awdurdod Lleol sy'n gyfrifol am ddarparu gwasanaethau iechyd meddwl eilaidd i'r claf perthnasol]

Llofnod [Mae'r claf perthnasol yn cael llofnodi'r cynllun gofal a thriniaeth, os yw'n dymuno] Y claf perthnasol

Llofnod [Rhaid i'r cydgysylltydd gofal lofnodi'r cynllun gofal a thriniaeth hwn] Y cydgysylltydd gofal

Dyddiad [Rhowch y dyddiad y mae'r cynllun gofal a thriniaeth yn cael ei wneud]

# Explanatory Memorandum and Regulatory Impact Assessment

## The Mental Health (Care Coordination and Care and Treatment Planning) (Wales) Regulations 2011

### Contents

<b>PART 1 – EXPLANATORY MEMORANDUM .....</b>	<b>3</b>
1. Description.....	3
2. Matters of special interest to the Constitutional and Legislative Affairs Committee .....	3
2. Legislative background.....	4
3. Purpose and intended effect of the legislation .....	4
4. Consultation.....	5
5. Options .....	6
6. Costs and benefits.....	8
7. Consultation.....	8
8. Competition assessment .....	11
9. Post implementation review.....	11
<b>Annex A – Contact information.....</b>	<b>12</b>

# **Explanatory Memorandum to the Mental Health (Care Coordination and Care and Treatment Planning) (Wales) Regulations 2011**

This Explanatory Memorandum has been prepared by the Department for Health, Social Services and Children and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

## **Minister's Declaration**

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Mental Health (Care Coordination and Care and Treatment Planning) (Wales) Regulations 2011. I am satisfied that the benefits outweigh any costs.

***Lesley Griffiths AM***

Minister for Health and Social Services

7 November 2011

## **PART 1 – EXPLANATORY MEMORANDUM**

### **1. Description**

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1. The Mental Health (Care Coordination and Care and Treatment Planning) (Wales) Regulations 2011 make provision as to:
  - a. determining whether a Local Health Board (LHB) or a local authority is identified as the relevant mental health service provider for a relevant patient, and is therefore responsible for appointing a care coordinator for that patient (other than as provided in the Mental Health (Wales) Measure);
  - b. the eligibility of persons who may be appointed as a care coordinator for patients receiving secondary mental health services;
  - c. the form and content of care and treatment plans;
  - d. who is to be consulted when making and reviewing a care and treatment plan for a relevant patient;
  - e. when care and treatment plans must be reviewed or revised;
  - f. who should receive a copy of a care and treatment plan;
  - g. how copies of care and treatment plans are to be provided;
  - h. what information should be provided to a patient when they are discharged from secondary mental health services; and,
  - i. transitional arrangements in respect of patients within secondary mental health services at the coming into force of the Regulations.

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

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2. This is the first set of Regulations to be made relating to Part 2 of the Mental Health (Wales) Measure 2010.
3. Because the first regulations (alone or with other provisions) to be made under section 18(1)(c) or 18(8) of the Measure are made subject to the approval of the National Assembly for Wales, all of the regulations made within this statutory instrument are made subject to approval.
4. These Regulations include transitional provisions, reflecting the necessary arrangements of moving from a non-statutory to a statutory scheme of care and treatment planning within secondary mental health services.
5. It is proposed that these Regulations are made before the commencement of the main provisions of Part 2 of the Measure. However, the powers to make these Regulations have commenced in accordance with section 55(1) and (2)(b) of the Measure, and the remaining provisions of Part 2 will be commenced prior to the coming into force date of these Regulations.

## **2. Legislative background**

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6. These Regulations may be made in exercise of powers conferred on the Welsh Ministers by sections 15(4), 18(1)(c), 18(8), 18(9), 47(1)(b), 47(2) and 52(2) of the Mental Health (Wales) Measure 2010.
7. These Regulations are made subject to the approval of the National Assembly for Wales, as noted previously.

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

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8. Part 2 of the Mental Health (Wales) Measure seeks to provide that all relevant patients (of any age) who have been accepted into secondary mental health services in Wales have a dedicated care coordinator and that service providers (LHBs and local authorities) act in a coordinated manner to improve the effectiveness of the mental health services provided to an individual. Also:
  - a. there will be a care and treatment plan for the patient;
  - b. the plan will be developed by a care coordinator in consultation with the patient (so far as practicable, taking into account their capacity and cooperation) and service provider(s), and overseen by the care coordinator;
  - c. the plan is to be agreed with a view to achieving the outcomes which the provision of mental health services for the patient are designed to achieve;
  - d. the plan will be in writing; and,
  - e. the plan will be subject to periodic review and revision in accordance with any Regulations which are made by the Welsh Ministers.
9. These regulations support these provisions of the Measure, by providing detailed practical arrangements to support the operation of Part 2 of the Measure.
10. In relation to care coordinators, these Regulations will:
  - a. ensure that only persons meeting the eligibility requirements may be appointed as a care coordinator; this is to ensure that suitably qualified, trained and experienced staff undertake this important function;
  - b. continue the intentions of section 15 of the Measure, to ensure that the most appropriate mental health service provider is identified as the relevant mental health service provider for a relevant patient, and appoints the care coordinator for that patient (in the case of the Regulations this applies where both an LHB and a local authority provide services).

11. In relation to care and treatment planning, these Regulations will:

- a. set out a prescribed form which the care and treatment plan must meet. This will help to ensure that plans are clear and accessible, and meet the purposes of such a document;
  - b. establish the content which all care and treatment plans must include; such content is based within the context of the philosophy of recovery which underpins secondary mental health services; and,
  - c. prescribe the circumstances when care and treatment plans must and may be reviewed and, if necessary, revised.
12. To support the principles of consultation, collaborative and joint working which underpin care and treatment planning within secondary mental health services, these Regulations will:
- a. provide comprehensive requirements about the persons, in addition to the relevant patient and the mental health service providers, who should be consulted in making and reviewing care and treatment plans; and,
  - b. help to ensure that the right people and organisations are clear about the expected outcomes of service provision, and understand what their obligations and expectations are in achieving those outcomes. This is achieved, in part, by providing copies of a relevant patient's care and treatment plan.
13. To help identify the support which relevant patients who leave secondary mental health services may need, these Regulations require certain information to be provided to patients on discharge.
14. It is anticipated that statutory care and treatment planning will lead to the greater involvement of patients in decisions which are made in relation to their care and treatment, and better outcomes for them.
15. In addition, it is expected that the design and delivery of care and treatment plans will foster more cohesive, focussed and effective cross-discipline working amongst mental health and social care professionals in delivering services.

## **4. Consultation**

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16. Details of the consultation undertaken are included in the regulatory impact assessment that has been completed for these Regulations, and is set out in Part 2 of this document.

## PART 2 – REGULATORY IMPACT ASSESSMENT

### 5. Options

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17. This section of the RIA presents two different options in relation to the policy objectives of the proposed Regulations (see Section 4 of Part 1 of this document). Both of the options are analysed in terms of how far they would achieve the Government's objectives, along with the risks associated with each. The costs and benefits of each option are set out in Section 7 of this Regulatory Impact Assessment.

18. The options are:

- Option 1 - Do nothing
- Option 2 - Deliver the policy objectives through the Regulations

#### Option 1 – Do nothing

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19. The current responsibilities for health and social care services in respect of care and treatment planning for patients in adult mental health services is set out in policy guidance relating to the Care Programme Approach (“CPA”)<sup>1</sup>. The CPA guidance does not, currently, apply to patients in child and adolescent secondary mental health services.

20. The Welsh Government has also initiated performance management arrangements in respect of CPA through the Service and Financial Framework (SaFF) and more recently through the Annual Operating Framework (AOF) and Annual Quality Framework (AQF).

21. However, despite existing guidance and targets, there have been anecdotal concerns over recent years that care and treatment plans are not being effectively developed with service users, and that the CPA guidance is not being correctly followed. This position has been confirmed by a recent review of the operation of CPA in Wales<sup>2</sup>.

22. Part 2 of the Measure is aimed at ensuring patients (of all ages) have a care coordinator and a care and treatment plan. Although this will improve the current situation, without the supporting regulations there are risks that a multitude of different documents will be considered to be a care and treatment plan and that different standards will be applied to the content of care and treatment plans. There are also risks that ineffective consultation with relevant individuals, professionals and organisations take place.

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<sup>1</sup> Welsh Assembly Government (2010) *Delivering the Care Programme Approach in Wales: Interim Policy Implementation Guidance*

<sup>2</sup> Elias E and Singer L (2009) *A review of the care programme approach in Wales*. Bridgend: Delivery Support Unit and National Leadership and Innovation Agency for Health (unpublished)

23. There are also concerns that unacceptable variations will continue, or increase, as to who may be appointed as a care coordinator and the skills and experience that such an individual will hold.

## **Option 2 – Make regulations**

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24. This option proposes that the Regulations will provide the necessary operational detail to the Measure, and make provision as to:

- a. determining whether a Local Health Board (LHB) or a local authority is identified as the relevant mental health service provider for a relevant patient, and is therefore responsible for appointing a care coordinator for that patient (other than as provided in the Mental Health (Wales) Measure);
- d. the eligibility of persons who may be appointed as a care coordinator for patients receiving secondary mental health services;
- e. the form and content of care and treatment plans;
- f. who is to be consulted when making and reviewing a care and treatment plan for a relevant patient;
- g. when care and treatment plans must be reviewed or revised;
- h. who should receive a copy of a care and treatment plan;
- i. how copies of care and treatment plans are to be provided;
- j. what information should be provided to a patient when they are discharged from secondary mental health services; and,
- k. transitional arrangements in respect of patients within secondary mental health services at the coming into force of the Regulations.

25. Using legislation in this way will ensure that relevant patients receive an effective assessment of their needs and risks (including vulnerability) that can be translated into effective planning of care and treatment designed to address identified needs, the management of identified risk, and achieve the agreed outcomes.

26. The duties contained in the Measure will therefore be supplemented by detailed regulations and both will be supported by updated guidance, and an implementation programme aimed at moving planning to a holistic, outcome-focussed, recovery-centred approach. Taken collectively this will enable the Welsh Government to redirect the focus of care planning and achieve a position whereby all relevant patients have the support of a dedicated care coordinator and receive a plan which is relevant to their needs, regularly reviewed and updated as appropriate throughout the duration of their treatment.

27. The risks associated with this option relate to the implementation of the legislation, rather than in taking a legislative approach. For example, it will be important to ensure that services are supported in moving towards holistic care planning where such services are not currently working in that way. These risks will be addressed through the implementation programme for the Mental Health (Wales) Measure 2010.



## 6. Costs and benefits

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### Costs and benefits of Option 1 (do nothing)

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28. Ongoing performance management of CPA will have no additional direct costs, and would continue to be used to ensure that care plans are in place for individuals. However, there are costs associated with inadequate planning of care, including poorer outcomes for individuals and their families, and ineffective care delivery and resource allocation. In the worse case, this may even lead to compromised public and patient safety, and increased potential for litigation, and reputational damage. The benefits expected to be realised in moving care and treatment planning forward on a statutory basis (as established by Part 2 of the Measure), may well not be realised with the 'do nothing' option.

### Costs and benefits of Option 2 (make regulations)

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29. Because care and treatment planning has been a (non-statutory) requirement within secondary mental health services for a number of years, there are no anticipated additional costs associated with these Regulations. There are identified implementation costs associated with Part 2 of the Measure (as set out in the Explanatory Memorandum to the Measure), but these Regulations do not add to those costs.

30. It is anticipated that these Regulations, in association with the Measure, will lead to greater involvement of relevant patients in decision-making around their care and treatment, and better outcomes for those patients. Revised CPA guidance and other components of the implementation programme will be directed to support the re-focussing of care and treatment planning which should also encourage more cohesive, focussed and effective cross-discipline working amongst mental health and social care professionals in delivering services.

31. The ultimate aim is to ensure that appropriate services are directed where they are actually required in a timely manner. If successful, this will not only benefit patients, but should also help remove inefficiencies in practice and potential wastage in care and treatment delivery, leading to potential cost savings (although unquantifiable at this stage) within the service.

### Summary

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32. **Option 2 (make regulations)** best meets the Government's objectives.

## 7. Consultation

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33. Welsh Government officials undertook a programme of consultation on the draft regulations relating to care coordination and care and treatment planning. 117 written responses were received from a variety of stakeholders, including service user representative bodies, NHS organisations, local authorities and professional

bodies.

34. A detailed consultation response report has been published on the Welsh Government's website, but the views received and the most noteworthy amendments made to the regulations as a result of the consultation are summarised in the following paragraphs.

*Identification of relevant mental health service provider*

35. The majority of respondents agreed with the principle that one organisation (either the relevant LHB or the local authority) should be the body responsible for appointing a care coordinator; therefore the Welsh Government will not be amending this Regulation.

*Eligibility requirements for care coordinators*

36. In response to suggestions received from stakeholders, dieticians, physiotherapists and speech and language therapists have been added to the list of those professionals who can be appointed as care coordinators. The Regulations have also been amended to make it clear that only qualified social workers (as opposed to student social workers) may be appointed as care coordinators. In addition, 'skills' has been added to Regulation 4(1)(b) in recognition of the fact that certain specific skill sets will on occasions be necessary when appointing care coordinators to patients with certain conditions or requirements.

*Form and content of care and treatment plans*

37. The Welsh Government has made significant changes to Schedule 2 of the Regulations to take into account the range of views expressed by stakeholders. All care and treatment plans will now include a review date, any risks identified in relation to the patient will be recorded against the relevant outcomes, and details of the patient's relapse signatures will be included. In addition, the wording of the mandatory text in Schedule 2 has been adapted to make the language less formal, and the layout of the plan has been substantially revised to clearly link outcomes with the mental health services to be provided with a view to achieving those outcomes. Given the amendments made to Schedule 2, the wording of Regulation 5 has been simplified from the version introduced for consultation.

*Persons to be consulted in preparing, reviewing and revising care and treatment plans*

38. To address concerns voiced by some respondents regarding how/whether certain persons set out in the draft Regulations should be consulted by the care coordinator when preparing or reviewing a care and treatment plans, the Regulations have been amended so that whilst it will be the case that the care coordinator has to take account of the views of the patient before consulting with any of the relevant persons set out in the regulations, he or she may choose to consult with such persons against the wishes of the patient, provided that the care coordination has given due consideration to the wishes of the patient. This

approach is intended to ensure that the wishes of the patient are balanced against the care coordinator's responsibility of delivering safe and effective care and treatment to the patient. To avoid adding unwarranted complexity to the process of developing and reviewing the care plan it was not felt proportionate to require the care co-ordinator to seek a decision from a 3rd party on whether it was appropriate to consult certain people against a patients wishes. It is expected that the Code of Practice relating to Parts 2 and 3 of the Measure will recommend that the reasons for such decisions should be clearly documented.

#### *Review and revision of care and treatment plans*

39. In response to uncertainty expressed by some consultees, the wording of the Regulations has been amended to make it clear that a review must be held *within* each 12 month period. The Welsh Government has also amended the Regulations to make it clear that any statutory mental health service provider providing care to a patient, and the patient's carer, or adult placement carer, may request that the care and treatment plan be reviewed as suggested by some stakeholders ('adult placement carers' have been added to the Regulations to reflect the fact that some patients will be cared for by such a carer under an Adult Placement Scheme).

#### *Copies of care and treatment plans*

40. To address concerns voiced by some respondents regarding whether/how certain persons set out in the draft Regulations should receive copies of the patient's care and treatment plan, the Regulations have been amended so that the care coordinator has to take account of the views of the patient before providing copies of his or her care and treatment plan to any of the persons set out in the Regulations. However, the care coordinator may choose to provide such persons with copies of the plan against the wishes of the patient provided that the care coordinator has given due consideration to the wishes of the patient. This approach is intended to ensure that the wishes of the service user are balanced against the care coordinator's responsibility of delivering safe and effective care and treatment to the patient. To avoid adding unwarranted complexity to the process of developing and reviewing the care plan it was not felt proportionate to require the care co-ordinator to seek a decision from a 3rd party on whether it was appropriate to consult certain people against a patients wishes. It is expected that the Code of Practice relating to Parts 2 and 3 of the Measure will recommend that the reasons for such decisions should be clearly documented.

#### *Information for persons ceasing to be relevant patients*

41. Given that a majority of consultees were content with the arrangements set out in the draft Regulation, the Welsh Government will not be making any substantive amendments to this Regulation. The wording of the text of Regulation 10(3)(b) has, however, been revised to make the relevance of a child's 18<sup>th</sup> birthday clearer, and, in keeping with amendments made elsewhere in the Regulations, the 'best interest' test which was previously included in Regulation 10(4) has been removed.

### *Transitional provisions*

42. In response to the view expressed by some stakeholders, services will be required to ensure that all persons in secondary mental health services (irrespective of age) at the time of the commencement of this legislation should have a care and treatment plan within 60 days.

## **8. Competition assessment**

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43. The competition filter is required to be completed if the subordinate legislation affects business, charities and/or the voluntary sector. The filter is therefore not required in respect of these Regulations.

## **9. Post implementation review**

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44. Section 48 of the Measure places the Welsh Ministers under a duty to the review the operation of Measure, and to publish a report of the findings of the review. The report on Part 2 of the Measure must be published no later than four years after the commencement of the principal provisions of Part 2.
45. It is intended that the review relating to Part 2, will take account of these Regulations.
46. The report of the review must be placed before the National Assembly for Wales, in accordance with section 48(9) of the Measure.

## **Annex A – Contact information**

For further information in relation to this document, please contact:

Mental Health Legislation Team  
Welsh Government  
Cathays Park  
Cardiff  
CF10 3NQ

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# Eitem 3.2

## Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol

(CLA(4)-12-11)

### CLA53

## Adroddiad drafft y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol

### Teitl: Gorchymyn Mesur Diwydiant Cig Coch (Cymru) 2010 (Diwygio) 2011

#### Gweithdrefn: Gadarnhaol

Mae'r Gorchymyn hwn yn diwygio Rhan 1 o Atodlen 2 i Fesur Diwydiant Cig Coch (Cymru) 2010 ('y Mesur') drwy amnewid y tablau ynghylch yr elfennau ym mharagraffau 5 a 6. Gwneir hyn i gynyddu uchafswm yr ardollau y caniateir eu gosod ar gyfer yr elfennau cynhyrchu a chigydda/ allforio o'r ardoll cig coch.

#### Materion technegol: craffu

Gwahoddir y Cynulliad i dalu sylw arbennig i'r offeryn hwn o dan Reol Sefydlog 21.2.

1. Gwneir y Gorchymyn hwn drwy ddefnyddio pwerau a roddwyd i Weinidogion Cymru gan adran 5(4) o'r Mesur, na wnaed gorchymyn cychwyn eto ar ei gyfer. Er y disgwylir y bydd gorchymyn o'r fath yn cael ei wneud cyn y ddadl yn y Cyfarfod Llawn, nid yw'r pŵer ar gael wrth i'r adroddiad hwn gael ei baratoi. [Rheol Sefydlog 21.2(i) – bod amheuaeth a yw intra vires]

#### Rhinweddau: craffu

Ni wahoddir y Cynulliad i dalu sylw arbennig i'r offeryn hwn o dan Reol Sefydlog 21.3.

## Cynghorwyr Cyfreithiol Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol

Tachwedd 2011

*Gorchymyn drafft a osodwyd gerbron Cynulliad Cenedlaethol Cymru o dan adran 17 o Fesur Diwydiant Cig Coch (Cymru) 2010, i'w gymeradwyo drwy benderfyniad gan Gynulliad Cenedlaethol Cymru.*

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OFFERYNNAU STATUDOL CYMRU DRAFFT

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**2011 Rhif (Cy. )**

**AMAETHYDDIAETH, CYMRU**

**Gorchymyn Mesur Diwydiant Cig  
Coch (Cymru) 2010 (Diwygio)  
2011**

**NODYN ESBONIADOL**

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

Mae'r Gorchymyn hwn yn diwygio Mesur Diwydiant Cig Coch (Cymru) 2010.

Mae erthygl 2 yn diwygio Rhan 1 o Atodlen 2 i'r Mesur drwy amnewid y tablau ynghylch yr elfennau ym mharagraff 5 a 6.

Ni luniwyd asesiad effaith rheoleiddiol ar yr effaith y bydd yr offeryn hwn yn ei gael ar gostau busnes ac ar y sector gwirfoddol.

*Gorchymyn drafft a osodwyd gerbron Cynulliad Cenedlaethol Cymru o dan adran 17 o Fesur Diwydiant Cig Coch (Cymru) 2010, i'w gymeradwyo drwy benderfyniad gan Gynulliad Cenedlaethol Cymru.*

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OFFERYNNAU STATUDOL CYMRU DRAFFT

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**2011 Rhif (Cy. )**

**AMAETHYDDIAETH, CYMRU**

**Gorchymyn Mesur Diwydiant Cig  
Coch (Cymru) 2010 (Diwygio)  
2011**

*Gwnaed*

\*\*\*

*Yn dod i rym*

*1 Ebrill 2012*

Mae Gweinidogion Cymru yn gwneud y Gorchymyn a ganlyn drwy arfer pwerau a roddwyd gan adrannau 5(4) ac 17 o Fesur Diwydiant Cig Coch (Cymru) 2010(1).

Gosodwyd drafft o'r Gorchymyn hwn gerbron Cynulliad Cenedlaethol Cymru a chymeradwywyd ef ganddo drwy benderfyniad.

**Enwi, cychwyn a chymhwyso**

1. Enw'r Gorchymyn hwn yw Gorchymyn Mesur Diwydiant Cig Coch (Cymru) 2010 (Diwygio) 2011. Mae'n gymwys o ran Cymru a daw i rym ar 1 Ebrill 2012.

**Diwygiadau i Atodlen 2 i'r Mesur**

2. Mae Rhan 1 o Atodlen 2 i'r Mesur wedi ei diwygio fel a ganlyn—

(1) Ym mharagraff 5 o'r Atodlen yn lle'r tabl a geir yno rhodder y tabl a ganlyn—

“Anifail

**Cyfradd uchaf yr  
elfen gynhyrchu  
ar gyfer pob  
anifail**

---

(1) 2010 mccc 3.



*Gorchymyn drafft a osodwyd gerbron Cynulliad Cenedlaethol Cymru o dan adran 17 o Fesur Diwydiant Cig Coch (Cymru) 2010, i'w gymeradwyo drwy benderfyniad gan Gynulliad Cenedlaethol Cymru.*

Gwartheg £ 6.91

Lloi £ 0.50

Defaid £ 1.00

Moch £ 1.67“.

(2) Ym mharagraff 6 o'r Atodlen yn lle'r tabl a geir yno rhodder y tabl a ganlyn—

	<b>Cyfradd uchaf yr elfen gigydda neu allforio ar gyfer pob anifail</b>
Gwartheg	£ 2.12
Lloi	£ 0.50
Defaid	£ 0.32
Moch	£ 0.40“.

Y Dirprwy Weinidog Amaethyddiaeth, Bwyd,  
Pysgodfeydd a Rhaglenni Ewropeaidd, o dan  
awdurdod y Gweinidog Busnes, Menter, Technoleg a  
Gwyddoniaeth, un o Weinidogion Cymru

Dyddiad

**Doc 2**

**Explanatory Memorandum to the Red Meat Industry (Wales) Measure 2010  
(Amendment) Order 2011**

This Explanatory Memorandum has been prepared by the Department for Business, Enterprise, Technology and Science and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

**Minister's Declaration**

In my view this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Red Meat Industry (Wales) Measure 2010 (Amendment) Order 2011.

*Alun Davies AM*

Deputy Minister for Agriculture, Food, Fisheries and European Programmes, under authority of the Minister for Business, Enterprise, Technology and Science, one of the Welsh Ministers.

8 November 2011

## Description

- 1.1. The purpose of this Statutory Instrument is to amend two paragraphs in the Schedule 2 of Red Meat Industry (Wales) Measure 2010 and so increase the maximum rate of levy that may be charged for the production and slaughter/ export components of the red meat levy.

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

- 2.1 There are no issues of special interest in this Statutory Instrument.

## Legislative Background

- 3.1 The Welsh Ministers may make the proposed Statutory Instrument in exercise of powers conferred by sections 5(4) and 17 of the Red Meat Industry (Wales) Measure 2010 through the affirmative procedure.

## Purpose and intended effect of the legislation

- 4.1 The fundamental purpose of this Statutory Instrument is to amend the Schedule to the Measure which sets the maximum rates of levy that may be charged on the red meat industry in Wales.
- 4.2 Currently the actual levy rates are set by the Welsh Levy Board. Where the proposed rate exceeds the maximum set out in the Welsh Levy Board Order 2008 Ministerial consent is required.
- 4.3 From 1 April 2012 the levy rate will be set annually by the Welsh Ministers. The rate must be set in accordance with the provisions made in the Measure and so any increases beyond the maximum value would require the Schedule to the Measure to be amended, by affirmative procedure, annually. This proposed Statutory Instrument would set the proposed maximum rates are based on current rates plus increases that take account of anticipated inflation over the next ten years thereby avoiding the need to amend the Schedule each year.
- 4.3 The Measure sets some basic parameters in respect of the levy, namely;
  - Money raised in each sector (cattle, sheep and pigs) must be spent for the benefit of that sector and so the promotion of the sector will be proportionate to its importance to the agriculture industry in Wales.
  - The money raised can only be spent on the development and promotion of these three sectors in the red meat industry, for example, it cannot be spent on the promotion of general agricultural produce from Wales nor could it be spent on general research and development.

## **Consultation**

- 5.1. No specific consultation has been entered into for this Statutory Instrument because this is one step in a process that started in 2006 when detailed and extensive consultation with the industry and other interested parties was undertaken as part of the Radcliffe Report on the Review of the UK Levy Bodies.
- 5.2. The recommendations in the report on the Radcliffe Review of the levy bodies were subject to wide consultation. Respondents from the meat sector were wholly supportive of the idea of having a Welsh red meat levy-raising body directly accountable to the then Welsh Assembly Government rather than directly accountable to the UK Levy Board - AHDB. The idea was accepted by all the main players including NFU Cymru, HCC, Welsh Lamb & Beef Producers Ltd. and Farmers' Union of Wales.

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

- 6.1. A Regulatory Impact Assessment is not required for this Statutory Instrument.
- 6.2. The proposed Statutory Instrument simply amends the tables in an existing Measure and so will set the maximum amount of levy that may be charged in future. The proposed amounts are based on current rates plus increases that take account of anticipated inflation over the next ten years.
- 6.3. The proposed Statutory Instrument would not give rise to any other administrative, compliance and/or other costs.

CLA GP5

**Constitutional and Legislative Affairs Committee**

**Inquiry into the Granting of Powers to Welsh Ministers in UK Laws**

**Response from Farmers Union of Wales**

**NATIONAL ASSEMBLY FOR WALES'  
CONSTITUTIONAL AND LEGISLATIVE  
COMMITTEE'S INQUIRY INTO THE  
GRANTING OF POWERS TO WELSH  
MINISTERS IN UK LAWS**

**Response from the Farmers' Union of Wales**

**September 2011**

## **NATIONAL ASSEMBLY FOR WALES' CONSTITUTIONAL AND LEGISLATIVE AFFAIRS COMMITTEE'S INQUIRY INTO THE GRANTING OF POWERS TO WELSH MINISTERS IN UK LAWS**

### **Response from the Farmers' Union of Wales**

#### **INTRODUCTION**

1. The Farmers' Union of Wales welcomes this opportunity to contribute to the Constitutional and Legislative Affairs Committee's Inquiry into the Granting of Powers to Welsh Ministers in UK Laws, with particular reference to how this practice impacts on the scrutiny of legislation affecting rural Wales.
2. The Farmers' Union of Wales (FUW) supported Devolution and the establishment of a National Assembly for Wales believing that this would enable Wales to promote, develop and institute policies that were designed specifically to cater for the needs and aspirations of the people of Wales.
3. The Union firmly believes that the interests of farmers and the rural economy of Wales are best served by policies and legislation determined and fashioned, wherever possible, by the elected representatives of the National Assembly for Wales who would be more attuned to the particular concerns and needs of Wales' rural areas.
4. As a means of achieving this, the Union supported the strengthening of the powers and responsibilities afforded to the National Assembly for Wales, believing that legislative parity was needed between Wales and the other devolved nations.
5. The Union, therefore, welcomed the Referendum on Further Law Making Powers for Wales held earlier this year.

#### Questions

**The extent of the current National Assembly scrutiny of delegated powers given to Welsh Ministers through provisions in UK Acts and through other statutory mechanisms.**

6. The FUW believes that the National Assembly for Wales should have the opportunity to comment on all legislation pertaining to Wales, whether emanating from Westminster or Cardiff, and that full scrutiny should be undertaken by the appropriate Assembly Committee to ensure total transparency and appropriateness of any new legislation implemented in Wales.
7. The current practice, where the National Assembly does not have the power to formally scrutinise those UK Acts of Parliament which confer powers directly onto Welsh Ministers is a cause of concern to the Union.
8. The FUW believes that unless the National Assembly, through an appropriate scrutiny Committee, is able to influence primary legislation through Assembly Ministers prior to its drafting in Westminster, then the opportunity to shape the content of such legislation could be compromised.
9. The Union believes that the various scrutiny Committees within the Assembly play a vital role in informing and shaping the activities undertaken by the Welsh Government.
10. During the third Assembly, the Union became increasingly concerned over the decline in emphasis given to the reports, recommendations and advice provided by scrutiny Committees to Assembly Ministers.
11. The FUW was particularly disappointed that, under the current Welsh Government, the Business Committee abolished the Rural Development Sub-Committee, thus, in its view, weakening the opportunity for discussion and debate on the particular challenges facing the rural economy in Wales.
12. While acknowledging that the Environment and Sustainability Committee will establish, when needed, 'Task and Finishing Groups' to look at specific issues affecting rural areas, such as the recently formed Common Agricultural Policy Task and Finish Group, the FUW believes that, due to the predominately rural nature of Wales and the importance of agriculture to rural areas, a separate Committee was needed to consider and scrutinise any issues and legislation which affects agriculture or rural Wales.
13. The Union believes that, for the scrutiny process to be seen to be working, the current process whereby Westminster can confer powers directly onto Welsh Ministers, without involving the National Assembly, needs to be amended so that the National Assembly is able to fully scrutinise any relevant pieces of legislation.

**The extent to which the National Assembly is able to exercise robust scrutiny of such processes through its Standing Orders.**

14. As outlined in the Annex document issued with the Inquiry letter, the National Assembly has no formal role in scrutinising powers transferred to Welsh Ministers through UK Acts of Parliament.

15. The FUW believes that the Assembly's role in the process needs to be formalised to prevent inappropriate legislation or parts of legislation being implemented in Wales.
16. At present, when a UK Act of Parliament confers powers directly onto Welsh Ministers, the Standing Orders, particularly Standing Order 30, only requires a written statement regarding the Bill and its provisions. Once this statement has been laid, there is no requirement for it, or the actual legislation, to be scrutinised by the Business Committee or, by referral, a relevant Committee.
17. The Union supports the comments made by the Constitutional Affairs Committee during the third Assembly regarding amending the Standing Orders to enable legislation applied to both the Assembly and individual Welsh Ministers to be scrutinised at an appropriate point. The subsequent changes made to the Standing Orders, particularly Standing Order 30, appear to be insufficient to address these recommendations and subsequently the level of scrutiny which can be undertaken.
18. If Welsh Ministers are to be more accountable to the National Assembly and the relevant Assembly Committees, the Union believes that Standing Order 30 should be amended to increase the level of scrutiny of UK legislation which confers powers directly onto Welsh Ministers.
19. These amendments should include referral of the statement and the actual legislation to the Business Committee who, in turn, would be able to scrutinise and comment on the documents or refer them to the Committee with the relevant knowledge and expertise to undertake this work. Similar provisions are contained within paragraph 29.4 of Standing Order 29 which the Union believes could be used as a basis to amend Standing Order 30.
20. Standing Order 21, paragraphs 21.8 and 21.9, already confers powers on a 'responsible Committee' to consider draft European Union legislation and make written representations on behalf of the National Assembly, to the relevant Committee in the House of Commons or the House of Lords. The Union also believes that, with some minor amendments, there is scope within this Standing Order to extend this to include the scrutiny of UK legislation which confers powers directly onto Welsh Ministers.

**The relevance of the UK Government's Devolution Guidance Notes in the light of recent Welsh constitutional developments.**

21. The Union is concerned that the Devolution Guidance Notes have yet to be updated to reflect the changes in the powers afforded to the National Assembly following the outcome of the Referendum. It believes that this work should be undertaken as a matter of urgency to ensure that UK Government acts appropriately following the changes brought about by the Referendum.

**The procedures for Legislative Consent Motions compared to the position in the other devolved legislatures.**



22. The Union welcomes the changes to Standing Order 29, for the fourth Assembly, which bestows the appropriate Assembly Committee with the ability to scrutinise and report on a Legislative Consent Motion (LCM) and the legislation which led to it being tabled.
23. In practice, this scrutiny can only take place if the Business Committee refers the LCM to the relevant Committee. The Union believes that the Business Committee should be required to refer all LCMs to the most appropriate Committee. This would allow the legislation to be fully debated and reported and allow the tabling of amendments which would allow the legislation to be adapted for Wales.
24. The Union also believes that an Assembly Committee should be able to request the referral of an LCM to it if it believes that it is important or could have implications for the work areas within its remit.
25. The FUW supports the conclusion of the Scottish Parliament's Procedures Committee in its report on 'The Sewel Convention' that "any legislation must either be the product of its own deliberations [the Scottish Parliament] or require its explicit consent. Either way, it remains in control".

29<sup>th</sup> September 2011

# Eitem 4.2

Y Gwir Anrh/Rt Hon Carwyn Jones AC/AM  
Prif Weinidog Cymru/First Minister of Wales



Llywodraeth Cymru  
Welsh Government

Ein cyf/Our ref: LF/FM/5152/11

David Melding AM  
Chair  
Constitutional & Legislation Affairs Committee  
National Assembly for Wales  
Cardiff Bay  
Cardiff

15<sup>th</sup> November 2011

Dear David

I am writing further to my letter of 2<sup>nd</sup> November accepting your invitation to give oral evidence to the Committee.

Your Committee's inquiry raises a specific issue, that of the delegation of powers, in connection with the pursuit by Welsh Ministers of our policy objectives through appropriate provision in Westminster legislation. In general, the Welsh Government follows the principle that primary legislation in devolved areas should be enacted by the National Assembly. However, it is necessarily the case that there are, and will continue to be, circumstances in which it is sensible and advantageous if provision which otherwise would be within the Assembly's competence is sought for Wales in Parliamentary Bills, with the consent of course of the National Assembly (signified by approval of a Legislative Consent Motion). Such provision will not infrequently include conferring new delegated powers on the Welsh Ministers.

Taking provision in a UK Bill can enable pragmatic solutions to be reached in a timely fashion, while simultaneously respecting the competence of the Assembly through the LCM process. It can be a matter of practical good government for such provisions to be included in a UK Bill. Examples of situations where such an approach would be appropriate could include:

- when the UK Government's legislative proposal would also be appropriate for Welsh circumstances but there is no time available for similar provisions to be brought forward in the Assembly;
- where the inter-connected nature of the relevant Welsh and English administrative systems mean that it is most effective and appropriate for provision for both to be taken forward at the same time in the same legislative instrument;
- where the devolved provisions in question are minor or technical and non-contentious;
- where the UK Bill covers both devolved and non devolved matters and the Westminster route must be taken in order to achieve the policy objective;
- where the competence of the Assembly and/or the powers of the Welsh Ministers would be extended in a way that could not be achieved through an Assembly Act, given the limits on the Assembly's legislative competence.

Bae Caerdydd • Cardiff Bay  
Caerdydd • Cardiff  
CF99 1NA

English Enquiry Line 0845 010 3300  
Llinell Ymholiadau Cymraeg 0845 010 4400  
Ffacs \* Fax 029 2089 8198  
ps.firstminister@wales.gsi.gov.uk

In my Government's view, it would be most unwise if we were to adopt a self-denying ordinance in respect of Westminster Bills in such circumstances.

Turning to the points specifically raised in your call for evidence:

**The extent of the current National Assembly scrutiny of delegated powers given to Welsh Ministers through provisions in UK Acts and through other statutory mechanisms**

This is of course primarily a matter for the Assembly itself. The Government must work within the devolution settlement as contained in the Government of Wales Act 2006 (GOWA 2006) and, in our dealings with the UK Government, in accordance with the principle of confidentiality enshrined in the Memorandum of Understanding.

A number of arrangements are already in place to enable Assembly scrutiny of provisions in Parliamentary Bills. Section 33 of GOWA 2006 requires the Secretary of State for Wales to consult the Assembly about the UK Government's legislative programme, which is followed by a debate in plenary. Assembly Committees have the discretion to consider Welsh provisions in Parliamentary Bills and the revised Standing Orders have put in place new arrangements for Legislative Consent Motions and the laying of written statements in relation to certain types of Bill provision.

**The extent to which the National Assembly is able to exercise robust scrutiny of such processes through its Standing Orders**

The content of Standing Orders is a matter for Business Committee.

**The relevance of the UK Government's Devolution Guidance Notes in the light of recent Welsh constitutional developments**

The existing Devolution Guidance Notes are currently being revised to take account of the new constitutional arrangements in Wales. Your Committee will of course bear in mind that these Notes are not the responsibility of the Welsh Government, although our officials engage in dialogue with Wales Office officials on the drafting. The Notes are aimed primarily for the guidance of civil servants working in Whitehall departments, who may on occasion have only a limited knowledge and understanding of devolution.

**The procedures for Legislative Consent Motions compared to the position in the other devolved legislatures.**

So far as I am aware, the procedures followed here are similar to those used in the other devolved legislatures, but your Committee will no doubt draw attention to any distinctive features of our arrangements which merit reconsideration.

I look forward to attending the Committee next week to discuss these matters further.

Yours sincerely



**CARWYN JONES**

## **National Assembly for Wales Constitutional and Legislative Affairs Committee**

### **Inquiry into the Granting of Powers to Welsh Ministers in UK Laws**

#### **Memorandum from the Wales Office**

1. This memorandum sets out the response of the Wales Office, on behalf of the United Kingdom Government, to the invitation from the Constitutional and Legislative Affairs Committee of the National Assembly for Wales to submit written evidence in relation to its inquiry on the granting of powers to Welsh Ministers in UK laws. It sets out the overarching principles which inform the Government's approach to legislating in respect of Welsh Ministers' functions, and responds specifically in the five areas on which the Committee has welcomed views.

#### Key Principles

2. There are four key principles which inform the Government's approach to including provision relating to Welsh Ministers' functions in parliamentary Bills:

**i. The UK Government works with the Welsh Government on matters relating to its legislative programme**

3. The UK Government consults the Assembly on its legislative programme at the start of each session of Parliament. The Government of Wales Act 2006 requires the Secretary of State for Wales to undertake with the Assembly such consultation as appears to her appropriate. In practice, the Secretary of State for Wales appears before the Assembly soon after the start of each parliamentary session to present the UK Government's legislative programme and hear the views of Assembly Members on it.

4. The UK Government consults the Welsh Government in preparing and managing its legislative programme. The Wales Office engages with the Welsh Government as the UK Government puts together its legislative programme, and keeps the Welsh Government informed of progress as the parliamentary session progresses. UK Government Departments currently ensure that contact with the Welsh Government on individual Bills starts at an early stage in the Bill development process, and continues during the parliamentary stages of a Bill.

5. The UK Government believes it is essential to encourage close working relationships with the Welsh Government to ensure both Governments act in the interests of Wales and of the United Kingdom as a whole. This relationship should be one based on mutual respect, where both Governments share information relating to their legislative programmes, and to particular Bills which form part of those programmes, to enable the legislative aspects of the

Welsh devolution settlement to work effectively. Each Government, in turn, should maintain a close working relationship with its respective legislature.

**ii. The Assembly would normally legislate on subjects within its legislative competence**

6. The subjects within the Assembly's legislative competence are set out in Part 1 of Schedule 7 to the Government of Wales Act 2006, together with exceptions to that competence, and the Assembly would normally legislate in these areas. Parliament retains the right to legislate in any area of the Assembly's legislative competence, although the UK Government currently observes the convention that it will not bring forward legislation in areas devolved to the Assembly without the Assembly's consent. The Welsh Government would ordinarily be expected to bring forward legislation in the Assembly in order to fulfil its legislative competence.

**iii. The UK Government would not normally ask Parliament to legislate on subjects which are within the Assembly's legislative competence without the consent of the Assembly.**

7. Notwithstanding the principle above, there may be specific circumstances where the UK Government would agree a request by the Welsh Government to include provision in a parliamentary Bill on a subject within the Assembly's legislative competence, including provisions relating to Welsh Ministers' powers. This may be because there is no suitable Assembly Bill in the Welsh Government's legislative programme in which to make provision and / or the requirement is too specific to warrant an Assembly Bill of its own.
8. Any provision which the Welsh Government wishes to make would need to be agreed with the UK Government, and fall within the scope of the relevant parliamentary Bill. It should not adversely affect the handling or timing of the Bill.
9. The consent of the Assembly is required if provision is included in a parliamentary Bill which is within its legislative competence. It is the responsibility of the Welsh Government to promote the relevant Legislative Consent Motion (LCM) in the Assembly. The UK Government would seek to agree with the Welsh Government before a parliamentary Bill is introduced that the Welsh Ministers would support an LCM, and lay a motion and an accompanying legislative consent memorandum in the Assembly as soon as possible after the Bill is introduced in Parliament. We understand that the Assembly's Standing Orders require the Welsh Government to lay an LCM in the Assembly normally no later than two weeks after a Bill is introduced in Parliament. An LCM may also be required if the provision is amended during a Bill's parliamentary stages.

- iv. **The UK Government may ask Parliament to legislate in relation to Welsh Ministers' functions in non-devolved areas, but would normally seek the agreement of the Welsh Government to do so.**
10. Welsh Government Ministers exercise most of their executive functions in areas where the Assembly has legislative competence. Accordingly, provisions in parliamentary Bills relating to the functions of Welsh Government Ministers will often be within the Assembly's legislative competence and will, for that reason, require the consent of the Assembly (through an LCM).
  11. But Welsh Government Ministers may also exercise functions in areas which are non-devolved, where the Assembly does not exercise legislative competence. They may, for example, be best placed to exercise specific functions in relation to Wales in areas where the UK Government is implementing a policy in a non-devolved area UK-wide or GB-wide, or in relation to England and Wales.
  12. The UK Government would not normally bring forward legislation in such circumstances, or in a way which significantly affects Welsh Government Ministers' executive functions (other than incidental or consequential provision), without the consent of Welsh Government Ministers. We understand that in accordance with the Standing Orders of the Assembly, Welsh Government Ministers should notify the Assembly in a written statement about provisions in parliamentary Bills which have a significant impact on Welsh Government Ministers' functions. The UK Government considers it appropriate for the Assembly to agree with the Welsh Government the nature and extent of Assembly engagement in relation to such provision.
  13. In response to the specific areas on which the Committee has invited written evidence
    - i. **The extent of the National Assembly scrutiny of delegated powers given to Welsh Ministers through provisions in UK Acts and through other statutory mechanisms.**
  14. As explained in our discussion of key principles, the consent of the Assembly is required in relation to powers conferred on Welsh Government Ministers in parliamentary Acts in areas within the Assembly's legislative competence. The Welsh Government is accountable to the Assembly for the exercise of its functions, and in drafting provisions the UK Government and the Welsh Government may, for example, require a draft of a statutory instrument brought forward by the Welsh Government under delegated powers to be laid before, and approved by a resolution of, the Assembly (affirmative procedure) or provide for an instrument to be subject

to annulment by the Assembly (negative procedure). The Assembly would, in turn, be mindful of the need for such requirements in considering whether to approve an LCM brought forward by the Welsh Government in relation to such provision.

15. Similarly, if executive functions are conferred on Welsh Government Ministers in non-devolved areas, any relevant scrutiny functions would normally be conferred on the Assembly. Parliament however would continue to exercise legislative competence and could undertake scrutiny in the relevant area. The Assembly, in the same way, normally assumes any scrutiny function formerly exercised by Parliament in the event of executive functions being transferred to Welsh Government Ministers in non-devolved areas (for example, in a Transfer of Functions Order). In some very particular cases the exercise of a delegated power may be subject to both Assembly and parliamentary approval.

**ii. The extent to which the National Assembly is able to exercise robust scrutiny of such processes through its Standing Orders.**

16. The UK Government considers this to be a matter for the National Assembly, in consultation with the Welsh Government.

**iii. The relevance of the UK Government's Devolution Guidance Notes in the light of recent Welsh constitutional developments.**

17. The UK Government makes available (on the Cabinet Office website) a series of Devolution Guidance Notes (DGNs) setting out guidance to UK Government Departments on working arrangements between the UK Government and the Devolved Administrations.

18. These DGNs can cover arrangements relating to all administrations, or to specific bilateral relations between the UK Government and one of the Devolved Administrations. In the context of the Committee's inquiry, DGN9 (Post-Devolution Primary Legislation Affecting Wales) is of particular relevance. The content of this DGN had been agreed between the UK Government and the (then) Welsh Assembly Government before publication, and is mirrored by reciprocal Welsh Government guidance.

19. Following the affirmative vote in the 3 March Assembly powers referendum and the subsequent conferral on the Assembly of enhanced law-making powers in the 20 devolved areas, the UK Government has been working with the Welsh Government to revise relevant DGNs to reflect the new constitutional arrangement. In that regard, we have prioritised the revision of DGN9, and are also preparing a new DGN (DGN17) to set out the process for modifying the legislative competence of the Assembly under section 109 of the Government of Wales Act 2006 (replacing DGN16, which

dealt with Legislative Competence Orders under section 95 of the 2006 Act).

20. The UK Government believes that DGNs remain crucially important in ensuring an efficient and effective working relationship between Whitehall and the Welsh Government, and that the Welsh devolution settlement continues to work well in this respect. In terms of DGN9, the guidance is being updated to reflect the new constitutional arrangements in place following the March referendum, and will provide the basis for Whitehall departments' engagement with the Welsh Government on legislative matters.
21. The UK Government is mindful of the need to publish revised guidance, and is working to agree a revised DGN9 with the Welsh Government. It is also expected that this revised guidance will form the basis for reciprocal Welsh Government guidance.

**iv. The procedures for Legislative Consent Motions compared to the position on the other devolved legislatures.**

22. The UK Government considers the procedures for LCMs in the Assembly to be a matter for the Assembly itself, in consultation with the Welsh Government. However, we consider it important that the Welsh Government agrees with the UK Government to promote an LCM in the Assembly before a parliamentary Bill is introduced which includes provision in an area within the Assembly's legislative competence. That should include a commitment to support that LCM, and to lay a motion and an accompanying legislative consent memorandum in the Assembly as soon as possible after the parliamentary Bill is introduced.
23. The Assembly should ideally give its consent well before, but at least by, the time the relevant clauses are considered in Committee in the House of introduction, and certainly before the Bill reaches its final amending stage in the House of introduction. The absolute deadline (which applies primarily in relation to amendments to relevant clauses which trigger the need for an LCM) is the last opportunity for the clauses to be amended while the Bill is still before Parliament.
24. The UK Government is mindful of the need for Whitehall departments and the Welsh Government to work together closely as the Welsh Government prepares a motion, in order to meet these deadlines. Certain factors inevitably complicate the process, including the fact that the sitting and recess dates for Parliament and the Assembly are not always the same, and that amendments may be made to a Bill after its introduction which trigger the need for an LCM. We consider it important that Bill Teams in Whitehall departments are aware of these factors. Another important factor is that the Assembly's Business Committee may refer a legislative



consent memorandum to another Assembly committee or committee(s) for consideration, and the Assembly would not debate an LCM until the committee has reported.

25. This process makes it all the more important for LCMs to be presented to the Assembly in a timely way, and for the UK Government and the Welsh Government to engage as early as possible about bringing forward an LCM for the Assembly to consider. By the same token, it is also important for the Assembly to be respectful of the parliamentary process, and deadlines, in managing the process of considering an LCM.
26. As a general rule, in relation to Bills introduced before the Assembly Act provisions came into force, the UK Government sought an LCM only if a Bill included provision which was within the Assembly's legislative competence at the time of introduction (or at the time when amendments were tabled). LCMs were not sought retrospectively, as a result of the wider legislative competence exercised by the Assembly since 5 May 2011, for provisions which were already included in Bills before that date.

**v. Any other matters relevant to the Inquiry.**

27. The Assembly Research Service's paper *Provision about Welsh Ministers in UK Acts* provides background and context to the Committee's inquiry. It identifies the Public Bodies Bill as an example of a "current UK Bill which seeks to delegate significant subordinate legislation-making powers to Welsh Ministers", and explains that the Bill provides a framework enabling changes to be made to public bodies and providing executive powers to both UK Government Ministers and Welsh Government Ministers to allow for those changes to be taken forward.
28. It is important to note that this Bill was introduced in Parliament in October 2010, before the March referendum on Assembly powers and the subsequent conferral on the Assembly of enhanced law-making powers (and so was subject to the general rule described in paragraph 26). In developing proposals it was necessary to work on the basis of the Assembly's legislative competence at the time. Following the Assembly's acquisition of wider powers, where amendments have been made to relevant clauses of the Bill, or new clauses added, the UK Government has worked closely with the Welsh Government to consider the implications of the new constitutional arrangements.
29. The Assembly has approved an LCM for the Public Bodies Bill relating to the powers of the Welsh Ministers in relation to environmental and other bodies, and the powers of UK Government Ministers insofar as they extended to areas within the Assembly's legislative competence. The provisions in clause 9 of the Bill mean that UK Government Ministers will not have the power to make

provision in Orders which are within the Assembly's legislative competence unless the Assembly gives its agreement. The Assembly will therefore be able to decide whether any changes are made which are within its legislative competence following Royal Assent of the Public Bodies Act.

30. The Welsh Ministers' powers under the Bill are subject to Assembly procedures equivalent to the parliamentary procedures which apply to orders made by UK Government Ministers. They give the Assembly and its committees a greater role in relation to orders under the Bill than is usual for subordinate legislation, for example enabling the Assembly to require an enhanced affirmative procedure to be followed. This reflects the significance of the powers in the Bill.

Wales Office  
November 2011



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

**Adroddiad: CLA(4)-11-11 : 14 Tachwedd 2011**

**Mae'r Pwyllgor yn cyflwyno'r adroddiadau a ganlyn i'r Cynulliad:**

**Offerynnau nad ydynt yn cynnwys unrhyw faterion i'w codi o dan Reol Sefydlog 21.2 neu 21.3**

### **Offerynnau'r Weithdrefn Penderfyniad Negyddol**

**CLA51 – Rheoliadau Cyfraniadau Ardrethu Annomestig (Cymru) (Diwygio) 2011**

**Gweithdrefn: Negyddol**

**Fe'u gwnaed: 1 Tachwedd 2011**

**Fe'u gosodwyd: 2 Tachwedd 2011**

**Dyddiad dod i rym: 30 Tachwedd 2011**

**CLA54 – Rheoliadau Cwmnïau RTM (Erthyglau Enghreifftiol) (Cymru) 2011**

**Gweithdrefn: Negyddol**

**Fe'u gwnaed: 5 Tachwedd 2011**

**Fe'u gosodwyd: 8 Tachwedd 2011**

**Dyddiad dod i rym: 30 Tachwedd 2011**

### **Offerynnau'r Weithdrefn Penderfyniad Cadarnhaol**

**CLA50 – Gorchymyn Llifogydd ac Erydu Arfordirol Atodol (Cymru) 2011**

**Gweithdrefn: Cadarnhaol**

**Fe'i gwnaed: heb ei nodi**

**Fe'i gosodwyd: heb ei nodi**

**Dyddiad dod i rym: 1 Rhagfyr 2011**

**Offerynnau sy'n cynnwys materion i'w codi o dan Reol Sefydlog 21.2 neu 21.3**

### **Offerynnau'r Weithdrefn Penderfyniad Negyddol**

**CLA48 – Rheoliadau'r Cynllun Lwfansau Tirlenwi (Cymru) (Diwygio) 2011**

**Gweithdrefn: Negyddol**

**Fe'u gwnaed: 25 Hydref 2011**

**Fe'u gosodwyd:** 27 Hydref 2011  
**Dyddiad dod i rym:** 21 Tachwedd 2011

**CLA49 – Gorchymyn Adroddiadau Archwilio ac Asesu (Cymru)  
(Diwygio) 2011**

**Gweithdrefn:** Negyddol  
**Fe'i gwnaed:** 31 Hydref 2011  
**Fe'i gosodwyd:** 1 Tachwedd 2011  
**Dyddiad dod i rym:** 22 Tachwedd 2011

Cytunodd y Pwyllgor ar yr adroddiadau hyn o dan Reolau Sefydlog 21.2 a 21.3. Ceir copi ohonynt yn Atodiadau 1 a 2.

**Busnes arall**

**Ymchwiliadau'r Pwyllgor: Ymchwiliad i roi pwerau i Weinidogion  
Cymru yn Neddfau'r DU**

Clywodd y Pwyllgor dystiolaeth lafar gan Mr Mike Lewis, y Prif Weithredwr a Ms Daisy Cole, Pennaeth Dylanwadu, Cysylltiadau Cyhoeddus a Pholisi Plant, ill dau yn cynrychioli Cyngor Ffoaduriaid Cymru.

**Penderfyniad i gwrdd yn breifat**

Yn unol â Rheol Sefydlog 17.42(vi) penderfynodd y Pwyllgor wahardd y cyhoedd o weddill y cyfarfod i drafod cyflwyniad y Pwyllgor i'r Comisiwn Bil Iawnderau a'r dystiolaeth a gyflwynwyd hyd yn hyn i'r Ymchwiliad i roi pwerau i Weinidogion Cymru yn Neddfau'r DU.

**David Melding AC**

Cadeirydd y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol

**14 Tachwedd 2011**

## **Atodiad 1**

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

**(CLA(4)-11-11)**

**CLA48**

### **Adroddiad y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol**

**Teitl: Rheoliadau'r Cynllun Lwfansau Tirlenwi (Cymru) (Diwygio) 2011**

#### **Gweithdrefn: Negyddol**

Mae'r Rheoliadau hyn yn diwygio'r derminoleg yn Rheoliadau'r Cynllun Lwfansau Tirlenwi (Cymru) 2004 (y prif Reoliadau) er mwyn sicrhau cysondeb â deddfwriaeth arall o dan Ddeddf Gwastraff a Masnachu Allyriadau 2003 (y Ddeddf).

#### **Materion technegol: craffu**

Gan nad yw'r Rheoliadau yn cyfeirio at yr holl bwerau a ddefnyddiwyd i wneud y prif Reoliadau, mae angen bod yn ofalus iawn i gyfeirio at y rhai cywir wrth wneud diwygiadau. Yn yr achos yma ni chyfeirir yn y paragraff rhagarweiniol at adrannau 12(2) a 15 o'r Ddeddf, y bernir eu bod yn berthnasol i'r diwygiadau a wneir yma i reoliadau 6 a 10, yn eu tro, o'r prif Reoliadau.

Gwahoddir y Cynulliad i dalu sylw arbennig i'r offeryn hwn o dan Reol Sefydlog 21.2 (vi).

#### **Rhinweddau: craffu**

Ni nodwyd unrhyw bwyntiau i'w hadrodd o dan Reol Sefydlog 21.2 mewn perthynas â'r offeryn hwn.

#### **David Melding AC**

Cadeirydd y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol

**14 Tachwedd 2011**

**Mae'r Llywodraeth wedi ymateb fel a ganlyn:**

**Rheoliadau'r Cynllun Lwfansau Tirlenwi (Cymru) (Diwygio) 2011**

#### **Adran 12**

Mae'r Llywodraeth yn derbyn pwynt y Pwyllgor am adran 12(2) y dylasid ei henwi yn y pwerau galluogi. Adran 12(2) yw'r pŵer y

caniateir diwygio rheoliad 6(5)(b) o'r prif reoliadau odani. Mae diwygiadau i weddill rheoliad 6 wedi eu gwneud o dan adran 12(1) o'r Ddeddf.

Mae'r Llywodraeth yn cydnabod ei bod yn bosibl y bydd yr hepgoriad hwnnw yn peri i rywun amau a yw diwygiad i reoliad 6(5)(b) o'r prif reoliadau wedi ei wneud ai peidio. Er ei bod yn annhebygol, ym marn y Llywodraeth, y gellid dehongli'r term "gwastraff trefol pydradwy" fel petai'n perthyn i unrhyw beth ond y gwastraff y mae awdurdodau gwaredu gwastraff yn ymdrin ag ef o dan y cynllun lwfansau tirlenwi, bydd y Llywodraeth yn gwneud rheoliadau i ddiwygio rheoliad 6(5)(b) o'r prif reoliadau cyn pen chwe wythnos.

## **Adran 15**

Mae'r Llywodraeth o'r farn bod y diwygiadau i reoliad 10 o'r prif reoliadau wedi eu hawdurdodi gan adran 11(1) a (2)(b) o'r Ddeddf a bod bod adran 15 o'r Ddeddf yn ymwneud â gwybodaeth o fath gwahanol y mae rheoliad 10 o'r prif reoliadau yn ymdrin â hi ar hyn o bryd. Casgliad y Llywodraeth yw bod enwi adran 12 yn y prif reoliadau yn gamgymeriad. Dyma isod y rhesymau sydd wedi ein harwain at y casgliad hwn.

Mae dwy ddarpariaeth yn y Ddeddf sy'n rhoi pŵer i wneud darpariaeth am gynnal cofrestrau; adrannau 11 a 15.

Mae adran 11(1) o'r Ddeddf yn rhoi pŵer i wneud darpariaeth at ddiben dwyn Pennod 1 o'r Ddeddf i effaith. Drwy adran 11(2)(b), mae'r rheoliadau hynny yn gallu gwneud darpariaeth am gynnal cofrestrau o faterion sy'n ymwneud â lwfansau tirlenwi.

Mae adran 15 o'r Ddeddf yn fwy penodol ac mae'n rhoi pŵer i wneud rheoliadau sy'n ei gwneud yn ofynnol i'r awdurdod monitro gynnal cofrestr sy'n cynnwys "gwybodaeth fonitro" o ddisgrifiad a bennir yn y rheoliadau. Ystyr "gwybodaeth fonitro" yw gwybodaeth neu dystiolaeth:

- y mae'r awdurdod monitro wedi ei chael wrth iddo gyflawni ei swyddogaethau o dan y Ddeddf; neu
- a ddatgelir i'r awdurdod monitro gan awdurdod monitro arall sydd wedi cael yr wybodaeth neu dystiolaeth wrth iddo gyflawni ei swyddogaethau ei hun o dan y Ddeddf.

Mae'r Llywodraeth yn dehongli "acquire" ("cael") a "disclose" ("datgelu") yn adran 15 i olygu bod yr wybodaeth neu'r dystiolaeth dan sylw yn wybodaeth neu'n dystiolaeth sydd, yn y lle cyntaf, ym meddiant rhywun nad yw'n awdurdod monitro ac sydd wedyn yn mynd i ddwylo'r awdurdod monitro wrth iddo gyflawni ei rôl fonitro o dan y cynllun lwfansau tirlenwi.

Deuwn at y casgliad hwn oherwydd natur rôl yr awdurdod monitro o dan y Ddeddf ac felly'r cyd-destun y mae awdurdod monitro yn debygol o gael yr wybodaeth a'r dystiolaeth ynddo, neu gael yr wybodaeth a'r dystiolaeth wedi eu datgelu iddo.

At ei gilydd, rôl awdurdod monitro yw monitro gweithrediad cynllun lwfansau tirlenwi yn gyffredinol, monitro pa faint o wastraff trefol pydradwy a anfonir i safleoedd tirlenwi yn enwedig ac archwilio perfformiad yr awdurdodau gwaredu gwastraff o ran sut y maent yn cydymffurfio â'u dyletswyddau o dan y Ddeddf.

I alluogi awdurdod monitro i gyflawni ei rôl, mae'r Ddeddf yn caniatáu rheoliadau i'w gwneud yn ofynnol i awdurdodau gwaredu gwastraff i ddarparu gwybodaeth benodol yn rheolaidd i'r awdurdod monitro (anfon dychweliadau). Mae'r Ddeddf hefyd yn caniatáu rheoliadau i ganiatáu i'r awdurdod monitro ei gwneud yn ofynnol i awdurdodau gwaredu gwastraff i gyflwyno cofnodion i'w harchwilio ac i ddarparu gwybodaeth a thystiolaeth sy'n ymwneud ag anfon gwastraff trefol pydradwy i safleoedd tirlenwi.

Ar ben hynny, mae'r Ddeddf yn caniatáu rheoliadau i ganiatáu i'r awdurdod monitro gael gafael ar gofnodion gweithredyddion safleoedd tirlenwi, drwy ddefnyddio grym os oes rhaid.

Mae'r Llywodraeth yn barnu mai yn cyd-destun hwn y bydd yr awdurdod monitro yn "cael" gwybodaeth neu dystiolaeth ac felly fe fydd gwybodaeth a "ddatgelir" i awdurdod monitro yn wybodaeth o'r un fath a geir mewn cyd-destun tebyg gan awdurdod monitro arall.

Nid yw rheoliad 10 o'r prif reoliadau yn ymwneud â'r math hwn o wybodaeth. Yn hytrach, mae'n ymwneud â'r canlynol:

- (a) gwybodaeth a ddaw i fodolaeth o ganlyniad i benderfyniadau a wneir ac a gyhoeddir o dan y Ddeddf gan Weinidogion Cymru; hynny yw, y lwfansau a ddyrennir i bob awdurdod gwaredu gwastraff o dan adran 4 o'r Ddeddf ac unrhyw newidiadau i'r dyraniadau hynny a wneir o dan adran 5 o'r Ddeddf; a
- (b) gwybodaeth y mae'r awdurdod monitro ei hun ei chreu; hynny yw:
  - (i) maint y gwastraff trefol pydradwy a anfonir i safleoedd tirlenwi gan bob awdurdod gwaredu gwastraff; a
  - (ii) y gwahaniaeth rhwng y maint hwnnw a'r maint y mae'r awdurdod gwaredu gwastraff yn dal lwfansau tirlenwi ar ei gyfer.

Ceir yr wybodaeth yn (i) drwy gymhwyso ffactor statudol o 61% i'r maint o wastraff trefol a gasglwyd a anfonir i safle tirlenwi gan

awdurdod gwaredu gwastraff. Fe geir peth o'r wybodaeth y mae ei hangen i wneud y cyfrifiad hwn yng nghofnodion awdurdod gwaredu gwastraff a gwybodaeth benodol a anfonir yn rheolaidd (dychweliadau) i'r awdurdod monitro a bydd yr awdurdod monitro yn "cael" y cofnodion hynny a'r wybodaeth honno wrth iddo gyflawni ei swyddogaethau o dan y Ddeddf. Nid yw'r Llywodraeth o'r farn y bydd y awdurdod monitro yn "cael" y cyfrifiad sy'n deillio o'r broses honno nac y bydd y cyfrifiad hwnnw yn cael ei "ddatgelu" iddo drwy'r broses honno.

Fe geir yr wybodaeth yn (ii) drwy dynnu'r maint yn (i) oddi wrth nifer y lwfansau a ddelir gan yr awdurdod ac a gyhoeddir gan Weinidogion Cymru o dan adran 4 ac/ neu 5 o'r Ddeddf. Unwaith eto, nid yw'r Llywodraeth o'r farn bod y cyfrifiad sy'n deillio o'r broses honno yn wybodaeth y mae'r awdurdod monitro yn "cael" nac yn wybodaeth neu'n dystiolaeth a "ddatgelir" iddo.

Am y rhesymau hyn mae'r Llywodraeth o'r farn bod y ddarpariaeth a wnaed yn rheoliad 10 o'r prif reoliadau wedi ei hawdurdodi gan adran 11(1) a (2)(b) o'r Ddeddf.



## **Atodiad 2**

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

**(CLA(4)-11-11)**

**CLA49**

### **Adroddiad y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol**

#### **Teitl: Gorchymyn Adroddiadau Archwilio ac Asesu (Cymru) (Diwygio) 2011**

#### **Gweithdrefn: Negyddol**

Mae'r Gorchymyn hwn yn diwygio Gorchymyn Adroddiadau Archwilio ac Asesu (Cymru) 2010 drwy ddarparu, mewn cysylltiad â'r blynyddoedd ariannol sy'n dechrau ar neu ar ôl 1 Ebrill 2011, mai 31 Ionawr yn y flwyddyn ariannol y cynhaliwyd yr archwiliad ynddi neu y mae'r asesiad yn ymwneud â hi fydd y dyddiad erbyn pryd y mae'n rhaid anfon yr adroddiad.

#### **Materion Technegol: craffu**

Ni nodwyd unrhyw bwyntiau i'w hadrodd o dan Reol Sefydlog 21.2 mewn perthynas â'r offeryn hwn.

#### **Rhinweddau: craffu**

Gwahoddir y Cynulliad i roi sylw arbennig i'r offeryn hwn o dan Reol Sefydlog 21.3(ii), sef ei fod o bwysigrwydd gwleidyddol neu gyfreithiol neu ei fod yn codi materion polisi cyhoeddus sy'n debyg o fod o ddiddordeb i'r Cynulliad.

Gwnaed y Gorchymyn Adroddiadau Archwilio ac Asesu (Cymru) 2010 yn Saesneg yn unig, er ei fod yn Orchymyn byr, a chyhoeddwyd adroddiad beirniadol ar y Gorchymyn gan y cyn Bwyllgor Materion Cyfansoddiadol am y rheswm hwnnw. Atodir copi o'r adroddiad hwnnw i'r ddogfen hon.

Gwnaed y Gorchymyn presennol yn ddwyieithog. Serch hynny, gan fod y Gorchymyn wedi'i ddrafftio fel Gorchymyn diwygio, mae'r diwygiad a wnaed i Orchymyn 2010 yn Saesneg yn unig, ac mae'r gyfraith o sylwedd yn parhau i fod yn Saesneg yn unig. Pe bai'r Gorchymyn presennol wedi dirymu a disodli Gorchymyn 2010, byddai hynny wedi arwain at eitem o ddeddfwriaeth ddwyieithog yn cymryd lle datganiad o'r gyfraith yn Saesneg.

Mae'r enghraifft hon yn tynnu sylw at bwysigrwydd sicrhau bod dwyieithrwydd yn hytrach na chyfieithu yn elfen greiddiol o'r broses deddfu. Mae'n dangos yr angen hefyd i ystyried adroddiadau a gyhoeddwyd eisoes gan y Pwyllgor hwn a'i rhagflaenwyr wrth ddrafftio deddfwriaeth ar yr un pwnc.

## **David Melding AC**

Cadeirydd y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol

**14 Tachwedd 2011**

ATODIAD

## **Y Pwyllgor Materion Cyfansoddiadol**

**CA(3)-01-11**

**CA508: Gorchymyn Adroddiadau Archwilio ac Asesu (Cymru) 2010**

### **Gweithdrefn: Negyddol**

Mae Adran 19 o Fesur Llywodraeth Leol (Cymru) 2009 yn ei gwneud yn ofynnol i Archwilydd Cyffredinol Cymru gyhoeddi adroddiad archwilio ac asesu mewn cysylltiad â phob awdurdod gwella Cymreig. Mae'r Gorchymyn hwn yn diwygio adran 19(3)(a) o'r Mesur mewn perthynas â'r flwyddyn ariannol a gychwynodd ar 1 Ebrill 2010, drwy ymestyn y terfyn amser y mae'n rhaid i'r Archwilydd Cyffredinol gadw ato o ran anfon copi o'r adroddiadau at Weinidogion Cymru ac at yr awdurdod gwella Cymreig perthnasol. Newidier y dyddiad ar gyfer anfon ei adroddiad o 30 Tachwedd 2010 i 31 Ionawr 2011.

### **Materion Technegol: craffu**

O dan Reol Sefydlog 15.2, bydd y Cynulliad yn cael ei wahodd i roi sylw arbennig i'r offeryn a ganlyn:-

1. Gwnaed y Gorchymyn yn yr iaith Saesneg yn unig. Mae'r Memorandwm Esboniadol yn cynnwys y datganiad a ganlyn: "The Minister for Social Justice and Local Government has further determined in this particular circumstance that it is not reasonable or practicable for the order to be made in English and Welsh."

Fodd bynnag, mae'r Gorchymyn, gan gynnwys y Memorandwm Esboniadol, yn 392 o eiriau o hyd, sef hanner maint y llythyr atodol sydd wedi'i gyfieithu ac sy'n egluro'r rhesymau dros dorri'r rheol 21 diwrnod. Yn ogystal â hyn, ar wahân i'r derminoleg safonol a ddefnyddir ar gyfer Offerynnau Statudol, yr un yw'r derminoleg a ddefnyddir yn y Gorchymyn a'r derminoleg a ddefnyddir yn y llythyr. O

dan yr amgylchiadau hynny, nid yw'n glir pam yr ystyriwyd ei bod yn afresymol neu'n anymarferol i wneud Gorchymyn dwyieithog.

[Rheol Sefydlog 15.2(ix)]

### **Rhagoriaethau: craffu**

Ni nodwyd unrhyw bwyntiau i'w hadrodd o dan Reol Sefydlog 15.3 mewn perthynas â'r offeryn hwn.

### **Cynghorwyr Cyfreithiol**

Y Pwyllgor Materion Cyfansoddiadol

### **Tachwedd 2010**

#### **Mae'r Llywodraeth wedi ymateb fel a ganlyn:**

Mae Llywodraeth Cynulliad Cymru o'r farn nad oedd cyfieithu Gorchymyn Adroddiadau Archwilio ac Asesu (Cymru) 2010 yn rhesymol nac yn ymarferol yn yr achos hwn o gofio'r cyfyngiadau amser a wynebwyd wrth wneud y Gorchymyn. Mae'r sylwadau ynghylch y llythyr atodol wedi eu nodi. Fodd bynnag, yr oedd gofyn cael cyfieithiad cyfreithiol a gwirio'r Gorchymyn. Nid oedd yn bosibl cyflawni hyn o fewn y cyfnod a roddwyd.